

# New Wetlands Protections Reduce Carbon

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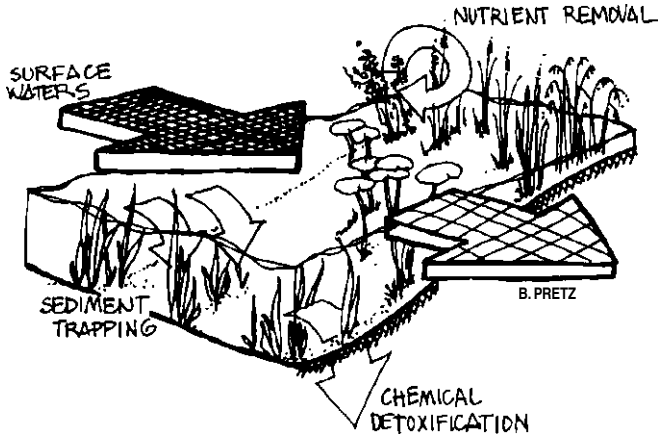
In October 2008, the New Jersey Department of Environmental Protection (NJDEP) adopted amendments to the Freshwater Wetlands Protection regulations [N.J.A.C. 7:7A] that not only strengthen their original intent but also help to fight global warming. The added protections recognize the important role of wetlands as carbon sinks that absorb pollutants, including carbon, and store them so that they are not released into the atmosphere.

According to the US Climate Change Technology Program, "Wetlands present an important opportunity for carbon sequestration and greenhouse gas offsets. Because they are inherently highly productive and accumulate large below-ground stocks of organic carbon, restoring lost wetlands and protecting those that remain clearly represents an immediate and large opportunity for enhancing terrestrial carbon sequestration."

## How the new rules affect development review

Municipalities should be aware of several new provisions that could affect municipal development review.

- Municipalities may now require a Letter of Interpretation (LOI) on their Application Checklist without worrying about legal challenges. [7:7A-3.1(b)1]
- Except for access or redevelopment,



NJDEP now requires applicants to place conservation easements not only on the land area of a Transition Area Waiver (a buffer or transition area with NJDEP-approved variable widths), but also on the adjacent wetland. Permittees now must also provide a copy of the filed easement deed to NJDEP and the municipal clerk before transfer of land and before start of construction [7:7A-2.12] [7:7A-6.1(e)]. They must also notify NJDEP Enforcement seven days before start of construction.

- Forested swales will now require a buffer. They are no longer considered "ordinary" wetlands because of the important functions they serve, and so the amended regulations require a buffer on either side of forested swales. [7:7A-1.4]
- Detention facilities constructed in uplands are now classified as "ordinary" (no buffer required) regardless of the classification of the water body or wetland they discharge to. [7:7A-2.4]

- Wetlands should now have lower appraised value due to the changed definition of Fair Market Value, so they will be easier to purchase for preservation. [7:7A – 1.4] Formerly, lands with wetlands were appraised with the assumption that all permits necessary to develop the area were in place.
- The rules clarify that exemptions for farming, silviculture and ranching apply only as long as the area is used for the exempted activity. The rules further clarify these exemptions and explain that they apply only to the part of a farm that has been actively farmed since June 30, 1988. [7:7A-2.8]
- NJDEP adopted a new General Permit [N.J.A.C. 5:17A] for non-motorized, multiple-use paths used by bicycles, skate boards, rollerblades and other non-motorized transport specifically to assist towns with permitting and working with the State’s Department of Transportation.
- Where historic and/or cultural resources may be on a site that is the subject of a wetlands application, an applicant must submit a Phase 1A historic and archaeological survey and an architectural survey. [7A:7-12.2]
- A mitigation area must have adequate hydrology to support wetland conditions year-round. The hydrology for a proposed wetland mitigation site may not include discharged stormwater. [7:7A-15.2(d)]
- Applicants constructing mitigation projects must provide the same notification to counties and municipalities as required for wetland permit applications. [7:7A-15.11]

This is only a partial list of the regulation changes. A complete copy of the updated Freshwater Wetlands Protection Regulations can be found at: [www.state.nj.us/dep/landuse/njsa\\_njac.html](http://www.state.nj.us/dep/landuse/njsa_njac.html)

## What environmental commissions can do

Environmental commissions should review the municipal application checklist to see if it requires submission of an LOI. If

not, the commission should recommend to the governing body an amendment to include an LOI. Submission of a State-approved LOI along with other application material assures the planning board that the submission is based on the necessary NJDEP review of both the wetland’s delineation and classification so that board members can better evaluate the application. An official LOI also protects the town’s professionals from issuing permits that could put their professional licenses in jeopardy by violating State law.

Commissions that are tracking conservation easements should make sure that the town clerk provides them with notification of the NJDEP-required easements when applicants submit them.

Commissions should check development applications to see if any of the new provisions will affect the development proposal. If so, they should inform the planning board.

Environmental commissions should coordinate with historic commissions to make sure that the necessary surveys are submitted to NJDEP for applications dealing with wetlands on historic sites that are either on or eligible for the National Register.

Commissions and open space committees should take a look at possible land acquisitions that include wetlands to insure the appraisal is based on the new definition of “fair market value.”

Commissions should check the municipal master plan to review designations of wetland areas, then check how they are zoned. The planning should reflect the need to protect wetlands and the zoning should provide the methods. Large lot zoning, clustering, and useable area and noncontiguous development ordinances can all be useful.

For an explanation of these ordinances, go to [www.anjec.org/pdfs/EasementCD-MunicipalActionFlier.pdf](http://www.anjec.org/pdfs/EasementCD-MunicipalActionFlier.pdf) on the ANJEC web site. The ANJEC Resource Center may also be able to help, with over 1,000 sample municipal ordinances on file, including those described. Call the Resource Center at (973) 539-7547 or email [resourcecenter@anjec.org](mailto:resourcecenter@anjec.org). 