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N.J.A.C. 7:7A
FRESHWATER WETLANDS PROTECTION ACT RULES

Statutory authority:
N.J.S.A. 13:9B-1 et seq.

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FRESHWATER WETLANDS PROTECTION ACT RULES
N.J.A.C. 7:7A
SUBCHAPTER 1 GENERAL INFORMATION

7:7A-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Certain violations of the New Jersey Water Pollution Control Act are also subject to enforcement provisions at N.J.A.C. 7:14.

7:7A-1.2 Construction of this chapter

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:7A-1.3 Forms and information, internet web site

(a) Forms or other information related to this chapter may be obtained from the Division of Land Use Regulation as follows:

1. Through the Division of Land Use Regulation website at www.state.nj.us/dep/landuse; or

2. By contacting the Division of Land Use Regulation at:
   Division of Land Use Regulation
   New Jersey Department of Environmental Protection
   P.O. Box 439
   Trenton, New Jersey 08625 - 0439
   (609) 292-0060
   Fax: (609) 292-8115

(b) Applications, fees, and correspondence shall be submitted to the address in (a) above, except that courier and hand deliveries shall be delivered to:
Division of Land Use Regulation
New Jersey Department of Environmental Protection
5 Station Plaza
501 East State Street
Trenton, New Jersey 08609

(c) Applications or other materials sent or delivered to a Department address other than those in (a) and (b) shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

(d) Other sources of information referred to in this chapter are available on the Division of Land Use Regulation website at www.state.nj.us/dep/landuse, or from the Office of Maps and Publications, located at 428 State Street, Trenton, New Jersey 08625, (609) 777-1038.

N. J.A.C. 7:7A-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions specifically applicable to N.J.A.C. 7:7A-15, Mitigation, are set forth at N.J.A.C. 7:7A-15.1.

"Abandoned" means, with respect to an agricultural field, including a blueberry field or a cranberry bog, that the field was used for agriculture, but has not been used to produce a crop or product for five years or more. If an agricultural field has been abandoned for 40 or more years, it shall no longer be considered an abandoned agricultural field.

"ACOE" or "Corps" means the United States Army Corps of Engineers.

"Acid producing soils means soils that contain geologic deposits of iron sulfide minerals (pyrite or marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

"Agency of the State" means each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments.

"Applicant" means a person who submits an application for a permit, waiver, or any other Department decision pursuant to N.J.A.C. 7:7A.

"Aquatic ecosystem" means waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

"Architectural survey" means an intensive-level historic architectural survey completed by an architectural historian whose qualifications meet the Secretary of the Interior's Professional Qualifications Standards and related guidance as part of the larger Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as referenced in 36 CRF 61, as amended and supplemented, incorporated herein by reference.

"Atlantic white-cedar wetlands" means a type of forested freshwater wetlands where Atlantic white-cedar tree is the dominant vegetation, as described in the Federal Manual.

"Best Management Practices" or "BMPs" means methods, measures, designs, performance standards, maintenance procedures, and other management practices which prevent or reduce adverse impacts upon or pollution of freshwater wetlands, State open waters, and adjacent

aquatic habitats, which facilitate compliance with the Federal Section 404(b)(1) guidelines (40 C.F.R. Part 230), New Jersey Department of Environmental Protection Flood Hazard Area Control rules, N.J.A.C. 7:13; the Department's Storm Water Management Regulations, N.J.A.C. 7:8; the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the New Jersey State Soil Conservation Committee at N.J.A.C. 2:90; and effluent limitations or prohibitions under Section 307(a) of the Federal Act and the Department's Surface Water Quality Standards, N.J.A.C. 7:9B. Examples include practices found at 33 C.F.R. 330.6, 40 C.F.R. 233.35(a)6, the Department's Technical Manual for Stream Encroachment, and "A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey." The manuals included in this definition are only a partial listing, and interested persons should contact the Department for the most up to date list.

"Category one waters" means waters designated as category one waters in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B. As of September 4, 2001, N.J.A.C. 7:9B-1.15 defines category one waters as those waters designated in the tables in N.J.A.C. 7:9B-1.15(c) through (h), for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to:

1. Waters originating wholly within Federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 at N.J.A.C. 7:9B-1.15(h) Table 6;

2. Waters classified at N.J.A.C. 7:9B-1.15(c) through (g) as FW2 trout production waters and their tributaries;

3. Surface waters classified in this subchapter as FW2 trout maintenance or FW2 nontrout that are upstream of waters classified in this subchapter as FW2 trout production;

4. Shellfish waters of exceptional resource value; or

5. Other waters and their tributaries that flow through, or border, Federal, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

"Conservation restriction or easement" means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of

the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded conditions, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;

2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;

3. Removal or destruction of trees, shrubs or other vegetation;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;

5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and/or

7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

"Contiguous" means adjacent properties, even if they are separated by human-made barriers or structures or legal boundaries. Contiguous properties shall include, but are not limited to, land areas which directly abut or are separated by a general access roadway or other right-of way, including waterways; and properties which are part of a subdivision that was under common ownership on July 1, 1988.

"Council" means the Wetlands Mitigation Council established pursuant to Section 14 of the Act.

"Critical habitat for fauna or flora" means:

1. For fauna, areas which serve an essential role in maintaining wildlife, particularly for wintering, breeding, spawning and migrating activities;

2. For flora, areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

"Cultivating" means physical methods of soil treatment, employed upon planted farm, ranch or forest crops to aid and improve the growth, quality or yield of the crops.

"Degraded wetland" means a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland which has been partially filled or

excavated, contaminated with hazardous substances, or which has an ecological value substantially less than that of undisturbed wetlands in the region.

"Delegable waters" means all waters of the United States, as defined in this section, within New Jersey, except waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce, shoreward to their ordinary high water mark. This term includes all waters which are subject to the ebb and flow of the tide, shoreward to their mean high water mark, including wetlands that are partially or entirely located within 1000 feet of their ordinary high water mark or mean high tide. Waters that are not delegable waters include, but are not limited to:

1. The entire length of the Delaware River within the State of New Jersey;

2. Waters of the United States under the jurisdiction of the Hackensack Meadowlands Development Commission; and

3. Greenwood Lake.

"Department" means the Department of Environmental Protection.

"Detention basin" or "detention facility" means a human-made impoundment area made by constructing an embankment, or excavating a pit, or both, for the purpose of temporarily storing stormwater.

"Developable upland" means an upland area that could be developed under the laws that apply to the site.

"Discharge of dredged material" means any addition of dredged material into State open waters or freshwater wetlands. The term includes the addition of dredged material into State open waters or freshwater wetlands and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into State open waters resulting from the subsequent onshore processing of dredged material are not included within this term. Such discharges of pollutants may, however, be subject to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A.

"Discharge of fill material" means the addition of fill into State open waters or freshwater wetlands. The term includes, but is not limited to, the following activities:

1. Placement of fill that is necessary for the construction of any structure;

2. The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;

3. Site-development fill for recreational, industrial, commercial, residential, and other uses;

4. Causeways or road fills;

5. Dams and dikes;

6. Artificial islands;

7. Property protection or reclamation devices, or both, such as riprap, groins, seawalls, breakwaters, and revetments;

8. Beach nourishment;

9. Levees;

10. Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and underground utility lines;

11. Artificial reefs; and

12. Stump removal.

"Ditch" means a linear topographic depression with bed and banks of human construction, which conveys water to or from a site, which is surrounded by uplands and which is not located within a wetland. This does not include channelized or redirected natural water courses.

