

The Regulation of Wetlands in the State of New Jersey

N.J. Department of Environmental Protection

Land Use Regulation Division

www.nj.gov/dep/landuse

Tom Micai, Director



Types of Wetlands

- **Tidally influenced wetlands**

- Primarily regulated via the *Wetlands Act of 1970*



- **Freshwater Wetlands**

- Regulated via the *Freshwater Wetlands Protection Act of 1987*



- **Un-mapped Tidally influenced wetlands**

- Regulated via the *Freshwater Wetlands Protection Act of 1987*

Wetlands Act of 1970

N.J.S.A. 13:9A-1 et seq.

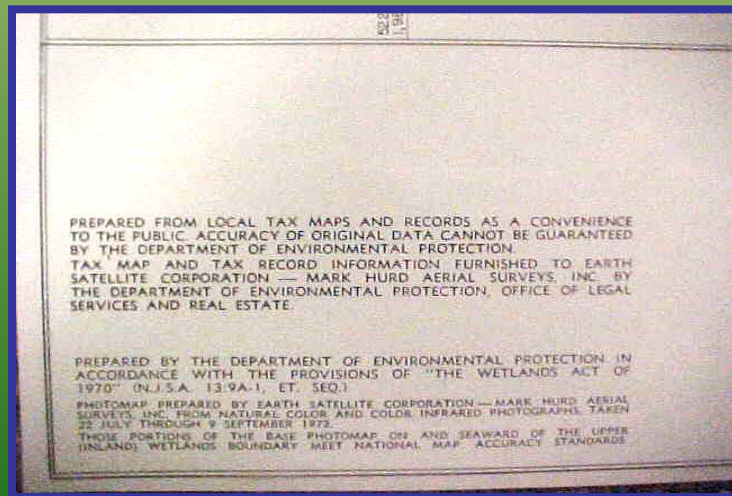
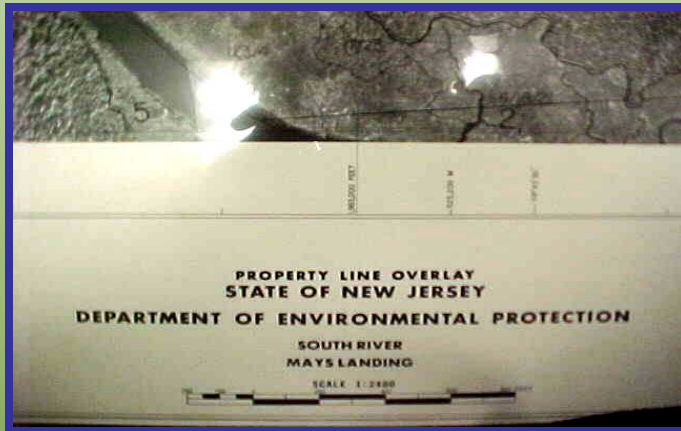
- This Act is implemented thru the *Coastal Zone Management Rules* (N.J.A.C. 7:7E)
- This law reflected the concern for the environment of the State's coastal waters
- Activities proposed within areas mapped as coastal wetlands on 1971/1972 Promulgated aerial mapping are regulated pursuant to this Act





Wetlands Act of 1970

1971/1972 Promulgated Aerial Maps



Coastal Zone Management Rules

Wetlands (7:7E-3.27)

- Development of all kinds is prohibited unless the proposed meets the following conditions:
 - requires water access or is water oriented as a central purpose of the basic function of the activity. (must be water dependent)
 - has no prudent or feasible alternative
 - results in minimum alteration or impairment of natural circulation
 - results in minimum alteration or impairment of natural contour or vegetation of the wetland



Recreational Docks & Piers

Must comply with the following:

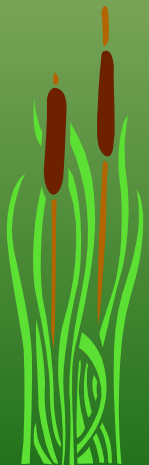
- There is a demonstrated need that cannot be fulfilled by utilizing existing facilities
- The construction minimizes adverse environmental impacts
- The docks and their associated mooring piles are located so as not to hinder navigation
- There is minimum feasible interruption of natural water flow
- Space between horizontal planking is maximized and the width of the horizontal planking is minimized.
- **The height of the structure over wetlands shall be a minimum of four (4) feet**
- **For docks proposed over coastal wetlands - the maximum width while crossing the wetlands shall be six (6) feet with the maximum width over water of eight (8) feet.**
- A minimum of eight (8) feet of open water shall be provided between docks if the combined width of the docks over the water exceeds eight feet.
- The construction of covered or enclosed structures such as gazebos or sheds located on or above the decking of recreational docks and piers are prohibited.

Coastal Zone Management Rules

Wetlands Buffers (7:7E-3.28)

A wetlands buffer (or transition area) is a area of land adjacent to a wetland which minimizes adverse impacts to the wetlands or serves as an integral component of the of the wetlands ecosystem

- Development is prohibited in a buffer (transition) area unless it can be demonstrated that the proposed development :
 - will not have a significant adverse impact and;
 - will cause minimal feasible adverse impact on the natural ecotone between the wetlands & the surrounding uplands.



Coastal Zone Management Rules

Wetlands Buffers (7:7E-3.28)



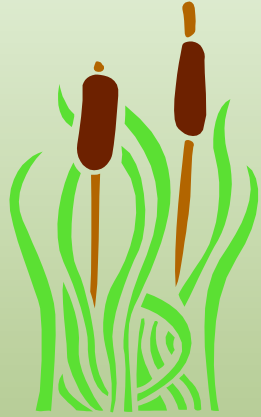
- For Freshwater Wetlands see the FWPA at NJAC 7:7A
 - maximum of 150 feet
- For all other wetlands (coastal) a buffer of up to 300 feet may be established
 - case-by-case basis
- In the Hackensack Meadowlands District, the buffer width shall be determined by the requirements in the HMD Zoning Regulations

Freshwater Wetlands Protection Act

N.J.S.A. 13:19B-1 et seq.

- This Act is implemented thru the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A)
- Currently the only state using the 1989 Federal Wetlands Delineation Manual
 - Utilizes a “three parameter approach”
 - Soils, Vegetation, Hydrology
- These rules also govern implementation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.)





Assumption of Section 404 of the Clean Water Act

- Section 404 regulates the placement of dredged and fill materials into waters of the United States including *wetlands*
 - Administered by the US Army Corps of Engineers (ACOE) and the US Environmental Protection Agency (EPA)
- The option is available for individual States or Tribes to “assume” administration of the 404 permit program in certain waters within State or Tribal jurisdiction

Assumption of Section 404 of the Clean Water Act

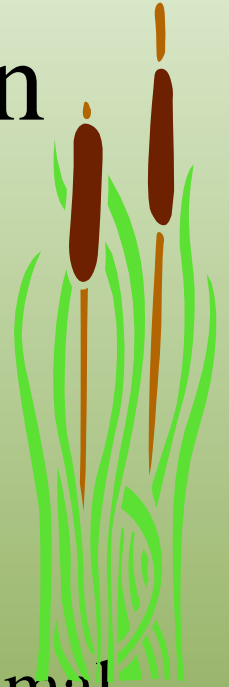
- To date, only two (2) States, Michigan & New Jersey have assumed the 404 Program.
 - Assumption in New Jersey - March 2, 1994
- Prior to assumption, the ACOE had concurrent jurisdiction of the waters/wetlands in New Jersey with the State
- Post assumption, ACOE jurisdiction is limited to:
 - tidal waters and their adjacent wetlands
 - limited to wetlands within 1,000 feet of a tidal waterway
 - navigable waters and their adjacent wetlands

Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A)

Activities regulated include:

- removal, excavation, disturbance or dredging of soil
- drainage/disturbance of the water level or water table
- dumping, discharging or filling with any material
- driving of pilings
- placement of obstructions
- destruction of plants so as to alter the character of a freshwater wetland (includes tree cutting)
- placing a residential development in a wetland or “transition area”

Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A)



- Letters of Interpretation (LOI)
 - establish jurisdiction (set the “wetlands line”)
- General Permits (FWGP)
 - allow for limited activities deemed to have “minimal adverse impacts” (23 different activity types)
- Individual Permits (FWIP)
 - for activities that are of a larger magnitude than those covered by general permits
- Mitigation
 - required for certain “permitted” activities in wetlands

Letters of Interpretation (LOI)

3 Reasons to Apply for an LOI

- Establish Resource value(s) of freshwater wetlands.
- Determine the boundaries of freshwater wetlands, transition areas and/or State open waters.
- Determine if freshwater wetlands, transition areas and/or State open waters are present.



Types of LOIs

- **Presence/Absence**
 - Department determines if FWW, TA and/or SOW exist on site
- **Footprint of Disturbance**
 - Department determines if FWW, TA and/or SOW exist on a portion of site (maximum of one acre)
- **Line Delineation - Under One (1) Acre**
 - Department delineates FWW, TA and/or SOW
- **Line Verification**
 - Department confirms or modifies a delineation proposed by applicant



Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A)

Regulations include the provision of a “buffer” or “transition area” to the freshwater wetlands

- Provides added protection for the wetlands
- Width varies according to the “resource classification” of the wetlands
 - Ordinary Class wetlands 0 feet
 - Intermediate Class wetlands 50 feet
 - Exceptional Class wetlands 150 feet
- Waivers are available to allow limited use of the buffer
 - Averaging plan as well

Freshwater Wetlands Protection Act Rules - General Permits

- FWGP1 - Maintenance & repair of existing features
 - lawfully existing prior to July 1, 1988 or permitted under the FWPA
- FWGP4 - Hazardous Site Investigation/Cleanup
- FWGP6 - Non-tributary wetlands
 - disturbance of up to 1 acre “isolated” wetlands
 - not allowed in EPA priority wetlands
- FWGP10A & B - Minor Road Crossings
 - specific length & fill limitations
- FWGP11 - Outfalls & Intake Structures
 - stormwater structures, wells, etc.
 - must provide water quality for discharges
- FWGP18 - Dam Repair
- FWGP 20 - Bank Stabilization

Freshwater Wetlands Protection Act Rules - Individual Permits

- Required when an activity cannot meet the requirements of a General Permit
- There must be no practicable alternative to the activity in a non-wetland area
 - applicant must provide a detailed
- Activity cannot adversely impact endangered species habitat
- Activity is in the public interest
- Must be consistent with an approved Water Quality Management Plan (208 Plan)
- Mitigation is required



Freshwater Wetlands Protection Act Rules - Mitigation

“Mitigation” means activities carried out in accordance with N.J.A.C. 7:7A-15 in order to compensate for the loss or disturbance of freshwater wetlands &/or State Open Waters


- Mitigation shall fully compensate for the loss of ecological value caused by a disturbance, by replacing any freshwater wetlands &/or State open waters and functions lost or disturbed with equal values and functions

Mitigation Types

- Creation (2:1), restoration (2:1), or enhancement (case-by-case)
 - On-site
 - Off-site in the same HUC-11 or in the same watershed
- Preservation of upland areas
- Purchase of credits from an approved mitigation bank
- Monetary contribution to “Mitigation Council”







**If you need to contact the Division,
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