

Recodified from N.J.A.C. 7:7-2.1 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section. Former N.J.A.C. 7:7-2.2, Wetlands, recodified to N.J.A.C. 7:7-2.3.

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).

Borough was properly assessed civil administrative penalties by the Department of Environmental Protection for violations of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., as a result of development activities in a coastal zone without a permit, including removing existing vegetation from the site, filling and grading the site with asphalt millings, tamping the asphalt millings, setting telephone poles on the site to create a parking area, and constructing a fence around the site. The Borough's reliance on the CAFRA exception with respect to the construction of the fence was inapplicable because the fence was not associated with a public highway. *N.J. Dep't. of Env'tl. Prot., Coastal and Land Use Compliance and Enforcement v. Seaside Heights Borough*, OAL Dkt. No. ESA 4458-06, 2009 N.J. AGEN LEXIS 924, Final Decision (May 11, 2009).

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).

7:7-2.3 Coastal wetlands

(a) Coastal 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;

5. The application of persistent pesticides.

(c) These rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the coastal wetlands maps (base map photography dated 1971, 1972) listed in chapter Appendix D and incorporated herein by reference.

Amended by R.1986 d.262, effective July 7, 1986.

See: 17 N.J.R. 1710(a), 18 N.J.R. 1374(a).

Added maps and amended maps in (c)3 Ocean County.

Amended by R.1986 d.349, effective August 18, 1986.

See: 18 N.J.R. 1026(a), 18 N.J.R. 1700(a).

Amended maps in (c)5.

Amended by R.1987 d.217, effective May 17, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Amended maps in (c)5 and (c)7.

Amended by R.1988 d.570, effective December 19, 1988.

See: 19 N.J.R. 2090(b), 20 N.J.R. 3135(b).

(c)9 Gloucester County had maps altered and added new maps.

Amended by R.1989 d.137 effective March 20, 1989.

See: 20 N.J.R. 349(b), 21 N.J.R. 750(b).

(c)8 Salem County maps altered: 266-1770, 266-1776, 273-1764, 273-1776, 294-1746, 294-1764, 315-1764, 329-1770, 329-1788.

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).

Petition for Rulemaking.

See: 46 N.J.R. 712(b), 1480(b), 1908(b), 2199(b).

Recodified from N.J.A.C. 7:7-2.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Wetlands". Rewrote the section. Former N.J.A.C. 7:7-2.3, Waterfront Development, recodified to N.J.A.C. 7:7-2.4.

7:7-2.4 Waterfront development

(a) The waterfront area regulated under this chapter varies in width in accordance with the following:

1. Within any part of the Hackensack Meadowlands District delineated at N.J.S.A. 13:17-4, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the CAFRA area, the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In those areas of the State outside both the CAFRA area and outside of the Hackensack Meadowlands District, the regulated waterfront area shall include:

- i. All tidal waterways and lands lying thereunder, up to and including the mean high water line; and
- ii. Adjacent upland areas within 100 feet of the mean high water line. For properties within 100 feet of the mean high water line that extend inland beyond 100 feet from the mean high water line, the regulated waterfront area shall extend inland to the lesser of the following distances:

(1) 500 feet from the mean high water line; or

(2) To the first paved public road, railroad, or surveyable property line that:

(A) Existed on September 26, 1980; and

(B) Generally parallels the waterway.

4. In the 12-mile circle as described at N.J.A.C. 7:7-1.2(c), the regulated waterfront area shall include the area

within the circle and extending outshore of the low-water mark of the Delaware River consistent with the decree of the United States Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008). The area landward of the boundary of the 12-mile circle is regulated waterfront area as set forth at (a)2 and 3 above.

(b) This chapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The development activities at (c)1 through 4 below will require a permit in that portion of the waterfront area at or waterward of the mean high water line. In accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, these development activities require a permit if the development activity affects New Jersey's riparian rights. Development activities that affect New Jersey's riparian rights include, but are not limited to, the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River that extend outshore of the mean low water line or will help to maintain access from the navigable water to such improvement.

1. The removal or deposition of sub-aqueous materials (for example, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier (including covered or enclosed structures such as gazebos or sheds located on or above the decking of the dock, wharf or pier), bulkhead, breakwater, groin, jetty, seawall, bridge, piling, boat lift, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this State prior to June 1, 1984, shall not require a permit.

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(d) A permit shall be required for the construction, reconstruction, alteration, expansion, or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. In the waterfront area defined in (a)3 above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet landward of the mean high water line;

2. In the waterfront area defined in (a)3 above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet landward of the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5,000 square feet;

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to special areas defined at N.J.A.C. 7:7-9, provided the addition is located in an existing cleared area of the site, and is set back a minimum of 15 feet landward of the mean high water line, where such changes or additions do not result in a change in the present land use of the site;

4. In the waterfront area defined in (a)3 above, the installation of a wind turbine(s) provided the wind turbine(s) is:

- i. On or structurally attached to a legally existing building;
- ii. Less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position;
- iii. No greater than 2,000 square feet in cumulative rotor swept area; and
- iv. Any portion of the tower of the wind turbine more than 100 feet above the ground surface is a freestanding monopole;

5. In the waterfront area defined in (a)3 above, the installation of solar panels provided the solar panels are:

- i. On or structurally attached to a legally existing building;
- ii. On or structurally attached to a utility pole (electric, telephone, cable and lighting) within a maintained utility right-of-way or on or structurally attached to a parking lot light pole;
- iii. On legally existing impervious cover provided the solar panels are not located within a floodway; or
- iv. On a sanitary landfill provided the solar panel is included in the Closure and Post-Closure Care Plan or modified plan as approved by the Department in accordance with N.J.A.C. 7:26;

6. The repair, replacement, renovation, or reconstruction, in the same location and size, as determined in accordance with (d)6i and ii below of the preexisting structure, of any dock, wharf, pier, bulkhead, or building, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map or that appears on the applicable coastal wetlands map identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D or that received a waterfront development permit subsequent to the date of the Tidelands Map or coastal wetlands map, as applicable, provided that the repair, replacement, renovation, or reconstruction is in the same location as the preexisting structure, and does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of or servicing of pleasure vessels.

i. The size of a dock or pier over wetlands, a low-profile bulkhead where the top of the bulkhead is constructed at an elevation below the spring high water line, or a building over wetlands or water shall be measured in three dimensions, that is, length, width, and height; and

ii. The size of any dock, wharf, pier, or bulkhead, or building not identified at (d)6i above shall be measured in two dimensions, that is, length and width;

7. The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in two dimensions, that is, length and width, of the preexisting structure, of any floating dock, mooring raft, or similar temporary or seasonal improvement or structure, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map, or that appears on the applicable coastal wetlands map identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D, or that received a waterfront development permit subsequent to the date of the Tidelands Map or coastal wetlands map, as applicable, provided that the repair, replacement, renovation, or reconstruction is in the same location and size as the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

8. The redecking and replacement of bridge surfaces provided there is no change in width, length or height.

(e) Those portions of a dock or pier proposed to be constructed landward of the mean high water line and in the coastal zone may be subject to the permits-by-rule at N.J.A.C. 7:7-4.4 and 4.5.

