



Freshwater Wetlands Protection Act



New Jersey Department of Environmental Protection
Bureau of Coastal and Land Use Compliance and
Enforcement

Lawrence J. Baier, Chief
609-292-1240

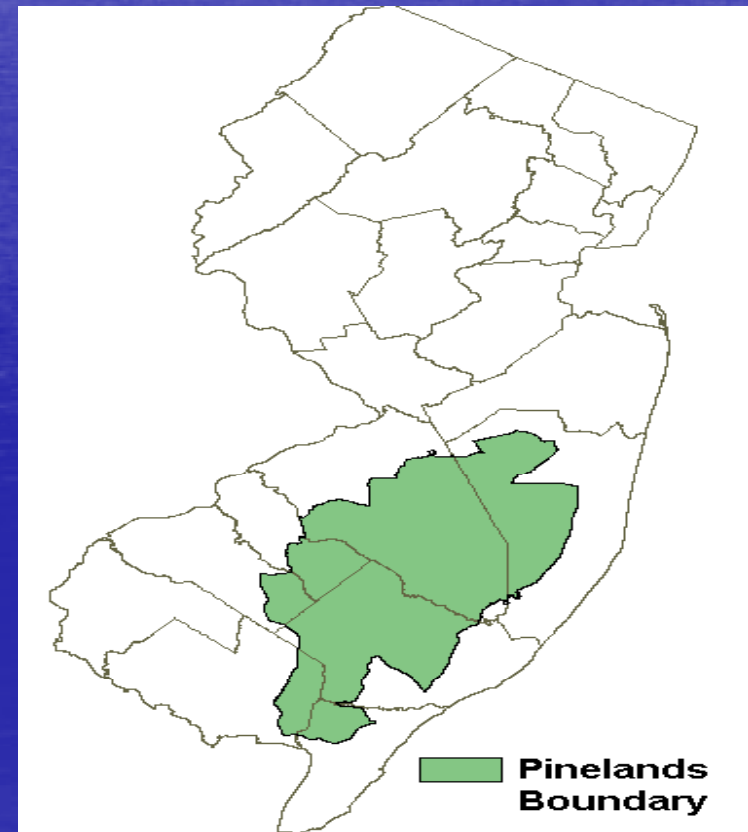
Disclaimer: The following is a training document for internal use only. It is not intended to be a guide for compliance nor should it be distributed to the public.

Freshwater Wetlands Protection Act ("FWPA"), N.J.S.A. 13:9B-1 et seq. & Rules, N.J.A.C. 7:7A-1 et seq.

- FWPA & associated Rules can be found at the NJDEP's Division of Land Use Regulation website, <http://www.nj.gov/dep/landuse/>.
- FWPA was enacted into law on July 1, 1987, with an effective date of July 1, 1988. Regulations for Transition Area buffers became effective on July 1, 1989. FWPA Regulations were last revised on November 9, 2009.
- Prior to enactment of the FWPA, freshwater wetlands regulation fell under the authority of the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency pursuant to Section 404 of the federal Clean Water Act.
- On March 2, 1994, New Jersey assumed the Section 404 program from the federal government and any remaining federal exemptions expired. However, certain interstate waters and tidal waters (including wetlands w/in 1,000') are non-assumable and both agencies have jurisdiction.
- Not to be confused with the Wetlands Act of 1970, which regulates *mapped* coastal wetlands. However, any *non-mapped* coastal wetlands are regulated under the FWPA.

FWPA Jurisdiction

- Geographic Exclusions
 - NJ Meadowlands Commission
 - NJ Pinelands Commission
 - 1970 Wetlands Act Regulated Coastal Wetlands



FWPA Regulated Areas

- FWPA Regulated Areas include:

- Freshwater wetlands

- Freshwater wetland transition areas “buffers”
(measured outward from wetland boundary), buffers can be:

- 150' - based on presence of exceptional resource value wetlands

- ❖ Wetlands drain to trout producing waters

OR

- ❖ Wetlands are associated with T & E species habitat

- 50' - based on presence of intermediate resource value

- No buffer – based on presence of ordinary resource value wetlands (rather uncommon)

- Open water

What is a Freshwater Wetland???

- **Webster's Definition:** *"A lowland area, such as a marsh or swamp, that is saturated with moisture, esp, when viewed as the natural habitat of wildlife." – Webster's II New College Dictionary, 2001*
- **Scientific/Technical Definition:** *"Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." - Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989*

07/17/2007

Can it be a wetland if I don't see any water???



