

COASTAL PERMIT PROGRAM RULES

CHAPTER 7

DIVISION OF COASTAL RESOURCES: COASTAL PERMIT PROGRAM RULES

Authority

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

Source and Effective Date

R.1994 d.378, effective June 24, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Division of Coastal Resources: Coastal Permit Program Rules, expires on June 24, 1999.

Chapter Historical Note

Originally, subchapter one of this chapter contained rules on Riparian Grants and Leases, which were adopted pursuant to N.J.S.A. 12:7-1 et seq. On October 7, 1980, R.1980 d.433 repealed this text. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). On August 26, 1980 rules concerning Waterfront Development Permits were adopted pursuant to N.J.S.A. 12:5-3 and 13:10-9 and filed as R.1980 d.375. This text was codified at subchapter two and became operative on September 26, 1980. See: 12 N.J.R. 252(a), 12 N.J.R. 576(a). Subsequently, amendments to this subchapter were filed as R.1981 d.355, effective July 9, 1981. See: 13 N.J.R. 73(c), 13 N.J.R. 401(b). On May 7, 1984 subchapter two was repealed by R.1984 d.164. See: 16 N.J.R. 1073(a). The chapter was substantially amended effective May 18, 1987 as R.1987 d.217. See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

The current Coastal Permit Program Rules are based on the CAFRA rules formerly found at N.J.A.C. 7:7D and include elements of the repealed Waterfront Development Permit rules (N.J.A.C. 7:7-2) and Wetlands Management rules (N.J.A.C. 7:7A-1). The wetlands maps listed at N.J.A.C. 7:7-2.2(c) were recodified from N.J.A.C. 7:7A-1.13. Pursuant to Executive Order No. 66(1978), Chapter 7 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 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 was readopted as R.1994 d.378. See: Source and Effective Date: Subchapter 7, General Permits and Permits-By-Rule, was adopted as part of 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). See, also, section annotations.

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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).

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.

"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.

"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 Permit" means a CAFRA, Wetlands or Waterfront Development Permit.

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

- i. The mean and spring high water lines of the tidal waters at the site; and
- ii. The proposed development including all structures, grading and clearing; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)13, including supplemental documents in the form of maps, surveys, etc.

(p) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)14 for the construction of a bulkhead and associated fill at a single family/duplex lot on a natural waterbody shall also submit:

1. Three copies of a site plan showing the following:
 - i. The mean high, mean low and spring high tide lines of the tidal waters at the site;
 - ii. Existing features both at the site and on adjacent waterfront sites including all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;
 - iii. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; and
 - iv. Bulkheads or other retaining structures on adjacent properties; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)14, including supplemental documents in the form of maps, surveys, etc.

(q) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)15 for the construction of piers, docks, pilings and boatlifts in man-made lagoons shall also submit:

1. Three copies of a site plan showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands within 150 feet of the proposed limits of disturbance;
 - iii. Existing structures including all waterfront structures (docks, pilings and bulkheads) on the project site and adjacent waterfront properties;
 - iv. The opposite side of the lagoon; and
 - v. The proposed dock, pier, piling and bulkhead; and

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)15, including supplemental documents in the form of maps, surveys, etc.;

(r) A person applying for a General Permit pursuant to N.J.A.C. 7:7-7.2(a)16 for maintenance dredging of no greater than 100 cubic yards in a man-made lagoon shall also submit:

1. Three copies of a site plan showing the following:
 - i. The mean high and mean low water lines of the tidal waters at the site;
 - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
 - iii. The existing and proposed water depths in the area to be dredged;
 - iv. Proposed cross sections of area to be dredged;
 - v. The location of dredge material disposal site;
 - vi. Method of dredging; and
 - vii. The method of stabilization of dredging material;

2. A Compliance Statement pursuant to N.J.A.C. 7:7-6, demonstrating how the proposed project complies with the criteria listed in N.J.A.C. 7:7-7.2(a)16, including supplemental documents in the form of maps, surveys, etc.

(s) 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 all tidelands conveyances required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the conveyance, provided that a complete application for the conveyance has been received by the DEP, 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.

(t) Within 15 days of the receipt of any additional information submitted pursuant to (s)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.

(u) The Department shall make a decision within 90 days of the application being declared complete for review.

(v) 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. 7:7-4.2.

(w) If the Department fails to render a decision on the 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 permit where the applicant has not received all required riparian conveyances setting forth the person's right to use or occupy the riparian land.

(x) An application for a General Permit authorization will also be reviewed following the procedures set forth at N.J.A.C. 7:7-4.8 through 4.11.

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Law Review and Journal Commentaries

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

7:7-7.4 Permits-By-Rule

(a) This section details the activities authorized by a Permit-By-Rule.

1. Single Family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family or duplex dwelling on the non-waterward sides of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet on the property over time, 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 or duplex dwelling 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 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 expansion or construction of a single family home or duplex (including, but not limited to, all accessory structures including garages, sheds, pools and driveways, but excluding shore protection structures) on a bulkheaded lagoon lot, provided that the proposed project complies with all of the following:

i. The site is located on a man-made lagoon lot, with an existing bulkhead along the entire waterfront portion of the site;

ii. All waterfront portions of the site are protected by a currently serviceable bulkhead;

iii. There are no wetlands on site upland of the bulkhead;

iv. The construction or expansion is not part of a larger development owned, controlled or being conducted by the property owner;

v. The proposed development and all other proposed permanent 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 development at least 15 feet landward of the bulkhead, the Department shall reduce the required set back 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 deed 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 upland 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 project includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;

viii. The lowest habitable floor (including the basement) of the proposed dwelling or expansion is at or above the base flood elevation for the site as established by the Federal Emergency Management Agency and designated on the Flood Insurance Rate Map;

ix. If the proposed development is a sewage generating development, it shall be serviced by an existing municipal sewer system; and

x. If the development involves the construction of a new single family or duplex dwelling, the use of plastic under landscaped or gravel areas is prohibited. 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 nondamaged 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; and

ii. The reconstruction does not result in an increase in the number of dwelling units in the case of residential reconstruction, and does not result in an increase in the number of parking spaces or equivalent parking area within the development in the case of commercial or other reconstruction.

iii. This permit-by-rule does not apply to repairs or maintenance, such as replacing siding, windows or roofs.

(b) For activities subject to (a)5 and 6 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 condition of (a)1, 3, 4 and/or 7 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.

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).

SUBCHAPTER 8. ENFORCEMENT

Source and Effective Date

R.1994 d.413, effective August 1, 1994.

See: 26 N.J.R. 1745(a), 26 N.J.R. 3188(a).

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;

2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;

3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or

4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as

provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if: