

COASTAL PERMIT PROGRAM RULES

CHAPTER 7

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Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980.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Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984.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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:7-1.1 Purpose and scope
- 7:7-1.2 (Reserved)
- 7:7-1.3 Definitions
- 7:7-1.4 Standards for evaluating permit applications
- 7:7-1.5 Permits and permit conditions
- 7:7-1.6 Provisional permits
- 7:7-1.7 Emergency permit authorization
- 7:7-1.8 Procedure where more than one permit is required
- 7:7-1.9 Permit fees
- 7:7-1.10 Construction and relaxation of procedures or standards
- 7:7-1.11 Severability

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

- 7:7-2.1 CAFRA
- 7:7-2.2 Wetlands
- 7:7-2.3 Waterfront development

SUBCHAPTER 3. PRE-APPLICATION REVIEW

- 7:7-3.1 Purpose
- 7:7-3.2 Request for a pre-application review
- 7:7-3.3 Discussion of information requirements
- 7:7-3.4 Memorandum of record

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

- 7:7-4.1 General
- 7:7-4.2 Application contents
- 7:7-4.3 Newspaper notice of application submission and availability of application for examination by the public
- 7:7-4.4 Initial review of applications
- 7:7-4.5 Public hearings and public comment periods
- 7:7-4.6 Final review of the application
- 7:7-4.7 Timetable for permit decisions
- 7:7-4.8 Publication of the permit decision
- 7:7-4.9 Withdrawal, resubmission and amendment of applications
- 7:7-4.10 Requests for modifications
- 7:7-4.11 Suspension and revocation of permits
- 7:7-4.12 (Reserved)

SUBCHAPTER 5. PROCEDURES TO REQUEST AN ADJUDICATORY HEARING TO CONTEST A PERMIT DECISION

- 7:7-5.1 Hearing request
- 7:7-5.2 Response to a hearing request
- 7:7-5.3 Action on hearing request
- 7:7-5.4 Settlement in response to a hearing request
- 7:7-5.5 (Reserved)

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

- 7:7-6.1 When an EIS is required
- 7:7-6.2 Formats and contents
- 7:7-6.3 Preparation

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

- 7:7-7.1 General standards for issuing coastal general permits and permits-by-rule
- 7:7-7.2 Permits-By-Rule
- 7:7-7.3 Application procedure for a coastal general permit authorization
- 7:7-7.4 Long Branch Redevelopment Zone Permit

- 7:7-7.5 Coastal general permit for amusement pier expansion
- 7:7-7.6 Coastal general permit for beach and dune maintenance activities
- 7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development
- 7:7-7.8 Coastal general permit for the development of a single family home or duplex
- 7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion) of a single family home or duplex
- 7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon
- 7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot
- 7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot
- 7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating commercial marinas
- 7:7-7.14 Reconstruction of a legally existing functioning bulkhead
- 7:7-7.15 Coastal general permit for hazardous waste clean up
- 7:7-7.16 Coastal general permit for the landfall of utilities
- 7:7-7.17 Coastal general permit for the construction of recreational facilities at public parks
- 7:7-7.18 Coastal general permit for bulkhead construction and placement of associated fill
- 7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons
- 7:7-7.20 Coastal general permit for minor maintenance dredging in man-made lagoons
- 7:7-7.21 Coastal general permit for the stabilization of eroded shorelines
- 7:7-7.22 Coastal general permit for avian nesting structures
- 7:7-7.23 Coastal general permit for modification of existing electrical substations
- 7:7-7.24 Coastal general permit for the legalization of the filling of tidelands
- 7:7-7.25 Coastal general permit for the construction of telecommunication towers
- 7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

SUBCHAPTER 8. ENFORCEMENT

- 7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities
- 7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

- 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)
- 7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)
- 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)
- 7:7-8.14 Severability

SUBCHAPTER 9. SECTOR PERMIT

- 7:7-9.1 Purpose and scope
- 7:7-9.2 Definitions
- 7:7-9.3 Sector Permit standards
- 7:7-9.4 Requirements for certification as a sector permit municipality
- 7:7-9.5 Responsibilities of a certified Sector Permit municipality
- 7:7-9.6 Effect of a certified Sector Permit municipality's noncompliance with the terms of its certification
- 7:7-9.7 Notification requirements for applications for authorization under the Sector Permit
- 7:7-9.8 Publication of the final decision
- 7:7-9.9 Procedures to request an adjudicatory hearing

APPENDIX A. ILLUSTRATION OF THE WATERWARD SIDE OF DEVELOPMENT PURSUANT TO N.J.A.C. 7:7-1.3

APPENDIX B. ILLUSTRATION OF INTERVENING DEVELOPMENT FOR PROPOSED DEVELOPMENT OTHER THAN A SINGLE FAMILY HOME OR DUPLEX PURSUANT TO N.J.A.C. 7:7-2.1(b)

APPENDIX C. ILLUSTRATION OF INTERVENING DEVELOPMENT FOR PROPOSED SINGLE FAMILY HOME OR DUPLEX PURSUANT TO N.J.A.C. 7:7-2.1(b)1

APPENDIX D. ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM FOR PERMITS

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:

“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 boat slip 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.

“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.

7:7-1.4 Standards for evaluating permit applications

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

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

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

Deleted Policies from text.

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

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

Case Notes

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

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

7:7-1.5 Permits and permit conditions

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

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

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

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

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

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

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

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

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

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.2.

“CAFRA core” means a core with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.2.

“CAFRA node” means a node with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.2.

“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.2.

“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.

7:7-9.3 Sector Permit standards

(a) The construction of CAFRA-regulated development 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; 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.

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 whether the sector is located in a CAFRA core, CAFRA node, or in a CAFRA urban center, CAFRA regional center, CAFRA town, CAFRA village or CAFRA hamlet. The sector shall be located within a CAFRA center located in any Coastal Planning Area or in 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.2 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 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:

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 letter from the Pinelands Commission finding the municipality's ordinances acceptable as to development within the Pinelands National Reserve.

(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; and

2. All components of a CAFRA-regulated development that would be constructed within the sector would be evaluated and approved or denied through the municipal planning board approval process. For example, although municipal ordinances often do not consider 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).

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 in the CAFRA center, CAFRA core or CAFRA node.

(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 by the municipal zoning board of adjustment in the immediately preceding year. The annual report shall include only variances granted for development under 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 variances granted;
2. A narrative description of the basis for granting each variance; and
3. An analysis demonstrating how the municipality continues to comply with the terms of its certification as a Sector Permit municipality despite the granting of the identified variances.

(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.

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 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 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.

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 Planning 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).

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.

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).

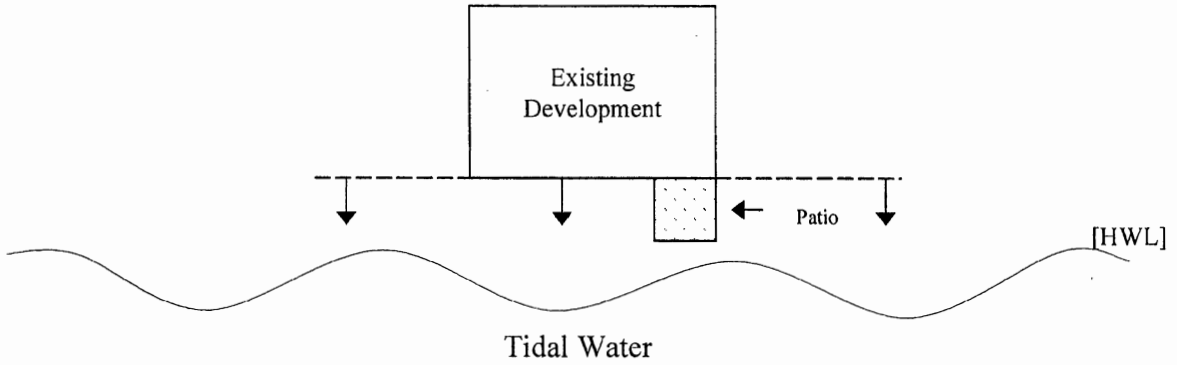
6. The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the request for an adjudicatory hearing, and review of a revised application to settle the contested case.

