

CHAPTER 7

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COASTAL PERMIT PROGRAM RULES

Authority

N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq.,
13:9A-1 et seq. and 13:19-1 et seq.

Source and Effective Date

R.2000 d.428, effective September 22, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Coastal Permit Program Rules, expires on September 22, 2005.

Chapter Historical Note

Chapter 7, Bureau of Marine Lands Management, Subchapter 1, Riparian Grants and Leases, was adopted and became effective prior to September 1, 1969.

Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a).

Subchapter 2, Waterfront Development Permits, was adopted as R.1980 d.375, effective September 26, 1980. See: 12 N.J.R. 252(a), 12 N.J.R. 576(a).

Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984. See: 16 N.J.R. 1073(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, 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, Coastal Permit Program Rules, 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, Coastal permit Program Rules, was readopted as R.1994 d.378, effective June 24, 1994, and Subchapter 7, General Permits and Permits-By-Rule, was adopted 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 8, Enforcement, was adopted as R.1994 d.413, effective August 1, 1994. See: 26 N.J.R. 1745(a), 26 N.J.R. 3188(a).

Notice of Routine Program Change. See: 30 N.J.R. 2087(a), 30 N.J.R. 2780(b), 30 N.J.R. 4284(a).

The Executive Order No. 66(1978) expiration date for Chapter 7, Coastal Permit Program Rules, was extended by gubernatorial directive from June 24, 1999 to June 24, 2000. See: 31 N.J.R. 1923(a).

Subchapter 9, Sector Permit, was adopted as R.2000 d.45, effective February 7, 2000. See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

The Executive Order No. 66(1978) expiration date for Chapter 7, Coastal Permit Program Rules, was extended by gubernatorial directive from June 24, 2000 to December 31, 2000. See: 32 N.J.R. 2591(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.2000 d.428, effective September 22, 2000. See: Source and Effective Date. 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.

“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.

“Linear development” means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission lines.

“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.)

“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.

“Property as a whole” means all property assembled as one investment or to further one development plan. The property as a whole may include more than one municipal tax block or lot. The property as a whole may also include blocks or lots that were previously sold or developed, if those blocks or lots and the remaining unsold or undeveloped blocks or lots were part of one investment or development plan. In determining the property as a whole in a particular case, the Department shall consider existing legal precedent regarding what constitutes “property as a whole” at the time of the determination.

“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 a municipality that qualifies under N.J.S.A. 52:27D-178 et seq. to receive State aid for the purpose of enabling such municipalities to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities for each State fiscal year. DCA’s list of qualifying municipalities may be obtained on request from the Department’s Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625, (609)292-0060.

“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.

“Revetment” means a sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents. A revetment is not a “gabion” or “bulkhead” as defined elsewhere in this section.

“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, wooden walkways, stage platforms, and portable restrooms, 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 lot or lots 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.

“Tidelands instrument” means a written document conveying, leasing or licensing lands owned or claimed to be owned as present or formerly flowed tidelands by the State of New Jersey to public entities or private interests pursuant to N.J.S.A. 12:3-1 et seq. and N.J.S.A. 13:1B-13 et seq. Tidelands instruments include licenses, long-term leases, conveyances (often called grants), and management agreements. These documents are recorded in the office of the clerk of the county or registrar of deeds and mortgages of the county in which the property is located.

“Waterward side of development” means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries. (see Appendix A, 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).
Amended by R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote the section.
Amended by R.2003 d.44, effective January 21, 2003.
See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Added “Property as a whole”.
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In “Dune”, inserted “and all landward dune ridges and mounds” preceding “as well as man-made dunes”.

Law Review and Journal Commentaries

Watch Out for the CAFRA II Rules. Lewis Goldshore and Marsha Wolf, 159 N.J.L.J. 1196 (2000).

7:7-1.4 Standards for evaluating permit applications

(a) 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.

(b) The Department shall not issue a permit under CAFRA unless the application complies with all of the policy and substantive standards of N.J.S.A. 13:19-2 and 13:19-10 as expressed in the Coastal Zone Management rules at N.J.A.C. 7:7E.

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).
Amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).
Added designation to first paragraph and added (b).

Law Review and Journal Commentaries

Watch Out for the CAFRA II Rules. Lewis Goldshore and Marsha Wolf, 159 N.J.L.J. 1196 (2000).

Case Notes

Implementing rules propounded by Department of Environmental Protection (DEP), with respect to Coastal Area Facility Review Act (CAFRA), did not incorporate, expressly or impliedly, requirement that DEP make specific findings required by statute. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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 conditions shall apply to all coastal permits. Failure to comply with any of the following shall constitute a violation.

(b) A hearing request may include a request that the permit or any and all conditions of the permit be stayed.

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

(d) If a permittee submits a hearing request contesting any condition of a permit, construction shall not commence until the adjudicatory hearing is resolved, unless the Commissioner issues a stay of the condition pursuant to N.J.A.C. 7:7-5.3(c).

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).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote the section.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote (a); deleted former (b); recodified former (c) through (e) as (b) through (d).

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 a hearing 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 hearing 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 the notice of the 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.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b), substituted "hearing" for "appeal" preceding "request"; and in (c), deleted "original" preceding "hearing" in the second sentence.

7:7-5.3 Action on hearing request

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

(b) The Commissioner shall act on any hearing request 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 the effective date of the permit or any or all of the conditions of the permit pending resolution of the adjudicatory hearing.

(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).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (a), substituted "hearing" for "appeal"; in (b), substituted "hearing request" for "appeal"; and rewrote (c).

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 Settlement in response to a hearing request

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

(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 the clerk of the municipality in which the proposed development is located and 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) The Department shall publish in the DEP Bulletin notice of any settlement, including a permit, which is arrived at pursuant to this section.

