

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 009-2024**

**AN ORDINANCE AMENDING CHAPTER 19 (LAND SUBDIVISION, SITE PLAN  
AND LAND USE ADMINISTRATION), AND CHAPTER 20 (ZONING)  
OF THE CODE OF UPPER TOWNSHIP**

---

**WHEREAS**, the Pinelands Protection Act (N.J.S.A. 13:18A-1) requires that the municipal master plan and local land use ordinances of the Township of Upper implement the objectives of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) and conform with the minimum standards contained therein; and

**WHEREAS**, the Pinelands Comprehensive Management Plan incorporates by reference certain stormwater management regulations contained at N.J.A.C. 7:8; and

**WHEREAS**, the New Jersey Department of Environmental Protection adopted amendments to certain stormwater management regulations contained at N.J.A.C. 7:8, effective July 17, 2023.

**WHEREAS**, the Pinelands Commission adopted amendments to the Pinelands Comprehensive Management Plan, effective December 4, 2023.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Upper, County of Cape May and State of New Jersey, as follows:

**SECTION 1:** Chapter 19 Land Subdivision, Site Plan and Land Use Administration, Section 19-7.7, Stormwater Control, is hereby amended by revising subsection c4. as follows:

- 4. Tables 1, 2, and 3** below summarize the ability of stormwater best management practices identified and described in the New Jersey Stormwater BMP Manual to satisfy the green infrastructure, groundwater recharge, stormwater runoff quality and stormwater runoff quantity standards specified in **§19-7.7c14, 15, 16, and 17**. When designed in accordance with the most current version of the New Jersey Stormwater BMP Manual and this Section, the stormwater management measures found in **Tables 1, 2, and 3** are presumed to be capable of providing stormwater controls for the design and performance standards as outlined in the tables below. Upon amendments of the New Jersey Stormwater BMP Manual to reflect additions or deletions of BMPs meeting these standards, or changes in the presumed performance of BMPs designed in accordance with the New Jersey Stormwater BMP Manual, the NJDEP shall publish in the New Jersey Registers a notice of administrative change revising the applicable table. The most current version of the BMP Manual can be found on the NJDEP website at: <https://dep.nj.gov/stormwater/bmp-manual/>.

**SECTION 2:** Chapter 19 Land Subdivision, Site Plan and Land Use Administration, Section 19-7.7, Stormwater Control, is hereby amended by revising subsection c15. as follows:

## 15. Groundwater Recharge Standards

- (a) (No change.)
- (b) For all major development in the Pinelands Area, the total runoff volume generated from the net increase in impervious surfaces by the current 10-year, 24-hour storm, as defined and determined in **§19-7.7d8**, shall be retained and infiltrated onsite and outside the Pinelands area the total runoff volume generated from the net increase in impervious surfaces by the 1-year storm shall be retained and infiltrated onsite.
- (c) For minor development in the Pinelands Area that involves the construction of four or fewer dwelling units, the runoff generated from the total roof area of the dwelling(s) by the current 10-year, 24-hour storm, as defined and determined in **§19-7.7d8**, shall be retained and infiltrated through installation of one or more green infrastructure stormwater management measures designed in accordance with the New Jersey Stormwater BMP Manual. Appropriate green infrastructure stormwater management measures include, but are not limited to dry wells, pervious pavement systems, and small scale bioretention systems, including rain gardens.
- (d) -- (e) (No change.)

**SECTION 3:** Chapter 19 Land Subdivision, Site Plan and Land Use Administration, Section 19-7.7, Stormwater Control, is hereby amended by revising subsection c17. as follows:

## 17. Stormwater Runoff Quantity Standards

- (a) (No change.)
- (b) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at **§19-7.7d**, complete one of the following:
  - (1) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the current and projected 2-, 10-, and 100-year storm events, as defined and determined in **§19-7.7d8 and 9**, do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;
  - (2) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the current and projected 2-, 10- and 100-year storm events, as defined and determined in **§19-7.7d8 and 9**, and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;
  - (3) Design stormwater management measures so that the post-construction peak runoff rates for the current and projected 2-, 10- and 100-year storm events, as defined and determined in **§19-7.7d8 and 9**, are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed; or
  - (4) (No change.)

(c) -- (e) (No change.)

**SECTION 4:** Chapter 19 Land Subdivision, Site Plan and Land Use Administration, Section 19-7.7, Stormwater Control, is hereby amended by revising subsection d. as follows:

**d. Calculation of Stormwater Runoff and Groundwater Recharge**

1. Stormwater runoff shall be calculated by the design engineer using the USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in Chapters 7, 9, 10, 15 and 16 Part 630, Hydrology National Engineering Handbook, incorporated herein by reference as amended and supplemented, except that the Rational Method for peak flow and the Modified Rational Method for hydrograph computations shall not be used. This methodology is additionally described in Technical Release 55 - Urban Hydrology for Small Watersheds (TR-55), dated June 1986, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the Natural Resources Conservation Service website at: <https://directives.sc.egov.usda.gov/viewerFS.aspx?hid=21422> or at United States Department of Agriculture Natural Resources Conservation Service, New Jersey.
2. (No change.)
3. For the purpose of calculating curve numbers and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "curve number" applies to the NRCS methodology at **1.** above. A curve number or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover has existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).
4. -- 7. (No change.)
8. The precipitation depths of the current two-, 10-, and 100-year storm events shall be determined by multiplying the values determined in accordance with items **(a)** and **(b)** below:
  - (a)** The applicant shall utilize the National Oceanographic and Atmospheric Administration (NOAA), National Weather Service's Atlas 14 Point Precipitation Frequency Estimates: NJ, in accordance with the location(s) of the drainage area(s) of the site. This data is available at:  
  
[https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html?bkmrk=nj](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=nj); and
  - (b)** The applicant shall utilize **Table 5:** Current Precipitation Adjustment Factors below, which sets forth the applicable multiplier for the drainage area(s) of the site, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

**Table 5: Current Precipitation Adjustment Factors**

<u>County</u>	<u>Current Precipitation Adjustment Factors</u>		
	<u>2-year Design Storm</u>	<u>10-year Design Storm</u>	<u>100-year Design Storm</u>
<u>Atlantic</u>	<u>1.01</u>	<u>1.02</u>	<u>1.03</u>
<u>Cape May</u>	<u>1.03</u>	<u>1.03</u>	<u>1.04</u>
<u>Cumberland</u>	<u>1.03</u>	<u>1.03</u>	<u>1.01</u>

9. **Table 6:** Future Precipitation Change Factors provided below sets forth the change factors to be used in determining the projected two-, 10-, and 100-year storm events for use in this chapter, which are organized alphabetically by county. The precipitation depth of the projected two-, 10-, and 100-year storm events of a site shall be determined by multiplying the precipitation depth of the two-, 10-, and 100-year storm events determined from the National Weather Service’s Atlas 14 Point Precipitation Frequency Estimates pursuant to **8.(a)** above, by the change factor in the table below, in accordance with the county or counties where the drainage area(s) of the site is located. Where the major development and/or its drainage area lies in more than one county, the precipitation values shall be adjusted according to the percentage of the drainage area in each county. Alternately, separate rainfall totals can be developed for each county using the values in the table below.

**Table 6: Future Precipitation Change Factors**

<u>County</u>	<u>Future Precipitation Change Factors</u>		
	<u>2-year Design Storm</u>	<u>10-year Design Storm</u>	<u>100-year Design Storm</u>
<u>Atlantic</u>	<u>1.22</u>	<u>1.24</u>	<u>1.39</u>
<u>Cape May</u>	<u>1.21</u>	<u>1.24</u>	<u>1.32</u>
<u>Cumberland</u>	<u>1.20</u>	<u>1.21</u>	<u>1.39</u>

**SECTION 5:** Chapter 19 Land Subdivision, Site Plan and Land Use Administration, Section 19-7.7, Stormwater Control, is hereby amended by revising subsection e. as follows:

**e. Sources for Technical Guidance**

1. Technical guidance for stormwater management measures can be found in the documents listed below, which are available to download from the NJDEP’s website at: <https://dep.nj.gov/stormwater/bmp-manual/>.
  - a. (No change.)
  - b. Additional maintenance guidance is available on the NJDEP’s website at: <https://dep.nj.gov/stormwater/maintenance-guidance/>.
2.
  - a. Submissions required for review by the NJDEP should be mailed to:

The Division of Watershed Protection and Restoration, New Jersey Department of Environmental Protection, Mail Code 501-02A, PO Box 420, Trenton, New Jersey 08625-0420.
  - b. (No change.)

