

CHAPTER 7

DIVISION OF COASTAL RESOURCES: COASTAL PERMIT PROGRAM RULES

Authority

N.J.S.A. 12:5-1 et seq., 13:1D-1 et seq., 13:9A-1 et seq., 13:9B-1 et seq., and 13:19-1 et seq.

Source and Effective Date

R.1994 d.378, effective June 24, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Division of Coastal Resources: Coastal Permit Program Rules, expires on June 24, 1999.

Chapter Historical Note

Originally, subchapter one of this chapter contained rules on Riparian Grants and Leases, which were adopted pursuant to N.J.S.A. 12:7-1 et seq. On October 7, 1980, R.1980 d.433 repealed this text. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). On August 26, 1980 rules concerning Waterfront Development Permits were adopted pursuant to N.J.S.A. 12:5-3 and 13:10-9 and filed as R.1980 d.375. This text was codified at subchapter two and became operative on September 26, 1980. See: 12 N.J.R. 252(a), 12 N.J.R. 576(a). Subsequently, amendments to this subchapter were filed as R.1981 d.355, effective July 9, 1981. See: 13 N.J.R. 73(c), 13 N.J.R. 401(b). On May 7, 1984 subchapter two was repealed by R.1984 d.164. See: 16 N.J.R. 1073(a). The chapter was substantially amended effective May 18, 1987 as R.1987 d.217. See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

The current Coastal Permit Program Rules are based on the CAFRA rules formerly found at N.J.A.C. 7:7D and include elements of the repealed Waterfront Development Permit rules (N.J.A.C. 7:7-2) and Wetlands Management rules (N.J.A.C. 7:7A-1). The wetlands maps listed at N.J.A.C. 7:7-2.2(c) were recodified from N.J.A.C. 7:7A-1.13. Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1989 d.309, effective May 12, 1989 (operative June 5, 1989). See: 21 N.J.R. 369(a), 21 N.J.R. 1526(a). Public Notice: Notice of Routine Program Implementation. See: 25 N.J.R. 1010(a).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.276 effective May 10, 1994. See: 26 N.J.R. 917(a), 26 N.J.R. 2413(a).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.378. See: Source and Effective Date: Subchapter 7, General Permits and Permits-By-Rule, was adopted as part of R.1994 d.378, effective July 18, 1994. See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a). See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection will review permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).
2. Wetlands Act of 1970: The draining, dredging, excavation, or deposition of material, and the erection of any structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area regulated under CAFRA. These requirements are fully explained in N.J.A.C. 7:7-2.3.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Validity. In re Loveladies Harbor, Inc., 176 N.J.Super. 69, 422 A.2d 107 (App.Div.1980), certification denied 85 N.J. 501, 427 A.2d 588 (1981).

Regulated activity without permit prior to promulgated order. Loveladies Prop. Owners Ass'n v. Raab, 137 N.J.Super. 179, 348 A.2d 540 (App.Div.1975).

Power of D.E.P. to regulate use of marshes and wetlands. Sands Point Harbor, Inc. v. Sullivan, 136 N.J.Super. 436, 346 A.2d 612 (App.Div.1975).

7:7-1.2 (Reserved)

Repealed, R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).
This section "Authority" was repealed.

7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

"City of the fourth class" means a city as defined at N.J.S.A. 40A:6-4d which borders on the Atlantic Ocean and which is a seaside or summer resort.

"Coastal Permit" means a CAFRA, Wetlands or Waterfront Development Permit.

"Commissioner" means the Commissioner of the Department of Environmental Protection or designated representative.

“Commercial development” means a development designed, constructed or intended to accommodate commercial or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

“Department” means the Department of Environmental Protection.

“Development” means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. Development, for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.1(c)4. Development does not include debris removal or cleanup provided such activities do not involve excavation, grading or filling on beaches and dunes.

“Dune” means a wind- or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

“Dwelling unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

“Educational facility” means an elementary or secondary school.

“Excavation” means the extraction of sand, gravel, earth or any other material.

“Filling” means the depositing of sand, gravel, earth or any other material.

“Floating home” means any waterborne structure designed and intended primarily as a permanent or seasonal

dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

“Footprint of development” means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

“Governmental agency” means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

“Habitable structure” means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

“Industrial development” means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

“Intervening development” means a development with an above ground structure, excluding any shore protection structure or sand fencing, and includes houses, garages, cabanas or bath houses which are fully enclosed and serviced by a municipal sewer system, commercial, industrial or public buildings that are either completed or under active construction as of July 19, 1994 and that have received all necessary Federal, State, and local approvals on or prior to July 19, 1994 or are otherwise exempt from CAFRA, and all development that has been approved and constructed under CAFRA. “Intervening development” does not include seawalls, bulkheads, retaining walls, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds, docks piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures as defined at N.J.A.C. 7:7-1.3. An “intervening development” will be determined by looking at the widest point of the footprint of the existing development and extending a line landward and perpendicular to the mean high water line from each point (See Appendix B, incorporated herein by reference). If the proposed development does not fall entirely within these lines, it shall be regulated.

“Linear development” means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way which have a basic function of connecting two points, and beach and dune maintenance activities. Linear development shall not mean residential, commercial, office or industrial buildings, or improvements within a development such as utility lines or pipes or

internal circulation roads that are proposed at the same time as the original development.

“LURP (Land Use Regulation Program) application form” means an application form used when applying for a permit or exemption pursuant to the Coastal Area Facility Review Act, Waterfront Development Law, Wetlands Act of 1970, Flood Hazard Area Control Act, or Freshwater Wetlands Protection Act, or when applying for Water Quality Certification and Federal Consistency Determinations. This form includes blocks for information regarding the permit application type, project description, project site location, property owner certification and names and addresses of the applicant and the applicant’s agent.

“Man-made lagoon” means an artificially created linear waterway sometimes branched, ending in a dead end with no significant upland drainage. Lagoons have been created through dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots for residential development adjacent to the lagoon. A natural waterway which is altered by activities including, but not limited to, filling, channelizing, or bulkheading shall not be considered a man-made lagoon, nor shall a bulkheaded boatslip be considered a lagoon.

“Mean high water” (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department’s Bureau of Tidelands.

“Mean high water line” (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the “ordinary” high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.)

“Permit” means any legal instrument constituting permission to undertake construction pursuant to CAFRA (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), or the Waterfront Development Law (N.J.S.A. 12:5-3). Permits shall be issued with conditions including requirements that shall, at the discretion of the Department, be satisfied prior to commencement of construction and long term post construction requirements such as monitoring and maintenance.

“Person” means any corporation, company, association, society, firm, partnership, individual, government agency, or joint stock company.

“Pesticide” means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

“Porch” means a covered or uncovered entrance, directly connected to a residential dwelling.

“Program” means the Land Use Regulation Program in the Department of Environmental Protection.

“Public development” means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. “Public development” does not have to be publicly funded or operated.

“Public highway” means a “public highway” as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

“Qualifying municipality” means those municipalities defined in urban aid legislation, N.J.S.A. 52:27D-178, qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The municipalities meeting this definition in 1993 are: Asbury Park, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City.

“Reconstruction” means the repair or replacement of a building, structure, or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction of docks and piers means repair or replacement in the same location and size of the preexisting structure. Reconstruction does not include repairs or maintenance, such as replacing siding, windows, roofs, unless such repairs or maintenance are associated with enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.1(c)4.

“Regulated activity” or “activity” means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the terms “project” and “development”.

“Regulated wetland” means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

“Residential development” means a development that provides one or more dwelling units.

“Seasonal or temporary structures related to the tourism industry” means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds with a footprint not exceeding 64 square feet in area, wooden walkways, stage platforms, and portable rest rooms, which remain in place only during the period from May 1 through September 30, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

“Site” means the land or area upon which a proposed development is to be constructed.

“Site preparation” means physical activity which is an integral part of a continuous process of land development or redevelopment for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

“Structure” means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

“Waterward side of development” means the area of the site located between a tidal waterbody and a line(s) drawn through the point(s) of the footprint of the building closest to the water, and parallel to the waterbody, which line extends to the property boundaries. (see Appendices C and D, herein incorporated by reference).

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Amended Division and Permit; added pesticide.
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-1.4 Standards for evaluating permit applications

All applications for coastal permits (as defined in N.J.A.C. 7:7-1.3), water quality certificates, and Federal consistency determinations shall be approved, conditionally approved or denied pursuant to the Department’s Rules on Coastal Zone Management, N.J.A.C. 7:7E. In addition,

applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Deleted Policies from text.
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Conditional approval of construction permit for large scale development, permitting no construction until statutory standards satisfied, improper as not authorized by enabling legislation and as being a decision deficient in essential findings (citing former N.J.A.C. 7:7D-2.3). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div.1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

Application for waterfront development permit; failure to comply with rules for coastal zone management. *Haldone v. DEPE*, 94 N.J.A.R.2d (EPE) 2.

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

(b) The following standard procedural conditions shall apply to all coastal permits. Failure to comply with any of the following shall constitute a violation.

1. A permittee shall notify the Department in writing, at least three working days prior to the beginning of construction on the site or site preparation.

2. A permittee shall notify the Department in writing within five working days prior to commencement of operation of a CAFRA development. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the development have been met.

3. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or structures. Neither the State nor the Department shall, in any way, be liable for the loss of life or property which may occur by virtue of the activity or development resulting from any permit.

4. A permittee shall allow the authorized representatives of the Department free access to the site at all times when construction activity is taking place, and at other times upon notice to the permittee. The permittee shall provide free of charge to the Department all of its equipment reasonably necessary for inspection of the site.

5. No change in plans or specifications upon which a permit is issued shall be made except with the prior written permission of the Department, in accordance with N.J.A.C. 7:7-4.10.

6. The notice of authorization shall be posted prominently at the site during construction and a copy of the permit and approved plans shall be kept on the construction site and shall be exhibited upon request to any person.

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition or a permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect the public interest.

10. A permit is subject to suspension or revocation for violations of its terms and conditions. A permittee shall, upon receipt of a notice of suspension or revocation, comply with the terms of such notice and shall, if required, cease such construction.

11. The Department may issue a modified permit for good cause when circumstances warrant minor changes in the original permit which will not result in additional adverse environmental impacts.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision's decision whether or not to accept the land, furnish proof to the Department of the political subdivision's decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the development, as described in the original application. No such change shall be implemented unless an application for a permit modification is filed pursuant to N.J.A.C. 7:7-4.10.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the Department that such condition(s) cannot be satisfied.

15. If required by the Department as a permit condition, the permit shall be filed with the clerk of the county court in which the project site is located as notice to prospective purchasers.

(c) The following standard substantive conditions shall apply to all coastal permits, where appropriate:

1. A permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29 (Noise control).

2. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

(d) A permit shall be valid authority to commence construction of a development for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit, with the exception of permits issued for activities located below the mean high water line, shall upon written authorization of the Department be valid, as long as construction continues, until the project is completed subject to the provisions of (d)1 and 2 below.

1. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a cumulative period of one year or longer the permit shall expire, except for projects of unusual size or scope or for projects for which are delayed due to circumstances beyond the permittee's control (such as a delay in the financing of a public works project), in which case, upon the request of the applicant prior to the expiration of the original permit, the permit may be extended for a total of 10 years from the original effective date.

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than 20 business days prior to the expiration date of the permit.

3. All permits issued for activities occurring below the mean high water line shall be effective for a fixed term not to exceed five years.

4. All water quality certificates and Federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit.

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter.

(e) The Department may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. The process for issuance of General Permits and the process for authorizing various activities under the issued General Permits is detailed at N.J.A.C. 7:7-7.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J. Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Conditional approval of construction permit for large scale development, permitting no construction until statutory standards satisfied, improper. (citing former N.J.A.C. 7:7D-2.5). *Crema v. Dept. of Environmental Protection*, 182 N.J. Super. 445, 442 A.2d 630 (App.Div. 1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

7:7-1.6 Provisional permits

(a) The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response

to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together with a recommendation regarding the request for emergency permit authorization.

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the standard application (CP-1) form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application in accordance with these rules and the Rules on Coastal Zone Management, N.J.A.C. 7:7E, the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions which must be satisfied by the permittee in accordance with the time frames established in the permit.

New Rule, R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.8 Procedure where more than one permit is required

(a) When a proposed development or project requires more than one coastal permit, the Department will require only one application, but that application must comply with

the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(b) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:1C-1.5(c).

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Deleted "... the highest of any ..." and added "calculated in accordance with ...".

Recodified from 7:7-1.7 and amended R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.9 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:1C-1.5. The Department will maintain a printed fee schedule for public use.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "(N.J.S.A. 13:1D-29 et seq.)".

Recodified from 7:7-1.8 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.10 Construction

This chapter shall be liberally constructed to effectuate the purpose of the Acts under which it was adopted. The Department may, in its discretion and if consistent with statutory requirements, relax the application of any of the procedures contained in this chapter when necessary and in the public interest.

Recodified from 7:7-1.9 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.11 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from 7:7-1.10 by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a) A CAFRA permit shall be required for:

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:
 - i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or
 - iv. A public development or industrial development;
3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:
 - i. A residential development having 25 or more dwelling units;
 - ii. A commercial development having 50 or more parking spaces or equivalent parking area; or
 - iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

- i. A residential development having 75 or more dwelling units;
- ii. A commercial development having 150 or more parking spaces or equivalent parking area; or
- iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

- i. A residential development having 25 or more dwelling units;
- ii. A commercial development having 50 or more parking spaces or equivalent parking area; or
- iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. In addition, the repair and maintenance of utilities within rights-of-way on beaches and dunes are not regulated development as defined at N.J.A.C. 7:7-1.3 provided that all disturbed areas are restored to their pre-disturbance condition. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1. Public development, for purposes of (a)3, 4 and 5 above only, does not include:

- i. The construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or

the extension of a road, sanitary sewer pipeline, storm-water management facility, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required;

- ii. The maintenance, repair or replacement (including upgrade) of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

- iii. The repair, modification, or replacement of sanitary system components other than pipelines and associated pump stations, including upgrading of systems from primary to secondary treatment, provided that an increase in capacity will not result;

- iv. The construction, maintenance, repair or replacement (including upgrade) of water lines, telecommunication lines and cable television lines; or

- v. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way.

2. Public development, for the purposes of N.J.A.C. 7:7-2.1(a)2 above does not include:

- i. The maintenance, repair or replacement (including upgrade) of existing water petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

- ii. The maintenance, repair, modification, or replacement of sanitary system components other than pipelines and associated pump stations, including upgrading of systems from primary to secondary treatment, provided that an increase in capacity will not result;

- iii. The placement or connection of telecommunication lines and cable television lines, or the maintenance, repair, replacement, or connection of telecommunication lines and cable television lines;

- iv. The maintenance, repair or replacement of existing and functional methods and related structures located completely within cleared and maintained rights-of-way; or

v. Maintenance and repair (excluding replacement, reconstruction or modification), including construction of less than 1,200 linear feet of new stormwater pipes, of existing stormwater management facilities which receive, store, convey or discharge stormwater runoff. These facilities may include retention and detention basins and infiltration structures; grassed swales, filter fabric, rip-rap channels and/or stormwater outfalls.