(f) Development that is exempt from the Waterfront Development Law 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 chapter.

1. For a written determination of exemption pursuant to (d)1 and 2 above, the following shall be submitted:

- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
- ii. A written description of the proposed development;
- iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map;
- iv. The fee specified at N.J.A.C. 7:7-25.1; and
- v. A site plan depicting the following:

- (1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement; and
- (2) The location of the mean high water line.
2. For a written determination of exemption pursuant to (d)3 above, the following shall be submitted:
- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
 - ii. A written description of the proposed development;
 - iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map;
 - iv. The fee specified at N.J.A.C. 7:7-25.1; and
 - v. A site plan depicting the following:
 - (1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement;
 - (2) The location of the mean high water line; and
 - (3) The limits of all special areas as defined at N.J.A.C. 7:7-9.
3. For a written determination of exemption pursuant to (d)4 above, the following shall be submitted:
- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
 - ii. A written description of the proposed development;
 - iii. The fee specified at N.J.A.C. 7:7-25.1;
 - iv. The total height and rotor swept area of the proposed wind turbine(s); and
 - v. A site plan depicting the following:
 - (1) The location of the proposed wind turbine(s);
 - (2) The height of the wind turbine(s) in relation to the ground surface elevation; and
 - (3) Details of the wind turbine monopole.
4. For a written determination of exemption pursuant to (d)5 above, the following shall be submitted:
- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
 - ii. A written description of the proposed development;
 - iii. The fee specified at N.J.A.C. 7:7-25.1;
 - iv. A site plan depicting the following:
 - (1) The location of the proposed solar panels; and
 - (2) The floodway, if appropriate; and
 - v. If located on a sanitary landfill, a copy of the Closure and Post-Closure Care Plan or modified plan as approved by the Department in accordance with the Solid Waste Management rules at N.J.A.C. 7:26.
5. For a written determination of exemption pursuant to (d)6 and 7 above, the following shall be submitted:
- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
 - ii. A written description of the proposed development;
 - iii. The fee specified at N.J.A.C. 7:7-25.1;
 - iv. A copy of the Tidelands instrument (grant, lease or license);
 - v. If applicable, a copy of any previous waterfront development permit issued for the structures to be replaced, renovated or reconstructed;
 - vi. A copy of the applicable portion of the Tidelands Map or coastal wetlands map showing the location and dimensions of the structures to be replaced, renovated, or reconstructed;
 - vii. Photograph(s) of the existing structures labeled as to orientation;
 - viii. The general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map; and
 - ix. A site plan showing the location and dimensions of the structures to be replaced, renovated, or reconstructed.
6. For a written determination of exemption pursuant to (d)8 above, the following shall be submitted:
- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
 - ii. A written description of the proposed development;
 - iii. The fee specified at N.J.A.C. 7:7-25.1; and
 - iv. A site plan depicting the location of the existing and proposed bridge surface to be redecked.
- (g) A waterfront development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands instrument by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agen-

cies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and 2 above.

1. A Waterfront Development permit application submitted under this subsection must be submitted in conjunction with an application for a tidelands instrument.

(h) A waterfront development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

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.

Emergency amendment, R.1988 d.518, effective October 14, 1988 (expired December 3, 1988).

See: 20 N.J.R. 2815(a).

Development of waterfront area within the "coastal area" added.

Adopted concurrent proposal R.1989 d.8, effective January 3, 1989.

See: 20 N.J.R. 2815(a), 21 N.J.R. 34(a).

Provisions of emergency amendment R.1988 d.518 readopted without change.

Amended by R.1989 d.243, effective May 1, 1989.

See: 21 N.J.R. 4(a), 21 N.J.R. 1141(a).

Limited inland scope of regulated area to 1000 feet; exempted shore protection structures in the 1,500-foot expansion exception calculation; in (d) excepted single-family residential dwelling units for which municipal permits and approvals had been obtained before October 3, 1988

and in (g) further defined "construction, excluding site preparation" and "in progress".

Emergency amendment R.1990 d.403, effective July 17, 1990 (expired September 15, 1990).

See: 22 N.J.R. 2361(a).

Definition of waterfront, types of development requiring permits, and permitting process for development amended to comply with N.J. Supreme Court decision in Last Chance Development Partnership v. Thomas H. Kean (Dkt. No. A-102, decided June 20, 1990).

Adopted concurrent proposal R.1990 d.503, effective September 14, 1990.

See: 22 N.J.R. 2361(a), 22 N.J.R. 3222(a).

Provisions of emergency amendment R.1990 d.403 readopted without change.

Administrative Correction: Added (a)3.

See: 23 N.J.R. 60(b).

INVALIDITY ANNOTATION: See 23 N.J.R. 406(b).

N.J.A.C. 7:7-2.3(a)2, as amended effective September 14, 1990 (see 22 N.J.R. 2361(a) and 3222(a)), held invalid. *Long Beach Township Oceanfront Property Owners Association v. New Jersey Department of Environmental Protection, et al.*, 245 N.J. Super. 143, Dkt. Nos. A-6697-89T2 and A-783-90T2 (App. Div. December 26, 1990).

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.298, effective July 21, 2003.

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

Rewrote (f).

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

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

Rewrote (a)3; in (d)4 and 5, added "as measured in three dimensions (length, width and height);"; deleted "legally existing"; and added "legally existing prior to January 1, 1981";; rewrote (f).

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 new (d)4 and (d)5; and recodified former (d)4 through (d)6 as (d)6 through (d)8.

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

In the introductory paragraph of (d), inserted a comma following "expansion"; in (d)6, substituted "determined in accordance with (d)6i and ii below" for "measured in three dimensions (length, width and height);", the second occurrence of "as" for "and size of" and a period for a semicolon at the end, and inserted a comma following "bulkhead" and "is" following the second occurrence of "reconstruction"; added (d)6i and (d)6ii; and in (d)7, substituted "two dimensions, that is, length and width" for "three dimensions (length, width, and height)" and the second occurrence of "as" for "of", and inserted a comma following "raft". Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Amended by R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

In (f)liv, (f)2iv, (f)3iii, and (f)4iii, updated the N.J.A.C. reference.

Recodified from N.J.A.C. 7:7-2.3 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Waterfront Development". Rewrote the section.

Case Notes

Amendments to waterfront development rules extending permit requirement to previously exempt properties were invalid. *Long Beach Tp. Oceanfront Property Owners Ass'n v. New Jersey Dept. of Environmental Protection*, 245 N.J. Super. 143, 584 A.2d 820 (A.D.1990).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region exceeded its statutory authority. *Last Chance Development Partnership v. Kean*, 119 N.J. 425, 575 A.2d 427 (1990).

Department of Environmental Protection did not have jurisdiction over development in upland areas of a coastal region. *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.

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.

Dredging without a permit so as to cause loss of bay's benefits to people and wildlife was violation warranting fine. *Department of Environmental Protection v. Gallagher*, 95 N.J.A.R.2d (EPE) 28.

Issuance of waterfront development permit did not endanger navigation to adjoining bulkhead and dock. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Waterfront Development Law; construction of floating dock and registering it as vessel. *Department of Environmental Protection v. Grossman*, 94 N.J.A.R.2d (EPE) 236.

7:7-2.5 Obtaining an applicability determination

(a) A person may request a written applicability determination from the Department to determine the applicability of CAFRA, the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and/or the Waterfront Development Law (N.J.S.A. 12:5-3 et seq.) to a proposed project. An applicability determination is optional, but the Department encourages persons to request one if there is uncertainty about whether a particular activity is regulated, since conducting unauthorized activities may result in enforcement action.

(b) A person requesting an applicability determination shall submit to the Department, at the address set forth at N.J.A.C. 7:7-1.6, the following:

1. A completed applicability determination/pre-application request form available from the Department at the address set forth at N.J.A.C. 7:7-1.6, including a written description of the site and the proposed development including the dimensions, number, and uses of any proposed structures; the length of any proposed linear development; and the number of any parking spaces proposed;
2. A copy of the site plan or survey for the proposed project; and
3. A copy of a USGS quad map or local street map with the project site clearly indicated.

New Rule, R.2015 d.108, effective July 6, 2015.
See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

SUBCHAPTER 3. GENERAL PROVISIONS FOR PERMITS-BY RULE, GENERAL PERMITS-BY CERTIFICATION, AND GENERAL PERMITS

7:7-3.1 Purpose and scope

This subchapter sets forth the standards for the Department to issue, by rulemaking, permits-by-rule, general permits-by-certification, and general permits; the use of these permits to conduct authorized activities; the standards governing the use of more than one of these permits on a single site; the duration of authorizations under these permits; and the conditions that apply to these permits.

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.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Designated the section as (a) and inserted a second sentence beginning with "Pre-application meetings".

New Rule, R.2015 d.108, effective July 6, 2015.
See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Former N.J.A.C. 7:7-3.1, Purpose, repealed.

7:7-3.2 Standards for issuance, by rulemaking, of permits-by-rule, general permits-by-certification, and general permits

(a) The Department will, in accordance with the rulemaking provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., promulgate each permit-by-rule, general permit-by-certification, or general permit after publication of a notice of rule proposal in the New Jersey Register and consideration of public comment.

(b) The Department will promulgate a permit-by-rule, general permit-by-certification, or general permit only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;
2. The Department determines that the development will be in conformance with the purposes of applicable statutes; and
3. The Department has provided public notice and an opportunity for public comment with respect to the proposed permit-by-rule, general permit-by-certification, or general permit. After a general permit-by-certification or general permit has been promulgated pursuant to this subchapter, the Department will not hold public hearings on individual applications for authorization under a general permit-by-certification or general permit.

The following annotation applies to N.J.A.C. 7:7-4.11 subsequent to its recodification in part from N.J.A.C. 7:7-7.2 by R.2015 d.108:

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section. Former N.J.A.C. 7:7-4.11, Suspension and revocation of permits, repealed.

7:7-4.12 Permit-by-rule 12 - construction of one to three wind turbines less than 200 feet in height having a cumulative rotor swept area no greater than 2,000 square feet

(a) This permit-by rule authorizes the construction of one to three wind turbines less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position, and having a cumulative rotor swept area no greater than 2,000 square feet, provided:

1. No portion of the wind turbine(s), including blades, tower and site disturbance, shall be located in, on or over dunes, beaches, wetlands, coastal bluffs, or wild and scenic river corridors;
2. No wind turbine tower(s) or site disturbance shall be located in floodways;
3. The wind turbine(s), including blades, tower and site disturbance, is set back a minimum of 50 feet, as measured parallel to the ground:
 - i. Landward of the mean high water line and the inland limit of any beach or dune. This setback does not apply to manmade lagoons and manmade ditches; and
 - ii. From the boundary of any wetlands;
4. No portion of the wind turbine, including blades, tower, and site disturbance, shall be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)4i and ii below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;
 - i. The wind turbine(s) is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or
 - ii. The wind turbine(s) is located on legally existing impervious cover;
5. If the wind turbine(s) is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower shall be a freestanding monopole(s); and

6. No lighting shall be placed on or directed at the wind turbine except for lighting required by the Federal Aviation Administration. Shielded ground level security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light.

(b) Development under this permit-by-rule shall not result in construction of more than three wind turbines on a site, either solely or in conjunction with a previous wind turbine development.

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section. Former N.J.A.C. 7:7-4.12 was reserved.

7:7-4.13 Permit-by-rule 13 - installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot

(a) This permit-by-rule authorizes the installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot, provided:

1. The solar panel development shall not be located in or on dunes, beaches, wetlands, floodways, or coastal bluffs;
2. The solar panel development shall be setback a minimum of 50 feet from the inland limit of any wetlands, beach, or dune;
3. The maintained lawn or landscaped area is not subject to a previous coastal permit requirement that it remain as vegetative cover; and
4. The solar panel development shall not be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps), except as provided at (a)4i and ii below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;
 - i. The solar panel(s) is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or
 - ii. The solar panel(s) is located on legally existing impervious cover.

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section.

7:7-4.14 Permit-by-rule 14 – reconfiguration of any legally existing dock, wharf, or pier at a legally existing marina

(a) This permit-by-rule authorizes the reconfiguration of any legally existing dock, wharf, or pier located at a legally existing marina, provided the marina is not located within shellfish habitat, submerged vegetation habitat, or a wetland.

(b) Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq.

(c) The proposed reconfiguration shall:

1. Not extend outside of the area covered by an existing Tidelands instrument;
2. Not result in an increase in the number of boat slips;
3. Not hinder navigation;
4. Not increase the total linear footage of docks or piers within the marina;
5. Minimize the water area covered by structures by:
 - i. Providing a minimum of eight feet of open water between any docks if the combined width of the docks over water exceeds eight feet; and
 - ii. For sites which have existing dock or pier structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to relocate, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats; and
6. Provide a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline;

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section.

7:7-4.15 Permit-by-rule 15 - placement of sand fencing to create or sustain a dune

(a) This permit-by-rule authorizes the placement of sand fencing to create or sustain a dune, provided the sand fencing complies with (a)1 through 3 below. This permit-by-rule does not authorize the excavation or grading of a dune. The sand fencing shall:

1. Be placed on the landward side of the dune;
2. Be placed parallel to the mean high water line; and
3. Not prevent perpendicular public access to the beach.

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section.

7:7-4.16 Permit-by-rule 16 - placement of land-based upwellers and raceways for aquaculture activities

(a) This permit-by-rule authorizes the placement of land-based upwellers and raceways, including intakes and discharges, for shellfish aquaculture activities. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The aquaculture activities shall comply with the following:

1. The structures are located on the upland portion of a lot with a legally existing, functioning bulkhead;
2. No grading, excavation, filling, or placement of a structure(s) is undertaken on a beach, dune, or wetland; and
3. The discharge from the aquaculture activities is to a water body and not directly into a wetland.

Recodified in part from N.J.A.C. 7:7-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Permits-by-rule". Rewrote the section.

7:7-4.17 Permit-by-rule 17 - placement of predator screens and oyster spat attraction devices within a shellfish lease area

(a) This permit-by-rule authorizes the placement of predator screens and oyster spat attraction devices in an area subject to a valid shellfish lease pursuant to N.J.S.A. 50:1-23. Upon expiration or termination of the shellfish lease, or the cessation of the use of predator screens and oyster spat attraction devices, whichever occurs first, within five days the permittee shall remove all predator screens and oyster spat attraction devices placed within the lease area. This permit-by-rule does not authorize the placement of shell within a shellfish lease area. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The placement of predator screens and oyster spat attraction devices shall comply with the following:

1. So as not to pose a hazard to navigation, predator screens shall not extend more than six inches above the substrate and oyster spat attraction devices shall not extend more than 24 inches above the substrate; and
2. No activity undertaken pursuant to this permit-by-rule shall prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner pursuant to N.J.S.A. 50:1-33.

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

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

In (a)1 and (b)2, deleted reference to N.J.A.C. 7:7E-3A.1 and added reference to 7:7E-3A.4; in (b)1, substituted "Three copies of a site plan(s)" for "A plan".

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

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

In (a)1, deleted "and" from the end; in (a)2, substituted "; and" for the period at the end; added (a)3; rewrote (b)1; in (b)2, deleted "and" from the end; in (b)3, substituted "; and" for the period at the end; and added (b)4.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (a)3, substituted "access" for the second occurrence of "trust rights"; and added (c).

Recodified from N.J.A.C. 7:7-7.6 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for beach and dune maintenance activities". Rewrote the section. Former N.J.A.C. 7:7-6.2, Formats and contents, repealed.

7:7-6.3 General permit 3 - voluntary reconstruction of certain residential or commercial development

(a) This general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development provided:

1. Such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law;
2. The reconstruction does not result in the enlargement of the footprint of the development;
3. In the case of residential reconstruction, the reconstruction does not result in an increase in the number of dwelling units;
4. In the case of commercial reconstruction;
 - i. The reconstruction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development; and
 - ii. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15;
5. The reconstruction does not result in additional impacts to special areas as defined at N.J.A.C. 7:7-9;
6. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement;
7. The reconstruction meets the requirements of N.J.A.C. 7:7-9.25 and 9.26; and
8. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(b) Authorization under this general permit is not required for repairs or maintenance, such as replacing siding, windows, or roofs which is not regulated, unless the repair or

maintenance is associated with an expansion of the footprint of development.

The following annotations apply to N.J.A.C. 7:7-6.3 prior to its repeal by R.2015 d.108:

Recodified from 7:7-6.4 and amended by R.1994 d.378, effective July 18, 1994.

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

The following annotations apply to N.J.A.C. 7:7-6.3 subsequent to its recodification from N.J.A.C. 7:7-7.7 by R.2015 d.108:

New Rule, R.2000 d.428, effective October 16, 2000.

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

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

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

In (a), codified 4 as 4 and i and added ii.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (a)5, deleted "and" from the end; in (a)6, substituted "; and" for the period at the end; and added (a)7.

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

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

In (a)6, deleted "and" from the end; in (a)7, substituted "; and" for the period at the end; added (a)8; rewrote (c)1; in (c)2, deleted "and" from the end; in (c)3, substituted "; and" for the period at the end; and added (c)4.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (a)8, substituted "access" for the second occurrence of "trust rights".

Recodified from N.J.A.C. 7:7-7.7 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for voluntary reconstruction of certain residential or commercial development". Rewrote the section. Former N.J.A.C. 7:7-6.3, Preparation, repealed.

7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes

(a) This general permit authorizes the development of one or two single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the one or two single-family homes or duplexes and accessory development are located landward of the mean high water line, and provided the single-family homes or duplexes are not located on a bulkheaded lagoon lot.

(b) Development under this general permit shall not result in the development of more than two single-family homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8.

(c) Development under this general permit shall comply with N.J.A.C. 7:7-9.22, Beaches; 7:7-9.25, Flood hazard areas; 7:7-9.26, Riparian zones; 7:7-9.27, Wetlands; 7:7-9.28, Wetland buffers; and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats.

(d) In addition to meeting the requirements at (c) above, the development of two single-family homes or duplexes under this general permit on filled water's edge sites that have included a water dependent use at any time since July of

1977, shall comply with N.J.A.C. 7:7-9.23(e) of the filled water's edge rule.

(e) Development under this general permit shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (e)1 or 2 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (e)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this subparagraph, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

i. The road, seawall, or bulkhead is of sufficient size to be designated as the V zone boundary on the FIRM;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A zone, B zone, or C zone on the FIRM;

v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

vi. The proposed development does not include the construction of a shore protection structure.

(f) Development under this general permit shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (m)1 below, unless the development meets either (f)1 or 2 below:

1. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)1 above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

(g) Development under this general permit shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and 7:7-9.19, Erosion hazard areas, except as excluded under (g)1 below;

1. Development under this general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, and the erosion hazard areas rule, N.J.A.C. 7:7-9.19, if:

i. The lot was shown as a subdivided lot prior to July 19, 1993;

ii. The lot is served by a municipal sewer system; and

iii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

(h) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(i) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

(j) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

(k) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

(l) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

(m) Development under this general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

2. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any recon-

struction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (m)1 above.

(n) This general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

New Rule, R.2000 d.428, effective October 16, 2000.

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

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

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

In (d)1, inserted "whichever is most landward," following "at (d)1ii below," in the introductory paragraph; in (e), rewrote the introductory paragraph and added i and ii.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (c), inserted "7:7E-3.25, Flood hazard areas, 7:7E-3.26, Riparian zones,"; and reserved (j).

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

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

In the introductory paragraph of (e) and (m)3, substituted "(m)1" for "(l)1"; added (g); recodified former (g) through (n) as (h) through (o); in (o)1iv; inserted "existing and" and "public accessways,"; and in (o)2, substituted "(n)" for "(m)".

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

Rewrote (g).

Recodified from N.J.A.C. 7:7-7.8 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for the development of a single family home or duplex". Rewrote the section.

Case Notes

In interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii, the waterward and landward slopes of a primary frontal dune must abruptly incline and decline respectively compared with the rest of the subject property or with the other properties in the area immediately adjacent to the subject property. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an oceanfront home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Initial Decision (2006 N.J. AGEN 177) adopted, which concluded that argument of contract purchaser seeking to construct a single-family dwelling that the site and proposed development satisfied N.J.A.C. 7:7-7.8, because the cross-sectional area of the primary frontal dune waterward of the development, as measured above the 100-year Stillwater elevation and waterward of the primary frontal dune crest, was greater than 1,100 square feet, was misplaced; the exception was only available when the proposed development was located on the landward slope of a secondary or tertiary dune and the evidence showed that there were no secondary or tertiary dunes on the lot and that the subject lot was located entirely on the landward slope of a primary dune. *Grauso v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 11080-04, 2006 N.J. AGEN LEXIS 672, Final Decision (April 17, 2006).

7:7-6.5 General permit 5 - expansion, or reconstruction (with or without expansion), of a single-family home or duplex

(a) This general permit authorizes the expansion, or reconstruction (with or without expansion), of a legally constructed, habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, and clearing, excluding shore protection structures), provided the single-family home or duplex and accessory structures are located landward of the mean high water line, and provided the single-family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this general permit shall not result in development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8.

(c) Development under this general permit shall comply with N.J.A.C. 7:7-9.22, Beaches; 7:7-9.25, Flood hazard areas; 7:7-9.26, Riparian zones; 7:7-9.27, Wetlands; 7:7-9.28, Wetland buffers; and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this general permit shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (d)1 through 4 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this subparagraph, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographical Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

i. The road, sea wall, or bulkhead is of sufficient size to be designated as the V zone boundary on the FIRM;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A zone, B zone, or C zone on the FIRM;

v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

vi. The proposed development does not include the construction of a shore protection structure.

3. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

i. The single family home or duplex legally existed on July 19, 1993;

ii. The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (d)4 below;

iii. The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (d)3iv below;

iv. For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (d)3ii above, provided the additional

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Permit condition requiring Department of Environmental Protection determination did not conflict with state and federal plans and was not beyond the department's authority. Matter of Cape May County Mun. Utilities Authority, 242 N.J.Super. 509, 577 A.2d 840 (A.D.1990).

SUBCHAPTER 15. USE RULES**7:7-15.1 Purpose and scope**

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules must be satisfied in addition to the location rules (N.J.A.C. 7:7-9 through 14), and the resource rules described in the following subchapter (N.J.A.C. 7:7-16).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

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

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

Rewrote the section.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

Recodified from N.J.A.C. 7:7E-7.1 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Updated the N.J.A.C. references.

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Construction permit application denied due to anticipated nitrate production; testing to challenge application denial found to not meet acceptable scientific standards. Andover Mobile Home Park v. Dept. of Environmental Protection, 4 N.J.A.R. 420 (1981).

7:7-15.2 Housing

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in water areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water, or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean-up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

iii. New housing acceptable under this rule shall be consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the filled water's edge rule, N.J.A.C. 7:7-9.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9. The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13, except on bay islands where the requirements of the bay islands rule, N.J.A.C. 7:7-9.21, shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading, or other means is conditionally acceptable provided that the conditions of the existing lagoon edge rule, N.J.A.C. 7:7-9.24, and the filling rule, N.J.A.C. 7:7-12.11, are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

7. Rationale: Housing is not water dependent on water access, and does not generally qualify for exemption to the rule of restricting non-water dependent development along water's edge. In addition to this general restriction, most of the Special Area rules contain specific restrictions that have the practical effect of discouraging or prohibiting new development, including housing, from sensitive areas.

(c) Standards relevant to floating homes are as follows:

1. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

2. Rationale: The primary focus of a floating home is as a residence. Floating homes, therefore, are not water-dependent, and should not be permitted to pre-empt limited

land's edge locations from water dependent uses such as boating. Boats which are used for navigation and serve a secondary function as houses are not considered floating homes and are not prohibited. Floating homes have an adverse impact on water quality through grey water discharges. The proliferation of houseboats in New Jersey would have a cumulative adverse effect on water quality, navigation and aesthetics.

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

2. Rationale: The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is limited. When such areas are present on site, the acceptable gross density may have to be reduced, unless the net density can be increased by clustering. Where municipal zoning requires minimum lot sizes that preclude clustering, applicants are encouraged to seek local approval, through new ordinances and/or variances, to maintain the permissible gross density by clustering. The Department will aid this endeavor by providing a rationale and testimony, as appropriate, especially for the protection of sensitive areas. Cluster developments lessen the impact of construction by preserving valued soil, open space, vegetation, and aquifer recharge resources. Some cluster developments also increase insulation and reduce energy consumption due to shared walls between units.

(e) Standards relevant to the development of one or two single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than two single family homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8, and provided the single-family home(s) or duplex(es) and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7-9.22, Beaches, 7:7-9.27, Wetlands, 7:7-9.28, Wetland buffers, and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats;

2. On filled water's edge sites that have included a water dependent use at any time since July of 1977, development of two single-family homes or duplexes shall comply with the filled water's edge rule, N.J.A.C. 7:7-9.23(e).

3. Development shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (e)3i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)3i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V zone boundary on the FIRM;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A zone, B zone, or C zone on the FIRM;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

4. Development shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)12i below, unless the development meets either (e)4i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)4i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

5. Development shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and N.J.A.C. 7:7-9.19, Erosion hazard areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, or erosion hazard areas rule at N.J.A.C. 7:7-9.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

6. Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7-16.9.

7. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

8. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

9. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

10. The development shall comply with the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25;

11. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

12. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-

18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)12i above;

13. The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. 7:7-15.2(f);

14. Rationale: Single-family homes and duplexes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. However, in view of the extensive development that has occurred along the coast and the minimal impacts associated with the development of one or two single-family homes or duplexes, construction of these developments on dunes and coastal bluffs, and within coastal high hazard areas and erosion hazard areas, is acceptable in certain situations.

Development of one or two single-family homes or duplexes on a dune may be acceptable in cases where the development is proposed on the landward slope of a secondary or tertiary dune or the dune is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead. One or two single-family homes or duplexes may be constructed on the landward slope of the secondary or tertiary dune where the intervening dune is of sufficient volume to provide protection during a 100-year storm, without the construction having a significant adverse long-term impact on the natural functioning of the beach and dune system. Similarly, the development of one or two single-family homes or duplexes on a dune that is isolated from a beach and dune system by an existing paved public road, public seawall, or public bulkhead that is of a sufficient size to eliminate the protective functioning of the isolated dune is acceptable, since the development will not have a significant adverse impact on the natural functioning of the beach and dune system. Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive developments have already occurred. Infill single family homes or duplexes are found to be acceptable because such development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developed to the degree currently existing in that area. With regards to coastal bluffs, since the disturbance associated with the development of one or two single-family homes or duplexes is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the construction of single-family homes or duplexes is allowed within 10 feet of the crest of the coastal bluff, except along high-energy shorelines of the Atlantic Ocean, Delaware

Bay, Raritan Bay, or Sandy Hook Bay and where excavation is proposed.

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8, and provided the single-family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7-9.22, Beaches, 7:7-9.27, Wetlands, 7:7-9.28, Wetland buffers, and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (f)2i through iii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

- (1) The road, seawall, or bulkhead is of sufficient size to be designated as the V zone boundary on the FIRM;
- (2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;
- (3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;
- (4) The area of proposed construction is designated as an A zone, B zone or C zone on the FIRM;
- (5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and
- (6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

- (1) The single family home or duplex legally existed on July 19, 1993;
- (2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;
- (3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;
- (4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single-family home or duplex and/or accessory development that complies with N.J.A.C. 7:7-18 is recorded.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

- (1) The development is the enclosure of a deck, patio, or porch;
- (2) The deck, patio, or porch enclosure is located on the non-waterward side of the single-family home or duplex;
- (3) The deck, patio, or porch legally existed on July 19, 1993;
- (4) The deck, patio, or porch abuts the dwelling;
- (5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;
- (6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;
- (7) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the

Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development that complies with N.J.A.C. 7:7-18 is recorded.

3. Development shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)11i below, unless the development meets either (f)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and N.J.A.C. 7:7-9.19, Erosion hazard areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, or erosion hazard areas rule at N.J.A.C. 7:7-9.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7-16.9;

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25;

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection struc-

ture. A site with coastal bluffs shall instead comply with (f)11i above;

12. The standards for the development of one or two single-family homes or duplexes are found at N.J.A.C. 7:7-15.2(e);

13. Rationale: Prior to the 1993 amendments, single-family homes and duplexes were not regulated under CAFRA. This rule allows for the limited expansion or reconstruction with or without expansion of a single-family home or duplex located on a dune that existed prior to July 19, 1993 (date of CAFRA amendments), in recognition of the impact of the CAFRA amendments on these developments. The limited expansion of an existing single-family home or duplex will not have a significant long-term, adverse impact on the natural functioning of the beach and dune system since they are limited in size and cannot be located on the waterward side of the dwelling. Further, the rule requires that the dune waterward of the existing dwelling be enhanced through the placement of sand and the planting of native dune vegetation thus improving the functioning of the existing dune.

Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive developments have already occurred. Infill single-family homes or duplexes are found to be acceptable, because their development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developed to the degree currently existing in that area. With regards to coastal bluffs, since the disturbance associated with the development of a single-family home or duplex is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the rule allows the construction of single-family homes or duplexes within 10 feet of the crest of the coastal bluff, except along high-energy shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay and where excavation is proposed.

(g) The standards relevant to housing and transportation are as follows:

1. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

4. Rationale: Public health and welfare concerns about air quality, as well as the necessity to limit energy consumption, require that public policies and decisions encourage alternatives to reliance on private automobiles.

Correction: Subsection (e)—Inserted omission concerning affordable housing.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended.

Petition for Rulemaking: Petitioned for a departmental level "conceptual approval"; denied.

See: 21 N.J.R. 1912(a).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

New housing policy replaced outmoded affordable housing use policy at (f).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Public Notice: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 5333(b); 30 N.J.R. 494(a).

Administrative correction.

See: 30 N.J.R. 217(a).

Petition for Rulemaking.

See: 30 N.J.R. 2525(a), 30 N.J.R. 4077(a).

Amended by R.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

Rewrote (e)1iii(3).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (b)3, rewrote the second sentence.

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

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

Deleted former (e), inserted new (e) and (f), and recodified former (f) as (g).

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

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

Rewrote the section.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (e)8 and (f)8, deleted "elevation and flood proofing" preceding "requirements" and substituted "Flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "National Flood Insurance Program regulations at 44 CFR Chapter 1".

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

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

In (b)2iii, substituted "lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate"; in (b)3, substituted ", N.J.A.C. 7:7E-3.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "(N.J.A.C. 7:7E-3.23) and the Public Access to Waterfront Rule (N.J.A.C. 7:7E-8.11)"; added new (e)5; recodified former (e)5 through (e)12 as (e)6 through (e)13; added new (f)5; and recodified former (f)5 through (f)12 as (f)6 through (f)13.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (b)2iii and (b)3, substituted "access" for the second occurrence of "trust rights"; in (b)3, substituted "filled water's edge" for "Filled Water's Edge" and "bay islands" for "Bay Island Corridor"; in the introductory paragraph of (e)5 and (f)5, "public access" for "Public trust rights" and deleted the last sentence; in the introductory paragraph of (e)5, substituted "Public" for "Except as provided in (e)5i below public"; deleted (e)5i and (f)5i; and in the introductory paragraph of (f)5, substituted "Public" for "Except as provided in (f)5i below, public".

Recodified from N.J.A.C. 7:7E-7.2 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Housing use rules". Rewrote the section.

Case Notes

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an ocean-front home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J. Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Regulation noted as being responsive to both CAFRA directions and to the fair share housing constitutional mandate of the Mount Laurel I decision. *Southern Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.*, 92 N.J. 158, 456 A.2d 390, on remand 207 N.J. Super. 169, 504 A.2d 66 (1983).

Department of Environmental Protection to impose "fair share" housing conditions to provide for low and moderate income housing (citing former N.J.A.C. 7:7E-8.6 and 7:7E-8.11). In re *Egg Harbor Associates*, 185 N.J. Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 465 A.2d 1115 (1983).

Former rules for large scale residential development do not support conditional approval of construction permit for large scale development because of serious deficiencies in essential findings (citing former regulations and former N.J.A.C. 7:7E-8.11). *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).

Where a Settlement Agreement and Letter of Authorization (LOA) following alternative dispute resolution authorized the reconstruction and expansion of the footprint of an existing single-family dwelling located on the property adjacent and easterly to that owned by the petitioners but there were no houses or commercial buildings within 100 feet of the property on either the northerly or southerly sides, the LOA was not a "waiver" of the third prong of the infill development rule of N.J.A.C. 7:7E-7.2(f)4 but rather a settlement based on the totality of the facts of a case in litigation. The Department of Environmental Protection has the ability to enter into reasonable settlements on a case-by-case basis that are in the best interest of the environment and that are consistent with the purpose of Coastal Area Facility Review Act, and in this case, the settlement mitigated the litigation risk and required the homeowner to enhance the dune area with plantings, to file a deed restriction prohibiting any future development seaward of the proposed reconstructed home, and to come into compliance with FEMA requirements governing flooding and storm damage prevention. *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).

Activity fit within the "repair, replacement or renovation" exemption from requirement for Waterfront Development Permit. N.J.S.A. 12:5-3. *Ward v. Department of Environmental Protection*, 91 N.J.A.R.2d 1 (EPE).

7:7-15.3 Resort/recreational

(a) Resort/recreation uses include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers,

parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging.

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

3. Rationale: The national and state interests in recreation are clearly indicated in the coastal economy and are essential for the quality of life. The coastal environment provides numerous opportunities for recreation which should be expanded by public policy and action, including priority setting.

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.

3. Rationale: The Rationale statement for this subsection is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under

- 3. An individual permit; and
- 4. A modification of an authorization under a general permit or an individual permit pursuant to N.J.A.C. 7:7-27.5.

(b) There is no application fee for:

- 1. An applicability determination pursuant to N.J.A.C. 7:7-2.5;
- 2. An emergency authorization pursuant to N.J.A.C. 7:7-21;
- 3. A permit-by-rule pursuant to N.J.A.C. 7:7-4;
- 4. An authorization under the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.24; or
- 5. An administrative modification of a permit, N.J.A.C. 7:7-27.5.

(c) All application fees shall be paid by money order, check (personal, bank, certified, or attorney) or government purchase order made payable to the "Treasurer, State of New Jersey."

(d) Any fee required under this chapter that is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, shall be payable in installments in accordance with N.J.A.C. 7:1L.

(e) The fee payable at the time of application for a CAFRA or waterfront development individual permit shall not exceed \$30,000. If the fee for an individual permit application determined under (g) below 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. The Department shall provide the applicant with documentation of such costs, and the applicant shall pay a supplemental fee in that amount.

(f) The application fee for a CAFRA individual permit or a waterfront development individual permit for a mixed residential and non-residential development shall be the sum of the applicable fees for residential development and non-residential development set forth at (g) below.

(g) The fees for applications under this chapter are set forth in Table A below:

Table A
APPLICATION FEES

Determination of exemption	
	Fee
Request for a written determination of exemption from CAFRA pursuant to N.J.A.C. 7:7-2.2(f)	\$500.00

Request for a written determination of exemption from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.4(h)	\$500.00
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Authorization under a general permit by certification
\$600.00

Authorization under a general permit pursuant to N.J.A.C. 7:7-6

	Fee
General permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-6.24	No fee
Any other general permit	\$1,000

CAFRA individual permit

	Fee
CAFRA individual permit for the development of one single family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
CAFRA individual permit for any other residential development	\$3,000 per unit
CAFRA individual permit for a commercial, industrial, or public development	\$3,000 per acre of the site (or fraction thereof)

Coastal wetlands individual permit

	Fee
Coastal wetlands individual permit for the development of one single family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Coastal wetlands individual permit for any other development	\$3,000 per acre of wetlands to be disturbed (or fraction thereof)

Waterfront development individual permit

	Fee
Waterfront development individual permit for the development of one single-family home or duplex and/or accessory development located landward of the mean high water line, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000

Waterfront development individual permit for any other residential development located landward of the mean high water line	\$3,000 per unit
Waterfront development individual permit for a commercial, industrial, or public development located landward of the mean high water line	\$3,000 per acre of the site (or fraction thereof)
Waterfront development individual permit for development located waterward of the mean high water line, such as a dock or bulkhead, at a single-family or duplex lot, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Waterfront development individual permit for any other development located waterward of the mean high water line	\$3,000 per acre of water area impacted by the development (or fraction thereof)

Additional fee for review of ground-water recharge calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)	\$250.00 per acre of impervious surface subject to water quality review (or fraction thereof)

Request for a modification of a waterfront development, coastal wetlands, or CAFRA individual permit pursuant to N.J.A.C. 7:7-27.5

Amended by R.2006 d.344, effective October 2, 2006.

