

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 16, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.state.nj.us/dep/rules>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to readopt with amendments the Natural Areas and the Natural Areas System rules at N.J.S.A. 7:5A (Natural Areas rules). These rules are scheduled to expire on November 17, 2009 pursuant to the provisions of Executive Order No. 66 (1978). The expiration date was extended by 180 days to May 16, 2010, pursuant to N.J.S.A. 52:14B-5.1c as a result of the timely filing of this proposal to readopt the rules. The Department has evaluated these rules and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated, as proposed herein and discussed below.

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The Natural Areas Act, N.J.S.A. 13:1B-15.4 et seq., enacted in 1961, vested the Department with the responsibility to acquire, maintain, and preserve natural areas within the State as habitat for rare and vanishing species of plant and animal life, in order to assure the public of the right to enjoy the benefits of such areas as places of natural interest and scenic beauty, as living illustrations of the State's original natural heritage, and as places for scientific study. The Natural Areas Act also established the Natural Areas Council (the Council), a seven member advisory board, to advise the Commissioner on the administration of natural areas. The Natural Areas Act also authorized the Department, with the advice of the Council, to prescribe rules and regulations establishing standards for acquisition, maintenance and operation of natural areas.

The Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., passed in 1975, supplemented the Natural Areas Act, and formally established the Natural Areas System (the System), which consisted of the natural areas the Department had designated as of that time and others to be so designated subsequently. The System currently contains 44 natural areas, totaling more than 42,000 acres and is administered by the Office of Natural Lands Management within the Department's Division of Parks and Forestry.

The Natural Areas and Natural Areas System rules establish the standards for the inclusion of areas in the Natural Areas System, procedures for planning for natural areas and evaluating suitable areas for designation, limitations on the use of land in the system, and a classification system for the designation and regulation of uses of natural areas.

A description of the rules proposed for re adoption, as well as the proposed amendments, follows.

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Summary of existing rules

N.J.A.C. 7:5A-1.1 and 1.2 explain the purpose and scope of the rules.

N.J.A.C. 7:5A-1.3 contains definitions.

N.J.A.C. 7:5A-1.4, Register of Natural Areas, governs the development and maintenance of the registry, required by N.J.S.A. 13:1B-15.12a6, of all lands, public and private, which are suitable for inclusion within the System.

N.J.A.C. 7:5A-1.5, Natural Areas Council, describes the functions and duties of the Natural Areas Council established by N.J.S.A. 13:1B-15.7.

N.J.A.C. 7:5A-1.6, Natural Areas designation, contains the criteria and procedure for designation of areas to the Natural Areas System.

N.J.A.C. 7:5A-1.7, Classification of natural areas, governs the Department's assignment of an interim classification to a natural area, upon designation of the area to the Natural Areas System.

N.J.A.C. 7:5A-1.8, Natural area management plans, sets forth the procedure by which the Department and the administering agency for a natural area may develop and adopt an individual management plan outlining a long-term management strategy for the natural area.

N.J.A.C. 7:5A-1.9, Interim management practices, lists management practices that apply to all natural areas during the period between the designation of an area to the Natural Areas System and the adoption of a management plan for the area pursuant to the procedure at N.J.A.C. 7:5A-1.8.

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N.J.A.C. 7:5A-1.10, Procedures for conducting research and collecting specimens, sets forth the requirements for conducting scientific research within natural areas and contains a procedure for obtaining permission to conduct scientific research or collect biological specimens in a natural area.

N.J.A.C. 7:5A-1.11, Enforcement of rules, governs remedies and penalties for violators of the provisions of these rules.

N.J.A.C. 7:5A-1.12, Boundaries of natural areas, contains a procedure for establishing and modifying the boundaries of natural areas in the Natural Areas System.

N.J.A.C. 7:5A-1.13, Natural Areas System, lists the designated components of the Natural Areas System.

N.J.A.C. 7:5A-1.14, Public Information, indicates contact information for the Office of Natural Lands Management.

Summary of proposed amendments

At N.J.A.C. 7:5A-1.13, the Department proposes to amend the administering agency for the Bear Swamp East Natural Area at N.J.A.C. 7:5A-1.13(a)5iv to the Division of Fish and Wildlife through the Millville Wildlife Management Area, rather than through the Belleplain State Forest, as a result of an interagency transfer of these lands that was approved in 2007.

The Department also proposes to amend the name of the administering agency for the Cape May Wetlands Natural Area at N.J.A.C. 7:5A-1.13(a)10iv to the Division of Fish and Wildlife through the Cape May Coastal Wetlands Wildlife Management Area, rather than

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through the Cape May Point State Park, as a result of an interagency transfer of these lands approved in 2007.

The Department also proposes to amend the name of the administering agency for the Hacklebarney Natural Area at N.J.A.C. 7:5A-1.13(a)19iv to Spruce Run Recreation Area.