3. For the purposes of (a)2, 3, 4, and 5 above, churches and facilities which provide government services and are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or provide recreational areas will be regulated in accordance with the thresholds for commercial developments.

4. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives. This calculation shall apply to both paved and unpaved parking areas.

5. For the purposes of (a)2 through 5 above, development or expansion of existing developments "either solely or in conjunction with a previous developments" means:

i. The construction of any residential or commercial development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 1, 1973 (the effective date of CAFRA), regardless of present ownership, or any subdivision or resubdivision of a parcel of land which occurred after September 19, 1973;

iii. The construction of any residential or commercial development on contiguous parcels of land where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

iv. The addition of one or more parking spaces or dwelling units or equivalent to any existing dwelling units or parking spaces or equivalent parking area for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.

(1) The addition of parking spaces by restriping is not regulated.

v. The total number of dwelling units or parking spaces in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vi. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

6. Contiguous parcels shall include, but not be limited to, those land areas which directly abut or are separated by a general access roadway or other right of way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

7. For the purposes of (a)2iii, iv 3, 4 and 5 above (developments not located on a beach or a dune and not located within 150 feet of beach, dune or mean high water line unless there is an intervening development), commercial and public development described in (b)3 above does not include development which:

i. Does not cause the number of parking spaces (either solely or in conjunction with the existing development) to exceed the regulatory threshold of the appropriate zone; or

ii. Does not propose development of any new parking spaces, regardless of whether the total number of existing parking spaces exceeds the regulatory threshold of the appropriate zone.

(c) This subchapter shall not apply to developments which meet one of the following criteria for exemption under CAFRA specified at N.J.S.A.13:19-5:

1. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction begins by July 19, 1997, and continues to completion with no lapses in construction activity for more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

iv. In the event the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. In cases where the municipal approval expires and is renewed or that a new permit is issued, the Department will require documentation that the new or renewed permit authorizes the same construction as the original permit, and that the currently authorized construction would not result in additional adverse impacts to any Special Areas as defined at N.J.A.C. 7:7E-3 that are greater than any adverse impacts associated with the development authorized before July 19, 1994, and the proposed construction is either 15 feet inshore of a bulkhead or no closer to the water than the original approval.

2. A residential development which has received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction begins by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings

or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

3. The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

i. The enlargement or relocation of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

iii. A relocation landward or laterally may qualify for the exemption at (c)3 above if the Department determines, in writing, that such a relocation would result in less environmental impact than the in place reconstruction of damaged or destroyed development.

iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (f)2 below.

v. A permit is not required for elevating a residential development on pilings, provided the number of dwelling units does not increase.

vi. Commercial development provided there is no increase in the number of parking spaces excluding the area located underneath the elevated structure.

4. The enlargement of any development provided that such enlargement does not result in:

i. The enlargement of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

5. The construction of a patio, deck or similar structure at a residential development.

i. For the purposes of this subsection, "similar structure" includes porches, balconies and verandas. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains used for the purpose that it was originally constructed. The conversion of such a structure into a new room or additional dwelling unit through the construction of walls and/or windows will require a CAFRA permit.

ii. For the purposes of this subsection, the following will also be allowed at a residential development, provided that such construction does not include the placement of pilings or placement of a structure on a beach, dune, or wetland: open fences, open carports, flower boxes, gardens, a landscape wall (for example, railroad ties) no more than one foot in height (or a series of walls not to exceed a cumulative total of one foot in height), gazebos, satellite dishes and antennas, sheds (with a footprint of 120 square feet or less), wooden boardwalks and gravel or brick/paver block walkways, propane tanks properly anchored, and showers/spa/hot tubs and above ground swimming pools (not exceeding 500 square feet of surface area) which do not discharge to surface waters or wetlands.

iii. The construction of timber dune walker structures constructed in accordance with Department specifications found at N.J.A.C. 7E, Rules on Coastal Zone Management shall also be allowed at a residential development.

iv. For the purposes of this subsection, "similar structure" does not include the construction of swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings.

6. Services provided, within the existing public right-of-way, by any governmental entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing unpaved roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects (including new paving or repaving) which do not increase the number of travel lanes;

iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices; or

iv. Re-stripping of public highways and the addition of toll booths provided that these activities do not result in any increase in impervious coverage.

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994 provided that construction, as defined at N.J.A.C. 7:7-2.1(c)1iii, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-2.1(c)1iii on or before September 19, 1973 shall expire on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to Special Areas, as defined at N.J.A.C. 7:7E-3, which additional impacts are greater than the impacts associated with the originally exempt development.

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the approved site plan or subdivision plan, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit and approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. To make such a determination, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v; and

iv. A completed LURP application form.

2. For an exemption pursuant to (c)3, 4, and 5 above the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

(1) For exemptions based on fire, storm, natural hazard or Act of God, the site plans submitted shall also indicate all preexisting structures to be rebuilt.

ii. Photographs of the site;

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v; and

iv. A completed LURP application form.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site;

v. The fee specified at N.J.A.C. 7:1C-1.5(a)3v; and

vi. A completed LURP application form.

Amended by R.1986 d.461, effective November 17, 1986.

See: 18 N.J.R. 1772(a), 18 N.J.R. 2326(a).

(b)4viii added.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1988 d.136, effective March 21, 1988.

See: 19 N.J.R. 807(a), 20 N.J.R. 643(b).

(b)6 substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Petition for Rulemaking.

See: 27 N.J.R. 769(a), 27 N.J.R. 1696(b).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Case Notes

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. Last Chance Development Partnership v. Kean, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Proposed paved parking lot of more than three acres in coastal area constituted "public facility" and "road, airport, or highway construction" under Act and project was therefore subject to review. In Re: DEP Reg. N.J.A.C. 7:7-2.1(b)1.iii, 214 N.J.Super. 579, 520 A.2d 794 (App.Div.1987) certification denied 107 N.J. 134, 526 A.2d 199 (1988).

CAFRA definition of "facilities" includes cabanas. State, Dept. of Environmental Protection v. Stavola, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

7:7-2.2 Wetlands

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

2. The excavation of an individual mooring slip;

3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Program within seven days after their initiation;

4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;

5. The installation of utilities;

6. Excavation of boat channels and mooring basins;

7. The construction of impoundments;

8. The construction of sea walls;

9. The diversion or appropriate use of water;

10. The use of pesticides, except those applied to the skin or clothing for personal use;

11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and

12. Filling, excavation or the construction of any structure.

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;

3. Applying any pesticide on areas containing significant stands of high vigor *Spartina alterniflora* (Saltmarsh cordgrass), *Zizania aquatica* (Wildrice), *Typha* sp. (Cattail), and *Scirpus americanus* (common threesquare) as shown generally on wetlands maps;

4. The storage or disposal of pesticides;

5. The application of persistent pesticides.

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any

amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:

574-2082
574-2088
581-2082
581-2088
581-2100
581-2106
581-2112
581-2118
588-2076
588-2082
588-2106
588-2112
588-2118
595-2070
595-2076
595-2082
595-2088
595-2094
595-2106
602-2064
602-2070
602-2076
602-2082
602-2088
602-2094
602-2100
602-2106
609-2094
609-2100
609-2106

2. Monmouth County:

455-2160
455-2166
462-2160
462-2166
462-2172
462-2154
469-2160
469-2172
469-2178
476-2166
476-2172
476-2178
483-2172
490-2166
490-2172
490-2178
497-2166
497-2172
518-2184
532-2178
539-2154
539-2160
539-2166
539-2172
539-2178
539-2184
539-2190
546-2154
546-2160
546-2172
546-2178
546-2184
546-2190
553-2160

553-2166
553-2172
553-2178
553-2184
553-2190
560-2166
560-2172
560-2178
560-2184
560-2190
567-2172
567-2718
567-2184
567-2190
574-2118
574-2124
574-2160
574-2166
574-2172
574-2178
574-2184
574-2190
581-2112
581-2118
581-2124
581-2130
581-2136
581-2142
581-2148
581-2154
581-2160
581-2166
581-2184
588-2118
588-2124
588-2130
588-2136
588-2142
588-2184
595-2178
595-2184

3. Ocean County:

245-2088
245-2094
245-2100
245-2106
252-2076
252-2088
252-2094
252-2100
252-2106
252-2112
259-2070
259-2076
259-2082
259-2088
259-2094
259-2100
259-2106
259-2112
259-2118
266-2070
266-2076
266-2082
266-2088
266-2094
266-2100
266-2106
266-2112
266-2118
273-2076
273-2088

273-2094	364-2136
273-2100	364-2142
273-2112	364-2160
273-2118	371-2136
273-2124	371-2142
280-2088	371-2148
280-2094	371-2160
280-2100	378-2142
280-2106	378-2148
280-2112	378-2160
280-2118	385-2142
280-2124	385-2148
280-2130	385-2160
287-2094	392-2136
287-2100	392-2142
287-2106	392-2148
287-2112	392-2154
287-2124	392-2160
287-2130	399-2124
294-2100	399-2130
294-2106	399-2136
294-2112	399-2142
294-2118	399-2148
294-2124	399-2154
294-2130	399-2160
294-2136	406-2118
301-2112	406-2124
301-2118	406-2130
301-2124	406-2148
301-2130	406-2154
301-2136	406-2160
301-2142	413-2118
308-2118	413-2148
308-2124	413-2154
308-2130	413-2160
308-2136	420-2142
308-2142	420-2148
315-2124	420-2154
315-2130	420-2160
315-2136	420-2166
315-2142	427-2142
315-2148	427-2148
322-2124	427-2154
322-2130	427-2160
322-2136	434-2148
322-2142	434-2154
322-2148	434-2160
329-2124	434-2166
329-2130	441-2148
329-2136	441-2154
329-2142	441-2160
329-2148	441-2166
329-2154	441-2172
336-2124	448-2142
336-2130	448-2148
336-2142	448-2154
336-2148	448-2160
336-2154	448-2166
343-2130	448-2172
343-2148	455-2154
343-2154	462-2166
343-2160	462-2154
350-2130	462-2172
350-2136	469-2154
350-2148	
350-2154	
357-2124	
357-2130	
357-2136	
357-2142	
357-2154	
357-2160	
359-2160	
364-2130	

4. Burlington County:

252-2064
 259-2046
 259-2052
 259-2058
 259-2064
 259-2070
 266-2034

266-2040	168-2016
266-2046	168-2022
266-2052	168-2028
266-2058	168-2034
266-2064	175-1974
266-2070	175-1980
273-2022	175-1986
273-2028	175-1992
273-2034	175-1998
273-2040	175-2004
273-2046	175-2010
273-2052	175-2016
273-2058	175-2022
273-2064	175-2028
273-2070	175-2034
273-2076	175-2040
280-2004	182-1980
280-2010	182-1986
280-2016	182-1992
280-2022	182-1998
280-2028	182-2004
280-2040	182-2010
280-2046	182-2016
280-2052	182-2022
280-2058	182-2028
287-2004	182-2034
287-2010	182-2040
287-2016	182-2046
287-2040	182-2052
287-2046	189-1974
294-2040	189-1980
413-1896	189-1986
413-1902	189-1992
420-1890	189-1998
420-1896	189-2022
420-1932	189-2028
420-1938	189-2034
420-1944	189-2040
427-1926	189-2046
427-1932	189-2052
427-1938	189-2058
434-1908	196-1974
434-1914	196-1980
434-1920	196-1986
434-1926	196-2034
434-1932	196-2040
448-1944	196-2046
448-1950	196-2052
448-1956	196-2058
462-1968	196-2064
469-1974	196-2070
476-1980	203-1980
476-1986	203-1986
483-1986	203-2040
483-1992	203-2046
490-1986	203-2052
490-1992	203-2058
	203-2064
	203-2070
	203-2076
	210-1974
	210-1980
	210-1986
	210-2040
	210-2046
	210-2052
	210-2058
	210-2064
	210-2070
	210-2076
	210-2082
	210-2088
	217-1974
	217-1980

5. Atlantic County:

161-1980	210-1974
161-1986	210-1980
161-1992	210-1986
161-2004	210-2040
168-1956	210-2046
168-1962	210-2052
168-1968	210-2058
168-1974	210-2064
168-1980	210-2070
168-1986	210-2076
168-1992	210-2082
168-1998	210-2088
168-2004	217-1974
168-2010	217-1980

217-1986	035-1920
217-2040	035-1926
217-2046	035-1932
217-2052	035-1938
217-2058	042-1914
217-2064	042-1920
217-2070	042-1926
217-2076	042-1932
217-2082	042-1938
217-2088	042-1944
217-2094	049-1914
224-1980	049-1926
224-2052	049-1932
224-2058	049-1938
224-2064	049-1944
224-2070	049-1950
224-2076	056-1914
224-2082	056-1920
224-2088	056-1932
224-2094	056-1938
231-2058	056-1944
231-2064	056-1950
231-2070	056-1956
231-2076	063-1938
231-2082	063-1944
231-2088	063-1950
231-2094	063-1956
231-2100	063-1962
238-2058	070-1920
238-2064	070-1926
238-2070	070-1944
238-2076	070-1950
238-2082	070-1956
238-2088	060-1962
238-2094	070-1968
245-2046	077-1920
245-2052	077-1926
245-2058	077-1932
245-2064	077-1950
245-2070	077-1956
252-2046	077-1962
252-2040	077-1968
252-2052	084-1926
252-2058	084-1932
252-2064	084-1938
252-2070	084-1950
259-2034	084-1956
259-2040	084-1962
259-2046	084-1968
259-2052	084-1974
259-2058	091-1932
259-2064	091-1938
259-2070	091-1944
266-2022	091-1956
266-2028	091-1962
266-2034	091-1968
266-2040	091-1974
273-2016	091-1980
273-2026	098-1932
273-2022	098-1938
273-2028	098-1944
273-2034	098-1950
280-2004	098-1962
280-2010	098-1968
280-2016	098-1974
280-2022	098-1980
287-1998	098-1986
287-2004	105-1932
287-2010	105-1938
287-2040	105-1944
	105-1968
	105-1974
	105-1980
	105-1986

6. Cape May County:

035-1914

112-1932	168-1998
112-1938	168-2016
112-1944	168-2022
112-1950	
112-1956	
112-1968	
112-1974	
112-1980	
112-1986	
112-1992	
119-1926	
119-1932	
119-1938	
119-1944	
119-1950	
119-1874	
119-1980	
119-1986	
119-1992	
126-1926	
126-1932	
126-1938	
126-1944	
126-1950	
126-1956	
126-1980	
126-1986	
126-1992	
126-1998	
133-1926	
133-1932	
133-1986	
133-1992	
133-1998	
133-2004	
140-1926	
140-1932	
140-1974	
140-1980	
140-1992	
140-1998	
140-2004	
140-2010	
147-1980	
147-1986	
147-1992	
147-1998	
147-2004	
147-2010	
154-1980	
154-1986	
154-1992	
154-1998	
154-2004	
154-2010	
154-2016	
161-1962	
161-1968	
161-1974	
161-1980	
161-1986	
161-1992	
161-1998	
161-2004	
161-2010	
161-2016	
161-2022	
168-1956	
168-1962	
168-1968	
168-1974	
168-1980	
168-1986	
168-1992	

