

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 On October 7, 1980, R.1980 d.433 repealed this text.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 On May 7, 1984 subchapter two was repealed by R.1984 d.164.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Coastal Permit Program Rules are based on the CAFRA rules formerly found at N.J.A.C. 7:7D and include elements of the repealed Waterfront Development Permit rules (N.J.A.C. 7:7-2) and Wetlands Management rules (N.J.A.C. 7:7A-1).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.

Notice of Routine Program Change. See: 30 N.J.R. 2087(a), 30 N.J.R. 2780(b).

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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.

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.

Law Review and Journal Commentaries

Implications of the New CAFRA Legislation. Michael J. Gross, Jeffrey S. Beenstock, 168 N.J.Law. 13 (Mag.) (April 1995).

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 nondamaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development, 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 of the footprint of the development;

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; and

iii. The reconstruction will not result in additional impacts to Special Areas as defined at N.J.A.C. 7:7E-3.

iv. This General Permit authorization is not required for repairs or maintenance, such as replacing siding, windows or roofs.

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 of 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).

Amended by R.1997 d.534, effective December 15, 1997.

See: 28 N.J.R. 4836(a), 29 N.J.R. 5287(a).

In (a)4, substituted "landward of the existing footprint of development" for "within the same footprint"; rewrote (a)4iii; and in (a)4iv, deleted the exception for repair or maintenance associated with an expansion of the footprint.

Law Review and Journal Commentaries

Implications of the New CAFRA Legislation. Michael J. Gross, Jeffrey S. Beenstock, 168 N.J.Law. 13 (Mag.) (April 1995).

Case Notes

Contractor penalized for dredging without permit. Department of Environmental Protection and Energy v. Gallagher, 95 N.J.A.R.2d (EPE) 28.

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
PO Box 401
5 Station Plaza
Trenton, New Jersey 08625-0401
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);