(e) 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).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote (a) and (c); added a new (d) and recodified former (d) as (e).

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 coastal permit applications. A request for modification of a coastal permit shall include an amended EIS or Compliance Statement pursuant to N.J.A.C. 7:7-4.10(i).

(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).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote (a).

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).

7:7-6.2 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.

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.

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

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, PO Box 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.

SUBCHAPTER 9. SECTOR PERMIT

Case Notes

Under the Sector Permit Program, a municipality requests to be certified by the Department of Environmental Protection (DEP) as a "sector permit municipality" so that any proposed individual development subject to the Coastal Area Facility Review Act (CAFRA) within its boundaries is thereafter subject to simultaneous, streamlined local and DEP review. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.1 Purpose and scope

(a) This subchapter establishes a Sector Permit for the authorization of CAFRA-regulated development in a certified sector permit municipality having a CAFRA center located in any Coastal Planning Area or having a CAFRA core or a CAFRA node located in either the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area.

(b) A municipality seeking certification as a sector permit municipality shall comply with the requirements of N.J.A.C. 7:7-9.4.

(c) Under the Sector Permit, a CAFRA-regulated development shall be authorized through the municipal approval process, subject to concurrent Department review and oversight, if the development meets the requirements of N.J.A.C. 7:7-9.3 and if the applicant seeking authorization for the development fulfills the notification requirements at N.J.A.C. 7:7-9.7.

7:7-9.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7-1.3, the following words and terms are defined for purposes of this subchapter. The terms and definitions in this section are a subset of those set forth at N.J.A.C. 7:7E-5.2, since these two subchapters are interrelated.

"CAFRA area" means the "coastal area" defined in the Coastal Area Facility Review Act at N.J.S.A. 13:9-4.

"CAFRA center" means a center with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA core" means a core with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA node" means a node with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA Planning Map" means the map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

"Center" means a compact form of development which may have one or more cores and residential neighborhoods. A center may be an urban center, regional center, town, village, or hamlet, based on factors such as comparative size, population density, total population, transportation access, infrastructure, and employment base.

"Coastal Planning Area" means a planning area in the CAFRA area with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"Core" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality or center, generally including some housing and access to public transportation.

"95-97 imagery" means the 1995-1997 National Aerial Photographic Program, New Jersey color infra-red imagery.

"Node" means a concentration of facilities and activities which are not organized in a compact form.

"Planning area" means an area of greater than one square mile that shares a common set of conditions such as population density, infrastructure systems, level of development, or environmental sensitivity. The five types of planning areas are Metropolitan Planning Area, Suburban Planning Area, Fringe Planning Area, Rural Planning Area and Environmentally Sensitive Planning Area.

"Sector" means the geographic area within a certified sector permit municipality in which CAFRA-regulated development that meets the standards of N.J.A.C. 7:7-9.3 can be authorized under this subchapter in accordance with the notification requirements at N.J.A.C. 7:7-9.7.

Amended by R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In "CAFRA center", "CAFRA core", "CAFRA node" and "Coastal Planning Area", amended the N.J.A.C. references.

7:7-9.3 Sector Permit standards

(a) The construction of CAFRA-regulated development, excluding structural shore protection as described at N.J.A.C. 7:7E-7.11(e), shall be authorized under the Sector Permit if the following requirements are met:

1. The development is located within the identified sector of a certified Sector Permit municipality;

2. The development is either:

i. Approved in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., by the planning board of the municipality without a variance or waiver from a provision(s) of the municipality's land use ordinances unless the planning board obtained prior written concurrence with such variance or waiver from the Department. The Department shall concur if the waiver or variance complies with the Coastal Zone Management rules, N.J.A.C. 7:7E, and if, notwithstanding the waiver or variance, the developments within the Sector shall continue to comply individually and collectively with the Coastal Zone Management rules; or

ii. Undertaken by the municipality and approved by the governing body of the municipality. The governing body shall obtain prior written concurrence from the Department if the approved development deviates in any way from the municipality's land use ordinances. The Department shall concur if the deviation complies with the Coastal Zone Management rules, N.J.A.C. 7:7E, and if, notwithstanding the deviation, the developments within the sector continue to comply individually and collectively with the Coastal Zone Management rules; and

3. Construction, including site preparation, of a development authorized under the Sector Permit shall not be started until either 45 days after receipt by the Department of the final planning board approval under N.J.A.C. 7:7-9.7(a)3 or 90 days after receipt by the Department of notice under N.J.A.C. 7:7-9.7(b)1, whichever is applicable, unless prior to that time the Department publishes a notice in the DEP Bulletin pursuant to N.J.A.C. 7:7-9.8 that the Sector Permit is applicable to the development, in which case, construction may be started on or after the date of publication of such notice.

(b) For any CAFRA-regulated development within the sector of a certified Sector Permit municipality that does not meet the conditions for approval under the Sector Permit, the applicant shall, pursuant to the applicable requirements of this chapter, either, obtain from the Department a CAFRA individual permit or meet the requirements for authorization under a general permit or permit-by-rule.

Amended by R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In (a), inserted " , excluding structural shore protection as described in N.J.A.C. 7:7E-7.11(e)," preceding "shall be authorized" in the introductory paragraph; in (a)2ii, added the second and third sentences.

Case Notes

Pursuant to the Sector Permit Program, a sector permit municipality authorizes subject developments in lieu of a separate Department of Environmental Protection (DEP) Coastal Area Facility Review Act (CAFRA) permit, while DEP concurrently reviews and oversees the process. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Standards set forth in Sector Permit Program rules under Coastal Area Facility Review Act (CAFRA), to be used by sector permit municipalities in granting sector permits, provided sufficiently specific guidance to enable municipalities to determine whether to approve CAFRA-regulated development. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Provision of Sector Permit Program allowing certified municipalities to approve sector permits for Coastal Area Facility Review Act (CAFRA) development undertaken by them did not improperly circumvent Department of Environmental Protection (DEP) review process or allow permits to issue without public hearing. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.4 Requirements for certification as a sector permit municipality

(a) The governing body of any municipality having a CAFRA center located in any Coastal Planning Area, or having a CAFRA core or CAFRA node located in either the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area, may submit a request to the Department for certification as a Sector Permit municipality.

1. A municipality may request a preliminary meeting with the Department to discuss the certification requirements and the area the municipality is intending to identify as a sector.

(b) A request for certification as a Sector Permit municipality shall include the following:

1. A resolution from the governing body of the municipality endorsing the request for certification as a Sector Permit municipality;

2. A statement identifying the Coastal Planning Area(s) in which the municipality is located and which of the following the sector contains in whole or in part: a CAFRA core, CAFRA node, CAFRA urban center, CAFRA regional center, CAFRA town, CAFRA village or CAFRA hamlet. The sector shall contain in whole or in part a CAFRA center located in any Coastal Planning Area or a CAFRA core or a CAFRA node located in either the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area;

3. A narrative description of the boundary of the sector of the municipality in which the Sector Permit would apply;

4. A map of the municipality at a minimum scale of one inch to 200 feet. The base map shall be a recent aerial photograph, such as the 95-97 imagery, which appears on the Department's Geographic Information

System. The map shall show all of the following within the CAFRA area:

- i. The boundary of each CAFRA center, CAFRA core or CAFRA node in the municipality. The boundaries of all Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes operative under N.J.A.C. 7:7E-5B.3 are as shown on the CAFRA Planning Map, which is available on the Department's Geographic Information System;
 - ii. If more than one Coastal Planning Area is located within the municipality, the boundaries of each Coastal Planning Area;
 - iii. The boundary of the sector of the municipality in which the Sector Permit would apply;
 - iv. The boundaries of all Special Areas, as defined at N.J.A.C. 7:7E-3. The boundaries of all Special Areas within the sector shown on the map shall have been verified in the field. The boundaries of Special Areas located outside the sector may be transferred from existing data sources, for example, the Department's freshwater wetlands and coastal wetlands maps;
 - v. Streets;
 - vi. Lot and block designations; and
 - vii. Zoning;
5. A copy of each of the municipality's land use ordinances in effect on the date of application;
 6. A copy of the municipality's master plan current as of the date of application; and
 7. A report describing how the municipality's ordinances ensure that any development approved by the municipality in accordance with the ordinances and throughout all portions of the municipality that are within the CAFRA area will be consistent with the Coastal Zone Management rules, N.J.A.C. 7:7E. The ordinances shall include a mechanism for identifying Special Areas as well as specific standards for regulating development in these areas. The report shall also:
 - i. Specifically identify which portions of the ordinance(s) ensure consistency with each specific Coastal Zone Management rule;
 - ii. Identify any ordinance changes under consideration for purposes of complying with the Coastal Zone Management rules;
 - iii. Include a copy of the letter of interpretation issued in accordance with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, for the sector, either verifying freshwater wetlands and associated transition area lines or confirming the absence of freshwater wetlands and transition areas within the sector; and

iv. If the portion of the municipality in the CAFRA area is also in the Pinelands National Reserve, include a determination from the Pinelands Commission finding the municipality's ordinances in substantial compliance with the Pinelands Comprehensive Management Plan.

(c) The Department shall review all information submitted in accordance with (b) above to determine whether the municipality is likely to meet the conditions for certification as a sector permit municipality. The Department may ask the governing body of the municipality to submit additional information necessary to make this determination. The Department shall advise the governing body of the municipality if changes need to be made to the municipality's land use ordinances in order for the municipality to meet the conditions for certification as a sector permit municipality.

(d) If the Department determines under (c) above that the municipality is likely to meet the conditions for certification as a Sector Permit municipality, the Department shall hold a public hearing within the municipality on the request for certification. At least 30 days before the scheduled date of the public hearing, the Department shall publish a notice in the DEP Bulletin, and the governing body of the municipality shall publish a display advertisement of a minimum of four inches in width in the official newspaper of the municipality. The notice and the display advertisement shall:

1. Generally describe the Sector Permit and the sector within the municipality where the Sector Permit would apply;
2. Identify the land use ordinances upon which the municipality is relying in its request for certification;
3. Announce the date, place, and time of the public hearing; and
4. Provide that written comments on the request for certification may be submitted to the New Jersey Department of Environmental Protection, PO Box 422, Trenton, NJ 08625-0422, at or within 15 days after the public hearing. Comments received after this date will be included in the record of the certification request and may be considered by the Department in its review of the request if relevant to its determination.

(e) Upon completion of its review of the information submitted by the municipality in its request for certification and the comments received on the request, the Department shall determine if the following conditions for certification as a sector permit municipality are met:

1. Any development that would be constructed in accordance with the municipality's land use ordinances in the CAFRA area of the municipality, both within and outside of the Sector, would comply with the Coastal Zone Management rules, N.J.A.C. 7:7E;

2. Any CAFRA-regulated development that would be constructed within the Sector and that requires approval by the planning board under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., would be evaluated and approved or denied through the municipal planning board approval process or, for development undertaken by the municipality, by the municipal governing body; and

3. Any development that is to be authorized under the Sector Permit and that is either subject to planning board approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or undertaken by the municipality shall be regulated under the municipality's land use ordinances to the same extent as it would be regulated under CAFRA and this chapter. For example, although municipal ordinances often do not consider all building elements such as decks and gazebos as "structures" subject to municipal planning board review, for purposes of certification as a sector permit municipality, a municipality's land use ordinances must provide standards for such building elements.