MAY 5 2005

Photo By: David Sumba, NJDEP BCLUCE

Establishing Jurisdiction for Freshwater Wetlands

- **Letter of Interpretation (“LOI”)**
 - NJDEP approved verification of FWPA regulatory boundaries
 - Can also be just a Presence/Absence and Classification Determination
 - Wetland boundary data derived from “Three Parameter Approach” noted below
- **Three Parameter Approach – 1989 Federal Manual**
 - Presence of hydric soil
 - Dominance of hydrophytic vegetation
 - Presence of hydrology indicators



Hydric Soil



15 2:02 PM

Photo By: David Sumba, NJDEP BCLUCE

Common Wetland Vegetation

Broad-leaved Cattail - *Typha latifolia*



© George F. Russell

Photo: Rusty Russell @ USDA-NRCS PLANTS Database

Tussock Sedge - *Carix stricta*



©2002 Gary Fewless

Photo: Gary Fewless @ University of Wisconsin, Green Bay
<http://www.uwgb.edu/biodiversity/herbarium/wetland_plants/crxstr01.htm>

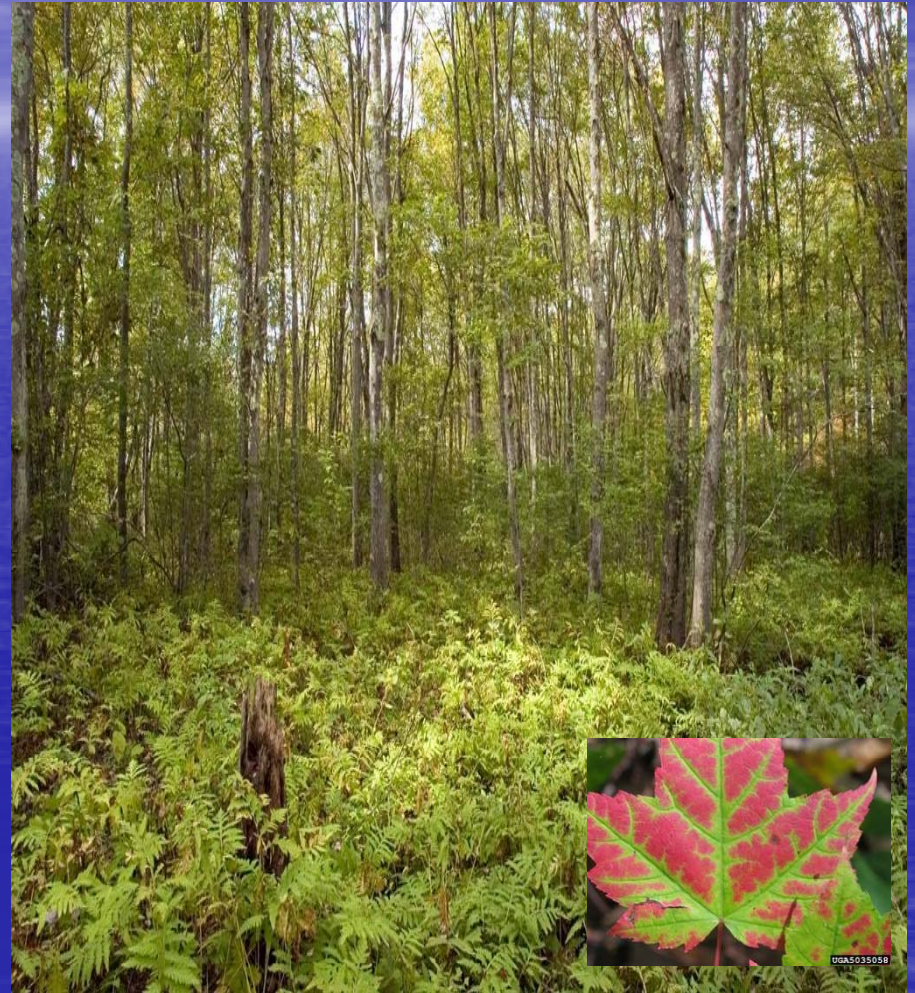
Common Wetland Vegetation

Skunk Cabbage – *symplocarpus foetidus*



Photo: http://en.wikipedia.org/wiki/File:Skunk_Cabbage_Leaves.jpg

Red Maple - *acer rubrum*



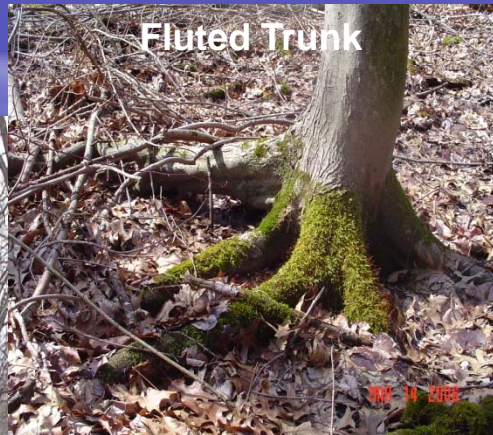
Background Photo: New Hampshire Division of Forest & Lands
Leaf Photo: Joseph O'Brien, USDA Forest Service, www.jpmlimages.org

Hydrology Indicators

Standing Water, Fluted Tree Trunks
& Water Stained Leaves



Fluted Trunk



Saturated Soils



GeoWeb Resources & the FWPA

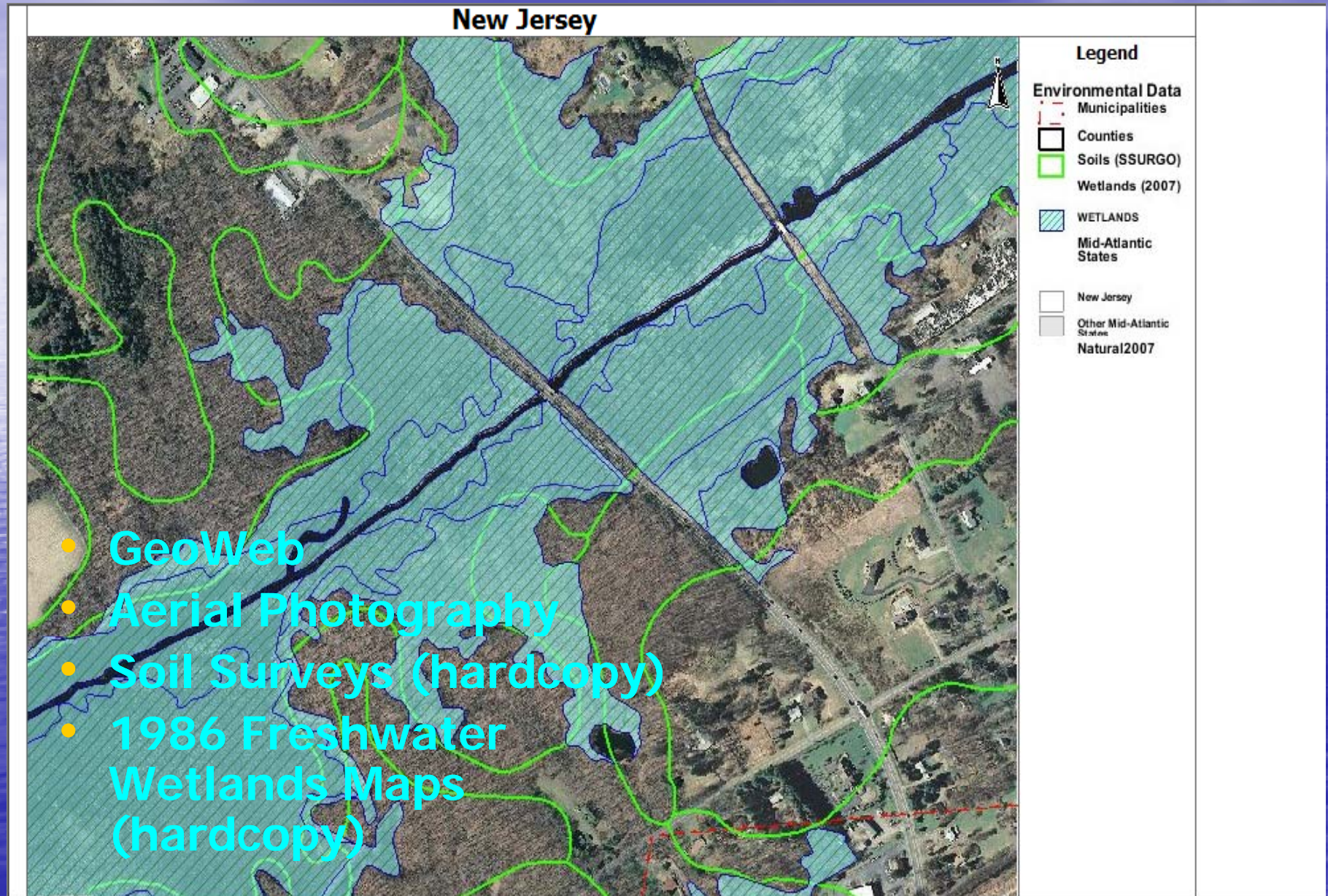
- **Aerial Photography**

- 1995 (color)
- 2002 (color)
- 2007 (color)