"Documented habitat for threatened or endangered species" means areas for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting, or feeding. Evidence of past use by a species may include, but is not limited to, sightings of the species, or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and

2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

"Drainage" means active or passive methods for changing the hydrologic conditions of wetlands or State open water, such as lowering groundwater or surface water levels through pumping, ditching, or otherwise altering water flow patterns.

"Dredging" means removal of wetlands or State open water soils or sediments through use of mechanical, hydraulic, or pneumatic tools or other means.

"Dredged material" means material that is excavated or dredged from waters of the United States.

"Dumping" means the discharge, placement or abandonment of solid, semi-solid or liquid materials.

"Environmental commission" means a municipal advisory body created pursuant to N.J.S.A. 40:56A-1 et seq.

"EPA priority wetlands" means wetlands which are designated as priority wetlands by EPA, and are listed on the "Priority Wetlands List for the State of New Jersey," which is available from the Department's Office of Maps and Publications at the address listed at N.J.A.C. 7:7A-1.3.

"Established, ongoing farming, ranching or silviculture operation" means activities on areas subject to a farming, ranching, or silviculture use as of June 30, 1988, which use has been pursued continuously since June 30, 1988. Activities on areas lying fallow as part of a conventional rotational cycle that does not exceed five years are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle for so long that modifications to the hydrological regime are necessary to resume operations, or for more than five years, whichever is shorter.

"Fair market value" or "market value" means the most probable price for which land will sell in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by any unusual benefit to the purchaser.

"Farmed wetland" means a freshwater wetland, as defined in this section, which was both manipulated and cropped before December 23, 1985, and has been in active agricultural use continuously since then. This term also includes a wetland that was manipulated and used for pasture or hayland before December 23, 1985, which has been in active use for pasture or hayland continuously since then. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be in active agricultural use.

"Federal act" means the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., including any amendments and supplements, and implementing regulations. This statute is sometimes referred to as the Federal Clean Water Act.

"Excavation" means to dig or remove soil, rocks, etc., resulting in a change in site elevation.

"Federal 404 program" means the program regulating the discharge of dredged or fill materials pursuant to Section 404 of the Federal Act.

"Fill" means the deposition or placement of material such as soil, sand, earth, rock, concrete, pavement, or solid material of any kind; so as to change the ground elevation in relation to surface water or groundwater level. "Fill" also means the material deposited.

"Forested" means that tree species with an average height greater than 20 feet are the predominant vegetation present.

"FW" means the general surface water classification applied to fresh waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B.

"FW1 waters" means waters designated as FW1 waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B. As of September 4, 2001, N.J.A.C. 7:9B-1.15 defines FW1 waters as those fresh waters wholly within Federal or State lands or special holdings, that are preserved for posterity, and are not subject to wastewater discharges of human origin.

"FW2 waters" means waters designated as FW2 waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B.

"Freshwater wetland" or "wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the 1989 Federal Manual as defined in this section. These include tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

"Freshwater wetlands permit" means a permit to engage in a regulated activity in a freshwater wetland issued pursuant to the Freshwater Wetlands Protection Act and this chapter.

"Gabion" means a shore or stream bank protection structure, that is made of wire mesh basket(s) or mattress(es) filled with rocks and usually used in multiples as a structural unit installed to withstand the forces of waves and currents.

"General permit" means a permit, adopted as a rule, under which the Department issues authorizations. A general permit may authorize regulated activities in freshwater wetlands, State open waters, and/or transition areas. An authorization issued under a general permit satisfies the requirement for a freshwater wetlands permit, open water fill permit, and/or transition area waiver, as applicable.

"Government agency" means any department, division, authority, board, commission, office, bureau, agency, committee or other instrumentality of the United States, or of the State or any political subdivision thereof.

"Harvesting" means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads or other engineering practices such as drainage which would alter the existing character of the farm, forest or ranch land.

“Historic preservation restriction or easement” means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land,

appropriate to preserving a structure or site which is historically significant for its architecture, archeology or associations, to forbid or limit any or all:

1. Alteration in exterior or interior feature of such structure;

2. Changes in appearance or condition of such site;

3. Uses of such structure or site which are not historically appropriate; and/or

4. Other acts or uses detrimental to the appropriate preservation of such structure or site.

"HUC" means the hydrologic unit code system developed by the United States Geological Service for delineating and identifying drainage areas. The system starts with the largest possible drainage areas and progressively smaller subdivisions of the drainage area are delineated and numbered in a nested fashion. As used in this chapter, "HUC 14" indicates a drainage area with a hydrologic unit code designation with 14 numbers. "HUC 11" indicates a larger subwatershed that is composed of several HUC 14 subwatersheds. There are 921 HUC 14 subwatersheds in New Jersey that range in size from 0.1 to 42 square miles. The boundaries are included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled "Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey." The HUC codes for New Jersey can be downloaded from http.//www.nj.gov/dep/gis/. The HUC 11 data is entitled "subwatersheds." Software designed for use with Geographic Information Systems (GIS) will be required to view the downloaded data.

"Hydric soil" means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation. These soils may be described in several places, including New Jersey's Official List of Hydric Soils, developed by the Natural Resources Conservation Service; the National Wetlands Inventory, entitled "The Wetlands of New Jersey", published in 1985 by the United States Fish and Wildlife Service; or in the 1989 Federal manual. Alluvial land, as mapped on soil surveys, or other soils exhibiting hydric characteristics identified through field investigation as described in Part III of the 1989 Federal manual may also be considered a hydric soil for the purposes of wetland classification. Also, wet phases of somewhat poorly drained soils not on New Jersey's Official List of Hydric Soils may be associated with a wetland and therefore for the purposes of this chapter shall be considered a hydric soil.

"Hydrophyte" means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season. A listing of these plants can be found in the "National List of Plant Species that Occur in Wetlands: 1988-New Jersey" and amendments thereto, compiled by the USFWS, ACOE, EPA and the Natural Resources Conservation Service.

"Impervious surface" means any structure or surface which prevents absorption of stormwater into land. Examples of impervious surfaces are pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools.

"Individual permit" means a freshwater wetlands permit or open water fill permit that is issued by the Department after an alternatives test and other site-specific and project-specific reviews required at N.J.A.C. 7:7A-7.

"Intermittent stream" means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Most intermittent streams are shown on Soil Conservation Service county soil surveys.

"Isolated wetlands " means a freshwater wetland that is not "part of a surface water tributary system," as defined in this section.

"Lake, pond, or reservoir" means any impoundment of water, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water.

"Letter of interpretation" or "LOI" means the document issued by the Department under N.J.A.C. 7:7A-3, indicating the presence or absence of wetlands, State open waters, or transition areas; verifying or delineating the boundaries of freshwater wetlands, State open waters, and/or transition areas; or assigning a wetland a resource value classification.

"Linear development" means land uses such as roads, drives, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

"Major discharge" means a discharge or activity that the Department must transmit to EPA for review in accordance with the Department's 1993 MOA with EPA regarding assumption of the Federal 404 program. Provisions regarding EPA review of major discharges are found at N.J.A.C. 7:7A-12.2. The following are major discharges:

1. A draft general permit;

2. A discharge with reasonable potential to affect Federally listed or proposed endangered or threatened species as determined by the U.S. Fish and Wildlife Service;

3. A discharge of dredged or fill material which has the potential for adverse impacts on the waters of a state other than New Jersey;

4. A discharge known or suspected to contain:

    i. Toxic pollutants as identified by Section 307(a)(1) of the Federal act;

    ii. Hazardous substances identified pursuant to Section 311 of the Federal act and Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq.;

iii. Toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; or

iv. Hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.;

5. A discharge located in the proximity of a public water supply intake;

6. A discharge within a critical area established under State or Federal law, including but not limited to a National or State park; fish or wildlife sanctuary or refuge; National or historical monument; wilderness area or preserve; a site identified or proposed under the National Historic Preservation Act; or a component of the National Wild and Scenic Rivers system;

7. The filling of five or more acres of freshwater wetlands and/or State open waters;

8. Any regulated activity that results in a significant reduction in the ecological, commercial, or recreational values of five or more acres of freshwater wetlands or State open waters;

9. A culvert enclosure longer than 100 feet; or

10. Channelization of more than 500 feet of a river or stream.

"Maximum extent practicable" means to the maximum extent after weighing, evaluating and interpreting alternatives to protect the ecological integrity of a wetland or State open water.

