

ENVIRONMENTAL PROTECTION

LAND USE MANGEMENT

DIVISION OF LAND USE REGULATION

Highlands Water Protection and Planning Act Rules

Definitions; Septic System Density Standards

Notice of Administrative Change

N.J.A.C. 7:38-1.4 and 3.4

Take notice that on January 9, 2018, the New Jersey Legislature passed Assembly Concurrent Resolution No. 192 and Senate Concurrent Resolution No. 163 (Resolutions) intending to invalidate the June 5, 2017, amendments of the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38 (Highlands Rules) pursuant to the Legislative Review Clause. N.J. Const. art. V, § 4, ¶ 6.

On June 5, 2017, the Department amended the Highlands Rules (2017 Highlands Amendments) to replace the existing forested and non-forested septic density standards with new standards for each of the three land use capability (LUC) zones set forth in the Highlands Water Protection and Planning Council's Regional Master Plan. (49 N.J.R. 1388(c)). Where the prior rules limited forested lots to one septic system per 88 acres and non-forested lots to one septic system per 25 acres, the amended standards allowed one individual subsurface sewage disposal system per 23 acres of a lot located in the Protection LUC zone, one individual subsurface sewage system per 12 acres of a lot located in the Conservation LUC zone, and one

individual subsurface sewage system per 11 acres of a lot located in the Existing Community LUC zone. Subsequently, on January 9, 2018, the New Jersey Legislature passed the Resolutions.

In light of these unique circumstances, the Department hereby provides notice that the provisions and standards that were in place prior to the 2017 Highlands Amendments at N.J.A.C. 7:38-1.4 and 3.4(b) currently apply to any applications made to the Department. The Department is also currently evaluating all available data, reconsidering what septic density standards may be most appropriate in the Highlands Preservation Area, and anticipates proposing amended septic density standards.

Full text of the changed rule follows (additions indicated in boldface thus, deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL INFORMATION

7:38-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

["Conservation Zone" means those areas identified on the Land Use Capability Zone Map of the regional master plan consisting of significant agricultural lands and limited low-density development interspersed with environmental features that should be preserved whenever possible.]

...

["Existing Community Zone" means those areas identified on the Land Use Capability Zone Map of the regional master plan consisting of extensive and intensive existing development, which may have capacity to support additional human development without adversely affecting the ecological value of the Highlands Region.]

...

["Protection Zone" means those areas identified on the Land Use Capability Zone Map of the regional master plan consisting primarily of high resource value lands in terms of forest resources, critical habitat, water quality and quantity, and ecological function, and having limited or no capacity to support human development without adversely affecting overall ecological function of the Highlands Region.]

...

SUBCHAPTER 3. PRESERVATION AREA STANDARDS

7:38-3.4 NJPDES permitted discharges and wastewater facilities

(a) (No change.)

(b) A new individual subsurface disposal system or aggregate of equivalent disposal units where the sanitary wastewater design flow is 2,000 gallons per day or less is permitted within the preservation area as set forth at (b)1 through [6] 4 below. **Forest under this subsection shall be identified and calculated in accordance with N.J.A.C. 7:38-3.9.** For the purposes of this subsection, "equivalent disposal unit" means: for residential development, one system serving one single-family home sized in accordance with the Standards for Individual Subsurface

Sewage Disposal Systems, Volume of sanitary sewage, at N.J.A.C. 7:9A-7.4; or for non-residential development or residential development comprising structures other than single-family homes, 500 gallons of wastewater per day generated for the development type, as determined in accordance with N.J.A.C. 7:9A-7.4:

1. On a lot that [is entirely located in the Protection Zone] **contains all forest**, the applicant proposes no more than one individual subsurface disposal system or equivalent disposal unit for each [23] **88** acres of the lot.

2. On a lot that [is entirely located in the Conservation Zone] **does not contain forest**, the applicant proposes no more than one individual subsurface disposal system or equivalent disposal unit for each [12] **25** acres of the lot.

[3. On a lot that is located entirely in the Existing Community Zone, the applicant proposes no more than one individual subsurface disposal system or equivalent disposal unit for each 11 acres of the lot.]

[4. To determine if a lot is located in the Protection Zone, Conservation Zone, and/or Existing Community Zone, the applicant shall refer to the Land Use Capability Zones GIS dataset constituting the Land Use Capability Zone Map, available from the Highlands Council website at <http://www.highlands.state.nj.us/njhighlands/gis/downloads/index.html> (see also the metadata for the Highlands Council's Land Use Capability Zones dataset, at http://www.nj.gov/njhighlands/gis/downloads/gis_data/LUCZ.html).]

[5.] **3.** (No change in text.)


[6.] **4.** For a lot [that has land located in more than one of the zones identified at (b)1, 2, and 3 above] **containing both forest and nonforest areas**, the total number of allowable

individual subsurface disposal systems or equivalent disposal units permitted on the lot shall be determined by calculating the number of acres of the lot that are [in each of the respective zones] forest (as determined in accordance with the method at N.J.A.C. 7:38-3.9), and dividing [the acreage in the Protection Zone by 23, the acreage in the Conservation Zone by 12, and the acreage in the Existing Community Zone by 11] that number by 88; calculating the remaining number of acres of the lot that are not forest and dividing that number by 25; and then summing the results. If the sum results in a fraction, the number shall be rounded down to the nearest whole number in order to determine the number of permitted individual subsurface disposal systems or equivalent disposal units.

[7.] 5. (No change in text.)

(c) (No change.)

12/6/18
Date


Catherine R. McCabe, Commissioner
Department of Environmental Protection