

**CHAPTER 7**

**COASTAL PERMIT PROGRAM RULES**

**Authority**

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

**Source and Effective Date**

R.2000 d.428, effective September 22, 2000.  
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

**Executive Order No. 66(1978) Expiration Date**

Chapter 7, Coastal Permit Program Rules, expires on September 22, 2005.

**Chapter Historical Note**

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

Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980.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

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

Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984.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

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

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

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

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

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

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

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 7, Coastal Permit Program Rules, was readopted as R.2000 d.428, effective September 22, 2000. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

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

**SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED**

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

**SUBCHAPTER 3. PRE-APPLICATION REVIEW**

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

**SUBCHAPTER 4. PERMIT REVIEW PROCEDURE**

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

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

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

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

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

**SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE**

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

- 7:7-7.4 Long Branch Redevelopment Zone Permit
- 7:7-7.5 Coastal general permit for amusement pier expansion
- 7:7-7.6 Coastal general permit for beach and dune maintenance activities
- 7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development
- 7:7-7.8 Coastal general permit for the development of a single family home or duplex
- 7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion) of a single family home or duplex
- 7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon
- 7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot
- 7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot
- 7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating commercial marinas
- 7:7-7.14 Reconstruction of a legally existing functioning bulkhead
- 7:7-7.15 Coastal general permit for hazardous waste clean up
- 7:7-7.16 Coastal general permit for the landfall of utilities
- 7:7-7.17 Coastal general permit for the construction of recreational facilities at public parks
- 7:7-7.18 Coastal general permit for bulkhead construction and placement of associated fill
- 7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons
- 7:7-7.20 Coastal general permit for minor maintenance dredging in man-made lagoons
- 7:7-7.21 Coastal general permit for the stabilization of eroded shorelines
- 7:7-7.22 Coastal general permit for avian nesting structures
- 7:7-7.23 Coastal general permit for modification of existing electrical substations
- 7:7-7.24 Coastal general permit for the legalization of the filling of tidelands
- 7:7-7.25 Coastal general permit for the construction of telecommunication towers
- 7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

**SUBCHAPTER 8. ENFORCEMENT**

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

- 7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)
- 7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)
- 7:7-8.14 Severability

**SUBCHAPTER 9. SECTOR PERMIT**

- 7:7-9.1 Purpose and scope
- 7:7-9.2 Definitions
- 7:7-9.3 Sector Permit standards
- 7:7-9.4 Requirements for certification as a sector permit municipality
- 7:7-9.5 Responsibilities of a certified Sector Permit municipality
- 7:7-9.6 Effect of a certified Sector Permit municipality's noncompliance with the terms of its certification
- 7:7-9.7 Notification requirements for applications for authorization under the Sector Permit
- 7:7-9.8 Publication of the final decision
- 7:7-9.9 Procedures to request an adjudicatory hearing
- 7:7-9.10 Expiration of certification as a sector permit municipality
- 7:7-9.11 Requirements for recertification as a Sector Permit municipality

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

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

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

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

**SUBCHAPTER 1. GENERAL PROVISIONS**

**7:7-1.1 Purpose and scope**

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

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

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

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" do not include games for cash payoffs, bars or restaurants.

"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.

"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.).

"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 an authorization or permit 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., or the Waterfront Development Law, N.J.S.A. 12:5-3.

"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, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

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 the foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, 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.

"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.

"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.

"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.

"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.)

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

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

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

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

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

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

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

“Seasonal or temporary structures related to the tourism industry” means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds, wooden walkways, stage platforms, and portable restrooms, which remain in place only during the period from May 1 through September 30, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

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

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

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

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

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

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

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

Amended Division and Permit; added pesticide.

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

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

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

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

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

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

Rewrote the section.

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”.

#### Law Review and Journal Commentaries

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

#### 7:7-1.4 Standards for evaluating permit applications

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

(b) The Department shall not issue a permit under CAFRA unless the application complies with all of the policy and substantive standards of N.J.S.A. 13:19-2 and 13:19-10 as expressed in the Coastal Zone Management rules at N.J.A.C. 7:7E.

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).

#### 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

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.

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

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

(a) 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.

(b) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:1C-1.5(c).

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).

#### 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. 7:1C-1.5. 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).

