

# Coastal and Land Use Compliance and Enforcement

Bill Neyenhouse, PP

[william.neyenhouse@dep.state.nj.us](mailto:william.neyenhouse@dep.state.nj.us)

(732) 255-0872

# Realtors: Rules have you Confused?

An Overview of New Jersey  
Department of Environmental  
Protection Coastal and Land Use  
Rules and Regulations

# Rules and Regulations

- The Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19) & (N.J.A.C. 7:7)
- The Waterfront Development Law (N.J.S.A. 12:5-3) & (N.J.A.C. 7:7)
- Tidelands Act (N.J.S.A. 12:3) & (N.J.A.C. 7:7)
- Wetlands Act of 1970 (Coastal Wetlands) (N.J.S.A. 13:9A) & (N.J.A.C. 7:7)
- Flood Hazard Area Control Act (N.J.S.A. 58:16A-50) & (N.J.A.C. 7:13)
- Freshwater Wetlands Protection act (N.J.S.A. 13:9B) & (N.J.A.C. 7:7A)

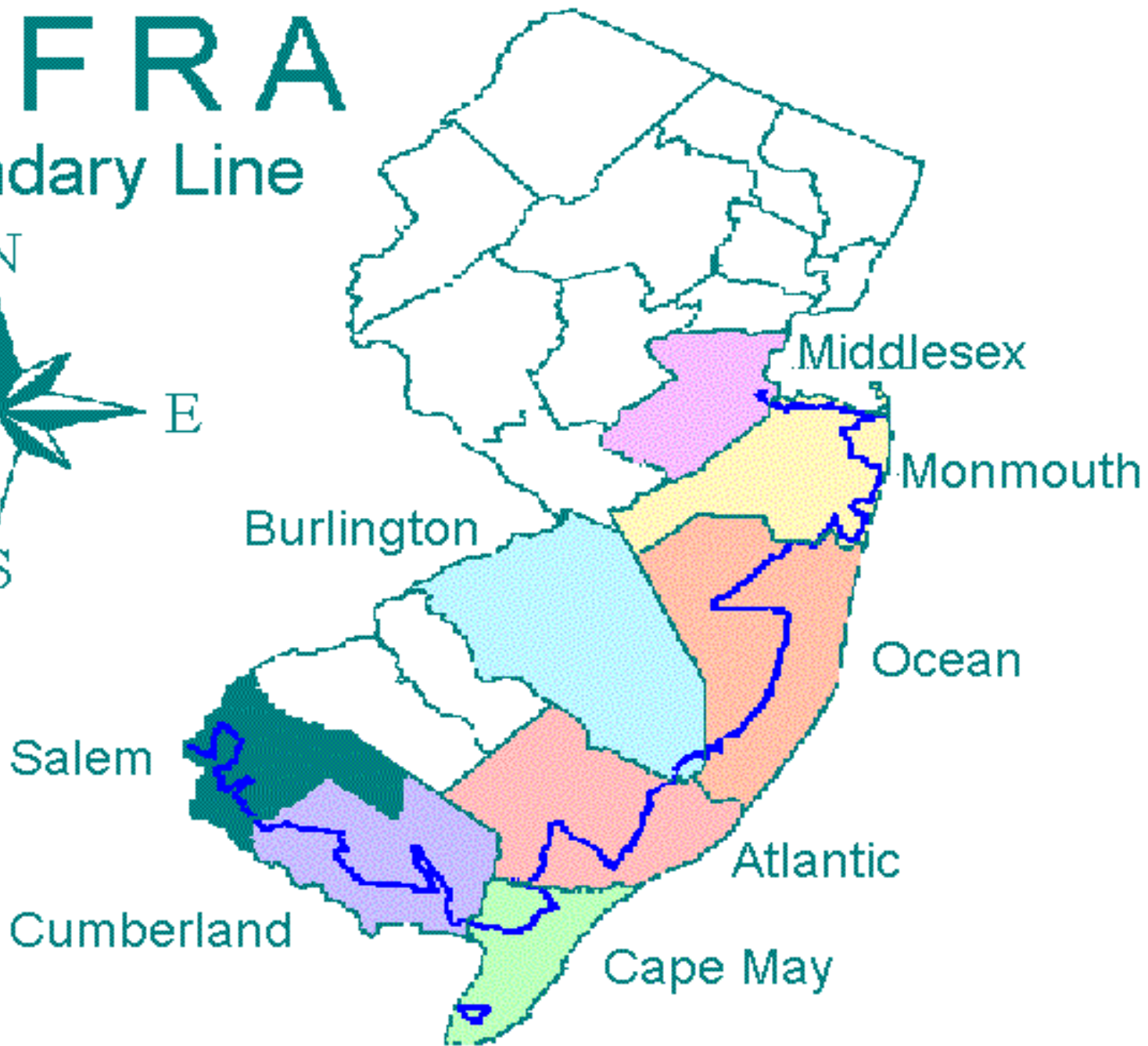
# CAFRA

- The CAFRA law regulates almost all development activities involved in residential, commercial, or industrial development within the defined CAFRA area.
- Includes construction, relocation and enlargement of buildings or structures; and all related work, such as excavation, grading, shore protection structures, and site preparation



# CAFRA

Boundary Line



# CAFRA Boundary Description

- The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at the Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA area follows an irregular line drawn along public roads, railroad tracks, and other features. The CAFRA area varies in width from a few thousand feet to 24 miles, miles measured straight inland from the shoreline.

## CAFRA - What's Regulated?

- Any development on a beach or dune
- Construction of structures between the mean high water line (or land ward limit of a beach or dune) and a point 150 feet land ward. Includes single family homes, sheds, fences, pools, upland bulkheads, etc
- Within the CAFRA area, a residential development having 25 or more dwelling units
- Within the CAFRA area, a commercial development having 50 or more parking spaces



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# Waterfront Development

- Projects or structures built or proposed below the mean high water line require permits and a tideland instrument.
- **What's Regulated?** Examples of projects that need a Waterfront Development Permit include docks, piers, pilings, bulkheads, marinas, bridges, pipelines, cables, and dredging.

# Tidelands And The Public Trust Doctrine

- Tidelands, also known as "riparian lands" are lands now or formerly flowed by the tide of a natural waterway. This includes lands that were previously flowed by the tide but have been filled and are no longer flowed by the tide. These lands are owned by the people of the State of New Jersey.
- The Public Trust Doctrine protects the public's right in tidal lands, and extends beyond the traditional purposes of navigation and fishing and apply to recreational use including but not limited to fishing, bathing, wading and kayaking. Does not exclude hunting.
- **What's Regulated?** You must first get permission and pay a fee to use these lands privately (i.e. docks, piers).











# Upland Waterfront Development

- For development outside of the CAFRA area, the Waterfront Development Law regulates not only activities in tidal waters, but also the area adjacent to the water, extending from the mean high water line to the first paved public road, railroad or surveyable property line. At a minimum, the zone extends at least 100 feet but no more than 500 feet inland from the tidal water body.
- **What's Regulated?** Within this zone, DEP must review construction, reconstruction, alteration, expansion or enlargement of structures, excavation, and filling. However, this part of the law does not apply within the Hackensack Meadowlands Development District.

# Wetlands Act of 1970 - Coastal Wetlands

- Locally referred to as Salt Marshes
- Do NOT have to be vast to be regulated
- **What's Regulated?** Permits required for activities in coastal wetlands delineated and mapped pursuant to the Act, including installation of utilities, filling, excavation, or construction catwalks, piers, docks, etc. Prohibited activities include disposal of solid waste, discharge of sewage or industrial waste, application of pesticides, storage of pesticides.









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# Freshwater Wetlands Protection Act

- New Jersey protects wetlands under the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B, promulgated in 1988. This law also protects transition areas or "buffers" around freshwater wetlands
- Wetlands are commonly referred to as swamps, marshes, “low-spots” or bogs. However, many wetlands in New Jersey are forested and do not fit the classic picture of a swamp or marsh
- The Freshwater Wetlands Protection Act requires DEP to regulate virtually all activities proposed in the wetland, including cutting or killing of vegetation, dredging, excavation or removal of soil, drainage or disturbance of the water level, filling or discharge of any materials, driving of pilings, and placing of obstructions

# Freshwater Wetlands - What's Regulated?

- **The destruction of vegetation** - Does not include the continued mowing of *existing* lawns, pastures. Does not include State approved forestry management or *ongoing* farming, but does include new farming or the expansion of farming activities.
- **The disturbance of the soil** - Grading, excavating, ditching. Does not include *ongoing* farming, does include new or expanded farming.
- **The placement of fill material** - Any material or volume that inhibits the growth of vegetation or that effects the functions of wetlands. Why fill? Is the applicant avoiding wetness?
- **Construction** - Can include the placement of small structures such as sheds, walls, fences as well as improvements such sewers, roads and utilities.

# Freshwater Wetland Transition Areas

- Commonly referred to as “Buffers”
- Follows the freshwater wetlands on a parallel line. Width varies from fifty to one-hundred fifty feet.
- Width is determined based upon the resource value of the associated wetland
- Transition areas are regulated as if “they are wetlands” to establish a protective buffer to the wetlands
- Waivers and Transition Area Averaging plans are reviewed case by case by LURP to allow uses consistent with program rules

# Freshwater Wetlands

- Identification of Freshwater Wetlands is complex and requires identification of hydrology, wetland soils, and wetland vegetation.
- If you suspect your property contains wetlands, look at the New Jersey freshwater wetlands maps. Your municipal clerk and county clerk's office have both been given these maps for public use. The maps can also be obtained from DEP's Maps and Publications Office at (609) 777-1038, or, if your county or public library has a GIS (Geographic Information System) computer system, the maps can be viewed on their computer.

## Freshwater Wetlands

- The New Jersey freshwater wetlands maps provide guidance on where wetlands are found in New Jersey, but they are not the final word. Only an official determination from DEP, called a "letter of interpretation" can tell you for sure if you have freshwater wetlands on your property. An LOI verifies the presence, absence, or boundaries of freshwater wetlands and transition areas on a site.
- To get a letter of interpretation (or "LOI") from the DEP, call (609) 292-0060 and ask for the LOI information and application package. You can also go to the Freshwater Wetlands section of the DEP forms web page

# Acronyms and Definitions

- LURP = Land Use Regulation Program
- JD = Jurisdictional Determination, applied for through LURP. Determination of applicability for Wetlands Act of 1970, Waterfront Development, and CAFRA
- Wetland Delineation = Field and research verified wetland line as it is applied to a given piece of property. Usually “staked” in the field and transposed onto a survey for submittal for an LOI
- LOI = Letter of Interpretation. Applied for through LURP staff verifies the wetland delineation, presence or absence of freshwater wetlands in writing

# Freshwater Wetlands











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MAR 16 2006





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# Flood Hazard Area Control Act

- **Jurisdiction:** Not just USGS “Blue-Line *streams*”. Rivers, brooks, creeks, streams, runs = WATERCOURSES
- **100-year flood plain (FEMA flood plain)** The elevation to which water is expected to rise during a storm with a 1% chance of occurring (1 in 100-storm). A calculated estimate.
- **NJ Flood Hazard Area (FHA)** The volume of water during the 100-year storm + 20% FHAs are adopted in the Rule making process. 25’ or 50’ from the top of the bank along the watercourse (Near-Stream or Riparian Buffer) Trout associated, C-1, or threatened/endangered species have 50’ near-stream buffer. Otherwise the near-stream buffer is 25’.

# Flood Hazard Area Control Act - What's Regulated?

- **The destruction of vegetation within 25' or 50' from the top of the bank.** Does not include the continued mowing of *existing* lawns, pastures. Does not include State approved forestry management or *ongoing* farming, but does include new farming or the expansion of farming activities.
- **The placement of fill material or disturbance of the soil within 25' or 50' from the top of the bank.** Why is the applicant filling near the bank? Are they trying to keep the water from overflowing the channel?
- **The placement of fill material within any of the jurisdictional areas.** Fill below the top of the bank is considered fill in the floodway. Why is the applicant placing fill on the land? Are they trying to elevate the grade of the land above the flood waters?
- **Any construction or manmade land disturbance within any of the jurisdictional areas.**









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OVER  
EDGE

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# Contacts

Bureau of Coastal and Land Use -  
Compliance and Enforcement  
1510 Hooper Avenue  
Toms River, NJ 08753  
(732) 255-0787

All information contained herein is provided solely as general guidance and it does not establish policy. For detailed or information specific to a case or site please consult any/all rules or regulations or consult the Department for details.