(f) If the Department determines that the conditions at (e) above for certification as a Sector Permit municipality are not met, the Department shall issue a denial letter to the governing body of the municipality, explaining the reasons for its decision.

(g) If the Department determines that the conditions at (e) above for certification as a Sector Permit municipality are met, the Department shall prepare a memorandum of agreement for execution by the municipality, which shall be executed and returned to the Department. The memorandum of agreement shall include:

1. Provisions to ensure development undertaken by the municipality conforms with the municipal land use ordinances identified in the certification letter; and
2. Provisions to ensure that the municipality adheres to the responsibilities under N.J.A.C. 7:7-9.5 and the notification requirements under N.J.A.C. 7:7-9.7(b).

(h) Upon receipt of the executed memorandum of agreement required under (g) above, the Department shall issue a certification letter to the governing body of the municipality setting forth the terms for the certification of the municipality under this subchapter. The certification terms shall include:

1. A narrative description of the sector in which the Sector Permit applies;
2. A list of the municipality's land use ordinances necessary to comply with (e) above;
3. Specific conditions applicable to particular types of sites or developments that must be met in order for a development to be authorized under the Sector Permit; and

4. A statement of the municipality's obligation to comply with the provisions of this subchapter, including its responsibilities under N.J.A.C. 7:7-9.5.

(i) The Department shall publish a notice in the DEP Bulletin of its decision under this section regarding the certification of the municipality as a Sector Permit municipality. If the decision is to certify the municipality, the Department shall also publish in the New Jersey Register a notice of administrative change to add the certified sector permit municipality to the list of certified sector permit municipalities in the table below. The list in this table is for informational purposes only. An applicant seeking authorization to construct a CAFRA-regulated development under the Sector Permit should contact the Department's Land Use Regulation Program at PO Box 439, Trenton, New Jersey 08625-0439, to obtain the list of certified sector permit municipalities current as of the time the applicant submits its application for development approval to the planning board under N.J.A.C. 7:7-9.7(a).

<u>Certified Sector Permit Municipality</u>	<u>Date of Certification</u>
1. (Reserved)	(Reserved)

(j) Subject to the limitation on third-party hearing rights specified at N.J.A.C. 7:7-9.9(a)5, any interested person who considers himself or herself aggrieved by a decision of the Department under this section may, within 10 days of publication of such decision in the DEP Bulletin, submit a request for an adjudicatory hearing to the Office of Legal Affairs in accordance with N.J.A.C. 7:7-9.9(a).

Amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In (b), rewrote 2 and 7iv and updated the N.J.A.C. reference in 4i; and rewrote (e).

Case Notes

Provision of Sector Permit Program allowing certified municipalities to approve sector permits for Coastal Area Facility Review Act (CAFRA) development undertaken by them did not improperly circumvent Department of Environmental Protection (DEP) review process or allow permits to issue without public hearing. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.5 Responsibilities of a certified Sector Permit municipality

(a) If a municipality intends to propose a change to any of the land use ordinances identified in the certification letter issued to it under N.J.A.C. 7:7-9.4(h), the municipality shall submit a copy of the proposed ordinance change to the Department for review at least 30 days before the municipality holds a public hearing on the ordinance. The Department's review shall include an analysis of the revised ordinance's consistency with the Coastal Zone Management rules, N.J.A.C. 7:7E, and the Coastal Permit Program rules, N.J.A.C. 7:7; and the importance of the change to the success of the municipality's master plan for development.

(b) The municipality shall notify the Land Use Regulation Program, NJ Department of Environmental Protection, PO Box 439, Trenton, NJ 08625-0439, of any action in Superior Court challenging an action of the municipality regarding a development authorized under the Sector Permit within 35 days of having been served with a complaint.

(c) The municipality shall provide a report to the New Jersey Department of Environmental Protection, PO Box 422, Trenton, NJ 08625-0422, by January 31 of each year, identifying the variances granted under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the deviations from the municipality's land use ordinances for developments undertaken by the municipality in the immediately preceding year. The annual report shall include only variances and deviations from the land use ordinances identified in the certification letter issued to the municipality under N.J.A.C. 7:7-9.4(h). The report shall exclude variances granted to individual single family or duplex developments which are not part of a larger development. The report shall include the following:

1. A list, by lot and block, of such variances and deviations;
2. A narrative description of the basis for each such variance and deviation; and
3. An analysis demonstrating how the municipality continues to comply with the terms of its certification as a Sector Permit municipality despite such variances and deviations.

(d) The municipality shall ensure that CAFRA-regulated developments in the sector authorized under the Sector Permit are constructed in accordance with the approved development plans.

(e) The municipality shall not issue a building permit, a final construction permit, or authorize site preparation for any CAFRA-regulated development outside of the sector unless a CAFRA permit for the development has been obtained.

(f) The governing body of the municipality shall, within 90 days of receipt of notice from the Department of applicable amendments to the Coastal Zone Management rules or Coastal Permit Program rules, either certify to the Department that the land use ordinances identified in the certification letter issued to it under N.J.A.C. 7:7-9.4(h) continue to enable the municipality to comply with the terms of its certification as a Sector Permit municipality or submit to the Department for approval draft revisions to the land use ordinances necessary to enable the municipality to continue to comply with the terms of its certification. Such revised ordinances shall be adopted within 90 days of approval by the Department.

Amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In (a), deleted "in the CAFRA center, CAFRA core or CAFRA node"; and rewrote (c).