Appendix A

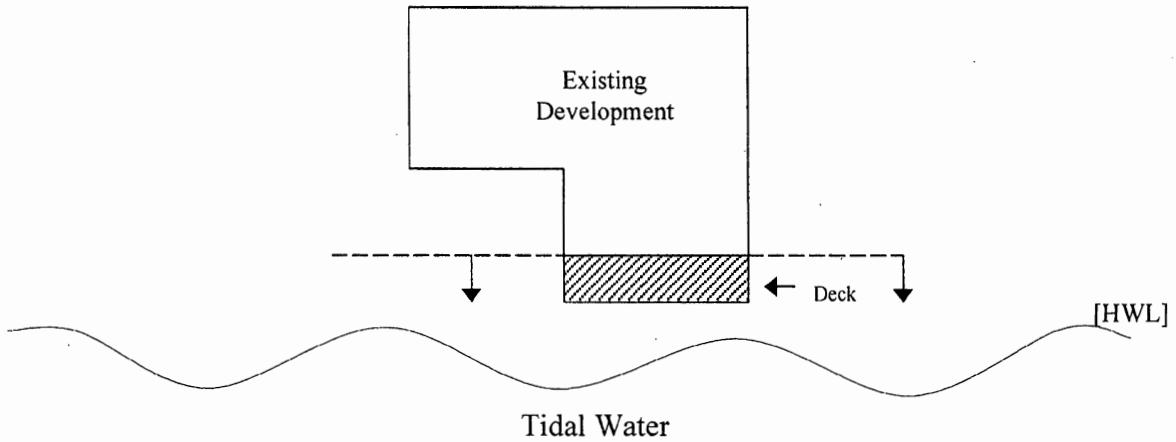
Illustration of the Waterward Side of Development

pursuant to N.J.A.C. 7:7-1.3

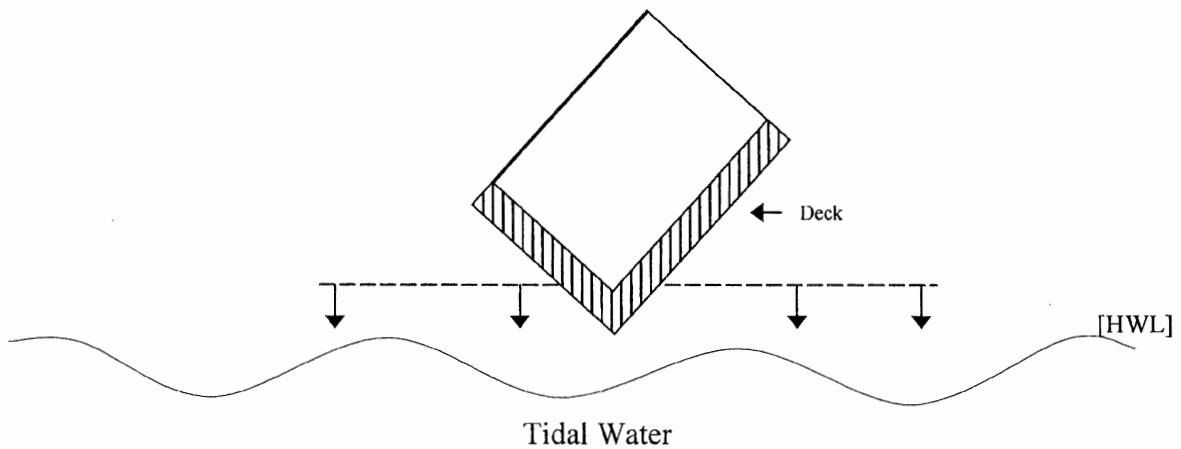
A.



