

(e) If the project, activities and/or property do not result in a substantial impact as determined in (c) above, the Department shall determine the transition area width based on the slope and dominant vegetational community type of

the transition area and the development intensity of the proposed project, as described below at (e) 1 to 3, as indices of impact on a freshwater wetland of exceptional resource value, using the matrix below.

		Slope %	Development Intensity		
			Low (0-10%)	Modernate (> 10-40%)	High (> 40%)
Dominant Vegetational Community	Herba- ceous	0-2	100	120	140
		>2	150	150	150
	Scrub-Shrub	0-2	75	75	80
		>2-5	95	115	130
		>5	150	150	150
	Forest	0-2	75	75	75
		>2-5	75	75	85
		>5-10	75	85	95
		>10-15	95	105	115
>15-20		115	125	135	
>20		135	145	150	

1. The dominant vegetational community in a transition area is the plant community which covers the most surface area of the transition area contained within the subject property. Vegetational communities are classified as herbaceous, scrub-shrub, or forested.

i. An herbaceous vegetational community is characterized by the presence of annual and perennial plant species or bare ground.

ii. A scrub-shrub vegetational community is characterized by shrub and herbaceous plant species with an average height equal to or less than 20 feet. A forested area with little or no herbaceous or shrub layer (understory) shall be considered a scrub-shrub vegetational community for the purposes of this chapter.

iii. A forested vegetational community is characterized by tree species with an average height greater than 20 feet accompanied by a herbaceous or shrub layer.

2. The average slope of the ground in the existing pre-activity standard transition area is measured as the arithmetic mean of slope measurements of the transition area taken every 200 feet along the outside transition area boundary. Slope shall be measured as the change in elevation of the ground from the freshwater wetlands boundary to the outside transition area boundary over the standard transition area width established in N.J.A.C. 7:7A-6.1.

3. The development intensity of the proposed project is the percentage of the surface area of the property,

measured on a horizontal scale, which will be covered by impervious surfaces at the completion of the proposed project. For the purposes of this paragraph, "property" means the municipal tax lot or lots upon which any part of the proposed project will occur. Impervious surfaces are areas which prevent the infiltration and percolation of water into the soil. Impervious cover includes, but is not limited to, pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools. The area used to calculate development intensity shall exclude freshwater wetlands, transition areas, and State open waters. The sum of the square footage of freshwater wetlands, transition areas, and State open waters on the property is subtracted from the square footage of the entire property. The resulting number is divided into the square footage of all impervious cover which will result on the property upon completion of the proposed project. This quotient is multiplied by 100 percent to obtain the percentage of impervious cover, also known as the development intensity, which can be expressed mathematically as:

$$DI = IC / (PA - (FW + TA + SOW)) \times 100\%$$

where:

i. DI is the development intensity of the project expressed as a percentage;

ii. IC is the square footage of impervious cover which will exist on the entire subject property or properties which are affected by the proposed project, at the completion of the proposed project, including pre-existing impervious cover.

iii. PA is the square footage of the property or properties on which the proposed project or activity will occur;

iv. FW is the square footage of freshwater wetlands present on the subject property;

v. TA is the square footage of the transition area based on the standard transition area width established at N.J.A.C. 7:7A-6.1; and

vi. SOW is the square footage of State open waters on the subject property.

(f) An extraordinary hardship to the applicant will be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is presently developed as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the local region; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction waiver to reduce the transition area to a minimum of 75 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased for fair market value to create a buildable lot;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

(g) If the applicant is unable to demonstrate that an activity will have no substantial impact on the adjacent wetland by satisfying the criteria at (c) above or at N.J.A.C. 7:7A-7.3, 7.4(e), or 7.5, an applicant may demonstrate no substantial impact through the use of scientific documentation. This documentation may include but is not limited to, nutrient or sediment transport models, buffer models such as "The Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, Inc., the "Buffer Delineation Model for New Jersey Pinelands Wetlands," prepared by Charles T. Roman and Ralph E. Good, or wildlife habitat suitability studies. If the applicant elects to use a buffer model, the following shall be addressed as they relate to the adjacent wetlands: sediment, nutrient, and pollutant transport and removal, impacts on sensitive species, and potential impacts to surface water quality.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

New (e) added defining what is considered no substantial impact and recodified (e)-(g) as (f)-(h); new (f)2 regarding single family residential lots.

7:7A-7.3 Intermediate resource value freshwater wetlands: standards for transition area width reduction

(a) This section addresses standards for overall width reduction of transition areas adjacent to intermediate resource value wetlands. A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a Department-approved transition area averaging plan issued pursuant to N.J.A.C. 7:7A-7.5, a transition area permit for access to an authorized activity granted by the Department pursuant to N.J.A.C. 7:7A-7.1(f), or a special activity permit pursuant to N.J.A.C. 7:7A-7.4, a transition area adjacent to a freshwater wetlands of intermediate resource value shall not be reduced to less than 25 feet wide.

(b) The Department shall grant a transition area waiver to reduce a transition area adjacent to a freshwater wetland of intermediate resource value from the standard transition area width only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c) and (d) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid a substantial hardship to the applicant, as defined in (e) below.

(c) For the purposes of this subchapter, a substantial impact shall be deemed to exist on a freshwater wetland of intermediate resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction pursuant to N.J.A.C. 7:7A-7.2(g):

1. The freshwater wetland is a critical habitat for fauna or flora, as determined by the Department. Critical habitat for fauna are areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities. Critical habitat for flora are areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey;

2. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. § 1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;

3. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:13-5.10 will be disturbed by the proposed activity;

4. The property is located adjacent to a local, county, State or Federal park, wildlife refuge, sanctuary, management area, or area listed on the New Jersey Register of Natural Areas; or

5. The proposed activity or project includes one or more of the operations or activities at N.J.A.C. 7:7A-7.2(c)6.

(d) If the project, activities and/or property do not meet any of the criteria in (c) above, the Department shall determine the transition area width reduction from that of the standard transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described at N.J.A.C. 7:7A-7.2(e)1 through 3, as indices of the impact on a freshwater wetland of intermediate resource value, using the criteria below:

1. A transition area waiver reducing the transition area width to 25 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described in N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent.

iii. The development intensity of the project, as determined N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

2. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true;

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant N.J.A.C. 7:7A-7.2(e)2, is less than or equal to three percent; and

iii. The developmental intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 40 percent.

3. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is scrub-shrub or herbaceous vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

4. A substantial impact on the freshwater wetland shall be deemed to exist, and a transition area waiver shall not be granted pursuant to this section, if the conditions in (d)1, 2 or 3 above are not met.

(e) A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use as authorized by the provisions of the Act and this chapter and this limitation results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction waiver to reduce the transition area to a minimum of 25 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

New (d) and new (e)2 added; (e)-(f) recodified as (d)-(e).

7:7A-7.4 Special activities: Standards for granting transition area waivers

(a) The Department will issue transition area waivers for certain special activities meeting the criteria in this section. Waivers under this section are not subject to the criteria in N.J.A.C. 7:7A-7.2, 7.3 or 7.5. The Department will issue a transition area waiver to reduce or partially eliminate the standard transition area to allow for the special activities listed below at (a)1 through 3, provided the applicable conditions for each activity set forth below at (b), (c), (d), (e) and (f) are met; provided the project is designed to minimize impacts to the freshwater wetland and transition area; and provided the transition area continues to serve the purposes set out at N.J.A.C. 7:7A-6.1(a) and (b). Reductions or partial eliminations authorized under this section shall not require compensation pursuant to N.J.A.C. 7:7A-7.5. Except pursuant to a transition area waiver for access to an authorized activity issued by the Department pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to freshwater wetlands of exceptional resource value shall not be reduced to less than 75 feet wide unless the applicant demonstrates, to the satisfaction of the Department, that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands waiver. The special activities are:

1. Stormwater management facilities as defined at (b) below;
2. Linear development as defined at N.J.A.C. 7:7A-1.4;
3. Activities performed in the transition area which are permitted under specific Statewide general permits listed in (e) below; and
4. Activities performed in the transition area which can be defined as redevelopment as specified in (f) below.

(b) If the proposed activity is the construction of a stormwater management facility, the Department will approve a transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative on-site location for the facility.

1. For the purposes of this paragraph, "stormwater management facility" means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with all applicable local, county and state regulations. These facilities may include retention and detention basins and infiltration structures; grassed swales; filter fabric; rip-rap channels and/or stormwater outfalls.

2. An alternative onsite location shall not be considered infeasible merely because it would require one or more of the following:

- i. Relocating part or all of the stormwater management facility outside of the transition area and into the upland;
- ii. Modifying the type of stormwater management facility;
- iii. Redesigning the layout, size, scope or configuration of the buildings, roads or other aspects of the project in order to accommodate the stormwater management facility; or
- iv. Reducing the scope or density of the project generating the stormwater.

3. An alternative onsite location shall be considered feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of stormwater management goals.

(c) If the proposed activity is the construction of a linear development as defined at N.J.A.C. 7:7A-1.4, the Department will approve a further transition area waiver for the reduction or partial elimination of transition area if there is no feasible alternative location for the linear development.

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

- i. Modifying the route of the linear development to avoid or reduce impacts to freshwater wetlands and transition areas; or
- ii. Reducing the width of the linear development.

2. An alternative shall be feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.