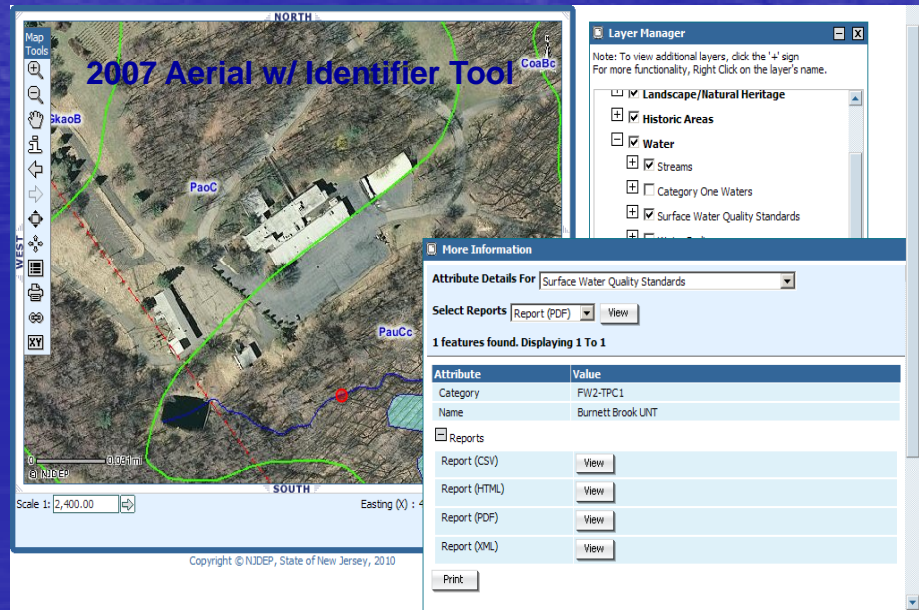
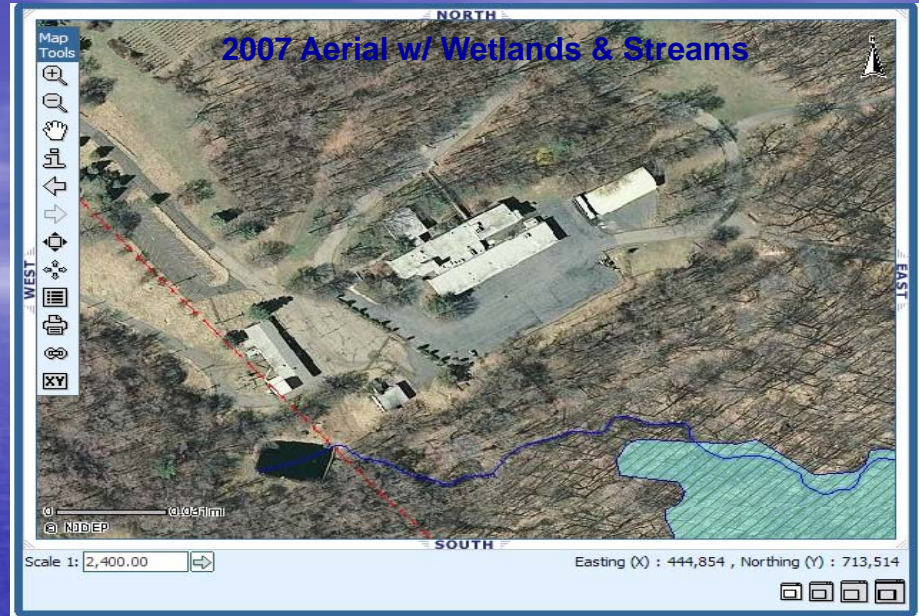
- **Digital Overlays**

- Freshwater Wetlands (digitized from hardcopy mapping)
- Streams and Watercourses
 - Name and Classification Information
 - Useful in determining resource value
- Soil Types
- Watershed Limits
- T & E Species Habitat
- Land Use Change (2002 – 2007)
 - From pervious to impervious coverage

Guidance Documents for Identifying Freshwater Wetlands



GeoWeb Interactive Mapping



FWPA Regulated Areas

- FWPA Regulated Areas include:

- Freshwater wetlands

- Freshwater wetland transition areas “buffers”
(measured outward from wetland boundary), buffers can be:

- 150' - based on presence of exceptional resource value wetlands

- ❖ Wetlands drain to trout producing waters

OR

- ❖ Wetlands are associated with T & E species habitat

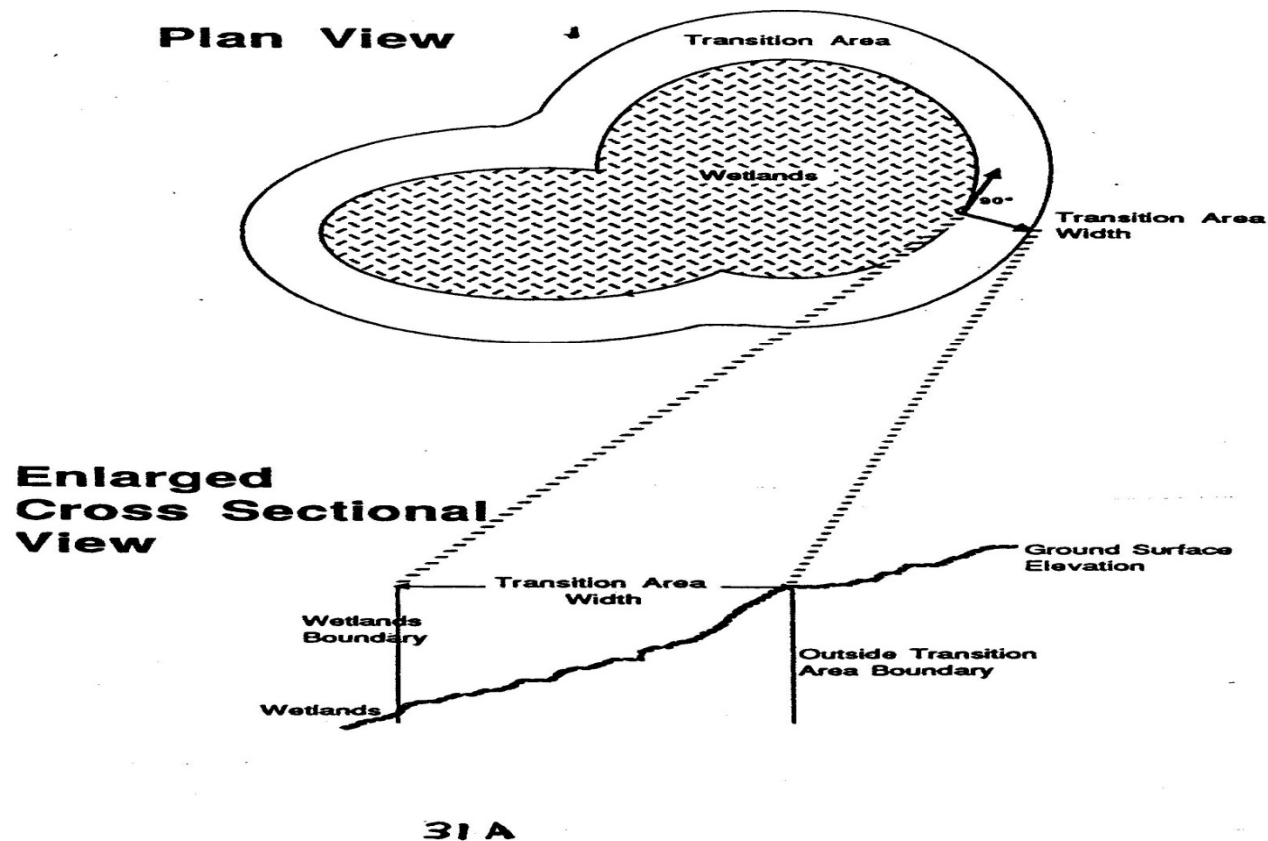
- 50' - based on presence of intermediate resource value

- No buffer – based on presence of ordinary resource value wetlands (rather uncommon)

- Open water

Freshwater Wetland Transition Area Diagram

Example of a transition area adjacent to a freshwater wetland. Depicted are a plan and cross sectional view.



