

CHAPTER 7

COASTAL PERMIT PROGRAM RULES

Authority

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

Source and Effective Date

Effective: November 14, 2014. See: 46 N.J.R. 2405(c).

Chapter Expiration Date

Chapter 7, Coastal Permit Program Rules, expires on November 14, 2021.

Chapter Historical Note

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

Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980.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

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

Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984. See: 15 N.J.R. 2090(a), 16 N.J.R. 1073(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.1989 d.309, effective May 12, 1989, operative June 5, 1989. See: 21 N.J.R. 369(a), 21 N.J.R. 1526(a).

Public Notice: Notice of Routine Program Implementation. See: 25 N.J.R. 1010(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.1994 d.276, effective May 10, 1994. See: 26 N.J.R. 917(a), 26 N.J.R. 2413(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.1994 d.378, effective June 24, 1994, and Subchapter 7, General Permits and Permits-By-Rule, was adopted as R.1994 d.378, effective July 18, 1994. See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Subchapter 8, Enforcement, was adopted as R.1994 d.413, effective August 1, 1994. See: 26 N.J.R. 1745(a), 26 N.J.R. 3188(a).

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

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.2000 d.428, effective September 22, 2000. See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

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

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

Chapter 7, Coastal Permit Program Rules, was readopted as R.2006 d.142, effective March 21, 2006. See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Public Notice: Routine Program Changes for Coastal Management Program. See: 42 N.J.R. 2638(a).

Public Notice: Determination on Routine Program Changes for Coastal Management Program. See: 43 N.J.R. 681(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7, Coastal Permit Program Rules, was extended by gubernatorial directive from March 21, 2011 to December 15, 2012. See: 43 N.J.R. 961(a).

Public Notice: Routine Program Change for Coastal Management Program. See: 45 N.J.R. 2613(b).

Public Notice: Determination on Routine Program Change for Coastal Management Program. See: 46 N.J.R. 558(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7, Coastal Permit Program Rules, was scheduled to expire on December 15, 2014. See: 43 N.J.R. 1203(a).

Chapter 7, Coastal Permit Program Rules, was readopted, effective November 14, 2014. See: Source and Effective Date.

Subchapter 10, Coastal Permit Application Fees, was repealed and Subchapter 10, Application Fees, was adopted as new rules by R.2015 d.023, effective February 2, 2015. See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

Law Review and Journal Commentaries

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

7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection will review permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).
2. Wetlands Act of 1970: The draining, dredging, excavation, or deposition of material, and the erection of any structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.
3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area

regulated under CAFRA. These requirements are fully explained in N.J.A.C. 7:7-2.3.

Amended by R.1994 d.378, effective July 18, 1994.
 See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Law Review and Journal Commentaries

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

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).

Validity. *In re Loveladies Harbor, Inc.*, 176 N.J.Super. 69, 422 A.2d 107 (App.Div.1980), certification denied 85 N.J. 501, 427 A.2d 588 (1981).

Regulated activity without permit prior to promulgated order. *Loveladies Prop. Owners Ass'n v. Raab*, 137 N.J.Super. 179, 348 A.2d 540 (App.Div.1975).

Power of D.E.P. to regulate use of marshes and wetlands. *Sands Point Harbor, Inc. v. Sullivan*, 136 N.J.Super. 436, 346 A.2d 612 (App.Div.1975).

7:7-1.2 (Reserved)

Repealed, R.1987 d.217, effective May 18, 1987.
 See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).
 This section "Authority" was repealed.

7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" also means bar and restaurant establishments and entertainment venues such as stage and band shells and associated seating areas. "Amusements" do not include games for cash payoffs.

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

"Beach berm" means the nearly horizontal part of the beach lying between the crest of the berm and the toe of the primary dune or first paved public right-of-way, whichever is more waterward. The berm is the sloping portion of the beach profile from the upper limit of wave up-rush to the lower limit of wave run-down at low tide.

"Bulkhead" means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a "revetment" or a "gabion" as defined elsewhere in this section.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

"Charitable conservancy" means a corporation or trust that meets the definition of a charitable conservancy at N.J.S.A. 13:8B-2 as amended.

"City of the fourth class" means a city as defined at N.J.S.A. 40A:6-4d which borders on the Atlantic Ocean and which is a seaside or summer resort.

"Coastal bluff" means a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland. Steep slopes are isolated areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

"Coastal Permit" or "permit" means a permit or an authorization, including a Federal Consistency determination and Water Quality Certificate, issued by the Department under this chapter pursuant to any of the following statutes: the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-3; Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

"Commissioner" means the Commissioner of the Department of Environmental Protection or designated representative.

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

"Conservation restriction" means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or for public access to tidal waterways and their shores, or as suitable habitat for fish or wildlife, to forbid or limit any or all of the following:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and/or
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

"Deck" means a horizontal platform that is not enclosed by windows, walls, doors, or screens and is not covered by a roof.

"Department" means the Department of Environmental Protection.

"Development" means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. Development, for an application under CAFRA, means the construction, relocation, or enlargement of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

"Dune" means a wind-or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, and all landward dune ridges and mounds, as well as man-made dunes where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Educational facility" means an elementary or secondary school.

"Excavation" means the extraction of sand, gravel, earth or any other material.

"Filling" means the depositing of sand, gravel, earth or any other material.

"Floating home" means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

"Floodway" has the same meaning as the definition of that term in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-1.2.

"Footprint of development" means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

"Gabion" means a shore protection structure that is comprised of wire mesh basket(s) or mattress(es) filled with rock and used in multiples as a structural unit installed to withstand the forces of waves and currents. A gabion is not a "bulkhead" or a "revetment" as defined elsewhere in this section.

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

"Grace period" means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

"Grading" means leveling off to a smooth horizontal or sloping surface.

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

"Impervious cover" means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar structures, surfaces, or improvements are considered impervious cover. Grass, lawns, or any other vegetation are not considered impervious cover.

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

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

"Living shoreline" means a shoreline management practice that addresses the loss of vegetated shorelines, beaches, and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of plants, stone, sand, or other structural and organic materials. There are three types of living shorelines: natural, hybrid, and structural. Natural living shorelines include natural vegetation, submerged aquatic vegetation, fill, and biodegradable organic materials. Hybrid living shorelines incorporate natural vegetation, submerged aquatic vegetation, fill, biodegradable organic materials, and low-profile rock structures such as segmented sills, stone containment, and living breakwaters seeded with native shellfish. Structural living shorelines include, but are not limited to, revetments, breakwaters, and groins.

"LURP (Land Use Regulation Program) application form" means an application form used when applying for a permit or exemption pursuant to the Coastal Area Facility Review Act, Waterfront Development Law, Wetlands Act of 1970, Flood Hazard Area Control Act, or Freshwater Wetlands Protection Act, or when applying for Water Quality Certification and Federal Consistency Determinations. This form includes blocks for information regarding the permit application type, project description, project site location, property owner certification and names and addresses of the applicant and the applicant's agent.

"Man-made lagoon" means an artificially created linear waterway sometimes branched, ending in a dead end with no

significant upland drainage. Lagoons have been created through dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots for residential development adjacent to the lagoon. A natural waterway which is altered by activities including, but not limited to, filling, channelizing, or bulkheading shall not be considered a man-made lagoon, nor shall a bulkheaded boatslip be considered a lagoon.

“Mean high water” (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department’s Bureau of Tidelands.

“Mean high water line” (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the “ordinary” high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.)

“Non-polluting material” means a material such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete, steel, or other inert products. Creosote and pressure-treated lumber (that is, treated with preservatives such as CCA-C, ACZA, CC, and ACQ) which is susceptible to leaching is not considered “non-polluting material.”

“Person” means any corporation, company, association, society, firm, partnership, individual, government agency, or joint stock company.

“Pesticide” means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

“Porch” means a covered or uncovered entrance, directly connected to a residential dwelling.

“Program” means the Land Use Regulation Program in the Department of Environmental Protection.

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

shall consider existing legal precedent regarding what constitutes “property as a whole” at the time of the determination.

“Public accessway” means a route that provides a means for the public to reach, pass along, and/or use lands and waters subject to public trust rights. Public accessways include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way.

“Public development” means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. “Public development” does not have to be publicly funded or operated.

“Public highway” means a “public highway” as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

“Public Trust Doctrine” means a common law principle that recognizes that the public has particular inalienable rights to certain natural resources. These resources include, but are not limited to, tidal waterways, the underlying submerged lands and the shore waterward of the mean high water line, whether owned by a public, quasi-public or private entity. In the absence of a grant from the State, submerged lands under tidal waterways and the shore of tidal waterways waterward of the mean high water line are owned by the State. Regardless of the ownership of these resources, under the Public Trust Doctrine, the public has rights of access to and use of these resources, as well as a reasonable area of shoreline landward of the mean high water line. Under the Public Trust Doctrine, the State is the trustee of these publicly owned resources and public rights for the common benefit and use of all people without discrimination. As trustee, the State has a fiduciary obligation to ensure that its ownership, regulation and protection of these properties and rights will safeguard them for the enjoyment of present and future generations. The public rights to use these resources extend both to traditional activities such as navigation and fishing, but also to recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. The specific rights recognized under the Public Trust Doctrine, a common law principle, continue to develop through individual court decisions. See, for example, *Arnold v. Mundy*, 6

N.J.L. 1 (1821), Borough of Neptune v. Borough of Avon-by-the-Sea, 61 N.J. 296 (1972), *Hyland v. Borough of Allenhurst*, 78 N.J. 190 (1978); *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984); *Slocum v. Borough of Belmar*, 238 N.J. Super. 179 (Law Div. 1989); *National Ass'n of Homebuilders v. State, Dept. of Env'tl Protect.*, 64 F. Supp.2d 354 (D.N.J. 1999); *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40 (2005); *Illinois Central R.R. v. Illinois*, 146 U.S. 387 (1892); *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988); *Karam v. NJDEP*, 308 N.J. Super. 225, 240 (App. Div. 1998), *aff'd*, 157 N.J. 187 (1999), *cert. denied*, 528 U.S. 814 (1999).

"Pumpout facility" means a facility intended to receive the discharge of wastewater from a marine sanitation device. Pumpout facilities include, but are not limited to, fixed pumpout stations, dockside pumpouts, portable pumpouts, pumpout boats, and dump stations.

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

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the terms "project" and "development".

"Regulated wetland" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

"Residential development" means a development that provides one or more dwelling units.

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

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

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds, wooden walkways, stage platforms, and portable restrooms, which remain in place only during the period from May 1 through October 31, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

"Site" means the lot or lots upon which a proposed development is to be constructed.

"Site preparation" means physical activity which is an integral part of a continuous process of land development or re-development for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

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

"Waterward side of development" means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries. (see Appendix A, herein incorporated by reference).

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Amended Division and Permit; added pesticide.
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).
Amended by R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

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

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

In "Dune", inserted "and all landward dune ridges and mounds" preceding "as well as man-made dunes".
Amended by R.2006 d.142, effective April 17, 2006.
See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Added definitions "beach berm" and "charitable conservancy"; updated definition "seasonal or temporary structures related to the tourism industry".
Amended by R.2007 d.242, effective August 20, 2007.
See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

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

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

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

Added definitions "Floodway", "Impervious cover" and "Rotor swept area".

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 definition "Amusement pier", inserted the next-to-last sentence, and deleted ", bars or restaurants" following the second occurrence of "payoffs".

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

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

Added definitions "Living shoreline", "Non-polluting material" and "Pumpout facility".

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.

Law Review and Journal Commentaries

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

Case Notes

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).

7:7-1.4 Standards for evaluating permit applications

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

(b) The Department shall not issue a permit under CAFRA unless the Department makes the findings required by N.J.S.A. 13:19-10. The findings shall be made in accordance with N.J.A.C. 7:7E-1.5(a).

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

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

Deleted Policies from text.

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

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

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

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

Added designation to first paragraph and added (b).

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

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

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

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

7:7-1.5 Permits and permit conditions

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

1. Potential applicants may request a written jurisdictional determination from the Department to determine the applicability of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3 et seq., to a proposed project. A jurisdictional determination is optional. If a potential applicant is unsure whether a particular activity is regulated, the Department encourages the potential applicant to obtain a written jurisdictional determination prior to commencing work since unauthorized regulated activities may result in substantial fines or other penalties.

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

i. A completed jurisdictional determination/preapplication request form including a written description of the site and the proposed development including

the dimensions, number, and uses of proposed structures; the length of proposed linear development; and the number of parking spaces proposed;

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

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

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

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

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

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

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

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

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

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of

its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

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

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

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

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

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

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

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

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

17. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment

Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

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

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

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

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

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

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

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

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or

for the original duration of the underlying Federal permit (without renewals), whichever is shorter.

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

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

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

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

Substantially amended.

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

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

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

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

Rewrote the section.

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

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

Added (a)1 and 2.

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

7:7-1.6 Provisional permits

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

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A

permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Law Review and Journal Commentaries

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

7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental

degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

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

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the LURP application form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application in accordance with these rules and the Coastal Zone Management rules, N.J.A.C. 7:7E, the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions that must be satisfied by the permittee in accordance with the time frames established in the permit.

New Rule, R.1994 d.378, effective July 18, 1994.

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

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

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

In (a)4, substituted "LURP application" for "standard application (CP-1)" in the second sentence.

Law Review and Journal Commentaries

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

7:7-1.8 Procedure where more than one permit is required

When a proposed development or project requires more than one coastal permit, the Department will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Deleted "... the highest of any ..." and added "calculated in accordance with ...".

Recodified from 7:7-1.7 and amended 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).

In (b), amended the N.J.A.C. reference.

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

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

Deleted designation (a); and deleted (b).

Law Review and Journal Commentaries

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

7:7-1.9 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:7-10. The Department will maintain a printed fee schedule for public use.

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

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

Added text "(N.J.S.A. 13:1D-29 et seq.)".

Recodified from 7:7-1.8 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).

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

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

Amended the N.J.A.C. reference.

Law Review and Journal Commentaries

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

7:7-1.10 Construction; relaxation of procedures or reconsideration of application of substantive standards

(a) This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.

(b) The Department may, in its discretion and if consistent with statutory requirements, relax the application of any of the procedures in this chapter when necessary and in the public interest.

(c) The Department may reconsider the application of one or more of the substantive standards in the rules on Coastal Zone Management at N.J.A.C. 7:7E, provided:

1. The Department has rendered a decision on a permit application under the substantive standards at N.J.A.C. 7:7E as strictly applied;

2. All administrative and judicial appeals of the permit decision have been concluded; and

3. Either of the following requirements is met:

i. A court has determined that the issuance, modification, or denial of a coastal permit would constitute a

taking of property, and the property owner thereupon submits a request for a reconsideration of the application of a substantive standard of N.J.A.C. 7:7E; or

ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification or denial of a coastal permit would constitute a taking of property, and the Department initiates the reconsideration.

(d) In making the determination to reconsider application of a substantive standard of N.J.A.C. 7:7E under (c) above, the Department shall prepare a written analysis that evaluates three factors:

1. The investments the property owner made in the property that is the subject of the coastal permit application and whether the investments were reasonable and reflected reasonable expectations, in accordance with (e) below;

2. The minimum beneficial economically viable use of the property, in accordance with (f) below; and

3. The environmental impacts of the minimum beneficial economically viable use for the property, and their consistency with the goals of CAFRA, N.J.S.A. 13:19-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (g) below.

(e) In determining whether the property owner's investments in the property as a whole were reasonable and reflected reasonable expectations, the Department shall evaluate the following information:

1. Conditions at the time of the investment. That is, the investment shall have been made in pursuit of development that would likely have been legally and practically possible on the property, considering all constraints existing and reasonably ascertainable at the time of the investment. For example, if a property owner bought land containing a dune that is regulated under this chapter, it would not be reasonable to expect that the property could be developed without constraints. In determining conditions at the time of the investment, the Department shall consider, at a minimum, the following:

i. Existing zoning and other regulatory requirements and conditions;

ii. Historic landmarks or other historic or cultural resources;

iii. The likelihood of obtaining other necessary approvals such as wastewater treatment approvals or approvals from other local, State or Federal agencies;

iv. Terrain and other site conditions, and/or environmental constraints, which could affect the potential uses of the property as a whole;

v. The existence of, or likelihood of obtaining, services to the property such as sewers or electricity; and

vi. Land uses on adjacent properties and in the area where the property is located;

2. Costs actually incurred in pursuit of development of the property as a whole;

3. Costs incurred in furtherance of a lawful action. For example, if the property owner began the project without the necessary permits, the cost of defending against an enforcement action for this violation would not constitute a reasonable investment that reflects reasonable expectations;

4. Costs relating only to the specific property as a whole that is the subject of the coastal permit application, and not including costs related to other properties; and

5. Any other factor affecting the property or the property owner, which is related to the reasonableness of the investments, the expectations, and/or the proposed use of the property.

(f) In determining the minimum beneficial economically viable use of the property, the Department shall consider existing legal precedent at the time of the determination. A use shall not be excluded from consideration as a minimum beneficial economically viable use merely because it diminishes the value of the property as a whole, does not result in a profit, reduces the marketability of the property as a whole, or does not allow the property owner to recoup all reasonable investments identified under (e) above.

(g) In determining the environmental impacts of any minimum beneficial economically viable uses of the property and the consistency of those impacts with the goals of CAFRA, N.J.S.A. 13:19-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (d) above, the Department shall evaluate whether the minimum beneficial economically viable use would:

1. Adversely affect the Special Areas described at N.J.A.C. 7:7E-3;

2. Result in irreversible losses of values and functions provided by coastal resources and whether such losses could be mitigated; and

3. Adversely affect public health, safety and welfare, and wildlife and marine fisheries.

(h) The Department shall not approve a minimum beneficial economically viable use as a result of the reconsideration of the application of a substantive standard of N.J.A.C. 7:7E under this section if that use would cause any one of the following:

1. Irreversible losses of values and functions of the coastal resources that provide essential breeding, spawning, nesting, feeding, resting, or wintering habitats for marine fish and wildlife, including migratory birds, endangered species, and commercially and recreationally important wildlife. For the purposes of this section, "irreversible losses" means an alteration to the coastal resource that would eliminate one or more of the essential characteristics which provides the breeding, spawning nesting, feeding, resting or wintering habitat for the species in question that could not be mitigated;
2. Irreversible losses in water quality, resulting in degradation of ground or surface waters, in violation of the Federal, State or local water quality standards; or
3. Irreversible losses of wetlands and/or State open waters, providing essential flood and storm damage protection by absorption, the storage of water during high runoff periods and the reduction of flood crests, resulting in creation of a public nuisance.

(i) A property owner may request a reconsideration of application of a substantive standard(s) of N.J.A.C. 7:7E only after:

1. The conclusion of any administrative and/or judicial appeal of the permit decision; and
2. A court has determined that the issuance, modification, or denial of a coastal permit without reconsideration would result in a taking of property without just compensation.

(j) A complete request for the reconsideration of N.J.A.C. 7:7E standards under (c) above shall include the following items:

1. A completed LURP application form indicating a request for reconsideration and the type of permit being requested;
2. Documentation that the following public notice requirements have been met:
 - i. Verification as required under N.J.A.C. 7:7-4.2(a)3 that public notice has been provided to the clerk of the municipality, and as applicable under that paragraph, to the Pinelands Commission; and
 - ii. Verification that a certified mail notice and an 8½ by 11 inch copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development that is the subject of the reconsideration would occur, to the planning board and environmental commissions of the county in which the

proposed development would occur, and to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all owners of real property, including easements as shown on the tax duplicate, within 200 feet. The list of property owners certified by the municipality shall be no more than one year old. The public notice shall follow the form provided by the Department, and shall state that a request for reconsideration has been submitted to the Department, that the request can be reviewed at the municipal clerk's office or at the Department, and that comments may be submitted to the Department within 15 days of receipt of the notice. This notice may be combined with the offer to sell the property required under (j)8 below:

3. An environmental impact statement or compliance statement, providing the information necessary for the Department to evaluate the environmental impacts of the proposed minimum beneficial economically viable use in accordance with (g) and (h) above;

4. Development plans showing the project that is proposed in order to provide a minimum beneficial economically viable use;

5. Document(s) showing when the property as a whole, as defined at N.J.A.C. 7:7-1.3, was acquired, the purchase price of the property as a whole and the instrument which documents the applicant's real property interest;

6. Document(s) showing the amount and nature and date of any investments made to maintain and/or develop the property as a whole, other than the purchase price;

7. The language of a proposed conservation restriction that meets the requirements of (n)2 below;

8. Documentation that the property has been offered for sale, in a letter following the form provided by the Department, to all owners of property, including easements as shown on the tax duplicate within 200 feet of the property as a whole, and to the land conservancies, environmental organizations, and governmental agencies on a list supplied by the Department. This documentation shall include the following:

- i. A copy of each letter that the property owner sends under this subsection;

- ii. All responses the property owner receives to the letters sent under this subsection. Each response shall be submitted to the Department within 15 days after the property owner's receipt of the response; and

- iii. A list, certified by the municipality, of all owners of real property within 200 feet of the property as a whole, including owners of easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old;

9. The written offer of sale required under (j)8 above shall be sent by certified mail and shall:

- i. Indicate that the offer is open for a period of at least 90 calendar days;
- ii. Include a copy of a fair market value appraisal, performed by a State-licensed appraiser, that assumes that a minimum beneficial economically viable use of the property would be allowed;
- iii. Include full disclosure of the location on the property and of any of the Special Areas described at N.J.A.C. 7:7E-3; and
- iv. Indicate that a reconsideration of N.J.A.C. 7:7E standards to allow development of the property has been requested under this section;

10. A copy of a court determination that the Department's issuance, modification, or denial of a coastal permit would constitute a taking of property without just compensation; and

11. Documents showing that the property owner has concluded all administrative and judicial appeals of the Department's decision on the application for a coastal permit. Such documentation shall include the last of the following (submitted after the appeal period for the applicable decision has expired):

- i. A Department decision on the coastal permit application, made in accordance with the rules as strictly applied;
- ii. A final decision issued by the Commissioner regarding the Department's decision on the coastal permit application; or
- iii. Documentation that all appeals of any final decision issued by the Commissioner under (j)11ii above have been concluded.

(k) In the case where the Department initiates the reconsideration of application of the substantive standards of N.J.A.C. 7:7E under (c) above, the Department shall, upon initiation of the reconsideration process follow all steps described in (k)1 through 3 below. In the case where the property owner is requesting a reconsideration of application of the substantive standards, the Department shall, upon initiation of the reconsideration process, follow the steps described in (k)1i, 1iii, 2 and 3 below:

1. Provide the following notifications:
 - i. Publication in the DEP Bulletin;
 - ii. In accordance with the requirements at N.J.A.C. 7:7-4.2(a)3; and
 - iii. To those who provided comments on the previous application that is the subject of the reconsideration;

2. Include in the notice the applicant's name; project name, if applicable; project number; county and municipality of the project; and an executive summary describing the development that is the subject of the reconsideration; and

3. Provide a 15-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(l) If the Department determines to approve a development upon reconsideration of the application of the substantive standards of N.J.A.C. 7:7E, the Department shall provide notice of the development that the Department proposes to allow under the reconsideration following the same procedure as described in (k)1i above except that the Department shall provide a 30-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(m) The Department shall complete the written analysis required under (d) above, which shall incorporate its decision on the request for reconsideration of the application of N.J.A.C. 7:7E standards as follows:

1. For a request for reconsideration under (c) and (i) above, no later than 180 days after receiving a complete request that meets all requirements at (j) above; or
2. For a reconsideration initiated by the Department under (c) above, no later than 180 days from the publication of notice in the DEP Bulletin under (k) above.

(n) If the Department approves a development upon reconsideration of the application of the substantive standards of N.J.A.C. 7:7E under (c) above, the approval shall, at a minimum:

1. Be the minimum relief necessary to enable the property owner to realize a minimum beneficial economically viable use of the property as a whole, consistent with constitutional standards; and
2. Ensure that any part of the property as a whole that the Department does not allow to be developed upon reconsideration of the substantive standards of N.J.A.C. 7:7E under (c) above will be protected from future development by a recorded conservation restriction.

Recodified from 7:7-1.9 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).

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

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

Rewrote the section.

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

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

In (e)4, substituted "15 days of receipt by the applicant" for "the time frame specified at (e)4i below" in the second sentence of the introductory paragraph.

Amended by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Rewrote the section.

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

Regulation authorizing relaxation of application of rules when necessary and in public interest allowed only waiver of procedural rules for Coastal Area Facility Review Act development permits and did not authorize Department of Environmental Protection to waive bay island corridor preservation policy incorporated into separate chapter. In re CAFRA Permit No. 87-0959-5 Issued to Gateway Associates, 290 N.J.Super. 498, 676 A.2d 161 (A.D.1996).

When a landowner's proposed development failed to comply with Coastal Area Facility Review Act Permit # 88-1016-5 for sewer lines, as well as the regulations concerning bay islands, wetlands, and wetlands buffers, and the development would be inconsistent with the intent of the areawide Water Quality Management (208) Plan for Cape May County, the Commissioner of the New Jersey Department of Environmental Protection (DEP) rejected any finding in the Initial Decision that the landowner satisfied the provisions of N.J.A.C. 7:7-1.10(c)3.i for purposes of requesting DEP to reconsider its application of the rules to this project or that the landowner had exhausted all administrative remedies for purposes of a taking action. Jurisdiction for such a proceeding was in the Superior Court, not with administrative agencies. *John Lutter v. New Jersey Dep't of Env'tl. Prot., OAL DKT. NO. ESA 8591-06, 2007 N.J. AGEN LEXIS 1278, Final Decision (November 11, 2007).*

ALJ may not decide that a petitioner has satisfied the procedural requirements necessary to request the Department to reconsider, pursuant to N.J.A.C. 7:7-1.10, the application of a substantive standard in the rules on Coastal Zone Management. Likewise, the Office of Administrative Law lacks jurisdiction to determine whether a petitioner has exhausted administrative remedies pursuant to N.J.A.C. 7:7-1.10(c)3 for purposes of filing a takings claim in Superior Court. *Lutter v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 8591-06, 2007 N.J. AGEN LEXIS 980, Final Decision (November 11, 2007).*

7:7-1.11 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from 7:7-1.10 by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Law Review and Journal Commentaries

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

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a) Subject to the interpretation and definition of certain statutory terms as provided at (b) below and subject to the exemptions identified at (c) below, a CAFRA permit shall be required for:

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:
 - i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or
 - iv. A public development or industrial development;
3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 75 or more dwelling units;

ii. A commercial development having 150 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. In addition, the repair and maintenance of utilities within rights-of-way on beaches and dunes are not regulated development as defined at N.J.A.C. 7:7-1.3 provided that all disturbed areas are restored to their pre-disturbance condition. To that end, the following statutory

terms are interpreted to mean the following, for the purposes of this section.

1. The method for determining whether an existing development is an intervening development is as follows:

i. For proposed developments other than single family home or duplex and/or accessory development as described in (b)1ii below, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix B, incorporated herein by reference). If the proposed development does not fall entirely within these lines, then the existing development is not considered intervening development.

ii. For a proposed single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, excluding shore protection structures) that is not part of a larger development, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix C, incorporated herein by reference). If the proposed single family home or duplex and/or accessory development extends beyond these lines more than 15 feet on either side or a cumulative total of 20 feet, then the existing development is not considered intervening development.

iii. Existing developments that may be considered intervening development include above-ground structures such as houses, garages, cabanas or bath houses which are fully enclosed and serviced by a municipal sewer system, and commercial, industrial or public buildings provided the above-ground structure received all necessary Federal, State and local approvals and was:

(1) Completed or under active construction as of July 19, 1994;

(2) Exempt from CAFRA; or

(3) Constructed under a CAFRA permit.

iv. Existing developments that are not considered intervening development include shore protection structures, seawalls, bulkheads, retaining walls, gabions, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds without foundations, docks, piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures associated with the tourism industry as defined at N.J.A.C. 7:7-1.3 or constructed under the coastal general permit for the construction of certain types of temporary and seasonal developments at hotels and motels, commercial developments and multi-family residential developments of 75 units, N.J.A.C. 7:7-7.26.