Case Notes

Department of Environmental Protection (DEP) rule listing responsibilities of certified sector permit municipalities did not govern standards for granting variances and waivers to requirements of Coastal Area Facility Review Act (CAFRA) rules under Sector Permit Program, or permit municipalities to approve variances and waivers under less stringent provision of Municipal Land Use Law (MLUL). In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Even if a sector permit municipality grants a variance or waiver to requirements of Coastal Area Facility Review Act (CAFRA) rules based upon its own municipal ordinances, Department of Environmental Protection (DEP) is still required, notwithstanding the waiver or variance, to ensure that the developments continue to comply individually and collectively with the Coastal Zone Management rules, which include the waiver requirements. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.6 Effect of a certified Sector Permit municipality's noncompliance with the terms of its certification

(a) If a municipality fails to comply with any of the terms of the certification issued to it under N.J.A.C. 7:7-9.4 or the memorandum of agreement executed under N.J.A.C. 7:7-9.4, the Department shall suspend the municipality's certification as a sector permit municipality in accordance with the following:

1. The Department shall, by certified mail, notify the municipality in writing of its intent to suspend the municipality's certification. The notice of intent to suspend shall establish a reasonable period, not to exceed 45 days unless extended by agreement between the Department and the municipality, within which the municipality must remedy the noncompliance; offer a plan to remedy the noncompliance that specifies the time necessary to implement the remedy; or demonstrate to the Department that the municipality has complied with the terms of its certification or the memorandum of agreement.

2. If the municipality does not remedy the noncompliance within the period established under (a)1 above, or if the Department finds the municipality's plan to remedy the noncompliance unacceptable, or if the Department finds the municipality's demonstration of compliance with the terms of its certification or the memorandum of agreement insufficient, the Department shall suspend, by written notice, the municipality's certification as a sector permit municipality. CAFRA-regulated development in the municipality shall not be authorized under this subchapter but shall instead be subject to the requirements for obtaining a CAFRA individual permit or for authorization under a general permit or permit by rule until the Department reinstates the municipality's certification as a sector permit municipality.

3. A municipality may appeal the suspension of its certification as a Sector Permit municipality in accordance with N.J.A.C. 7:7-9.9.

4. During the period that the municipality is appealing the suspension of its certification, CAFRA regulated development shall not be authorized in the municipality under this subchapter but shall instead be subject to the requirements for obtaining a CAFRA individual permit or for authorization under a general permit or permit by rule.

(b) If the Department suspends a municipality's certification as a Sector Permit municipality in accordance with (a) above, and the suspension is not remedied, then the Department shall revoke the municipality's certification as follows:

1. The Department shall, by certified mail, notify the municipality in writing of its intent to revoke the municipality's certification as a Sector Permit municipality. The notice of intent to revoke shall inform the municipality of its right to a hearing pursuant to N.J.A.C. 7:7-9.9.

2. If the municipality does not request a hearing within 10 days of its receipt of the notice of intent to revoke, the municipality's certification shall automatically be revoked.

3. If the municipality's certification as a Sector Permit municipality is revoked, CAFRA-regulated development shall not be authorized in the municipality under this subchapter but shall instead be subject to the requirements for obtaining a CAFRA individual permit or for authorization under a general permit or permit by rule.

Amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

7:7-9.7 Notification requirements for applications for authorization under the Sector Permit

(a) The notification requirements for applications for CAFRA-regulated developments which require municipal planning board approval to be authorized under the Sector Permit are as follows:

1. The applicant shall provide notice, by certified mail, return receipt requested, to the Land Use Regulation Program, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that an application for a development within the Sector has been filed with the Planning Board as soon as the Planning Board determines under the Municipal Land Use Law, N.J.S.A. 40:55D-10.3, that the application is complete for review. This notice shall include a copy of the application and of the development plan(s).

2. The applicant shall provide notice, by certified mail, return receipt requested, to the Land Use Regulation Program, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, of the date of the Planning Board hearing on the development application at least 10 days prior to the hearing.

3. The applicant shall provide notice, by certified mail, return receipt requested, of preliminary and final Plan-

ning Board approvals to the Land Use Regulation Program, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, within seven days of the Planning Board's adoption of each memorializing resolution. This notice shall include a copy of the approved development plan(s) and of the resolution.

4. If the Department determines that the Sector Permit under this section is not applicable and that a CAFRA individual permit, general permit, permit-by-rule, or other coastal permit is instead required, the Department shall within 45 days of its receipt under (a)3 above of notice of preliminary and final Planning Board approval, so notify the applicant and Planning Board.

(b) The notification requirements for CAFRA developments conducted by the municipality which do not require Planning Board approval but do require approval of the municipal governing body to be authorized under the Sector Permit are as follows:

1. The municipal governing body shall provide notice, by certified mail, return receipt requested, to the Land Use Regulation Program, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that the development within the sector is under consideration by the municipal governing body 90 days prior to the solicitation of bids for construction of the development. This notice shall include a copy of the development plan(s).

2. If the Department intends to comment for the purpose of suggesting modifications to the development plan(s), it shall provide the municipal governing body with written comments within 30 days after receipt by the Department notice under (b)1 above. The Department's comments may include suggestions regarding how the development should be modified in order to meet the requirements of the Sector Permit and any additional conditions imposed in the certification letter issued under N.J.A.C. 7:7-9.4.

3. If the Department determines that the Sector Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall within 90 days of its receipt under (b)1 above of notice that a development is under consideration by the municipal governing body, so notify the municipal governing body.

(c) If notice is not provided as required by (a) or (b) above, the development shall not be authorized by the Sector Permit and the applicant shall instead apply for a CAFRA individual permit, general permit, or permit-by-rule.

(d) A preapplication review wherein the Department will discuss compliance of the proposed development with the Sector Permit is available upon request. A preapplication review may be requested from the Department by following the procedures at N.J.A.C. 7:7-3.2(a).