B.



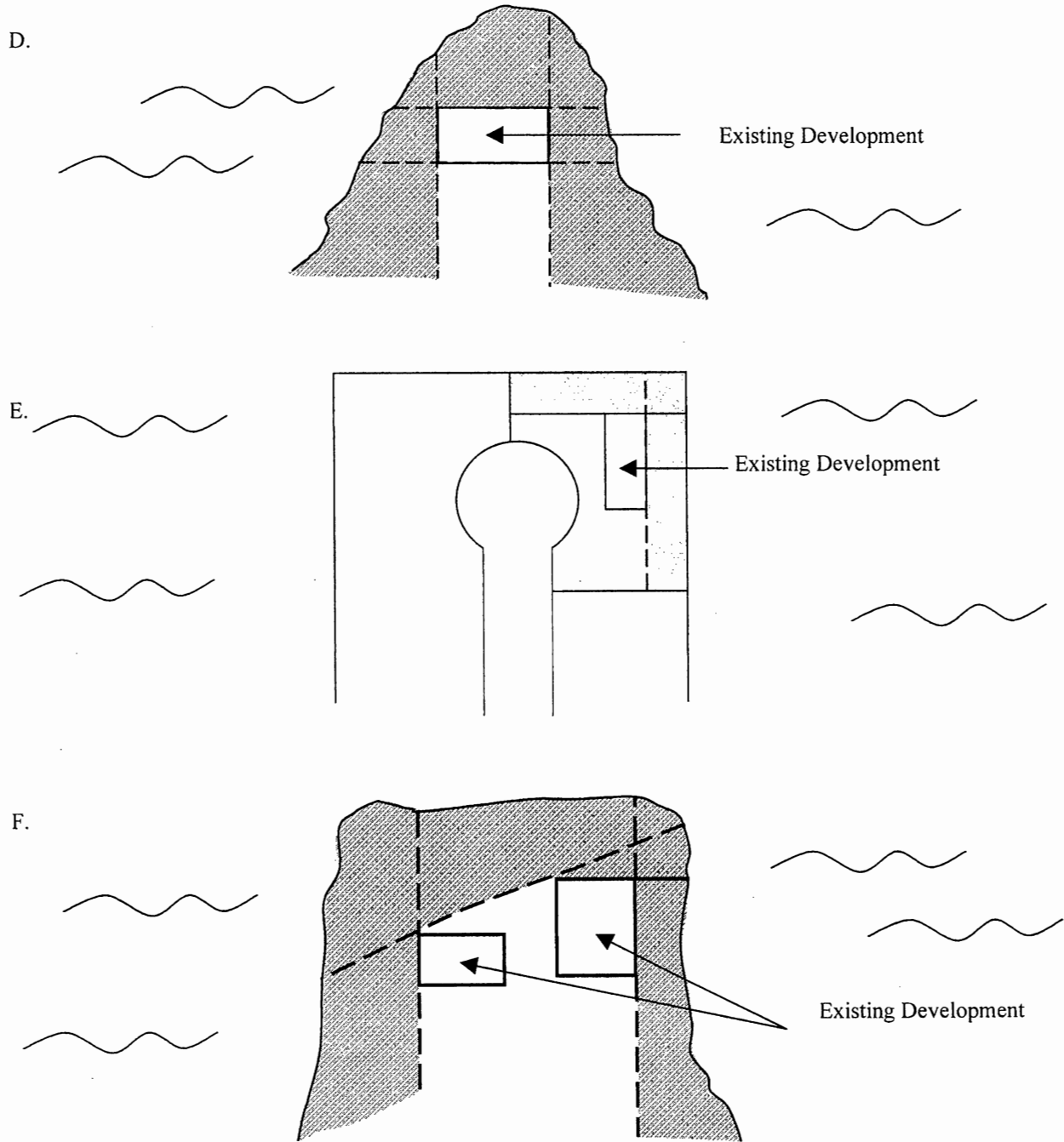
C.



*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.