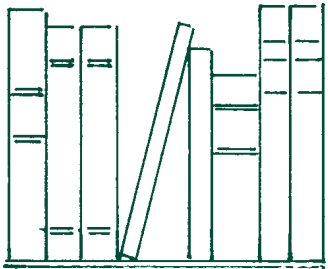


# RESOURCE PAPER



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ASSOCIATION OF NEW JERSEY  
ENVIRONMENTAL COMMISSIONS

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## Major State Programs Affecting Land Use

The New Jersey legislature has enacted many laws to protect New Jersey's environment. The New Jersey Department of Environmental Protection (NJ DEP) enacts regulations to implement these laws through several programs. A number of state programs regulate impacts on water resources from proposed land uses because changes in land use are the single most important influence on water quality. Since land use regulation is a municipal responsibility, local officials should take into account the overlap between the state and local levels of government regulation.

The NJ DEP compiles, publishes and adopts regulations for its programs after considering public comment. The regulations outline program standards and permit application processes, including requirements for content and timetables for public comment and NJ DEP review. Applicants must submit specific information to NJ DEP to obtain permits. Often, this is the only information DEP receives and it may lack comprehensive data about local conditions, or even contain incorrect information.

Environmental commissions are in an excellent position to provide NJ DEP with local, site-specific information relevant to particular applications. For example, an environmental commission might know that a proposal involves a wetland connected to a surface water body, although the applicant identified it as isolated wetlands. (Isolated wetlands have weaker protection.) NJ DEP review staff will not have this information unless the commission or some other party submits it. Commissions do not have to know the exact requirements of regulations to submit useful information to NJ DEP. But they should pay attention to the public notices they receive about permit application(s) and respect NJ DEP's review timetables.

In addition to providing useful information to NJ DEP, environmental commissions can be excellent resources for their municipal boards. Commissions can alert boards to the state permits that an application needs. The *Municipal Land Use Law* makes local boards responsible for ensuring that applicants obtain permits required by other levels of government. Local boards can approve an application conditioned upon receipt of other permits. However, it is far preferable to require that applicants receive jurisdictional determinations from other levels of government prior to local application. These include:

- NJ DEP Letters of Interpretation for freshwater wetlands
  - NJ DEP Verifications for accuracy of flood hazard design elevations
  - NJ DEP Coastal Area Facilities Review Act overlay
- These determinations allow the reviewing board to suggest, when applicable, changes that could help the applicant avoid the need for state permits. It also prevents board review of an application where the determinations have not been made by NJ DEP and could be inaccurate.

Environmental commissions can also recommend changes to municipal master plans and ordinances that will better protect natural resources. Master plans that provide strong natural resource protection can help discourage applicants from proposing environmentally damaging projects in areas that require state permits.

This Resource Paper briefly outlines the content of some frequently used permit programs administered by NJ DEP, and the planning framework for those programs. It will help environmental commissions and the public participate effectively in both the planning and the permitting process.

# HOW TO PARTICIPATE

NJ DEP programs affecting land use require notice to the public and opportunities for public comment on permit applications and regulation proposals. Effective response to public notice requires familiarity with notification procedures and comment time limitations.

## Preparing to Participate

Knowledge of the natural resources in your municipality and the plans to protect them is important preparation for reviewing NJ DEP permit applications. The municipal Environmental Resource Inventory (ERI), the Master Plan's Land Use Element, Conservation Element, Open Space Plan and/or Greenway Plan are all important. The ERI will probably have more detailed information than the state has, which could be vital to share with NJ DEP review staff.

## NJ DEP Notification Procedures Vary

The Public Notice Chart on page 3 illustrates that different NJ DEP programs require different application notification procedures. Some programs notify environmental commissions and/or towns directly. Other programs use indirect notification such as publication in the *DEP Bulletin* or the *New Jersey Register* (available at ANJEC or a local library). Setting up a routine process to review and respond to notifications will facilitate response in either situation.