2. If located in an area other than a beach or a dune, public development is not the following:

i. The maintenance, repair or replacement (including upgrade) of existing petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the

replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

ii. The maintenance, repair, modification, or replacement of sanitary system components other than pipelines and associated pump stations, including upgrading of systems from primary to secondary treatment, provided that an increase in capacity will not result;

iii. The construction, maintenance, repair or replacement (including upgrade) of water lines, telecommunication and cable television lines, including fiber optic cables, poles and transfer and/or switching stations associated with telecommunication lines, provided the transfer and/or switching station is located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way. This does not include the construction of telecommunication towers such as cellular telephone towers;

iv. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way;

v. The maintenance and repair of existing stormwater management facilities which receive, store, convey or discharge stormwater runoff;

vi. The construction of less than 1,200 linear feet of new stormwater pipes;

vii. The construction or expansion of educational facilities as defined at N.J.A.C. 7:7-1.3;

viii. The construction of seasonal or temporary structures related to the tourism industry as defined at N.J.A.C. 7:7-1.3; or

ix. The construction, maintenance, repair or replacement of power lines.

3. In addition to the activities identified at (b)2 above, if located more than 150 feet from the mean high water line of any tidal waters, or the landward limit of a beach or a dune, whichever is most landward, public development is not the following:

i. The construction of a new road, sanitary sewer pipeline, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, stormwater management facility, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required; or

ii. The construction of telecommunication towers such as cellular telephone towers.

4. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives. This calculation shall apply to both paved and unpaved parking areas.

5. A development that is used solely for the storage of food or other merchandise, excluding storage of agri-

chemical and petroleum products, and that is not associated with any on-site manufacturing or industrial process and is not specifically included in the definition of industrial development at N.J.A.C. 7:7-1.3 is considered a "commercial development."

6. Municipal or other government administrative, public works or emergency services buildings that are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or parks which are publicly owned or controlled are considered commercial developments.

7. Churches, synagogues or other houses of worship are considered commercial developments.

8. Development or expansion of existing developments "either solely or in conjunction with a previous development" is described at (b)8i through iv below. "Previous development" includes developments that either were previously constructed after September 19, 1973 or developments that previously received a CAFRA permit which remains valid but the approved development has not yet been built. For the purposes of (b)8i, ii and iii below, contiguous parcels shall include, but not be limited to, those land areas which directly abut or are separated by a general access roadway or other right-of-way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

i. The construction of any residential or commercial development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 19, 1973, regardless of present ownership, or any subdivision or re-subdivision of a parcel of land which occurred after September 19, 1973;

iii. The construction of any residential or commercial development on contiguous parcels of property, where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

iv. The addition of one or more parking spaces or dwelling units or equivalent to any existing dwelling units or parking spaces or equivalent parking area for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined

by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.

(1) The addition of parking spaces by restriping is not regulated.

v. The total number of dwelling units or parking spaces in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vi. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

9. Commercial development not located on a beach or a dune and not located within 150 feet of the beach, dune or mean high water line unless there is an intervening development as described at (b)1 above, excludes development which:

i. Does not cause the number of parking spaces (either solely or in conjunction with the existing development) to exceed the regulatory threshold of the appropriate zone; or

ii. Does not propose development of any new parking spaces, regardless of whether the total number of existing parking spaces exceeds the regulatory threshold of the appropriate zone.

10. The elevating of an existing residential, commercial, industrial, or public building on pilings does not require a CAFRA permit, unless the elevating of the existing building is associated with an enlargement and such enlargement is not exempt under CAFRA pursuant to (c)4 below or unless the elevating of the existing building involves excavation, filling, or grading on a beach or a dune. Additional parking spaces located under a building elevated in accordance with this paragraph are not counted toward the parking space or equivalent parking area limits at (a) above.

11. Residential developments which include the offsite construction of more than 1,200 linear feet of new sewer pipelines or roads require a CAFRA permit regardless of the number of dwelling units. For all other residential developments which are not located on a beach or dune, whether a CAFRA permit is required is based on the number of dwelling units proposed only and not the length of roadways or sewer pipelines on-site.

12. The classification or removal from classification of the municipality in which a development is located as a "qualifying municipality," as defined at N.J.A.C. 7:7-1.3, affects the requirement for a CAFRA permit for such development as follows:

i. If construction of the development under a valid CAFRA permit has been started and the municipality in which the development is located either becomes classified or is removed from classification as a "qualifying municipality," the permittee is obligated to comply with all conditions of the permit;

ii. If construction of the development under a valid CAFRA permit has not been started at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, the permittee need not comply with the conditions of the issued permit;

iii. If construction of the development is started in accordance with all necessary approvals at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not require a CAFRA permit for the development provided construction continues to completion with no lapses in construction that cumulatively total one year or more;

iv. If site plan approval is obtained for the development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not, for a period of one year from the date that the municipality is removed from classification as a "qualifying municipality," require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

v. If preliminary subdivision approval is obtained for a residential development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and no subsequent site plan approval is required, at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not, for a period of one year from the date that the municipality is removed from classification as a "qualifying municipality," require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

vi. For the purposes of (b)12iii through v above, construction means having completed one of the following, as approved as part of the municipal site plan or subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) The subsurface improvements for the roadways; or
- (3) The bedding for utilities.

vii. Development under (b)12iii through v above is limited to the specific project depicted on the approved site plan or for residential developments only, the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

13. Development is not the following:

i. The installation of a wind turbine(s) provided the wind turbine(s) is:

- (1) On or structurally attached to a legally existing building;
- (2) Less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position;
- (3) No greater than 2,000 square feet in cumulative rotor swept area; and
- (4) Any portion of the tower of the wind turbine more than 100 feet above the ground surface is a free-standing monopole;

ii. The installation of a solar panel(s) provided the solar panel(s) is:

- (1) On or structurally attached to a legally existing building;
- (2) 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;
- (3) On legally existing impervious cover unless the solar panel would be located in a floodway; or
- (4) 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; or

iii. The rehabilitation and use of an existing dredged material management area within the same footprint.

(c) A CAFRA permit shall not be required for:

1. A development which received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this paragraph, "construction" means having completed one of the following as approved as part of the site plan:

- (1) The foundation for one of the buildings or structures;
- (2) All of the subsurface improvements for roadways;
- (3) The installation of all of the bedding materials for utility lines; or
- (4) The installation of a well or septic system, for projects which are exempt based on receipt of a final municipal building or construction permit.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

v. In the event the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 19, 1997. In cases where the municipal approval expired and was renewed or that a new permit was issued, the Department will require documentation that the new or renewed permit authorized the same construction as the original permit, and that the currently authorized construction would not result in additional adverse impacts to any Special Areas as defined at N.J.A.C. 7:7E-3 that are greater than any adverse impacts associated with the development authorized before July 19, 1994, and the proposed construction is either 15 feet inshore of a bulkhead or no closer to the water than the original approval.

2. A residential development which received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this paragraph, "construction" means having completed one of the following as approved as part of the subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) All of the subsurface improvements for roadways; or
- (3) The installation of all of the bedding materials for utility lines.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

3. The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

- i. The enlargement or relocation of the footprint of the development; or
- ii. An increase in the number of dwelling units or parking spaces within the development.

iii. A relocation landward or laterally may qualify for the exemption at (c)3 above if the Department determines, in writing, that such a relocation would result in less environmental impact than the in place reconstruction of damaged or destroyed development.

iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (f)2 below.

v. An increase in the area covered by buildings and/or asphalt or concrete pavement.

4. The enlargement of any building provided that such enlargement does not result in:

i. The enlargement of the footprint of the development as defined at N.J.A.C. 7:7-1.3; or

ii. An increase in the number of dwelling units or parking spaces associated with the building;

5. The construction of a patio, deck or similar structure at a residential development, provided such construction does not result in the grading, excavation, or filling of a beach or dune.

i. For the purposes of this paragraph, "similar structure" includes porches, balconies and verandahs. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains used for the purpose that it was originally constructed. Further, the exemption shall not include the placement of any structure such as a pool, roof or enclosure with walls or windows on a patio, deck, porch, balcony or veranda. Such activities will require a CAFRA permit.

ii. For the purposes of this paragraph, the following shall be considered "similar structures" at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, or wetland: fences, flower boxes, gardens, a landscape wall (for example, railroad ties) no more than one foot in height (or a series of walls not to exceed a cumulative total of one foot in height), satellite dishes and antennas, and wooden boardwalks and gravel or brick/paver block walkways.

iii. For the purposes of this paragraph, the following shall also be considered "similar structures" at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, wetland or coastal bluff: sheds (with a footprint of 120 square feet or less), open carports, gazebos, propane tanks properly anchored, and showers, spas, hot tubs and above ground swimming pools (not exceeding 500 square feet of surface area) which do not discharge to surface waters or wetlands.

iv. For the purposes of this paragraph, the construction of timber dune walkover structures constructed in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. The fee specified at N.J.A.C. 7:7-10.1; and

iv. A completed LURP application form.

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

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

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

ii. Photographs of the site;

iii. The fee specified at N.J.A.C. 7:7-10.1; and

iv. A completed LURP application form.

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

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

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

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

iv. Photographs of the site;

- v. The fee specified at N.J.A.C. 7:7-10.1; and
- vi. A completed LURP application form.

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

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

(b)4viii added.

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

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

Substantially amended.

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

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

(b)6 substantially amended.

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

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

Petition for Rulemaking.

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

Added (b)13.

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

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

In (b)13i(4), deleted "or" from the end; in (b)13ii(4), substituted "; or" for a period at the end; and added (b)13iii.

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)1iii, (f)2iii, and (f)3v, updated the N.J.A.C. reference.

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).

7:7-2.2 Wetlands

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

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;
2. The excavation of an individual mooring slip;
3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Program within seven days after their initiation;
4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;
5. The installation of utilities;
6. Excavation of boat channels and mooring basins;
7. The construction of impoundments;
8. The construction of sea walls;
9. The diversion or appropriative use of water;

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

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

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

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

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

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

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

4. The storage or disposal of pesticides;

5. The application of persistent pesticides.

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

1. Middlesex County:

- 574-2082
- 574-2088
- 581-2082
- 581-2088
- 581-2100
- 581-2106
- 581-2112
- 581-2118
- 588-2076
- 588-2082
- 588-2106

- 588-2112
- 588-2118
- 595-2070
- 595-2076
- 595-2082
- 595-2088
- 595-2094
- 595-2106
- 602-2064
- 602-2070
- 602-2076
- 602-2082
- 602-2088
- 602-2094
- 602-2100
- 602-2106
- 609-2094
- 609-2100
- 609-2106

2. Monmouth County:

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

546-2184
 546-2190
 553-2160
 553-2166
 553-2172
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 553-2184
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 567-2172
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 574-2118
 574-2124
 574-2160
 574-2166
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 574-2178
 574-2184
 574-2190
 581-2112
 581-2118
 581-2124
 581-2130
 581-2136
 581-2142
 581-2148
 581-2154
 581-2160
 581-2166
 581-2184
 588-2118
 588-2124
 588-2130
 588-2136
 588-2142
 588-2184
 595-2178
 595-2184

3. Ocean County:

245-2088
 245-2094
 245-2100
 245-2106
 252-2076
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 252-2094
 252-2100
 252-2106
 252-2112
 259-2070
 259-2076
 259-2082
 259-2088
 259-2094
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 266-2106
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266-2118
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 280-2094
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 350-2154
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 357-2130
 357-2136
 357-2142
 357-2154

357-2160
 359-2160
 364-2130
 364-2136
 364-2142
 364-2160
 371-2136
 371-2142
 371-2148
 371-2160
 378-2142
 378-2148
 378-2160
 385-2142
 385-2148
 385-2160
 392-2136
 392-2142
 392-2148
 392-2154
 392-2160
 399-2124
 399-2130
 399-2136
 399-2142
 399-2148
 399-2154
 399-2160
 406-2118
 406-2124
 406-2130
 406-2148
 406-2154
 406-2160
 413-2118
 413-2148
 413-2154
 413-2160
 420-2142
 420-2148
 420-2154
 420-2160
 420-2166
 427-2142
 427-2148
 427-2154
 427-2160
 434-2148
 434-2154
 434-2160
 434-2166
 441-2148
 441-2154
 441-2160
 441-2166
 441-2172
 448-2142
 448-2148
 448-2154
 448-2160
 448-2166
 448-2172
 455-2154
 462-2166
 462-2154
 462-2172
 469-2154

4. Burlington County:

252-2064
 259-2046
 259-2052
 259-2058

259-2064
 259-2070
 266-2034
 266-2040
 266-2046
 266-2052
 266-2058
 266-2064
 266-2070
 273-2022
 273-2028
 273-2034
 273-2040
 273-2046
 273-2052
 273-2058
 273-2064
 273-2070
 273-2076
 280-2004
 280-2010
 280-2016
 280-2022
 280-2028
 280-2040
 280-2046
 280-2052
 280-2058
 287-2004
 287-2010
 287-2016
 287-2040
 287-2046
 294-2040
 413-1896
 413-1902
 420-1890
 420-1896
 420-1932
 420-1938
 420-1944
 427-1926
 427-1932
 427-1938
 434-1908
 434-1914
 434-1920
 434-1926
 434-1932
 448-1944
 448-1950
 448-1956
 462-1968
 469-1974
 476-1980
 476-1986
 483-1986
 483-1992
 490-1986
 490-1992

5. Atlantic County:

161-1980
 161-1986
 161-1992
 161-2004
 168-1956
 168-1962
 168-1968
 168-1974
 168-1980
 168-1986
 168-1992

168-1998	210-2088
168-2004	217-1974
168-2010	217-1980
168-2016	217-1986
168-2022	217-2040
168-2028	217-2046
168-2034	217-2052
175-1974	217-2058
175-1980	217-2064
175-1986	217-2070
175-1992	217-2076
175-1998	217-2082
175-2004	217-2088
175-2010	217-2094
175-2016	224-1980
175-2022	224-2052
175-2028	224-2058
175-2034	224-2064
175-2040	224-2070
182-1980	224-2076
182-1986	224-2082
182-1992	224-2088
182-1998	224-2094
182-2004	231-2058
182-2010	231-2064
182-2016	231-2070
182-2022	231-2076
182-2028	231-2082
182-2034	231-2088
182-2040	231-2094
182-2046	231-2100
182-2052	238-2058
189-1974	238-2064
189-1980	238-2070
189-1986	238-2076
189-1992	238-2082
189-1998	238-2088
189-2022	238-2094
189-2028	245-2046
189-2034	245-2052
189-2040	245-2058
189-2046	245-2064
189-2052	245-2070
189-2058	252-2046
196-1974	252-2040
196-1980	252-2052
196-1986	252-2058
196-2034	252-2064
196-2040	252-2070
196-2046	259-2034
196-2052	259-2040
196-2058	259-2046
196-2064	259-2052
196-2070	259-2058
203-1980	259-2064
203-1986	259-2070
203-2040	266-2022
203-2046	266-2028
203-2052	266-2034
203-2058	266-2040
203-2064	273-2016
203-2070	273-2026
203-2076	273-2022
210-1974	273-2028
210-1980	273-2034
210-1986	280-2004
210-2040	280-2010
210-2046	280-2016
210-2052	280-2022
210-2058	287-1998
210-2064	287-2004
210-2070	287-2010
210-2076	287-2040
210-2082	

6. Cape May County:

035-1914	105-1974
035-1920	105-1980
035-1926	105-1986
035-1932	112-1932
035-1938	112-1938
042-1914	112-1944
042-1920	112-1950
042-1926	112-1956
042-1932	112-1968
042-1938	112-1974
042-1944	112-1980
049-1914	112-1986
049-1926	112-1992
049-1932	119-1926
049-1938	119-1932
049-1944	119-1938
049-1950	119-1944
056-1914	119-1950
056-1920	119-1874
056-1932	119-1980
056-1938	119-1986
056-1944	119-1992
056-1950	126-1926
056-1956	126-1932
063-1938	126-1938
063-1944	126-1944
063-1950	126-1950
063-1956	126-1956
063-1962	126-1980
070-1920	126-1986
070-1926	126-1992
070-1944	126-1998
070-1950	133-1926
070-1956	133-1932
060-1962	133-1986
070-1968	133-1992
077-1920	133-1998
077-1926	133-2004
077-1932	140-1926
077-1950	140-1932
077-1956	140-1974
077-1962	140-1980
077-1968	140-1992
084-1926	140-1998
084-1932	140-2004
084-1938	140-2010
084-1950	147-1980
084-1956	147-1986
084-1962	147-1992
084-1968	147-1998
084-1974	147-2004
091-1932	147-2010
091-1938	154-1980
091-1944	154-1986
091-1956	154-1992
091-1962	154-1998
091-1968	154-2004
091-1974	154-2010
091-1980	154-2016
098-1932	161-1962
098-1938	161-1968
098-1944	161-1974
098-1950	161-1980
098-1962	161-1986
098-1968	161-1992
098-1974	161-1998
098-1980	161-2004
098-1986	161-2010
105-1932	161-2016
105-1938	161-2022
105-1944	168-1956
105-1968	168-1962
	168-1968
	168-1974

168-1980
168-1986
168-1992
168-1998
168-2016
168-2022

7. Cumberland County:

119-1926
126-1860
126-1866
126-1896
126-1902
126-1908
126-1914
126-1920
126-1926
133-1854
133-1860
133-1866
133-1872
133-1878
133-1884
133-1890
133-1896
133-1902
133-1908
133-1914
133-1920
133-1926
140-1854
140-1860
140-1866
140-1872
140-1878
140-1884
140-1890
140-1896
140-1902
140-1908
140-1914
140-1926
147-1848
147-1854
147-1860
147-1866
147-1872
147-1878
147-1884
147-1890
147-1896
147-1902
147-1908
154-1836
154-1842
154-1848
154-1854
154-1860
154-1866
154-1872
154-1878
154-1884
154-1896
154-1902
154-1908
161-1818
161-1824
161-1830
161-1836
161-1842
161-1848
161-1854
161-1860

161-1866
161-1872
161-1878
161-1884
161-1896
161-1902
161-1908
161-1914
168-1812
168-1818
168-1824
168-1830
168-1836
168-1842
168-1848
168-1854
168-1902
168-1908
168-1914
175-1812
175-1818
175-1824
175-1830
175-1836
175-1842
175-1848
175-1896
175-1902
175-1908
175-1914
182-1800
182-1806
182-1812
182-1818
182-1824
182-1830
182-1836
182-1842
182-1896
182-1902
182-1908
182-1914
189-1794
189-1800
189-1806
189-1812
189-1818
189-1824
189-1830
189-1890
189-1902
196-1782
196-1788
196-1794
196-1800
196-1806
196-1812
196-1818
196-1824
196-1830
196-1836
196-1842
196-1890
196-1896
203-1782
203-1788
203-1794
203-1800
203-1806
203-1812
203-1818
203-1824
203-1836
203-1842

203-1890
 210-1782
 210-1788
 210-1794
 210-1800
 210-1836
 217-1782
 217-1788
 217-1794
 217-1836
 224-1788
 224-1794
 224-1800

8. Salem County:

196-1782
 196-1788
 203-1776
 203-1782
 203-1788
 210-1776
 210-1782
 210-1788
 217-1764
 217-1770
 217-1776
 217-1782
 217-1788
 224-1752
 224-1758
 224-1764
 224-1770
 224-1776
 224-1782
 224-1788
 224-1794
 224-1800
 231-1752
 231-1758
 231-1764
 231-1770
 231-1776
 231-1782
 231-1788
 238-1752
 238-1758
 238-1764
 238-1770
 238-1776
 238-1782
 245-1752
 245-1758
 245-1764
 245-1770
 245-1776
 245-1782
 245-1752
 252-1758
 252-1764
 252-1770
 252-1776
 252-1782
 252-1788
 259-1752
 259-1758
 259-1764
 259-1770
 259-1776
 259-1782
 259-1788
 259-1794
 259-1800
 266-1758

266-1764
 266-1770
 266-1776
 266-1782
 266-1788
 266-1794
 266-1800
 273-1746
 273-1752
 273-1758
 273-1764
 273-1770
 273-1776
 273-1782
 273-1788
 273-1794
 280-1746
 280-1752
 280-1758
 280-1764
 180-1770
 280-1776
 280-1782
 280-1788
 280-1794
 287-1746
 287-1752
 287-1764
 287-1770
 287-1776
 287-1782
 287-1788
 294-1746
 294-1752
 294-1764
 294-1770
 294-1776
 294-1782
 294-1788
 294-1794
 301-1764
 301-1770
 301-1776
 301-1782
 301-1788
 301-1794
 308-1770
 308-1776
 308-1782
 315-1764
 315-1770
 315-1776
 315-1800
 315-1806
 322-1770
 322-1788
 322-1794
 322-1800
 329-1770
 329-1776
 329-1782
 329-1788
 329-1794
 329-1800
 336-1770
 336-1776
 336-1788
 336-1794
 343-1782
 343-1788
 343-1794

9. Gloucester County:

315-1800
315-1806
322-1794
322-1800
329-1794
329-1800
329-1806
329-1818
329-1824
336-1788
336-1794
336-1800
336-1806
336-1812
336-1818
336-1860
343-1782
343-1788
343-1794
343-1800
343-1806
343-1824
343-1848
343-1854
343-1860
350-1794
350-1800
350-1806
350-1812
350-1818
350-1824
350-1830
350-1842
350-1848
350-1854
350-1860
350-1878
357-1794
357-1800
357-1806
357-1812
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357-1836
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357-1848
357-1854
357-1878
364-1806
364-1812
364-1818
364-1824
364-1830
364-1836
364-1842
364-1848
364-1854
364-1860
364-1872
364-1878
371-1848
371-1854
371-1860
371-1872
371-1878
378-1866

10. Camden County:

364-1878
371-1872
371-1878
378-1866

378-1872
413-1896
413-1902
420-1890
420-1896

11. Mercer County:

476-1980
476-1986
483-1980
483-1986
483-1992
490-1974
490-1980
490-1986

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).

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, 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 "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), 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 "coastal area" defined by CAFRA and outside of the New Jersey 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 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.

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

(c) The following development activities will require a permit in that portion of the waterfront area at or below (outshore of) the mean high water line:

1. The removal or deposition of sub-aqueous materials (for example, excavation, 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. (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

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. 7:7E-3, provided the additions 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 free-standing 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 adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or that appears on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972) or that received a Waterfront Development permit subsequent to the date of the photograph 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 adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph 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 permit-by-rule at N.J.A.C. 7:7-7.2(a)5 and 6.

(f) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

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

- i. A completed LURP application form;
- 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 U.S. Geological Survey topographic quadrangle map;
- iv. The fee specified at N.J.A.C. 7:7-10.1; 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 LURP application form;
- 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 U.S. Geological Survey topographic quadrangle map;

iv. The fee specified at N.J.A.C. 7:7-10.1; 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. 7:7E-3.

3. For a written determination of exemption pursuant to (d)4 and 5 above, the following shall be submitted:

- i. A completed LURP application form;
- ii. A written description of the proposed development;
- iii. The fee specified at N.J.A.C. 7:7-10.1;
- 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 adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or New Jersey Coastal Wetlands Map (base map photography dated 1971, 1972) 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 U.S. Geological Survey topographic quadrangle map; and

ix. Plans showing the location and dimensions of the structures to be replaced, renovated, or reconstructed.

4. For a written determination of exemption pursuant to (d)6 above, the following shall be submitted:

- i. A completed LURP application form;

- ii. A written description of the proposed development;
- iii. The fee specified at N.J.A.C. 7:7-10.1; and
- iv. A site plan depicting the location of the existing and proposed bridge surfaced 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 agencies, 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)1iv, (f)2iv, (f)3iii, and (f)4iii, updated the N.J.A.C. reference.

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.

SUBCHAPTER 3. PRE-APPLICATION REVIEW

7:7-3.1 Purpose

(a) A preapplication review is an optional service especially recommended for major development. Pre-application meetings are, however, mandatory for coastal permit applications involving the installation of submarine cables in the Atlantic Ocean. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

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".

7:7-3.2 Request for a pre-application review

(a) Potential applicants for major projects, other than the installation of submarine cables in the Atlantic Ocean, are encouraged to request a preapplication review with the Department at the earliest opportunity. A request for a preapplication review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

ii. Maps indicating the site's location and rough internal plan of development; and

iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) Potential applicants for the installation of submarine cables in the Atlantic Ocean shall schedule the pre-application review early in the design process. A request for a pre-application review shall be made in writing and include a written description of the proposed project along with a National Oceanic and Atmospheric Administration (NOAA) nautical chart depicting potential cable routes in relationship to existing cable routes. All pre-application review requests for the installation of submarine cables shall be submitted to the Manager of the Department's Bureau of Coastal Regulation, PO Box 439, Trenton, New Jersey, 08625-0439.

(c) The Department shall, within 10 days of receipt of such request, schedule a preapplication conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A preapplication review will not be considered a declaration of intent to submit an application to the Department.

(d) For pre-application conferences involving the installation of submarine cables in the Atlantic Ocean, written notice of the pre-application meeting shall be provided by the potential applicant to the organizations listed at (d)1 through 7 below, a minimum of 15 days prior to the date of the scheduled meeting. The written notice shall include the date, time and location of the pre-application meeting and a copy of the applicable NOAA nautical chart depicting the proposed cable route.

1. Garden State Seafood Association;
2. National Fisheries Institute;
3. North Atlantic Clam Association,
4. Rutgers Cooperative Extension;
5. New Jersey Shellfisheries Council;
6. New Jersey Marine Fisheries Council; and
7. Commercial Fishing Communications Association.

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

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

Added text "and shall include . . . showing the site".

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).

In (a), inserted ", other than the installation of submarine cables in the Atlantic Ocean," following "Potential applicants for major projects"; recodified existing (b) as (c); added new (b) and (d).

7:7-3.3 Discussion of information requirements

(a) The Department shall discuss the information, including the level of detail and areas of emphasis, which must be included in a permit application for the proposed development to allow the Department to review the application if one is submitted. This does not preclude the Department from requesting additional information based upon review of the formal application submittal.

(b) The Department shall also make available to the potential applicant current information on nearby projects in the Department's files. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Department.

Recodified from 7:7-3.4 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).

Prior text at 7:7-3.3, Conceptual proposal, repealed.

7:7-3.4 Memorandum of record

(a) After the pre-application review, the Department shall, upon request, prepare a written memorandum of record or policy compliance checklist summarizing the discussion of the proposed development, the apparent sensitivity of the land and water features of its site, and the level of detail and the areas of emphasis necessary in the information that would be required as part of an application.

(b) The memorandum of record shall be mailed to the potential applicant within 20 days of the pre-application review. If an application is submitted, a copy of the memorandum of record or policy compliance checklist shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department and shall not have any binding effect on the final decision of the Department on any permit application.

Recodified from 7:7-3.5 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).

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to

other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same development, if applications for proposed developments are processed at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) establishes certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

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).

In (c), deleted "and its implementing regulations (N.J.A.C. 7:1C)" following "(N.J.S.A. 13:1D-29 et seq.)".

Case Notes

Trial court properly dismissed a landowner's complaint in lieu of prerogative writs against a borough, its board of commissioners, and its zoning officer, with regard to his attempt to obtain a zoning permit to build a pool between his oceanfront home and the ocean, as an ordinance banning construction close to the water's edge did not violate substantive due process and was not preempted by the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 to 13:19-21. *McGovern v. Borough of Harvey Cedars*, 401 N.J. Super. 136, 949 A.2d 302, 2008 N.J. Super. LEXIS 131 (App.Div. 2008).

Federal Clean Water Act and State Water-Front and Harbor Facilities Act were not intended to preempt municipality's authority to regulate land use within its borders. *Anfuso v. Seeley*, 243 N.J. Super. 349, 579 A.2d 817 (A.D.1990).

Municipality's zoning districts do not end at mean high water level where state-owned land begins and private property ends. *Anfuso v. Seeley*, 243 N.J. Super. 349, 579 A.2d 817 (A.D.1990).

Type B permit application hearing. *In re Triarch Corp.*, 139 N.J. Super. 514, 354 A.2d 652 (App.Div.1976).

7:7-4.2 Application contents

(a) Individual waterfront development, wetland, and CAFRA permit application submissions shall comply with (a) through (f) below. Individual CAFRA permit applicants must also provide public notice in the newspaper of an application submission to the Department in accordance with N.J.A.C. 7:7-4.3, Newspaper notice of application submission and availability of application for examination by the public. The submission requirements for the coastal general permits are found at N.J.A.C. 7:7-7.3, Application procedure for a coastal general permit authorization.

1. A completed LURP application form for the type of permit being applied for;

2. The appropriate application fee as set forth at N.J.A.C. 7:7-10.1;

3. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package have been submitted to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission. The third copy shall be maintained in the clerk's office.

i. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission.

ii. Applications for a waterfront development permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (a)3ii(1) through (7) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (a)4 below and a copy of the public notice shall be included in the application to the Department.

- (1) Garden State Seafood Association;
- (2) National Fisheries Institute;
- (3) North Atlantic Clam Association,
- (4) Rutgers Cooperative Extension;
- (5) New Jersey Shellfisheries Council;
- (6) New Jersey Marine Fisheries Council; and
- (7) Commercial Fishing Communications Association.

4. Verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development would occur, to the planning board and environmental commission of the county in which the proposed development would occur, and to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate, within 200 feet. The list of property owners certified by the municipality shall be no more than one year old. Exceptions to the required

notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found at (a)4i through iv below. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

“This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental
Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
Attn: (Municipality in which property is located)
Section Chief”;

i. Notice to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required for individual CAFRA applications at the time the application is submitted. Instead notice shall be provided in accordance with the notice requirements for a public hearing or for a public comment period, whichever is applicable. The notice requirements for a public hearing are set forth at N.J.A.C. 7:7-4.5(f). The notice requirements for a public comment period are set forth at N.J.A.C. 7:7-4.5(g) (for general permit application requirements see N.J.A.C. 7:7-7.3).

ii. Notice to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur is not required at the time an application is first submitted for a Waterfront Development or Wetlands permit, if a public hearing will be held pursuant to N.J.A.C. 7:7-4.5(a). Notice shall instead be provided in accordance with the requirements for notice of a public hearing set forth at N.J.A.C. 7:7-4.5(f).

iii. A waterfront development or wetlands permit application for a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length shall be subject to public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper(s). This newspaper notice shall be published as a display advertisement of at least four inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the linear development or shore protection development such as a pump station or treatment plant, groin, bulkhead, revetment or gabion, rather than to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. Such an application shall also contain a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate, within 200 feet of an above ground structure. The list of property owners certified by the municipality shall be no more than one year old. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The language of the public notice shall read as found at (a)4 above and a copy shall be included in the application to the Department;

iv. For a Waterfront Development or wetlands application, for additional development proposed on the site of an existing industrial facility of at least 100 acres in size or park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper of general circulation instead of notifying all owner's of real property, including easements as shown on the tax duplicate within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required to notice only those property owners within the vicinity of the proposed tennis court.

5. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation.

6. All coastal permit applications shall include the State plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the State plane coordinates for a site, contact the Department's Geographic Information (GIS) Office at (609) 777-0672.

i. State plane coordinates are not required as part of an application for development at a single family home or duplex lot that is not part of a larger development.

ii. For a linear development or shore protection development including beach nourishment, beach and dune maintenance or dune creation, the State plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below.

(1) For a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the development and the coordinates for points located at 1,000 foot intervals along the entire length of the development; or

(2) For a linear development of less than one-half mile in length, or shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the State plane coordinates shall include the coordinates for the end points of the development.

7. Fifteen copies of development plans. (Plans must be folded to no larger than 8 1/2 inches by 11 inches in size.)

i. For CAFRA and Waterfront Development applications for activities occurring landward of the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA".

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor. Plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified Landscape Architect instead of a Professional Engineer or Land Surveyor.

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA":

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labelled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(I) The location of upper and lower wetlands boundary. The "upper" wetlands boundary refers to the upland or landward limit of wetlands, and the "lower" wetlands boundary refers to the waterward limit of wetlands.

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, depths at mean low water outshore of the dock for a

distance of at least 100 feet (excluding lagoons), location and orientation of proposed mooring areas, mooring area depths at mean low water, including the method, time and date of soundings, cross sections of the dock including height and width of any wetland crossing(s).

(4) Development plans for activities in an area subject to a tidelands instrument shall be prepared and sealed by a professional engineer or land surveyor, and must depict the limits of the tidelands instrument. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.

8. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

9. Applications for development in an area under the jurisdiction of the Pinelands Commission must also submit either a Certificate of Filing, a Notice of Filing, a Certificate of Completeness, or a resolution approving an application for public development from the Pinelands Commission along with the other required application materials; and

10. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

(b) Waterfront Development and Wetlands applications shall also include a copy of any tidelands instrument previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

(c) Development plans for activities in an area which requires a tidelands instrument, shall be prepared by a professional surveyor or professional engineer licensed by the State of New Jersey and shall depict the limits of the areas for which the tidelands instrument will be sought.

(d) An application for a Waterfront Development or Wetlands permit proposing the discharge of dredge or fill material shall also constitute an application for a State Water Quality Certificate under Section 401 of the Federal Clean Water Act.

(e) If the regulated activity would occur in wetlands as defined by N.J.A.C. 7:7E-3.27(a) or intertidal and subtidal shallows as defined by N.J.A.C. 7:7E-3.15(a), then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition prior to engaging in a regulated activity in a wetland or intertidal and subtidal shallow, except as provided at (e)2 or 3 below.

2. The Department may, upon request of the applicant, determine that a mitigation plan will not be required as part of a permit application for the construction of catwalks, piers, docks, landings, footbridges, and observation decks provided that the applicant shows, to the satisfaction of the Department, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.5. The Department may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary.

3. Mitigation is not required for certain types of development in intertidal and subtidal shallows as specified at N.J.A.C. 7:7E-3.15(g).

4. All mitigation proposals submitted pursuant to this section shall comply with N.J.A.C. 7:7E-3B.2, Tidal wetland and intertidal and subtidal shallows mitigation proposals.

(f) All application sets including charts, plans and other large documents submitted to the Department pursuant to this chapter shall be collated and folded flat to a size that is suitable for interoffice distribution.

(g) All applications for the construction of wind turbines that, in accordance with the energy facility use rule, at N.J.A.C. 7:7E-7.4(r), require pre and/or post-construction monitoring, shall include the proposed monitoring methodology.

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

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

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

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

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Substituted "Land Use Regulation Program (LURP) permit application" for "DEPE Standard Construction Permit (CP-1)" throughout.

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

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

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

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

Rewrote the section.

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

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

Rewrote the section.

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 (g).

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

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

Rewrote (a)2.

7:7-4.3 Newspaper notice of application submission and availability of application for examination by the public

(a) Applicants for CAFRA individual permits shall give public notice that a CAFRA application has been filed with the Department and that a public hearing may be requested in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. The newspaper notice shall be a display advertisement a minimum of four inches in width and shall read as follows:

"Take Notice that an application has been submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a CAFRA permit for the development described below:

APPLICANT:

PROJECT NAME:

PROJECT DESCRIPTION:

PROJECT STREET ADDRESS:

BLOCK:

LOT:

MUNICIPALITY:

COUNTY:

The CAFRA permit application can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. A 30 day public comment period or a fact-finding public hearing will be held on this application in the future. A public hearing will be held only if the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing. Individuals may request that the Department hold a public hearing on this application. Requests for a public hearing shall be made in writing within 15 days of the date of this notice and shall state the specific nature of the issues proposed to be raised at the hearing. Hearing requests should be sent to:

New Jersey Department of Environmental
Protection
Land Use Regulation Program
PO Box 439

501 East State Street
Trenton, New Jersey 08625-0439
Attn: (Municipality in which the property is
located) Section Chief."

(b) The newspaper notice shall be published after the CAFRA application has been filed with the Department. Proof of the public notice shall be submitted to the Department within 10 calendar days of filing of the CAFRA application. Proof of the public notice shall specify the date and newspaper in which the notice was published, and shall include a copy of the newspaper notice.

1. If proof of the public notice is not received within this time frame, the application shall be deficient pursuant to N.J.A.C. 7:7-4.4 for a minimum of 20 days after notice has been published, and until proof of the public notice is received by the Department.

(c) Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.

(d) The Department shall publish in the "DEP Bulletin" a report of the receipt of each new application and each agency action on applications currently before it. In conjunction with notice provided under N.J.A.C. 7:7-4.8, publication in the "DEP Bulletin" constitutes constructive notice to all interested persons of Department actions on coastal permits, except as provided in N.J.A.C. 7:7-4.8.

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

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

Added cross reference cites.

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

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

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

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

Added new (a) and (b) and recodified former (a) and (b) as (c) and (d).

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

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

Rewrote (d).

7:7-4.4 Initial review of applications

(a) For all CAFRA applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

i. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing or for a public comment period and a public hearing or public comment period shall be scheduled within 15 days;

ii. Assign an agency project number, accept the application and issue notification to the applicant that additional information is required to correct deficiencies; or

iii. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

2. Within 15 days of the receipt of any additional information submitted pursuant to (a)1ii above, the Department shall issue notification to the applicant stating whether the amended application is considered complete.

i. Such notification shall either:

(1) Specify which deficiencies still remain;

(2) If no public hearing is to be held, declare the application complete for public comment; or

(3) If a public hearing is to be held, declare the application complete for the public hearing.

ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

3. If an application is not complete for public comment or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

4. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6 the Coastal Zone Management rules, N.J.A.C. 7:7E, in effect at that time will govern the staff review of the permit application.

5. Once an application for which a public hearing will be held has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

(b) For all Waterfront Development and Coastal Wetland applications:

1. Within 20 working days of receipt of the application, the Department shall take one of the following actions:

i. Assign an agency project number, accept the application, and issue notification that the application is complete for final review effective the date of receipt of the application;

ii. Assign an agency project number, accept the application, and issue notification to the applicant that the application is complete for public hearing and a public hearing shall be scheduled within 15 days;

iii. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review until all additional information has been received and the application deemed complete;

iv. Assign an agency project number and accept the application but request in writing that the applicant submit additional information within a specific period of time to assist in its review and inform the applicant that the Department has determined that additional information which can only be obtained by public hearing is also necessary to assist in its review; or

v. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

2. Within 15 days of receipt of any additional information submitted pursuant to b(iii) or (iv) above, the Department shall issue notification to the applicant stating whether the amended application is considered complete for public hearing or final review.

i. Such notification shall either:

(1) Specify which deficiencies still remain;

(2) If no public hearing is to be held, declare the application complete for final review; or

(3) If a public hearing is to be held, declare the application complete for the public hearing.

ii. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

3. Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. For Wetland and Waterfront Development applications for which a public hearing will not be held, and which are complete for final review, the 90 day review period established pursuant to the 90 Day Construction Permit Law, N.J.S.A. 13:1D-29 et seq., shall begin on the date of receipt of the additional information which completed the application.

4. If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward resubmission of the application provided that such resubmission is within one year of the date of cancellation.

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

iii. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

5. Once an application is declared complete for final review in accordance with N.J.A.C. 7:7-4.6 the Coastal Zone Management rules, N.J.A.C. 7:7E in effect at that time will govern the staff review of the permit application.

6. Once an application for which a public hearing will be held has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

i. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

ii. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

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

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

Added (b)2i.

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).

In (a)4 and (b)5, deleted "or for the public hearing, whichever occurs later;" following "N.J.A.C. 7:7-4.6"; in (a)5 and (b)6, substituted "will be held" for "is required" following "public hearing"; and rewrote (b)3. 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)3ii and (b)4ii, amended the N.J.A.C. references.

7:7-4.5 Public hearings and public comment periods

(a) The Department may, in its discretion, hold a fact-finding public hearing on a coastal permit application when the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing.

(b) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.

2. The hearing shall, if possible, be held in the municipality in which the development is proposed.

(c) In the event the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day comment period in accordance with (d) below.

(d) If a public comment period is to occur, the Department shall within 15 days of declaring the application complete for public comment, set a date for the commencement of the 30 day public comment period and shall so notify the applicant.

1. The date for the start of the public comment period shall be no later than 60 days after the application has been declared complete for public comment.

(e) The Department shall publish a notice announcing the date, place, and time of the public hearing or the date of commencement of the public comment period in the DEP Bulletin.

(f) The applicant shall give public notice of the public hearings, pursuant to section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12), with the exception of (f)2 and 3 below. Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. Such notice shall describe the proposed development, identify its agency number, announce the date, place, and time of the of the public hearing on the application and indicate that comments on the application may be made to the Land Use Regulation Program, New Jersey Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439 at or within 15 days after the public hearing, or until the application is declared complete for final review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length, the applicant shall give public notice containing the information described in (f)1 above in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of real property including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection development, such as a pumping station, treatment plant, groin, bulkhead, revetment, gabion, or dune walkover, rather than to all owners of real property, including easements, within 200 feet of the entire linear development as shown on the tax duplicate.

3. For additional development proposed on the site of an existing industrial facility of at least 100 acres in size, or park facility of at least 50 acres in size, the Department may at its discretion eliminate or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owners of real property, including easements as shown on the tax duplicate, within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required only to notice owners of real property, including easements as shown on the tax duplicate within the vicinity of the proposed tennis courts.

4. Notice as described at (f)1 above shall also be given to the clerk of the municipality in which the proposed development will occur the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

5. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. Proof of notice to property owners of real property, including easements as shown on the tax duplicate, and public

agencies shall consist of the white mail certified receipts or other written receipts. Proof shall also include a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper notice. In cases where proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which the notice was published.

(g) The applicant shall give public notice of the public comment period pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D12), with the exception of (g)3 and 4 below. Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. The newspaper notice shall describe the proposed development, identify its agency number, and announce the commencement date of the public comment period on the application and indicate that comments on the application shall be submitted to the Land Use Regulation Program, New Jersey Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439 within 30 days of the start of the public comment period.

2. All notice other than the newspaper notice required at (g)1 above shall consist of a site plan, letter, and copy of the completed LURP application form.

i. The site plan referred to in (g)2 above need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.

ii. The letter shall read as follows:

"This letter is to provide you with legal notification that an application has been submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan and that a 30 day public comment period will commence on <DATE>.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Your written comments must be submitted to the Department by the end of the 30 day comment period. Comments should be sent to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
Attn: (Municipality in which property is located)
Section Chief";

3. If the development is a linear development (as defined at N.J.A.C. 7:7-1.3) of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length, the applicant shall give public notice containing the information described in (g)1 above in the official newspaper of the municipality or in the newspaper of general circulation in the municipality if there is no official newspaper, and shall give public notice containing the information described in (g)2 above to owners of real property, including easements as shown on the tax duplicate within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection development, such as a pumping station, treatment plant, groin, bulkhead, revetment, gabion, or dune walkover, rather than to all owners of real property, including easements as shown on the tax duplicate within 200 feet of the entire linear development.

4. For additional development proposed on the site of an existing industrial facility of at least 100 acres in size, or park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements as shown on the tax duplicate, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct a salt dome or guard shack at an industrial facility located greater than 500 feet from adjacent properties would be required to provide notice in a newspaper instead of notifying all owners of real property, including easements as shown on the tax duplicate, within 200 feet. Similarly, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility would be required only to notice owners of real property, including easements as shown on the tax duplicate within the vicinity of the proposed tennis courts.

5. Notice containing the information described in (g)2 above of the public comment period shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

6. Proof of notice shall be submitted to the Department at least 10 days prior to the commencement of the public comment period. Proof of notice to owners of real property, including easements as shown on the tax duplicate, and public agencies shall consist of white certified mail receipts or other written receipts. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper advertisement. Proof shall also include a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old.

(h) The Department shall maintain a copy of the hearing transcript and of all written comments received for public inspection in its Trenton Office.

(i) The applicant shall provide a court reporter, bear the cost of the hearing, including, but not limited to, court reporter attendance fees, transcript costs and hearing room rental, and provide the Department with the original transcript.

(j) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(k) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.

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

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

Additional text added to (a)2 "it determines that ... of the application".

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

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

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

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

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

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

Rewrote the section.

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

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

Rewrote the section.

Case Notes

Public hearings on CAFRA permit applications are not required to be conducted under contested case rules (citing former N.J.A.C. 7:7A-1.8 and 7:7A-4.6). Public Interest Research Group of New

Jersey, Inc. v. State, 152 N.J.Super. 191, 377 A.2d 915 (App.Div.1977) certification denied 75 N.J. 538, 384 A.2d 517 (1977).

7:7-4.6 Final review of the application

(a) In the case of CAFRA applications, the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for final review.

ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The Department shall, within 15 days of the receipt of any required additional information, either declare the application complete for final review effective the date of receipt of the additional information or issue notification to the applicant that the application is still not complete for final review and specify which deficiencies remain.

(c) In the case of Waterfront Development and Coastal Wetland applications for which a public hearing was held, the application shall be declared complete for final review on the date of the public hearing.

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Notwithstanding any other provision if these rules, no application shall be declared complete for final review unless and until the applicant has possession of all tidelands instruments required for the riparian land. The Department may at its discretion issue a permit decision prior to receipt of the tidelands instrument, provided that a complete application for the tidelands instrument has been received by the DEP, Bureau of Tidelands Management.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

(c) added.

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).

In (e) substituted references to tidelands instruments for references to conveyances.

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)2, amended the N.J.A.C. reference.

7:7-4.7 Timetable for permit decisions

(a) The Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the close of the public comment period, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review.

(b) The Department shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) The timeframes for a decision prescribed under this section may be extended for a 30-day period by the mutual consent of the applicant and the Department provided that the Department or the applicant request from the other such an extension prior to the expiration date for the approval, conditioning or disapproval of such an application.

(d) If the Department fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit which has not received all required tidelands instruments setting forth the person's right to use or occupy the land.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review"; deleted text in (b) "unless a public ... complete for review".

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).

In (c), substituted "tidelands instruments" for "riparian conveyances".

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

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

Added new (c); recodified former (c) as (d).

Case Notes

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

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). DiDonato v. Wildwood Municipal Body Corporate and Politic, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.8 Publication of the permit decision

The Department shall notify the applicant of the permit decision by mail, shall publish notice of the permit decision in the DEP Bulletin, and shall also notify interested persons who specifically requested notice.

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

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

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

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

In (a) and (b), substituted references to permit decisions for references to decisions and final decisions.

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

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

Undesignated (a) and deleted (b) and (c).

Case Notes

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). DiDonato v. Wildwood Municipal Body Corporate and Politic, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.9 Withdrawal, resubmission and amendment of applications

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable following the conclusion of the initial 20 working day review period except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project of the same or reduced scope on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-5.1.

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "public hearing or final review."
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).

7:7-4.10 Requests for modifications

(a) If a permittee proposes a change in the development authorized under a coastal permit during the term of validity of the permit pursuant to N.J.A.C. 7:7-1.5, the permittee shall submit, in accordance with this section, a request for a modification of the permit. In addition, to address a construction related problem, a permittee who has completed construction shall submit a request for a modification of a permit within one year of completion of construction. The criteria for modification of a waterfront development permit are found at (a) through (e) below; for modification of a coastal wetlands permit, at (f) below; and for modification of a CAFRA permit at (g) and (h) below. The criteria for modification of a coastal general permit are found at N.J.A.C. 7:7-7.3A, Requests for modifications of coastal general permits.

(b) Any request for a modification of a CAFRA permit or waterfront development permit for development located landward of the mean high water line that meets either (b)1 or 2 below shall be treated as a request for a new permit. In that case, the permittee shall comply with the permit application requirements at N.J.A.C. 7:7-4. The permittee shall apply for a new permit if:

1. The proposed change in the development would result in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving; or
2. The proposed change in development would result in development on a lot or lots which were not included in the development authorized by the issued permit.

(c) If a permittee with a waterfront development permit for development located landward of the mean high water line proposes a change in the development that would not require a new permit under (b) above, and if the change in the development would have any of the results listed at (c)1

through 3 below, the permittee shall submit a request for a major modification of the waterfront development permit.

1. A cumulative increase in area covered by buildings, asphalt, or concrete paving of greater than 0.25 acres;
2. A new or increased encroachment in any of the following Special Areas: N.J.A.C. 7:7E-3.2 through 3.42 and 3.44 through 3.47; or
3. New or relocated development within 200 feet of any property sharing a common property boundary with the property or properties on which the proposed development would occur.

- i. For a linear development, this criterion applies only to new or relocated above ground structures.

(d) If a permittee with a waterfront development permit for development located landward of the mean high water line proposes a change in the development that would not require a new permit under (b) above, and if the change in the development does not meet the criteria at (c)1 through 3 above, the permittee shall submit a request for a minor modification of the waterfront development permit.

(e) If a permittee with a waterfront development permit for a development located below the mean high water line proposes a change in the development that meets the criteria at (e)1 through 3 below, the permittee shall submit a request for a modification of the waterfront development permit. If the permittee proposes any other change in the development, the permittee shall apply for a new permit.

1. The proposed change in the development would not result in any additional filling or filling in areas not authorized for filling under the permit;
2. The proposed change in the development would modify only the structure authorized under the permit and the proposed change in development would not result in the development on a lot or lots which were not included in the development authorized by the permit. For example, a permittee proposing to change the configuration of a dock authorized under the permit may request a permit modification; however, a permittee proposing to construct additional docks or a bulkhead, or to undertake dredging is required to apply for a new permit; and
3. If the proposed change in development is a change in a dredging activity, and is:
 - i. A change in the method of dredging;
 - ii. A change in location for placement of dredged material; or
 - iii. A change in the volume of material to be dredged without changing the specific area within which the permit authorized dredging.

(f) If a permittee with a coastal wetlands permit proposes a change in the development that would not result in either additional excavation or filling or in excavation or filling in areas not authorized under the issued permit, the permittee shall submit a request for a modification of the coastal wetlands permit. If the permittee proposes any other change in the development, the permittee shall apply for a new permit.

(g) If a permittee with a CAFRA permit proposes a change in the development that would not require a new permit under (b) above, and if the change in development would have any of the results listed at (c)1 through 3 above, the permittee shall submit a request for a major modification of the CAFRA permit.

(h) If a permittee with a CAFRA permit proposes a change in the development that would not require a new permit under (b) above, and if the change in the development does not meet the criteria at (c)1 through 3 above, the permittee shall submit a request for a minor modification of the CAFRA permit.

(i) A permittee requesting a modification to a coastal permit shall submit to the Department the following:

1. A completed LURP application form;
2. A copy of the permit to be modified, approved site plan(s), and summary report (if applicable);
3. A detailed explanation of the proposed change(s) in the previously authorized development and the reason for changing the previously authorized development;
4. An amended Environmental Impact Statement or Compliance Statement addressing all applicable Coastal Zone Management rules (N.J.A.C. 7:7E);
5. Five copies of an amended site plan(s), showing all proposed changes in the development;
6. The applicable fee under N.J.A.C. 7:7-10;
7. Verification (white mailing receipt or other written receipt is acceptable and a copy of the public notice) that public notice has been provided in accordance with (j) below. Verification shall also include a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with (j) below. The list of property owners certified by the municipality shall be no more than one year old; and
8. Any additional information necessary to review the proposed modification.

(j) The permittee shall provide public notice as follows:

1. For a major modification of a CAFRA permit or a waterfront development permit for development located landward of the mean high water line:

i. Submission of three complete copies of the request for a modification required under (i) above to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission. The third copy shall be maintained in the clerk's office.

(1) Requests for a modification of a permit for development within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission.

(2) Requests for a modification of a permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (j)1i(2)(A) through (G) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (j)1ii below and a copy shall be included in the application to the Department.

- (A) Garden State Seafood Association;
- (B) National Fisheries Institute;
- (C) North Atlantic Clam Association,
- (D) Rutgers Cooperative Extension;
- (E) New Jersey Shellfisheries Council;
- (F) New Jersey Marine Fisheries Council; and
- (G) Commercial Fishing Communications Association.

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, to the planning board and environmental commission of the county in which the proposed development would occur, and to all owners of real property, including easements, as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. Exceptions to required notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found at (j)1iii and (j)4 below. The amended site plan referred to in this subparagraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal permit will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal permit in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal permit can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental
Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
Attn: (Municipality in which property is located)
Section Chief;"

iii. For modified developments proposed on the site of an industrial, commercial or residential development of at least 100 acres or a park facility of at least 50 acres, provided there is no change in land use, the Department may, at its discretion, limit the requirement for public notice to property owners at (j)1ii above to only those property owners the Department has determined are likely to be affected by the modification(s) to the previously approved development. The determination shall be based on the size of the proposed modification and its proximity to properties within 200 feet.

2. For a minor modification of a CAFRA permit or a waterfront development permit for a development located landward of the mean high water line, public notice in accordance with (j)1i above.

3. For a modification of a coastal wetlands permit or waterfront development permit for a development located below (outshore of) the mean high water line, public notice shall consist of the following:

i. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i above;

ii. Notice, including a copy of the amended site plan and completed LURP application form, to all owners of real property including easements, sharing a common property boundary with the property on which the proposed development would occur. The amended site plan referred to in this subparagraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it

generally depicts the proposed development and the general and site specific location. The public notice shall read as described at (j)1ii above and a copy shall be included in the application to the Department;

4. Rather than public notice as required under (j)1 through 3 above, for a modification of any coastal permit, if the change is to a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one half-mile or more in length, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i above;

iii. Notice, including a copy of the amended site plan and completed LURP application form, to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

iv. Notice including a copy of the amended site plan and completed LURP application form to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection structure, such as a treatment plant, groin, revetment, gabion or bulkhead rather than to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

(k) The Department shall publish in the DEP Bulletin notice of the receipt of each request for modification of a coastal permit and notice of the approval or disapproval of each request.

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

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

Added "minor".

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.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

In (b) substituted "Land Use Regulation Program (LURP) permit application form" for "CP-1 form".

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

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

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

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

Rewrote the section.

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

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice, by certified mail, of intent to revoke the permit and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all reasonable efforts to restore the site to its pre-construction condition.

Administrative change to (b)1.
See: 23 N.J.R. 3325(b).
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Action by the New Jersey Department of Environmental Protection (DEP) in "reconsidering" its grant, per the Coastal Zone Management Regulations, N.J.A.C. 7:7E-1.1 to -8A.5, and thereafter suspending, per N.J.A.C. 7:7-4.11, a permit previously granted to the developer of a residential housing complex consisting of townhouses along the Hudson River walkway, a two-floor parking deck, and three high-rise towers, was arbitrary because DEP's action was not taken on the basis of any

new information nor any modification of the plan but simply because DEP found a different way to define and measure the structure. In recommending that the developer's motion for summary decision in its favor be granted, the Administrative Law Judge concluded that DEP's new method of measurement was neither uniformly applied nor previously defined and also suffered from the further defect that it was inconsistent with the objectives of the Coastal Zone Management Regulations. *Riverview Development LLC v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ELU-WD 08640-11, AGENCY Dkt. No. 0908-05-0004.3 and WFD060001, 2013 N.J. AGEN LEXIS 325, Initial Decision (November 4, 2013).

7:7-4.12 (Reserved)

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).
Added "final review or public hearing".
Repealed by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Section was "Expedited application process".

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

Law Review and Journal Commentaries

Administrative Procedure—Environmental Law. Steven P. Bann, 137 N.J.L.J. No. 1, 67 (1994).

7:7-5.1 Hearing request

(a) Subject to the limitation on thirdparty hearing rights specified in (d) below, any interested persons who consider themselves aggrieved by a permit decision of the Land Use Regulation Program may, within 30 days of publication of notice of the permit decision in the DEP Bulletin submit a written request for an adjudicatory hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402. The DEP Bulletin is available through the Department's website at www.state.nj.us/dep. The written request shall include:

1. All information required by the "Adjudicatory Hearing Request Checklist and Tracking Form" available from the Department's Land Use Regulation Program, PO Box 439, Trenton, NJ 08625-0439 and on the Land Use Regulation Program's website at www.state.nj.us/dep/landuse, including the following:

- i. Information on the person requesting the hearing;
- ii. Information on the decision being appealed;
- iii. A copy of the decision document;
- iv. The legal and factual basis for the appeal;
- v. Information on the issues being appealed, whether they were discussed during the review process and suggestions to settle these issues; and
- vi. Any special hearing requirements.

2. If the hearing request is submitted by someone other than the applicant, in addition to submitting the information requested above, the person requesting the hearing shall submit additional information including the following:

- i. Evidence of notice to the permit applicant;
- ii. Information regarding the participation of the person requesting the hearing in the application review process; and
- iii. Information necessary for the Department to determine whether the appellant has a legal right to a hearing.

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

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

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

Administrative change to (a)1.

See: 23 N.J.R. 3325(b).

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

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

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

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

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

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

Rewrote the section.

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

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

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

Case Notes

Issuance of waterfront development permit during pendency of application did not entitle marine conservation group to a review hearing. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Marine conservation group had standing to seek judicial review of grant of waterfront development permit. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Noted that conceptual approval permit not granted and additional evidence from objectors not permitted by Coastal Area Review Board (citing former N.J.A.C. 7:7D-1.9). *Crema v. Dept. of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

7:7-5.2 Response to a hearing request

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the hearing request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request, may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of the notice of the hearing request in the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.

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

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

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

7:7-5.3 Action on hearing request

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

(b) The Commissioner shall act on any hearing request which complies with the requirements of this subchapter within 21 days of its receipt.

(c) The Commissioner may, upon request and for good cause shown, stay the effective date of the permit or any or all of the conditions of the permit pending resolution of the adjudicatory hearing.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

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

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

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

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

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

Case Notes

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

Appeal by interested persons of decision granting CAFRA permit does not require a contested case evidentiary hearing; hearing received was fair and adequate; permit decision supported by ample credible evidence; Commissioner not required to hold hearing in considering appeal (citing former N.J.A.C. 7:7D-2.8). Normandy Beach Improvement Assn. v. Dept. of Environmental Protection, 193 N.J.Super. 57, 472 A.2d 156 (App.Div.1983) certification denied 96 N.J. 305, 475 A.2d 596 (1984).

7:7-5.4 Settlement in response to a hearing request

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

(b) Applicants will be required to submit information adequate to allow the Department to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEP Bulletin, and shall be provided to the clerk of the municipality in which the proposed development is located and to any interested third party who commented on the project in writing or at the public hearing (if one was held), and any interested person shall have 10 days from the date of publication in the DEP Bulletin to comment on a proposed settlement.

(d) The Department shall publish in the DEP Bulletin notice of any settlement, including a permit, which is arrived at pursuant to this section.

(e) Any permit which is issued as a result of a settlement may be appealed by an affected party not a party to the settlement, in the manner provided for in this subchapter.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

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

7:7-5.5 (Reserved)

Repealed by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Section was "Coastal Area Review Board procedures".

Case Notes

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

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

7:7-6.1 When an EIS is required

(a) An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all coastal permit applications. A request for modification of a coastal permit shall include an amended EIS or Compliance Statement pursuant to N.J.A.C. 7:7-4.10(i).

(b) The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which, based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).
Rewrote (a).

Law Review and Journal Commentaries

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

7:7-6.2 Formats and contents

(a) The applicant shall prepare and submit the EIS or Compliance Statement in the form and manner set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS or Compliance Statement the following:

1. Summary: A brief one or two page summary shall preface the EIS or Compliance Statement, and shall contain:

- i. A description of site, including location, tax map designation, and existing conditions;
- ii. A description of the size, nature and location of the proposed development;
- iii. A description of the major environmental impacts associated with the proposed development, including possible areas of controversy or significant issues to be solved; and
- iv. A list of any other municipal, state or federal approvals required or received, if any;

2. Project description: The project description consists of eight elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

- i. The description shall consist of written and graphic material and development plans as specified in N.J.A.C. 7:7-4.2(a)7.
- ii. The eight elements are: the development description, site plan, structure description, housing plan, transportation plan, utilities plan, public services plan, and outdoor recreation plan (as appropriate);

3. Environmental assessment and compliance with the Coastal Zone Management rules. This section shall include an environmental inventory assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment. This section shall also include a detailed statement of compliance with the Coastal Zone Management rules, N.J.A.C. 7:7E and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) For CAFRA permit applications, the EIS or Compliance Statement shall demonstrate, as required by the Coastal Area Facility Review Act at N.J.S.A. 13:19-10 and in accordance with N.J.A.C. 7:7E-1.5(b), that the proposed development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;
2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;

3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;

4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;

6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and

7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region.

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

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

(b)4-6 added.

Recodified from 7:7-6.3 and amended by R.1994 d.378, effective July 18, 1994.

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

Prior text at 7:7-6.2, Distribution of EIS to other agencies, repealed.

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

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

Rewrote the section.

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

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

In introductory paragraph (c), added “, as required by the Coastal Area Facility Review Act at N.J.S.A. 13:19-10 and in accordance with N.J.A.C. 7:7E-1.5(b),”.

Law Review and Journal Commentaries

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

7:7-6.3 Preparation

(a) The level of detail and areas of emphasis in an EIS will vary depending upon the nature and complexity of the facility and the nature of the site and its surrounding regions.

1. The EIS should be concise, and should contain the facts and analyses necessary to evaluate the application with reference to the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

2. The information should be presented in an analytic, rather than an encyclopedic format.

(b) If the applicant believes that specific elements of the EIS or Compliance Statement are not applicable to the proposed development, the applicant may indicate “not applicable” under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8½ by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, name of preparer, date of

preparation (including all revisions), and source of information. All appendices shall be labelled on the cover page so that they can be identified.

(d) The EIS or Compliance Statement should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Department recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an

EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS or Compliance Statement must discuss the applicability of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

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

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

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.1 General standards for issuing coastal general permits and permits-by-rule

(a) This section contains the procedures and substantive standards governing the issuance of new coastal general permits in accordance with CAFRA, N.J.S.A. 13:19-1, the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued coastal general permits. N.J.A.C. 7:7-7.4 describes the activities authorized by permit-by-rule.

(b) Before reissuing a coastal general permit or permit-by-rule, or adopting a new coastal general permit or permit-by-rule, the Department will propose a draft coastal general permit or permit-by-rule for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue a coastal general permit or permit-by-rule 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 a public hearing with respect to the proposed coastal general permit or permit-by-rule. After a coastal general permit has been issued by the Department, the Department will not hold hearings on individual applications for a coastal general permit.

(d) Each coastal general permit or permit-by-rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and

2. A precise description of the geographic area to which the coastal general permit or permit-by-rule applies.

(e) The Department will include in each coastal general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the coastal general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a coastal general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of coastal general permit or permit-by-rule, and thereafter require individual permits for development previously covered by the coastal general permit or permit-by-rule, if it finds that the coastal general permit or permit-by-rule no longer meets the purposes of applicable statutes and of this chapter.

(g) The Department shall review each coastal general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each coastal general permit and permit-by-rule previously adopted.

(h) If a coastal general permit or permit-by-rule is not modified or reissued within five years of initial adoption by publication in the New Jersey Register, it shall automatically expire.

(i) N.J.A.C. 7:7-7.2 sets forth the procedure for obtaining an authorization under a permit-by-rule and the substantive standards for the various permits-by-rule. N.J.A.C. 7:7-7.3 sets forth the procedure for obtaining an authorization under a coastal general permit, and N.J.A.C. 7:7-7.5 through 7.25 set forth the substantive standards for the various coastal general permits.

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

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

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

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

Rewrote the section.

7:7-7.2 Permits-by-rule

(a) This section details the activities authorized by a permit-by-rule.

1. Single family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family home or duplex on the non-waterward sides of the single family home or duplex, provided that:

- i. The expansion is not proposed on a beach, dune, or wetland;

- ii. The expansion meets the requirements of N.J.A.C. 7:7E-3.25; and

iii. The expansion does not exceed a cumulative surface area of 400 square feet on the property constructed after July 19, 1994. For example, a 200 square foot expansion of a single family home or duplex could be authorized under this permit-by-rule and an additional 200 square foot expansion could later be authorized under this permit-by-rule, since the cumulative footprint of the development for both expansions would not exceed 400 square feet on the property. However, a property on which a 300 square foot expansion was already constructed pursuant to a permit-by rule would not be eligible for another permit-by-rule subsequently for an additional 200 square foot expansion since the cumulative total footprint of development for both expansions would exceed 400 square feet.

2. (Reserved)

3. The development (including expansion or reconstruction and expansion) of a 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 development are located on a bulkheaded lagoon lot and, provided that the proposed single family home or duplex and/or accessory structures comply with all of the following:

i. Development under this permit-by-rule 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. 7:7-2.1(b)8;

ii. The site is located on a man-made lagoon lot, with an existing bulkhead along the entire waterfront portion of the site;

iii. All waterfront portions of the site are protected by a currently serviceable bulkhead;

iv. There are no wetlands on the site landward of the bulkhead;

v. The proposed single family home or duplex and accessory structures, excluding decks, are set back a minimum of 15 feet from the waterward face of the bulkhead. If there is no alternative to locating the proposed single family home or duplex and accessory structures at least 15 feet landward of the bulkhead, the set back shall be reduced if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing bulkhead and a conservation restriction is recorded for the property which states that any reconstruction of a bulkhead shall be within 18 inches of the existing bulkhead;

vi. A silt fence is erected landward of the bulkhead with a 10-foot landward return on each end prior to con-

struction. This fence shall be maintained and remain in place until all construction and landscaping activities are completed;

vii. If the development includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or else be pitched to drain all runoff onto permeable areas of the site;

viii. The development shall meet the requirements of N.J.A.C. 7:7E-3.25;

ix. The single family home or duplex shall be serviced by an existing municipal sewer system; and

x. All sub-gravel liners must be made of filter cloth or other permeable material.

4. Placement of public safety or beach/dune ordinance signs on beaches and dunes provided no footings are required, and placement of signs at public parks.

5. The construction of nonresidential docks, piers and boat ramps located landward of the mean high water line, provided that the construction waterward of the mean high water line has received a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. This permitbyrule also includes the construction of nonresidential decks provided they are not located on a beach, dune or wetland, provided the construction does not require clearing of forest vegetation and provided the size does not exceed a footprint area of 400 square feet. The Waterfront Development permit may include additional conditions (including but not limited to public access to the waterfront) on the upland construction to insure compliance with the Coastal Zone Management rules, N.J.A.C. 7:7E.

6. The construction of the portion of a recreational dock or pier landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. The width of the structure landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. The Waterfront Development permit may include additional conditions on the upland construction to insure compliance with the Coastal Zone Management rules (N.J.A.C. 7:7E). For example, the Waterfront Development permit may be conditioned to require the dock to cross the wetlands at the narrowest point on the property or to allow continued access along the shoreline.

7. Other than reconstruction within the CAFRA area that meets the exemption from a CAFRA permit at N.J.A.C. 7:7-2.1(c)3, the reconstruction, within the same footprint, of a legally constructed, residential or commercial development that has been or could have been legally occupied in the most recent five-year period, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State, and Federal law and provided:

i. The reconstruction does not result in the enlargement or relocation of the footprint of the development;

ii. In the case of a residential development, the reconstruction does not result in an increase in the number of dwelling units;

iii. In the case of a commercial development, the reconstruction does not result in an increase in the number of parking spaces or equivalent paved area associated with the development;

iv. The construction meets the requirements of N.J.A.C. 7:7E-3.25;

v. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement; and

vi. This permit-by-rule does not apply to repairs or maintenance of the residential or commercial development, such as replacing siding, windows or roofs.

8. The expansion or relocation (with or without expansion) landward or parallel to the mean high water line of the footprint of a legally constructed residential development, including accessory development such as sheds, garages, pools, and driveways, or commercial development that has been or could have been legally occupied in the most recent five-year period, provided:

i. The expansion or relocation is in compliance with the applicable requirements or codes of municipal, State, and Federal law;

ii. Except as provided in (a)8viii below, the expansion or relocation is not proposed on a beach, dune or wetland;

iii. In the case of residential development, the expansion does not result in an increase in the number of dwelling units;

iv. In the case of commercial development, the expansion does not result in an increase in the number of parking spaces or equivalent parking area associated with the development;

v. Except as provided in (a)8viii below, the expansion or relocation does not result in additional impacts to special areas as defined at N.J.A.C. 7:7E-3;

vi. The expansion or relocation meets the requirements of N.J.A.C. 7:7E-3.25 and 3.26; and

vii. The expansion does not increase the surface area of the footprint of the development by a cumulative total of more than 400 square feet on the property constructed after July 19, 1994. For an example of how the cumulative total limitation would apply, see (a)1iii above.

viii. Where the expansion includes structures such as stairs or an ADA-compliant ramp, which are constructed only for access to a residential or commercial development required to be elevated pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, in accordance with the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, there is no feasible alternative location for these structures outside of a beach, dune, wetland, or other special areas as defined at N.J.A.C. 7:7E-3. ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 1201 et seq.).

9. The construction of a utility line, including cable (that is, electric, television, or fiber optic), telecommunication, wastewater, petroleum, natural gas, or water, attached to a bridge or culvert. This permit-by-rule applies only to that portion of the utility line that will be constructed across the tidal waterway up to the mean high water line, provided a tidelands instrument has been obtained for the utility line. The construction of the utility line shall comply with the following:

i. No excavation, dredging or filling shall be undertaken within the water body over which the utility line crosses;

ii. The utility line shall be firmly attached to the existing bridge or culvert structure so that no part of the utility line, its encasement, or any attachment device extends above or below the existing bridge or culvert structure;

(1) If the crossing is a bridge, the utility line, its encasement, and all attachment devices shall be located entirely above the elevation of the low chord of the superstructure and entirely below the elevation of the bridge surface;

(2) If the crossing is a culvert, the utility line, its encasement, and all attachment devices shall be located entirely above the overt elevation of the culvert and entirely below the elevation of the top of the culvert;

(3) If the utility line is a pipeline that conveys any substance other than potable water, the utility line shall be sufficiently encased within ductile iron or concrete to protect the utility line from damage from impact with floating debris during floods; and

(4) If there is a predominant direction of flow within the water body, the utility line shall be attached to the downstream face of the bridge or culvert;

iii. The installation of the utility line shall have no adverse impacts to special areas as defined in the Coastal Zone Management rules at N.J.A.C. 7:7E-3;

iv. Construction equipment shall be operated from land, the top of the bridge or culvert, or from barges, and shall under no circumstances be allowed to enter the water body; and

v. This permit-by-rule does not relieve the permittee from the obligation of obtaining all necessary approvals from the U.S. Army Corps of Engineers.

10. Where a single family home or duplex is proposed or exists on a lot which was previously filled and is not part of a larger development, the prior filling of any lands on the lot formerly flowed by the tide shall be considered by the Department to be authorized provided the filling appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78). The permit-by-rule is only effective if a tidelands instrument has been obtained for all filled tidelands areas.

11. The construction of the portion of a boat ramp landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. A boat ramp located within wetlands is not authorized by this permit-by-rule. The width of the boat ramp landward of the mean high water line shall not exceed the width of the boat ramp waterward of the mean high water line. The Waterfront Development permit may include additional conditions on the upland construction to insure compliance with the Coastal Zone Management rules (N.J.A.C. 7:7E).

12. The construction and/or installation, at a marina, a boatyard or a boat sales facility, of a boat wash wastewater system that prevents the discharge of boat wash wastewater to the waters of the State, including a boat wash wastewater system necessary to comply with the Equipment and Vehicle Washing provisions of the New Jersey Pollutant Discharge Elimination System (NJPDES) Basic Industrial Stormwater General Permit NJ0088315 (5G2) established under the NJPDES rules, N.J.A.C. 7:14A. This permit-by-rule authorizes the construction of a boat wash wastewater system, including an impervious wash pad or pads connected to a collection system, reclaim/recycling system, or infrastructure to connect to an existing sanitary sewer. This permit-by-rule additionally authorizes a sump or other mechanism to collect the boat wash waste water, shed(s) to house the treatment system and/or a tank(s) to store the wash water for reuse or collection, as applicable for the system utilized. This permit-by-rule authorizes at any one marina, boatyard, or boat sales facility one to three wash pads and a maximum of three boat wash wastewater systems. Authorization under this permit-by-rule does not relieve a marina or boatyard of the obligation to obtain any other permits from the Department, including a Treatment Works Approval for a sanitary sewer connection or a Basic

Industrial Stormwater General Permit NJ0088315 (5G2). Each boat wash wastewater system shall:

i. Be located on the upland portion of the marina, boatyard, or boat sales facility;

ii. Be located outside of any wetlands;

iii. Include a wash pad that is:

(1) Equipped with a pit, trough, trench drain, or settling chamber with sump or similar type pump;

(2) Bermed or pitched to drain all boat wash wastewater to the pit, trough, trench drain, or settling chamber;

(3) Less than or equal to a surface area of 1,250 square feet; and

(4) Connected to a reclaim/recycling system, collection tank to store boat wash wastewater for reuse or collection/pump out, or a sanitary sewer;

iv. If the system has a shed or storage unit to house the boat wash wastewater system, the shed or storage unit shall be:

(1) Used exclusively to house the boat wash wastewater system;

(2) Less than or equal to 150 square feet in size; and

(3) Limited to one shed or storage unit per system; and

v. If the system will discharge to a sanitary sewer, connection shall be to an existing sewer line located on-site or immediately adjacent to the site.

13. 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:

i. 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;

ii. No wind turbine tower(s) or site disturbance shall be located in floodways;

iii. The wind turbine(s), including blades, tower and site disturbance, is set back a minimum of 50 feet, as measured parallel to the ground:

(1) 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

(2) From the boundary of any wetlands;

iv. 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)13iv(1) and (2) below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

(1) 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

(2) The wind turbine(s) is located on legally existing impervious cover;

v. 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);

vi. 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; and

vii. 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.

14. The installation of solar panels on a maintained lawn or landscaped area at a single family home or duplex lot provided:

i. The solar panel development shall not be located in or on dunes, beaches, wetlands, floodways, or coastal bluffs;

ii. The solar panel development shall be setback a minimum of 50 feet from the inland limit of any wetlands, beach, or dune;

iii. The maintained lawn or landscaped area is not subject to a previous coastal permit requirement that it remain as vegetative cover; and

iv. 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)14iv(1) and (2) below. The Landscape Maps are

available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

(1) 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

(2) The solar panel(s) is located on legally existing impervious cover.

15. 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. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water, 33 U.S.C. §§ 1251 et seq. The proposed reconfiguration shall:

i. Not extend outside of the area covered by an existing Tidelands instrument;

ii. Not result in an increase in the number of boat slips;

iii. Not hinder navigation;

iv. Not increase the total linear footage of docks or piers within the marina;

v. Minimize the water area covered by structures by:

(1) 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

(2) 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

vi. Provide a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline;

16. The placement of sand fencing to create or sustain a dune, provided the sand fencing complies with (a)16i through iii below. This permit-by-rule does not authorize the excavation or grading of a dune. The sand fencing shall:

i. Be placed on the landward side of the dune;

ii. Be placed parallel to the mean high water line; and

iii. Not prevent perpendicular public access to the beach.

17. 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:

i. The structures are located on the upland portion of a lot with a legally existing, functioning bulkhead;

ii. No grading, excavation, filling, or placement of a structure(s) is undertaken on a beach, dune, or wetland; and

iii. The discharge from the aquaculture activities is to a water body and not directly into a wetland.

18. 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:

i. 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

ii. 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.

19. The placement of shellfish cages 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 shellfish cages, whichever occurs first, within five days the permittee shall remove all shellfish cages placed within the 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 shellfish cages shall comply with the following:

i. There shall be a minimum of four feet of water between the top of any cage and the water surface at mean low water;

ii. The cages shall be continuously checked and repaired to ensure that they are not displaced off the lease area;

iii. The cages shall be constructed of non-polluting materials; and

iv. No activity undertaken pursuant to the 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.

20. The construction and/or installation of a pumpout facility and/or pumpout support facilities in the circumstances set forth at (a)20i and ii below. The construction and/or installation of a pumpout facility or pumpout support facility shall have no adverse impacts to any special areas described at N.J.A.C. 7:7E-3.

i. At a marina, boat yard, boat sales facility, yacht club, restaurant, boat ramp, or other waterfront facility, the construction and/or installation of a pumpout facility and/or the construction of pumpout support facilities, such as stanchions, hydrants, piping, pumps, holding tanks, a concrete pad for a holding tank (not to exceed a surface area of 100 square feet), a platform to elevate a pump above flood level, macerator pumps, or other equipment necessary to transfer sewage from the holding tank on a boat to a sanitary sewer line or holding tank, provided the pumpout discharges to:

(1) A municipal or regional treatment plant where practicable;

(2) A subsurface sewage disposal system; or

(3) A holding tank with waste being removed by a licensed septage hauler.

(A) Any facility using a holding tank for the pumpout discharge shall maintain a record of removal of the waste.

ii. A sewer line connecting a pumpout facility and/or pumpout support facility into an existing sewer line located on-site or located immediately adjacent to the site, provided:

(1) The sewer line and the area of the connection into the existing sewer are located within areas of non-porous cover;

(2) For a sewer line that connects from a pumpout facility and/or pumpout support facility that is located on an existing dock, the sewer line does not extend below the stringers of the dock; and

(3) The sewer line receives a Treatment Works Approval as required in accordance with the

Department's rules at N.J.A.C. 7:14A from the Department's Division of Water Quality.

21. The implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site. The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling. 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 §§ 1251 et seq. This permit-by-rule authorizes the implementation of a sediment sampling plan for sampling to be conducted within a water area described at N.J.A.C. 7:7E-4.1, as part of a dredging or dredged material management activity or as part of a remedial investigation, provided:

i. If the sampling is part of a dredging or dredged material management activity, the sediment sampling plan shall be approved in writing by the Department's Office of Dredging and Sediment Technology; or

ii. If the sampling is part of a remedial investigation of a contaminated site, the sediment sampling plan shall be prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and approved by the Department or certified by a Licensed Site Remediation Professional in accordance with the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C.

(b) For activities subject to (a)5, 6 and 10 above, the Department shall review the activities subject to the permit-by-rule in conjunction with the Waterfront Development permit application.

(c) Notification to the Department prior to commencement of a development which meets the conditions of (a)1, 3, 4, 7, 8 and 9 above is not required.

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.1997 d.534, effective December 15, 1997.

See: 28 N.J.R. 4836(a), 29 N.J.R. 5287(a).

Inserted (a)7; rewrote (b); deleted (b)1 through (b)4; rewrote (c); and deleted (c)1 and (c)2.

Recodified from N.J.A.C. 7:7-7.4 and 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. Former N.J.A.C. 7:7-7.2, General Permit authorization, repealed.

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

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

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

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

Rewrote (a)1; in (a)3viii, substituted "meet the requirements of N.J.A.C. 7:7E-3.25" for "comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1"; in (a)7iii, deleted "and" from the end; added new (a)7iv; and recodified former (a)7iv and (a)7v as (a)7v and (a)7vi.

Amended by R.2008 d.378, effective December 15, 2008.

See: 40 N.J.R. 4386(b), 40 N.J.R. 6960(a).

Added (a)11.

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 (a)12 and (a)13.

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

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

Section was "Permits-By Rule". In the introductory paragraph of (a), substituted "permit-by-rule" for "Permit-By-Rule"; rewrote the introductory paragraph of (a)7; in (a)7iv, deleted "and" from the end; in (a)7v, substituted ";" and "for a period at the end; added new (a)8; recodified former (a)8 through (a)13 as (a)9 through (a)14; in (a)13iv, substituted "(a)13iv(1)" for "(a)12iv(1)"; in (a)14iv, substituted "(a)14iv(1)" for "(a)13iv(1)"; and added (a)15 through (a)21.

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 with one change (effective July 15, 2013): in the introductory paragraph of (a)17, inserted "shellfish".

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

7:7-7.3 Application procedure for a coastal general permit authorization

(a) A person proposing to engage in an activity covered by a coastal general permit shall submit the following to the Department:

1. A completed LURP application form;
2. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation;
3. The general site location of the development, which may be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;
4. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package have been submitted to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission, or any public body with similar responsibilities. The third copy shall be maintained in the clerk's office. Applications for coastal general permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;
5. Verification that a certified mail notice (white receipts or green cards are acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the construction code official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Verification that notice has also been provided to all

owners of real property, including easements, as shown on the tax duplicate, surrounding and sharing a property boundary at any point on the perimeter of the proposed development. Verification in the form of a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate, surrounding and sharing a property boundary at any point, except as provided at (a)5i and ii below shall also be provided. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows:

“This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for authorization under a coastal general permit for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk’s office or by appointment at the Department’s Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental
Protection
Land Use Regulation Program
PO Box 439
Trenton, New Jersey 08625-0439
Attn: (Municipality in which property is located)
Section Chief”;

i. For beach and dune maintenance permit applications which involve more than one single family lot, the applicant shall provide public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements, as shown on the tax duplicate within 200 feet of a proposed dune walkover structure, rather than to all owners of real property, including easements within 200 feet of the beach and dune maintenance activities. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location;

ii. For additional development proposed on the site of an existing park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility might be required to notice only those property owners within the vicinity of the proposed tennis court.

6. All coastal permit applications shall include the State plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the State plane coordinates for a site contact the Department's Geographic Information (GIS) Office at (609) 777-0672.

i. State plane coordinates are not required for applications for the following coastal general permits: N.J.A.C. 7:7-7.7 (for single family homes or duplexes that are not part of a larger development only), 7.8, 7.9, 7.10, 7.11, 7.12, 7.14, 7.18, 7.19 and 7.20.

ii. For shore protection development including beach nourishment, beach and dune maintenance or dune creation, the State plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below.

(1) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the development and the coordinates for points located at 1,000 foot intervals along the entire length of the development; or

(2) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the State plane coordinates shall include the coordinates for the end points of the development;

7. A fee pursuant to N.J.A.C. 7:7-10; and

8. The additional information for the specific coastal general permit for which the authorization is sought, as required under N.J.A.C. 7:7-7.5 through 7.26.

(b) Within 20 working days of receipt of the application, the Department shall take one of the following actions:

1. Declare the application complete for final review effective the date of receipt by the Department;

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in the Department's review.

i. Notwithstanding any other provision of these rules, no application shall be declared complete for final review unless and until the applicant has possession of tidelands instruments required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the tidelands instrument provided that a complete application tidelands instrument has been received by the Department's Bureau of Tidelands Management; or

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(c) Within 15 days of the receipt of any additional information submitted pursuant to (b)2 above, the Department shall issue notification to the applicant regarding whether the amended application is considered complete.

1. Such notification shall either:

i. Specify which deficiencies still remain; or

ii. Declare the application complete for final review effective the date of receipt of the additional information.

2. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

(d) The Department shall make a decision within 90 days of the application being declared complete for review.

(e) If an application is not complete for final review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-10.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-7.3.

(f) If the Department fails to render a decision on the coastal general permit within 90 days of the date it was declared complete for review, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a coastal general permit authorization where the applicant has not received all required tidelands instruments setting forth the person's right to use or occupy the riparian land.

(g) An application for authorization under a coastal general permit will also be reviewed following the procedures set forth at N.J.A.C. 7:7-4.8 through 4.11.

(h) The Department shall require an application for an individual coastal permit instead of a coastal general permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements.

(i) When all aspects of a project do not qualify for a coastal general permit, then the entire project shall require an individual coastal permit application, with the exception of authorization issued under the following coastal general permits:

1. Coastal general permit for the development of a single family home or duplex (N.J.A.C. 7:7-7.8);
2. Coastal general permit for the expansion or reconstruction (with or without expansion) of a single family home or duplex (N.J.A.C. 7:7-7.9); and
3. Coastal general permit for the landfall of utilities (N.J.A.C. 7:7-7.16).

(j) When an authorized activity requires a tidelands instrument, the coastal general permit authorization shall not be a valid authorization to begin construction until the permittee has received a tidelands instrument.

(k) All coastal general permit authorizations shall be valid for a term not to exceed five years from the date of authorization by the Department. If the term of a coastal general permit authorization exceeds the expiration of the coastal general permit promulgated as a rule under this chapter, and the coastal general permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee shall comply with the requirements of the new regulations by applying for a new coastal general permit authorization unless construction is under way. If the coastal general permit is not repromulgated as a rule, the applicant shall apply for an individual coastal permit unless construction pursuant to the prior coastal general permit authorization is already under way. In either of these cases where construction has begun, construction can continue to completion provided there are no cumulative lapses in construction activity of greater than one year.

1. For the purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by the date of expiration of the coastal general permit, the Department shall evaluate such proofs as may be provided by the applicant including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)11(2) or (b)11(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

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

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

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

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

Rewrote the section.

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

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

Rewrote (a); in (e)2, amended the N.J.A.C. reference.

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

7:7-7.3A Requests for modifications of coastal general permit authorizations

(a) If a permittee proposes a change in the development authorized under a coastal general permit during the term of validity of the permit authorization pursuant to N.J.A.C. 7:7-7.3(k), the permittee shall submit a request for a modification of the coastal general permit authorization in accordance with this section.

(b) A permittee may request a modification to a coastal general permit authorization provided:

1. The changed project would continue to be authorized under the same coastal general permit; and
2. The proposed change does not result in a significant change in the scale, use or impact to special areas as defined at N.J.A.C. 7:7E-3. The determination as to what constitutes a significant change will be based on a review of the original application file and new information submitted by the permittee which describes all proposed changes. A change that will result in less impact to special areas than the original approved development will not constitute a significant change. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious cover, and reduction in buffers.

(c) For changes to coastal general permit authorizations that do not meet the standards of (b) above, a new coastal general permit authorization or individual coastal permit will be required.

(d) A permittee requesting a modification to a coastal general permit authorization shall submit to the Department the following:

1. A completed LURP application form;
2. Three copies of an amended site plan(s), showing:
 - i. All site plan information required under the specific coastal general permit;
 - ii. The originally approved development; and
 - iii. All proposed changes to the existing development;
3. A copy of the permit authorization to be modified and site plan(s) approved by that authorization;
4. The applicable fee under N.J.A.C. 7:7-10;

5. Verification (white certified mailing receipt or other written receipt is acceptable) that public notice has been provided in accordance with (e) below. Verification shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with (e) below; and

6. Any additional information the applicant believes will assist the Department in reviewing the proposed modification.

(e) The permittee shall provide public notice as follows:

1. For requests for a modification of a coastal general permit authorization other than those listed at (e)2 below:

i. Submission of three complete copies of the request for a modification under (d) above to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission, or any public agency with similar responsibilities. The third copy shall be maintained in the clerk's office. Requests for modification of a coastal general permit within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission;

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Notice shall also be provided to all owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point on the perimeter of the development to be modified. Such an application shall also contain a list, certified by the municipality, of owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point, except as provided at (e)2 below. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the submission to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal general permit authorization will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal general permit authorization in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal general permit authorization can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection

Land Use Regulation Program

PO Box 439

501 East State Street

Trenton, New Jersey 08625-0439

Attn: (Municipality in which property is located) Section Chief";

iii. For modified developments proposed on the site of an existing park facility of at least 50 acres in size, the Department may, at its discretion, limit the requirement for public notice to property owners at (e)1ii above to only those property owners the Department has determined are likely to be affected by the modifications to the previously approved development. The determination shall be based on the size of the proposed modification and its proximity to properties sharing a common boundary.

2. Rather than public notice as required under (e)1 above, for a modification of a coastal general permit authorization for beach and dune maintenance activities which involve more than one single family lot, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (e)1i above;

iii. Notice including a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (e)1ii above; and

iv. Notice, including a copy of the amended site plan and completed LURP application form, to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed dune walkover structure. The amended site plan requirements and notice language are found at (e)1ii above.

(f) The Department shall publish in the DEP Bulletin notice of receipt of each request for modification of a coastal general permit authorization and notice of the approval or disapproval of each request.

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

7:7-7.4 Long Branch Redevelopment Zone Permit

(a) The construction of any development regulated under N.J.A.C. 7:7-2.1 within the Redevelopment Zone of the City of Long Branch, as defined in the Redevelopment Plan Ordinance of the City of Long Branch and as described at (a)1 below, is authorized, provided the conditions at (b) through (i) below are met:

1. The Redevelopment Zone of the City of Long Branch comprises that area circumscribed by a line starting at the point of intersection of North Bath Avenue and Ocean Boulevard, then moving northward along Ocean Boulevard to the intersection of Ocean Boulevard and Chelsea Avenue. Then move westward along Chelsea Avenue to the intersection of Chelsea Avenue and Second Avenue. Then move northward along Second Avenue to the intersection of Second Avenue and Broadway. Continue across Broadway in a northerly direction along Union Avenue until Union Avenue makes a 90 degree turn westward. At this point, continue in a northerly direction until meeting the southerly property line of the abandoned Conrail Railroad right-of-way. At this point, follow the southerly side of the right-of-way eastward to Long Branch Avenue. Continue in a northerly direction along Long Branch Avenue until the northerly side of the Conrail right-of-way is reached. From this point, follow the northerly side of the Conrail right-of-way westward to a point which intersects the westerly fence line of the New Jersey Natural Gas facility. Continue in a northerly direction along the fence line past the foot of Brook Street (C.P. Williams Way). Continue to follow fence in northern and eastern directions along the property line, which divides New Jersey Natural Gas/Jersey Central Power & Light property from City of Long Branch Housing Authority property, to Central Avenue. Continue in an easterly direction to the Open Brook. Follow the Open Brook in a northerly direction to the point of intersection with the property line of the former Jerry Morgan Park, known as Block 309, Lot 6.02. Follow this property line in an easterly and southerly direction until Long Branch Avenue is met. Continue in a southerly direction along Long Branch Avenue to the intersection of Long Branch Avenue and Cooper Avenue. Continue in an easterly direction along Cooper Avenue until the intersection of Cooper Avenue and Witmer Place. Continue northward along Witmer Place until the intersection of Witmer Place and Sea View Avenue. Follow Sea View Avenue eastward until meeting the high water mark of the Atlantic Ocean. Follow the mean high water line inclusive of existing Pier riparian lands, known as Block 298, Lots 1.01 and 1.02, southward until reaching a point created by the intersection of the mean high water line and a line projected from the right-of-way for North Bath Avenue. Then turn westward along this line to North Bath Avenue to the point of origin, which is the intersection of Ocean Boulevard and North Bath Avenue.

(b) The development shall be in compliance with the Redevelopment Plan Ordinance and the Design Guidelines Ordinance of the City of Long Branch.

(c) The development must be approved by the Planning Board of the City of Long Branch, or, if it is a public development, by the City Council or the Redevelopment Agency of the City of Long Branch.

(d) The Long Branch Redevelopment Zone Permit established under this section does not apply to applications for development before the Board of Adjustment of the City of Long Branch or any other agency not specified in (c) above.

(e) If the Planning Board, the City Council, or the Redevelopment Agency of the City of Long Branch approves a development with a variance or waiver from a provision(s) of the Redevelopment Plan Ordinance or the Design Guidelines Ordinance of the City of Long Branch, and if the Department concurs in writing with such variance or waiver, the development is authorized under this section. The Department shall concur if the waiver or variance complies with the Coastal Zone Management rules, N.J.A.C. 7:7E, and if, notwithstanding the waiver or variance, the developments within the Redevelopment Zone continue to comply individually and collectively with the Coastal Zone Management rules.

(f) Construction, including site preparation, of a development proposed under this section shall not be started until either 45 days after receipt by the Department of the final Planning Board approval under (h) below or 90 days after receipt by the Department of notice under (i)1 below, whichever is applicable.

(g) For any development within the Redevelopment Zone of the City of Long Branch that does not meet the conditions for approval under this section, the applicant shall, pursuant to the applicable requirements of this chapter, either obtain from the Department a CAFRA individual permit or meet the requirements for authorization under a CAFRA general permit or permit-by-rule.

(h) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch requiring Planning Board approval are as follows:

1. The Planning Board of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that an application for a development within the Redevelopment Zone has been filed with the Planning Board as soon as the Planning Board determines under the Municipal Land Use Law, N.J.S.A. 40:55D-10.3, that the application is complete for review. This notice shall include a copy of the application and of the development plan(s).

2. If the Department intends to comment on the development application prior to the Planning Board's taking action on the application, it shall provide the Planning Board with written comments within 30 days after receipt by the Department of notice under (h)1 above. The Department's comments may include suggestions regarding how the development should be modified in order to meet the requirements of the Long Branch Redevelopment Zone Permit.

3. The applicant shall provide notice, via certified mail, to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, of the date of the Planning Board hearing on the development application at least 10 days prior to the hearing.

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

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

(i) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch not requiring Planning Board approval are as follows:

1. The City Council or the Redevelopment Agency of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that a development within the Redevelopment Zone is under consideration by the City Council or Redevelopment Agency 90 days prior to the solicitation of bids for construction of the development. This notice shall include a copy of the development plan(s).

2. If the Department intends to comment for the purpose of suggesting modifications to the development plan(s), it shall provide the City Council or the Redevelopment Agency with written comments within 30 days after receipt by the Department of notice under (i)1 above.

3. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general

permit or permit-by-rule is instead required, the Department shall, within 90 days of its receipt under (i)1 above of notice that a development is under consideration by the City Council or the Redevelopment Agency, so notify the City Council or the Redevelopment Agency.

(j) The Department shall publish notice in the DEP Bulletin of its decision under (h)5 or (i)3 above that the Long Branch Redevelopment Zone Permit is applicable or inapplicable.

(k) Subject to the limitation on third-party hearing rights specified in (k)5 below, any interested person who considers himself or herself aggrieved by a decision of the Land Use Regulation Program under (h)5 or (i)3 above may, within 10 days of publication of such decision in the DEP Bulletin, appeal to the DEP Commissioner by submitting a written request for a hearing addressed to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as chapter Appendix A.

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

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

3. The person submitting the request for a hearing shall mail a copy of the request to the Monmouth County Clerk and the City of Long Branch Clerk, and shall include proof of such mailing with the hearing request submitted to the Department.

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

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

6. The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the appeal request, action on appeal request, and review of the revised application to settle appeal.

New Rule, R.1998 d.108, effective February 17, 1998.

See: 29 N.J.R. 3920(a), 30 N.J.R. 645(a).

Recodified from N.J.A.C. 7:7-7.5 by R.2000 d.428, effective October 16, 2000.

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

Former N.J.A.C. 7:7-7.4, Permits-By-Rule, recodified to N.J.A.C. 7:7-7.2.

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

Law Review and Journal Commentaries

When to Redevelop. Peter A. Buchsbaum and Arren Goldman, 155 N.J.L.J. 1151 (1999).

7:7-7.5 Coastal general permit for amusement pier expansion

(a) This coastal general permit authorizes the expansion of an existing, functional amusement pier as defined at N.J.A.C. 7:7-1.3, provided that the expansion complies with the following:

1. The amusement pier was existing and functional as of July 19, 1993;
2. The expansion does not exceed by more than 25 percent the footprint of the amusement pier as it existed on July 19, 1993;
3. The expansion is located more than 150 feet landward of the mean high water line;
4. The expansion will not eliminate or adversely affect existing, direct public access from the boardwalk to the beach, unless for each access point eliminated or adversely affected another access point is provided immediately adjacent to the expanded amusement pier;
5. The expansion includes a provision for public seating and viewing at the terminal end of the expansion;
6. The expansion may consist of either structures or beach grading which does not result in change in existing beach elevations of more than one foot;
7. The expansion shall not result in excavation or grading of a dune;
8. The expanded amusement pier shall continue to be used only for amusements;
9. The expansion is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15; and
10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The amusement pier as it existed on July 19, 1993, as it exists at the time of the application, and as it will appear with the proposed expansion;
 - ii. Existing and proposed direct public access points from the boardwalk to the beach and all public accessways to the beach on the amusement pier and expansion;

iii. The proposed public seating and viewing area at the terminal end of the expansion; and

iv. Location of the mean high water line of the Atlantic Ocean at or in proximity to the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed expansion complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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

Former N.J.A.C. 7:7-7.5, Long Branch Redevelopment Zone Permit, recodified to N.J.A.C. 7:7-7.4.

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

Added (a)9.

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)4, inserted "adversely" preceding "affect", and "or adversely affected"; in (a)8, deleted "and" from the end; in (a)9, substituted "; and" for the period at the end; added (a)10; and in (b)1ii, inserted "and all public accessways to the beach on the amusement pier and expansion".

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)10, substituted "access" for the second occurrence of "trust rights".

7:7-7.6 Coastal general permit for beach and dune maintenance activities

(a) This coastal general permit authorizes beach and dune maintenance activities provided:

1. The beach and dune maintenance activities are conducted in accordance with Best Management Practices as defined by the Department in the Coastal Zone Management rules at N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 (routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance, respectively);
2. The beach and dune maintenance activities shall not be conducted in any wetlands; and
3. Public access to the beach shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing:
 - i. The specific location of all proposed beach and dune maintenance activities;
 - ii. All tidal waterways and their shores on and adjacent to the site; and
 - iii. All existing and proposed public access areas and public accessways to tidal waterways and their shores including streets, paths, trails, easements, streets shown on a recorded plan but never built (paper streets), dune

walkovers/walkways, piers and other dedicated public rights-of-way on and adjacent to the site; and

2. The name, title, address and telephone number of the person(s) responsible for supervising the proposed activities to ensure compliance with N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4;

3. The schedule for conducting the specific beach and dune maintenance activities; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the beach and/or dune maintenance activities comply with (a) above, including supplemental documents as appropriate, such as beach fee schedules, maps or surveys.

(c) As of November 5, 2015, the Department shall not approve authorization under this general permit to any municipality that does not have a Department-approved municipal public access plan in accordance with N.J.A.C. 7:7E-8.11(c) through (m).

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)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).

7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development

(a) This coastal 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. 7:7E-3;

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. 7:7E-3.25 and 3.26; and

8. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) Authorization under this coastal 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.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) clearly depicting:

i. The locations and dimensions of all existing and proposed structures;

ii. Existing site conditions (including all Special Areas as defined at N.J.A.C. 7:7E-3);

iii. All existing and proposed public accessways to tidal waterways and their shores on the site; and

iv. All proposed filling, grading, excavation and clearing;

2. In the case of residential reconstruction, documentation that there will not be an increase in the number of dwelling units;

3. In the case of commercial reconstruction, documentation that there will not be an increase in the number of parking spaces or equivalent parking area associated with the proposed reconstruction; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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".

7:7-7.8 Coastal general permit for the development of a single family home or duplex

(a) This coastal general permit authorizes the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the single family home or duplex and accessory development 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 coastal general permit shall 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. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.25, Flood hazard areas, 7:7E-3.26, Riparian zones, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (d)1 or 2 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. 7:7E-3.16, 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. 7:7E-3.19, 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. 7:7E-3.16, 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 municipal Flood Insurance Rate Map;

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 municipal Flood Insurance Rate Map;

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.

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, 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. 7:7E-3.31(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 (e)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 (e)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.

(f) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and 7:7E-3.19, Erosion Hazard Areas, except as excluded under (f)1 below;

1. Development under this coastal 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. 7:7E-3.18, and the Erosion Hazard Areas rule, N.J.A.C. 7:7E-3.19 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;

(g) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(h) 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.

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

(j) 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.

(k) (Reserved)

(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 the coastal 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 in a form approved by the Department 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 (m)1 above;

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

(o) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
 - ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;
 - iii. Existing roads and utilities immediately adjacent to the site;
 - iv. All existing and proposed development, including all structures, public accessways, grading, clearing and limits of disturbance; and
 - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (n) above, including supplemental documents as appropriate, such as maps or surveys.

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).

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 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).

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).*

7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion), of a single family home or duplex

(a) This coastal 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, drive-ways, 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 coastal 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. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.25, Flood hazard areas, 7:7E-3.26, Riparian zones, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, 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. 7:7E-3.16, 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. 7:7E-3.19, 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. 7:7E-3.16, 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 municipal Flood Insurance Rate Map;
- 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 municipal Flood Insurance Rate Map;
- 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. 7:7E-3.16, 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 square footage is constructed on the non-waterward side of the single family home or duplex;

v. The dune area waterward of the single family home or duplex is enhanced as follows:

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

(2) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in 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 Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

vi. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18; and

4. 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. 7:7E-3.16, if the development meets the following criteria:

- i. The development is the enclosure of a deck, patio, or porch;
- ii. The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;
- iii. The deck, patio, or porch legally existed on July 19, 1993;
- iv. The deck, patio, or porch abuts the dwelling;
- v. The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;
- vi. The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet; and
- vii. The dune area waterward of the single family home or duplex is enhanced as follows:

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

(2) Native dune vegetation shall be planted in accordance with the specifications contained in 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 Land Use Regulation Program, PO Box

439, Trenton, New Jersey 08625-0439, (609)292-0060; and

viii. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, 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. 7:7E-3.31(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 (e)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 (e)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.

(f) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and 7:7E-3.19, Erosion Hazard Areas, except as excluded under (f)1 below;

1. Development under this coastal 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. 7:7E-3.18, and the Erosion Hazard Areas rule, N.J.A.C. 7:7E-3.19 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.

(g) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(h) 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.

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

(j) 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.

(k) (Reserved)

(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 the coastal general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that are 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 other below grade structures; and

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 in a form approved by the Department 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 (m)1 above;

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

(o) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
 - ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;
 - iii. Existing roads and utilities immediately adjacent to the site;
 - iv. All existing and proposed development, including all structures, public accessways, grading, clearing and limits of disturbance; and
 - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (n) above, including supplemental documents as appropriate, such as maps or surveys.

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, "whichever is most landward," following "(d)1ii below," in the introductory paragraph; in (e), rewrote the introductory paragraph and added 1 and 2.

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).

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).

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).

7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon

(a) This coastal general permit authorizes the construction of a bulkhead on a lot located on a substantially developed manmade lagoon, provided that the bulkhead complies with the following:

1. The site is located on a substantially developed man-made lagoon as defined at N.J.A.C. 7:7-1.3;
2. The bulkhead shall be located at or above the spring high water line unless it is between two existing legally constructed bulkheads not more than 75 feet apart. In such cases, the connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;
3. There shall be no disturbance to wetlands during construction;
4. The bulkhead is located inshore of any wetlands;
5. A minimum 10-foot return shall be constructed at each end of the bulkhead unless it is tied into an existing adjacent bulkhead;
6. Clean fill from an upland source shall be used for backfill; and
7. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site;

ii. Existing features at the site, including structures and the upper and lower limits of wetlands and beach areas;

iii. Bulkheads or other retaining structures on adjacent properties;

iv. All proposed structures including deadmen, tie backs, and returns; and

v. All existing and proposed public accessways to tidal waterways and their shores on the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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.2007 d.374, effective December 17, 2007.

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

In (a)5, substituted "10-foot" for "10 foot" and deleted "and" from the end; in (a)6, substituted "; and" for a period at the end; added (a)7; in (b)liii, deleted "and" from the end; and added (b)lv.

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)7, substituted "access" for the second occurrence of "trust rights" and deleted the last sentence.

7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot

(a) This coastal general permit authorizes the construction of a revetment, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of gabions at a single family home is found at N.J.A.C. 7:7-7.12.)

(b) Construction of the revetment shall comply with the following:

1. The revetment slope shall not be steeper than one vertical to two horizontal;

2. The placement of rip rap in the waterway shall be limited to that necessary to protect the shoreline;

3. Fill material placed to achieve the required slope shall be:

i. Added only to the upland;

ii. Free of large stones; and

iii. Firmly compacted before revetment construction begins;

4. Filter fabric (or graded stone filter) shall be installed to prevent loss of slope materials through voids in the revetment material;

5. Revetment stones shall be angular and blocky, not rounded;

6. The toe of the revetment shall be located at least three feet below existing grade to prevent undercutting;

7. Weight of individual stone shall be determined by a design engineer based on wave height range for the site;

8. Placement of a revetment in dunes or wetlands is prohibited. Any wetlands disturbed by the construction activities shall be restored to pre-construction conditions; and

9. The revetment shall be placed in such a way as to not result in instability of a coastal bluff or cause erosion of adjacent properties or offshore areas.

(c) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(d) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including topography and structures;

iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;

iv. Bulkheads or other retaining structures on adjacent properties;

v. The proposed location of the revetment and limit of disturbance; and

vi. Cross sections of the proposed revetment in relationship to mean high, mean low water, and spring high water lines; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed revetment complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys.

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.2007 d.374, effective December 17, 2007.

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

Added new (c); recodified former (c) as (d); and in (d)2, substituted "through (c)" for "and (b)".

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 (c).

7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot

(a) This coastal general permit authorizes the construction of gabions, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of revetments at a single family home is found at N.J.A.C. 7:7-7.11.)

(b) The design and construction of the gabions shall comply with the following:

1. The gabions shall be laid along the face of the shore such that the waterward slope of the gabions, as measured along the face of the gabions, shall be no steeper than one vertical to two horizontal. However, if the steepness and height of the slope of the non-storm shoreline profile preclude construction of a sloped gabion system, then the waterward slope of a step faced gabion system, as measured along a line connecting the gabions shall be no steeper than one vertical to one horizontal;

2. The placement of the gabions in the waterway shall be limited to that necessary to protect the shore;

3. The toe of the gabions shall be located at least three feet below existing grade to prevent undercutting;

4. Rip rap shall be placed along the waterward toe of the gabion only if the Department determines that such rip-rap is required to limit scour potential and the areas and volume of rip rap are minimized;

5. Placement of gabions on dunes or in wetlands is prohibited. Any wetlands disturbed by the construction activities shall be restored to pre-construction conditions;

6. The gabions shall be placed in such a way as to not result in instability of a coastal bluff or cause erosion of adjacent properties or offshore areas;

7. The gabions shall be tightly packed with four inch to eight inch diameter stone (to minimize movement of the interior stone and consequent damage to the wire) and the edges shall be laced together with steel wire;

8. Individual gabions shall be wired together;

9. The size and number of gabions shall be determined by a design engineer based on wave height range for the site; and

10. Fill material placed to achieve the required slope shall be:

- i. Added only to the upland;
- ii. Free of large stones; and

iii. Firmly compacted before construction of the gabions begins.

(c) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(d) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean high, mean low, and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including topography and structures;

iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;

iv. Bulkheads or other retaining structures on adjacent properties;

v. The proposed location of the gabions and limit of disturbance;

vi. Cross sections of the proposed gabions in relationship to mean high and mean low water; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed gabion system complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys.

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.2007 d.374, effective December 17, 2007.

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

Added new (c); recodified former (c) as (d); and in (d)2, substituted "through (c)" for "and (b)".

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 (c).

7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating marinas

(a) This coastal general permit authorizes the construction of support facilities at legally existing and operating commercial marinas including marinas operated by public agencies, commissions and authorities.

(b) The construction of the following support facilities listed at (b)1 through 6 below is acceptable provided they comply with the specific conditions for each facility and also with (c) below:

1. Construction of boat rack systems/marina support buildings including, but not limited to, showroom, maintenance/repair, marine supplies, bait/tackle, boat sales,

dock masters office buildings, sheds, and storage, excluding residential development provided:

- i. The building(s) shall be no more than one story or level;
- ii. The building(s) shall be set back a minimum of 15 feet from a shore protection structure and 25 feet from the mean high water line where no shore protection structures are present;
- iii. The building(s) and rack system shall be set back a minimum of 50 feet from the inland limit of any wetlands;
- iv. The building(s) and rack system shall be located in an existing cleared and maintained area of the site;
- v. The marina must provide or maintain restrooms and at least one portable toilet emptying receptacle in accordance with N.J.A.C. 7:7E-7.3(d); and
- vi. Marinas with dockage for 25 or more vessels or any one vessel with live aboard arrangement must provide for adequate and conveniently located pumpout facilities.

2. Construction of restroom facilities provided:

- i. Discharge from the facilities shall either be to a municipal or regional treatment plant where practicable, or to a subsurface sewage disposal system designed with capacity to accommodate the new restroom facilities in accordance with N.J.A.C. 7:9A;
- ii. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well ventilated condition;
- iii. The restroom building shall be set back a minimum of 15 feet from a shore protection structure and 25 feet from the mean high water line where no shore protection structures are present; and
- iv. The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines that there is no alternate location.

3. Construction of fences, water lines, and new sewer lines to connect restrooms, pumpout facilities, and/or pumpout support facilities to existing sewer lines provided:

- i. The construction has no prudent or feasible alternative alignment which would have less impact to Special Areas as defined at N.J.A.C. 7:7E-3;
- ii. The construction shall not result in permanent or long term loss of Special Areas as defined at N.J.A.C. 7:7E-3;
- iii. The construction utilizes appropriate measures to mitigate adverse environmental impacts to the maximum

extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features; and

iv. For sewer lines only:

- (1) The sewer line receives a Treatment Works Approval as required in accordance with the Department's rules at N.J.A.C. 7:7-14A, from the Department's Division of Water Quality;
- (2) The sewer line shall not result in adverse secondary impacts; and
- (3) The sewer line connects to an existing sewer line located on-site or immediately adjacent to the site.

4. Construction of a gasoline pump(s) and associated pipes and tanks on the upland portion of the marina provided:

- i. The marina has available adequate floating containment booms and absorbent materials in the event of hydrocarbon spills;
- ii. Fuel pumps include back pressure cutoff valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina; and

iii. All necessary approvals for the construction of underground or above ground storage tanks are obtained.

