

“Rotor swept area” means the area of the circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine.

“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 October 31, 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”.

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

Added definitions “beach berm” and “charitable conservancy”; updated definition “seasonal or temporary structures related to the tourism industry”.

Amended by R.2007 d.242, effective August 20, 2007.
See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

Added definition “Grace Period”.
Amended by R.2007 d.374, effective December 17, 2007.
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote definition “Coastal Permit”; in the introductory paragraph of definition “Conservation restriction”, inserted “or for public access to tidal waterways and their shores,” and “of the following”; in paragraph 1 of definition “Conservation restriction”, substituted “of” for “or” following “placing”; and added definitions “Public accessway” and “Public Trust Doctrine”.

Amended by R.2010 d.193, effective September 7, 2010.
See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Added definitions “Floodway”, “Impervious cover” and “Rotor swept area”.

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 Coastal Zone Management rules, 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 Department makes the findings required by N.J.S.A. 13:19-10. The findings shall be made in accordance with N.J.A.C. 7:7E-1.5(a).

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).
Amended by R.2004 d.43, effective January 20, 2004.
See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (a), substituted “Coastal Zone Management rules” for “Rules on Coastal Zone Management”; rewrote (b).

Amended by R.2008 d.82, effective April 7, 2008.
See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In the second sentence of (b), substituted “The” for “Such” and updated the N.J.A.C. reference.

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

New Jersey Department of Environmental Protection (NJDEP) had a sufficient factual basis to grant permits to fill approximately 7.69 acres of wetlands in connection with the Xanadu Redevelopment project, its determination that mitigation of traffic and air quality problems must be addressed in stages due to the nature of the project was not an arbitrary and capricious resolution, and development of the surrounding wetlands did not violate N.J.A.C. 7:7E-3.27(c)1 because there was little, if any, possible water dependent use for the property and no prudent or feasible alternative to developing the project on a non-wetlands site. However, the NJDEP process of reviewing future submissions for compliance with conditions contained in the approval failed to provide an adequate opportunity for public comment; therefore, the NJDEP was required to develop a system that ensures the opportunity for such comment. In re Stream Encroachment Permit, 402 N.J. Super. 587, 955 A.2d 964, 2008 N.J. Super. LEXIS 201 (App.Div. 2008).

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.

1. Potential applicants may request a written jurisdictional determination from the Department to determine the applicability of 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 et seq., to a proposed project. A jurisdictional determination is optional. If a potential applicant is unsure whether a particular activity is regulated, the Department encourages the potential applicant to obtain a written jurisdictional determination prior to commencing work since unauthorized regulated activities may result in substantial fines or other penalties.

2. An application for a jurisdictional determination shall contain the following:

i. A completed jurisdictional determination/preapplication request form including a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures; the length of proposed linear development; and the number of parking spaces proposed;

ii. A copy of the site plan or survey for the proposed project; and

iii. A copy of a USGS quad map or local street map with the project site clearly outlined.

(b) The following conditions shall apply to all coastal permits. The permittee or responsible party, such as, the site operator or contractor, shall comply with all conditions, requirements, and limitations of any coastal permit issued pursuant to this chapter. Failure to comply with any permit, condition, or approved plan shall constitute a violation and shall subject the permittee or responsible party to enforcement action pursuant to this chapter.

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

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

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

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

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

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

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

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion

thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

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

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

11. The Department may issue a modified permit in accordance with N.J.A.C. 7:7-4.10.

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

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

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

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

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

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

18. If the Department determines that a conservation restriction, as defined at N.J.A.C. 7:7-1.3, is necessary to protect the public health, safety, and welfare, or to protect wildlife and/or fisheries, or to otherwise preserve, protect, and enhance the natural environment, the permittee shall, prior to site preparation, submit to the Department proof that such a conservation restriction has been recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development site is located. The conservation restriction shall be in the form and terms appropriate to the property as specified and approved by the Department, and shall run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof;

19. Authorization of construction shall not constitute a relinquishment of public rights to access and use tidal waterways and their shores.

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

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

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

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

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

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

(d) The duration of validity for coastal general permits is found at N.J.A.C. 7:7-7.3(k).

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

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

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

Substantially amended.

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

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

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.2006 d.142, effective April 17, 2006.

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

Added (a)1 and 2.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote the introductory paragraph of (b); and added (b)19.

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

Purchaser was not bound to restriction on its land that was imposed by Department of Environmental Protection (DEP) as part of coastal permit issued to owner's predecessor in title; restriction could not be found by diligent search of record title, deed from vendor to purchaser did not contain any condition concerning water-dependency, and any environmental impact would be limited in scope. *Island Venture Associates v. New Jersey Dept. of Environmental Protection*, 849 A.2d 1228.

Expiration of construction permit issued by (DEP) did not preclude application of permit condition requiring Department approval for connection to borough sewer system. *Mutschler v. Envir. Protection*, 337 N.J.Super. 1 (A.D.2001).

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

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

7:7-1.6 Provisional permits

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

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

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

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

Law Review and Journal Commentaries

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

7:7-1.7 Emergency permit authorization

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

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together with a recommendation regarding the request for emergency permit authorization.

accordance with Department specifications found at N.J.A.C. 7:7E, Coastal Zone Management rules, shall be considered a "similar structure" at a residential development.

v. For the purposes of this paragraph, the following shall not be considered "similar structures" at a residential development: swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings, except as provided at (c)5iii above.

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

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

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

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

iv. Re-stripping of public highways and the addition of toll booths provided that these activities do not result in any increase in asphalt or concrete pavement.

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

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

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

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

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may

be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

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

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

ii. In the event that the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 18, 1997. To make such a determination, the Department will require documentation that the new permit authorized exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:7-10.4(e); and

iv. A completed LURP application form.

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

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

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

ii. Photographs of the site;

iii. The fee specified at 7:7-10.4(e); and

iv. A completed LURP application form.

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

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

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

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

iv. Photographs of the site;

- v. The fee specified at N.J.A.C. 7:7-10.4(e); and
- vi. A completed LURP application form.

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

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

(b)4viii added.

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

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

Substantially amended.

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

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

(b)6 substantially amended.

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

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

Petition for Rulemaking.

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

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

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

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).

In (f), amended the N.J.A.C. references in 1iii, 2iii, and 3v.

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

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

In (b)8ii, substituted "September 19" for "September 1" and deleted "(the effective date of CAFRA)".

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Added (b)13.

Case Notes

New Jersey Department of Environmental Protection's broad scope of authority under the New Jersey Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Coastal Permit Program Rules, N.J.A.C. 7:7-1.1 et seq., and the Coastal Zone Management Rules, N.J.A.C. 7:7E-1.1 et seq., included jurisdiction to review fees proposed by a private beach club for the public's use of its beach. *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40, 879 A.2d 112, 2005 N.J. LEXIS 932 (2005).

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

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

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

Where a homeowner sought to reconstruct and expand the footprint of an existing single-family dwelling (constructed originally in 1950) located adjacent to the property owned by petitioners (whose dwelling was constructed in 1988), and the two properties had been a single parcel until 1981, both homes were legally existing and pre-dated 1994, which was the date under the Coastal Area Facility Review Act (CAFRA) when single-family homes began to be regulated, and the Department of Environmental Protection's determination that the homeowner's proposed project would constitute the first development and thus could be reviewed for substantive compliance with a General Permit, rather than an Individual Permit, was a reasonable exercise of its discretion. The Department's determination that the proposed project would not be

undertaken "in conjunction with" the 1988 construction of the single-family dwelling on the adjacent property, within the meaning of N.J.A.C. 7:7-7.9(b) and 7:7-2.1(b)8ii, was a reasonable interpretation of CAFRA and the implementing regulations. *Dragon v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 2988-06, 2007 N.J. AGEN LEXIS 919, Final Decision (June 25, 2007).

7:7-2.2 Wetlands

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

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

2. The excavation of an individual mooring slip;

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

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

5. The installation of utilities;

6. Excavation of boat channels and mooring basins;

7. The construction of impoundments;

8. The construction of sea walls;

9. The diversion or appropriative use of water;

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

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

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

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

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

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

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

- 4. The storage or disposal of pesticides; 602-2106
609-2094
- 5. The application of persistent pesticides. 609-2100
609-2106

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:

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

2. Monmouth County:

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



1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the

findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

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

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

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

- i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
- ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or
- iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$ 500
4	\$ 1,000
5	\$ 5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in	0.50

- compliance within 30 days of receipt of the notice of violation from the Department; or
- ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration.

0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

- 1. The compliance history of the violator;
- 2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
- 3. The deterrent effect of the penalty; and/or
- 4. Any other mitigating, extenuating or aggravating circumstances.

Case Notes

Administrative penalty of \$25,000 for construction of a septic system without a Coastal Area Facility Review Act (CAFRA) permit was excessive and would be reduced to \$5,000 where, *inter alia*, local and county approvals of the septic system were sought and received after full inspections, the property owners honestly did not know they needed a CAFRA permit and no reliable proof was offered to the contrary, the only activity that took place after the Department of Environmental Protection was contacted was to cover the septic tanks for safety reasons at the direction of the local officials, no serious environmental consequences were created by the property owners' conduct, the site disturbance could be restored, and it was the property owners who contacted the Department and sought approval once they learned a CAFRA permit was required. *Wright v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 349-04; ESA 8389-04 (Consolidated), 2005 N.J. AGEN LEXIS 666, Initial Decision (November 1, 2005).*

7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to

comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) The Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.