

“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.

“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.

#### 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).

#### Case Notes

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.

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

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

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

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

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

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

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

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

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

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

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

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

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

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

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

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

17. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

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

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

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

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

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

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

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter.

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

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

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

Substantially amended.

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

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

Rewrote the section.

#### 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.

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

#### 7:7-1.6 Provisional permits

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

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

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

#### 7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

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

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

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