

## FRESHWATER WETLANDS PROTECTION INSTRUCTIONS

Please read the Freshwater Wetlands Protection Act Summary below and then complete the Freshwater Wetlands Receipt of Wetlands Notice form that is on the last page of this document.

## FRESHWATER WETLANDS PROTECTION ACT SUMMARY

*This is a brief introduction/general discussion of the regulations and not an actual text of same.*

The Freshwater Wetlands Protection Act (FWPA), N.J.S.A. 13:9b-1 et seq. was enacted on July 1, 1987. The Act regulates and restricts development activities in and around freshwater wetlands, i.e., those areas inundated or saturated by surface or groundwater sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. The degree of protection afforded to a freshwater wetland is dependent upon its classification as having exceptional, intermediate or ordinary resource value.

The statute also provides for the regulation of an area of uplands adjacent to freshwater wetlands. These are referred to as the "transition area" or buffer and are designed to minimize adverse impacts on the wetlands or act as an integral component of the wetlands ecosystem. A comprehensive and strict permitting system was created by the Legislature to regulate activities in freshwater wetlands and buffer areas. The FWPA establishes certain exemptions from the State requirement of a freshwater wetlands permit and transition area requirements.

**To determine whether an exemption applies, consult your lawyer and/or wetlands consultant.**

Unless an exemption applies, the FWPA requires a "person" proposing to engage in a "regulated activity" to apply to the New Jersey Department of Environmental Protection (NJDEP) for a freshwater wetlands permit. "Regulated activity" is defined in the Statute to mean any of the following activities in a "freshwater wetland":

- The removal, excavation, disturbance or dredging of soil, sand, gravel or aggregate material of any kind;
- The drainage or disturbance of the water level or water table;
- The dumping, discharging or filling with any new materials;
- The driving of pilings;
- The placing of obstructions;
- The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees.

Unless an exemption applies, the FWPA also prohibits certain activities in a "transition area". The following activities, except for normal property maintenance or minor or temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area, are prohibited in the transition area, except in accordance with a transition area waiver approved by the NJDEP:

- Removal, excavation or disturbance of the soil;
- Dumping or filling with any materials;
- Erection of structures, except for temporary structures of 150 square feet or less;
- Placement of pavements;

- Destruction of plant life, which would alter the existing pattern of vegetation.

Compliance with the statutory requirements of the FWPA is the obligation of the "person" proposing to engage in a regulated activity in a freshwater wetland or a prohibited activity in a transition area. At present, there are no maps available which identify the location of freshwater wetlands with any precision.

If there is any question whether the site of the proposed activity is located in a freshwater wetland or transition area, **the Borough strongly recommends that the person proposing to engage in such activity request a letter of interpretation from NJDEP confirming the presence or absence of such wetlands or transition areas.** The benefit of a request for a letter of interpretation is the relatively expeditious and economical confirmation by NJDEP of the presence or absence of wetlands on the site of the proposed activity.

If NJDEP confirms the presence of freshwater wetlands or a transition area in its letter of interpretation, the person who requested the letter must then apply for the appropriate freshwater wetlands permit or transition area waiver, assuming said person continues to propose to engage in a regulated activity in a freshwater wetland or a prohibited activity in a transition area. If NJDEP confirms the absence of freshwater wetlands and transition areas in its letter of interpretation, the person who requested said letter may rely on NJDEP's confirmation.

Absent confirmation from NJDEP that there are no freshwater wetlands or transition areas within the site of the proposed activity, a person runs the risk of non-compliance with the FWPA if that person engages in a regulated or prohibited activity without a wetlands permit or transition area waiver. Violations of the Act or of any regulation adopted under the Act, may result in the NJDEP Commissioner:

- 1) issuing an order requiring compliance;
- 2) bringing a civil action seeking such relief, including:
  - (a) a temporary or permanent injunction;
  - (b) assessment against the violator for:
    - costs of any investigation, inspection or monitoring survey which led to the establishment of the violation;
    - reasonable costs of preparing and bringing the legal action;
    - costs incurred by the State in removing, correcting or terminating the adverse effects upon the freshwater wetland resulting from any unauthorized regulated activity;
    - compensatory damages for any loss or destruction of wildlife, fish or aquatic life;
    - for any other actual damages caused by an unauthorized regulated activity.
  - (c) a requirement that the violator restore the site of the violation.
- 3) levying of a civil administrative penalty of not more than \$10,000.00 for each violation. [Note: Each day during which each violation continues shall constitute an additional, separate and distinct offense.]
- 4) commencing an action for a civil penalty not to exceed \$10,000.00 per day of such violation.
- 5) commencing a criminal action. Conviction of a first offense shall result in a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation. A second offense shall subject the violator to a fine of not less than \$5,000.00 nor more than \$50,000.00 per day of violation.

**As may be gathered from the above discussion, the consequences of non-compliance with the FWPA may be severe. The burden of compliance falls upon the person who proposes to engage in a regulated activity in a freshwater wetland or a prohibited activity in a transition area.** That burden, necessarily, includes a determination of whether the site of the proposed activity contains freshwater wetlands or a transition area.

**The Borough of Bernardsville is not responsible for compliance or enforcement of the FWPA.** The action of the Borough's Planning Board in granting or denying an application for subdivision or site plan approval and/or the action of Borough's Building Inspector in issuing a building permit shall not be construed as:

a confirmation of the presence or absence of freshwater wetlands or transition areas on the site of the proposed activity, or any portion thereof or

a confirmation of compliance with the FWPA.

**In addition, the NJDEP has separate rules relative to Flood Hazard Areas and Riparian Buffer Zones. Questions regarding compliance should be referred to NJDEP or your lawyer and/or wetlands consultant.**

**BOROUGH OF BERNARDSVILLE**

INCORPORATED JUNE 2, 1924

SOMERSET COUNTY

ROUTE U.S. 202, P.O. BOX 158  
BERNARDSVILLE, NEW JERSEY 07924

**CERTIFICATION  
RECEIPT OF WETLANDS NOTICE**

I, \_\_\_\_\_ , OWNER of Block # \_\_\_\_\_ ,  
Lot # \_\_\_\_\_ , located at \_\_\_\_\_ ,  
in the Borough of Bernardsville, do hereby Certify that I have been pro-  
vided with a copy of NOTICE RE: FRESHWATER WETLANDS PROTECTION ACT .

I further Certify that I understand that I am responsible for abiding by  
all State Regulations in this matter and I will hold the Borough of  
Bernardsville and its employees harmless and indemnify it/them for any  
and all action which might be taken as a result of failure to comply with  
wetlands regulations.

DATED: \_\_\_\_\_

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Property Owner / Corporation Principal

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Property Street Address

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City, State and Zip Code

NOTICE RE:  
FRESHWATER WETLANDS PROTECTION ACT  
ATTACHED HERETO  
frshwtrn.rec (E-4)