

7:7E-5.3 Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) This section sets forth impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Impervious cover limits, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B.

(b) A stormwater management facility is not counted toward the impervious cover limit for a site.

(c) The impervious cover allowed on a site shall be placed on the net land area on the site, as determined at (d) below, and in addition, for an unforested site under N.J.A.C. 7:7E-5A.9(b)3 or N.J.A.C. 7:7E-5B.3(e)2, the impervious cover shall be placed on the area covered by buildings and/or asphalt or pavement legally existing on the site at the time the application is submitted to the Department. If the amount of impervious cover calculated under this subchapter, N.J.A.C. 7:7E-5A, and/or N.J.A.C. 7:7E-5B is greater than the net land area of the site, the acreage of the impervious cover allowed on the site shall be the acreage of the net land area. The placement of impervious cover may be further restricted by other provisions in this chapter. For example, placement of impervious cover would be discouraged in critical wildlife habitat under N.J.A.C. 7:7E-3.39.

(d) To determine the acreage of the net land area on a site:

1. Determine the acreage of the total land area on the site;
2. Identify all areas on the site that are classified as one of the following Special Water's Edge Areas:
 - i. Dunes (N.J.A.C. 7:7E-3.16);
 - ii. Bay islands (N.J.A.C. 7:7E-3.21);
 - iii. Beaches (N.J.A.C. 7:7E-3.22);
 - iv. Wetlands (N.J.A.C. 7:7E-3.27);
 - v. Wetland buffers (N.J.A.C. 7:7E-3.28);
 - vi. Coastal bluffs (N.J.A.C. 7:7E-3.31); and
 - vii. Intermittent stream corridors (N.J.A.C. 7:7E-3.32);
3. Sum the acreage of the land areas identified in (d)2 above;
4. Subtract (d)3 above from (d)1 above; and
5. The result is the net land area to be used in calculating the impervious cover limits in N.J.A.C. 7:7E-5A and 5B.

(e) If a site or a portion of a site is a contaminated site, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for the Remediation of Contaminated

Sites, the impervious cover limit for the site may be increased if required under the Technical Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26E in order to properly remediate the contaminated portion of the site.

7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) This section sets forth vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Vegetative cover percentages, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B. More trees may be planted or preserved than required, and if so, the herb/shrub area shall be reduced proportionately.

(b) If a site is located in the northern waterfront region or urban area region in the upland waterfront development area; or if a site is located in a CAFRA center, CAFRA core, or CAFRA node; or if the area of trees on a site required to be planted and/or preserved as calculated under (b)1 below is smaller than one acre, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.4; and
2. The area (in acres) of the site that would have been required under N.J.A.C. 7:7E-5A.10 or 5B.4 to be planted and/or preserved in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(c) If a residential development of 24 units or fewer that is not part of a larger development is proposed on a site in the upland waterfront development area or in the CAFRA area and does not meet the criteria at (b) above, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.4.
2. The area (in acres) of a forested site or portion to be preserved in trees is not subject to (d) below. However, the trees preserved shall be protected from any future development by a recorded conservation restriction enforceable by the Department which:
 - i. Requires that the area of trees be preserved in its natural state;
 - ii. Prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and
 - iii. Prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to

the Department that such removal will result in habitat enhancement; and

3. The area of an unforested site or portion to be planted in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and/or herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(d) For sites other than those that meet (b) or (c) above, when trees are required to be planted or preserved under N.J.A.C. 7:7E-5A or 5B, the trees shall be planted and/or preserved in a tree cluster as follows:

1. Trees preserved and/or planted shall be located in a cluster within the boundaries of one lot that shall not be further subdivided. However, on a site with existing non-contiguous forested areas larger than five acres each, the Department may require that a tree cluster be preserved on a lot located in each of the forested areas. The tree cluster should, to the maximum extent practicable, be adjacent to existing on-site or off-site forests or other natural resources, such as critical wildlife habitat areas as defined at N.J.A.C. 7:7E-3.39, or water bodies;

2. The boundaries of the tree cluster shall be clearly marked with permanent, visible markers such as concrete blocks or posts, metal stakes, or other easily seen, permanent, immovable markers;

3. The tree cluster shall be protected from any future development by a recorded conservation restriction, which requires that the tree cluster be preserved in its natural state, and prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and which prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement;

4. For a residential development of 25 units or more, the recorded conservation restriction required under (d)3 above, shall be enforceable by the Department and:

- i. A local public entity;
- ii. A private nonprofit organization whose trustees have no other interest in the land; or
- iii. A homeowner's association; and

5. For a non-residential development, the recorded conservation restriction required under (d)3 above shall be enforceable by the Department and a local public entity or a private nonprofit organization whose trustees have no other interest in the land, unless no such entity or organization will agree to enforce the conservation restriction.

(e) Trees planted to meet the tree cluster requirement of (d) above shall be planted in accordance with the following:

1. The trees shall be spaced approximately 10 feet apart, and shall be planted in a staggered, non-linear, pattern;

2. If a tree has lost more than 50 percent of its canopy within a full growing season after it is planted, it shall be immediately replaced with another tree as large as the first tree was when planted;

3. All trees shall be native or adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast;

4. The entire area of tree plantings shall be covered with a mulch of hardwood chips at least three inches deep;

5. Two-thirds of the trees planted shall be:

i. Canopy or dominant tree species which typically grow taller than 50 feet at maturity;

ii. A minimum of one and one half inches in diameter at the base; and

iii. Balled, burlapped and supported by staking with guy wires, which shall be removed after one year; and

6. The remaining one-third of the trees planted shall be:

i. Understory or subcanopy tree species which typically grow to a height of less than 50 feet at maturity;

ii. A minimum of four to five feet in height; and

iii. Balled and burlapped, or container-grown.

(f) Herb/shrub vegetation required under N.J.A.C. 7:7E-5A or 5B shall be adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast.

(g) The vegetative cover required on a site shall be planted or preserved only on the net land area determined under N.J.A.C. 7:7E-5.3(d).

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J. Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

7:7E-5.5 Determining if a site is forested or unforested

(a) The vegetative cover percentage that applies to a site under N.J.A.C. 7:7E-5A or 5B varies depending on whether the site is forested. If only a portion of a site is forested, separate vegetative cover percentages shall be calculated for the forested and unforested portions of the site.

(b) The following will be considered to be unforested for the purposes of determining vegetative cover percentages: