

Fighting New Warehouses in NJ: FAQ

Eastern Environmental Law Center produced this FAQ in coordination with Clean Water Action to help community members understand some of the legal requirements for proposed warehouses in New Jersey. Building your understanding of the process will help you to identify opportunities to raise objections at the right time and place. This FAQ is not a comprehensive review of all possible laws that could apply to a proposed warehouse development, and nothing in it should be taken as legal advice.



1. What is the local zoning/planning board's role with warehouse approvals?

The local zoning or planning board may be the developer's first application for government approval of a warehouse development. The zoning/planning board is responsible for evaluating and rendering decisions on applications for development. The zoning/planning board has limited authority under the Municipal Land Use Law to prepare a Master Plan and enact zoning and ordinances. If a proposed warehouse complies with the applicable zoning and ordinances, and is consistent with the municipality's Master Plan, the planning board has little discretion to deny the application. Understanding local zoning and the Master Plan in your municipality is useful for understanding the requirements for a proposed warehouse development at the local level. If you can't find them on your town's official website, your municipal clerk should be able to show you a full copy of the municipal Master Plan and zoning map.

2. What regional laws might apply to a warehouse proposal?

There may be regional rules that apply to a proposed warehouse, depending on its location. These rules may add to state rules, or displace them. The Planning Area overlays on the DEP Land Resource Protection Web Application (available online) show the location of each regional planning area. In addition, a warehouse proposal may also be subject to county-specific planning permits.

Coastal areas: The Coastal Area Facility Review Act and the Coastal Zone Management Rules apply to proposed developments in the coastal region of New Jersey and most warehouses proposed in this area will need a permit from DEP. The Wetlands Act of 1970 regulates development within mapped coastal wetlands.

Pinelands: For the Pinelands National Reserve in southern New Jersey, the Pinelands Protection Act regulates development. The Pinelands Commission reviews development applications, including standards that protect water quality, wetlands and threatened and endangered species.

Highlands: For the Highlands region in northern New Jersey, which is a significant source of drinking water for the state, the Highlands Water Protection and Planning Act regulates development, including additional water and wetlands protection. The Highlands Water Protection and Planning Council recently adopted new policies that prohibit new warehouses in some areas, and set new requirements including proximity to major roads and limits to impervious surface in other areas.

Hackensack Meadowlands District: The New Jersey Sports and Exposition Authority is responsible for the regional planning and zoning in this District, and updated its Master Plan in 2020 to direct new warehouse development toward brownfield and redevelopment sites, and away from natural areas. DEP has overlapping authority in this area, which is subject to a Memorandum of Agreement.

Delaware and Raritan Canal area: The Delaware and Raritan Canal is a historic and natural resource, as well as a water supply system for much of central New Jersey. Projects in this area require Delaware and Raritan Canal Commission approval. The Commission reviews development projects for their impact on stormwater drainage and water quality, stream corridors, visual, historic and natural quality, and traffic.

3. What state laws might apply to a warehouse proposal?

Proposed warehouse developments will almost certainly require approvals at the state level from DEP and may also require approvals from the New Jersey Department of Transportation.

Flood Hazard Area Control Act (FHACA): Any construction near surface water that drains at least 50 acres or is connected to another waterway will likely require review and/or a permit from DEP for compliance with the

FHACA. The new Inland Flood Protection rule will increase the regulated fluvial flood hazard area elevations by up to 3 feet and will also require regulated major development to design stormwater facilities to manage stormwater runoff for storms utilizing year 2100 rainfall projections.



Example: In the Tobias Farm case, EELC successfully appealed DEP’s Flood Hazard Area Applicability Determination on behalf of the Skylands Preservation Alliance. The DEP had failed to recognize an intermittent stream in the middle of a farmed field that drained over 160 acres of land on its way into the Musconetcong River. The developer planned to build a 1.2 million square foot warehouse directly on top of the stream corridor. The Court ordered a remand, which required the DEP to go back and review its determination. The DEP reversed its prior decision and recognized the stream, which triggered the DEP’s flood hazard rules and prevented construction of the warehouse as it was proposed.

Water Pollution Control Act: This is the state implementation of the Clean Water Act, which prohibits all discharges of pollutants (which is construed broadly) in a manner which might reach the waters of the State, except in conformance with a New Jersey Pollutant Discharge Elimination System (NJPDDES) permit.

Freshwater Wetlands Protection Act: This law extends protection to inland waterways and freshwater wetlands, which protect water quality and provide flood protection and habitat for wildlife. The Act regulates all activities in wetlands and “transition areas,” i.e., buffers adjacent to wetlands.

Endangered Species Conservation Act: Applicants for development of sites that contain or are next to areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps managed by the Division of Fish & Wildlife, or who discover endangered or threatened wildlife on the site, will be subject to additional burdens and reviews.

4. Who should community members engage to oppose a proposed warehouse?

Assuming you have the means and resources to devote to this issue, it would be useful to consult with or hire an environmental land use lawyer. An experienced lawyer should be able to help you determine whether you have a valid challenge to the decision of the town planning board, or any permits issued by regional and state agencies. A lawyer can also help identify what other experts might be useful, which could include a professional engineer or planner.

You may want to raise awareness and build consensus about the proposed development with your neighbors and community, and connect with any local environmental nonprofits to seek advice or resources they may have. You may also want to reach out to your local and state elected officials to learn more about the project and the government’s involvement and position on it, and voice your concerns. We recommend that you take notes and keep a record of conversations you have with all people and government officials regarding the proposed development.