**SECTION 6:** Chapter 19, Land Subdivision, Site Plan and Land Use Administration, Section 19-3, Definitions, is hereby amended by adding to subsection b. the following definition:

**DIVERT or DIVERSION** – Means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

**SECTION 7:** Chapter 19, Land Subdivision, Site Plan and Land Use Administration, Section 19-7.15, Mining and Excavation Standards, is hereby amended by revising subsection b.1 as follows:

1. Any application filed for approval of resource extraction operations in the Pinelands shall include at least the following information:

(a) – (q) (No change.)

(r) If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

**SECTION 8:** Chapter 20, Zoning, Section 20-2.2, Pinelands Area Definitions, is hereby amended by adding the following definitions:

**DIVERT or DIVERSION** – Means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

**HYDROLOGIC UNIT CODE-11 or HUC-11** – Means an area within which water drains to a particular receiving surface water body, also known as a subwatershed, which is identified by an 11-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

**NONCONSUMPTIVE USE** – Means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

**SECTION 9:** Chapter 20, Zoning, Section 20-5.14 Pinelands Area Development Standards, is hereby amended by repealing and replacing subsection h5. as follows:

5. Water Management

**(a)** Water shall not be exported from the Pinelands except as otherwise provided at N.J.S.A. 58:1A-7.1.

**(b)** A diversion within the Pinelands Area portion of Upper Township that involves the interbasin transfer of water from sources within the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at **(1)** and **(2)** below, or outside of either basin, shall be prohibited.

**(1)** The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection.

**(2)** The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection.

**(c)** A diversion within the Pinelands Area portion of Upper Township involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic Basin or Delaware Basin as defined at **(b)(1)** and **(2)** above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at **(d)** below.

**(d)** Within the Pinelands Area portion of Upper Township a new diversion or an increase in allocation from either a single existing diversion source or from combined existing and new diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at **(d)(3)** through **(6)** below and the water management standards of the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.86(d). "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.

**(1)** When evaluating whether the proposed diversion meets the criteria set forth at **(d)(3)** through **(6)** below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.

**(2)** The standards set forth at **(d)(3)** through **(6)** below shall not apply to:

**(i)** A new well that is to replace an existing well, provided the existing well is decommissioned in accordance with N.J.A.C. 7:9D-3 and the new replacement well will:

**[1]** Be approximately the same depth as the existing well;

**[2]** Divert from the same aquifer as the existing well;

**[3]** Have the same or lesser pump capacity as the existing well; and

**[4]** Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well;

**(ii)** Any proposed diversion that is exclusively for agricultural or horticultural use; or

**(iii)** Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel.

- (3) A proposed diversion shall be permitted only in the following Pinelands Management Areas: Pinelands Town; Rural Development Area; and the Pinelands Villages of Petersburg and Tuckahoe.
- (4) A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at <https://www.nj.gov/pinelands/>.
- (5) A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at N.J.A.C. 7:50-6.86(d)6 and 7, respectively. A proposed diversion deemed to have an adverse local impact in the Pinelands Area is prohibited. A proposed diversion deemed to have an adverse regional impact shall only be permitted if an applicant permanently offsets the diversion in accordance with N.J.A.C. 7:50-6.86(d)6i.
- (6) An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

**SECTION 10: REPEALER:** All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

**SECTION 11: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon final adoption and publication as required by law.

**SECTION 12: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 13: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

\_\_\_\_\_  
JOANNE R. HERRON, Township Clerk

\_\_\_\_\_  
JAY NEWMAN, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 22<sup>ND</sup> DAY OF APRIL, 2024 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 24<sup>TH</sup> DAY OF JUNE, 2024 AT 4:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER