

Understanding Land Use Permitting



Acknowledgements

- NJDEP Division of Land Use Regulation
<http://www.state.nj.us/dep/landuse/about.html> 
- Department of Community Affairs (DCA)
<http://www.state.nj.us/dca/> 
- Rutgers University Center for Government Services - Edward J. Bloustein School of Public Planning and Public Policy
<http://www.policy.rutgers.edu/cgs/> 
- Jacques Cousteau National Estuarine Research Reserve
www.jcnerr.org 

Images throughout courtesy of NJDEP, Dr. Pasly - Rutgers, and other sources, as noted

Course Expectations

Time Commitment Summary

1. Overview and Waterfront Development
 - 45 minutes
2. Coastal Zone Management Rules and CAFRA
 - 45 minutes
3. Freshwater and Coastal Wetlands
 - 45 minutes
4. Stream Encroachment and Tidelands
 - 45 minutes
5. I-Map and Data Miner Webquest and Wrap-Up
 - 45 minutes

Course Expectations

- Interactive Tutorial
 - During this course, you will be presented with a variety of resources for information. Some of those resources will be in the form of links on websites outside the course. For example:
 - You will be directed to the DEP website to download some forms



Course Expectations

- Interactive Tutorial
 - The following tutorial will walk you through the steps to access information on various websites, and ensure that your computer system is capable of viewing the material.



Course Expectations

- Interactive Tutorial
 1. Here is a link to the Forms and Checklists on the NJ DEP Division of Land Use Regulation website.


<http://www.state.nj.us/dep/landuse/forms/index.html>



Course Expectations

- Interactive Tutorial
4. Click on the link titled "Waterfront Development Law Exemption Request ("Zane Letter") Checklist"
 1. This document is an Adobe PDF, and may be opened with a variety of free document readers
 2. If the document opens on your computer, continue with the tutorial
 3. If the document does not open, you may need to download Adobe Acrobat reader, available for free at: <http://www.state.nj.us/acrobat.htm>
 4. You will need Acrobat 7.0 or higher to access all the information contained in this webcourse

Course Expectations

- Interactive Tutorial
5. The other external website is the DEP I-MAP site.
 1. Click on <http://www.state.nj.us/dep/gis/depsplash.htm#> to open the DEP I-MAP home page
 2. Click on  to open the I-MAP viewer
 3. If you can view a map of New Jersey, close the viewer and continue with the tutorial.
 4. If the map does not load, you will need to follow the tutorial on the DEP website above to ensure you internet browser is compatible with the I-MAP tool

Course Expectations

- Interactive Tutorial
- Now that you have ensured your computer is compatible with the necessary external websites, documents, and resource formats, you may continue with online course.



Course Expectations

- End of section quizzes
 - At the end of each of the following sections, you will be presented with a brief 5-10 question online quiz that will assess the knowledge you gained from the content provided. These quizzes will need to be successfully completed to continue in the program.

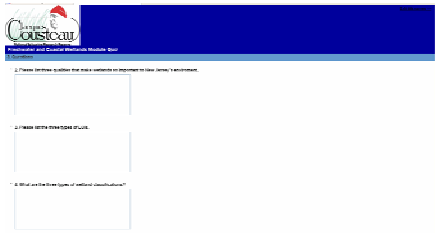


Course Expectations

- End of section quizzes
 - Any written or online sources may be used to answer the questions, as the goal of the program is to not only teach the concepts but demonstrate where additional information may be found.
 - The quizzes will be accessed through a weblink at the end of each module.

Quizzes

Here is a demonstration screenshot of one of the quizzes. The questions will be mostly short answer.

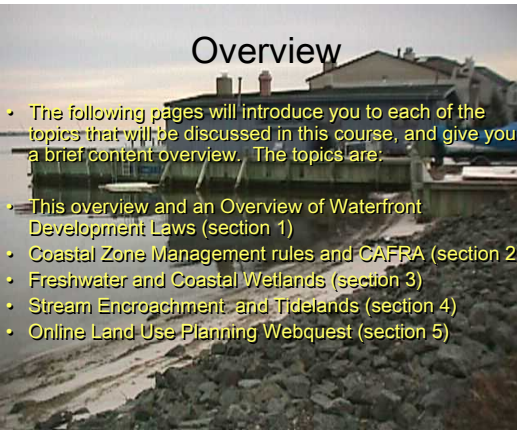


Course Expectations

- Certification Requirements
To receive certification for the successful completion of this online course, you will need to complete the following:
 1. Completion of each of the sections of the online course
 2. Completion of each of the online quizzes
 3. Successful completion of the end of course webquest (section 5)
 4. Completion of the end of course survey

Overview

- The following pages will introduce you to each of the topics that will be discussed in this course, and give you a brief content overview. The topics are:
- This overview and an Overview of Waterfront Development Laws (section 1)
- Coastal Zone Management rules and CAFRA (section 2)
- Freshwater and Coastal Wetlands (section 3)
- Stream Encroachment and Tidelands (section 4)
- Online Land Use Planning Webquest (section 5)



Waterfront Development

- The waterfront development section of this online course will introduce you to and summarize the laws regulating development in the coastal zone. It will also discuss the permits required for construction and exemptions to the rules.