The *DEP Bulletin* lists construction permit applications recently filed or acted upon by NJ DEP, including those for Freshwater Wetlands, Flood Hazard Area Protection, Coastal Area Facility Review (CAFRA) and Treatment Works Approval. The *DEP Bulletin* is published twice a month and notes several milestone dates for applications including: Complete for Review, Additional Information Requested, Approval, Denial and Withdrawn. The *DEP Bulletin* is available at [www.nj.gov/dep/bulletin/index.html](http://www.nj.gov/dep/bulletin/index.html)

The *New Jersey Register* contains rule proposals, adoptions and public notices for changes in NJ DEP plans, regulations and policies. It is available at county libraries and through ANJEC. ANJEC follows proposed regulations published in the *Register* and alerts commissions to proposals of special concern.

## Set up a Routine Response Process

Environmental commissions can designate a member to be responsible for keeping track of and informing the commission of NJ DEP application notifications. This person should:

- Establish regular communication with the town clerk to insure timely receipt of notices and a system to review the full application that the applicant is required to send to the clerk.
- Check the *DEP Bulletin* for notices.
- Contact the applicant to obtain more information if necessary.
- Contact a local watershed group or county soil district for more information.
- Contact the appropriate NJ DEP office for questions the applicant cannot answer.
- Inform the Planning Board or Board of Adjustment of receipt of the application notice.

Copy a contact(s) in the neighborhood affected by the permit, if possible. See the Public Notice Chart on page 3.

## Comment on Permit Applications

**Be Selective** – It is not always necessary to comment to NJ DEP on applications. It is helpful to establish criteria for selecting those applications the commission wishes to comment on. The criteria should include:

- the type of natural resource affected. For example, a flood hazard area application that involves encroachment into a riparian zone on a trout production or Category One stream calls for close scrutiny; an application that involves encroachment on a non-trout stream may be more routine.
- the extent of the construction applied for. A large development often requires several state permits. It often demands extensive study and close review, whereas a small development may not.

**Be Accurate** – It is important to evaluate an application carefully to insure that comments are relevant and accurate. It may be wise to check with the local watershed group or invite applicants to a meeting to discuss the development proposal if the commission has questions that involve a state permit.

**Be Specific** – Accurate information about the site that is the subject of the application is critical for comprehensive NJ DEP review. The single most important part of an application comment should be a description of the natural resources on the site and the pre-development functions those resources perform. Such information is important for NJ DEP evaluation of the application. Environmental commissions are in an excellent position to provide this information. Applicants may not present comprehensive site information and NJ DEP can review only the information submitted. The commission should:

- Advise NJ DEP, where appropriate, of alternatives available to the applicant, especially if the application omits important information.
- Copy the reviewing municipal board with comments made to NJ DEP.

- Consider advising the public about the application so individuals and/or groups can participate in the comment process.
- Alert municipal boards of an applicant's need for state permits so municipal approvals can be appropriately conditioned.
- Provide NJ DEP with information critical to comprehensive review.
- Provide important public interest representation at NJ DEP.

## Function of Comments

Comments from the environmental commission can serve many useful functions. They:

### Public Notice and Opportunities for Public Participation

Application	Notice Sent to	Response Time for comment from notice in <i>DEP Bulletin</i> or <i>New Jersey Register</i>	Public Can Request Public Hearing
<b>WATER QUALITY</b>			
NJPDES Permits	Town clerk, environmental commission, planning board, mayor, board of health, county planning board	30 days	Yes
Treatment Works Approval (TWA)	<i>DEP Bulletin</i>	Within 10 days of publication	No
Surface Water Quality Standards	<i>New Jersey Register</i>	60	Yes
<b>FRESHWATER WETLANDS</b>			
LOIs, Trans. Area Waivers, Permit Extensions, General Permits 1, 25 and 26	Town clerk, environmental commission, planning board, property owners within 200 feet, county, planning board, construction official, <i>DEP Bulletin</i>	15 days	Yes
General Permit 15 (Mosquito Control)	Display ad in local paper		No
Individual Permits	All above entities, plus a DEP-generated list of interested parties in the area of the project.	30 days	Yes
General Permits	Town Clerk	15 days	No
<b>FLOOD HAZARD AREAS</b>			
Individual Permits and Verifications	Three copies to town clerk and town clerks within one mile* for distribution, one to property owners within 200 feet, county clerk, <i>DEP Bulletin</i> , Display ad or legal notice in official newspaper, 5000 sq ft disturbance – Soil Conservation District** * 1 copy for verifications ** No copy for verifications	30 days	Yes
<b>COASTAL WATERS</b>			
Individual Permits, Coastal Wetlands, and Waterfront	Three copies to town clerk for distribution to planning board and environmental commission, one copy to construction official, to property owners within 200 feet, county planning board and environmental commission	30 days	Yes
CAFRA	In addition to above, public notice in local newspaper. If a public hearing is held, public notice of hearing required.	30 days	Yes
<b>REGULATION PROPOSALS</b>	Generally appear in the <i>New Jersey Register</i> before program rules are due to expire, every 5 years.	30 or 60 days	Yes

# PROTECTING WATER RESOURCES THROUGH APPROPRIATE LAND USE

NJ DEP is the primary agency responsible for protecting the state's water resources. The U.S. Environmental Protection Agency passed to NJ DEP the responsibility for implementing Sections 208 and 303 of the federal *Clean Water Act*. The Act requires the states to produce regional or areawide Water Quality Management Plans (WQMP) as a means of attaining protection and enhancement of water resources through control of point and nonpoint-source pollution. The WQMPs delineate the areas served by sewer and those that are served by septic system treatment of wastewater. These plans are critical as they require assessment of land use and how it impacts our streams, wetlands, and lakes. The health of the state's waters depends on the kind and intensity of land use in the watersheds of our state's water resources. The Water Quality Management Plans provide a critical bridge between municipalities, which are in charge of land use, and NJ DEP, which is charged with responsibility for approving the wastewater infrastructure for that land use.

Counties or regional entities prepared WQMPs for their areas in the 1980s. Because all permits that NJ DEP issues must be consistent with the area WQMP, this program can be regarded as the framework for NJ DEP's other permit programs. The NJ DEP will only accept an application that is consistent with the regulations and the applicable Water Quality Management Plan. (N.J.A.C. 7:15-3.1)

## ***Municipal Wastewater Management Plans***

Wastewater Management Plans (WMPs) are parts or elements of the applicable areawide WQMP. NJ DEP rules implemented in 1990 required counties, municipalities, and utility authorities with wastewater management planning responsibility to insure, through Wastewater Management Plans (WMPs), that the available or planned municipal wastewater infrastructure will adequately serve land uses specified in their zoning. These plans are more detailed than WQMPs and specific about wastewater facilities and projected facility needs.

Under rules adopted in 2008, municipal WMPs must avoid or demonstrate minimal damage to environmentally sensitive areas, minimal direct and/or indirect impacts to water resources, and assurance of adequate water supply availability. In

particular, WMPs must now designate appropriate wastewater management alternatives based on environmental sensitivity and local planning objectives. WMPs must also demonstrate that adequate wastewater treatment capacity exists to meet the projected wastewater demand based on current municipal zoning, without degrading water quality, including areas to be served by septic systems. If the zoning examination reveals that the build-out allowed by existing zoning would create unacceptable impacts on environmental resources and/or if infrastructure is inadequate to handle it, the rules offer alternatives for towns to consider to address those impacts.

*The Water Quality Management Plans provide a critical bridge between municipalities and NJ DEP.*

All WMPs are subject to public notice and public hearing before they can be adopted by NJ DEP as amendments to the appropriate WQMP. When an approved WMP is in place, counties or municipalities have to update it every six years, the same schedule as the *Municipal Land Use Law* requirement. Generally, out-of-date WMPs (more than six-years old) cannot be amended.

Changes during the six-year term of a WMP are allowable but require an amendment or revision to the plan approved by NJ DEP. Any of the following require an amendment to a WMP if they are not reflected in the adopted plan:

- a. any expansion of sewer service area;
- b. new domestic or industrial treatment works that require NJPDES permits;
- c. expansion of an existing treatment works (hardware needed to treat or convey wastewater).

