

CHAPTER 272

AN ACT concerning freshwater wetlands exemptions, and amending P.L.1987, c.156.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1987, c.156 (C.13:9B-4) is amended to read as follows:

C.13:9B-4 Exemptions from permit, transition area requirements.

4. The following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency:

a. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or upland soil and water conservation practices; construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; the installation of temporary farm structures with only a dirt or fabric floor, including hoophouses and polyhouses, and any grading or land contouring associated therewith on lands that were actively cultivated on or before July 1, 1988, have been in active agricultural use since then, were in active agricultural use at the time that the temporary farm structures were or are to be erected, and are identified as "ModAg" farmed wetlands on the Wetland Maps promulgated by the Department of Environmental Protection in 1988; maintenance of cranberry bogs and blueberry fields including, but not limited to, periodic flooding, sanding, control or suppression of weeds or brush in or around the bog or field, and pest control or suppression; maintenance, repair, or cleaning of dams, ditches, underdrains, floodgates, irrigation systems, or other drainage or water control facilities for cranberry bogs or blueberry fields; activities for the renewal or rehabilitation of a cranberry bog, including, but not limited to, removal of undesirable soil or vegetation, grading and leveling, installation, reconfiguration, repair or replacement of water control or supply systems or facilities, removal, relocation, or construction of internal dams, and planting of new vines in an appropriate soil layer; construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized;

b. Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

c. Areas regulated as a coastal wetland pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.);

d. Projects for which (1) preliminary site plan or subdivision applications have received preliminary approvals from the local authorities pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) prior to the effective date of this act, (2) preliminary site plan or subdivision applications have been submitted prior to June 8, 1987, or (3) permit applications have been approved by the U.S. Army Corps of Engineers prior to the effective date of this act, which projects would otherwise be subject to State regulation on or after the effective date of this act, shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of this act; provided, however, that upon the expiration of a permit issued pursuant to the Federal Act any application for a renewal thereof shall be made to the appropriate regulatory agency. The department shall not require the establishment of a transition area as a condition of any renewal of a permit

issued pursuant to the Federal Act prior to the effective date of this act. Projects not subject to the jurisdiction of the United States Army Corps of Engineers and for which preliminary site or subdivision applications have been approved prior to the effective date of this act shall not require transition areas;

e. The exemptions in subsections a. and b. of this section shall not apply to any discharge of dredged or fill material into a freshwater wetland incidental to any activity which involves bringing an area of freshwater wetlands into a use to which it was not previously subject, where the flow or circulation patterns of the waters may be impaired, or the reach of the waters is reduced.

f. For the purposes of the exemptions in subsection a. of this section, a cranberry bog, blueberry field, or portion thereof, on which any of the activities specifically pertaining to cranberry bogs or blueberry fields listed in that subsection has occurred within the prior five years shall be considered an established, ongoing farming operation, and shall not be deemed abandoned. The lack of a commercial harvest or production of a crop on or from the bog or field shall not be a determining factor as to whether the agricultural use has been abandoned.

2. This act shall take effect immediately.

Approved January 19, 2016.