CAFRA



The CAFRA law regulates almost all development activities involved in residential, commercial, or industrial development. The CAFRA area varies in width from a few thousand feet to 24 miles, measured straight inland from the shoreline. The law divides the CAFRA area into pieces or zones, and regulates different types of development in each zone. Generally, the closer you are to the water, the more likely it is that your development will be regulated.

Wetlands

New Jersey protects wetlands under the New Jersey Freshwater Wetlands Protection Act. This law also protects transition areas or "buffers" around freshwater wetlands. This section describes the regulations and the permit process for freshwater and coastal wetlands.



Stream Encroachment



image from
<http://www.oxbowriver.com>

Stream Encroachment is a term that refers to development in a floodplain. The stream encroachment section will define the flood plain, detail information sources for determining if your project needs a stream encroachment permit, and discuss stream buffers.

Tidelands



Tidelands, also known as riparian lands, are all those lands currently or formerly flowed by the mean high tide of a natural waterway. In this section learn the difference between a grant, a license and a lease and the regulations protecting the tidelands.

Overview of regulations

- "It's not that bad"
 - Understanding the totality of information on Land Use in New Jersey is not a small task. This course, along with other information and resources, will help provide you with the tools necessary to find the appropriate information regarding your particular needs, responsibilities, and concerns.



Summary

- ***"The management of New Jersey's lands play an important role in the DEP's overall environmental protection strategy. What we do to our land is intimately tied to our drinking water quality, wildlife habitat, potential for flooding, our recreational open space and tourism, and many other important quality of life issues. "***
 - NJDEP Land Use Regulation Program

Intro to the Division of Land Use Regulation

If someone is buying land; or building a home, store, or marina; they may be impacted by one or more of the protective programs administered by the Division of Land Use Regulation. The Division of Land Use Regulation is part of the NJ DEP, and is not responsible for septic system approvals, Land Use Enforcement, Dredging & marinas (tidal or inland, or Threatened or endangered species. More information about the Division of Land Use Regulation can be found at

<http://www.state.nj.us/dep/landuse/index.html>

Module 1 - Waterfront Development

- The first module of this course is a section on Waterfront Development laws. The module should take around 30 minutes to complete. It reviews the laws that pertain to Waterfront Development in New Jersey. Some laws, such as CAFRA, will be covered in more detail in latter modules.



Why Regulate Waterfront Development?

"Regulation is necessary to prevent pollution, destruction of vital wildlife habitat, increases in rainwater runoff, and destruction of the natural beauty that attracts visitors. Regulation of coastal activities is also necessary in some cases to prevent loss of life and property from coastal storms, erosion, and flooding." (NJDEP Coastal Permitting)



The Law

- The following sections will show portions of each law, summarize what natural features the law protects (where it applies), and then detail the types of development activities it regulates.
- More detail may be found at the NJ DEP Coastal Permitting Program website <http://www.state.nj.us/dep/landuse/coast.html>

The Law

- There are six main laws that regulate development and land use activities in the coastal zone:
 1. Freshwater Wetlands Protection Act, N.J.S.A. 13:9B (rules at N.J.A.C. 7:7A)
 2. Flood Hazard Area Control Act (stream encroachment), N.J.S.A. 58:16A (rules at N.J.A.C 7:13)
 3. Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19 (rules at N.J.A.C 7:7 and 7:7E)
 4. Waterfront Development Act, N.J.S.A. 12:5-3 (rules at N.J.A.C. 7:7 and 7:7E)
 5. Wetlands Act of 1970, N.J.S.A. 13:9A (rules at N.J.A.C 7:7 and 7:7E)
 6. Tidelands Act, N.J.S.A. 12:3-1

These laws are provided on the DEP website in Adobe PDF format at http://www.state.nj.us/dep/landuse/njsa_njac.html and may be downloaded for review.

Freshwater Wetlands Protection Act

Excerpt from 13:9B-2. Legislative findings and declarations

...
The Legislature therefore determines that in this State, where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance; and that to achieve these goals it is important that the State expeditiously assume the freshwater wetlands permit jurisdiction currently exercised by the United States Army Corps of Engineers pursuant to the Federal Act and implementing regulations.
...

Freshwater Wetlands Protection Act

Excerpt from 13:9B-3. Definitions

- ... "Regulated activity" means any of the following activities in a freshwater
- wetland:
- (1) The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;
- (2) The drainage or disturbance of the water level or water table;
- (3) The dumping, discharging or filling with any materials;
- (4) The driving of pilings;
- (5) The placing of obstructions;
- (6) The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees;
- ...

Freshwater Wetlands Protection Act

The Freshwater Wetlands Protection Act covers freshwater wetlands, transition areas or "buffers" around freshwater wetlands, lakes, ponds, rivers, streams, etc.



image from <http://www.state.nj.us/dep/landuse/fw.html>

Freshwater Wetlands Protection Act

- Summary (activities regulated)
 - **Freshwater wetlands**
 - Disturbance or destruction of water level, soil or vegetation, such as draining, filling, or clearing.
 - **Transition areas (buffers)**
 - Same activities above but with an exception to allow normal property maintenance
 - **Lakes, ponds, rivers, streams, etc.**
 - Discharge of dredged or fill material

Flood Hazard Area Control Act

Excerpt from Chapter 13 – Flood Hazard Area Control, Subchapter 1.
General Provisions, 7:13-1.1 Purpose and Scope

“...To minimize potential on and off site damage to public or private property caused by development which, at times of flood, subject structures to flooding and increase flood heights and/or velocities both upstream and downstream.”

“...to safeguard the public from the dangers and damages caused by materials being swept onto nearby or downstream lands, to protect and enhance the public's health and welfare by minimizing the degradation of water quality from point and non point pollution sources and to protect wildlife and fisheries by preserving and enhancing water quality and the environment associated with the flood plain and the watercourses that create them.”

Flood Hazard Control Act

c) Without proper controls, development in the flood plain and the watercourses that create them may adversely affect the flood carrying capacity of these areas, subject new facilities to flooding, reduce natural flood storage that the flood plain provides, increase the volume of storm water runoff, degrade the water quality of the receiving water body, and result in increased sedimentation, erosion or other environmental damage.

d) The rules in this chapter govern minimum standards for development within areas within the jurisdiction of this chapter. The Department shall administer permits pursuant to this chapter, except as provided in N.J.A.C. 7:13-5.3.

Flood Hazard Area Control Act

The Flood Hazard Area Control Act covers rivers, lakes, and streams, and their flood plains



Flood Hazard Area Control Act



- Summary (Regulated Activities)
 - All construction activities and human disturbance of lands, including the placement of structures or fill, excavation, and dredging.

image from <http://www.state.nj.us/dep/nj/flood/>

Coastal Area Facility Review Act

The Coastal Area Facility Review Act (CAFRA) is one of the more significant pieces of legislation in the Coastal Zone. It is covered in depth in Module 2. The following slides are a brief summary of the law as it relates specifically to Waterfront Development.

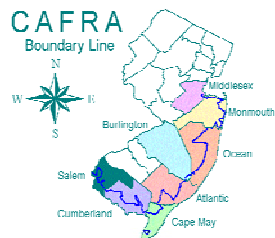


Coastal Area Facility Review Act

- Summary (Natural features Protected)

–Most shore areas south of Cheesequake Creek and along the Delaware south of Kilcohook National Wildlife refuge

–The area seaward of the blue line in the illustration is the CAFRA zone



Coastal Area Facility Review Act

- Summary (activities regulated)
 - All development activities. These include excavation, grading, filling, and site preparation. Also includes construction or placement of structures such as docks, bulkheads, shore protection structures, single family homes, residential developments, commercial and industrial facilities.

Coastal Area Facility Review Act

- Module 2 contains significantly more details on the entirety of the CAFRA legislation



Waterfront Development Act

- 12:5-3. Submission to board of plans for water-front development
 - All plans for the development of any water-front upon any navigable water or stream of this State... which is contemplated by any person or municipality, in the nature of individual improvement or development or as part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any similar or dissimilar water-front development shall be the first submitted to the Department of Environmental Protection.

Waterfront Development Act

- Summary (interpretation)
 - Covers all land within or under tidally flowed waters throughout New Jersey. Also covers land next to tidally flowed waters outside the CAFRA area, up to a maximum of 500 feet from the high water line.



Waterfront Development Act

- Summary (activities regulated)
 - Same as CAFRA
 - All development activities. These include excavation, grading, filling, and site preparation. Also includes construction or placement of structures such as docks, bulkheads, shore protection structures, single family homes, residential developments, commercial and industrial facilities.

Wetlands Act of 1970

Excerpt from 13:9A-1. Legislative intent; inventory and mapping of tidal wetlands; filing in office of county recording officer

"...one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for all of our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land"

"...and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting...."


Wetlands Act of 1970

- Summary (Natural Areas Protected)
 - Areas identified as Wetlands on the DEP Coastal Wetland Maps
 - Unlike DEP's freshwater wetlands maps, the coastal wetlands maps are used to determine jurisdiction. These maps are available for public inspection at each county clerks office.

image from <http://www.nj.nrcs.usda.gov>

Wetlands Act of 1970

- Summary (activities regulated)
 - Placement of Structures or fill, excavation or dredging
 - Application of pesticides



Tidelands Act

12:3-1. Commissioners to make survey and report as to riparian lands, etc.
 P.L.1864, c. 391, p. 681 (Rev.1877, pp. 981, 982, §§ 1 to 6; C.S. pp. 4383, 4384, §§ 1 to 7).

This act provides for the appointment of a board of commissioners to make surveys and reports of the lands lying under the waters of the bay of New York, of the Hudson river and the lands adjacent thereto, the Kill von Kull, Newark Bay, Arthur Kill, Raritan Bay and the Delaware river opposite to the county of Philadelphia.

Tidelands Act

- Summary (Natural Areas Protected)
 - Tidal lands, or lands that were formally tidally flowed (unless specifically granted to another owner by the State)



Tidelands Act

- Summary (activities regulated)
 - Structures that will exist for longer than 10 days
 - Excavation
 - Dredging



DEP Land Use Regulation Law Matrix

Law	Natural feature Protected	Types of activities regulated
Freshwater Wetlands Protection Act, N.J.S.A. 13:55 Title 13, N.J.A.C. 17:27	Freshwater wetlands	Disturbance or destruction of water level, soil or vegetation, such as by draining, filling, or clearing
	Transition areas or "buffers" around freshwater wetlands	Same activities as in freshwater wetlands, except that normal property maintenance is allowed
	Lakes, ponds, rivers, streams, etc.	Discharge of dredged or fill material
Coastal Wetlands Protection Act, N.J.S.A. 13:56 Title 13, N.J.A.C. 17:28	Rivers, lakes, and streams, and their flood plains	Any construction activity or human land disturbance, such as placement of structures or fill, excavation, dredging
Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:13 Title 13, N.J.A.C. 17:27 and 17:28	Most shore areas south of Chesapeake Creek and along the Delaware south of Kicohook National Wildlife Refuge	Development activities, including excavation, grading, filling, and site preparation, and construction or placement of structures, including docks, bulkheads, shore protection structures, single family homes, residential developments, and commercial or industrial facilities
Wetland Development Act, N.J.S.A. 13:5-3 Title 13, N.J.A.C. 17:27 and 17:28	All land within or under tidally flowed waters throughout New Jersey, and in addition land adjacent to tidally flowed waters outside the CAFRA area, up to a maximum of 500 feet from the high water line	Placement of structures or fill, excavation or dredging, application of pesticides
Wetlands Act of 1970, N.J.S.A. 13:50 Title 13, N.J.A.C. 17:27 and 17:28	Wetlands shown on the DEP Coastal Wetland Maps	Placement of structures or fill, excavation or dredging, application of pesticides
Tidelands Act, N.J.S.A. 13:5-1	Lands that are now tidally flowed, or were formerly tidally flowed (unless specifically granted to another owner by the State)	Placement of a structure that will exist for more than ten days, excavation, dredging

- From the "Guide to New Jersey's Coastal Permitting Program" - NJ DEP
- Updated with links to legislation in Adobe PDF format - If you want the complete legal text for any of the laws, click on the corresponding link and view the PDF document.

Exemptions

- There are numerous exemptions to each of the development regulations. A complete list of exemptions is available from the DEP. Some of the more common exemptions are discussed below:
 - CAFRA
 - Minor activities such as:
 - Maintenance
 - Plantings
 - Decks or similar structures at a residence
 - Rebuilding a damaged structure on the same building footprint (if damaged after 7/19/94)
 - Enlarging a dwelling without increasing its footprint or number of units
 - Waterfront Development Program
 - Repair, replacement, or reconstruction of some legally existing docks, piers, bulkheads and buildings, if they existed before 1978 and if other conditions are met.
 - Certain single family homes
 - Small additions (5,000 square feet) to existing structures, if the home is located more than 100 feet inland from the mean high water line

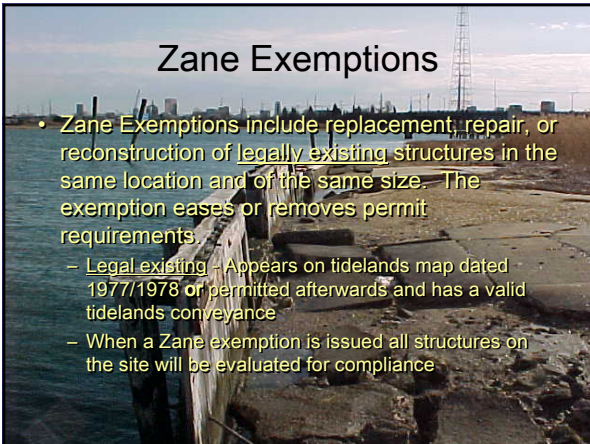
Waterfront Development & Tidelands

- Projects or structures built or proposed below the mean high water line require permits and a tideland instrument. Examples of projects that need a Waterfront Development Permit include docks, piers, pilings, bulkheads, marinas, bridges, pipelines, cables, and dredging.
- Use of Riparian Lands, owned by the people of the State of New Jersey, require permission from the State in the form of a tidelands license, lease or grant (referred to as a Tidelands Instrument) and require payment for use

From "Marina Owner/Operators: Rules have you Confused? - An overview of New Jersey Department of Environmental Protection Coastal and Land Use Rules and Regulations" - Bureau of Coastal and Land Use Compliance and Enforcement, Toms River, NJ

Zane Exemptions

- Zane Exemptions include replacement, repair, or reconstruction of legally existing structures in the same location and of the same size. The exemption eases or removes permit requirements
 - Legal existing - Appears on tidelands map dated 1977/1978 or permitted afterwards and has a valid tidelands conveyance
 - When a Zane exemption is issued all structures on the site will be evaluated for compliance



Waterfront Development Permits

- If a construction project falls within any of the natural features or legal descriptions above it will most likely require one or more permits
- These applications for these permits are divided into sections and checklists including:
 - [Waterfront Development and/or Coastal Wetlands Permit Application Checklist - N.J.A.C. 7:7E & 7:1C & 7:7](#)
 - [Waterfront Development Law Exemption Request \("Zane Letter"\) Checklist](#)
 - [Coastal Permit Modification](#)
 - [Coastal General Permit Modification](#)
 - [CAFRA Exemption](#)
 - [Coastal General Permit for Development at Single Family or Duplex Properties](#)
 - [Coastal General Permit for Development other than at Single Family or Duplex Properties](#)
 - [CAFRA Individual Permit Application](#)
 - [Request for Relaxation of the Coastal Zone Management, N.J.A.C. 7:7E, Standards](#)
 - [Jurisdictional Request Form for Waterfront Development, CAFRA & Wetlands Act of 1970](#)
- These forms, along with several guides and pamphlets, can be found at:
<http://www.state.nj.us/dep/landuse/forms/index.html#coastal>

Waterfront Development Permits

- The permits require a variety of information, including (as applicable):
 - Applications
 - Fees
 - Photographs of the site
 - Coordinates of the site
 - Proof of distribution of plans to various agencies, including (depending on the project)
 - County Planning Board
 - County Environmental Commission
 - US Army Corps of Engineers
 - Municipal Construction Official
 - Owners of Properties within specified distances
 - Public Notices
 - Documentation addressing Coastal Zone Management Rules
 - Evidence of Tidelands Ownership
 - Development Plans
 - Dredging Applications

How to tell if a planned waterfront development is regulated

- Consult the CAFRA section of this program
- View the CAFRA and wetland maps at your county clerk or your local library
- Contact municipal officials
- Contact the DEP Land Use Regulation Program to determine if the property is regulated under the DEP Coastal Permit Program. Write them at:
Land Use Regulation Program
Department of Environmental Protection
501 East State Street
P.O. Box 439
Trenton, NJ 08625-0439

How to tell if a planned waterfront development is regulated

- Writing the LURP allows you to obtain a Jurisdictional Determination. The JD determines the applicability of the three main laws, the Waterfront Development Law, CAFRA, and the Wetlands Act of 1970, to your project.

Intro to Coastal Zone Management Rules and CAFRA

- The next section of this course is focused on CAFRA. You will be introduced to the specific topics and areas that CAFRA covers, and be guided through the variety of information available relating to the legislation and regulation. At the end of the section there will be a short quiz. The CAFRA section should take around 45 minutes to complete.