Activities Regulated Pursuant to the FWPA

- Generally speaking, the following activities are regulated when conducted within a freshwater wetland, freshwater wetland transition area, and/or State open water:
 - Clearing and/or the destruction of vegetation
 - Placement and/or dumping of fill material of any kind
 - Disturbance of soil, including grading & excavation
 - Construction and/or placement of structures & impervious surfaces
- The above activities require that the property owner secure a FWPA permit prior to conducting site work.
 - However, there are some exceptions

3 11:16 AM

Exemptions & Non Regulated Activities

- **Exemptions [N.J.A.C. 7:7-2.8A]**
 - **Agriculture**
 - Applies to areas where farming has continually occurred since enactment of FWPA
 - Farm roads not to exceed 20 ft in width
 - Includes farm pond maintenance
 - Minor drainage activities
 - Does not include converting a forested wetland to a new farm field
 - Forestry management plans approved by Division of Forestry
 - Must implement Best Management Practices
 - **Transition Area**
 - Subdivisions that have local approvals prior to July 1, 1989 and no subsequent board approval was granted
- **Lawfully existing areas/features in a Transition Area [N.J.A.C. 7:7A-2.6(b)1.i.(9)]**
 - Work occurring for lawfully existing structures or in lawfully existing lawns where no expansion will occur
 - Right of Way maintenance (GP needed for work in wetlands)

Exemptions & Non Regulated Activities

- Non regulated uses for di minimus activities [N.J.A.C. 7:7A(b)1.]
 - Temporary Structure (shed, fence) in a Transition Area
 - 150 sq ft or less, no concrete footings or foundation
 - Gardens in a Transition Area
 - Less than 2,500 sq ft located in area not previously forested
 - Not located in a NJDEP easement
 - Minor Activities in a Transition Area
 - Mowing (not expansion) of lawfully existing lawns
 - Selective tree cutting
 - Does not alter the character of the naturally occurring vegetation
 - Safety/Property hazard (vulnerable tree near a house, parking lot)
 - Activities adjacent to a Transition Area in which a minor impact in the Transition Area may occur
 - No tree or shrub vegetation is removed
 - Disturbance does not last more than six months

FWPA Violation Examples



FEB 10 2006

Photo By: David Sumba NJDEP BCLUCE

FWPA Violation Examples



Photos By: David Sumba NJDEP CLUE

FWPA Violation Examples



FWPA Violation Examples





Questions & NJDEP BCLUCE Contact Information



- **QUESTIONS???**
- **BCLUCE Offices**
 - **Trenton Office**, (609) 292-1240
 - Counties: Northern and Central Burlington, Southern Bergen, Camden, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Western Monmouth, Eastern Morris, Western Ocean, Eastern Passaic, Somerset, & Union
 - Mailing Address: 401 East State P.O. Box 420, Mail Code 401-04C, Trenton, NJ 08625
 - **Toms River Office**, (732) 255-0787
 - Counties: Atlantic, Southern Burlington, Cape May, Cumberland, Eastern Monmouth, Eastern Ocean, & Salem
 - Mailing Address: 1510 Hooper Ave, Suite 140, Toms River, NJ 08753
 - **Chester Office**, (908) 879-3769
 - Counties: Northern Bergen, Passaic, Morris, Sussex, & Warren
 - Mailing Address: 100 North Road, Chester, NJ 07930

A developer has come to your office to inquire about what approvals are needed to construct a golf course. The undeveloped site is located in Princeton, Mercer County, NJ. A look at the proposed site plan shows construction/clearing/filling for hole # 3 is near an area with a small pond, as well as construction/clearing for hole #16 proposed adjacent to a stream, with golf cart access across the stream to hole #17. You advise the developer that.....

- A. A CAFRA Permit is needed
- B. A Highlands Permit is needed
- C. A Freshwater Wetlands permit is needed
- D. A Flood Hazard Area permit is needed
- E. Both a Freshwater Wetlands and Flood Hazard permit is needed
- F. No NJDEP Land Use permit is needed (ie – Coastal Wetlands, CAFRA, Freshwater Wetlands, Flood Hazard Area, Waterfront Development)
- G. A Freshwater Wetlands Letter of Interpretation and/or Flood Hazard applicability determination is needed