See: 37 N.J.R. 3120(a), 38 N.J.R. 4205(a).

In (a)4, deleted "and" from the end; in (a)5, substituted "; and" for a period at the end; and added (a)6.

Repeal and New Rule, R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Section was "Purpose and scope".

Recodified from N.J.A.C. 7:7-10.1 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

Amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

In Table A of (g), deleted "Additional fee if project disturbs vegetation within a Special Water Resource Protection Area (see N.J.A.C. 7:8-5.5)" in the first column and "\$2,000" in the corresponding second column.

	Fee
Administrative modification	No fee
Minor technical modification of a waterfront development, coastal wetlands, or CAFRA general permit authorization or individual permit	\$500.00
Major technical modification of a waterfront development, coastal wetlands, or CAFRA general permit authorization or individual permit	30 percent of the original application fee or \$500.00, whichever is greater

7:7-25.2 Adjustment of application fees

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

Request to extend a general permit authorization or an individual permit pursuant to N.J.A.C. 7:7-27.3

	Fee
Request to extend a general permit authorization	\$240.00
Request to extend a waterfront development individual permit for activities located waterward of the mean high water line	25 percent of the total original permit application fee up to a maximum of \$3,000

Additional application fee for stormwater review if a project is a "major development" pursuant to the Stormwater Management Rules (see N.J.A.C. 7:8-1.2)

	Fee
Base fee for any major development	\$3,000

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and

2. Publish a notice of administrative change in the New Jersey Register that:

i. States that the Application Fee Adjustment Report is available on the Department's website at www.nj.gov/dep/landuse; and

ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following:

4. Any other mitigating, extenuating or aggravating circumstances.

(i) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

Recodified from N.J.A.C. 7:7-8.5 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)". Rewrote the section.

Case Notes

Borough was properly assessed \$50,000 in civil administrative penalties by the Department of Environmental Protection for violations of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., as a result of development activities in a coastal zone without a permit, where the Borough admitted that it acted with knowledge of the requirement for prior approval under CAFRA, the area of disturbance was 75,000 square feet, and the Borough conducted the unauthorized activities in two special areas. N.J. Dep't. of Env'tl. Prot., Coastal and Land Use Compliance and Enforcement v. Seaside Heights Borough, OAL Dkt. No. ESA 4458-06, 2009 N.J. AGEN LEXIS 924, Final Decision (May 11, 2009).

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).

7:7-29.6 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities

(a) For violations other than failure to obtain a permit prior to conducting regulated activities, 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., N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto. The Department shall assess penalties under this section rather than under N.J.A.C. 7:7-29.5 when N.J.A.C. 7:7-29.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto, shall constitute an additional, separate, and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto, 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) To assess a civil administrative penalty pursuant to this section, the Department shall use the two factors described at (e) and (f) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty. The applicable daily penalty amount is determined using the base daily penalty matrix in the table below, based on the seriousness of the violation determined pursuant to (e) below and the conduct of the violator determined pursuant to (f) below:

Base Daily Penalty Matrix

SERIOUSNESS

	Major	Moderate	Minor
Major	\$25,000	\$15,000	\$10,000

CONDUCT

Moderate	\$15,000	\$7,500	\$ 5,000
Minor	\$10,000	\$ 5,000	\$1,000

(e) The seriousness of the violation shall be determined as major, moderate, or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health, safety, or the environment, or the coastal regulatory program, or seriously deviates from the applicable law and/or condition. "Serious" deviations include, but are not limited to, those violations which are in complete contravention of the law, requirement, and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement, or condition. Violations of "major" seriousness include, but are not limited to, any unauthorized activity occurring within or impacting a special area described at N.J.A.C. 7:7-9;

2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, or the environment, the coastal regulatory program, or substantially deviates from the applicable law and/or condition. "Substantial deviation" shall include, but not be limited to, violations which are in substantial contravention of the law, requirement, and/or condition, and/or which substantially impair or undermine the protection, operation, or intent of the law, requirement, and/or condition. The Department will consider a violation to be of moderate seriousness if limited

solely to upland areas that are not designated as a wetland or other special area identified at N.J.A.C. 7:7-9; and

3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate, or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. There is a rebuttable presumption that any violation of a Department permit or authorization, emergency authorization, exemption under N.J.S.A. 12:5-3.a, applicability determination, and/or Tidelands instrument or the conditions thereof to be knowing violations;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The total civil administrative penalty shall be the daily civil administrative penalty determined under (d) through (f) above, multiplied by the number of calendar days during which each violation continued or remained in place without the required permit.

(h) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

Recodified from N.J.A.C. 7:7-8.6 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "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". Rewrote the section.

7:7-29.7 Civil penalties

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq., any regulation, rule, permit, order, or court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-29.3, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq. The Superior Court shall have jurisdiction to

enforce the provisions of the Penalty Enforcement Law of 1999 in connection with N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq.

Recodified from N.J.A.C. 7:7-8.7 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)". Rewrote the section.

7:7-29.8 Civil actions

(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. Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

3. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;

4. Recovery of compensatory damages for any loss or destruction of natural resources, including, but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection; and/or

5. Execution of an order requiring the violator to restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for an off-site restoration alternative as approved by the Department.

(b) Recovery of damages and costs under (a) above shall be paid to the State Treasurer.

Recodified from N.J.A.C. 7:7-8.13 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "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)". Rewrote the section.

7:7-29.9 Criminal action

(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and/or 13:9A-1 et