Revisions must be minor in nature and have no significant individual or cumulative environmental or water quality impact and may not result in a new pattern of sewer development. Larger scale projects and those with a greater potential for environmental impact require an amendment, which involves a public process similar to the adoption of the WMP itself.

## **Surface Water Quality Related Permits**

The *New Jersey Pollution Discharge Elimination System* (NJPDES) permit regulations control discharges to surface and groundwater. (N.J.A.C. 7:14A-22 *et seq.* and N.J.A.C. 7:9.1 *et seq.*) They implement the NJ Water Pollution Control Act. (N.J.S.A. 58:10A-1 *et seq.*) The regulations are in place to insure that dischargers meet water quality standards. The regulations aim to control or prevent pollution from point sources such as wastewater treatment and industrial facilities, discharges from fuel cleanups, combined sewer overflows, campgrounds, schools, shopping centers.

## SURFACE WATER QUALITY STANDARDS

The Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, establish the designated uses and antidegradation categories of the State's surface waters, assign classifications to surface waters based on those uses, and specify the water quality criteria and other policies necessary to attain those designated uses. Designated uses include drinking water supply, fish consumption, shellfish resources, propagation of fish and wildlife, recreation, and agricultural and industrial water supplies.

### CLASSIFICATION

#### FRESHWATERS

**FW1** – freshwaters that are to be maintained in their natural state of quality for posterity and not subjected to any man-made wastewater discharges or increases in runoff from anthropogenic activities because of their clarity, color, scenic setting, other characteristic of aesthetic value, unique ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s).

**FW2** – freshwaters not designated as FW1 or Pinelands Waters.

**Trout Status** – Freshwaters are further classified based on trout status:

**TP** – Trout Production – waters that support spawning

**TM** – Trout Maintenance – can support trout throughout the year

**NT** – Freshwaters that do not support trout, but do support other species

#### PINELANDS WATERS

**PI** – Waters within Pinelands Protection and Preservation areas are classified as Pinelands waters

#### SALINE WATERS

Waters with a salinity greater than 3.5 parts per thousand at mean high tide.

**SC** – coastal saline waters

**SE** – estuarian saline waters.  
SE1, SE2, SE3

**Shellfish waters** – waters that support or have the potential to support shellfish.

### ANTIDEGRADATION CATEGORY

**Outstanding National Resource Waters (ONRW)** – high quality waters that constitute an outstanding national resource (for example, waters of National/State Parks and Wildlife Refuges and waters of exceptional recreational or ecological significance).

**Category One (C1)** – waters protected from measurable changes in water quality

**Category One (C1)**

**Category Two (C2)** – waters not designated ONRW or C1

**Outstanding National Resource Waters (ONRW)**

**Treatment Works Approvals (TWA)** N. J.A.C. 7:14A-1.9 Issued after a discharger has obtained a NJPDES permit, the Treatment Works Approval process involves assessing the design of new sewer lines and other wastewater conveyance facilities (force mains, pumping stations, etc.) as well as evaluating downstream conveyance and treatment capacity. Municipalities must approve TWAs before NJ DEP can issue approvals.

**Stormwater Management Regulations** at N.J.A.C. 7:14A-25.1 are part of the NJPDES regulations. They provide standards for small municipal separate storm sewer systems (MS4s) and municipal operations. The permit includes standards for street storm

drainage, stormwater outfalls and public works yards. Part of the NJPDES stormwater requirements applies to new development (N.J.A.C. 7:14A-25.6 (a) 3) and implements the *Municipal Land Use Law* N.J.S.A. 40:55D-1 *et seq.*; the *Water Pollution Control Act*, N.J.S.A. 58:10A-1 *et seq.*; the *Freshwater Wetlands Protection Act*, N.J.S.A. 13:9B-1 *et seq.* and the *Flood Hazard Area Control Act*, N.J.S.A. 58:16A-50 *et seq.*; and implementing rules.