#### 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 and 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 8 1/2 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 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;

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.

#### 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).

#### 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)lii 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 agricultural 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 1, 1973 (the effective date of CAFRA), regardless of present ownership, or any subdivision or resubdivision 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 develop-

ment 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.

(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)liii, 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)liii 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. 7:1C-1.5(a)3v; 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. 7:1C-1.5(a)3v; 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. 7:1C-1.5(a)3v; 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. 2056(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.

**Case Notes**

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).

**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  
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2. Monmouth County:

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3. Ocean County:

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4. Burlington County:

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 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	182-1980
280-2010	182-1986
280-2016	182-1992
280-2022	182-1998
280-2028	182-2004
280-2040	182-2010
280-2046	182-2016
280-2052	182-2022
280-2058	182-2028
287-2004	182-2034
287-2010	182-2040
287-2016	182-2046
287-2040	182-2052
287-2046	189-1974
294-2040	189-1980
413-1896	189-1986
413-1902	189-1992
420-1890	189-1998
420-1896	189-2022
420-1932	189-2028
420-1938	189-2034
420-1944	189-2040
427-1926	189-2046
427-1932	189-2052
427-1938	189-2058
434-1908	196-1974
434-1914	196-1980
434-1920	196-1986
434-1926	196-2034
434-1932	196-2040
448-1944	196-2046
448-1950	196-2052
448-1956	196-2058
462-1968	196-2064
469-1974	196-2070
476-1980	203-1980
476-1986	203-1986
483-1986	203-2040
483-1992	203-2046
490-1986	203-2052
490-1992	203-2058

## 5. Atlantic County:

161-1980	203-2064
161-1986	203-2070
161-1992	203-2076
161-2004	210-1974
168-1956	210-1980
168-1962	210-1986
168-1968	210-2040
168-1974	210-2046
168-1980	210-2052
168-1986	210-2058
168-1992	210-2064
168-1998	210-2070
168-2004	210-2076
168-2010	210-2082
168-2016	210-2088
168-2022	217-1974
168-2028	217-1980
168-2034	217-1986
175-1974	217-2040
175-1980	217-2046
175-1986	217-2052
175-1992	217-2058
175-1998	217-2064
175-2004	217-2070
175-2010	217-2076
175-2016	217-2082
175-2022	217-2088
175-2028	217-2094
175-2034	224-1980
175-2040	224-2052
	224-2058
	224-2064
	224-2070

224-2076	056-1914
224-2082	056-1920
224-2088	056-1932
224-2094	056-1938
231-2058	056-1944
231-2064	056-1950
231-2070	056-1956
231-2076	063-1938
231-2082	063-1944
231-2088	063-1950
231-2094	063-1956
231-2100	063-1962
238-2058	070-1920
238-2064	070-1926
238-2070	070-1944
238-2076	070-1950
238-2082	070-1956
238-2088	060-1962
238-2094	070-1968
245-2046	077-1920
245-2052	077-1926
245-2058	077-1932
245-2064	077-1950
245-2070	077-1956
252-2046	077-1962
252-2040	077-1968
252-2052	084-1926
252-2058	084-1932
252-2064	084-1938
252-2070	084-1950
259-2034	084-1956
259-2040	084-1962
259-2046	084-1968
259-2052	084-1974
259-2058	091-1932
259-2064	091-1938
259-2070	091-1944
266-2022	091-1956
266-2028	091-1962
266-2034	091-1968
266-2040	091-1974
273-2016	091-1980
273-2026	098-1932
273-2022	098-1938
273-2028	098-1944
273-2034	098-1950
280-2004	098-1962
280-2010	098-1968
280-2016	098-1974
280-2022	098-1980
287-1998	098-1986
287-2004	105-1932
287-2010	105-1938
287-2040	105-1944

6. Cape May County:

035-1914	105-1968
035-1920	105-1974
035-1926	105-1980
035-1932	105-1986
035-1938	112-1932
042-1914	112-1938
042-1920	112-1944
042-1926	112-1950
042-1932	112-1956
042-1938	112-1968
042-1944	112-1974
049-1914	112-1980
049-1926	112-1986
049-1932	112-1992
049-1938	119-1926
049-1944	119-1932
049-1950	119-1938
	119-1944
	119-1950
	119-1874

119-1980	133-1860
119-1986	133-1866
119-1992	133-1872
126-1926	133-1878
126-1932	133-1884
126-1938	133-1890
126-1944	133-1896
126-1950	133-1902
126-1956	133-1908
126-1980	133-1914
126-1986	133-1920
126-1992	133-1926
126-1998	140-1854
133-1926	140-1860
133-1932	140-1866
133-1986	140-1872
133-1992	140-1878
133-1998	140-1884
133-2004	140-1890
140-1926	140-1896
140-1932	140-1902
140-1974	140-1908
140-1980	140-1914
140-1992	140-1926
140-1998	147-1848
140-2004	147-1854
140-2010	147-1860
147-1980	147-1866
147-1986	147-1872
147-1992	147-1878
147-1998	147-1884
147-2004	147-1890
147-2010	147-1896
154-1980	147-1902
154-1986	147-1908
154-1992	154-1836
154-1998	154-1842
154-2004	154-1848
154-2010	154-1854
154-2016	154-1860
161-1962	154-1866
161-1968	154-1872
161-1974	154-1878
161-1980	154-1884
161-1986	154-1896
161-1992	154-1902
161-1998	154-1908
161-2004	161-1818
161-2010	161-1824
161-2016	161-1830
161-2022	161-1836
168-1956	161-1842
168-1962	161-1848
168-1968	161-1854
168-1974	161-1860
168-1980	161-1866
168-1986	161-1872
168-1992	161-1878
168-1998	161-1884
168-2016	161-1896
168-2022	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

## 7. Cumberland County:

119-1926  
126-1860  
126-1866  
126-1896  
126-1902  
126-1908  
126-1914  
126-1920  
126-1926  
133-1854

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  
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 189-1824  
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 189-1890  
 189-1902  
 196-1782  
 196-1788  
 196-1794  
 196-1800  
 196-1806  
 196-1812  
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 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

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  
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 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

8. Salem County:

196-1782  
 196-1788  
 203-1776

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  
 357-1818  
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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.

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.

#### 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 pre-application review is an optional service especially recommended for major development. 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).

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

(a) Potential applicants for major projects are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application 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) The Department shall, within 10 days of receipt of such request, schedule a pre-application conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

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).

#### 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 dis-

cussion 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.) and its implementing regulations (N.J.A.C. 7:1C) establish 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).

#### Case Notes

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. A check, money order, or government voucher in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5);

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. 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.

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 certified list of all owners of real property, including easements as shown on the tax duplicate, within 200 feet, except as described 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 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 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. 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;

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. Fifteen copies of development plans. (Plans must be folded to no larger than 8½ 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, sew-

ers, 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.

7. 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;

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

9. 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 on wetlands as defined by N.J.A.C. 7:7E-3.27(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 precedent to engaging in a regulated activity in a wetland.

2. The Department may, upon the request of the applicant, determine that a mitigation plan will not be required to be a 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-4.2(e). 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. Any mitigation proposal submitted pursuant to this section shall include, but shall not be limited to, the following:

i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;

iii. Photographs of the proposed mitigation site;

iv. The names and addresses of current and proposed owner(s) of the mitigation project site;

v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;

vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;

ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

x. A copy of a proposed conservation restriction as defined at N.J.A.C. 7:7-1.3, providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Prior to site preparation, proof that the conservation restriction has been recorded in the office of the clerk of the county or the Registrar of Deeds and Mortgages, if applicable, is required.

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the conservation restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

(1) Project location within the region;

(2) The lot and block number of the mitigation project location;

(3) Existing and proposed elevations and grades of the mitigation site in one foot intervals; and

(4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and property boundaries, and a determination of the State Plane Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the end points of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

xvi. A mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. For a mitigation plan submitted by a public agency, the Department will not require a secured bond provided that the construction of the development and mitigation are provided for in a single bid and contract.

(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.

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.

#### **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 status of all permit applications shall be published in the DEP Bulletin pursuant to N.J.A.C. 7:1C-1.6, and this publication shall constitute notice to all interested persons 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).

#### 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. 7:1C-1.5.

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. 7:1C-1.5.

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.

#### 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 hearing, 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 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 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. 40:55D-12 with the exception of (g)2, 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<sup>6</sup>;

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 as described at (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.

(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 and provide the Department with the original transcript, as required by N.J.A.C. 7:1C-1.5(e).

(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.

#### 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. 7:1C-1.5.

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.

**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) 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".

**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

(a) 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.

(b) The permittee may, if it chooses not to wait for the permit decision to be published in the DEP Bulletin, publish notice of the permit decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who commented on the application during the review process or requested such notice, in writing, during the application review period. The Department shall maintain a list of such newspapers. Such notice 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.

1. Publication of notice by the permittee by publication of a display advertisement of at least four inches in width in a newspaper of general circulation in the municipality shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the permit decision in the DEP Bulletin.

2. Proof of such publication and of mailing shall be submitted the Department.

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

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.

#### 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 (c) 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.

(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. 7:1C-1.5(d);
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; 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. 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.

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, along with a certified list of all owners of real property, including easements, as shown on the tax duplicate, within 200 feet, with the exception of (j)1iii 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, submission of a copy of the site plan, the public notice required at (j)1ii above, 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.

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 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. Notice containing the information described in (j)3 above shall also be provided to all owners of real property, including easements as shown on the tax duplicate, 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.

(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.

#### 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, PO Box 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).

#### 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 third-party 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 10 days of publication of notice of the permit decision in the DEP Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, 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 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as Appendix D.

1. The notice of a hearing request shall include the appropriate agency project number and, where the hearing request is submitted by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant.

2. The appellant shall, within 14 days of the date on which the hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(b) Copies of a request for a hearing from a decision on a CAFRA permit application shall also be mailed to the clerk of the county of the municipality in which the project site is located, and evidence of such mailing shall be included with the hearing request.

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

(d) 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).

(e) 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.

#### 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.

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 Permits-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 the expansion does not exceed a cumulative surface area of 400 square feet on the property constructed after July 19, 1994, and provided that such expansion is not proposed on a beach, dune, or wetland. 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 construction. 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 comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1;

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 non-residential 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 permit-by-rule also includes the construction of non-residential 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 Rules on Coastal Zone Management, 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 Rules on Coastal Zone Management (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. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, 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; and
- iv. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement.
- v. 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 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.

9. 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.

10. 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).

(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.

#### 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).

### 7:7-7.3 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 of the site for which authorization is being requested;
3. Verification that a complete copy of the application has been forwarded to the clerk of the municipality (white certified mail receipt or written receipt is required) and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, as well as to municipal planning board, county planning board, municipal construction official, and 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. The 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, and 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.

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.

4. A fee pursuant to N.J.A.C. 7:1C-1.5(a)3iii; and

5. 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 7.25.

(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. 7:1C-1.5.

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)1I(2) or (b)1I(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.

**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).

**7:7-7.4 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 Rules on Coastal Zone Management, 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 Rules on Coastal Zone Management.

(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.

**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 affect existing, direct public access from the boardwalk to the beach, unless for each access point eliminated 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; and
8. The expanded amusement pier shall continue to be used only for amusements.

(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;
  - 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.

**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.1, 3A.2 and 3A.3 (routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance, respectively); and
2. The beach and dune maintenance activities shall not be conducted in any wetlands.

(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. A plan showing the specific location of all proposed beach and dune maintenance activities;
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.1, 3A.2 and 3A.3; and
3. The schedule for conducting the specific beach and dune maintenance activities.

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

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

**7:7-7.7 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 that:

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, the reconstruction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development;

5. The reconstruction does not result in additional impacts to Special Areas as defined at N.J.A.C. 7:7E-3; and

6. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement.

(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 the locations and dimensions of all existing and proposed structures, existing site conditions (including all Special Areas as defined at N.J.A.C. 7:7E-3), and 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; and

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.

New Rule, R.2000 d.428, effective October 16, 2000.  
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

#### **7:7-7.8 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-3.27, 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, 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 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. If the site is not located on one of these four water bodies, the development shall comply with the setback requirement at (l)1 below.

(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) 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.

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

(i) 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.

(j) The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1.

(k) 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.

(l) 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 (l)1 above;

(m) 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.

(n) 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 proposed development, including all structures, 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 (m) 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).

**7:7-7.9 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, driveways, grading, excavation and clearing, excluding shore protection structures), provided the single family home or duplex and accessory structures are located landward of the mean high water line, and provided the single family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this 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-3.27, 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 as described at (d)1ii below, need not comply with the dunes rule at N.J.A.C. 7:7E-3.16 if the site and the development meet all of the following criteria:

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. If the site is not located on one of these four water bodies, the development shall comply with the setback requirement at (l)1 below;

(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) 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.

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

(i) 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.

(j) The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1.

(k) 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.

(l) Development under this 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 (l) 1 above.

(m) 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.

(n) 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 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 proposed development, including all structures, 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 the criteria listed (a) through (m) 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).

**7:7-7.10 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 manmade 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; and

6. Clean fill from an upland source shall be used for backfill.

(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; and
- iv. All proposed structures including deadmen, tie backs, and returns; 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).

**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) 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) 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).

**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) 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) 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).

**7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating commercial 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 7 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, 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 100 feet from the mean high water line;

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 stations.

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 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 that there is no alternate location.
3. Construction of pumpout facilities (marine sanitation devices) provided:
- i. Discharge from the facility shall either be to a municipal or regional treatment plant where practicable or to a subsurface sewage disposal system; or
  - ii. Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal.
4. Construction of fences, water lines and new sewer lines to connect restrooms and pumpouts 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 from the Department's Bureau of Connection and Construction Permits;
    - (2) The sewer line is consistent with the 208 Water Quality Management Plan;
    - (3) The sewer line shall not result in adverse secondary impacts; and
    - (4) The sewer line connects to an existing sewer line located on-site or immediately adjacent to the site;
5. 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. Any other required approvals for the construction of underground or above ground storage tanks are obtained.
6. 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.
7. 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 the support facilities listed at (b)1 through 7 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 public access to the waterfront rule, N.J.A.C. 7:7E-8.11; and
  3. Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided.
- (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. The location of all existing and proposed public access areas; 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).

#### 7:7-7.14 Reconstruction of a legally existing functioning bulkhead

(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead in-place or upland of the existing bulkhead. This coastal general permit also authorizes the reconstruction of a legally existing bulkhead within 18 inches outshore of the existing bulkhead when a timber bulkhead is used. This coastal general permit also authorizes the construction of a legally existing bulkhead up to a maximum of 24 inches outshore of the existing bulkhead when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead. The distance outshore is measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead.

1. 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. With the exception of individual single family/duplex properties which are not part of a larger development, public access shall be maintained or provided in accordance with the public access to the waterfront 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. The location of all existing and proposed public access areas; 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).

#### 7:7-7.15 Coastal general permit for hazardous waste clean up

(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).

#### 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; and

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.).

(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).

**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) 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; and
  - 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
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.

New Rule, R.2000 d.428, effective October 16, 2000.  
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

**7:7-7.18 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; and

10. There shall be no disturbance to wetlands during construction.

(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; and

iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; 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).

**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 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 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  $\frac{3}{8}$  inch,  $\frac{1}{2}$  inch,  $\frac{3}{4}$  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:

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 D

## ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM FOR PERMITS

I. Permit Being Appealed:

\_\_\_\_\_

Title and Type of Permit

II. Person Requesting Hearing:

\_\_\_\_\_

Name/Company

\_\_\_\_\_

Name of Attorney

\_\_\_\_\_

Address

\_\_\_\_\_

Address of Attorney

III. Please Include the Following Information as Part of Your Request:

- A. The date the permittee received the final permit;
- B. A copy of the permit, list of all permit conditions, and issues contested;
- C. The legal and factual questions at issue;
- D. A statement as to whether or not the permittee raised each legal and factual issue[s] during the public comment period on the permit;
- E. Suggested revised or alternative permit conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all the information listed above, including attachments to:
  - 1. Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
Department of Environmental Protection  
401 E. State Street  
PO Box 402, Trenton, NJ 08625-0402

2. Department of Environmental Protection  
Land Use Regulation Program  
ATTENTION: Director  
PO Box 439  
Trenton, NJ 08625-0439
  
3. All co-permittees (w/attachments)

Signature \_\_\_\_\_

Date: \_\_\_\_\_

Amended by R.1995 d.550, effective October 16, 1995.  
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).  
Recodified from N.J.A.C. 7:7 App. A and amended 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 App. D repealed.