

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

In (h)6, substituted "approved by the Department" for "memorialized in a deed restriction meeting the Department's requirements" in the third sentence; and in (h)6 and (h)8, inserted references to conservation restrictions for references to conservation easements and substituted "recorded" for "registered" throughout.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c)1, amended the N.J.A.C. reference; rewrote (h)3.

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

Rewrote (b).

Case Notes

Federal court finding that land was wetland under federal definition required applicant for permit to concede that activity conflicted with state's coastal zone management program. Matter of Stoeco Development, Ltd., 262 N.J.Super. 326, 621 A.2d 29 (A.D.1993).

Project's exemption from permit requirements does not prevent state from finding proposed activity inconsistent with state's coastal zone management program. Matter of Stoeco Development, Ltd., 262 N.J.Super. 326, 621 A.2d 29 (A.D.1993).

Permit to fill wetlands granted by Army Corps of Engineers was not subject to state regulation. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

Exclusive state regulation of isolated wetlands was provided by Freshwater Wetland Protection Act. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

State regulation of upland development which had no direct effect on navigable waterways was not authorized by Waterfront Development Act. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

Department of Environmental Protection was not required, in contested permit proceeding, to give notice that condition of mitigation might be imposed. *Baron v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 75.

7:7E-3.28 Wetlands buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem (see Appendix, Figure 7). Wider buffers than those noted below may be required to establish conformance with other Coastal Rules, including, but not limited to, 7:7E-3.38 and 3.39.

1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).

2. For all other wetlands, including wetlands regulated under the Coastal Wetlands Act of 1970, a wetlands buffer of up to 300 feet shall be established.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the

Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

"Policy:" deleted from (b).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on wet borrow pit margins recodified to 3.30 and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A and N.J.A.C. 7:50-6.14.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Administrative correction.

See: 37 N.J.R. 1516(a).

7:7E-3.29 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b) deleted; (b)1.-3. recodified as (b)-(d); (c) recodified as (e).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on coastal bluffs recodified to 3.31.

Repealed by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Section was "Cranberry Bogs".

7:7E-3.30 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Subsection (b) deleted; (b)1.-6. recodified to (b)-(g); (c) recodified to (h).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on intermittent stream corridors recodified to 3.32; text on wet borrow pit margins recodified and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A; wet borrow pits are considered State open waters.

Repealed by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Section was "Wet Borrow Pit Margins".

7:7E-3.31 Coastal bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff.

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland (see Appendix, Figures 7 and 8, incorporated herein by reference).

3. Steep slopes (N.J.A.C. 7:7E-3.34) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on the Location of Linear Development (N.J.A.C. 7:7E-6.1), shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11), and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay and comply with N.J.A.C. 7:7E-7.2(e) or (f).

(c) The stabilization of coastal bluffs with vegetation is encouraged.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b) and (b)2 deleted; section recodified to reflect deletions.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on farmland conservation areas recodified to 3.33 and amended to reflect and support the State and local Farmlands Preservation and Agricultural Development and Retention Programs; text on coastal bluffs recodified from 3.29.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Public Notice: Petition for Rulemaking; Coastal Permit Program Rules.

See: 28 N.J.R. 3674(a).

Public Notice: Action on petition for rulemaking.

See: 28 N.J.R. 3833(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 (b).

7:7E-3.32 Intermittent stream corridors

(a) Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or

areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater (see Appendix, Figures 7 and 9, incorporated herein by reference).

1. Where an intermittent stream corridor is also a wetland, the Wetlands rule (N.J.A.C. 7:7E-3.27) shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(e) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency note: N.J.A.C. 7:7E-3.33 through 3.35 are Special Land Areas)

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b) deleted; section recodified.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on steep slopes recodified to 3.34; text on intermittent stream corridors recodified from 3.30; intermittent stream corridors are considered State open waters.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

7:7E-3.33 Farmland conservation areas

(a) Farmland conservation areas are defined as any contiguous area of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall “preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a Pinelands environment....” (Section 8c).

1. Under the authority of the Department’s Surface Water Quality Standards (N.J.A.C. 7:9B), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated “Pinelands Waters” which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9B1-4, 1.5(d)6ii, 1.12(b), and 1.14(b)). The Department’s present Groundwater Quality Standards (N.J.A.C. 7:9C), which were adopted on March 3, 1981, and revised on February 1, 1993, identify the “Central Pine Barrens Area” as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County

Brigantine City	Hamilton Township
Corbin City	Mullica Township
Egg Harbor City	Port Republic
Egg Harbor Township	Somers Point City
Estell Manor Township	Weymouth Township
Galloway Township	

Burlington County

Bass River Township	Washington Township
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Cape May County

Dennis Township	Upper Township
Middle Township	Woodbine Borough

Cumberland County

Maurice River Township	
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Ocean County

Barnegat Township	Lakehurst Borough
Beachwood Borough	Little Egg Harbor Township
Berkeley Township	Manchester Township
Dover Township	Ocean Township
Eagleswood Township	South Toms River Borough
Lacey Township	Stafford Township
	Tuckerton Borough

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A1 et seq.).