# FRESHWATER WETLANDS PROTECTION

The regulations at N.J.A.C. 7:7A-1.1 *et seq.* implement the Freshwater Wetlands Protection Act, (N.J.S.A. 13:9B-1 *et seq.*) and the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*)

## Resources Regulated

Nearly all activities in the following resources are regulated, with the exception of those in Open Waters. There, NJ DEP regulates discharge of dredge and fill material.

**Freshwater Wetlands** of all sizes with three classifications:

- Ordinary Resource Value (man-made swales, ditches or detention facilities)
- Intermediate Resource Value (wetlands without habitat for threatened and endangered species; wetlands that are not Ordinary Resource Value)
- Extraordinary Resource Value (wetlands containing habitat for Threatened and Endangered species)

**Transition Areas** (buffer areas around wetlands)

- No buffer for Ordinary Resource
- 150' for Extraordinary Resource
- 50' for all others

**Open Waters**

No buffers for Open Waters under the wetlands regulations, but the Flood Hazard Area Control regulations require buffers. (See discussion on page 7.)

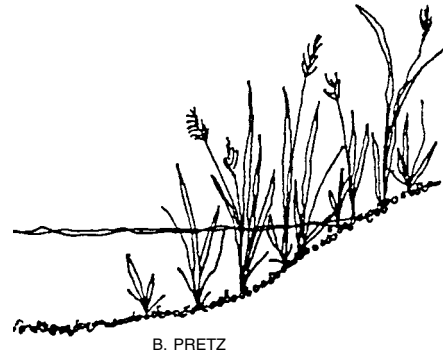
## NJ DEP Responsibilities

**Letters of Interpretation (LOIs)** – NJ DEP determinations that identify the wetlands classification and verify wetlands delineations. NJ DEP will respond to requests to determine the:

- presence or absence of regulated resources – wetlands, transition areas, and/or open waters.
- delineation of these resources on existing lots of an acre or less.

**General Permits** – NJ DEP issues General Permits for activities that it considers routine and that will cause minimal adverse environmental and cumulative impacts and will cause minor impacts to wetlands. Providing an expedited review process, the regulations establish 27 general permits with individualized standards. The permits range from those for utility lines and minor road crossings to mosquito control activities.

**Transition Area Waivers** – NJ DEP reviews proposals for reductions, averaging the area and/or changing the shape of the required wetlands transition area.



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**Individual Permits** – NJ DEP issues Individual Permits. The regulations establish much stricter standards for individual permits. An application for a water-dependent activity must establish that there is no practicable alternative outside of wetlands that would create less adverse impact. For a non-water-dependent activity, an applicant must rebut the presumption that there is a practicable alternative off-site that does not involve impacts on a wetland, that there is a competing public need, or that a denial would result in extraordinary hardship.

**Mitigation** – All individual permits and five of the General Permits require mitigation or compensation for wetlands destruction. Mitigation activities include avoidance, creation, restoration or enhancement of degraded wetlands and preservation of wetlands.

## Mapping Information

The NJ DEP has mapped wetlands for the entire state. While very helpful in indicating the proximity of wetlands, these maps need to be verified with site-specific observation.

Mapping information can be found at:

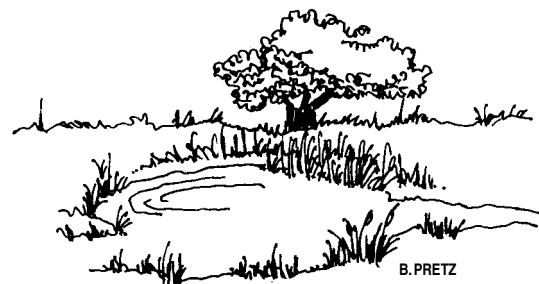
i-map Landscape data at

[www.dep.gov/dep/gis/depsplash.htm](http://www.dep.gov/dep/gis/depsplash.htm)

Digital Downloads at

[www.nj.gov/dep/gis/download.htm](http://www.nj.gov/dep/gis/download.htm)