Finally, the name of the Liberty Park Natural Area was changed to the Richard J. Sullivan Natural Area, based on the dedication of this natural area in 2005. Accordingly, the Department proposes to delete N.J.A.C. 7:5A-1.13(a)24 in its entirety, and to recodify in alphabetical order, under the new name of Richard J. Sullivan Natural Area at N.J.A.C. 7:5A-1.13(a)32, the location, management objective, interim classification, and administering agency that applied to Liberty Park Natural Area. Consequently, the Department proposes to recodify N.J.A.C. 7:5A-1.13(a) 25 through 32 as 24 through 31, with no change in the rule text.

Social Impact

The purpose of the Natural Areas System is to protect and preserve natural and ecological resources for present and future generations of New Jersey residents. The rules at N.J.A.C. 7:5A have provided for the designation of eligible lands to the System, and they prescribe management of natural areas in a manner that insures preservation of the features the System is designed to protect. The rules proposed for readoption with amendments are expected to have a favorable social impact by continuing the administration and management of the System, thereby furthering the Department's goal of preservation of natural diversity in the state.

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Economic Impact

Since this chapter imposes land management responsibilities on the Department but not on members of the general public, the rules proposed for readoption with amendments are not expected to have a direct economic impact on members of the general public. Readopting the rules is expected to have a positive economic impact by continuing the Department's ability to manage State natural areas efficiently and effectively in accordance with specified management objectives.

Environmental Impact

The Natural Areas System rules have facilitated the Department's protection of the State's natural diversity. Readopting the rules is expected to have a favorable environmental impact by continuing the Department's ability to administer and manage the System.

Federal Standards Statement

Executive Order No. 24 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:5A is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required.

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Jobs Impact

The rules proposed for readoption with amendments are not anticipated to have any impact on employment and jobs in New Jersey because the rules govern the administration and management of State-owned natural areas.

Agriculture Industry Impact

Natural Areas System lands are not used for agriculture. Therefore, the rules proposed for readoption with amendments will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees. The Department has determined that the rules proposed for readoption with amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The rules proposed for readoption with amendments impose land management responsibilities on the Department, but not on members of the general public.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to describe the impact of the proposed rule on the achievement of smart growth and

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implementation of the New Jersey State Development and Redevelopment Plan (State Plan), N.J.S.A. 52:18A-196 et seq. The Department has evaluated this rulemaking to determine the nature and extent of the impact of readopting these rules with amendments on smart growth and the State Plan. The proposed re Adoption of the rules is expected to contribute to the preservation, proper management and public use of open space in its natural state, and is consistent with the State Plan. Since the proposed amendments are not substantive, the Department anticipates that they will have no impact on the achievement of smart growth or on the implementation of the State Plan.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed for re Adoption with amendments to determine their impact, if any, on the affordability of housing. Since these rules concern the management of State-owned natural areas, the Department has determined that the rules will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed for re Adoption with amendments to determine their impact, if any on smart growth development. Since these rules concern the management of

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State-owned natural areas, the Department has determined that the rules will impose an insignificant impact because they do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:5A.

Full text of the proposed amendments follows (additions indicated by bold **thus**; deletions indicated in brackets [thus]):

7:5A-1.13 Natural Areas System

(a) The designated components of the Natural Areas System are as follows:

1. - 4. (No change.)

5. Bear Swamp East Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of [Parks and Forestry] **Fish and**

Wildlife, through [Belleplain State Forest] **Millville Wildlife Management Area**;

6. - 9. (No change.)

10. Cape May Wetlands Natural Area:

i.-iii. (No change.)

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iv. Administering Agency: Division of [Parks and Forestry] **Fish and Wildlife**, through [Cape May Point State Park] **Cape May Coastal Wetlands Wildlife Management Area**;

11. - 18. (No change.)

19. Hacklebarney Natural Area:

i.- iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry, through [Voorhees State Park] **Spruce Run Recreation Area**;

20-23. (No change.)

[24. Liberty Park Natural Area:

i. Location: Liberty State Park, Jersey City, Hudson County;

ii. Management Objective: preservation of a salt marsh in upper New York Bay and created uplands;

iii. Interim Classification: conservation preserve;

iv. Administering Agency: Division of Parks and Forestry, through Liberty State Park;]

25. – 32. Recodify as 24. – 31. (No change in text.)

32. Richard J. Sullivan Natural Area:

i. Location: Liberty State Park, Jersey City, Hudson County;

ii. Management Objective: preservation of a salt marsh in upper New York Bay and created uplands;

iii. Interim Classification: conservation preserve;

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**iv. Administering Agency: Division of Parks and Forestry,
through Liberty State Park;**

33 - 44. (No change.)