5. Construction of boat handling facilities including, but not limited to, winches, gantries, railways, platforms and lifts, hoists, cranes, fork lifts, and ramps provided:

- i. The boat handling facility (excluding boat ramp and railways) is located landward of the mean high water line; and
- ii. The boat handling facility is not located in a wetland area.

6. The one time construction of a single marina support building not exceeding a footprint of 120 square feet provided the building is located on the upland portion of the marina and is not located within wetlands.

(c) The construction of support facilities listed at (b)1 through 6 above shall also comply with the following:

1. The marina complies with N.J.A.C. 7:7E-7.3(d), the standards relevant to the construction of marinas;
2. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11;
3. Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided;

4. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15; and

5. The development shall meet the requirements of N.J.A.C. 7:7E-3.25.

(d) In addition to the application and information required under N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:
 - i. The mean high, mean low and spring high water lines of the tidal waters at the site;
 - ii. Existing features at the site including, topography, structures, utilities, beach areas and dune areas;
 - iii. The upper and lower limits of wetlands within 150 feet of the proposed limit of disturbance;
 - iv. The proposed development including all limits of disturbance, structures and building heights, grading, and existing and proposed clearing areas;
 - v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and
 - vi. Where sewers are to be used, the location of the existing sewer line abutting the site;
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed marina support facility complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys; and
3. A copy of any previous coastal permit for the site.

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).

Deleted (b)4iv(2); recodified former (b)4iv(3) and (b)4iv(4) as (b)4iv(2) and (b)4iv(3); added (c)4.

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)3, deleted "and" from the end; in (c)4, substituted "; and" for the period at the end; and added (c)5.

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

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

Rewrote (c)2; and in (d)1v, substituted "All" for "The location of all" and inserted "and public accessways to tidal waterways and their shores on the site".

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 (c)2, substituted "access" for the second occurrence of "trust rights".

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 (b), substituted "6" for "7"; in the introductory paragraph of (b)1, inserted "and storage,"; rewrote (b)1ii and (b)2iii; in (b)1vi, substituted "facilities" for "stations"; deleted former (b)3; recodified (b)4 through (b)7 as (b)3 through (b)6; in the introductory paragraph of (b)3, inserted a comma following "water lines" and substituted ", pumpout facilities, and/or pumpout support facilities" for "and pumpouts"; in (b)3iv(1), inserted "as required in accordance with the Department's rules at N.J.A.C. 7:7-14A," and

substituted "Division of Water Quality" for "Bureau of Connection and Construction Permits"; in (b)3iv(3), substituted a period for a semicolon at the end; in (b)4iii, substituted "All necessary" for "Any other required"; in (b)5, inserted a comma following "fork lifts"; in the introductory paragraph of (c), substituted "6" for "7"; and in (c)5, deleted "and 3.26" following "7:7E-3.25".

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.

7:7-7.14 Coastal general permit for reconstruction of a legally existing functioning bulkhead

(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead provided:

1. For project sites which are located on a lagoon lot, the reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead;
2. For project sites which are not located on a lagoon lot:
 - i. The reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead; or
 - ii. The reconstruction of a legally existing bulkhead is:
 - (1) Located within 18 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a timber bulkhead is used; or
 - (2) Located up to a maximum of 24 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead; and

(1) Located within 18 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a timber bulkhead is used; or

(2) Located up to a maximum of 24 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead; and

3. For all project sites, reconstruction of certain bulkhead structures in place located below the mean high water line may be exempt from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d)4.

(b) The reconstruction of a legally existing bulkhead as described in (a) above is acceptable provided that:

1. The replacement bulkhead is located upland of any wetlands;
2. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.
3. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave runup, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is

utilized, appropriate sub-base and filter cloth shall be incorporated into the design;

4. The placement of rip-rap along the seaward toe of the replacement bulkhead structure may qualify for this coastal general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized;

5. The structure will not create net adverse shoreline movement downdrift, including erosion or shoaling;

6. The construction shall have no adverse impact to any Special Areas defined at N.J.A.C. 7:7E-3; and

7. Clean fill from an upland source shall be used for backfill.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including, all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;

iii. Bulkheads or other retaining structures on adjacent properties;

iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-zone; and

v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed reconstructed bulkhead complies with (a) and (b) above, including supplemental documents as appropriate such as maps or surveys.

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).

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).

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

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

Rewrote (b)2; and in (c)1v, substituted "All" for "The location of all" and inserted "and public accessways to tidal waterways and their shores on the site".

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 (b)2.

7:7-7.15 Coastal general permit for investigation, cleanup, removal or remediation of hazardous substances

(a) This coastal general permit authorizes all regulated activities above the mean high water line that are undertaken,

authorized or otherwise expressly approved in writing by the Department for the investigation, cleanup, removal or remediation of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met:

1. If the proposed cleanup activity is to take place in Special Areas as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives to the investigation, cleanup, removal and remediation of the hazardous substances or pollutants that would involve less or no disturbance or destruction of Special Areas as defined at N.J.A.C. 7:7E-3;

2. Mitigation may be required in accordance with the Coastal Zone Management rules, N.J.A.C. 7:7E, for disturbance to Special Areas as defined at N.J.A.C. 7:7E-3; and

3. For coastal wetlands, mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7E-3.27 and 7:7E-3B. The mitigation plan may be incorporated as part of the document by which the Department approves the clean-up or it may be submitted as part of the coastal general permit application. The coastal general permit will not be issued until the mitigation plan is submitted and approved by the Program according to the standards at N.J.A.C. 7:7E-3.27 and 7:7E-3B.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. The limits of all Special Areas as defined at N.J.A.C. 7:7E-3 within 150 feet of the proposed limits of disturbance on site and at the material disposal site;

iii. The proposed limits of disturbance and method of investigation, clean up, removal or remediation; and

iv. The restoration plan;

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed hazardous waste cleanup complies with (a) above, including supplemental documents as appropriate, such as maps or surveys;

3. Photographs of the site prior to the remediation; and

4. The Department's case control number.

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).

7:7-7.16 Coastal general permit for the landfall of utilities

(a) This coastal general permit authorizes the landfall of utilities including cable (that is electric, television and fiber optics), telecommunication, petroleum, natural gas, water and sanitary sewer lines constructed in tidal water bodies authorized pursuant to the Waterfront Development Law or Flood Hazard Area Control Act.

(b) Construction authorized under this coastal general permit is acceptable provided:

1. The section of the utility line that extends landward from the mean high water line of the tidal water body shall be no more than 150 feet long and shall connect to an existing utility line in the adjacent upland;
2. The width of the area disturbed within the right-of-way of the project is no more than 20 feet;
3. Excavated areas for the placement of the utility landfall shall be returned to the pre-existing elevation using the original soil, if feasible or other suitable material to backfill from a depth of 18 inches to the original grade and be revegetated;
4. The utility landfall shall have no adverse impacts to Special Areas as defined in the Coastal Zone Management rules N.J.A.C. 7:7E-3;
5. A silt fence and/or other soil erosion controls shall be installed prior to excavation and shall remain in place until final restoration is complete;
6. The staging area and construction equipment shall not be placed directly into the tidal water. Construction equipment shall be land based or based on barges;
7. All underground cutting agents/lubricants shall be contained and properly disposed. Use of a vacuum truck may be required for large drilling operations;
8. The location of existing facilities prior to excavation shall be performed pursuant to the Underground Facility Protection Act, P.L. 1994, c.118 (N.J.S.A. 48:2-73 et seq.); and
9. The sanitary sewer line is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean and spring high water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands, beach areas, coastal bluffs, endangered or threatened wildlife

or vegetation habitats and dune areas within 150 feet of the proposed limit of disturbance;

- iii. The proposed limit(s) of disturbance;
- iv. The restoration plan;
- v. The location of the existing and proposed utility; and
- vi. The location and type of soil erosion and sediment control measures to be used during construction; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed landfall of the utility complies with (a) and (b) above, including supplemental documents as appropriate, such as maps and surveys.

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).
Added (b)9.

7:7-7.17 Coastal general permit for the construction of recreational facilities at public parks

(a) This coastal general permit authorizes the construction of the following recreational facilities at parks which are publicly owned or controlled for the purposes of public access. Construction of the facilities listed below is acceptable provided that the construction has no adverse impact on any Special Areas defined at N.J.A.C. 7:7E-3 and provided that the facility complies with the specific conditions listed below for each facility.

1. Construction of the following facilities provided they are not located on a dune or in a wetland, except as noted at (a)3 below:
 - i. Playground equipment including, but not limited to, swings, slides, and jungle gyms;
 - ii. Picnic tables, benches and grills which are not seasonal;
 - iii. Gazebos, rain shelters and sheds provided they do not exceed a footprint 200 square feet;
 - iv. Pathways, bicycle paths and jogging and nature trails and associated fitness equipment provided they are not located on a beach; and
 - v. Fences which do not require permanent footings.
2. Construction of restroom facilities not located on a beach, dune or in a wetland, provided that:
 - i. The restroom facilities connect to an existing sewer line located within or abutting the park, or facilities discharge to a subsurface sewerage disposal system;
 - ii. The connection at (a)2i above shall be consistent with the 208 Water Quality Management Plan;

iii. The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and

iv. The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines there is no alternate location.

3. Trail or boardwalk construction in wetlands is acceptable provided that:

i. The width of the trail or boardwalk does not exceed six feet, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. The construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure is not authorized on the boardwalk or trail;

ii. The height of the structure over wetlands, other than wetlands regulated under the Freshwater Wetlands Protection Act and implementing rules at N.J.A.C. 7:7A, shall be a minimum of four feet regardless of width;

iii. The project does not interfere with the natural hydrology of the area; and

iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.

(b) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. The proposed development including all limits of disturbance, structures, grading and clearing;

iii. Within 150 feet of the proposed limit(s) of disturbance, the upper and lower limits of wetlands, beach areas, endangered and threatened wildlife or vegetation habitats and dune areas; and

iv. All existing and proposed public access areas and public accessways to tidal waterways and their shores on-site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed recreational facility complies with (a) and (b) above, including supplemental documents as appropriate such as maps or surveys.

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.2007 d.374, effective December 17, 2007.

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

Added new (b); recodified former (b) as (c); in (c)1ii, deleted "and" from the end; added (c)1iv; and in (c)2, inserted "and (b)".

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), substituted "access" for the second occurrence of "trust rights".

7:7-7.18 Coastal general permit for bulkhead construction and placement of associated fill

(a) This coastal general permit authorizes the construction of a bulkhead and associated fill at a single family/duplex lot on a natural water body provided that the proposed bulkhead complies with the following:

1. Legally existing functional bulkheads are located on the lots adjacent to the proposed bulkhead and are no more than 75 feet apart;

2. The bulkhead shall be located at or above the spring high water line;

3. The bulkhead is located a minimum of five feet inshore of any wetlands;

4. The bulkhead shall not be located on a dune or oceanfront beach;

5. Clean fill from an upland source shall be used for backfill;

6. The bulkhead shall not be located further waterward than the bulkheads on the adjacent properties;

7. In the event that the bulkhead will be located landward of the adjacent bulkheads, the new bulkhead shall connect to the bulkhead on either side;

8. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave run-up, and shall include a splash pad on the landward side. The splash pad shall have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;

9. The placement of rip-rap along the seaward toe of the bulkhead structure may qualify for this coastal general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized;

10. There shall be no disturbance to wetlands during construction; and

11. Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) This general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean high and spring high tide lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands, beach and dunes areas;
 - iii. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkhead and other retaining structures;
 - iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; and
 - v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on-site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead and associated fill complies with (a) and (b) above, including supplemental documents as appropriate, such as maps and survey.

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.2007 d.374, effective December 17, 2007.

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

In (a)9, deleted "and" from the end; in (a)10; added "and" to the end; added (a)11; in (c)1iii, deleted "and" from the end; and added (c)1v.

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 (a)11.

7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons

(a) This coastal general permit authorizes the construction of piers, docks (including jet ski ramps), pilings and boatlifts in man-made lagoons provided that:

1. The structures shall be located on individual single family or duplex lots and shall be for recreational/non-commercial use;
2. The structures, including mooring area and mooring piles, shall not extend beyond a distance of 20 percent of the width of a man-made lagoon;
3. The width of the dock or pier shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high water, except for floating docks. For example, an eight foot wide dock must be elevated a minimum of four feet above the water surface at mean high water;

4. The maximum width of the structure shall be eight feet, except where crossing wetlands, where the proposed structure shall be constructed perpendicular to the shoreline to access sufficient water depth and shall not exceed six feet in width. In any case, the height of the structure over wetlands shall be a minimum of four feet;

5. Any wetlands disturbed during construction shall be restored to pre-project conditions;

6. The proposed structure, including mooring areas and mooring piles, does not hinder navigation or access to adjacent docks, piers, moorings or water areas;

7. A minimum of eight feet of open water shall be provided between any docks including jet ski ramps, if the combined width of any existing or proposed docks over the water exceeds eight feet;

8. For docks which are perpendicular to the adjacent bulkhead or shoreline, construction and placement of the dock shall be a minimum of four feet from all property lines;

9. The space between horizontal planking is maximized and the width or horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks respectively;

10. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width; and

11. For sites which have existing dock 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 increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures shall be reduced to a maximum of eight feet in width.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands at the site;
 - iii. Existing structures including all waterfront structures (docks, pilings and bulkheads) on the project site and adjacent waterfront properties;
 - iv. The opposite side of the lagoon with the width of the lagoon indicated; and

v. The proposed structures and boat mooring area; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dock, pier, jet ski ramp, pilings or boat lift complies with (a) above, including supplemental documents as appropriate such as maps or surveys.

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

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

In (a)2 and 6, added “, including mooring areas and mooring piles,”; in (b)iv, added “with the width of the lagoon indicated”.

7:7-7.20 Coastal general permit for minor maintenance dredging in man-made lagoons

(a) This coastal general permit authorizes minor maintenance dredging in man-made lagoons provided that:

1. The volume of the material to be dredged shall not exceed 100 cubic yards;
2. The proposed depth shall not exceed six feet below mean low water;
3. Dredged material shall be placed on an upland site and shall be stabilized;
4. The proposed slope from the waterward edge of any wetlands to the nearest edge of the dredged area shall not exceed three horizontal to one vertical; and
5. The proposed depth does not exceed the water depth outshore of the dredged area.

(b) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
 - iii. The existing and proposed water depths in the area to be dredged;
 - iv. Proposed cross sections of area to be dredged;
 - v. The location of the dredged material disposal site;
 - vi. The method of dredging; and
 - vii. The method of stabilization of dredging material; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed minor maintenance dredging complies with (a) above,

including supplemental documents as appropriate, such as maps or surveys.

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

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

7:7-7.21 Coastal general permit for the stabilization of eroded shorelines

(a) This coastal general permit authorizes the stabilization of eroded shorelines along tidal waterways, excluding the Atlantic Ocean, provided that the proposed method complies with all of the following:

1. The stabilization materials are limited to live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, choir fiber products, fiber plugs, plants and clusters, selected plant materials, fiber pallets, fiber carpet, and wood stake anchor systems. Materials shall be installed in accordance with the construction guidelines of Chapter 16—“Streambank and Shoreline Stabilization Protection,” of the National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, incorporated herein by reference, as amended and supplemented. This coastal general permit does not authorize the use of geotubes, stone, concrete, gabions, wood sheathing, pvc pipe, used tires, discarded Christmas trees, or other material not specifically stated in this paragraph;

2. The stabilization of the eroded shoreline shall have no adverse impact on Special Areas defined at N.J.A.C. 7:7E-3;

3. No disturbance to wetlands shall occur;

4. Where shoreline stabilization will occur outshore of a wetland, the construction shall result in minimum feasible alteration or impairment of natural tidal circulation;

5. Where shoreline stabilization will occur outshore of a wetlands, the construction shall result in minimum feasible alteration or impairment of the natural contour or the natural vegetation of the wetlands;

6. For sites where grading is required, no grading shall occur below the spring high water line, and all soil or other graded materials shall be pulled back away from the water. Grading by pushing soil or other material below the spring high water line is prohibited;

7. The placement of bioengineering materials, with the exception of plantings, shall be limited to that necessary to protect the shoreline;

8. Plant material shall be chosen and installed in accordance with “Vegetation For Tidal Shoreline Stabilization In the Mid-Atlantic States” in Chapter 16—“Streambank and Shoreline Stabilization Protection,” of the National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture,

incorporated herein by reference, as amended and supplemented.

9. For projects on public lands, public access to the waterfront shall be provided and maintained during construction, and thereafter; and

10. If the Department determines that construction has resulted in adverse shoreline sand movement, including erosion or shoaling, the Department may require the permittee to remove the shoreline stabilization materials.

(b) In addition to the applications and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site(s) plan showing the following:
 - i. Mean high, mean low and spring high water lines of the tidal waters at the site;
 - ii. Existing waterfront structures at the site and on adjacent waterfront sites;
 - iii. The upper and lower limits of wetlands, beach areas, and dune areas at the site and on adjacent waterfront properties;
 - iv. The location and cross section of the proposed stabilization materials in relationship to mean high and mean low water; and
 - v. On public lands, the location of the existing and proposed public access to the waterfront; and

2. A compliance statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed stabilization of the eroded shoreline complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.

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

7:7-7.22 Coastal general permit for avian nesting structures

(a) This coastal general permit authorizes the construction of pile supported avian nesting structures provided:

1. The construction shall not alter or impair the natural contour or vegetation of the wetlands. Protective measures such as wide track vehicles and mats shall be utilized during construction;
2. Disturbance to wetlands is restored except for those permanently impacted by the pilings; and
3. The construction of the pile supported nesting structure shall not adversely impact Special Areas as defined at N.J.A.C. 7:7E-3.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The location of the proposed nesting structure;
 - ii. Mean high water line of the tidal waters at the site;
 - iii. Existing features at the site including structures, and all Special Areas as defined at N.J.A.C. 7:7E-3, including the upper and lower limits of wetlands, beach areas, and dune areas; and
 - iv. Details of the proposed nesting structure.

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

7:7-7.23 Coastal general permit for modification of existing electrical substations

(a) This coastal general permit authorizes the modification of existing electrical substations within the existing fence line to maintain substation and electrical load and system reliability provided that:

1. The activities occur within the cleared, maintained portions of the site within the existing fenced area; and
2. The activities shall not have an adverse impact on Special Areas as defined at N.J.A.C. 7:7E-3.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall also be submitted:

1. Three copies of a site plan(s) showing:
 - i. Existing fence, existing limits of clearing, existing and proposed structures; and
 - ii. The upper and lower limits of any wetlands within 150 feet of the fenced area; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed modification to the existing electrical substation complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.

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

7:7-7.24 Coastal general permit for the legalization of the filling of tidelands

(a) This coastal general permit authorizes the legalization of the filling of any lands formerly flowed by the tide provided:

1. The filling occurred after 1914;
2. The fill appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78); and

3. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(b) The legalization of the filling of any lands formerly flowed by the tide associated with a single family home that is not part of a larger development, is eligible for a permit-by-rule. See N.J.A.C. 7:7-7.2(a)9.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The location of the tidelands claim line as shown on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78) and current mean high water line at or adjacent to the site; and
 - ii. The location of all existing and proposed public access areas and public accessways to tidal waterways and their shores on-site;

2. Proof that a tidelands instrument has been obtained for all filled tidelands areas or evidence that an application for a tidelands instrument has been submitted to the Bureau of Tidelands Management. This coastal general permit authorization shall not be valid until the permittee has received a tidelands instrument; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the site complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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.2007 d.374, effective December 17, 2007.

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

In (a)3, 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)"; in (c)1ii, inserted "and public accessways to tidal waterways and their shores on-site"; and in (c)3, substituted "(a) above, including supplemental documents as appropriate, such as maps or surveys" for "the Public Access to the Waterfront rule, N.J.A.C. 7:7E-8.11".

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 substituted a period for a semicolon at the end.

7:7-7.25 Coastal general permit for the construction of telecommunication towers

(a) This coastal general permit authorizes the construction of telecommunication towers such as cellular telephone and radio towers, including access roads and associated support buildings located upland of the mean high water line provided:

1. The development shall not be located in or on dunes, beaches, wetlands, bay islands, coastal bluffs or wild and scenic river corridors;

2. The limits of disturbance associated with the development shall not exceed 0.25 acres;

3. The development shall be located a minimum of 50 feet landward of the mean high water line except on sites defined as filled water's edge sites at N.J.A.C. 7:7E-3.23 where the development shall instead be located a minimum of 100 feet landward of the mean high water line;

4. The development shall be setback a minimum of 50 feet from the inland limit of any wetlands; and

5. The development shall comply with the endangered or threatened wildlife or vegetation species habitats rule, N.J.A.C. 7:7E-3.38, and the critical wildlife habitat rule, N.J.A.C. 7:7E-3.39.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The proposed development including all limits of disturbance, structures, grading and clearing;
 - ii. All existing features at the site including the mean high and spring high water lines, and the upper limits beaches and dunes; and
 - iii. The upper limits of wetlands and coastal bluffs on and adjacent to the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed telecommunication tower complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.

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

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

7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

(a) This coastal general permit authorizes the construction of structures such as equipment storage containers and sheds, stage platforms, bleachers, portable restrooms, food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments and multi-family residential developments over 75 units provided that:

1. Except as provided in (a)1i below, the structure remains in place only from May 1 through October 31;
 - i. Underground utilities, floor decking, open drink and food concession stand shells, and stage shells may remain in place on a year-round basis;

2. All structures authorized by this general permit that are located on a beach, except underground utilities, shall be immediately removed from the beach and relocated to a secure place at any time that the National Weather Service issues a Severe Weather Alert for the municipality in which the development is located, for significant weather events, such as Coastal Flood Warning, Extreme Wind Warning, Hurricane Warning, Tornado Warning or Tropical Storm Warning, that would directly affect structures left on the beach, until the Severe Weather Alert is lifted.

3. The structure is not located on a dune, coastal bluff, or in a wetland;

4. Placement of the structure does not include the excavation, grading or filling of a beach;

5. The structure shall have no adverse impact on Special Areas defined at N.J.A.C. 7:7E-3;

6. The structure is located a minimum of 50 feet landward of the mean high water line, except on beaches where the development is located on the most landward portion of the beach. Development on beaches shall additionally be subject to the following:

i. The development shall occupy a maximum of 33 percent of the total width of the beach berm area within the limits of the project; and

ii. The total area of beach coverage, including all structures and support facilities, shall not exceed one acre. However, the Department reserves the right to limit the coverage to a greater extent due to prevailing beach conditions, public access and safety concerns;

7. The structure is located a minimum of 50 feet from any wetlands;

8. If the structure is proposed on a beach, the structure does not unreasonably conflict with ocean views or other beach uses;

9. If the structure is proposed on a beach, the beach is open to the public;

10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11; and

11. Where the structure(s) is located on a beach, for each year of the duration of the permit, the permittee shall submit on or before April 1st to the Department for its review and approval one copy of a revised site plan, dated no more than 30 days prior to the submittal, including supplemental documents as appropriate, showing:

i. The location of the beach berm area; and

ii. Compliance with (a)2 through 9 above. Based on review of this information, the Department may approve the structure(s) as proposed or require modifications to the footprint or design of the structures to comply with these standards.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean high water line of the tidal waters at the site;

ii. The location and type of all proposed structures;

iii. The upper limits of wetlands and beach and dune areas, and endangered and threatened wildlife or vegetation habitats; and

iv. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed recreational facility complies with (a) above, including supplemental documents as appropriate such as maps or surveys.

(c) Seasonal and temporary structures related to the tourism industry at public developments are not regulated as public development under CAFRA pursuant to N.J.A.C. 7:7-1.3 and 2.1(b)2viii.

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

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

In introductory paragraph (a), added "structures such as"; in (a)1, substituted "October 31" for "September 30"; in (a)5, added "Development on beaches shall additionally be subject to the following:" and added (a)5i and ii; added (a)9 and 10.

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

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

Rewrote (a)9; in (b)1ii, deleted "and" from the end; and added (b)1iv.

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 the introductory paragraph of (a), inserted "that"; in the introductory paragraph of (a)1, substituted "Except as provided in (a)1i below, the" for "The"; added (a)1i; added new (a)2; recodified former (a)2 through (a)10 as (a)3 through (a)11; in (a)10, substituted "access" for the second occurrence of "trust rights"; and rewrote the introductory paragraph of (a)11.

7:7-7.27 Coastal general permit for geotechnical survey borings

(a) This coastal general permit authorizes geotechnical survey borings including survey borings or excavations constructed for the purpose of obtaining information on subsurface conditions, for the purpose of determining the presence or extent of contamination in subsurface soils or groundwater, and for obtaining seismic information, provided the following conditions are met.

1. Borings and related site disturbance shall not be located in Shellfish habitat (N.J.A.C. 7:7E-3.2), Submerged vegetation habitat (N.J.A.C. 7:7E-3.6) or Endangered or threatened wildlife or plant species habitats (N.J.A.C. 7:7E-3.38).

2. Borings and related site disturbance shall comply with Wild and scenic river corridors, (N.J.A.C. 7:7E-3.46), Wetlands (N.J.A.C. 7:7E-3.27), and Wetlands buffers (N.J.A.C. 7:7E-3.28).

3. Borings for remedial investigation shall be completed in accordance with the criteria found in N.J.A.C. 7:26E-3 of the Technical Requirements for Site Remediation;

i. Any excavation shall not adversely impact existing remedial investigation/remediation assessment (RI/RA) activities;

ii. Workers on-site shall be notified, in writing, prior to the start of site preparation, of the possible presence of contaminated materials. Appropriate measures shall be taken to protect workers from exposure to possible contaminants; and

iii. Potential impact to existing monitoring wells shall be reported to the Department's Office of Site Remediation to coordinate appropriate measures required to protect or seal/replace the monitoring wells. Sealing of monitoring wells shall be done by a licensed New Jersey well driller who is also certified to seal wells.

4. Disturbance shall be limited to that which is necessary to access and conduct the geotechnical borings.

i. Disturbance to vegetation shall, be limited to a maximum width of five feet for access.

5. Borings and related site disturbance shall not be conducted during the following time periods:

i. During the migration of anadromous fish from April 1 thru June 30 (inclusive);

ii. During the period from March 1 thru June 30 and from October 1 thru November 30 (inclusive), within and adjacent to waters on the Delaware River System from the mouth of bay to Delaware Memorial Bridge and tidal Maurice River, identified as American shad migratory pathways; and

iii. During the period from April 1 thru June 30 and from September 1 thru November 30 (inclusive), within and adjacent to waters on the Delaware River System from the Delaware Memorial Bridge to the New York State line and tidal portions of Rancocas and Raccoon Creeks, identified as American shad migratory pathways.

6. Any acid-producing soils encountered shall be managed in accordance with the requirements for a regulated activity in an area with acid-producing soils in the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).

7. Bore holes shall be backfilled to the original surface level with appropriate, non-contaminated, soil material.

i. Sand may not be used for backfilling in either freshwater or coastal wetlands. Restoration of all bore holes must maintain the hydrologic integrity of the wetlands. To avoid the potential for draining a wetland by puncturing a hard-pan or confining layer, all borings must be sealed with grout or bentonite in accordance with the Department's Water Monitoring Management Program rules, N.J.A.C. 7:9-6.

ii. Water used to flush a boring may be discharged to the ground provided the boring is not conducted in proximity to a stream or in an area of hazardous waste or acid-producing soils. When the boring is performed in proximity to a stream, and water or drilling fluid is used to remove soil from the hole, the sediment-laden water shall not be allowed to flow overland such that it would enter the stream. Soil erosion and sediment control measures shall be used as necessary to contain/filter excess water. Drilling fluid shall be contained when working adjacent to a fish-populated watercourse during the relevant restricted period, and in any other situation where containment represents the only method of ensuring that there is no impact to adjacent streams.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at or in proximity to the site;

ii. For activities proposed at or upland of the mean high water line, existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;

iii. For activities proposed at or waterward of the mean water line, existing features at the site including areas designated as shellfish habitat, submerged vegetation habitat, topography and structures, and the limits of wetlands;

iv. Existing roads and utilities immediately adjacent to the site;

v. Location of proposed activities, methods, equipment to utilized and limits and depth of all proposed borings; and

vi. All grading, clearing and limits of disturbance;

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with the criteria listed in (a) above, including supplemental documents as appropriate such as maps or surveys.

New Rule, R.2006 d.142, effective April 17, 2006.
 See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).
 Amended by R.2007 d.340, effective November 5, 2007.
 See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).
 Rewrote (a)6.

7:7-7.28 (Reserved)

7:7-7.29 Coastal general permit for habitat creation, restoration, enhancement, and living shoreline activities

(a) This coastal general permit authorizes habitat creation, restoration, enhancement, and living shoreline activities necessary to implement a plan for the restoration, creation, enhancement, or protection of the habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas, which is sponsored by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a "sponsor" shall endorse the activities in writing.

(b) The following habitat creation, restoration, enhancement, and living shoreline plans are acceptable provided they demonstrate compliance with (c) through (g) below:

1. A fish and/or wildlife management plan created or approved by the Department's Division of Fish and Wildlife;
2. A project plan approved under the Partners for Fish and Wildlife program, Coastal Program, or a similar program administered by the U.S. Fish and Wildlife Service;
3. A project plan created by the U.S. Department of Agriculture's Natural Resources Conservation Service under the Wetlands Reserve program, the Conservation Reserve program, the Conservation Reserve Enhancement program, the Wildlife Habitat Incentive program (WHIP), or a similar program, and approved by the local Soil Conservation District;
4. A plan approved by the Department's Office of Natural Resource Damages for the restoration, creation or enhancement of natural resources injured as the result of an oil spill or release of a hazardous substance;
5. A mitigation project required or approved by a government agency, such as the U.S. Army Corps of Engineers;
6. A habitat creation, restoration, or enhancement plan carried out by one of the Federal or State agencies at (b)1 through 5 above or by a government resource protection agency such as a parks commission;
7. A habitat creation, restoration, or enhancement plan carried out by a charitable conservancy, as defined at N.J.A.C. 7:7-1.3, provided that the plan is part of a program listed at (b)2 through 5 above;
8. A living shoreline plan designed and/or sponsored by the Department, the U.S. Fish and Wildlife Service, the

Natural Resource Conservation Services, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the National Oceanic Atmospheric Administration's Restoration Center; or

9. A living shoreline plan implemented by a college or university for the purpose of research.

(c) Habitat creation, restoration, enhancement, and living shoreline activities that are authorized by this coastal general permit include, but are not limited to, the following:

1. Altering hydrology to restore or create wetlands conditions, such as by blocking, removing, or disabling a human-made drainage ditch or other drainage structure such as a tile, culvert or pipe;
2. Breaching a structure such as a dike or berm in order to allow water into an area;
3. Placing habitat improvement structures such as:
 - i. Nesting islands;
 - ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and
 - iii. Fish habitat enhancement devices or fish habitat improvement structures such as placed boulders, stream deflectors, or brush piles;
4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement;
5. Cutting, burning, or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora; or
6. Establishing a living shoreline to protect, restore, or enhance a habitat.

(d) To be eligible for authorization under this coastal general permit, an applicant shall demonstrate that the proposed project:

1. Is part of a plan for the restoration, creation, or enhancement of the habitat and water quality functions and values of wetlands, wetland buffers, and/or State open waters;
2. Is consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, the Coastal Area Facility Review Act, and the Coastal Zone Management rules;
3. Will improve or maintain the values and functions of the ecosystem; and
4. Will have a reasonable likelihood of success, or, if performed by a college or university, in accordance with (b)9 above, will advance the level of knowledge regarding living shorelines in the State.

(e) Activities under this coastal general permit except for living shoreline activities, which are subject to the requirements of (f) below, shall comply with the following:

1. If the proposed habitat creation, restoration, or enhancement activity is to take place in Special Areas, as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives that would involve less or no disturbance or destruction of Special Areas;

2. The activities shall disturb the minimum amount of Special Areas as defined at N.J.A.C. 7:7E-3 necessary to successfully implement the project plan;

3. The activities shall not decrease the total combined area of Special Areas on a site. However, the Department may approve a decrease if the Department determines that the activities causing the decrease are sufficiently environmentally beneficial to outweigh the negative environmental effects of the decrease. In addition, the Department may approve conversion of one Special Area to another Special Area if the Department determines that such conversion is environmentally beneficial; and

4. If the activities involve the removal of a dam, the activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's Dam Safety Section in the Division of Engineering and Construction.

(f) Living shoreline activities shall comply with the following:

1. The project area below the mean high water line is one acre in size or less, unless the applicant is a county, State, or Federal agency that demonstrates that a larger project size is necessary to satisfy the goals of the project;

2. The project shall disturb the minimum amount of special areas, as defined at N.J.A.C. 7:7E-3, necessary to successfully implement the project plan. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if the Department determines that the activities causing the reduction are sufficiently environmentally beneficial to outweigh the negative environmental effects of the reduction; and

3. Where the living shoreline is intended to restore an existing shoreline to a previous location, the living shoreline, including all associated fill, shall not exceed the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), except for a structural component of the project intended to reduce wave energy.

(g) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(h) This coastal general permit does not authorize an activity unless the sole purpose of the activity is habitat creation, restoration, enhancement, or a living shoreline. For example, this coastal general permit does not authorize construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement.

(i) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean high and spring high tide lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands and wetlands buffers, beaches, dunes, and coastal bluff areas;

iii. Limits of all intertidal and subtidal shallows, submerged vegetation, and shellfish habitat areas;

iv. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkheads, other retaining structures, and culverts;

v. Existing roads and utilities immediately adjacent to the site; and

vi. The limits and depth of all proposed excavation, proposed grading, or fill;

2. If a living shoreline activity includes the placement of fill, the applicant shall identify the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978); and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed project complies with (a) through (h) above, including supplemental documents as appropriate, such as maps and survey.

New Rule, R.2006 d.142, effective April 17, 2006.

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

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

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

Added new (f); and recodified former (f) and (g) as (g) and (h).

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 (f), substituted "access" for the second occurrence of "trust rights". Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

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

Sections was "Coastal general permit for habitat creation and enhancement activities". Rewrote the section.

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.

7:7-7.30 Coastal general permit for the construction of one to three wind turbines less than 200 feet in height and having a cumulative rotor swept area no greater than 4,000 square feet

(a) This coastal general permit 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 4,000 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. The wind turbine(s) shall comply with N.J.A.C. 7:7E-3.38, Endangered or threatened wildlife or plant species habitats and 7:7E-3.39, Critical wildlife habitats;
5. Development under this general permit 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;
6. 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);
7. 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; and
8. In order to assess the impact of the operation of wind turbines authorized under this coastal general permit on avian species and bats, post-construction monitoring shall be required for the first 15 wind turbine developments constructed under this coastal general permit, where the rotor swept area either individually or cumulatively on a site, exceeds 2,000 square feet. The monitoring shall be conducted for one full year beginning immediately after the wind turbines begin operation and shall consist of bird and bat carcass searches as well as removal and efficiency trials. The monitoring methodology shall be approved by the Department prior to initiation and a complete report of

findings submitted to the Department within three months of completion of the monitoring. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse.

(b) In accordance with N.J.A.C. 7:7-7.1(e)1, the Department may add a special condition to an authorization under this general permit, that would curtail the operation of the wind turbines, as directed by the Department pursuant to (b)1 below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

1. Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse.

(c) In addition to the application and information required under N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Five copies of a site plan showing the following:
 - i. The mean high water lines of the tidal waters within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;

- ii. Existing features at the site including topography, structures, utilities, beach areas, dune areas, coastal bluffs, and floodways;
 - iii. The upper limits of wetlands, beaches, dunes and coastal bluffs within 150 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
 - iv. The proposed location of each proposed wind turbine, all limits of disturbance, grading, and existing and proposed clearing areas; and
 - v. The proposed lighting for each proposed wind turbine;
2. Five copies of an elevation plan of each proposed wind turbine;
 3. The total height and rotor swept area for each proposed wind turbine;
 4. Five copies of the post-construction monitoring methodology, if applicable; and
 5. Five copies of a Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed wind turbine(s) comply with (a) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule, 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).

7:7-7.31 Coastal general permit for the construction of wind turbines less than 250 feet in height and having a cumulative rotor swept area no greater than 20,000 square feet

(a) This coastal general permit authorizes the construction of wind turbines less than 250 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 20,000 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(s), including blades, tower and site disturbance shall be located within:

- i. 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). The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

- ii. An area identified on the Department's Large Scale Wind Turbine Siting Map, dated August 8, 2009, incorporated by reference into N.J.A.C. 7:7E. The Department's Large Scale Wind Turbine Siting Map is available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>; or

- iii. One-quarter mile of an area identified on the Department's Large Scale Wind Turbine Siting Map;

5. The wind turbine(s) shall comply with N.J.A.C. 7:7E-3.39, Critical wildlife habitats;

6. Development under this general permit shall not result in construction of turbines with a cumulative rotor swept area, as defined at N.J.A.C. 7:7-1.3, greater than 20,000 square feet on a site, either solely or in conjunction with a previous wind turbine development;

7. 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);

8. No lighting shall be placed on or directed at the wind turbine except that lighting required by the Federal Aviation Administration and 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; and

9. In order to assess the impact of the operation of wind turbines authorized under this coastal general permit on avian species and bats, post-construction monitoring shall be required. The monitoring shall be conducted for one full year beginning immediately after the wind turbines begin operation and shall include bird and bat carcass searches as well as removal and efficiency trials. The monitoring methodology shall be approved by the Department prior to initiation and a complete report of findings submitted to the Department within three months of completion of the monitoring. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse.

(b) In accordance with N.J.A.C. 7:7-7.1(e)1, the Department may add a special condition to an authorization under this general permit, that would curtail the operation of the wind turbines as directed by the Department pursuant to (b)1 below, during peak spring (April through June) and fall

(August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

1. Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse.

(c) In addition to the application and information required under N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Five copies of a site(s) plan showing the following:
 - i. The mean high water lines of the tidal waters within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
 - ii. Existing features at the site including topography, structures, utilities, beach areas, dune areas, coastal bluffs, floodways, and limits of the areas identified on the Department's Large Scale Wind Turbine Siting Map and areas within one-quarter mile of mapped areas;
 - iii. The landward limits of wetlands, beaches, dunes and coastal bluffs within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
 - iv. The proposed location of each proposed wind turbine, including all limits of disturbance, grading, and existing and proposed clearing areas; and
 - v. The proposed lighting for each proposed wind turbine;

2. Five copies of an elevation plan of each proposed wind turbine;
3. The total height and rotor swept area for each proposed wind turbine;
4. Five copies of the post-construction monitoring methodology; and
5. Five copies of a Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed wind turbine(s) comply with (a) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule, 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).

7:7-7.32 Coastal general permit for the dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency

(a) This coastal general permit authorizes the dredging of sand from a man-made lagoon that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 through 6 below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. The volume of sand to be dredged is limited to that which was deposited as a result of the storm event;
2. The area to be dredged is limited to that where the sand was deposited as a result of the storm event;
3. The sand removed by dredging is placed on an upland site, dewatered as necessary within a temporary dewatering area, and capped with a six-inch layer of clean fill and stabilized;
4. No wetlands are present within 25 feet of the area to be dredged. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged; and
5. Any debris contained within the dredged sand shall be removed and disposed of properly.

(b) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(d) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site plan(s) showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
 - iii. If available, pre- and post-storm bathymetry of the area to be dredged;
 - iv. The method of dredging;
 - v. The location of the dredged material disposal site; and
 - vi. The method of stabilization of dredged material;

2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, provides guidance on performing a grain size analysis; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

Adopted concurrent new rule, 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.

7:7-7.33 Coastal general permit for the dredging of material from a waterway at a residential or commercial development deposited as a result of the failure of a bulkhead as a consequence of a storm event for which the Governor declared a State of Emergency

(a) This coastal general permit authorizes the dredging of material from a waterway at a residential or commercial lot that was deposited as a result of the failure of a legally existing bulkhead that was damaged as a result of a storm event for which the Governor declared a State of Emergency, provided:

1. The volume of the material to be dredged is limited to that which resulted from the failure of the bulkhead;
2. The area to be dredged is limited to that where the material was deposited as a result of the failure of the bulkhead;
3. The dredged material is placed on an upland portion of the lot, dewatered as necessary within a temporary dewatering area, and capped with a six-inch layer of clean fill and stabilized;
4. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged; and

5. Any debris contained within the dredged material shall be removed and disposed of properly.

(b) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(d) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site plan(s) showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands on site and on adjacent properties;
 - iii. The alignment of the bulkhead that failed;
 - iv. If available, the pre- and post-storm bathymetry of the area to be dredged;
 - v. The method of dredging;
 - vi. The location of the dredged material disposal site; and
 - vii. The method of stabilization of the dredged material; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

Adopted concurrent new rule, 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.

7:7-7.34 Coastal general permit for dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency

(a) This coastal general permit authorizes the dredging and management of material from a marina that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 and 2 below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. The dredged material is sand; or

2. If the dredged material is not sand, the material is temporarily disposed of in an existing upland confined disposal facility located on the marina property until a final placement site is determined in accordance with (e) below.

(b) Dredging activities under this general permit shall comply with the following:

1. The depth in the area after the proposed dredging is completed shall not exceed the depth in that area prior to the storm event;

2. The area to be dredged is limited to the area in which material was deposited as a result of the storm event; and

3. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged, unless the area to be dredged is within an existing maintained navigation channel or basin. In such cases, the area to be dredged shall be limited to the existing channel or basin.

(c) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(d) Material determined to be sand shall be placed at either an on-site or off-site location that has been approved by the Department. The beneficial use of this dredged sand is encouraged.

(e) Material determined not to be sand shall be disposed of in an existing upland confined disposal facility located on the marina property, until beneficially used at an on- or off-site location. The dredged material shall remain within the confined disposal facility until a determination of an acceptable final placement site is issued by the Department. Additional testing of the material may be required as part of the Department's assessment of a final placement site. The upland confined disposal facility shall:

1. Be large enough to contain and dewater the dredged material, considering any bulking that occurs during dredging;

2. Not be located within wetlands or wetlands buffers; and

3. Be operated and maintained in a manner to minimize the discharge of dredged material into the adjacent surface waters and wetlands.

(f) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(g) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands on site and on adjacent properties;

iii. If available, the pre- and post-storm bathymetry of the area to be dredged;

iv. The method of dredging;

v. The location and areal dimensions of the existing on-site disposal area, including inflow and weir discharge points; and

vi. Cross sections showing the heights of the berms of the existing on-site disposal area;

2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, provides guidance on performing a grain size analysis;

3. Calculations demonstrating the available capacity of the upland confined disposal facility located on the marina site; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging and dredged material management activities comply with (a) through (e) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

Adopted concurrent new rule, 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.

7:7-7.35 Coastal general permit for commercial shellfish aquaculture activities

(a) This coastal general permit authorizes the construction and/or placement and maintenance of shellfish aquaculture equipment, including floating upwellers, shellfish rafts, racks and bags, lantern nets, and cages, provided:

1. The structures are located in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23;

2. The structures are not located within submerged infrastructure routes, N.J.A.C. 7:7E-3.12, shipwreck and artificial reef habitat, N.J.A.C. 7:7E-3.13, or wetlands, N.J.A.C. 7:7E-3.27;

3. The structures are not located within 50 feet of any designated navigation channel, unless it is demonstrated that the proposed structure will not hinder navigation. The placement of structures within designated navigation channels is prohibited;

4. The boundaries of the area where the structures are placed are clearly marked in accordance with US Coast Guard requirements for regulatory and informational markers (US Coast Guard "U.S. Aids to Navigation System" <http://www.uscgboating.org/ATON/index.htm>). Specifically, the corners of the footprint of the area where the structures are placed must be marked with buoys or stakes;

5. The structures are constructed of non-polluting materials:

6. The structures are properly secured; and

7. No activity undertaken pursuant to this general permit 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.

(b) Upon expiration or termination of the shellfish lease, or the cessation of shellfish aquaculture activities, whichever occurs first, within five days the permittee shall remove all structures placed within the lease area.

(c) Prior to the commencement of activities authorized by this general permit, the permittee shall notify the Department's Bureau of Shellfisheries in writing:

1. For Atlantic Coast Shellfish Leases:

Nacote Creek Shellfish Office
PO Box 418
Port Republic, NJ 08241

2. For Delaware Bay Shellfish Leases:

Delaware Bay Shellfish Office
1672 East Buckshutem Road
Millville, NJ 08332

(d) The notification under (c) above shall contain the following information:

1. A copy of the permit and associated plans;
2. The shellfish lease number;
3. The shellfish species to be cultured; and
4. The estimated date of commencement of activities.

(e) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:

- i. The mean high, mean low, and spring high water lines of the tidal waters at the site, any wetlands, and navigation channels;
- ii. The area covered by the shellfish lease;
- iii. Existing waters depths in the area where the structures will be located; and
- iv. The location of the proposed structures; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed commercial shellfish aquaculture equipment complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

Adopted concurrent new rule, 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.

7:7-7.36 Coastal general permit for the placement of shell within shellfish lease areas

(a) This coastal general permit authorizes the placement of shell in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23, provided:

1. The shell to be planted is comprised of processed oyster, surf clam, and/or ocean quahog shell or other shell material approved by the Department;

2. The height of the shell material placed on the bottom of the water body does not exceed six inches above the substrate;

3. The placement of shell does not pose a hazard to navigation; and

4. All shell is clean and free of contaminants.

(b) This coastal general permit does not authorize the stockpiling of shell or dredging activities.

(c) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:

i. The mean high, mean low, and spring high water lines of the tidal waters at the site, any wetlands, and navigation channels;

ii. The area covered by the shellfish lease; and

iii. Existing waters depths in the area where the shell will be located;

2. The type and quantity of shell to be used, and the source of the shell; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed shell planting complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

Adopted concurrent new rule, 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.

SUBCHAPTER 8. ENFORCEMENT

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14, pursue the remedies specified in (a)1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

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

In (a), inserted "and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14," and substituted "(a)1 through 4" for "1 through 4".

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;

2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;

3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative

penalty assessment becomes a final order upon receipt of notice of such denial; or

4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

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

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

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

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

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

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

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

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

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

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the

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

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

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

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

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

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

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

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

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

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

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

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

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

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

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

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

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved—1 point

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

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

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

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

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

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the ef-	0.50

fects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or

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

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

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

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

Case Notes

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).

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

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

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pur-

suant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

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

SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	\$20,000- \$25,000	\$15,000- \$20,000	\$10,000- \$15,000
	Moderate	\$15,000- \$20,000	\$10,000- \$15,000	\$ 5,000- \$10,000
	Minor	\$10,000- \$15,000	\$ 5,000- \$10,000	\$125- \$ 5,000

(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 or the environment;
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
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;
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 Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, 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, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:
 - i. Determining the seriousness of the violation pursuant to (f) below; and
 - ii. Determining the conduct of the violator pursuant to (g) below.

2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

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

SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	\$1,000	\$900	\$750
	Moderate	\$900	\$700	\$500
	Minor	\$750	\$500	\$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;
2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;
3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator;
3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;
3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;
4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;
5. The deterrent effect of the penalty; and/or

6. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

The Department may assess an additional penalty of not more than \$100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

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

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

7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

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

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

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

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

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

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

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

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be, subject upon order of a court, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14, to a civil penalty of not more than \$1,000.

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

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

In (a), inserted "and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-8.14,".

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

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

1. A temporary or permanent injunction;

2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or

3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

7:7-8.14 Grace period applicability; procedures

(a) Each violation identified in Table A at (f) below by an "M" in the Type of Violation column for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-day grace period.

(b) Each violation identified in Table A at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table A at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table A at (f) below but is comparable to a violation designated as "M" in Table A and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

2. If the violation is not listed in Table A at (f) below and is not comparable to a violation listed in Table A but the violation meet all of the criteria of (d)1 through 9 below, the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

3. If the violation is not listed in Table A at (f) below but is comparable to a violation designated as "NM" in Table A, then the violation is a non-minor violation and is not subject to a grace period.

4. If the violation is not listed in Table A at (f) below and is not comparable to a violation listed in Table A, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to a grace period.

5. Comparability of a violation to a violation in Table A at (f) below is based on the nature of the violation(s) (for example, recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table A un-

less the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local governmental agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

5. In the case of a violation of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local governmental agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

7. The violation poses minimal risk to the public health, safety and natural resources;

8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 days.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Coastal Permit Program rules relating to the Wetlands Act of 1970 and CAFRA and this chapter as minor (M) or non-minor (NM) are set forth in Table A below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table A and the rule to which the violation description corresponds, the rule shall govern.

Table A

<u>Rule Citation</u>	<u>Violation Description</u>	<u>Type of Violation</u>
N.J.A.C. 7:7-1.5(a), 7:7-2.1(a), 7:7-2.2(a)	Failure to obtain a permit prior to conducting regulated activities (CAFRA, Wetlands Act of 1970)	NM
N.J.A.C. 7:7-1.5(b)1	Failure to notify the Department in writing at least three working days prior to starting work under a permit	NM
N.J.A.C. 7:7-1.5(b)2	Failure to notify the Department in writing and certify that all permit conditions have been met within five working days prior to operation of a CAFRA development.	NM
N.J.A.C. 7:7-1.5(b)4	Failure to allow the Department free access to the site	NM
N.J.A.C. 7:7-1.5(b)5	Failure to obtain written permission from the Department prior to a change in plans or specifications on which a permit is issued	NM
N.J.A.C. 7:7-1.5(b)6	Failure to post and maintain permits and plans at the permitted site	NM
N.J.A.C. 7:7-1.5(b)7	Failure to inform the Department of adverse effects on the environment not described in the application or in the conditions of the permit	NM
N.J.A.C. 7:7-1.5(b)10	Failure to comply with terms of suspension or revocation notice	NM
N.J.A.C. 7:7-1.5(b)12	Failure to notify the Department of political subdivision's decision whether or not to accept land dedication	NM
N.J.A.C. 7:7-1.5(b)13	Failure to apply for permit modification in the event of a rental, lease, sale or other conveyance by the permittee when there is a change in the site, proposed construction, or proposed use of the development from that identified in the original application	NM

N.J.A.C. 7:7-1.5(b)14	Failure to comply with a permit condition that must be satisfied prior to the commencement of construction	NM	N.J.A.C. 7:7-4.5(f)	Failure of an applicant to provide appropriate public notice of public hearing on permit application	NM
N.J.A.C. 7:7-1.5(b)15	Failure to file permit with the county clerk	NM	N.J.A.C. 7:7-7.3(a)4	Failure to provide verification that three copies of the application have been submitted to the clerk of the municipality in which the general permit activity would occur, and if appropriate, to the Pinelands Commission	M
N.J.A.C. 7:7-1.5(b)16	Failure to minimize noise during construction	NM			
N.J.A.C. 7:7-1.5(b)17	Failure to comply with the latest revised standards for soil erosion and sediment control under the Soil Erosion and Sediment Control Act of 1975	NM	N.J.A.C. 7:7-7.3(a)5	Failure to provide verification that a copy of the application has been submitted to the construction official and that certified mail notice has been provided to all owners of real property surrounding and sharing a property boundary	M
N.J.A.C. 7:7-1.5(b)18	Failure to submit proof that the conservation restriction has been recorded	M			
N.J.A.C. 7:7-1.5(c)2	Failure to submit a request to continue construction beyond the expiration of a permit no later than 20 business days prior to the expiration of the permit	M	N.J.A.C. 7:7-7.3A	Failure to submit to the Department a request for modification of a coastal general permit authorization, should a permittee propose a change in the development	NM
N.J.A.C. 7:7-1.7(a)4	Failure to submit a complete coastal permit application within 10 working days of issuance of an emergency permit authorization	NM	N.J.A.C. 7:7-7.3A(e)	Failure to provide public notice for request for modification of a coastal permit authorization	NM
N.J.A.C. 7:7-2.2(b)	Conducting identified prohibited activities within coastal wetlands without prior Department authorization	NM	N.J.A.C. 7:7-8.1	Failure to comply with a site-specific CAFRA permit condition issued by the Department	NM
N.J.A.C. 7:7-4.2(a)3	Failure to provide verification that copies of the application have been submitted to the clerk of the municipality in which the proposed development would occur including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission	M	N.J.A.C. 7:7-8.1	Failure to submit to the Department documentation required by a CAFRA permit condition	M
N.J.A.C. 7:7-4.2(a)4	Failure to provide verification that the application has been submitted to the municipal construction official, planning board and environmental commission, and to property owners within 200 feet of the property or properties	M			
N.J.A.C. 7:7-4.3(a)	Failure by a CAFRA applicant to provide appropriate newspaper public notice of permit application	NM			
N.J.A.C. 7:7-4.3(b)	Failure to submit proof to the Department that CAFRA newspaper public notice requirements have been met	M			

New Rule, R.2007 d.242, effective August 20, 2007.

See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

Former N.J.A.C. 7:7-8.14, Severability, recodified to N.J.A.C. 7:7-8.15.

7:7-8.15 Severability

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

Recodified from N.J.A.C. 7:7-8.14 by R.2007 d.242, effective August 20, 2007.

See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. APPLICATION FEES

7:7-10.1 Application fees

(a) This subchapter establishes the application fees for:

1. A written determination of exemption from CAFRA pursuant to N.J.A.C. 7:7-2.1(f), or from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(h);
2. An authorization under a general permit, pursuant to N.J.A.C. 7:7-7.5 through 7.36, except for the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.29;
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. 7:7-4.10 or 7.3A, respectively.

(b) There is no application fee for:

1. A jurisdictional determination pursuant to N.J.A.C. 7:7-1.5(a)2;
2. An emergency permit authorization pursuant to N.J.A.C. 7:7-1.7;
3. A permit-by-rule pursuant to N.J.A.C. 7:7-7.2(a)1 through 21; or
4. An authorization under the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.29.

(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. 7:7-2.1(f)	\$500.00
Request for a written determination of exemption from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(h)	\$500.00

Authorization under a general permit by certification (Reserved)

Authorization under a general permit pursuant to N.J.A.C. 7:7-7.5 through 7.36

	Fee
General permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.29	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)

Request for a modification of a waterfront development, coastal wetlands, or CAFRA individual permit pursuant to N.J.A.C. 7:7-4.10 or a general permit pursuant to N.J.A.C. 7:7-7.3A

	Fee
Modification of an authorization under a general permit	\$500.00
Minor modification of a waterfront development, coastal wetlands, or CAFRA individual permit	\$500.00
Major modification of a waterfront development individual permit for development located landward of the mean high water line or a CAFRA individual permit	30 percent of the original application fee or \$500.00, whichever is greater

Request to extend a general permit authorization or an individual permit (Reserved)

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
Additional fee for review of groundwater 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)
Additional fee if project disturbs vegetation within a Special Water Resource Protection Area (see N.J.A.C. 7:8-5.5)	\$2,000

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".

7:7-10.2 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:

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:

i. The number and type of Department staff required to perform each activity for which fees are charged and the projected total salaries of those staff for the upcoming State fiscal year;

ii. The total cost of fringe benefits for those Department staff, calculated as the projected total salaries of those staff multiplied by a percentage set by the New Jersey Department of the Treasury that reflects costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those Department staff, calculated as the total salaries and fringe benefits for those staff multiplied by a percentage known as the indirect cost rate. The indirect cost rate is negotiated annually with the U.S. Environmental Protection Agency and is the total of the Department's costs for management and administrative costs applicable to multiple cost objectives (including but not limited to, indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent, and the Department's share of the Statewide Cost Allocation Plan) divided by total Department direct salaries plus applicable fringe benefits; and

iv. Projected operating costs attributable to those Department staff, including, but not limited to, costs for postage, telephone, travel, supplies, and data system management;

2. Project the total amount of revenue expected to be received from application fees in the upcoming State fiscal year. This projection shall consider the following:

i. The number and type of applications received in previous State fiscal years;

ii. Any trend toward increasing or decreasing construction activities in regulated areas and such trend's impact, if any, on the number and type of applications anticipated for the upcoming State fiscal year;

iii. Other data concerning economic trends reasonably likely to influence the number and type of applications anticipated for the upcoming State fiscal year; and

iv. The application fees in effect at the time such projection is made;

3. Project the total amount of money to be available from sources other than application fees, such as State appropriations or Federal grants, for the upcoming State fiscal year;

4. Subtract the amounts in (b)2 and 3 above from the amount in (b)1 above. The remainder is the projected fee revenue shortfall for the upcoming State fiscal year; and

5. Divide the projected fee revenue shortfall in (b)4 above by the total amount of revenue expected to be received from application fees in (b)2 above to determine the fee adjustment factor. The amounts of the adjusted application fees for the upcoming State fiscal year shall be obtained by increasing the existing fees by the fee adjustment factor.

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

Rewrote the section.

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

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

Amended by R.2006 d.344, effective October 2, 2006.
See: 37 N.J.R. 3120(a), 38 N.J.R. 4205(a).

In the introductory paragraph of (a) and in (c)1, substituted "\$600.00" for "\$500.00"; in (b)1, substituted "\$1,200" for "\$1,000" two times; rewrote the introductory paragraph of (b)2; deleted (b)2ii through (b)2iii; rewrote (b)3 and (c)2; and in (e), substituted "\$300.00" for "\$250.00".

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 "Application fees for waterfront development permits".

7:7-10.3 (Reserved)

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

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

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

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

Amended by R.2006 d.344, effective October 2, 2006.
See: 37 N.J.R. 3120(a), 38 N.J.R. 4205(a).

Rewrote (a); and in (b), substituted "\$600.00" for "\$500.00".
Repealed by R.2015 d.023, effective February 2, 2015.

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

Section was "Application fees for Coastal Wetland permits".

7:7-10.4 (Reserved)

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

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

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

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

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)1, substituted "\$1,200" for "\$1,000" two times; rewrote (a)2; deleted (a)2ii through (a)2iii; rewrote (b)1 and (b)2; in (e), substituted "\$600.00" for "\$500.00"; and in (f), substituted, "\$300.00" for "\$250.00".

Repealed by R.2015 d.023, effective February 2, 2015.
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Section was "Application fees for CAFRA permits".

7:7-10.5 (Reserved)

Repealed by R.2015 d.023, effective February 2, 2015.
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Section was "Standards for assessing a single permit application fee".

7:7-10.6 (Reserved)

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

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

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

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)1, substituted "\$250.00" for "\$200.00"; rewrote (a)2; and in (a)3, substituted "\$250.00" for "200.00".

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

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

Section was "Application fees for requests for modifications of coastal permits".

7:7-10.7 (Reserved)

New Rule, R.2006 d.344, effective October 2, 2006.

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

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

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

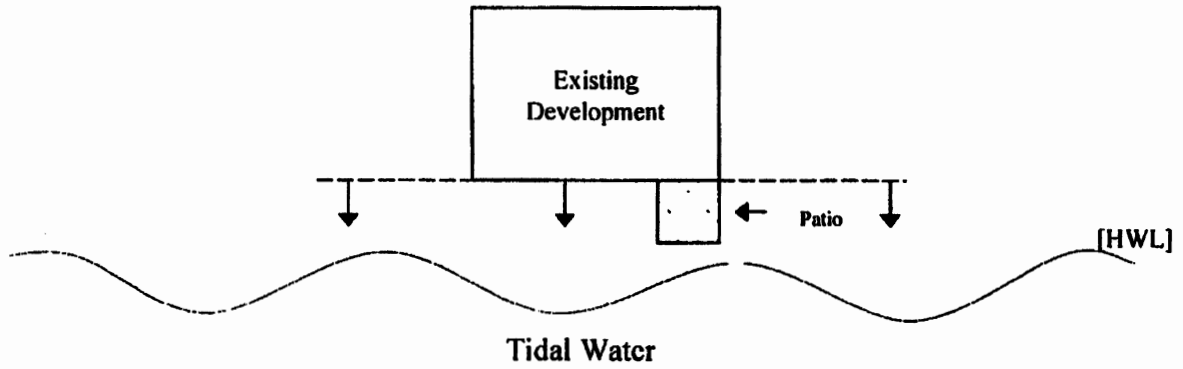
Section was "Additional fees for major development requiring stormwater review pursuant to N.J.A.C. 7:8".

Appendix A

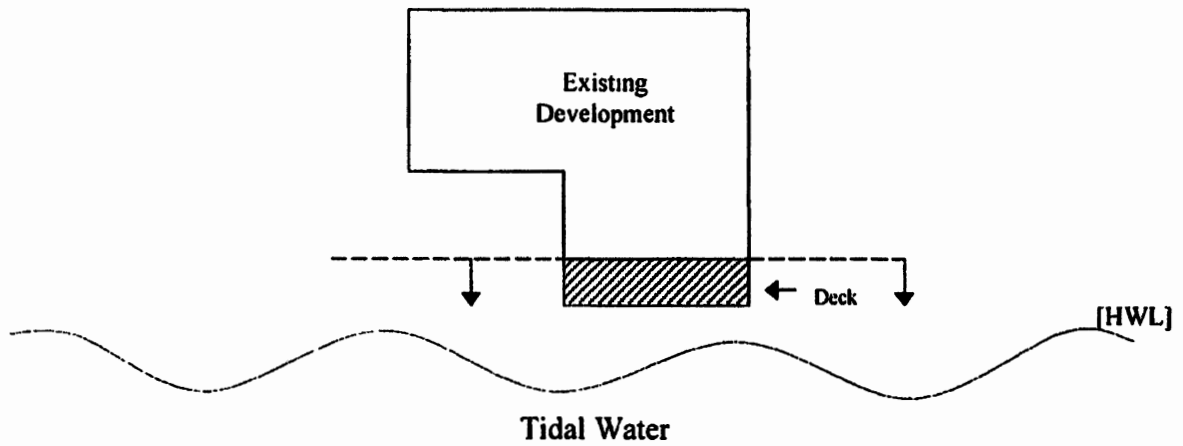
Illustration of the Waterward Side of Development

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

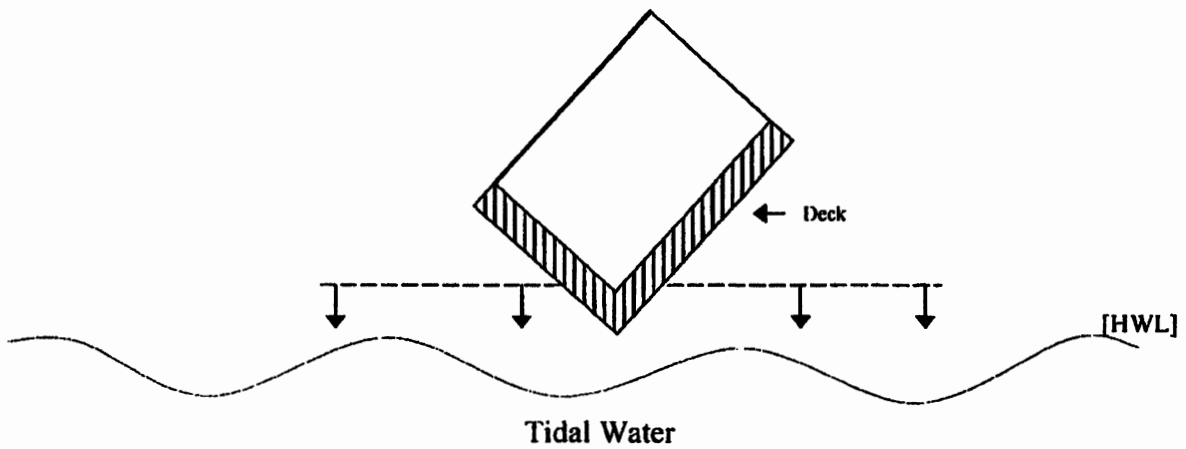
A.



B.



C.

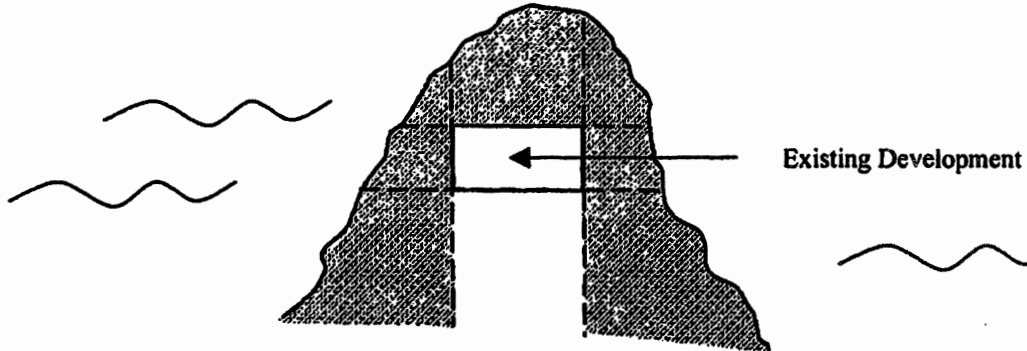


***NOT TO SCALE ***

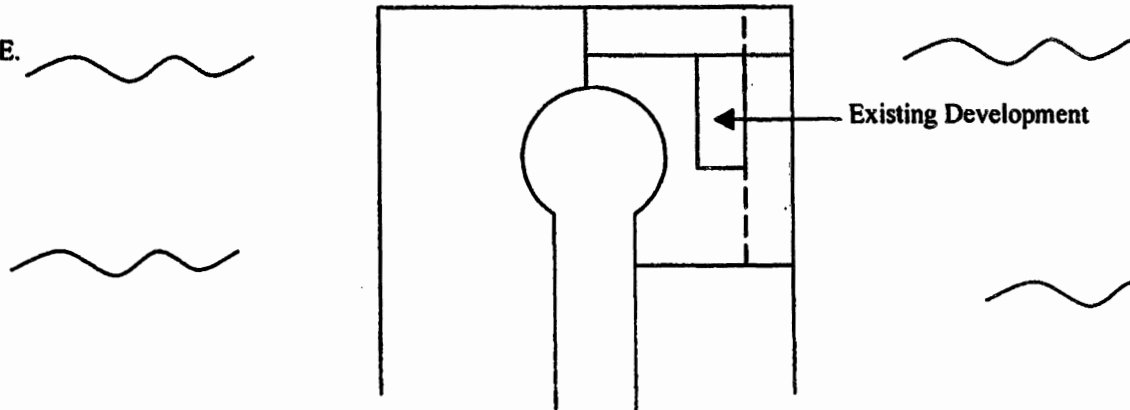
Note: Arrows Denote Waterward Side of the Development

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

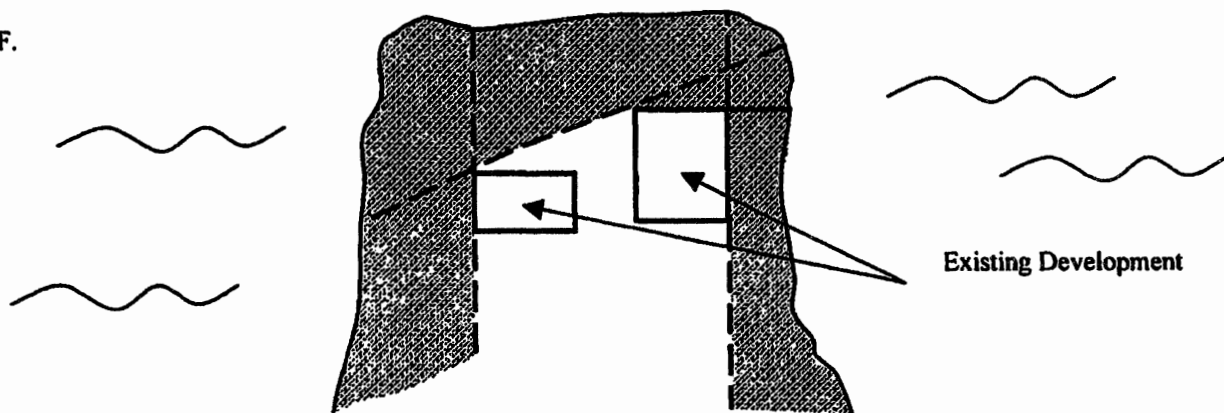
D.



E.



F.



NOTE: Shaded areas denote waterward side of development

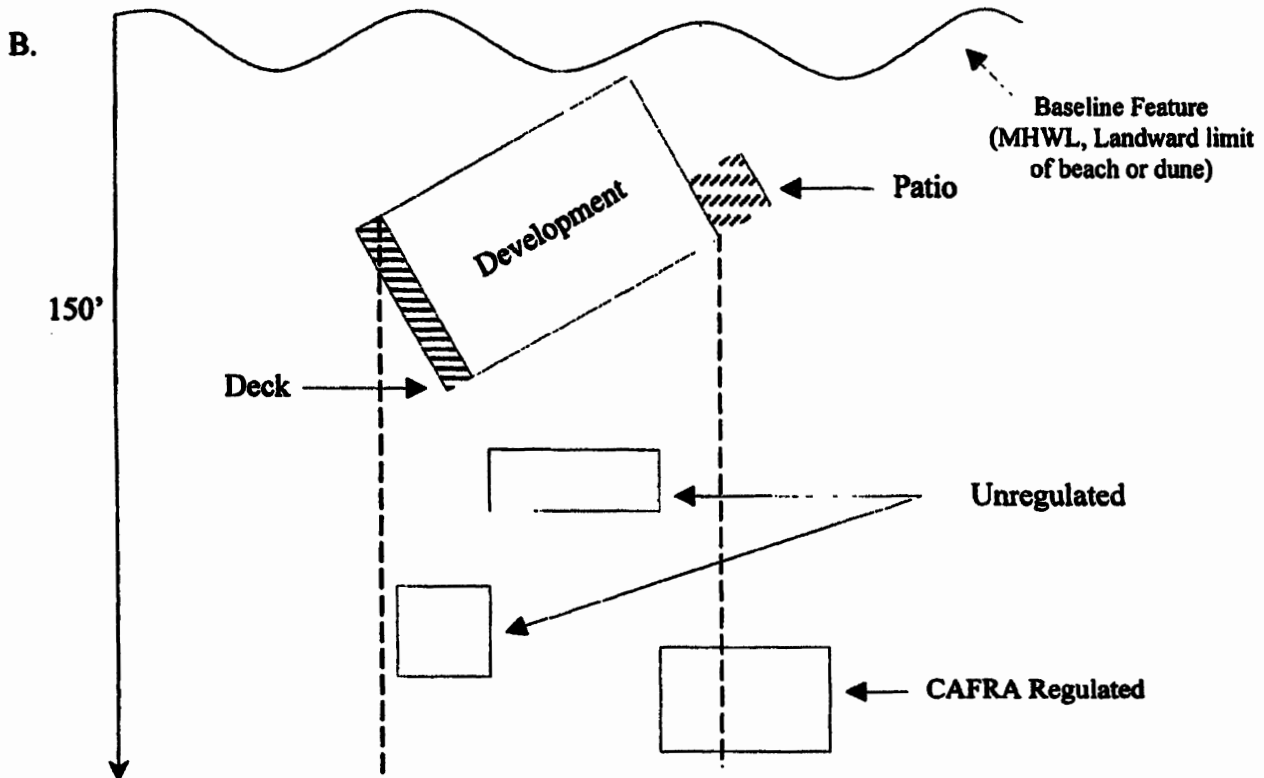
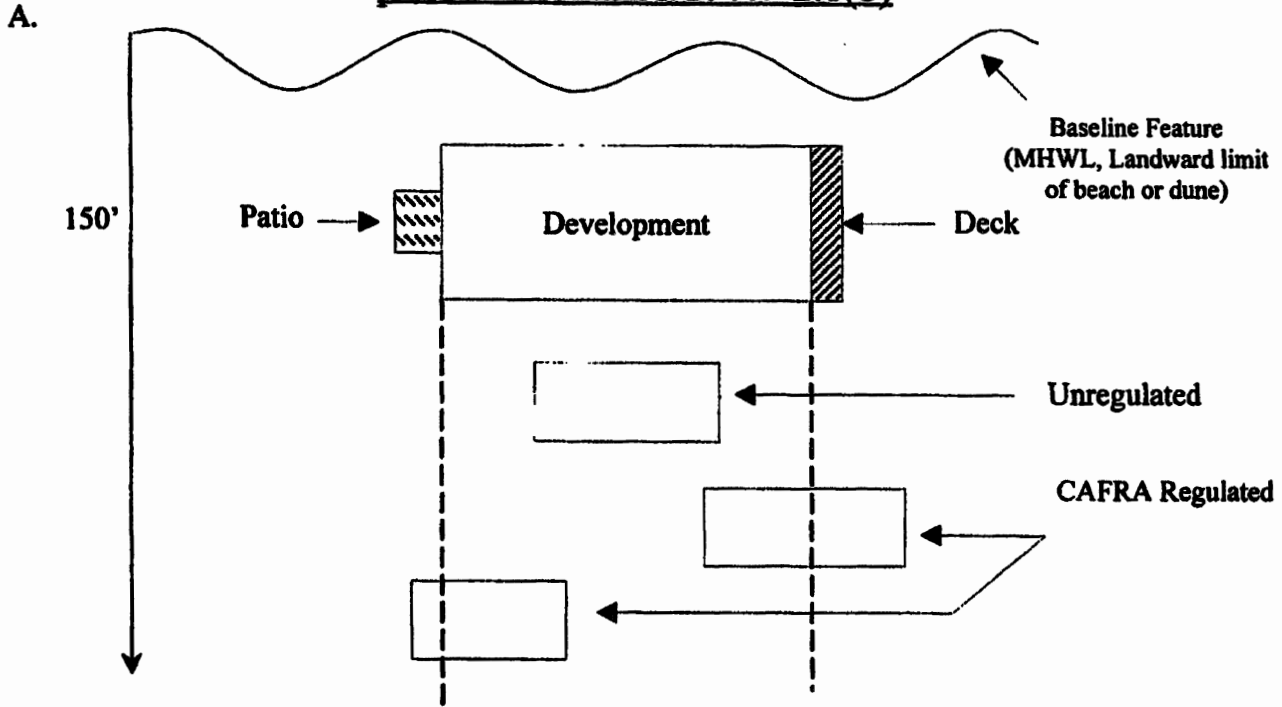
NOT TO SCALE

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

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

Appendix B

Illustration of Intervening Development for Proposed Development other than a Single Family Home or Duplex pursuant to N.J.A.C. 7:7-2.1(b)



COASTAL PERMIT PROGRAM RULES

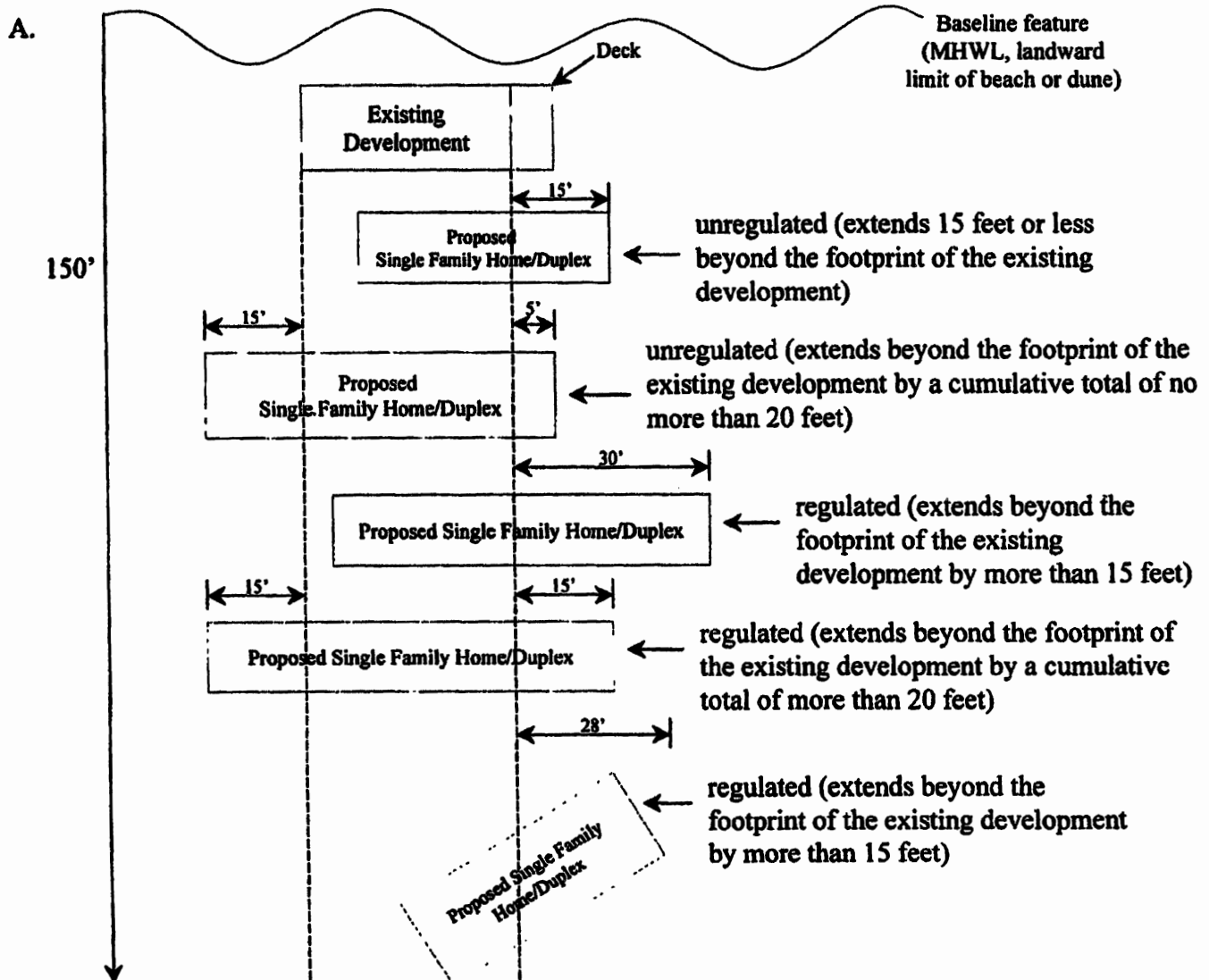
7:7 App. B

New Rule, R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

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

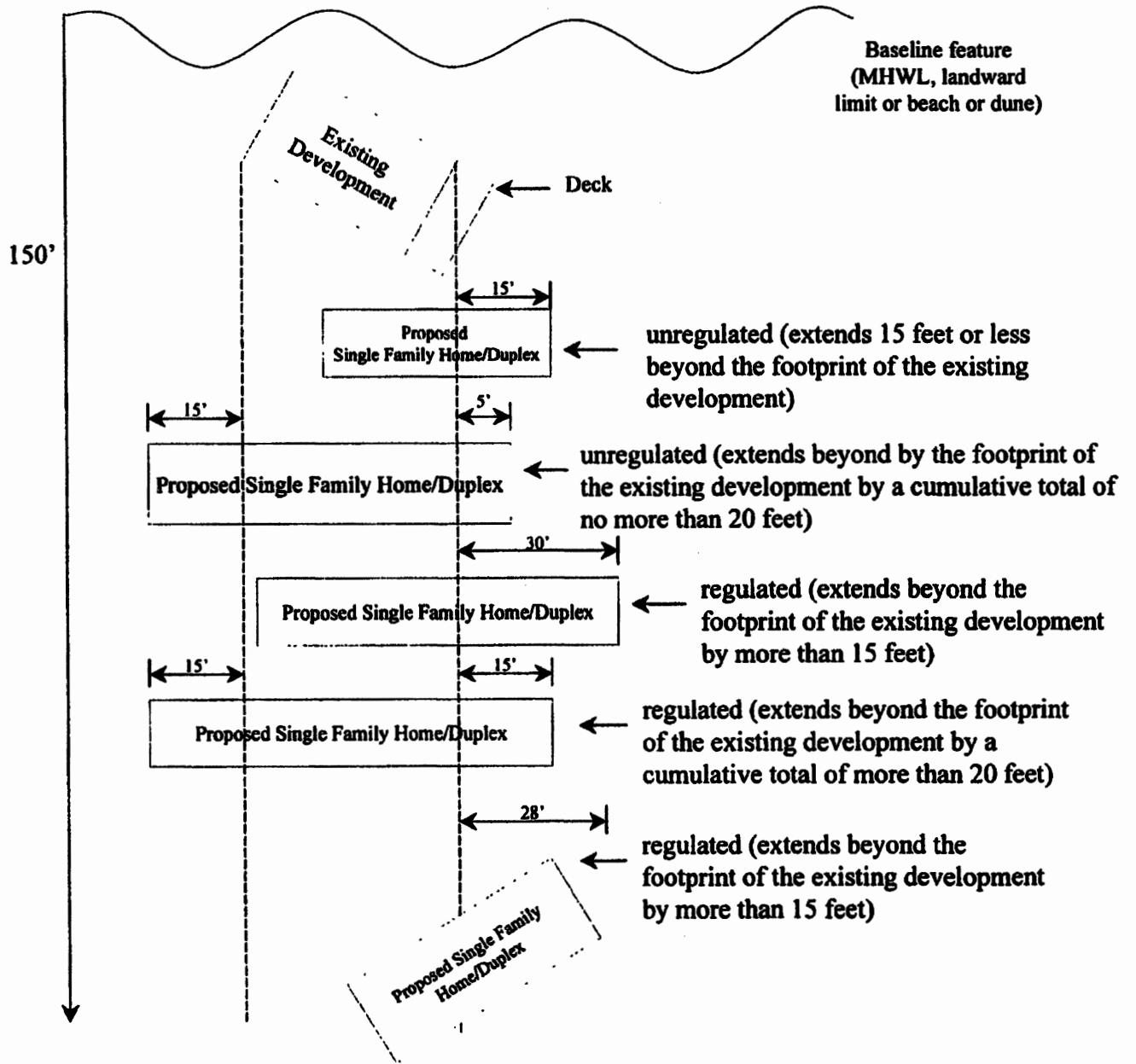
Appendix C

Illustration of Intervening Development for Proposed Single Family Home or Duplex pursuant to N.J.A.C. 7:7-2.1(b)1



NOT TO SCALE

B.



***NOT TO SCALE ***

New Rule, R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

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