NJ DEP Freshwater Wetlands Quarter Quadrangles, 1991, size 25 x 30, scale: 1 to 12,000 from the Maps and Publications Office (609-777-1038)



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# FLOOD HAZARD AND RIPARIAN AREA PROTECTION

Regulations at N.J.A.C. 7:13-1.1 *et seq.* implement the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 *et seq.*) and relevant aspects of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*); and the Water Quality Planning Act (N.J.S.A. 58:11A-1 *et seq.*)

## Resources Regulated

Most activities in the areas described below require an authorization from the NJ DEP. The purpose of the regulations is to insure protection of property from flooding and to protect riparian zones along streams and rivers.

**Flood Hazard Area** – the 100-year floodplain plus a margin for possible future increase for streams, lakes and rivers with watersheds that are 50 acres or larger

**Riparian Areas** for all streams throughout New Jersey  
300 feet on both sides of Category One waters  
150 feet on both sides of trout maintenance waters, stream segments flowing through areas having documented habitat of threatened or endangered plant or animal species and segments flowing through areas containing acid-producing soils  
50 feet on both sides of all other streams

## NJ DEP Responsibilities

**Verifications** – NJ DEP will verify the accuracy of flood hazard design elevation, floodway limits, riparian zone limits

**Delineation Review** – NJ DEP will review flood hazard area calculations

**Permits-by-rule** – NJ DEP establishes this review-free category for activities that require no engineering calculations and/or the structure is anchored so that it is secured to resist flotation, collapse and/or displacement due to floodwaters

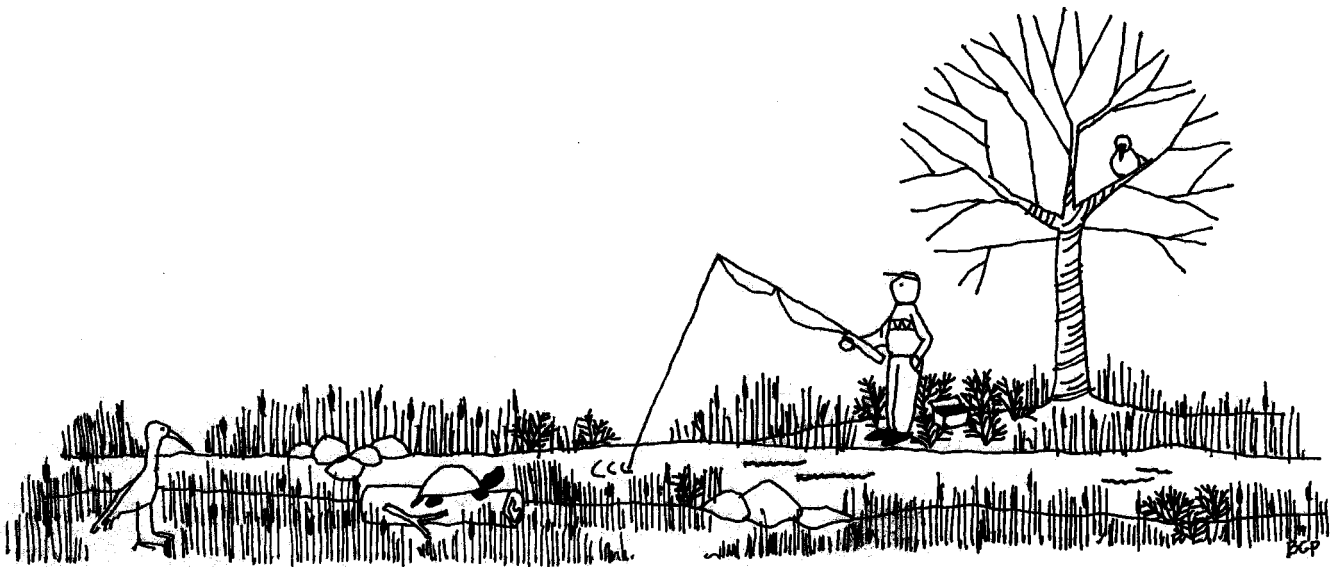
**General Permits** – NJ DEP sets standards for different activities and reviews applications. Activities include stream cleaning, relocation/reconstruction of damaged buildings, repair of stormwater structures, agricultural projects.

**Individual Permits** – NJ DEP reviews applications for compliance with standards for a particular location – channel, flood hazard area, riparian zone, fishery resource waters and standards for a particular activity in these locations. For example, standards for placement of a culvert in a fishery resource waters would be different than if the culvert were placed in a channel.

## Mapping Information

Federal Emergency Management Agency (FEMA) at 800-358-9616 or [www.fema.gov](http://www.fema.gov).

NJ DEP at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse). Methodologies for delineating the flood hazard area are at N.J.A.C. 7:13-3.1 Maps and Licenses: [www.nj.gov/dep/njgs/pricelst/pubsinfo.htm](http://www.nj.gov/dep/njgs/pricelst/pubsinfo.htm)



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# COASTAL PROTECTION

New Jersey Coastal Permit Program Rules (N.J.A.C. 7:7) and the Coastal Zone Management Rules (N.J.A.C. 7:7E) implement protection of the coastal zone through three laws: the Waterfront Development Law (N.J.S.A. 12:5-3), the Coastal Area Facility Review Act/CAFRA (N.J.S.A. 13:19) and the Wetlands Act of 1970 (N.J.S.A. 13:9A).

## CAFRA Jurisdiction

CAFRA area covers tidally washed lands. It 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.

## Resources Regulated

Include special areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. They include:

**Beaches and Dunes** – The coastal area includes coastal waters and rivers including the Delaware to the limit of tidal influence.

**Coastal or Tidal Wetlands**

**Waterfront**

**Coastal Forest**

**Threatened and Endangered Species Habitat**

**Critical Wildlife Habitats**

## NJ DEP Responsibilities

**Coastal Area Facility Review Act (CAFRA) Permit** – NJ DEP reviews applications to construct residential, public, commercial, transportation, utility and energy-related facilities in the coastal area as defined by the Act. The CAFRA regulations require a permit if a site:

- is within 150 feet from mean high water (MHW) of ocean or tidal waterway
- is on a dune
- contains 25 or more units
- is a major development.

The standards differ among designated planning areas. Impervious cover limits range from 3% in the Coastal Rural Planning and Coastal Environmentally Sensitive Planning areas, through 30% for a seweried Coastal Suburban Planning Area, to 90% for a CAFRA Urban Center. N.J.A.C. 7:7E-5B.4 (g) Table H.

**Waterfront Development Permit** – NJ DEP reviews applications for any project involving the development of waterfront near or upon any tidal or navigable waterway in the state. The intent is to limit impacts to existing navigation channels, marinas, moorings, other existing uses and the environment.

**Coastal Wetlands Permit** – NJ DEP reviews projects that would disturb Mapped Tidal Wetlands for excavation, erecting, filling or erecting structures.

## Locating Resources

i-Map at [www.dep.gov/dep/gis/depsplash.htm](http://www.dep.gov/dep/gis/depsplash.htm)  
County Clerk Offices for coastal wetlands maps

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ANJEC is a statewide non-profit organization that informs and assists environmental commissioners and interested citizens in preserving and protecting New Jersey's environment.

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### MIMI UPMEYER RESOURCE PAPER COLLECTION



ANJEC dedicates its collection of Resource Papers to Mimi Upmeyer, who worked for ANJEC for 10 years and later served as a board trustee. As our State Plan project director, she worked with environmental commissioners and local officials in towns across New Jersey and provided them with information and contacts to help implement good land use planning and zoning. To help local officials deal with these issues, she conceived the idea for ANJEC's Resource Papers – and wrote the first three. Packed with concise, practical information on specific topics for local environmental protection, ANJEC's ever-expanding stock of Resource Papers has become a standard element of our educational program. For a list of all our Resource Papers, contact ANJEC at 973-

539-7547 or visit the Publications page on [www.anjec.org](http://www.anjec.org).