1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.

2. The Department’s Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the

February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Department’s Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a freshwater wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters shall require a State permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of 33 USC 1344 and N.J.S.A. 13:9B-6(b).

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on wild and scenic river corridors recodified to 3.46; text on Pinelands National Reserve and Pinelands Protection Area recodified from 3.42; exception to Freshwater Wetlands Protection Act added.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Administrative correction.

See: 37 N.J.R. 4245(a).

7:7E-3.45 Hackensack Meadowlands District

(a) The Hackensack Meadowlands District is a 19,485-acre area of water, coastal wetlands and associated uplands within the boundaries described in the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.).

(b) A coastal activity or development for which the New Jersey Meadowlands Commission requires a zoning certificate shall be consistent with the New Jersey Meadowlands Master Plan, as evidenced by receipt of a zoning certificate from the New Jersey Meadowlands Commission.

(c) In addition to (b) above, a coastal activity or development identified at (c)1 through 3 below shall be consistent with the New Jersey Meadowlands Master Plan as evidenced by receipt of a resolution or statement of consistency from the New Jersey Meadowlands Commission.

1. Municipal or county projects necessitating the expenditure of any public funds and requiring review and approval through a resolution from the New Jersey Meadowlands Commission in accordance with the Hackensack

Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-12(b);

2. Municipal projects, located on land owned by a municipality, provided that the following conditions as outlined in the New Jersey Meadowlands Commission District Zoning Regulations, at N.J.A.C. 19:4-3.2(a)5, are met:

i. The governing body and planning board of the municipality have entered into a memorandum of understanding with the New Jersey Meadowlands Commission, and remain in compliance with the memorandum of understanding, agreeing that municipal projects shall comply with applicable New Jersey Meadowlands Commission District Zoning Regulations and that review of the project by the municipality shall utilize New Jersey Meadowlands Commission standards;

ii. The municipal project has been reviewed by the planning board of the municipality, which has certified to the New Jersey Meadowlands Commission that the project is in compliance with all applicable New Jersey Meadowlands Commission District Zoning Regulations; and

iii. A complete copy of the plans for the municipal project, and a certification of the planning board, have been sent to the New Jersey Meadowlands Commission for review, and the New Jersey Meadowlands Commission has not notified the municipality within 45 days of the receipt thereof of any objection to the project; and

3. Developments and improvements proposed or sponsored by the New Jersey Meadowlands Commission, in accordance with New Jersey Meadowlands Commission District Zoning Regulations at N.J.A.C. 19:4-3.2(a)3.

(d) If a coastal activity or development, including any coastal activity or development identified at (b) or (c) above, is located in a tidal waterway or in any lands lying thereunder, up to and including the mean high water line, the coastal activity or development shall comply with all applicable rules in this chapter.

(e) Any coastal activity or development not identified at (b) or (c) above shall comply with all applicable rules in this chapter.

(f) Coastal activities under the jurisdiction of the New Jersey Meadowlands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

(g) The Department's Division of Land Use Regulation and New Jersey Meadowlands Commission will coordinate

the review of proposed developments and activities within the Hackensack Meadowlands District through the process outlined in the November 9, 2005 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. A copy of the Memorandum of Agreement may be obtained from the Department's Division of Land Use Regulation, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(h) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Added text in (b), "The Division will ... other environmental resources."

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on geodetic control reference marks recodified to 3.47; text on Hackensack Meadowlands District recodified from 3.43.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b), substituted "the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263" for "section on GAPS in Chapter 4" and substituted "Department" for "Division" preceding "will periodically review"; codified formerly uncodified Rationale paragraph as (d).

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

Rewrote the section, including the Rationale statement referenced in (h).

7:7E-3.46 Wild and scenic river corridors

(a) Wild and scenic river corridors are all rivers designated into the National Wild and Scenic Rivers System and any rivers or segments thereof being studied for possible designation into that system pursuant to the National Wild and Scenic Rivers Act (16 U.S.C. §§ 1271-1278). For rivers designated into the national system, the wild and scenic river corridor shall include the river and adjacent areas located within one-quarter mile from the mean high water line on each side of the river until a Federal River Management Plan has been adopted, after which time the wild and scenic corridor shall be the area defined in the adopted plan. For rivers under study for possible designation into the national system, the wild and scenic river corridor shall include the river and adjacent areas extending one-quarter mile from the mean high water line on each side of the river.

(b) Development in wild and scenic river corridors shall comply with (b)1 and 2 below, and the standards for the specific type of development at (c), (d), (f), (g) and (h) below. The standards for linear development are found at (e) below.

1. Development that would have a direct and adverse effect on any "outstandingly remarkable resource value" for which the river was designated or is being studied for possible designation into the National Wild and Scenic Rivers System is prohibited. For the purposes of this rule, "outstandingly remarkable resource values" means any of those extraordinary scenic, recreational, cultural, historical,