



Public letter-writing campaign to oppose Future Mining's application for a CAFRA Permit

According to the NJDEP Land Use Regulatory Program's Coastal Program, Future Mining Inc. has not yet applied to them for a Coastal Area Facility Review Act (CAFRA) Permit. Once public notice is given, the American Littoral Society will post a sample letter as an action alert on its home page for interested members of the public to use as a basis for submitting letters to DEP to request local public hearings.

It is critically important for as many members of the public to submit these letters as possible, because they are a necessary prerequisite to convincing DEP that public hearings are necessary.

However, these letters should not be submitted until DEP receives Future Mining's CAFRA permit application. In the meantime, we encourage the public to frequent our website to keep an eye out for the announcement that DEP has received the permit application and the 30-day public comment period has begun. The public can also contact either the DEP or Middle Township Clerk's Office, where a complete copy of the permit application, Environmental Impact Statement and most current site plan will be available for review.

Why Your Comments Are So Important

Public hearings on Future Mining's application would provide an invaluable opportunity for the public to finally voice their concerns about this project's potential adverse impacts to public health and welfare, the environment, and irreplaceable habitat and wildlife resources.

Indeed, the CAFRA Permit application requires the applicant to prepare a comprehensive Environmental Impact Statement (EIS), where they will have to address a host of important environmental and public health concerns. The EIS requires the applicant to clearly demonstrate how the proposed project meets various enforceable goals and policies established by the State Legislature, when it enacted the CAFRA rules.

Some of these include: "Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that: (1) Provide opportunities for passive and active recreation; (2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values."

About Public Participation

A 30 day public comment period or a fact-finding public hearing will be held on this application in the future. A public hearing will be held only if the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing. Individuals may request that the Department hold a public hearing on this application. Requests for a public hearing shall be made in writing within 15 days of the date of this notice and shall state the specific nature of the issues proposed to be raised at the hearing.

Middle Township Clerk's office

33 Mechanic Street

Cape May Court House, NJ 08210

(609) 465-8721

Email: mtclerk@middletownship.com

NJDEP Land Use Regulatory Program – Coastal Permitting

Questions call (609) 984-0162

Send regular mail to this address:

Department of Environmental Protection

Division of Land Use Regulation

P.O. Box 439

Trenton, New Jersey 08625-0439

To visit the NJDEP Land Use Regulatory Program:

<http://www.nj.gov/dep/landuse/coast.html>

Background on Coastal Rules

The **Coastal Zone Management rules** represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. These rules are used to review permit applications submitted 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. The rules are also a basis for making recommendations to the Tidelands Resource Council on applications for Tidelands Instruments, and are applied in other Department decision-making pursuant to N.J.A.C. 7:7E-1.2.

The **Coastal Permit Program rules** establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act, 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. The Coastal Permit Program rules contain the coastal general permits, permits-by-rule and the Long Branch Redevelopment Zone Permit.

The **Freshwater Wetlands Protection Act rules** implement the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. These rules provide stringent standards for activities that disturb freshwater wetlands, transition areas surrounding wetlands and open waters.

To learn more about the **New Jersey Coastal Management Program** regarding rules or substantive standards, enforceable policies and permit procedures visit:

http://liberty.state.nj.us/dep/cmp/czm_enforcepolicies.html

Important Language from the Coastal Rules

7:7E-1.5 CAFRA (Section 10 Findings)

Another significant element of the Coastal Rules is their requirement that, even if a project meets all of the applicable Coastal Rules, DEP can issue a development permit only upon a finding that

the project also complies with certain additional criteria set forth in the CAFRA statute. Among other things, this requires a finding that the project:

The Department shall issue a permit pursuant to the Coastal Area Facility Review Act (CAFRA) only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;
2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region;
3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare;
4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;
5. animal, fish, and human life processes at the site and within the surrounding region;
6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare; and
7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding region.

According to a 2008 White Paper by Monmouth University's Urban Coast Institute, the CAFRA Section 10 Findings were deemed such an important part of CAFRA that they were incorporated word-for-word into the Coastal Rules. Like the Coastal Policies, these requirements provide a powerful tool for DEP to consider and reject or amend projects that meet the letter of Coastal Rules, but are constructed in such a way or in "location" that renders them too hazardous or too much of a burden on coastal resources. To view the entire White Paper visit: http://www.monmouth.edu/urban_coast_institute/articles/SusanKennedyCoastalProtectionWhitePaper.pdf

N.J.A.C 7:7-Coastal Permit

- a) Applicants for CAFRA individual permits shall give public notice that a CAFRA application has been filed with the Department.
- b) Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife
- c) or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.
- d) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife habitat on the Landscape Maps shall either:
 1. Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or

2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3.

7:7E-3.40 Public open space

- a) New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.
- b) Development that adversely affects existing public open space is discouraged.
- c) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land

7:7-4.5 Public hearings and public comment periods

- a. The Department may, in its discretion, hold a fact-finding public hearing on a coastal permit application when the Department determines that, based on public comment or a review of the project, its scope and environmental impact, additional information is necessary to assist in its review or evaluate potential impacts and that this information can only be obtained by providing an opportunity for a public hearing.
- b. If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.
- c. Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.
- d. The Department shall publish in the "DEP Bulletin" a report of the receipt of each new application and each agency action on applications currently before it. In conjunction with notice provided under N.J.A.C. 7:7-4.8, publication in the "DEP Bulletin" constitutes constructive notice to all interested persons of Department actions on coastal permits, except as provided in N.J.A.C. 7:7-4.8.

Environmental Impact Statement (EIS)

1. An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all coastal permit applications.
2. The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.
3. The Department may issue a coastal general permit or permit-by-rule only if all of the following conditions are met:

- a) The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately.
- b) will have only minimal cumulative adverse impacts on the environment.
- c) and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;
- d) The Department determines that the development will be in conformance with the purposes of applicable statutes; and...

7:7E-7.8 Mining use rule

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;
2. The location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas;
3. Buffer areas are provided in accordance with N.J.A.C. 7:7E-8.13, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas.
4. The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development; The mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted;
5. The mineral extraction areas shall be reclaimed, contoured and replanted to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site within two years of the termination of mining operations;
6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;
7. The mineral extraction operation will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource; and
8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal rules.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the flood hazard areas rule at N.J.A.C. 7:7E-3.25.