7. Cumberland County:

119-1926
126-1860
126-1866
126-1896
126-1902
126-1908
126-1914
126-1920
126-1926
133-1854
133-1860
133-1866
133-1872
133-1878
133-1884
133-1890
133-1896
133-1902
133-1908
133-1914
133-1920
133-1926
140-1854
140-1860
140-1866
140-1872
140-1878
140-1884
140-1890
140-1896
140-1902
140-1908
140-1914
140-1926
147-1848
147-1854
147-1860
147-1866
147-1872
147-1878
147-1884
147-1890
147-1896
147-1902
147-1908
147-1926
154-1836
154-1842
154-1848
154-1854
154-1860
154-1866
154-1872
154-1878
154-1884
154-1896
154-1902
154-1908
161-1818
161-1824
161-1830
161-1836
161-1842
161-1848
161-1854
161-1860
161-1866
161-1872
161-1878

161-1884
 161-1896
 161-1902
 161-1908
 161-1914
 168-1812
 168-1818
 168-1824
 168-1830
 168-1836
 168-1842
 168-1848
 168-1854
 168-1902
 168-1908
 168-1914
 175-1812
 175-1818
 175-1824
 175-1830
 175-1836
 175-1842
 175-1848
 175-1896
 175-1902
 175-1908
 175-1914
 182-1800
 182-1806
 182-1812
 182-1818
 182-1824
 182-1830
 182-1836
 182-1842
 182-1896
 182-1902
 182-1908
 182-1914
 189-1794
 189-1800
 189-1806
 189-1812
 189-1818
 189-1824
 189-1830
 189-1890
 189-1902
 196-1782
 196-1788
 196-1794
 196-1800
 196-1806
 196-1812
 196-1818
 196-1824
 196-1830
 196-1836
 196-1842
 196-1890
 196-1896
 203-1782
 203-1788
 203-1794
 203-1800
 203-1806
 203-1812
 203-1818
 203-1824
 203-1836
 203-1842
 203-1890
 210-1782
 210-1788

210-1794
 210-1800
 210-1836
 217-1782
 217-1788
 217-1794
 217-1836
 224-1788
 224-1794
 224-1800

8. Salem County:

196-1782
 196-1788
 203-1776
 203-1782
 203-1788
 210-1776
 210-1782
 210-1788
 217-1764
 217-1770
 217-1776
 217-1782
 217-1788
 224-1752
 224-1758
 224-1764
 224-1770
 224-1776
 224-1782
 224-1788
 224-1794
 224-1800
 231-1752
 231-1758
 231-1764
 231-1770
 231-1776
 231-1782
 231-1788
 238-1752
 238-1758
 238-1764
 238-1770
 238-1776
 238-1782
 245-1752
 245-1758
 245-1764
 245-1770
 245-1776
 245-1782
 245-1752
 252-1758
 252-1764
 252-1770
 252-1776
 252-1782
 252-1788
 259-1752
 259-1758
 259-1764
 259-1770
 259-1776
 259-1782
 259-1788
 259-1794
 259-1800
 266-1758
 266-1764
 266-1770
 266-1776

266-1782
 266-1788
 266-1794
 266-1800
 273-1746
 273-1752
 273-1758
 273-1764
 273-1770
 273-1776
 273-1782
 273-1788
 273-1794
 280-1746
 280-1752
 280-1758
 280-1764
 180-1770
 280-1776
 280-1782
 280-1788
 280-1794
 287-1746
 287-1752
 287-1764
 287-1770
 287-1776
 287-1782
 287-1788
 294-1746
 294-1752
 294-1764
 294-1770
 294-1776
 294-1782
 294-1788
 294-1794
 301-1764
 301-1770
 301-1776
 301-1782
 301-1788
 301-1794
 308-1770
 308-1776
 308-1782
 315-1764
 315-1770
 315-1776
 315-1800
 315-1806
 322-1770
 322-1788
 322-1794
 322-1800
 329-1770
 329-1776
 329-1782
 329-1788
 329-1794
 329-1800
 336-1770
 336-1776
 336-1788
 336-1794
 343-1782
 343-1788
 343-1794

9. Gloucester County:

315-1800
 315-1806
 322-1794

322-1800
 329-1794
 329-1800
 329-1806
 329-1818
 329-1824
 336-1788
 336-1794
 336-1800
 336-1806
 336-1812
 336-1818
 336-1860
 343-1782
 343-1788
 343-1794
 343-1800
 343-1806
 343-1824
 343-1848
 343-1854
 343-1860
 350-1794
 350-1800
 350-1806
 350-1812
 350-1818
 350-1824
 350-1830
 350-1842
 350-1848
 350-1854
 350-1860
 350-1878
 357-1794
 357-1800
 357-1806
 357-1812
 357-1818
 357-1824
 357-1830
 357-1836
 357-1842
 357-1848
 357-1854
 357-1878
 364-1806
 364-1812
 364-1818
 364-1824
 364-1830
 364-1836
 364-1842
 364-1848
 364-1854
 364-1860
 364-1872
 364-1878
 371-1848
 371-1854
 371-1860
 371-1872
 371-1878
 378-1866

10. Camden County:

364-1878
 371-1872
 371-1878
 378-1866
 378-1872
 413-1896
 413-1902

420-1890
420-1896

11. Mercer County:

476-1980
476-1986
483-1980
483-1986
483-1992
490-1974
490-1980
490-1986

Amended by R.1986 d.262, effective July 7, 1986.

See: 17 N.J.R. 1710(a), 18 N.J.R. 1374(a).

Added maps and amended maps in (c)3 Ocean County.

Amended by R.1986 d.349, effective August 18, 1986.

See: 18 N.J.R. 1026(a), 18 N.J.R. 1700(a).

Amended maps in (c)5.

Amended by R.1987 d.217, effective May 17, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Amended maps in (c)5 and (c)7.

Amended by R.1988 d.570, effective December 19, 1988.

See: 19 N.J.R. 2090(b), 20 N.J.R. 3135(b).

(c)9 Gloucester County had maps altered and added new maps.

Amended by R.1989 d.137 effective March 20, 1989.

See: 20 N.J.R. 349(b), 21 N.J.R. 750(b).

(c)8 Salem County maps altered: 266-1770, 266-1776, 273-1764, 273-1776, 294-1746, 294-1764, 315-1764, 329-1770, 329-1788.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) This subchapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The following development activities will require a permit in that portion of the waterfront area at or below the mean high waterline:

1. The removal or deposition of sub-aqueous materials (for example, excavation, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this state prior to June 1, 1984 shall not require a permit. (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(d) A permit shall be required for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. In the waterfront area defined in a(3) above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet inland from the mean high water line;

2. In the waterfront area defined in a(3) above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet inland from the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5000 square feet;

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to Special Areas defined at N.J.A.C. 7:7E-3, provided the addition is located in an existing cleared area of the site, and is set back a minimum of 15 feet from the mean high water line, where such changes or additions do not result in a change in the present land use of the site;

4. The repair, replacement, renovation, or reconstruction (as defined at N.J.A.C. 7:7-1.3) of any legally existing dock, wharf, pier, bulkhead or building that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photog-

raphy dated 1971, 1972), or that received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction (as defined at N.J.A.C. 7:7-1.3) does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

5. The repair, replacement, renovation, or reconstruction (as defined at N.J.A.C. 7:7-1.3) of any legally existing floating dock, mooring raft or similar temporary or seasonal improvement or structure that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction (as defined at N.J.A.C. 7:7-1.3) does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels; and

6. The redecking and replacement of bridge surfaces provided there is no change in width, length or height.

(e) Those portions of a dock or pier proposed to be constructed above the mean high water line and in the coastal zone may be subject to the permit-by-rule at N.J.A.C. 7:7-7.4(a)5 and 6.

(f) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

1. The requesting party shall provide the Department with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and depicting the mean high water line, and with a project description. When the applicability determination request is based on a proposed facility's location in accordance with (a)3 above, the map shall also depict that property line as it is depicted on the official local tax map as of September 26, 1980, and shall graphically depict the proposed project.

(g) A Waterfront Development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tideland Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and 2 above.

1. A Waterfront Development permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

(h) A Waterfront Development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Substantially amended.

Emergency amendment, R.1988 d.518, effective October 14, 1988 (expired December 3, 1988).

See: 20 N.J.R. 2815(a).

Development of waterfront area within the "coastal area" added. Adopted concurrent proposal R.1989 d.8, effective January 3, 1989. See: 20 N.J.R. 2815(a), 21 N.J.R. 34(a).

Provisions of emergency amendment R.1988 d.518 readopted without change.

Amended by R.1989 d.243, effective May 1, 1989.

See: 21 N.J.R. 4(a), 21 N.J.R. 1141(a).

Limited inland scope of regulated area to 1000 feet; exempted shore protection structures in the 1,500-foot expansion exception calculation; in (d) excepted single-family residential dwelling units for which municipal permits and approvals had been obtained before October 3, 1988 and in (g) further defined "construction, excluding site preparation" and "in progress".

Emergency amendment R.1990 d.403, effective July 17, 1990 (expired September 15, 1990).

See: 22 N.J.R. 2361(a).

Definition of waterfront, types of development requiring permits, and permitting process for development amended to comply with N.J. Supreme Court decision in *Last Chance Development Partnership v. Thomas H. Kean* (Dkt. No. A-102, decided June 20, 1990). Adopted concurrent proposal R.1990 d.503, effective September 14, 1990.

See: 22 N.J.R. 2361(a), 22 N.J.R. 3222(a).

Provisions of emergency amendment R.1990 d.403 readopted without change.

Administrative Correction: Added (a)3.

See: 23 N.J.R. 60(b).

INVALIDITY ANNOTATION: See 23 N.J.R. 406(b).

N.J.A.C. 7:7-2.3(a)2, as amended effective September 14, 1990 (see 22 N.J.R. 2361(a) and 3222(a)), held invalid. *Long Beach Township Oceanfront Property Owners Association v. New Jersey Department of Environmental Protection, et al.*, 245 N.J.Super. 143, Dkt. Nos. A-6697-89T2 and A-783-90T2 (App. Div. December 26, 1990).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Case Notes

Amendments to waterfront development rules extending permit requirement to previously exempt properties were invalid. *Long Beach Tp. Oceanfront Property Owners Ass'n v. New Jersey Dept. of Environmental Protection*, 245 N.J.Super. 143, 584 A.2d 820 (A.D.1990).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region exceeded its statutory authority. *Last Chance Development Partnership v. Kean*, 119 N.J. 425, 575 A.2d 427 (1990).

Department of Environmental Protection did not have jurisdiction over development in upland areas of a coastal region. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Waterfront Development Law; construction of floating dock and registering it as vessel. *Department of Environmental Protection and Energy v. Grossman*, 94 N.J.A.R.2d (EPE) 236.

SUBCHAPTER 3. PRE-APPLICATION REVIEW

7:7-3.1 Purpose

A pre-application review is an optional service especially recommended for major development. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-3.2 Request for a pre-application review

(a) Potential applicants for major projects are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

ii. Maps indicating the site's location and rough internal plan of development; and

iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) The Department shall, within 10 days of receipt of such request, schedule a pre-application conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "and shall include . . . showing the site".

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-3.3 Discussion of information requirements

(a) The Department shall discuss the information, including the level of detail and areas of emphasis, which must be included in a permit application for the proposed development to allow the Department to review the application if one is submitted. This does not preclude the Department from requesting additional information based upon review of the formal application submittal.

(b) The Department shall also make available to the potential applicant current information on nearby projects in the Department's files. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Department.

Recodified from 7:7-3.4 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Prior text at 7:7-3.3, Conceptual proposal, repealed.

7:7-3.4 Memorandum of record

(a) After the pre-application review, the Department shall, upon request, prepare a written memorandum of record or policy compliance checklist summarizing the discussion of the proposed development, the apparent sensitivity of the land and water features of its site, and the level of

detail and the areas of emphasis necessary in the information that would be required as part of an application.

(b) The memorandum of record shall be mailed to the potential applicant within 20 days of the pre-application review. If an application is submitted, a copy of the memorandum of record or policy compliance checklist shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department and shall not have any binding effect on the final decision of the Department on any permit application.

Recodified from 7:7-3.5 and amended by R.1994 d.378, effective July 18, 1994.
Sec: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same development, if applications for proposed developments are processed at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and its implementing regulations (N.J.A.C. 7:1C) establish certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

Amended by R.1994 d.378, effective July 18, 1994.
Sec: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Federal Clean Water Act and State Water-Front and Harbor Facilities Act were not intended to preempt municipality's authority to regulate land use within its borders. *Anfuso v. Seeley*, 243 N.J.Super. 349, 579 A.2d 817 (A.D.1990).

Municipality's zoning districts do not end at mean high water level where state-owned land begins and private property ends. *Anfuso v. Seeley*, 243 N.J.Super. 349, 579 A.2d 817 (A.D.1990).

Type B permit application hearing. In re Triarch Corp., 139 N.J.Super. 514, 354 A.2d 652 (App.Div.1976).

7:7-4.2 Application contents

(a) Applications shall contain the following:

1. A completed LURP application form for the type of permit being applied for;

2. A check, money order, or government voucher in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5);

3. Verification (white certified mailing receipt or other written receipt is required) that a complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur, and to the planning board, construction official and environmental commission of the municipality in which the proposed development would occur. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;

4. Verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all owners of real property, including easements as shown on current tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all owners of real property, including easements as shown on current tax duplicate, within 200 feet, except as described at (a)4i through iv below. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEP's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection
 Land Use Regulation Program
 CN 401
 501 East State Street
 Trenton, New Jersey 08625
 attn: (County in which property is located) Section Chief”;

i. Notice to all owners of real property, including easements as shown on current tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required for individual CAFRA applications at the time the application is submitted. Instead notice shall be provided in accordance with the notice requirements for a public hearing or for a public comment period, whichever is applicable. The notice requirements for a public hearing are set forth at N.J.A.C. 7:7-4.5(g). The notice requirements for a public comment period are set forth at N.J.A.C. 7:7-4.5(h) (for general permit application requirements see N.J.A.C. 7:7-7.3).

ii. Notice to all owners of real property, including easements as shown on current tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required at the time an application is first submitted for a Waterfront Development or Wetlands permit, if a public hearing is required pursuant to N.J.A.C. 7:7-4.5(a). Notice shall instead be provided in accordance with the requirements for notice of a public hearing set forth at N.J.A.C. 7:7-4.5(g).

iii. A waterfront development or wetlands permit application for a linear development of one-half mile or more in length shall be subject to public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper(s). Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements as shown on current tax duplicate, within 200 feet of an above ground structure related to the linear development such as a pump station or treatment plant, rather than to all owners of real property, including easements as shown on current tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.

iv. For additional development proposed on the site of an existing industrial facility of at least 100 acres or park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements as shown on current tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owner’s of real property, including easements as shown on current tax duplicate within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required to notice only those property owners within the vicinity of the proposed tennis court.

5. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation.

6. Fifteen copies of development plans. (Plans must be folded to no larger than 8½ inches by 11 inches in size.)

i. For CAFRA applications, Waterfront Development applications for activities occurring above the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the “Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA”.

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor. Plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified Landscape Architect instead of a Professional Engineer or Land Surveyor.

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the “Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA”:

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labelled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(I) The location of upper and lower wetlands boundary. The "upper" wetlands boundary refers to the upland or landward limit of wetlands, and the "lower" wetlands boundary refers to the waterward limit of wetlands.

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, depths at mean low water outshore of the dock for a distance of at least 100 feet (excluding lagoons), location and orientation of proposed mooring areas, mooring area depths at mean low water, including the method, time and date of soundings, cross sections of the dock including height and width of any wetland crossing(s).

(4) Development plans for activities in an area subject to a Tidelands conveyance (grant, lease or license) shall be prepared and sealed by a professional engineer or land surveyor, and must depict the limits of the conveyance. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.

7. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

8. Applications for development in an area under the jurisdiction of Pinelands Commission must also submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission along with the other required application materials; and

9. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

(b) Waterfront Development and Wetlands applications shall also include a copy of any Tidelands Grant, Lease or License previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

(c) Development plans for activities in an area which requires a Tidelands (Riparian) Grant, Lease or License, shall be prepared by a professional surveyor or professional engineer licensed by the State of New Jersey and shall depict the limits of the area for which the Tidelands instrument will be sought.

(d) An application for a Waterfront Development or Wetlands permit proposing the discharge of dredge or fill material shall also constitute an application for a State Water Quality Certificate under Section 401 of the Federal Clean Water Act.

(e) If the regulated activity would occur on wetlands as defined by N.J.A.C. 7:7E-3.27(a) then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition precedent to engaging in a regulated activity in a wetland.

2. The Division may, upon the request of the applicant, determine that a mitigation plan will not be required to be a part of a permit application for the construction of catwalks, piers, docks, landings, footbridges and observation decks provided that the applicant shows, to the satisfaction of the Division, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.2(e). The Division may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary.

3. Any mitigation proposal submitted pursuant to this section shall include, but shall not be limited to, the following:

- i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;
- ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;
- iii. Photographs of the proposed mitigation site;
- iv. The names and addresses of current and proposed owner(s) of the mitigation project site;
- v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;
- vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;
- vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;
- viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;
- ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;
- x. A copy of a proposed deed restriction providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof

that the deed restriction has been registered with the County Clerk (the Registrar of Deeds and Mortgages if applicable) is required prior to the start of construction;

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

- (1) Project location within the region;
- (2) The lot and block number of the mitigation project location;
- (3) Existing and proposed elevations and grades of the mitigation site in one foot intervals; and
- (4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plan Coordinates for the end points of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

xvi. A mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. For a mitigation plan submitted by a public agency, the Department will not require a secured bond provided that

the construction of the development and mitigation are provided for in a single bid and contract.

(f) All application sets including charts, plans and other large documents submitted to the Department pursuant to this chapter shall be collated and folded flat to a size that is suitable for interoffice distribution.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Substituted "Land Use Regulation Program (LURP) permit application" for "DEPE Standard Construction Permit (CP-1)" throughout.

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-4.3 Availability of application for examination by the public

(a) Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.

(b) The status of all permit applications shall be published in the DEPE Bulletin pursuant to N.J.A.C. 7:1C-1.6, and this publication shall constitute notice to all interested persons except as provided in N.J.A.C. 7:7-4.8.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added cross reference cites.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.4 Initial review of applications

(a) For all CAFRA applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

i. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing or for a public comment period and a public hearing or public comment period shall be scheduled within 15 days;

ii. Assign an agency project number, accept the application and issue notification to the applicant that additional information is required to correct deficiencies; or

iii. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

2. Within 15 days of the receipt of any additional information submitted pursuant to (a)1ii above, the Department shall issue notification to the applicant stating whether the amended application is considered complete.

i. Such notification shall either:

(1) Specify which deficiencies still remain;

(2) If no public hearing is to be held, declare the application complete for public comment; or

(3) If a public hearing is to be held, declare the application complete for the public hearing.

ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

3. If an application is not complete for public comment or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

4. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6, the Rules on Coastal Zone Management, N.J.A.C. 7:7E, in effect at that time will govern the staff review of the permit application.

5. Once an application for which a public hearing is required has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

(b) For all Waterfront Development and Coastal Wetland applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

i. Assign an agency project number, accept the application, and issue notification that the application is complete for final review effective the date of receipt of the application;

ii. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing and a public hearing shall be scheduled within 15 days;

iii. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review until all additional information has been received and the application deemed complete;

iv. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review and inform the applicant that the Department has determined that additional information which can only be obtained by public hearing is also necessary to assist in its review; or

v. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

2. Within 15 days of receipt of any additional information submitted pursuant to b(iii) or (iv) above, the Department shall issue notification to the applicant stating whether the amended application is considered complete for public hearing or final review.

i. Such notification shall either:

(1) Specify which deficiencies still remain;

(2) If no public hearing is to be held, declare the application complete for final review; or

(3) If a public hearing is to be held, declare the application complete for the public hearing.

ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be

distributed by the applicant to the same persons to whom copies of the initial application were distributed.

3. Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. Wetland and Waterfront Development applications which do not require a public hearing and which are complete for final review shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law, N.J.S.A. 13:1D-29 et seq., on the date of receipt of the additional information which completed the application.

4. If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward resubmission of the application provided that such resubmission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

5. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6 or for the public hearing, whichever occurs later, the Rules on Coastal Zone Management, N.J.A.C. 7:7E et seq., in effect at that time will govern the staff review of the permit application.

6. Once an application for which a public hearing is required has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added (b)2i.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-4.5 Public hearings and public comment periods

(a) A fact-finding public hearing will be held for the following types of developments:

1. 150 or more residential dwelling units;
2. 300 or more parking spaces or equivalent paved areas;
3. New roads;
4. Solid waste facilities;
5. New wastewater treatment plants;
6. Airports;
7. Manufacturing or industrial processing facilities;
8. Power production plants; and
9. Mining activities.

(b) In addition, the Department may, in its discretion, hold a fact-finding public hearing for other types of development when the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing.

(c) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.
2. The hearing shall, if possible, be held in the municipality in which the development is proposed.

(d) In the event that the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day public comment period in accordance with (e) below.

(e) If a public comment period is to occur, the Department shall within 15 days of declaring the application complete for public comment, set a date for the commencement of the 30 day public comment period and shall so notify the applicant.

1. The date for the start of the public comment period shall be no later than 60 days after the application has been declared complete for public comment.

(f) The Department shall publish a notice announcing the date, place, and time of the public hearing or the date of commencement of the public comment period in the DEP Bulletin.

(g) The applicant shall give public notice of the public hearing, pursuant to section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12), with the exception of (g)2 and 3 below. Any newspaper advertisement shall be a display advertisement a minimum of four inches in width.

1. Such notice shall describe the proposed development, identify its agency number, announce the date, place, and time of the public hearing on the application, and indicate that the comments on the application may be made to the Land Use Regulation Program, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625 at or within 15 days after the public hearing, or until the application is declared complete for final review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length, the applicant shall give public notice containing the information described in (g)1 above in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of all real property, including easements as shown on current tax duplicate, within 200 feet of an above ground structure related to the linear development, such as a pumping station, treatment plant, or dune walkover, rather than to all owners of real property, including easements, within 200 feet of the entire linear development.

3. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

4. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. Proof of notice to owners of real property, including easements as shown on current tax duplicate, and public agencies shall consist of white certified mail receipts or other written receipts. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper advertisement. In cases where proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which the notice was published.

(h) The applicant shall give public notice of the public comment period pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12 with the exception of (h)2, 3 and 4 below). Any newspaper advertisement shall be a display advertisement a minimum of four inches in width.

1. The notice shall consist of a site plan, letter, and copy of the completed LURP application form.

i. The site plan referred to in h(1) above need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.

ii. The letter shall read as follows:

“This letter is to provide you with legal notification that an application has been submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan and that a 30 day public comment period will commence on <DATE>.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEP's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Your written comments must be submitted to the Department by the end of the 30 day comment period. Comments should be sent to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
CN 401
501 East State Street
Trenton, New Jersey 08625
attn: (County in which property is located) Section Chief”;

2. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length which does not qualify for a general permit, the applicant shall give public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of all real property, including easements as shown on tax duplicate within 200 feet of an above ground structure related to the proposed linear development, such as a pumping station, treatment plant, or dune walkover, rather than to all owners of real property, including easements as shown on tax duplicate within 200 feet of the entire linear development.

3. For additional development proposed on the site of an existing industrial or park facility of at least 100 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to

owners of real property, including easements depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owners of real property, including easements, within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required only to notice owners of real property, including easements within the vicinity of the proposed tennis courts.

4. Notice of the public comment period shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(i) The Department shall maintain a copy of the hearing transcript and of all written comments received for public inspection in its Trenton Office.

(j) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with the original transcript, as required by N.J.A.C. 7:1C-1.5(e).

(k) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(l) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Additional text added to (a)2 “it determines that ... of the application”.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Case Notes

Public hearings on CAFRA permit applications are not required to be conducted under contested case rules (citing former N.J.A.C. 7:7A-1.8 and 7:7A-4.6). Public Interest Research Group of New

Jersey, Inc. v. State, 152 N.J.Super. 191, 377 A.2d 915 (App.Div.1977) certification denied 75 N.J. 538, 384 A.2d 517 (1977).

7:7-4.6 Final review of the application

(a) In the case of CAFRA applications, the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for final review.

ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The Department shall, within 15 days of the receipt of any required additional information, either declare the application complete for final review effective the date of receipt of the additional information or issue notification to the applicant that the application is still not complete for final review and specify which deficiencies remain.

(c) In the case of Waterfront Development and Coastal Wetland applications for which a public hearing was held, the application shall be declared complete for final review on the date of the public hearing.

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Notwithstanding any other provision of these rules, no application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. The Department may at its discretion issue a permit decision prior to receipt of the conveyance, provided that a complete application for the conveyance has been received by the DEP, Bureau of Tidelands Management.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

(c) added.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-4.7 Timetable for final decisions

(a) The Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the close of the public comment period, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review.

(b) The Department shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) If the Department fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit which has not received all required riparian conveyances setting forth the person's right to use or occupy the land.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review"; deleted text in (b) "unless a public ... complete for review".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). DiDonato v. Wildwood Municipal Body Corporate and Politic, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.8 Publication of the final decision

(a) The Department shall notify the applicant of the decision by mail, shall publish notice of the decision in the DEP Bulletin, and shall also notify all interested persons who specifically requested notice.

(b) The permittee may, if it chooses not to wait for the decision to be published in the DEP Bulletin, publish notice of the final decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who commented on the application during the review process or requested such notice, in writing, during the application review period. The Department shall maintain a list of such newspapers. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

1. Publication of notice by the permittee by publication of a display advertisement of at least four inches in width in a newspaper of general circulation in the municipality shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the final decision in the DEP Bulletin.

2. Proof of such publication and of mailing shall be submitted the Department.

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). *DiDonato v. Wildwood Municipal Body Corporate and Politic*, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.9 Withdrawal, resubmission and amendment of applications

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable following the conclusion of the initial 20 working day review period except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project of the same or reduced scope on the same site within one year without additional fees. The resubmitted application will be treated

as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-5.1.

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "public hearing or final review."
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.10 Requests for modifications

(a) A permittee may apply for a modification to an issued permit for projects which do not result in a significant change in the scale, use or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and new information submitted by the applicant. A change that will result in less environmental impact than the original approved development will not constitute a significant change. Significant changes generally include, but are not limited to, increased clearing, grading or filling or impervious coverage, reduction in buffers, and change in footprint location.

1. Permits may only be modified during the initial five year term of the permit or beyond this five year period if the permit is still active pursuant to N.J.A.C. 7:7-1.5(d). At the Department's discretion, a modification may be granted to a permit for which approved construction has been completed to allow additional minor construction to occur on-site.

(b) Modifications shall require an applicant to amend the issued permit, including a new LURP application form, notice requirements pursuant to N.J.A.C. 7:7-4.2, a copy of the original permit, summary report, and approved plans, and any additional information necessary to review the proposed modification. At the Department's discretion, notice requirements may be eliminated, reduced or modified if the proposed modification is contained within the footprint of the existing structure or paved areas, and there is no proposed change in land use, and no offsite impacts beyond

those associated with the formerly approved project are anticipated. For example, the Department may not require public notice for permit modification in cases where a minor expansion is proposed in an area previously approved for structures or paving.

(c) A fee shall be required for any modification and shall be in accordance with the provisions of N.J.A.C. 7:1C (90 day Construction Permits).

(d) The status of an application to amend an issued permit shall be published in the DEP Bulletin.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "minor".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.356, effective July 3, 1995.
See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

In (b) substituted "Land Use Regulation Program (LURP) permit application form" for "CP-1 form".
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice, by certified mail, of intent to revoke the permit and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all reasonable efforts to restore the site to its pre-construction condition.

Administrative change to (b)1.

See: 23 N.J.R. 3325(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.12 (Reserved)

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review or public hearing".

Repealed by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Section was "Expedited application process".

SUBCHAPTER 5. APPEALS

Law Review and Journal Commentaries

Administrative Procedure—Environmental Law. Steven P. Bann, 137 N.J.L.J. No. 1, 67 (1994).

7:7-5.1 Request for review on appeal

(a) Subject to the limitation on third-party hearing rights specified in (d) below any interested persons who consider themselves aggrieved by a final decision of the Land Use Regulation Program may, within 10 days of publication of notice of the final decision in the DEP Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, appeal to the DEP Commissioner by requesting a hearing by addressing a written request to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as Appendix A.

1. The notice of request for a hearing on appeal shall include the appropriate agency project number and, where the appeal is taken by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant.

2. The appellant shall, within 14 days of the date on which the initial hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(b) Copies of an appeal request from a decision on a CAFRA permit application shall also be mailed to the clerk of the county and the municipality in which the project site is located, and evidence of such mailing shall be included with the appeal request.

(c) A hearing request may include a request that the permit be stayed.

(d) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14-3.1 through 3.3 (P.L.1993, c.359).

Administrative change to (a)1.

See: 23 N.J.R. 3325(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Case Notes

Issuance of waterfront development permit during pendency of application did not entitle marine conservation group to a review hearing. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Marine conservation group had standing to seek judicial review of grant of waterfront development permit. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Noted that conceptual approval permit not granted and additional evidence from objectors not permitted by Coastal Area Review Board (citing former N.J.A.C. 7:7D-1.9). Crema v. Dept. of Environmental Protection, 94 N.J. 286, 463 A.2d 910 (1983).

7:7-5.2 Response to appeal request

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the appeal request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of notice of the original hearing request in the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.

7:7-5.3 Action on appeal request

(a) The Department shall publish notice of all appeal requests in the DEP Bulletin.

(b) The Commissioner shall act on any appeal which complies with the requirements of this subchapter within 21 days of its receipt.

(c) The Commissioner may, upon request and for good cause shown, stay any or all of the conditions of the permit pending a final decision on the appeal.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Appeal by interested persons of decision granting CAFRA permit does not require a contested case evidentiary hearing; hearing received was fair and adequate; permit decision supported by ample credible evidence; Commissioner not required to hold hearing in considering appeal (citing former N.J.A.C. 7:7D-2.8). Normandy Beach Improvement Assn. v. Dept. of Environmental Protection, 193 N.J.Super. 57, 472 A.2d 156 (App.Div.1983) certification denied 96 N.J. 305, 475 A.2d 596 (1984).

7:7-5.4 Review of revised application to settle appeal

(a) Any applicant who has appealed a decision or has had a decision appealed by a third party pursuant to this subchapter may, at any time prior to the rendering of a decision by the Office of Administrative Law, submit a revised application for the purpose of negotiating a settlement of the appeal.

(b) Applicants will be required to submit information adequate to allow the Department to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEP

Bulletin, and shall be provided to any interested third party who commented on the project in writing or at the public hearing (if one was held), and any interested person shall have 10 days from the date of publication in the DEP Bulletin to comment on a proposed settlement.

(d) Any permit which is issued as a result of a settlement may be appealed by an affected party not a party to the settlement, in the manner provided for in this subchapter.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-5.5 (Reserved)

Repealed by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Section was "Coastal Area Review Board procedures".

Case Notes

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In *re* Egg Harbor Associates, 185 N.J. Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

SUBCHAPTER 6. INFORMATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENTS AND COMPLIANCE STATEMENTS

7:7-6.1 When an EIS is required

(a) An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all CAFRA permit applications. The Department also requires an EIS for all major Wetlands and Waterfront Development permit applications.

(b) The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which, based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-6.2 Formats and contents

(a) The applicant shall prepare and submit the EIS or Compliance Statement in the form and manner set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS or Compliance Statement the following:

1. Summary: A brief one or two page summary shall preface the EIS or Compliance Statement, and shall contain:

- i. A description of site, including location, tax map designation, and existing conditions;
- ii. A description of the size, nature and location of the proposed development;
- iii. A description of the major environmental impacts associated with the proposed development, including possible areas of controversy or significant issues to be solved; and
- iv. A list of any other municipal, state or federal approvals required or received, if any;

2. Project description: The project description consists of eight elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

- i. The description shall consist of written and graphic material and development plans as specified in N.J.A.C. 7:7-4.2(a)7.
- ii. The eight elements are: the development description, site plan, structure description, housing plan, transportation plan, utilities plan, public services plan, and outdoor recreation plan (as appropriate);

3. Environmental assessment and compliance with the Rules on Coastal Zone Management. This section shall include an environmental inventory assessment as described below, a detailed statement of compliance with the Rules on Coastal Zone Management (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) The EIS or Compliance Statement shall contain an environmental inventory and assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment.

(d) The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Management, N.J.A.C. 7:7E. It should contain sufficient detail to enable an evaluation of the development, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Department to make the necessary findings for permit approval.

1. Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

2. An EIS contains a more thorough review of a proposed development's impacts than a Compliance Statement, including such data as traffic analyses, storm-water management calculations, archaeological surveys, environmental resource inventories, habitat assessment, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules since the proposed development and associated impacts will be larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

(b)4-6 added.

Recodified from 7:7-6.3 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Prior text at 7:7-6.2, Distribution of EIS to other agencies, repealed.

7:7-6.3 Preparation

(a) The level of detail and areas of emphasis in an EIS will vary depending upon the nature and complexity of the facility and the nature of the site and its surrounding regions.

1. The EIS should be concise, and should contain the facts and analyses necessary to evaluate the application with reference to the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

2. The information should be presented in an analytic, rather than an encyclopedic format.

(b) If the applicant believes that specific elements of the EIS or Compliance Statement are not applicable to the proposed development, the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8½ by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, name of preparer, date of preparation (including all revisions), and source of information. All appendices shall be labelled on the cover page so that they can be identified.

(d) The EIS or Compliance Statement should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Department recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS or Compliance Statement must discuss the applicability of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

Recodified from 7:7-6.4 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.1 General standards for issuing coastal General Permits and Permits-By-Rule

(a) This section contains the procedures and substantive standards governing the issuance of new General Permits in accordance with CAFRA, N.J.S.A. 13:19-1, the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and contains the procedures and substantive standards for the issuance of Permits-By-Rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued General Permits. N.J.A.C.

7:7-7.4 describes the activities authorized by Permit-by-Rule.

(b) Before reissuing a General Permit or Permit-By-Rule, or adopting a new General Permit or Permit-By-Rule, the Department will propose a draft General Permit for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue General Permits or Permits-By-Rule only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;

2. The Department determines that the development will be in conformance with the purposes of applicable statutes; and

3. The Department has provided public notice and an opportunity for a public hearing with respect to the proposed General Permit or Permit-By-Rule. After a General Permit has been issued by the Department, the Department will not hold hearings on individual applications for a General Permit.

(d) Each General Permit or Permit-By-Rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and

2. A precise description of the geographic area to which the general permit or permit-by-rule applies.

(e) The Department will include in each general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of General Permits or Permits-By-Rule, and thereafter require individual permits for development previously covered by the General Permit or Permit-By-Rule, if it finds that the General Permit or Permit-By-Rule no longer meets the purposes of applicable statutes and of this chapter.

(g) The Department shall review each general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each general permit and permit-by-rule previously adopted.

(h) If a general permit or permit-by-rule is not modified or reissued within five years of initial publication in the New Jersey Register, it shall automatically expire.

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-7.2 General Permit authorization

(a) The following development is authorized under the following General Permits, provided that the activity is in compliance with the specific conditions contained in the General Permit:

1. (Reserved)

2. Amusement Pier Expansion: The expansion of an existing, functional amusement pier, provided that the proposed expansion complies with the following:

i. The amusement pier was existing and functional as of July 19, 1993 and contained game, ride and food concessions;

ii. The proposed expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent;

iii. The proposed expansion is located more than 150 feet landward of the mean high water line;

iv. The proposed expansion is constructed at the same elevation as the existing, functional amusement pier;

v. The proposed expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless another access point is provided immediately adjacent to the expanded pier for each access point eliminated; and

vi. The proposed expansion includes a provision for public sitting and viewing at the terminal end of the expansion.

3. Beach and Dune Maintenance Activities: Beach and dune maintenance activities provided they are conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management, N.J.A.C. 7:7E-3A. Activities which may be authorized under this general permit include dune creation projects, sand transfers using mechanical equipment, and the construction of beach access ways.

4. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law and provided:

i. The reconstruction does not result in the enlargement or relocation of the footprint of the development; and

ii. The reconstruction does not result in an increase in the number of dwelling units in the case of residential reconstruction, and does not result in an increase in the number of parking spaces or equivalent parking area within the development in the case of commercial or other reconstruction.

iii. A relocation landward may qualify for this general permit if the Department determines that such a relocation would result in less environmental impact than the prior development.

iv. This General Permit authorization is not required for repairs or maintenance, such as replacing siding, windows or roofs, unless such repair or maintenance is associated with an expansion of the footprint of development.

5. Single Family Home or Duplex: The construction of a single family home or duplex including, but not limited to, all accessory structures (such as garages, sheds, pools, and driveways, excluding shore protection structures) landward of the spring high water line, other than construction authorized under N.J.A.C. 7:7-7.4(a)3, provided that:

i. The project consists solely of the construction of a single family home or duplex and associated improvements (excluding any shore protection structures as well as filling outshore of the spring high tide line), and is not part of a larger development that is owned, controlled or being constructed by the property owner;

ii. The project complies with N.J.A.C. 7:7E-3.16 Dunes, 7:7E-3.22 Beaches, 7:7E-3.27 Wetlands, 7:7E-3.28 Wetland Buffers, 7:7E-3.31 Coastal Bluffs, and 7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species Habitats;

iii. The project complies with N.J.A.C. 7:7E-3.18 Coastal High Hazard Areas and N.J.A.C. 7:7E-3.19 Erosion Hazard Areas of the Rules on Coastal Zone Management, except as excluded under (a)5xii below;

iv. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners must be made of filter cloth or other permeable material;

v. The driveway is covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;

vi. On oceanfront sites with existing or proposed shore protection structures, the dwelling and all other permanent structures (except decks) are set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment;

vii. On non-oceanfront sites with existing or proposed shore protection structures, the dwelling and all other permanent structures (except decks) are set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required set back if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a deed restriction is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure;

viii. For wooded sites, site clearing shall be limited to an area no more than 20 feet from the footprint of the dwelling and the area necessary for driveway, septic and utility line installations;

ix. In non-tidal areas, the lowest structural member is at or above the base flood elevation;

x. In tidal areas:

(1) The lowest floor (including the basement, if any) is elevated to or above the base flood elevation within designated zones A1 through A30 on the community's Flood Insurance Rate Maps;

(2) The building is elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevated to or above the base flood level within designated zones V1 through V30 on the community's Flood Insurance Rate Maps;

(3) The dwelling is constructed as close as possible to the landward site boundary, and is not constructed waterward of the adjacent developments;

xi. For sites adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return is erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence must be maintained and remain in place until all construction and landscaping is completed; and

xii. Construction of a single family home or duplex that meets the other requirements of this rule and is located on a site partially or completely within the erosion hazard area or coastal high hazard area need

not comply with the Erosion Hazard Area or Coastal High Hazard Area rules if the site meets the following criteria:

- (1) It was shown as a subdivided lot prior to July 19, 1993;
- (2) The lot is served by a municipal sewer system; and
- (3) A house or commercial building is located on each lot abutting the lot lines perpendicular to the shoreline and the existing house or commercial building is located within 100 feet of said lot lines;

xiii. This general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

6. Single Family or Duplex Expansion: The expansion of a legally constructed, habitable single family or duplex dwelling including, but not limited to, all accessory structures (that is garages, sheds, pools, and driveways, but excluding shore protection structures), landward of the spring high water line which does not qualify for permits listed in this subchapter provided that:

i. The project consists solely of the expansion of a single family home or duplex and associated improvements landward of the spring high water line (excluding any shore protection structures as well as filling out-shore of spring high water), and is not part of a larger development that is owned, controlled, or being constructed by the property owner;

ii. The expansion complies with N.J.A.C. 7:7E-3.16 Dunes, 7:7E-3.22 Beaches, 7:7E-3.27 Wetlands, 7:7E-3.28 Wetland Buffers, 7:7E-3.31 Coastal Bluffs, and 7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species Habitats;

iii. The project complies with N.J.A.C. 7:7E-3.18 Coastal High Hazard Areas and N.J.A.C. 7:7E-3.19 Erosion Hazard Areas of the Rules on Coastal Zone Management, except as excluded under (xii) below;

iv. The expansion does not include the placement of plastic under landscaped or gravel areas; any sub-gravel liners placed in connection with the expansion are made of filter cloth or other permeable material;

v. If the project includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or is pitched to drain all runoff into permeable areas of the site;

vi. On oceanfront sites with existing or proposed shore protection structures, the dwelling and all other permanent structures (except decks) are set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment;

vii. On non-oceanfront sites with existing or proposed shore protection structures, the dwelling and all other permanent structures (except decks) are set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required set back if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a deed restriction is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.

viii. For wooded sites, the expansion will not result in the clearing of a site beyond an area more than 20 feet from the footprint of the dwelling and beyond the area necessary for driveway, septic system and utility line installations;

ix. In non-tidal areas, the lowest structural member added by the expansion is at or above the base flood elevation;

x. In tidal areas:

(1) The lowest floor (including the basement, if any) added by the expansion is elevated to or above the base flood elevation within designated zones A1 through A30 on the community's Flood Insurance Rate Maps; or

(2) The expanded portion of the building is elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevated to or above the base flood level within designated zones V1 through V30 on the community's Flood Insurance Rate Maps;

xi. For sites adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return is erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence must be maintained and remain in place until all construction and landscaping is completed; and

xii. A single family home or duplex that meets all other conditions of this rule and is located on a site partially or completely within the erosion hazard area or coastal high hazard area need not comply with the Erosion Hazard Area or Coastal High Hazard Area rules if the site meets the following criteria:

(1) It was a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located on each lot abutting the lot lines perpendicular to the shoreline and said house or commercial building is located within 100 feet of said lot lines;

xiii. This general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

7. Bulkhead Construction and Placement of Associated Fill: The construction of a bulkhead or revetment on a lot located on a substantially developed manmade lagoon, provided that the proposed bulkhead complies with all of the following:

i. The site is located on a substantially developed manmade lagoon as defined at N.J.A.C. 7:7-1.3;

ii. The bulkhead is located at or above the spring high water line unless it is between two existing lawful bulkheads not more than 75 feet apart. In such cases, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads;

iii. There shall be no disturbance to wetlands during construction;

iv. The bulkhead is located inshore of any wetlands;

v. A minimum 10 foot return shall be constructed at each end of the bulkhead unless it is tied into an existing adjacent bulkhead; and

vi. Clean fill from an upland source shall be used for backfill.

8. Revetment Construction at a Single Family/Duplex Lot: For the purpose of this section a revetment is defined as a sloped structure composed of rip rap or gabions which is installed along a shoreline, excluding the Atlantic Ocean, Delaware Bay, Raritan Bay and Sandy Hook Bay, to protect against erosion by waves or currents. The construction of a revetment on a waterbody is acceptable provided that the proposed revetment complies with all of the following:

i. The site of the proposed revetment shall be stabilized with a maximum slope not to exceed one vertical to two horizontal (1:2);

ii. The placement of rip rap or gabions in the waterway shall be limited to that necessary to protect the shoreline;

iii. Fill material shall be minimized and added only where needed to achieve uniform slope, shall be free of large stones and shall be firmly compacted before revetment construction begins;

iv. Filter fabric (or graded stone filter) shall be installed to prevent loss of slope materials through voids in the revetment material;

v. Revetment stones shall be angular and blocky, not rounded;

vi. The toe of the revetment shall be located at least three feet below existing grade to prevent undercutting;

vii. Weight of individual stone shall be determined by a design engineer based on wave height range for the site;

viii. Placement of a revetment in wetlands is prohibited;

ix. The revetment will not cause erosion of adjacent properties;

x. The gabion baskets shall be tightly packed with four inch to eight inch diameter stone (to minimize movement of the interior stone and consequent damage to the wire) and the edges shall be laced together with steel wire;

xi. Individual baskets shall be wired together; and

xii. The size and number of gabion baskets shall be determined by a design engineer based on wave height range for the site.

9. Support Facilities at Legally Existing and Operating Commercial Marinas including marinas operated by public agencies, commissions and authorities: The construction of the support facilities listed in (a)9i through ix below is acceptable provided they comply with the specific conditions listed for each facility and with the conditions listed at (a)9ix below:

i. Boat rack systems/marina support buildings including, but not limited to, showroom, maintenance/repair, marine supplies, bait/tackle, boat sales, dock masters office buildings, sheds, excluding residential development.

(1) The building is to be set back a minimum of 100 feet from the mean high water line;

(2) The building or rack system shall be set back a minimum of 50 feet from the inland limit of any wetlands;

(3) The building and rack system shall be located in an existing cleared and maintained area of the site;

(4) The marina must provide or maintain rest rooms and at least one portable toilet emptying receptacle in accordance with N.J.A.C. 7:7E-7.3(d); and

(5) Marinas with dockage for 25 or more vessels or any one vessel with live aboard arrangement must provide for adequate and conveniently located pump-out stations.

ii. Restrooms.

(1) The restroom facilities shall:

(A) Discharge to a municipal or regional treatment plant where practicable; or

(B) Discharge to a subsurface sewage disposal system;

(2) Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well ventilated condition;

(3) The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and

(4) The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines that there is no alternate location.

iii. Pumpout Facilities (Marine Sanitation Devices).

(1) The pumpout facilities shall:

(A) Discharge to a municipal or regional treatment plant where practicable;

(B) Discharge to a subsurface sewerage disposal system; or

(C) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal.

iv. Construction of a sewer line to connect restrooms and pumpouts to existing sewer lines.

(1) The new sewer line shall:

(A) Obtain a Treatment Works Approval from the Department's Bureau of Connection and Construction Permits;

(B) Be consistent with the 208 Water Quality Management Plan;

(C) Not result in adverse secondary impacts;

(D) Connect to an existing sewer line located immediately adjacent to the site;

(E) Have no prudent or feasible alternative alignment which would have less impact to Special Areas as defined at N.J.A.C. 7:7E-3;

(F) Not result in permanent or long term loss of Special Areas as defined at N.J.A.C. 7:7E-3; and

(G) Appropriate measures shall be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features;

v. Gasoline pump and associated pipes and tanks on the upland portion of the marina.

(1) The gasoline pump and associated pipes and tanks shall be located on the upland portion of the site;

(2) The marina must have available adequate floating containment booms and absorbent materials in the event of hydrocarbon spills;

(3) Fuel pumps shall include back pressure cutoff valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina; and

(4) Obtain any other required approvals for the construction of underground or above ground storage tanks.

vi. Boat handling facilities including, but not limited to: winches, gantries, railways, platforms and lifts, hoists, cranes, fork lifts and ramps;

(1) The boat handling facility (excluding boat ramp and railways) shall be located landward of the mean high water line; and

(2) The boat handling facility shall not be located in a wetlands area.

vii. A single marina support building not exceeding a footprint of 120 square feet.

(1) The marina building shall not be located in wetlands.

viii. Construction of water lines and fences provided that:

(1) It has no prudent or feasible alternative alignment which would have less impact on Special Areas as defined at N.J.A.C. 7:7E-3;

(2) It will not result in permanent or long term loss of Special Areas as defined at N.J.A.C. 7:7E-3; and

(3) Appropriate measures shall be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features;

ix. The construction of the items listed at (a)9i through viii above shall also comply with the following:

(1) Public access shall be provided in accordance with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11); and

(2) Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided.

10. Reconstruction of a legally existing functioning bulkhead is acceptable provided that:

i. The reconstructed bulkhead is in-place, upland or within 18 inches outshore (as measured from the waterward face of the existing bulkhead to the waterward face of the proposed bulkhead) of the existing bulkhead;

ii. The replacement bulkhead is located upland of any wetlands;

iii. With the exception of individual single family/duplex properties, public access shall be maintained or provided in accordance with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11);

iv. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave runup, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;

v. The placement of rip-rap along the seaward toe of the replacement bulkhead structure may qualify for this general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized;

vi. The structure will not create net adverse shoreline movement downdrift, including erosion or shoaling;

vii. The construction shall have no adverse impact to any Special Areas defined at N.J.A.C. 7:7E-3; and

viii. Clean fill from an upland source shall be used for backfill.

11. Hazardous Waste Clean Up: All regulated activities above the mean high water line that are undertaken, authorized or otherwise expressly approved in writing by the Department for the investigation, cleanup or removal of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met:

i. If the proposed cleanup activity is to take place in Special Areas as defined at N.J.A.C. 7:7E-3, the general permit authorization shall be issued only if the Department finds that there are no practicable alternatives to the investigation, cleanup and removal of the hazardous substances or pollutants that would involve less or no disturbance or destruction of Special Areas as defined at N.J.A.C. 7:7E-3;

ii. If the proposed activities are to take place in a wetland or transition area regulated pursuant to the Freshwater Wetlands Protection Act, the appropriate

Freshwater Wetlands Protection Act authorization shall be obtained;

iii. For coastal wetlands, mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7E-3.27 and 7:7E-3B. The mitigation plan may be incorporated as part of the document by which the Department approves the cleanup or it may be submitted as part of the general permit application. The general permit will not be issued until the mitigation plan is submitted and approved by the Program according to the standards at N.J.A.C. 7:7E-3.27 and 7:7E-3B; and

iv. Mitigation may be required in accordance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, for disturbance to Special Areas as defined at N.J.A.C. 7:7E-3.

12. Landfall of Utilities, including cable (that is electric, television and fiber optics), telecommunication, petroleum, natural gas, water and sanitary sewer lines constructed in tidal waterbodies authorized pursuant to the Waterfront Development Law provided that:

i. The location of existing facilities prior to excavation shall be performed pursuant to the Underground Facility Protection Act, P.L.1994, c.118 (N.J.S.A. 48:2-73 et seq.);

ii. The width of the area disturbed within the right-of-way of the project is no more than 20 feet;

iii. Excavated areas for the placement of the utility landfall shall be returned to the pre-existing elevation using the original soil, if feasible or other suitable material to backfill from a depth of 18 inches to the original grade and revegetated;

iv. The utility landfall shall have no adverse impacts to Special Areas as defined in the Rules on Coastal Zone Management N.J.A.C. 7:7E;

v. A silt fence and/or other soil erosion controls shall be installed prior to excavation and shall remain in place until final restoration is complete;

vi. The staging area and construction equipment shall not be placed directly into the tidal water. Construction equipment shall be land based or based on barges; and

vii. All underground cutting agents/lubricants shall be contained and properly disposed. Use of a vacuum trucks may be required for large drilling operations.

13. Construction of Recreational Facilities at Public Parks: The construction of the following recreational facilities at parks which are publicly owned or controlled for the purposes of public access is acceptable provided that the construction complies with (a)13viii below and that the facilities are not located on dunes or in wetlands, except as noted at (a)13vii below:

- i. Construction of playground equipment including, but not limited to, swings, slides, and jungle gyms;
 - ii. Construction of picnic tables, benches and grills which are not seasonal;
 - iii. Construction of gazebos, rain shelters and sheds provided they do not exceed a footprint 200 square feet;
 - iv. Construction of pathways, bicycle paths and jogging trails and associated fitness equipment provided they are not located on a beach;
 - v. Construction of restrooms provided they:
 - (1) Discharge to a municipal or regional treatment plant where practicable; or
 - (2) Discharge to a subsurface sewerage disposal system;
 - (3) The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and
 - (4) The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines there is no alternate location;
 - vi. Construction of fences which do not require permanent footings.
 - vii. Trail or boardwalk construction in wetlands is acceptable provided that:
 - (1) The width of the trail or boardwalk does not exceed six feet, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. This general permit does not authorize construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure;
 - (2) The height of the structure over wetlands shall be a minimum of four feet regardless of width;
 - (3) The project does not interfere with the natural hydrology of the area;
 - (4) The project does not encroach upon or adversely affect the habitat of any threatened or endangered species; and
 - viii. The construction of the recreational facilities shall have no adverse impact on any Special Areas defined at N.J.A.C. 7:7E-3.
14. Bulkhead Construction and Placement of Associated Fill: The construction of a bulkhead at a single family/duplex lot on a natural waterbody, provided that the proposed bulkhead complies with the following:
- i. Legally existing functional bulkheads are located on the lots adjacent to the proposed bulkhead and are no more than 75 feet apart;
 - ii. The bulkhead will be located at or above the spring high water line;
 - iii. There shall be no disturbance to wetlands during construction;
 - iv. Clean fill from an upland source shall be used for backfill;
 - v. The bulkhead shall not be located further waterward than the bulkheads on the adjacent properties;
 - vi. In the event that the bulkhead will be located landward of the adjacent bulkheads, the new bulkhead shall connect to the bulkhead on either side;
 - vii. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave runup, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;
 - viii. The placement of rip-rap along the seaward toe of the bulkhead structure may qualify for this general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized; and
 - ix. The bulkhead is located a minimum of five feet inshore of any wetlands;
 - x. This general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.
15. Construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons shall be acceptable provided that:
- i. The structures shall be located on individual single family or duplex lots and shall be for recreational/non-commercial use;
 - ii. The structures shall not extend beyond a distance of 20 percent of the width of a man-made lagoon;
 - iii. The width of the dock or pier shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide, except for floating docks. For example, an eight foot wide dock must be elevated a minimum of four feet above the water surface at mean high tide;

iv. The maximum width of the structure shall be eight feet, except where crossing wetlands, mudflats, where the proposed structure shall be constructed perpendicular to the shoreline to access sufficient water depth and shall not exceed six feet in width. In any case, the height of the structure over wetlands shall be a minimum of four feet;

v. Any wetlands disturbed during construction shall be restored to pre-project conditions;

vi. The proposed structure does not hinder navigation or access to adjacent docks, piers, moorings or water areas;

vii. A minimum of eight feet of open water shall be provided between any docks if the combined width of any existing or proposed docks over the water exceeds eight feet;

viii. For docks which are perpendicular to the adjacent bulkhead or shoreline construction and placement of the dock shall be a minimum of four feet from all property lines;

ix. The space between horizontal planking is maximized and the width or horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of $+38$ inch, $\frac{1}{2}$ inch, $\frac{3}{4}$ inch or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks respectively;

x. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width; and

xi. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width.

16. Minor maintenance dredging in man-made lagoons is acceptable provided that:

i. The volume of the material to be dredged shall not exceed 100 cubic yards;

ii. The proposed depth shall not exceed six feet below mean low water;

iii. Dredged material shall be placed on an upland site and shall be stabilized; and

iv. A 3:1 slope shall be maintained from the waterward edge of any wetlands to the nearest edge of the dredged area.

v. The proposed depth does not exceed the water depth offshore of and immediately adjacent to the dredged area.

(b) The Department may require an application for an individual permit instead of a General Permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements. The Department retains discretionary authority to require, on a case-by-case basis, submission of an individual permit application for any proposed activity when it is determined that such a review would be in the public interest and that the proposed activity has the potential to cause significant impacts on environmental resources. In addition, when a project in its entirety does not qualify for a general permit, then the entire project shall require an individual permit application.

(c) All General Permits shall be valid for a term not to exceed five years from the date of receipt from the Department. If the term of a General Permit applicable to a specific development exceeds the expiration date of the General Permit issued by rule, and the General Permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee must comply with the requirements of the new regulations by applying for a new General Permit authorization unless construction is already underway. If the General Permit is not reissued, the applicant must apply for an individual permit unless construction pursuant to the prior General Permit is already underway.

1. For the purposes of this section, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by the date of expiration of the General Permit, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-7.3 Application and review procedure for a General Permit authorization

(a) A person proposing to engage in an activity covered by a General Permit shall submit the following to the Department:

1. A completed LURP application form;
2. Photographs of the site for which authorization is being requested;

3. Verification that a complete copy of the application has been forwarded to the clerk of the municipality (white certified mail receipt or written receipt is required) and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, as well as to municipal planning board, county planning board, municipal construction official, and to all owners of real property surrounding and sharing a property boundary at any point on the perimeter of the proposed development. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a General Permit for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEP's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625
attn: (County in which property is located) Section Chief"

i. For beach and dune maintenance permit applications which involve more than one single family lot, the applicant shall provide public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to all owners of real property, including easements as shown on current tax duplicate within 200 feet of an above ground structure (such as a boardwalk or dune walkover structure), rather than to the all owners of real property, including easements within 200 feet of the beach and dune maintenance activities.

ii. For additional development proposed on the site of an existing park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility might be required to notice **only those property owners** within the vicinity of the proposed tennis court.

4. A fee pursuant to N.J.A.C. 7:1C-1.5(a)3iii; and
5. Any additional information as outlined in (b) through (r) below.

(b) (Reserved)

(c) A person applying for a General Permit to expand an existing, functional amusement pier pursuant to N.J.A.C. 7:7-7.2(a)2 shall also submit written documentation containing:

1. A description of the location of the activity including county, municipality, lot(s) and block(s);
2. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;
3. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;
4. Plans showing the existing and proposed direct public access points from the boardwalk to the beach; and
5. Plans showing the proposed public sitting and viewing area at the terminal end of the expansion.

(d) A person applying for a General Permit for beach and dune maintenance activities pursuant to N.J.A.C. 7:7-7.2(a)3 shall also submit:

1. A description of the location of the proposed activities, including county, municipality, lot(s) and block(s);
2. A plan showing the specific location of all proposed activities;
3. A description of the specific activities proposed for each location;
4. The name, title, address and phone number of the person(s) responsible for supervising the proposed activities to ensure compliance with the referenced standards; and
5. The schedule for conducting the specific activities.

(e) A person applying for a General Permit for voluntary reconstruction of an undamaged, legally constructed, serviceable structure or habitable residential or commercial development pursuant to N.J.A.C. 7:7-7.2(a)4 shall also submit:

1. Development plans clearly depicting the existing site and the proposed site, including size and location of the current and proposed footprint; and

2. For residential reconstruction, documentation that there will not be an increase in the number of dwelling units shall be provided. For commercial or other reconstruction, documentation that there will not be an increase in the number of parking spaces or equivalent parking area associated with the proposed reconstruction shall be provided.

3. A person wishing to relocate landward shall also submit plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing.

(f) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)5, to construct a single family home or duplex not on a bulkheaded lagoon lot, shall also submit:

1. Three copies of a site plan showing the following:

- i. The mean and spring high water lines of the tidal waters in proximity to the site;
- ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas and vegetation;
- iii. Existing roads and utilities immediately adjacent to the site; and
- iv. All proposed development, including all structures, grading and clearing; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed development complies with the criteria listed in N.J.A.C. 7:7-7.2(a)5, including supplemental documents in the form of maps, surveys, etc.

(g) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)6 to expand a single family home or duplex shall also submit:

1. Three copies of a site plan showing the following:

- i. The mean and spring high water lines of the tidal waters in proximity to the site;
- ii. Existing features at the site including topography and structures, roads, and utilities, and the limits of wetlands, dune areas, beach areas, flood hazard areas and vegetation;
- iii. Existing roads and utilities immediately adjacent to the site; and
- iv. All proposed development, including all structures, grading and clearing; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed development complies with the criteria listed in N.J.A.C. 7:7-7.2(a)6, including supplemental documents in the form of maps, surveys, etc.