"Mitigation" means activities carried out pursuant to N.J.A.C. 7:7A-15 in order to compensate for freshwater wetlands or State open waters loss or disturbance caused by regulated activities.

"Natural Resources Conservation Service" or "NRCS" means the arm of the U.S. Department of Agriculture (USDA) that provides technical assistance with USDA conservation programs associated with soil, water, and other related natural resources. The Natural Resources Conservation Service was previously known as the Soil Conservation Service.

"1989 Federal Manual" means the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published in 1989 by the EPA, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture's Natural Resources Conservation Service (formerly the Soil Conservation Service), as amended and/or supplemented, which Manual is incorporated herein by reference.

"Non-delegable waters" mean waters that are not delegable waters.

"Normal rainfall year" means a 12 month period in which the precipitation at a location is within 10% of the average annual precipitation for that location, calculated using the standard averaging period for "normals," established by the World Meteorological Organization, except that the

Department may determine normal rainfall on a case-by-case basis in unusual situations, such as where the sampling period begins immediately following prolonged drought conditions. As of September 4, 2001, the World Meteorological Organization has defined the standard averaging period as 1961 through 1990. Information regarding the standard averaging period can be found in the USDA's Natural Resources Conservation Service website at www.nrcs.usda.gov/water/climate.

"Offsite" means the area not onsite.

"Onsite" means the area located within the site, as defined in this section.

"Open water fill permit" means the type of New Jersey Pollution Discharge Elimination System permit issued pursuant to this chapter and N.J.S.A. 58:10A-1 et seq., which governs the discharge of dredged or fill material into State open waters.

"Ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

"Palustrine emergent" means a wetlands vegetation pattern in which persistent and nonpersistent grasses, rushes, sedges, forbs and other herbaceous or grass-like plants are the dominant vegetation.

"Part of a surface water tributary system" means connected to a surface water that discharges into a lake, pond, river, stream or other surface water feature. The connection may be through any surface water feature, whether regulated or not, including a stormwater or drainage pipe. The connection may be through a secondary flow channel or other feature. However, the connection may be through overland flow only if there is evidence of scouring, erosion, or concentrated flows. The connection may not be through groundwater alone. Wetlands adjacent to a surface water are connected to the surface water and are part of the surface water tributary system.

"Permit" means an approval to engage in a regulated activity in a freshwater wetland, State open water, or transition area, issued by the Department under this chapter. The Department issues the following permits under this chapter:

1. Freshwater wetlands permits including general permit authorizations;

2. Open water fill permits; and

3. Transition area waivers.

"Permittee" means a person to whom the Department has issued a permit or a waiver under this chapter.

"Person" means an individual, corporation, corporate officer or official, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State or any interstate body.

"Phase IA historical and archaeological survey" means an archaeological survey the purpose of which is to identify resources completed by an archaeologist whose qualifications meet the Secretary of the Interior's Professional Qualifications Standards and related guidance as part of the larger Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as referenced in 36 CFR 61, as amended and supplemented, incorporated herein by reference.

"Pilings" means timber, metal, concrete or other similar structures driven, dropped, poured, or placed to support a vertical load.

"Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing, and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of dredged material, rock, sand, or other surface materials in a manner which changes any area of wetlands to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of material.

"Practicable alternative" means other choices available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and may require an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

"Preliminary approval" means the conferral of certain rights pursuant to N.J.S.A. 40:55D-46, 48 and 49 prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

"Project" means the following:

1. For the purpose of a transition area exemption under N.J.A.C. 7:7A-2.8(f) based on the application for or the grant of a preliminary site plan approval:

    1. All buildings, structures, pavements, and other improvements specifically depicted on the site plans referenced in the resolution approving the site plan; and

    2. For the purpose of a transition area exemption under N.J.A.C. 7:7A-2.8(f) based on the application for or the grant of a preliminary subdivision approval:

i. Where subdivision approval is the last stage of municipal review before the owner/applicant may apply for a building permit to begin construction, the "project" is the development of the subdivision consistent with the lot coverage, use, and density restrictions of the zoning ordinance in effect at the time of the subdivision approval; or

ii. Where site plan approval is required prior to construction, "project" means the proposed economic development, whether commercial, industrial or residential, intended to be constructed on that portion of a tract of land that is the focus of the qualifying approval. Although "project" is not limited to specific structures shown on the subdivision plans, it is limited to development on those portions of a tract of land that were the focus of the qualifying subdivision application or approval. Development on other lands, such as development on the remainder of a larger tract or on a contiguous property in common ownership, are not included within a "project." In order to determine if an applicant qualifies for an exemption under this definition, the Department will determine the existence of a proposed economic development at the time of the subdivision application. Because the purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents, where the subdivision is merely a division of land and no substantial investment was made in planning or development, there can be no exempted project. Therefore, an application for the subdivision of lands simply for future development, yet to be planned, or simply for resale shall not qualify for an exemption. To determine the existence of a proposed economic development and to determine which portion of a tract was the focus of subdivision approval or application, the Department will examine the resolution granting approval and any documentation submitted with the application, including, but not limited to, drainage, engineering, traffic, utility, landscaping, soil and environmental plans and reports as well as the subdivision plan. In cases where the above information is unclear, the Department may consider money spent or obligated on engineering and design in the preparation of the subdivision application to determine if a substantial investment has been made in an economic development. Money spent or obligated for the initial purchase, carrying costs, or legal services will not be considered in determining the existence of a proposed economic development.

iii. The following are examples of how the Department will determine the "project" exempted on the basis of the application for or grant of preliminary subdivision approval:

(1) Where a project was to be developed in three sections but a complete application for preliminary approval was submitted, accepted and subsequently approved for only one section, only the development planned for that section is exempt and the development envisioned for sections two and three is not exempt. This is not altered by the fact that some depiction of that future development on the remainder of the parcel might be required by a local planning board in concept or sketch form;

(2) Where an entire parcel is subdivided into five conforming residential lots, the residential development planned on all five lots is exempt. However, where the focus of the subdivision application and approval is on less than the entire tract of land, which lesser portion is divided into five single family house lots, and the remainder of the tract is left as a bulk parcel for further subdivision or other planning board approval, only development on the five lots is exempt. It is irrelevant that the configuration of the remainder lot has been changed by the subdivision or that the remainder lot has been renumbered;

(3) Where the land to be divided for a commercial industrial park straddles two townships and the developer received approval to subdivide the land in township A and sold the unsubdivided portion in township B to another developer, only the development on the land in township A could be considered the subject of township A's subdivision approval. Therefore, only the development on the land in township A is exempt. It is irrelevant that the original developer had, from the start, contemplated a commercial industrial park for the property in both townships or that the office building contemplated on the land in township B did not require further subdivision;

(4) Where land is divided for the sole purpose of bequeathing it sometime in the future to one's children to be developed as they wish, no economic development was contemplated when the application was made or approval granted. After the land passes to the children and one of them decides to build, that development is not exempt. The purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents. Where the subdivision is merely a division of land and no investment was made in the planning or development, there can be no exempted project; and

(5) Where land is subdivided but requires further subdivision, other than de minimis changes for road right of ways or other infrastructure, before the applicant can proceed to the next step of municipal approval (either building permits or site plan approvals), there is no evidence of intended economic development at the time of initial subdivision application or approval, because the proposed economic development only comes into being with the subsequent, untimely subdivision. Therefore, there is no basis for exemption.

