

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.2006 d.142, effective March 21, 2006. See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Chapter Expiration Date

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

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Subchapter 1, Riparian Grants and Leases, was repealed by R.1980 d.433, effective October 7, 1980.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Subchapter 2, Waterfront Development Permits, was repealed and Chapter 7, Coastal Permit Program Rules, was adopted as new rules by R.1984 d.164, effective May 7, 1984.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 as R.1994 d.378, effective July 18, 1994. See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

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

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

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

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

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

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

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

Subchapter 9, Sector Permit, was repealed by R.2004 d.43, effective January 20, 2004.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

Chapter 7, Coastal Permit Program Rules, was readopted as R.2006 d.142, effective March 21, 2006. See: Source and Effective Date. See, also, section annotations.

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

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

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

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

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

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measured in three dimensions, that is, length, width, and height; and

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

7. The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in two dimensions, that is, length and width, of the preexisting structure, of any floating dock, mooring raft, or similar temporary or seasonal improvement or structure, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction is in the same location and size as the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

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

(e) Those portions of a dock or pier proposed to be constructed landward of the mean high water line and in the coastal zone may be subject to the permit-by-rule at N.J.A.C. 7:7-7.2(a)5 and 6.

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

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

- i. A completed LURP application form;
- ii. A written description of the proposed development;
- iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;
- iv. The fee specified at N.J.A.C. 7:7-10.2; and
- v. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement; and

(2) The location of the mean high water line.

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

- i. A completed LURP application form;
- ii. A written description of the proposed development;
- iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

iv. The fee specified at N.J.A.C. 7:7-10.2; and

v. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement;

(2) The location of the mean high water line; and

(3) The limits of all Special Areas as defined at N.J.A.C. 7:7E-3.

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

- i. A completed LURP application form;
- ii. A written description of the proposed development;
- iii. The fee specified at N.J.A.C. 7:7-10.2;
- iv. A copy of the Tidelands instrument (grant, lease or license);
- v. If applicable, a copy of any previous waterfront development permit issued for the structures to be replaced, renovated or reconstructed;

vi. A copy of the applicable portion of the Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or New Jersey Coastal Wetlands Map (base map photography dated 1971, 1972) showing the location and dimensions of the structures to be replaced, renovated, or reconstructed;

vii. Photograph(s) of the existing structures labeled as to orientation;

viii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map; and

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

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

- i. A completed LURP application form;

ii. A written description of the proposed development;

iii. The fee specified at N.J.A.C. 7:7-10.2; and

iv. A site plan depicting the location of the existing and proposed bridge surfaced to be redecked.

(g) A Waterfront Development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands instrument by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and (2) above.

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrative Correction: Added (a)3.

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

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

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

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

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

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

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

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

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

Rewrote the section.

Amended by R.2003 d.298, effective July 21, 2003.

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

Rewrote (f).

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

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

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

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

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

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

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

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

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