Case Notes

Pursuant to the Sector Permit Program, a sector permit municipality authorizes subject developments in lieu of a separate Department of Environmental Protection (DEP) Coastal Area Facility Review Act (CAFRA) permit, while DEP concurrently reviews and oversees the process. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Sector Permit Program, permitting municipal review of permit applications under Coastal Area Facility Review Act (CAFRA), did not constitute impermissible subdelegation of administrative permit power of Department of Environmental Protection (DEP) to municipalities; DEP retained right to disapprove sector permits, and was required to publish notice of its decisions as to applicability or inapplicability of sector permit. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.8 Publication of the final decision

The Department shall publish notice in the DEP Bulletin of its decision under N.J.A.C. 7:7-9.7(a)4 or 7:7-9.7(b)3 that the Sector Permit is applicable or inapplicable.

Case Notes

Sector Permit Program, permitting municipal review of permit applications under Coastal Area Facility Review Act (CAFRA), did not constitute impermissible subdelegation of administrative permit power of Department of Environmental Protection (DEP) to municipalities; DEP retained right to disapprove sector permits, and was required to publish notice of its decisions as to applicability or inapplicability of sector permit. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Administrative rules governing Sector Permit Program provided adequate procedural safeguards to guarantee that municipalities exercising sector permit power acted consistently with requirements of Coastal Area Facility Review Act (CAFRA); under rules at issue, Department of Environmental Protection (DEP) remained ultimate decision-maker as to issuance of sector permit to a municipality, with hearing available to those aggrieved by such decision. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) was required to amend its rules with respect to Sector Permit Program under Coastal Area Facility Review Act (CAFRA), to set forth requirement that DEP make findings under all applicable standards set forth in CAFRA prior to issuing sector permit to a municipality for development thereunder. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.9 Procedures to request an adjudicatory hearing

(a) Subject to the limitation on third-party hearing rights specified in (a)5 below, any interested person who considers himself or herself aggrieved by a decision of the Department under N.J.A.C. 7:7-9.4 or 9.7 may, within 10 days of publication of such decision in the DEP Bulletin, submit a written request for an adjudicatory hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402, including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits," see chapter Appendix A, incorporated herein by reference.

1. The request for a hearing shall include the appropriate Department file number and, where the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant.

2. The request for a hearing shall include a statement describing, in detail, how the person submitting the request is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

3. The person submitting the request for a hearing shall mail a copy of the request to the county clerk and the municipal clerk of the county and municipality in which the sector is located, and shall include proof of such mailing with the hearing request submitted to the Department.

4. A hearing request may include a request that the permit be stayed.

5. Nothing in this subsection 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).

6. The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the request for an adjudicatory hearing, and review of a revised application to settle the contested case.

Case Notes

Administrative rules governing Sector Permit Program provided adequate procedural safeguards to guarantee that municipalities exercising sector permit power acted consistently with requirements of Coastal Area Facility Review Act (CAFRA); under rules at issue, Department of Environmental Protection (DEP) remained ultimate decision-maker as to issuance of sector permit to a municipality, with hearing available to those aggrieved by such decision. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) was required to amend its rules with respect to Sector Permit Program under Coastal Area Facility Review Act (CAFRA), to set forth requirement that DEP make findings under all applicable standards set forth in CAFRA prior to issuing sector permit to a municipality for development thereunder. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7-9.10 Expiration of certification as a sector permit municipality

(a) A municipality's certification as a sector permit municipality shall expire five years after the date of certification issued in accordance with N.J.A.C. 7:7-9.4(h).

(b) If a municipality's certification as a sector permit municipality expires, CAFRA-regulated development in the municipality shall not be authorized under this subchapter but shall instead be subject to the requirements for obtaining a CAFRA individual permit or for authorization under a general permit or permit by rule.

(c) Where construction has commenced under an authorization granted prior to the expiration of a sector permit municipality's certification, the authorization shall remain valid, as long as construction continues until the project is completed subject to the provisions of (c) 1 and 2 below.

1. If construction continues beyond the expiration of the sector permit municipality's certification, and then, prior to the completion of the project, stops for a cumulative period of one year or longer, the authorization shall expire.

2. Upon request, the authorization may be extended for a total of five years from the expiration date of the sector permit municipality's certification. All requests for authorization to continue construction beyond the expiration of a sector permit municipality's certification shall be submitted to the Department no later than 20 business days prior to the expiration date of the certification.

New Rule, R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

7:7-9.11 Requirements for recertification as a Sector Permit municipality

(a) At least 180 days prior to the expiration of its certification as a sector permit municipality, a sector permit municipality seeking recertification shall submit a request for recertification to the Department. A municipality may only request recertification as a sector permit municipality for the same sector for which certification was initially obtained.

(b) A request for recertification as a sector permit municipality shall include the following:

1. A resolution from the governing body of the municipality endorsing the request for recertification as a sector permit municipality;

2. If a change in any of the items listed at (b)2i through vii below has occurred during the term of the municipality's certification, an updated map, current as of the date of the request for recertification, of the municipality at a minimum scale of one inch to 200 feet, with the changes highlighted or annotated. The map shall show all of the following within the CAFRA area:

i. The boundary of each CAFRA center, CAFRA core or CAFRA node in the municipality. The boundaries of all Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes operative under N.J.A.C. 7:7E-5B.3 are shown on the CAFRA Planning Map, which is available on the Department's Geographic Information System;

ii. If more than one Coastal Planning Area is located within the municipality, the boundaries of each Coastal Planning Area;

iii. The boundary of the sector of the municipality in which the Sector Permit would continue to apply;

iv. The boundaries of all Special Areas, as defined at N.J.A.C. 7:7E-3. The boundaries of all Special Areas within the sector shown on the map shall have been verified in the field. The boundaries of Special Areas located outside the sector may be transferred from existing data sources, for example, the Department's freshwater wetlands and coastal wetlands maps;

v. Streets;

vi. Lot and block designations; and

vii. Zoning;

3. A copy of any changes to the municipality's land use ordinances adopted since the date of initial certification;

4. If revised since initial certification, a copy of the municipality's master plan current as of the date of the request for recertification; and

5. A report describing how the municipality's ordinances have been effective in assuring that all development approved by the municipality in accordance with the ordinances and throughout all portions of the municipality that are within the CAFRA area has been consistent with the Coastal Zone Management rules, N.J.A.C. 7:7E, over the term of the certification. The report shall also:

i. Identify any ordinance changes under consideration for purposes of complying with the Coastal Zone Management rules; and

ii. Include a copy of a new letter of interpretation or a letter of interpretation reissued in accordance with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, for the Sector, either verifying freshwater wetlands and associated transition area lines or confirming the absence of freshwater wetlands and transition areas within the sector.