(i) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)7 for the construction of a bulkhead and associated fill on a lot located on a substantially developed manmade lagoon shall also submit:

1. Three copies of a site plan showing the following:

- i. The mean and spring high water lines of the tidal waters at the site;
- ii. Existing features at the site, including structures and the upper and lower limits of wetlands and beach areas;
- iii. Bulkheads or other retaining structures on adjacent properties;
- iv. All proposed structures including deadmen, tie backs and returns; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)7, including supplemental documents in the form of maps, surveys, etc.

(j) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)8 for the construction of a revetment at a single family/duplex lot on a waterbody shall also submit:

1. Three copies of a site plan showing the following:

- i. The mean high, mean low and spring high water lines of the tidal waters at the site;
- ii. Existing features at the site including topography and structures;
- iii. The upper and lower limits of wetlands, beach areas and dune areas at the site and on adjacent waterfront properties;
- iv. Bulkheads or other retaining structures on adjacent properties;
- v. The location and cross sections of the proposed revetment in relationship to mean high and mean low water; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)8, including supplemental documents in the form of maps, surveys, etc.

(k) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)9 to construct marina support facilities shall submit:

1. Three copies of a site plan showing the following:

- i. The mean high, mean low and spring high water lines of the tidal waters at the site;
- ii. Existing features at the site including, topography, structures, utilities, beach areas and dune areas;

- iii. The upper and lower limits of wetlands within 150 feet of the proposed limit of disturbance;
- iv. The proposed development including all structures, grading and clearing; and
- v. The location of all existing and proposed public access areas;

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)9, including supplemental documents in the form of maps, surveys, etc.; and

3. A copy of any previous coastal permit for the site.

(l) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)10 for the reconstruction of a legally existing bulkhead waterward of the mean high water line shall also submit:

- 1. Three copies of a site plan showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site;
 - ii. Existing features at the site including, all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;
 - iii. Bulkheads or other retaining structures on adjacent properties;
 - iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-zone; and
 - v. The location of all existing and proposed public access areas; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)10, including supplemental documents in the form of maps, surveys, etc.

(m) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)11 for hazardous waste clean up shall also submit:

- 1. Three copies of a site plan showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site;
 - ii. The limits of all Special Areas as defined at N.J.A.C. 7:7E-3 within 150 feet of the proposed limits of disturbance on site and at the material disposal site;
 - iii. The proposed area of disturbance and method of clean up; and
 - iv. The restoration plan; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)11, including supplemental documents in the form of maps, surveys, etc.

(n) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)12 for the landfall of utilities in tidal waterbodies shall also submit:

- 1. Three copies of a site plan showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands, beach areas, coastal bluffs, endangered or threatened wildlife or vegetation habitats and dune areas within 150 feet of the proposed limit of disturbance;
 - iii. The proposed area of disturbance;
 - iv. The restoration plan;
 - v. The location of the existing and proposed utility;
 - vi. The location and type of soil erosion and sediment control measures to be used during construction; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)12, including supplemental documents in the form of maps, surveys, etc.

(o) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)13 for the construction of recreational facilities at existing public parks shall also submit:

- 1. Three copies of a site plan showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site; and
 - ii. The proposed development including all structures, grading and clearing; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)13, including supplemental documents in the form of maps, surveys, etc.

(p) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)14 for the construction of a bulkhead and associated fill at a single family/duplex lot on a natural waterbody shall also submit:

- 1. Three copies of a site plan showing the following:
 - i. The mean high, mean low and spring high tide lines of the tidal waters at the site;

- ii. Existing features both at the site and on adjacent waterfront sites including all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;
 - iii. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; and
 - iv. Bulkheads or other retaining structures on adjacent properties; and
2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)14, including supplemental documents in the form of maps, surveys, etc.
- (q) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)15 for the construction of piers, docks, pilings and boatlifts in man-made lagoons shall also submit:
- 1. Three copies of a site plan showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands within 150 feet of the proposed limits of disturbance;
 - iii. Existing structures including all waterfront structures (docks, pilings and bulkheads) on the project site and adjacent waterfront properties;
 - iv. The opposite side of the lagoon; and
 - v. The proposed dock, pier, piling and bulkhead; and
 - 2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)15, including supplemental documents in the form of maps, surveys, etc.;
- (r) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)16 for maintenance dredging of no greater than 100 cubic yards in a man-made lagoon shall also submit:
- 1. Three copies of a site plan showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
 - iii. The existing and proposed water depths in the area to be dredged;
 - iv. Proposed cross sections of area to be dredged;
 - v. The location of dredge material disposal site;
 - vi. Method of dredging; and
 - vii. The method of stabilization of dredging material;
2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)16, including supplemental documents in the form of maps, surveys, etc.
- (s) Within 20 working days of receipt of the application, the Department shall take one of the following actions:
- 1. Declare the application complete for final review effective the date of receipt by the Department;
 - 2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in the Department's review.
 - i. Notwithstanding any other provision of these rules, no application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the conveyance, provided that a complete application for the conveyance has been received by the DEP, Bureau of Tidelands Management; or
 - 3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.
- (t) Within 15 days of the receipt of any additional information submitted pursuant to (s)2 above, the Department shall issue notification to the applicant regarding whether the amended application is considered complete.
- 1. Such notification shall either:
 - i. Specify which deficiencies still remain; or
 - ii. Declare the application complete for final review effective the date of receipt of the additional information.
 - 2. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.
- (u) The Department shall make a decision within 90 days of the application being declared complete for review.
- (v) If an application is not complete for final review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90

day extension in which to submit the information will be granted.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(w) If the Department fails to render a decision on the General Permit within 90 days of the date it was declared complete for review, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit where the applicant has not received all required riparian conveyances setting forth the person's right to use or occupy the riparian land.

(x) An application for a General Permit authorization will also be reviewed following the procedures set forth at N.J.A.C. 7:7-4.8 through 4.11.

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

7:7-7.4 Permits-By-Rule

(a) This section details the activities authorized by Permit-by-Rule.

1. **Single Family Home or Duplex Expansion:** The expansion of a legally constructed, habitable single family or duplex dwelling on the non-waterward sides of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet on the property over time, and provided that such expansion is not proposed on a beach, dune, or wetland. For example, a 200 square foot expansion of a single family or duplex dwelling could be authorized under this permit-by-rule and an additional 200 square foot expansion could later be authorized under this permit-by-rule, since the cumulative footprint of development for both expansions would not exceed 400 square feet on the property. However, a property on which a 300 square foot expansion was already constructed pursuant to a permit-by-rule would not be eligible for another permit-by-rule subsequently for an additional 200 square foot expansion since the cumulative total footprint of development for both expansions would exceed 400 square feet.

2. (Reserved)

3. The expansion or construction of a single family home or duplex (including, but not limited to, all accessory structures including garages, sheds, pools and driveways, but excluding shore protection structures) on a bulkheaded lagoon lot, provided that the proposed project complies with all of the following:

i. The site is located on a man-made lagoon lot, with an existing bulkhead along the entire waterfront portion of the site;

ii. All waterfront portions of the site are protected by a currently serviceable bulkhead;

iii. There are no wetlands on site upland of the bulkhead;

iv. The construction or expansion is not part of a larger development owned, controlled or being conducted by the property owner;

v. The proposed development and all other proposed permanent structures (excluding decks) are set back a minimum of 15 feet from the waterward face of the bulkhead. If there is no alternative to locating the proposed development at least 15 feet landward of the bulkhead, the Department shall reduce the required set back if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing bulkhead and a deed restriction is recorded for the property which states that any reconstruction of a bulkhead shall be within 18 inches of the existing bulkhead;

vi. A silt fence is erected upland of the bulkhead with a 10 foot landward return on each end prior to construction. This fence shall be maintained and remain in place until all construction and landscaping activities are completed;

vii. If the project includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;

viii. The lowest habitable floor (including the basement) of the proposed dwelling or expansion is at or above the base flood elevation for the site as established by the Federal Emergency Management Agency and designated on the Flood Insurance Rate Map;

ix. If the proposed development is a sewage generating development, it shall be serviced by an existing municipal sewer system; and

x. If the development involves the construction of a new single family or duplex dwelling, the use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners must be made of filter cloth or other permeable material.

4. Placement of public safety or beach/dune ordinance signs on beaches and dunes provided no footings are required, and placement of signs at public parks.

5. The construction of non-residential docks, piers and boat ramps located landward of the mean high water line, provided that the construction waterward of the mean high water line has received a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. This permit-by-rule also includes the construction of non-residential decks provided they are not located on a beach, dune or wetland, provided the construction does not require clearing of forest vegetation and provided the size does not exceed a footprint area of 400 square feet. The Waterfront Development permit may include additional conditions (including but not limited to public access to the waterfront) on the upland construction to insure compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

6. The construction of the portion of a recreational dock or pier landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. The Waterfront Development permit may include additional conditions on the upland construction to insure compliance with the Rules on Coastal Zone Management (N.J.A.C. 7:7E). For example, the Waterfront Development permit may be conditioned to require the dock to cross the wetlands at the narrowest point on the property or to allow continued access along the shoreline.

(b) A person wishing to engage in an activity covered by a Permit-By-Rule shall submit notification to the Department to be received by certified mail 45 days prior to commencement of the proposed work. For persons wishing to engage in the activities listed at (a)5 and 6 above, the Waterfront Development Permit application shall be considered notification, and the Department shall issue the Permit-By-Rule in conjunction with the Waterfront Development Permit. Such notification shall be sent to: Administrator, DEP—Land Use Regulation Program, CN 401, Trenton, New Jersey 08625, and shall include:

1. A completed LURP application form.
2. A plan showing existing development and the proposed expansion including its dimensions and location;
3. A site location map; and

4. Photographs showing the area of the proposed development.

(c) If the Department determines that the proposed development does not qualify for the Permit-By-Rule, the Department will provide a Notice of Ineligibility for the Permit-By-Rule within 45 days of receipt of the notification by the Department. The Notice of Ineligibility will specify which conditions of the Permit-By-Rule are not met. If the Department determines the application to be ineligible for the Permit-By-Rule, no construction shall proceed until the applicant:

1. Modifies the proposed development to meet the conditions of the Permit-By-Rule and submits new notice of the Permit-By-Rule to the Department, showing revised development. The Department shall issue its decision within 45 days of receipt of the new notice; or
2. Receives a General Permit or Individual Permit from the Department for the proposed development.

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

SUBCHAPTER 8. ENFORCEMENT

Source and Effective Date

R.1994 d.413, effective August 1, 1994.
See: 26 N.J.R. 1745(a), 26 N.J.R. 3188(a).

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining

approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the

violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

- i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
- ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or
- iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$ 500
4	\$ 1,000
5	\$ 5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or	0.50

Mitigating Factor	Multiplier
ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration.	0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

- 1. The compliance history of the violator;
- 2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
- 3. The deterrent effect of the penalty; and/or
- 4. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) The Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.

SERIOUSNESS

		Major	Moderate	Minor
	Major	\$20,000-\$25,000	\$15,000-\$20,000	\$10,000-\$15,000
CONDUCT	Moderate	\$15,000-\$20,000	\$10,000-\$15,000	\$ 5,000-\$10,000
	Minor	\$10,000-\$15,000	\$ 5,000-\$10,000	\$125-\$ 5,000

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or the environment;
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:
 - i. Determining the seriousness of the violation pursuant to (f) below; and
 - ii. Determining the conduct of the violator pursuant to (g) below.
2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

(e) The matrix of civil administrative penalties is as follows:

SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	\$1,000	\$900	\$750
	Moderate	\$900	\$700	\$500
	Minor	\$750	\$500	\$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;
2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;
3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator;
3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;
3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;
4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;
5. The deterrent effect of the penalty; and/or

6. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

The Department may assess an additional penalty of not more than \$100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than \$1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;

2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or

3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior

Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

7:7-8.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

APPENDIX A

**Administrative Hearing Request Checklist
and Tracking Form for Permits**

I. Permit Being Appealed:

_____ Title and Type of Permit

_____ Issuance Date of Permit _____ Permit Number

II. Person Requesting Hearing:

_____ Name/Company _____ Name of Attorney (if applicable)

_____ Address _____ Address of Attorney

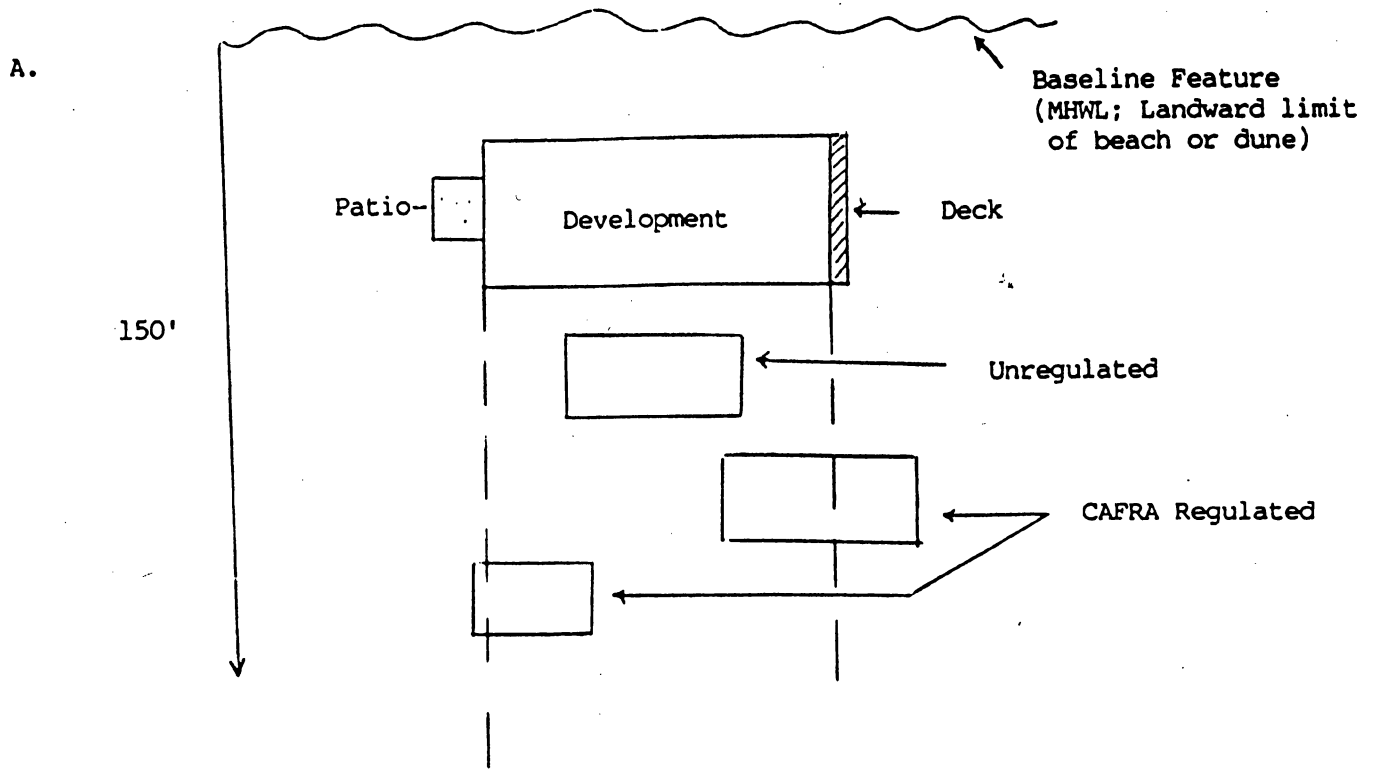
III. Please Include the Following Information as Part of Your Request:

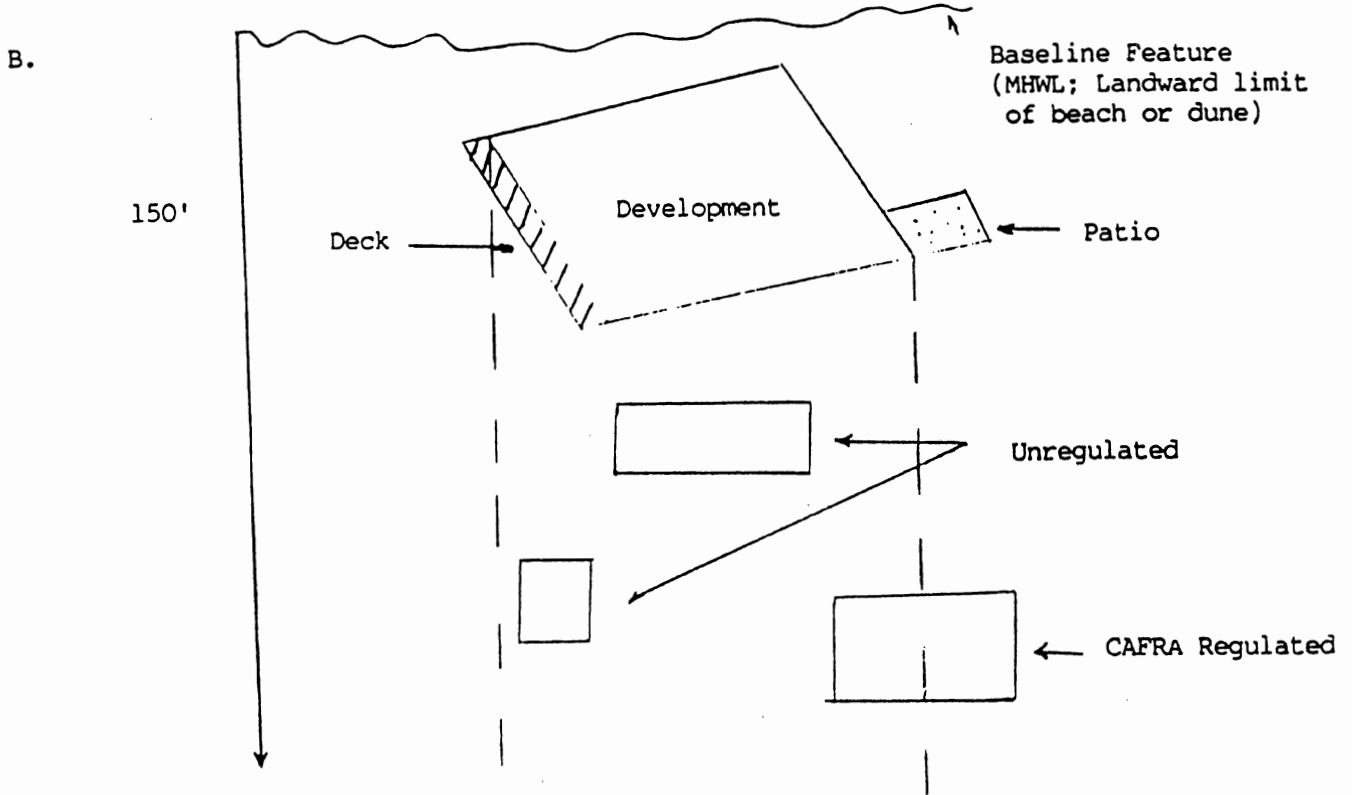
- A. The date the permittee received the final permit;
- B. A copy of permit, list of all permit conditions and issues contested;
- C. The legal and factual questions at issue;
- D. A statement as to whether or not the permittee raised each legal and factual issues during the public comment period on the permit;
- E. Suggested revised or alternative permit conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachments, to:
 - 1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402
 - 2. (Name and address of Assistant Director/designee)
 - 3. All co-permittees (w/attachments)

IV. Signature: _____ **Date:** _____

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

APPENDIX B

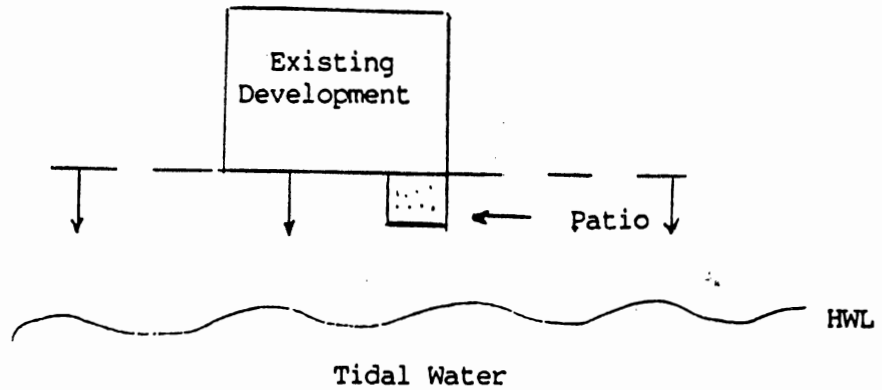




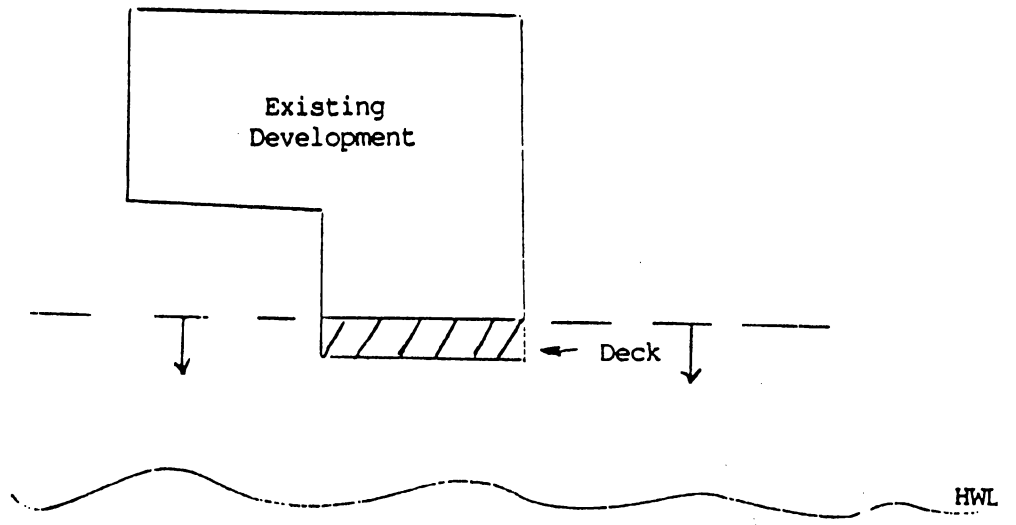
New Rule, R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

APPENDIX C

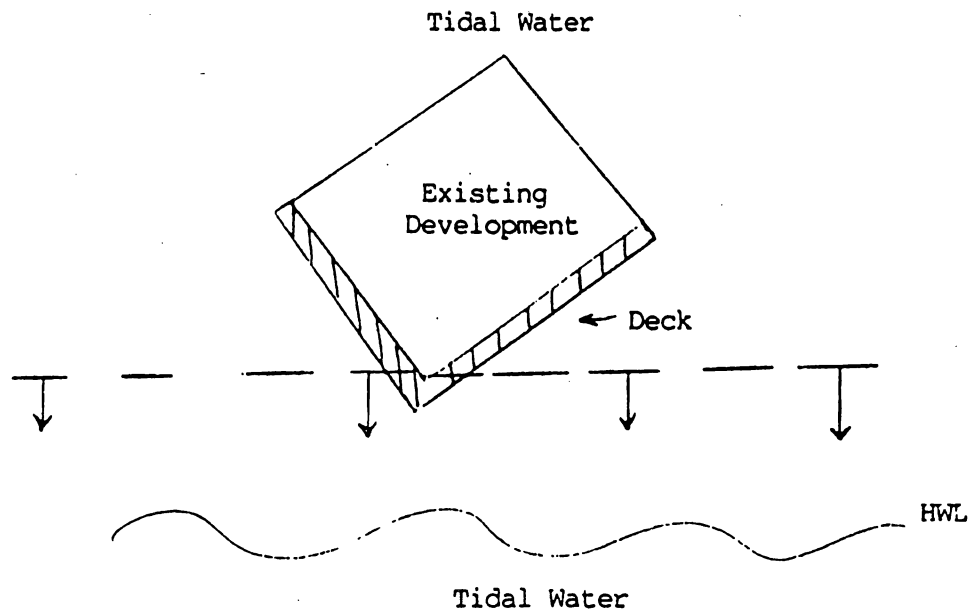
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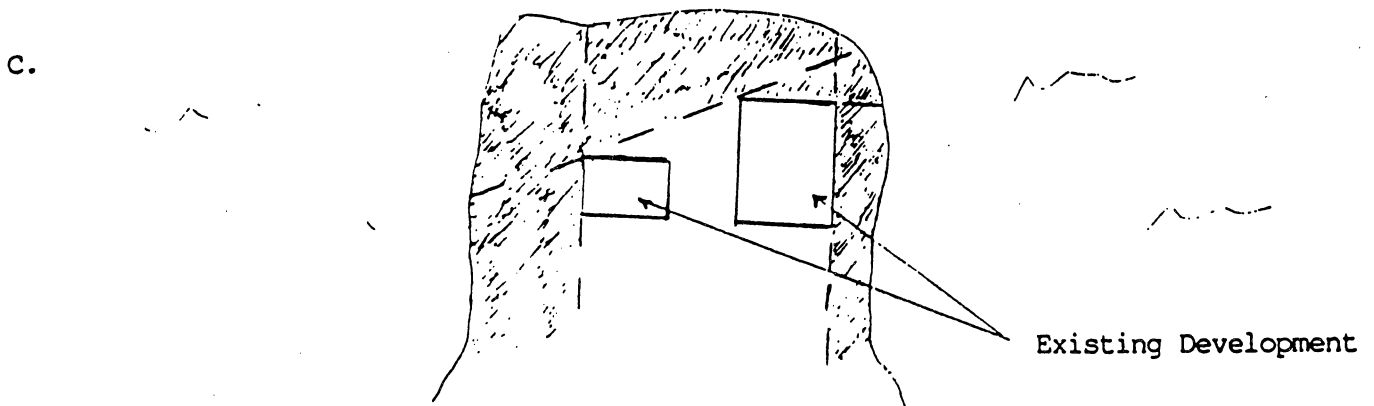
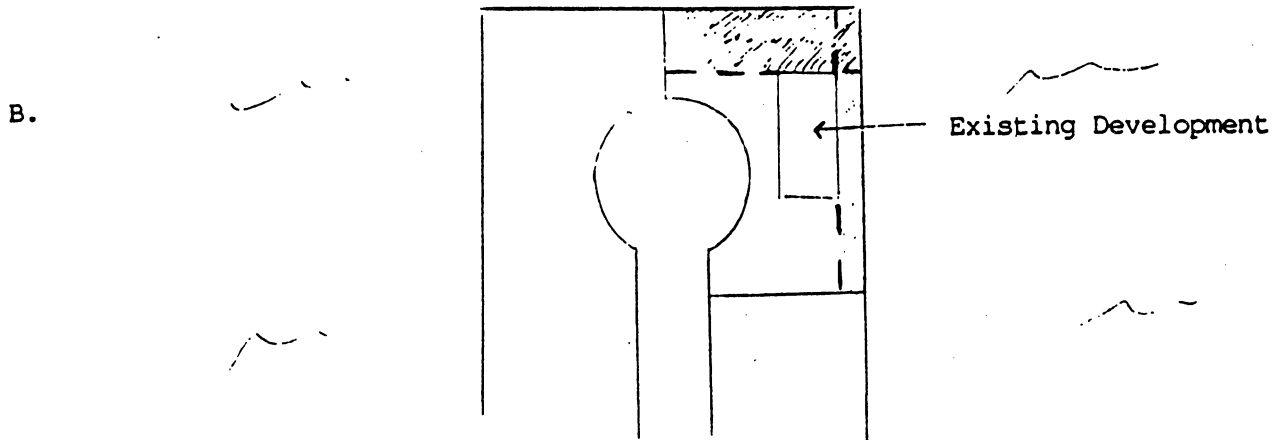
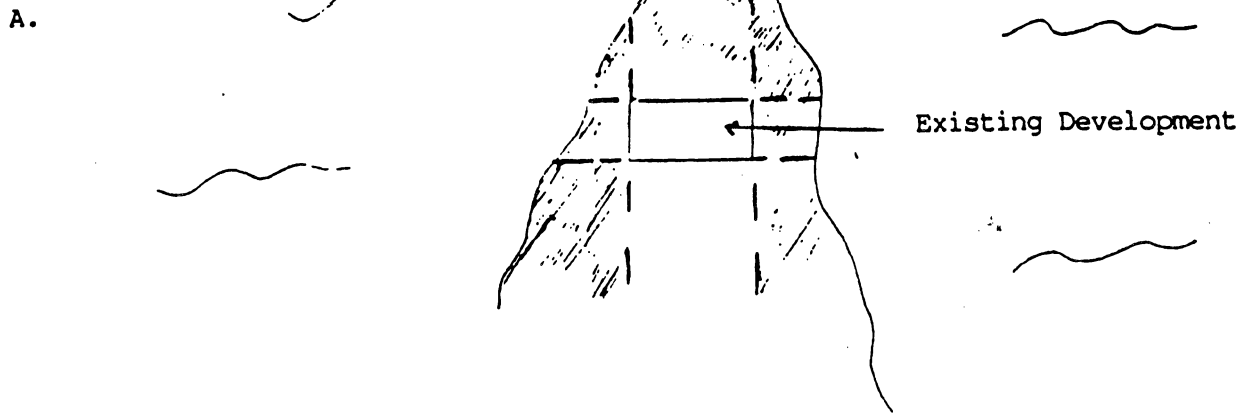
B.



C.



New Rule, R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).



NOTE: Shaded areas denote waterward side of development

New Rule, R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

NEW JERSEY STATE LIBRARY