"Property as a whole" means all property assembled as one investment or to further one development plan. The property as a whole may include more than one municipal tax block or lot. The property as a whole may also include blocks or lots that were previously sold or developed, if those blocks or lots and the remaining unsold or undeveloped blocks or lots were part of one.

"Public hearing" means an administrative non-adversarial type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"Redevelopment" means the construction of structures or improvements on or below impervious surfaces, as defined in this section, or other significantly disturbed area.

"Regulated activity" means any of the activities described at N.J.A.C. 7:7A-2.2 or at N.J.A.C. 7:7A-2.6.

"Seeding" means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

"Silviculture" means the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis. The normal harvesting of forest products is a part of some silviculture operations. Orchards, tree farms and nurseries are not silviculture but are farming.

"Site" means the area within the legal boundary of the property(ies) or right-of-way for which a letter of interpretation is requested, or upon which a regulated activity is proposed, is occurring, or has occurred, plus any contiguous land owned or controlled by the same person(s). This term also includes an area which is the subject of an application for a letter of interpretation or which is the location of a proposed mitigation bank. For the purposes of this definition, the legal boundary of a property or right-of-way shall be the boundary as it existed on July 1, 1988, except that if additional contiguous lots and/or blocks were acquired after July 1, 1988, or if lots were merged after July 1, 1988, these lots are included in the site, and the legal boundary of the property or right-of-way shall be the boundary of all contiguous land owned or controlled by the same person(s), as it exists on the date an application is submitted under this chapter. The legal boundary of a property is set forth in the deed(s) for the property or other legally binding document that sets forth a boundary. The legal boundary of a right-of-way is set forth in the document creating the right-of-way.

"Soil Conservation District" means a local subdivision of the New Jersey Department of Agriculture (NJDA), established pursuant to N.J.S.A. 4:24-1 et seq. Generally, each Soil Conservation District administers NJDA programs for a single county, although some administer programs for more than one county. The Soil Conservation Districts are overseen by the New Jersey State Soil Conservation Committee in the NJDA, which promulgates the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90.

"Special aquatic site" means a site described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.), except freshwater wetlands which, for the purposes of this chapter, shall not be considered special aquatic sites. In general, special aquatic sites are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted functions and values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health

or vitality of the entire ecosystem of a region. As of September 4, 2001, the following special aquatic sites are described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.): sanctuaries and refuges, wetlands (note: while freshwater wetlands are excluded from the definition of a special aquatic site for purposes of this chapter, other wetlands, such as most coastal wetlands, would be considered special aquatic sites), mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

"State Forester" means the chief forester employed by the Department.

"State open waters" means all waters of the State as defined in this section, including waters of the United States as defined in this section, but excluding ground water as defined at N.J.A.C. 7:14A, and excluding freshwater wetlands as defined in this section. The following waters will generally not be considered State open waters for the purposes of this chapter. However, the Department shall determine, on a case-by-case basis, if a particular watercourse or water body listed below is a State open water:

1. Non-tidal drainage and irrigation ditches excavated on dry land;

2. Artificially irrigated areas which would revert to upland if the irrigation ceased;

3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;

5. Water-filled depressions created in dry land incidental to construction or remediation activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of "waters of the United States";

6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Federal act (other than cooling ponds);

7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices; and

8. Stormwater management facilities created in uplands.

"Stormwater management facility" means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with applicable local, county and State regulations. These facilities may include retention basins, detention basins, infiltration structures, grassed swales, rip-rap channels and/or stormwater outfalls.

"Swale" means a linear topographic depression, either naturally occurring or of human construction, which meets all of the following criteria:

1. It is surrounded by uplands except where runoff flows out of it.

    i. A depression is not a swale if it is located within a larger wetland or if it is merely an undulation in a wetland boundary;

    ii. A depression is not a swale if it is naturally occurring, contains palustrine forest, and is located within an upland forest;

2. It has formed or was constructed in uplands to convey surface water runoff from the surrounding upland areas;

3. It drains less than 50 acres;

4. It is not a seep or spring;

5. It is not an intermittent stream;

6. It has no definite bed and banks; and

7. At its widest point, it is generally 50 feet wide or narrower.

"Temporary disturbance" means a disturbance caused by permitted regulated activities that are permanently discontinued within six months after they are begun.

"Threatened or endangered species" means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq., and subsequent amendments thereto.

"Tidal waters" means fresh or saline waters under tidal influence, up to the head of the tide.

"Transition area" means an area of upland adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

"Transition area waiver" or "waiver" means a waiver issued by the Department under this chapter, authorizing any of the regulated activities enumerated at N.J.A.C. 7:7A-2.6 in a transition area.

"Tree" means a woody plant which is five inches or greater in diameter at a height of four and one half feet above the ground.

"Trout production waters" means waters designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, for use by trout for spawning or nursery purposes during their first summer.

"USEPA" or "EPA" means the United States Environmental Protection Agency.

"USFWS" means the United States Department of the Interior, Fish and Wildlife Service.

"USGS" means the United States Geological Survey.

"USGS quad map" means a topographic quadrangle map issued by the USGS, 7.5 minute series, drawn at a scale of 1:24,000, available from the Department's Maps and Publications Office at the address listed in N.J.A.C. 7:7A-1.3.

"Utility line" means a pipe, cable, line, conduit, or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a tower or pole required to support a utility line, but does not include a tower or pole that only transmits waves through the air, such as for radio, television, or telephone transmission. The term "utility line" does not include a stormwater pipe, or a pipe that drains a wetland or State open water, such as a drainage tile.

"Vernal habitat" means a wetland as identified at N.J.A.C. 7:7A-2.3, or State open water, as defined at N.J.A.C. 7:7A-1.4 above that meets all of the criteria at 1 through 4 below. Evidence of breeding by an obligate species under 2i below creates a rebuttable presumption that the criteria at 3 and 4 below are met:

1. Occurs in or contains a confined basin depression without a permanent flowing outlet;

2. Features evidence of breeding by one or more species of fauna adapted to reproduce in ephemeral aquatic conditions, identified in N.J.A.C. 7:7A, Appendix 1, incorporated herein by reference. The following shall constitute evidence of breeding by such a species:

    i. One or more obligate species listed in Appendix 1, or evidence of such a species, is found in or immediately adjacent to the area of ponded water; or

    ii. Two or more facultative species listed in Appendix 1, or evidence of the presence of such a species, are found in or immediately adjacent to the area of ponded water;

3. Maintains ponded water for at least two continuous months between March and September of a normal rainfall year; and

4. Is free of reproducing fish populations throughout the year, or dries up at some time during a normal rainfall year.

"Water-dependent activity" means an activity that cannot physically function without direct access to the body of water along which it is proposed. An activity that can function on a site not adjacent to the water is not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.

"Water Pollution Control Act" means the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Waters of the State" means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

"Waters of the United States" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sand flats, sloughs, wet meadows, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

    i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

    ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

    iii. Which are used or could be used for industrial purposes by industries in interstate commerce;

    iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;

    v. Which are or would be used as habitat by other migratory birds which cross state lines;

    vi. Which are or would be used as habitat for endangered and threatened species; or

    vii. Which are used to irrigate crops sold in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial seas; and

7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition, other than those that are themselves wetlands.

"Water quality certificate" means a Department determination issued for a proposed activity which requires a Federal license or permit, pursuant to 33 U.S.C. §1341 of the Federal Act and N.J.S.A. 58:10A-1 et seq.

"Working day" means a day upon which the offices of the New Jersey Department of Environmental Protection are open for business.

7:7A-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:7A-1.6 Other statutes and regulations

(a) The powers, duties and functions vested in the Department under this chapter shall not limit in any manner the powers, duties and functions vested therein under any other law except as specifically set forth in this chapter.

(b) The Freshwater Wetlands Protection Act, on and subsequent to July 1, 1988, shall supersede any law or ordinance enacted by any municipality, county, or political subdivision thereof, regulating freshwater wetlands or freshwater wetlands transition areas except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction. No municipality, county, or political subdivision thereof shall enact any law, ordinance, or rule or regulation requiring a transition area adjacent to a freshwater wetland, except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation or other matters.

(d) This chapter shall not preempt State regulatory programs which affect regulated activities in freshwater wetlands, including but not limited to Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and State approved municipal water quality management plans. These programs will continue to regulate based on the concerns covered by their respective enabling statutes and rules, and may, through such regulation, have some impact on projects in freshwater wetlands. However, those programs will not use freshwater wetlands concerns as a basis for regulation, and any regulation by these programs of projects in freshwater wetlands will be limited to that based on other (for example, flood danger) concerns.

(e) If a proposed project does not involve a freshwater wetland or State open water, does not constitute a regulated activity, or is exempt under this chapter, the final decision on the application shall be based solely on the requirements of other applicable permit programs.

N. J.A.C. 7:7A-1.7 Hearings and appeals

(a) Subject to the limits on third party hearings at (k) below, a person may request an administrative hearing to contest a decision under this chapter on any of the following actions:

1. An exemption letter request;

2. An application for a letter of interpretation;

3. An application for authorization to act under a general permit;

4. An application for a transition area waiver;

5. An application for an individual freshwater wetlands permit;

6. An application for an individual open water fill permit; or

7. An application for a modification or extension of any Department issued document.

(b) A person seeking to contest an administrative order or a penalty assessment arising from an enforcement matter under this chapter shall do so under N.J.A.C. 7:7A-16.7.

(c) A request for an administrative hearing shall:

1. Be in writing;

2. Contain all information required by the administrative hearing request checklist, available from the Department at the address in N.J.A.C. 7:7A-1.3;

3. Explain in what way the person submitting the request believes the Department has acted improperly;

4. Explain what issues the person submitting the request will raise if a hearing is held; and

5. Be submitted to the Department at the following address, with a copy to the Division of Land Use Regulation at the address at N.J.A.C. 7:7A-1.3(b) above:

   Office of Legal Affairs
   Attention: Administrative Hearing Requests
   Department of Environmental Protection
   401 East State Street, 4th Floor

PO Box 402
Trenton, New Jersey 08625-0402

(d) To contest a decision listed at (a) above, a person shall submit a hearing request within 30 days after notice of the decision is published in the DEP Bulletin. If a person submits the hearing request after this time, the Department shall deny the request. The DEP bulletin is available through the Department's website at www.state.nj.us/dep.

(e) As part of a request for an administrative hearing, a person may request that the Department determine whether the matter for which the administrative hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the person who submitted the request of its determination. If the Department determines the matter is suitable for mediation, it shall also notify the person who submitted the request of the procedures and schedule for mediation.

(f) A request by a permittee for a hearing shall automatically stay operation of a permit, including a transition area waiver or general permit authorization, unless the permittee shows good cause why the permit should continue in effect while being contested. If a hearing is requested by a permittee, all permitted activities shall stop upon the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing. If a person other than the permittee requests a hearing, the requester may also request a stay of the permit. The Department shall grant the request for a stay of the permit if the requester shows good cause why the permit should be stayed.

(g) When the Department receives an administrative hearing request, the Commissioner may refer the matter to the Office of Administrative Law for an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure rules, N.J.A.C. 1:1, or may deny the request for a hearing. If the Commissioner refers the matter to the Office of Administrative Law, the Department shall so notify the person who submitted the request and the applicant.

(h) If the Department agrees to settle a matter for which a hearing request has been submitted under this section, and the settlement will result in Department approval of a regulated activity, public notice of the settlement shall be provided as follows:

1. The person who requested the hearing shall send by certified mail a notice of intent to settle the matter. A form for the notice may be obtained from the Department at the address in N.J.A.C. 7:7A-1.3. The notice shall be sent to:

    i. Each person provided notice of the application for the permit or approval which is the subject of the appeal; and

    ii. Each person who commented on the application;

2. The Department shall publish a notice of intent to settle in the DEP Bulletin, and shall accept comments on the notice for at least 30 days;

3. After the 30 day comment period provided for in (h)2 above, the person who requested the hearing shall send by certified mail a notice of settlement. A form for the notice may be obtained from the Department at the address in N.J.A.C. 7:7A- 1.3. The notice shall be sent to:

   i. Each person provided notice of intent to settle under (h)1 above; and

   ii. Each person who commented on the notice of intent to settle provided under (h)2 above; and

4. The Department shall publish a notice of the final settlement in the DEP Bulletin.

(i) After a hearing, the administrative law judge will submit an initial decision to the Commissioner. Within forty five days of receiving the initial decision, the Commissioner shall affirm, reject, or modify the decision, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure rules, N.J.A.C. 1:1.

(j) The Commissioner's action under (i) above shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.

(k) Nothing in this section shall be construed to provide a right to an administrative hearing in contravention of the Administrative Procedure Act, N.J.S.A. 52:14B-3.1 through 3.3.

SUBCHAPTER 2 APPLICABILITY

N.J.A.C. 7:7A-2.1 Jurisdiction; permit or waiver requirement

(a) A person proposing to engage in a regulated activity, as described at N.J.A.C. 7:7A-2.2, shall first obtain a general permit authorization or an Individual freshwater wetlands or open water fill permit. A person proposing to engage in a prohibited activity, as described at N.J.A.C. 7:7A-2.6,in a transition area shall first obtain approval from the Department through a transition area waiver or general permit authorization. The discharge of dredged or fill material in a State open water or wetland may also require a stream encroachment permit pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

(b) An agency of the State proposing to engage in a regulated activity shall first obtain a freshwater wetlands and/or open water fill permit, and/or a transition area waiver, but shall not be required to pay an application fee.

(c) On March 2, 1994, the Department assumed responsibility for administering the Federal wetlands program (also known as the 404 program) in delegable waters, as defined at N.J.A.C. 7:7A-1.4. In non-delegable waters, the ACOE retains jurisdiction under Federal law, and both Federal and State requirements apply. A project in non-delegable waters requires two permits,

one from the Department under this chapter and one from the ACOE under the Federal 404 program.

(d) A permit issued under this chapter shall constitute the water quality certificate required under the Federal Act at 33 U.S.C. §1341 for any activity covered by this chapter. If a discharge of dredged or fill material into waters of the United States, as defined at N.J.A.C. 7:7A-1.4, does not require a permit under this chapter but does require a water quality certificate, the Department shall use the standards and procedures in this chapter to determine whether to issue the water quality certificate, except in the New Jersey Coastal zone, as described at N.J.A.C.7:7E-1.2(b). For a discharge of dredged or fill material in the Coastal zone, the Department shall use the standards and procedures in the Coastal Permit Program rules and the Coastal Zone Management rules, N.J.A.C. 7:7 and 7:7E, respectively, to determine whether to issue a water quality certificate.

(e) A permittee shall be responsible for ensuring that the permitted project complies with all requirements in this chapter. However, any person who owns the property on which the project occurs, or who manages, oversees or works on the project may share liability for work or activities that are not performed in accordance with this chapter.

(f) Only an activity specifically identified as authorized in a permit, including a transition area waiver or general permit authorization, shall be authorized under that permit.

(g) Failure to obtain a permit or waiver to conduct regulated or prohibited activities, or to conduct regulated or prohibited activities in accordance with an approved permit or waiver shall constitute a violation of the Freshwater Wetlands Protection Act and this chapter and shall be subject to enforcement action in accordance with N.J.A.C. 7:7A-16.

N.J.A.C. 7:7A-2.2 Regulated activities in freshwater wetlands and State open waters

(a) The following activities are regulated under this chapter when performed in a freshwater wetland unless excluded under (c) below:

1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;

2. The drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration, by:

    i. Adding or impounding a sufficient quantity of stormwater or other water to modify the existing vegetation, values or functions of the wetland; or

    ii. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water so as to modify the existing vegetation, values or functions of the wetland;

3. The dumping, discharging or filling with any materials;

4. The driving of pilings;

5. The placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland; and

6. The destruction of plant life which would alter the character of a freshwater wetland, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees.

(b) The term "regulated activity" shall also mean the discharge of dredged or fill material into State open waters, except for a discharge into a non-delegable State open water which is subject to the Waterfront Development Law, N.J.S.A. 12:5-3.

(c) Notwithstanding (a) above, the following activities are not regulated activities:

1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed;

2. The placement of temporary structures (such as observation blinds, waterfowl blinds, artificial nesting structures, or sign posts) for observing, managing, or harvesting fish or wildlife, provided the structures:

   i. Do not have permanent foundations;

   ii. Do not require the deposition of fill material; and

   iii. Have a footprint no larger than 32 square feet;

3. Placement of one or more small guy anchors that screw into the ground to secure a guy wire supporting a utility pole, provided that the area of disturbance caused by each guy anchor is no more than 15 inches in diameter;

4. Hand trimming of trees or other vegetation, provided the trimming does not alter the character of the freshwater wetland; and

5. The driving of one or more pilings in a State open water, if the pilings are not regulated by the ACOE under the Federal 404 program. The ACOE regulates the placement of pilings if the placement would have the effect of a discharge of fill material. Examples of activities that are and are not regulated by the ACOE are:

i. Activities that generally do not have the effect of a discharge of fill material and thus are not regulated are:

(A) Placing pilings for linear projects, such as bridges, elevated walkways, and utility line structures; and

(B) Placement of pilings for piers or docks;

ii. Activities that generally do have the effect of a discharge of fill material and thus are regulated include, but are not limited to:

(A) Projects where the pilings are so closely spaced that sedimentation rates would be increased;

(B) Projects in which the pilings themselves effectively would replace the bottom of a water body;

(C) Projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States;

(D) Projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions; and

(E) Projects where the pilings are intended to be used for structural support of a building such as a commercial or residential structure.

N.J.A.C. 7:7A-2.3 Identifying freshwater wetlands

(a) Freshwater wetlands shall be identified and delineated using the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the 1989 Federal manual, as defined at N.J.A.C. 7:7A-1.4.

(b) To aid in determining the presence or absence of freshwater wetlands, the Department may refer to any of the following sources of information:

1. New Jersey Freshwater Wetlands maps prepared by the Department and available as indicated in (f) below;

2. United States Department of Agriculture Soil Surveys;

3. United States Fish and Wildlife Service National Wetlands Inventory (NWI) Maps;

i. NWI maps shall be used to indicate the approximate location of some freshwater wetlands;

ii. NWI maps have been determined to be unreliable for the purposes of locating the actual wetlands boundary;

4. USGS quad maps;

5. Letters submitted by applicants containing site specific data;

6. Comments filed by municipal and county governments and interested citizens; and

7. Comments filed by State or Federal agencies.

(c) Vegetative species classified as hydrophytes and indicative of freshwater wetlands shall include, but not be limited to, those plants listed in "National List of Plant Species that Occur in Wetlands: 1988-New Jersey," compiled by the United States Fish and Wildlife Service in cooperation with the ACOE, USEPA, and the United States Soil Conservation Service, and any subsequent amendments thereto.

(d) To obtain a determination from the Department of the presence, absence, or boundaries of freshwater wetlands on a particular site, a person may apply to the Department for a letter of interpretation under N.J.A.C. 7:7A-3.

(e) The Department has developed freshwater wetlands maps at a scale of 1:12000 to provide guidance and for general informational purposes. These freshwater wetlands maps can help to determine the approximate extent and location of wetlands. However, these maps are for guidance only and do not take the place of nor supersede a wetland delineation that the Department has approved through a letter of interpretation issued for a particular site.

(f) The Department has provided the New Jersey freshwater wetlands maps to the following offices for public inspection:

1. The county clerk or registrar of deeds and mortgages in each county;

2. The municipal clerk of each municipality; and

3. The Department's Maps and Publications Sales Office, located at the address listed in N.J.A.C. 7:7A-1.3.

N.J.A.C.-7:7A-2.4 Classification of freshwater wetlands by resource value

(a) Freshwater wetlands shall be divided into three classifications based on resource value. The Department shall consider the resource value classification of a wetland in, among other things, evaluating alternatives to the proposed regulated activity, in determining the size of the transition area, and in determining the amount and/or type of mitigation required.

(b) A freshwater wetland of exceptional resource value, or exceptional resource value wetland, is a freshwater wetland which:

1. Discharges into FW1 or FW2 trout production waters or their tributaries;

2. Is a present habitat for threatened or endangered species; or

3. Is a documented habitat for threatened or endangered species, and which remains suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.

(c) The Department identifies present or documented habitat for threatened or endangered species for purposes of (b) above using the Landscape Project method, which focuses on habitat areas required to support local populations of threatened or endangered wildlife species. The details of this method are described in the Division of Land Use Regulation freshwater wetlands technical manual, available from the Department's Office of Maps and Publications at the address in N.J.A.C. 7:7A-1.3. An applicant may request that a documented habitat not result in the classification of a freshwater wetland as a freshwater wetland of exceptional resource value. Such a request shall include a demonstration of the long-term loss of one or more habitat requirements of the specific documented threatened or endangered species, including, but not limited to, wetlands size or overall habitat size, water quality, or vegetation density or diversity. Upon such a request, the Department shall review all available information, and shall make a final classification of the wetland.

(d) A freshwater wetland of ordinary resource value, or an ordinary resource value wetland, is a freshwater wetland which does not exhibit any of the characteristics in (b) above, and which is:

1. An isolated wetland, as defined at N.J.A.C. 7:7A-1.4, which:

   i. Is smaller than 5,000 square feet; and

   ii. Has the uses listed below covering more than 50 percent of the area within 50 feet of the wetland boundary. In calculating the area covered by a use, the Department will only consider a use that was legally existing in that location prior to July 1, 1988, or was permitted under this chapter since that date:

      (1) Lawns;

      (2) Maintained landscaping;

      (3) Impervious surfaces;

      (4) Active railroad rights-of-way; and

      (5) Graveled or stoned parking/storage areas and roads;

2. A drainage ditch;

3. A swale; or

4. A detention facility created by humans in an area that was upland at the time the facility was created regardless of the wetland resource classification of the wetland under these rules, or the classification of the body of water, as FW-1 or FW-2 trout production, to which it discharges.

(e) A freshwater wetland of intermediate resource value, or intermediate resource value wetland, is any freshwater wetland not defined as exceptional or ordinary.

(f) The classification system established under this section shall not restrict the Department's authority to require the creation or restoration of freshwater wetlands under N.J.A.C. 7:7A-15.

(g) To obtain a Department determination of the resource value classification for a particular wetland, an applicant may obtain a letter of interpretation from the Department under N.J.A.C. 7:7A-3.

7:7A-2.5 General transition area provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission in a transition area that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with (a) above:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands and from and to uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands, flora and fauna, and nearby waterways.

(c) A transition area is required adjacent to a freshwater wetland of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.4. A transition area is not required adjacent to a freshwater wetland of ordinary resource value or adjacent to a State open water.

Figure 1-Transition Area

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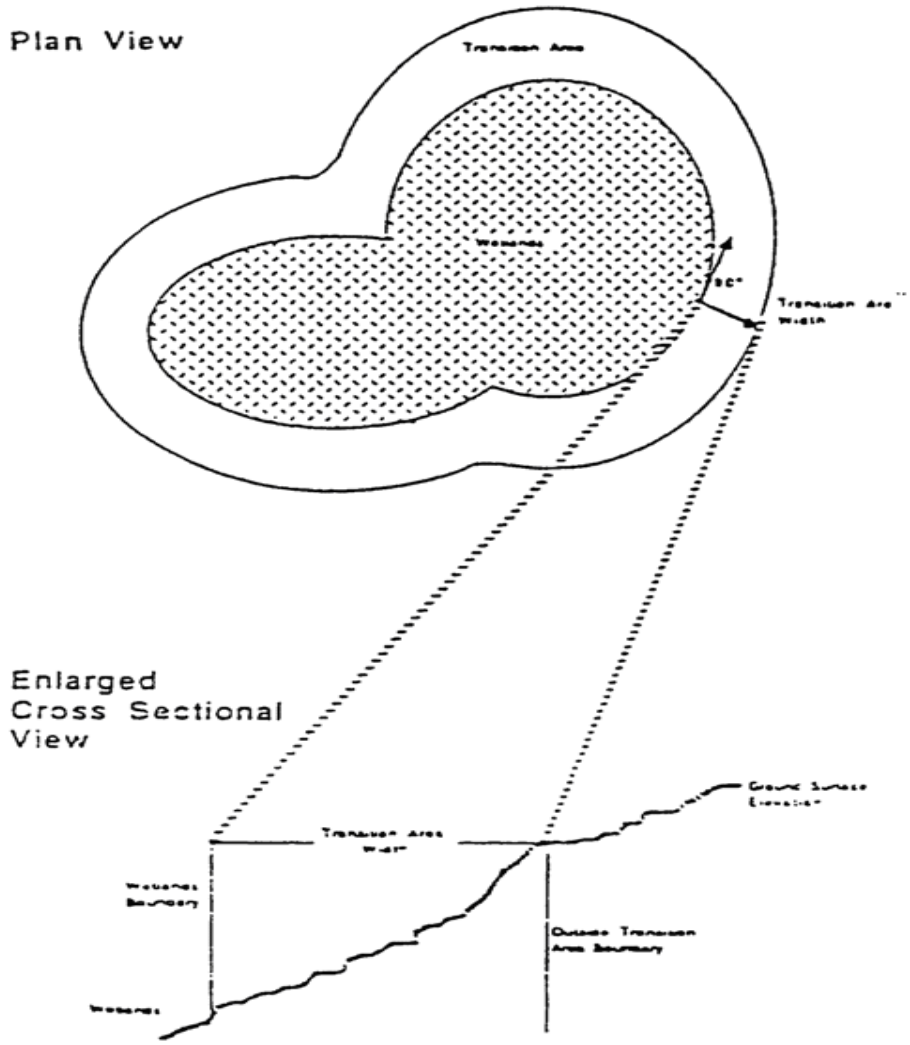
Example of a transition area adjacent to a freshwater wetland. Depicted are a plan and elevational view.



(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

(f) A person shall not engage in regulated activities, as described at N.J.A.C. 7:7A-2.6, in a transition area except pursuant to a transition area waiver.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6, Appendix A, which is incorporated by reference in this chapter. The outside boundary

line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless the Department issues a transition area waiver.
The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

Figure 1 - Transition Area

Example of a transition area adjacent to a freshwater wetland.

N.J.A.C. 7:7A-2.6 Regulated activities in transition areas

(a) Except as provided in (b) and (c) below, the following are regulated activities when they occur in transition areas:

1. Removal, excavation, or disturbance of the soil;

2. Dumping or filling with any materials;

3. Erection of structures;

4. Placement of pavements; and

5. Destruction of plant life which would alter the existing pattern of vegetation.

(b) Notwithstanding (a) above, the following activities are not regulated in transition areas and do not require Department approval under this chapter, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands, and provided that the transition area is not contained within a conservation restriction or easement. If the transition area is contained in a conservation restriction or easement, none of the following activities are allowed unless explicitly stated in the conservation restriction or easement:

1. Normal property maintenance;

   i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, landscaping and gardening. These activities include:

      (1) Mowing of existing lawns. The conversion of a field to a lawn by planting, seeding, frequent mowing or any other means is not considered normal property maintenance and requires a transition area waiver;

      (2) Maintenance of existing fields;

      (3) Pruning of trees and shrubs;

(4) Selective cutting of trees;

(5) Replacement of existing non-native plants with either native or non-native species that will not significantly change the character of the existing vegetational community of the transition area.;

(6) Limited supplemental planting of non-native plant species that will not significantly change the character of the existing vegetational community of the transition area. The creation of a lawn is not considered supplemental planting;

(7) Planting of native species, that is, plants naturally occurring in transition areas in the local region, (the county agricultural agent may be consulted to obtain information regarding these species);

(8) Continued cultivation of existing gardens; and the development of new gardens provided that the new garden is:

(A) No larger than 2,500 square feet in size;

(B) Located in a non-forested transition area; and

(C) Located in a transition area not subject to a conservation restriction or easement; and

(9) Maintenance of artificial features including the repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, lawfully existing prior to July 1, 1989, or permitted under this chapter, provided such activities do not result in additional disturbance of the transition area upon completion of the activity. Minor deviations from the existing structure due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional transition area upon completion of the activity.

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance and shall require a transition area waiver in accordance with this chapter. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, extensive removal, alteration, or destruction of vegetation by clear cutting, cutting, mowing (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes (except as described in (b)1i above), regrading or significant changes in the existing surface contours and the placement of fill, pavement or other impervious surfaces.

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area, provided the activities do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands, and do not continue for more than six months. For the purposes of this paragraph, minor and temporary disturbances include, but are not limited to, the placement of scaffolds or ladders, the removal of human-made debris by non-mechanized means which does not destroy woody vegetation, the placement of temporary construction supports, and the placement of utility lines over or under a previously authorized, currently serviceable paved roadway surface. Fencing will not be regulated if it is installed on the boundary between the transition area and upland area;

3. The erection of one or more temporary structures covering a combined total of 150 square feet or less of the transition area. For the purposes of this paragraph, a "temporary structure" means a shed or fence without a foundation, or a structure that remains in the transition area for no more than six months. Chain link fences are not considered temporary structures.