(c) The Department shall review all information submitted in accordance with (b) above to determine whether the municipality is likely to continue to meet the conditions for certification as a sector permit municipality. The Department may ask the governing body of the municipality to submit additional information necessary to make this determination. The Department shall advise the governing body of the municipality if changes need to be made to the municipality's land use ordinances in order for the municipality to continue to meet the conditions for certification as a sector permit municipality.

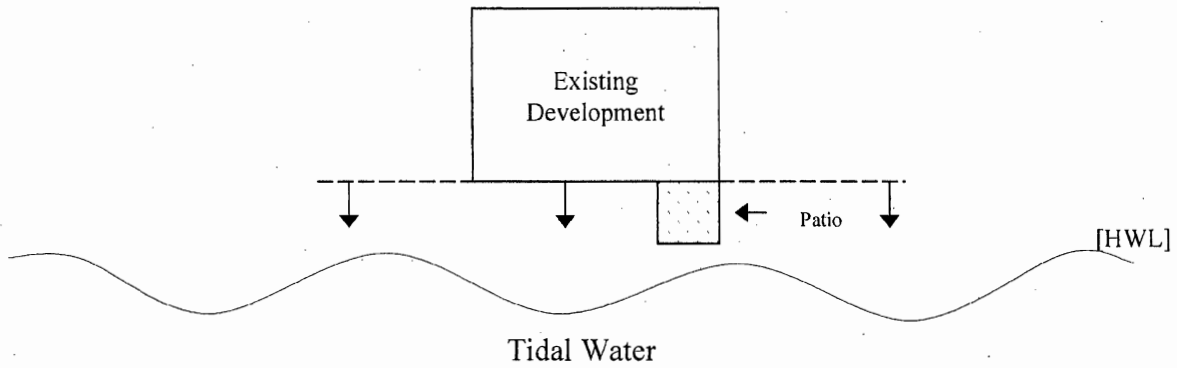
(d) Upon completion of its review under (c) above of the request for recertification, the Department shall, in accordance with the procedures for certification at N.J.A.C. 7:7-9.4(d) through (j), either recertify the municipality as a sector permit municipality or deny the request for recertification.

New Rule, R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

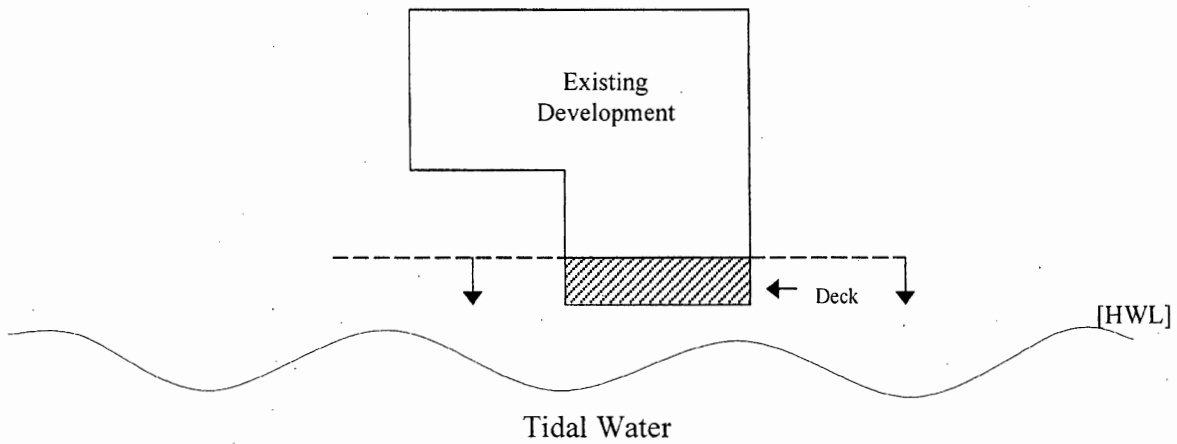
Appendix A

Illustration of the Waterward Side of Development pursuant to N.J.A.C. 7:7-1.3

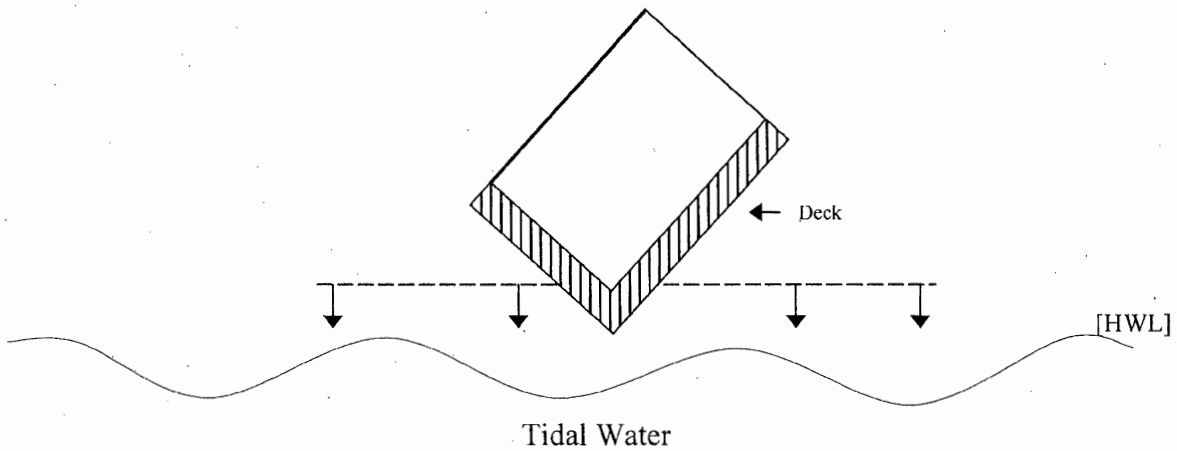
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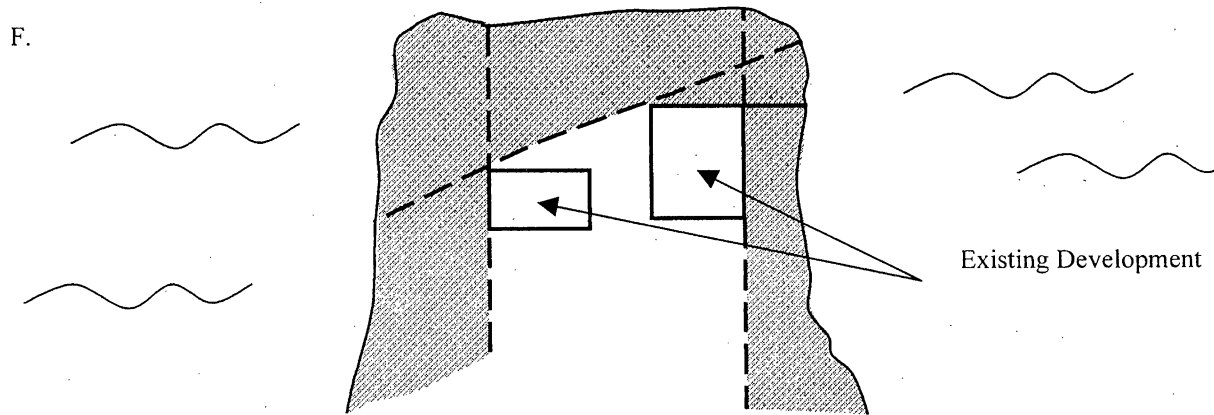
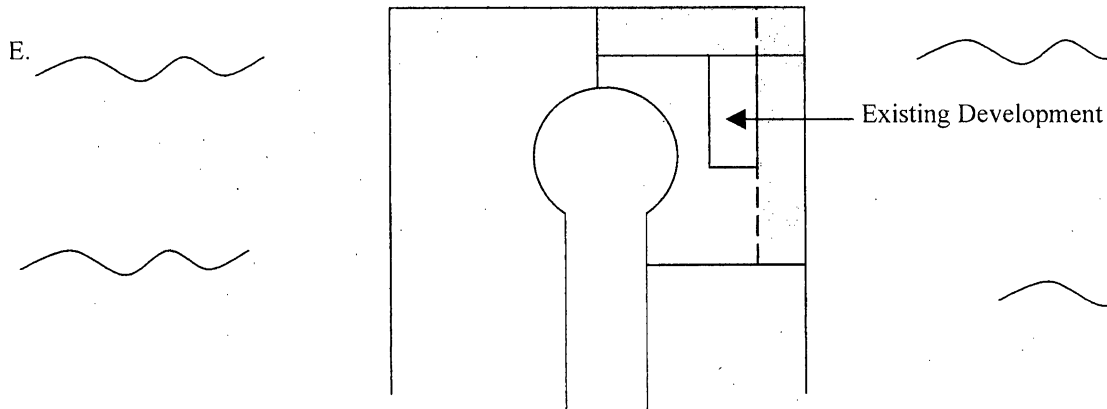
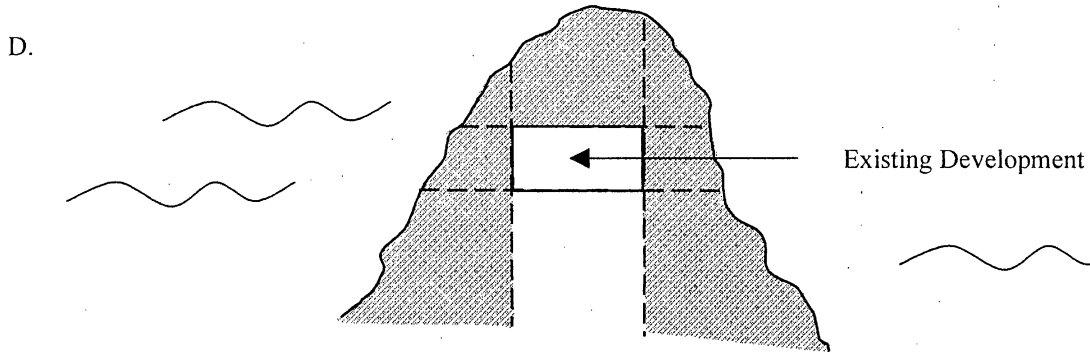
C.



*NOT TO SCALE *

Note: Arrows Denote Waterward Side of the Development

Illustration of the Waterward
Side of Development
pursuant to N.J.A.C. 7:7-1.3



NOTE: Shaded areas denote waterward side of development

*NOT TO SCALE *

New Rule, R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Former N.J.A.C. 7:7 App. A, Administrative hearing request check-
list and tracking form for permits, recodified to N.J.A.C. 7:7 App. D.