

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 individual 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. 7:7-10.5(a).

Amended by R.1993 d.111, effective March 1, 1993.
See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Deleted "... the highest of any ..." and added "calculated in accordance with ...".
Recodified from 7:7-1.7 and amended R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

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

Law Review and Journal Commentaries

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

7:7-1.9 Permit fees

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

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

Added text "(N.J.S.A. 13:1D-29 et seq.)".
Recodified from 7:7-1.8 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

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

Law Review and Journal Commentaries

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

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

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

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

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

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

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

3. Either of the following requirements is met:

i. A court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the property owner thereupon submits a request for a reconsideration of the application of a substantive standard of N.J.A.C. 7:7E; or

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

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

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

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

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

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

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

i. Existing zoning and other regulatory requirements and conditions;

ii. Historic landmarks or other historic or cultural resources;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Irreversible losses of values and functions of the coastal resources that provide essential breeding, spawning, nesting, feeding, resting, or wintering habitats for marine fish and wildlife, including migratory birds, endangered species, and commercially and recreationally important wildlife. For the purposes of this section, "irreversible losses" means an alteration to the coastal resource that would eliminate one or more of the essential characteristics which provides the breeding, spawning nesting, feeding, resting or wintering habitat for the species in question that could not be mitigated;

2. Irreversible losses in water quality, resulting in degradation of ground or surface waters, in violation of the Federal, State or local water quality standards; or

3. Irreversible losses of wetlands and/or State open waters, providing essential flood and storm damage protection by absorption, the storage of water during high runoff periods and the reduction of flood crests, resulting in creation of a public nuisance.

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

1. The conclusion of any administrative and/or judicial appeal of the permit decision; and

2. A court has determined that the issuance, modification, or denial of a coastal permit without reconsideration would result in a taking of property without just compensation.

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

1. A completed LURP application form indicating a request for reconsideration and the type of permit being requested;

2. Documentation that the following public notice requirements have been met:

- i. Verification as required under N.J.A.C. 7:7-4.2(a)3 that public notice has been provided to the clerk of the municipality, and as applicable under that paragraph, to the Pinelands Commission; and

- ii. Verification that a certified mail notice and an 8½ by 11 inch copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development that is the subject of the reconsideration would occur, to the planning board and environmental commissions of the county in which the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- i. A Department decision on the coastal permit application, made in accordance with the rules as strictly applied;
- ii. A final decision issued by the Commissioner regarding the Department's decision on the coastal permit application; or
- iii. Documentation that all appeals of any final decision issued by the Commissioner under (j)10ii above have been concluded.

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

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

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

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

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

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

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

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

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

Recodified from 7:7-1.9 and amended by R.1994 d.378, effective July 18, 1994.

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

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

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

Rewrote the section.

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

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

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

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

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

Rewrote the section.

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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).

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

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

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

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high

water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:

i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or

iv. A public development or industrial development;

3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

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

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

iii. A public development or industrial development;

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

- i. A residential development having 75 or more dwelling units;
- ii. A commercial development having 150 or more parking spaces or equivalent parking area; or
- iii. A public development or industrial development; and

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

- i. A residential development having 25 or more dwelling units;
- ii. A commercial development having 50 or more parking spaces or equivalent parking area; or
- iii. A public development or industrial development.

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

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

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

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

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

- (1) Completed or under active construction as of July 19, 1994;
- (2) Exempt from CAFRA; or
- (3) Constructed under a CAFRA permit.

- iv. Existing developments that are not considered intervening development include shore protection structures, seawalls, bulkheads, retaining walls, gabions, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds without foundations, docks, piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures associated with the tourism industry as defined at N.J.A.C. 7:7-1.3 or constructed under the coastal general permit for the construction of certain types of temporary and seasonal developments at hotels and motels, commercial developments and multi-family residential developments of 75 units, N.J.A.C. 7:7-2.6.

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;