

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.2006 d.142, effective March 21, 2006. See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Chapter Expiration Date

Chapter 7, Coastal Permit Program Rules, expires on March 21, 2011.

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Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980.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Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984.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: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Subchapter 10, Coastal Permit Application Fees, was adopted as new rules by R.2003 d.60, effective February 3, 2003. See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Subchapter 9, Sector Permit, was repealed by R.2004 d.43, effective January 20, 2004. See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

Chapter 7, Coastal Permit Program Rules, was readopted by R.2006 d.142, effective March 21, 2006. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**Law Review and Journal Commentaries**

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

**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

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, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than \$1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

**7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)**

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or
3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs

incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

**7:7-8.14 Severability**

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. COASTAL PERMIT APPLICATION FEES

**7:7-10.1 Purpose and scope**

(a) This subchapter sets forth the fees for all coastal permit applications.

1. The application fee for Waterfront Development permits is found at N.J.A.C. 7:7-10.2;
2. The application fee for Coastal Wetland permits is found at N.J.A.C. 7:7-10.3;
3. The application fee for CAFRA permits is found at N.J.A.C. 7:7-10.4;
4. The standards for assessing a single permit fee for a single project requiring multiple permits including Waterfront Development, Coastal Wetlands, CAFRA, Freshwater Wetlands or Stream Encroachment permits are found at N.J.A.C. 7:7-10.5; and
5. The fees for requesting a modification of a coastal permit are found at N.J.A.C. 7:7-10.6.

(b) For the purposes of this subchapter, the term "construction cost" means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a permit pursuant to CAFRA, the Waterfront Development Law or Wetlands Act of 1970.

(c) Any fee required under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

**7:7-10.2 Application fees for waterfront development permits**

(a) The application fee for each of the following shall be \$500.00:

1. Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7, excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee; or
2. Any development consisting solely of capital repairs or reconstruction with all work taking place above the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location.

(b) The application fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$1,000 per unit. The fee for a residential development consisting of a single duplex shall be \$1,000.
2. The fee for all other residential developments shall be \$6,000 plus:
  - i. \$100.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;
  - ii. \$80.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and
  - iii. \$60.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.
3. The fee for non-residential developments shall be calculated based on the following schedule:

<u>Construction Cost</u>	<u>Fees</u>
\$0 to \$50,000	\$2,900 + ½ of one percent of construction costs
\$50,001 to \$100,000	\$3,400 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$4,400 + 1¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$6,900 + 1½ percent of construction costs above \$200,000
Greater than \$350,000	\$11,400 + one percent of construction costs above \$350,000

4. The fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fee as calculated under (b)1 or 2 and 3 above.

(c) The application fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

1. The fee for residential site improvements for a single private residential unit or duplex, including, but not limited to: shore structures (bulkheads, revetments and gabions) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be \$500.00

plus one half of one percent of the construction cost above \$10,000.

2. The fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

<u>Construction Cost</u>	<u>Fees</u>
\$0 to \$50,000	\$2,900 + ½ of one percent of construction costs
\$50,001 to \$100,000	\$3,400 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$4,400 + 1¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$6,900 + 1½ percent of construction costs above \$200,000
Greater than \$350,000	\$11,400 + one percent of construction costs above \$350,000

(d) The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under (b) or (c) above exceeds \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(e) The fee for the review and processing of a request for a written determination of exemption from the Waterfront Development Law permitting requirements pursuant to N.J.A.C. 7:7-2.3(f) is \$250.00.

Amended by R.2003 d.298, effective July 21, 2003.  
See: 35 N.J.R. 928(a), 35 N.J.R. 3354(a).

Rewrote the section.

Amended by R.2006 d.142, effective April 17, 2006.  
See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

In (a)1, added “excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee”.

**7:7-10.3 Application fees for Coastal Wetland permits**

(a) The application fee for a Wetlands Act of 1970 permit (“Coastal Wetlands permit”) shall be one percent of the construction costs, or a minimum of \$500.00 for residential dock construction associated with a single family or duplex dwelling unit, and, except as provided at (b) below, a minimum of \$500.00 for all other regulated developments.

(b) The application fee for review of a coastal general permit application pursuant to N.J.A.C. 7:7, excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee, shall be \$500.00.

Amended by R.2003 d.298, effective July 21, 2003.  
See: 35 N.J.R. 928(a), 35 N.J.R. 3354(a).

Substituted “\$500.00” for “\$250.00” in (a), (b).

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

In (a), added “; except as provided at (b) below.”; in (b), added “excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee”.

**7:7-10.4 Application fees for CAFRA permits**

(a) The application fee for residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$1,000 per unit. The fee for a residential development consisting of a single duplex shall be \$1,000.

2. The fee for all other residential developments shall be \$6,000 plus:

i. \$100.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

ii. \$80.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

iii. \$60.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(b) The fee for non-residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for commercial, public or industrial development located on a beach or dune or located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

<u>Construction Cost</u>	<u>Fees</u>
\$0 to \$50,000	\$2,900 + ½ of one percent of construction costs
\$50,001 to \$100,000	\$3,400 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$4,400 + 1¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$6,900 + 1½ percent of construction costs above \$200,000
Greater than \$350,000	\$11,400 + one percent of construction costs above \$350,000

2. The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be \$7,000 plus \$1,000 per acre included in the site plan, except as provided at (b)2i through iv below.

i. For a proposed linear development, the fee shall be \$7,000 plus \$1,000 per acre to be disturbed. For the purposes of this section, “linear development” means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines,

electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

ii. For a proposed mining operation, as defined at N.J.A.C. 7:7E-7.8, the fee shall be \$7,000 plus \$200.00 per acre disturbed.

iii. For a proposed development associated with a solid waste landfill the fee shall be \$7,000.

iv. For a proposed public development to be located entirely within a publicly owned park or recreation area, the fee shall be \$7,000 plus \$200.00 per acre disturbed.

3. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (b)1 above.

4. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

5. For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

(c) The application fee for mixed residential and non-residential development requiring a CAFRA permit shall be the sum of the residential and non-residential development fees as calculated under (a) and (b) above.

(d) The application fee payable at the time of application for the CAFRA permits at (a) through (c) above shall not exceed \$30,000. If the fee calculated under this section exceeds \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(e) The application fee for the review of a coastal general permit application pursuant to N.J.A.C. 7:7-7, excluding the Coastal general permit for habitat creation and enhancement

activities at N.J.A.C. 7:7-7.29, for which there is no fee, shall be \$500.00.

(f) The application fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be \$250.00.

Amended by R.2003 d.298, effective July 21, 2003.

See: 35 N.J.R. 928(a), 35 N.J.R. 3354(a).

Rewrote (a), (b); in (e), substituted "\$500.00" for "\$250.00"; in (f), substituted "\$250.00" for "\$125.00".

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

In (e), added "excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee".

#### **7:7-10.5 Standards for assessing a single permit application fee**

(a) The Department shall assess a single permit application fee for a development which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individual permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The application fee for the project is equal to the sum of the following:

1. The single highest permit application fee for the above listed permits required for the project; and
2. Seventy five percent of the sum of the permit application fees for all other permits required for the project.

#### **7:7-10.6 Application fees for requests for modifications of coastal permits**

(a) The fees for requests to modify coastal permits in accordance with N.J.A.C. 7:7-4.10 and 7.3(a) are as follows:

1. The fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is \$200.00;
2. The fee for a major modification to an Upland Waterfront Development or CAFRA permit is 20 percent of the total original permit application fee, with a minimum fee of \$500.00 and a maximum fee of \$10,000; and
3. The fee for a modification of a coastal general permit is \$200.00.

Amended by R.2003 d.298, effective July 21, 2003.

See: 35 N.J.R. 928(a), 35 N.J.R. 3354(a).

In (a)1, substituted "\$200.00" for "\$100.00"; in (a)2, substituted "\$500.00" for "\$250.00", "\$10,000" for "\$5,000"; in (a)3, substituted "\$200.00" for "\$100.00".