(c) Certain regulated activities are exempt from transition area requirements under N.J.A.C. 7:7A-2.8(f). In addition, an activity that is exempt from freshwater wetlands permit requirements under N.J.A.C. 7:7A-2.8(c) for farming activities, or N.J.A.C. 7:7A-2.8(d) for forestry activities, is also exempt from transition area requirements, subject to the limits on freshwater wetlands exemptions at N.J.A.C. 7:7A-2.8. A person may request an exemption letter confirming the exemption status of an activity by using the procedures at N.J.A.C. 7:7A-2.10.

N.J.A.C. 7:7A-2.7 Transition areas due to freshwater wetlands on adjacent property

(a) The outside boundary of a transition area is determined solely by reference to the freshwater wetlands boundary and is not affected by property lines. Therefore, a property within 150 feet of a freshwater wetlands may contain a transition area that arises from a freshwater wetlands on another property. Every property containing a transition area is subject to this chapter, even if the freshwater wetland that causes the transition area is located on another property.

(b) To determine whether a site has transition areas on it caused by wetlands on another property:

1. Determine whether there are any wetlands on any property within 150 feet of the site's property line. If not, there are no transition areas on the site due to wetlands on nearby properties;

2. If there are freshwater wetlands on another property within 150 feet of the site's property line, determine the resource value classification of the wetlands on the nearby property. For a Department-issued resource value classification of the wetlands, obtain an LOI under N.J.A.C. 7:7A-3;

3. If all of the freshwater wetlands on nearby properties within 150 feet of the site's property line are ordinary resource value wetlands, there is no transition area on the site arising from wetlands on other properties;

4. If any of the freshwater wetlands on nearby properties within 150 feet of the site's property line cannot be classified as ordinary resource value wetlands, determine the transition area on the site as follows:

    i. If any wetlands on nearby properties are intermediate resource value wetlands, and are within 50 feet of the site's property line, there is at least some transition area on the site arising from these wetlands. In order to determine the size and shape of the transition area, obtain a delineation of the wetlands on the nearby properties and determine the transition area for each under N.J.A.C. 7:7A-2.5(e); and

    ii. If any wetlands on nearby properties are exceptional resource value wetlands, and are within 150 feet of the site's property line, there is at least some transition area on the site arising from these wetlands. In order to determine the size and shape of the transition area, obtain a delineation of the wetlands on the nearby properties and determine the transition area for each under N.J.A.C. 7:7A-2.5(d); and

5. To avoid obtaining an LOI and/or delineating wetlands under (b)3 and 4 above, a person can ensure compliance with transition area requirements arising from wetlands on other properties by assuming that there are exceptional resource value wetlands on all adjacent properties and refraining from any regulated activities within 150 feet of the site's property line.

(c) It may be necessary to obtain written permission from adjacent property owners to investigate their land within 150 feet of the site's boundary.

N.J.A.C. 7:7A-2.8 Activities exempted from permit and/or waiver requirement

(a) This section sets forth certain activities that are exempt from certain permit requirements in this chapter. However, even if an activity is exempt under this chapter, it may still require a permit from the Army Corps of Engineers under the Federal wetlands program, and/or a water quality certificate issued by the Department. Any activity conducted under an exemption that does not meet all standards, conditions, or limitations of the exemption shall constitute a violation of this chapter, and shall be subject to enforcement action in accordance with N.J.A.C. 7:7A-16.

(b) The farming, ranching, and silviculture exemptions in (c) and (d) below are subject to the following limits:

1. The exemptions shall not apply to any discharge of dredged or fill material into freshwater wetlands or State open water incidental to any activity which involves bringing an area of freshwater wetlands or State open waters into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the extent or values and functions of freshwater wetlands or State open waters is reduced;

2. The exemptions apply only as long as the area is used for the exempted activity. Therefore, if the area stops being used for farming, ranching, or silviculture, the exemption no longer applies;

3. The exemptions apply only to the portion of the property which meets all requirements for the exemption. For example, if half of a 20 acre property has been actively farmed since June 30, 1988 and half has not, the half that has been actively farmed would be considered to be part of an established, ongoing farming operation and would therefore be eligible for the farming exemption. The remainder would not be eligible for the farming exemption;

4. The normal harvesting of forest products, including the clear cutting of a non-cultivated, wooded wetland area, must be part of a forest management plan that addresses wetlands, and that is reviewed and approved by the State Forester before the activities are undertaken. A woodland management plan prepared for tax purposes but that does not address wetlands is insufficient to qualify for the exemption; and

5. If an area with hydric soils has been drained for farming purposes through the use of drainage structures such as tiles or ditches, the Department shall presume that the area has wetlands hydrology for the purpose of identifying a freshwater wetland under N.J.A.C. 7:7A-2.3. To rebut this presumption of wetlands hydrology, all drainage structures shall be removed or completely disabled and the area shall be left undisturbed for at least one normal rainfall year, after which the presence or absence of wetlands hydrology shall be determined through use of technical criteria, field indicators, and other information, in accordance with the 1989 Federal manual.

(c) Subject to the limitations of this section, the following activities, when part of an established, ongoing farming, ranching or silviculture operation, on properties which have received or are eligible for a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., are exempt from the requirement of a freshwater wetlands or open water fill permit, or transition area waiver:

1. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or soil and water conservation practices. For the purposes of this paragraph, "minor drainage" means:

   i. The discharge of material incidental to connecting upland drainage facilities to adjacent wetlands, adequate to effect the removal of excess soil moisture from upland croplands;

   ii. The discharge of material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where the farming activities and the discharge occur in wetlands and waters which are in established use for such

agricultural and silvicultural wetlands crop production, and the ditching or water control facilities do not alter the bottom elevations of any watercourse;

iii. The discharge of material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Federal Act and which are in established use for the production of rice, cranberries, or other wetland crop species;

iv. The discharge of material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainage ways and, if not properly removed, would result in damage to or loss of existing crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainage way as it existed prior to the formation of the blockage. Removal must be accomplished within one year of formation of such blockages in order to be eligible for exemption under this paragraph; and

v. Minor drainage in wetlands is limited to drainage within areas that are part of an established farming or silvicultural operation. It includes maintenance of existing drainage tile or other drainage structures. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (for example, wetlands species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any new canal, ditch, dike or other waterway or structure. Any discharge of dredged or fill material into the wetlands or State open waters incidental to the construction of any such structure or waterway requires a freshwater wetlands or State open water permit, and will not be considered minor drainage;

2. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches, provided that such facilities are for farming, ranching or silvicultural purposes and do not constitute a change in use. Any dredged material from pond construction or maintenance must be placed outside the freshwater wetlands unless it is needed for the structural or environmental integrity of the pond;

i. A pond constructed in an actively farmed area does not constitute a change in use. A field in which no crops or pasturing has occurred for 5 years or more is considered abandoned and is not considered an actively farmed area. Forest land is not considered an actively farmed area; however, an area that has been undergoing normal harvesting of forest products is considered an actively farmed area if it is part of a forest management plan in accordance with (d) below;

ii. To qualify for this exemption, a farm pond shall be:

(1) Part of a farm conservation plan developed in conjunction with the Natural Resources Conservation Service and approved by the Soil Conservation District, as appropriate;

(2) Located outside a watercourse;

(3) Created by excavation and not by creating an embankment within a watercourse;

(4) Not associated with development as that term is defined in the Municipal Land Use Law, N.J.S.A. 40:55D-4;

(5) Intended exclusively for agricultural purposes. The applicant shall submit a description of the purpose of the pond with any application for an exemption letter under N.J.A.C. 7:7A-2.10; and

(6) Sized appropriately for the intended use under (4) above.

3. Construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands and State open waters are not impaired and that any adverse effect on the aquatic environment will be minimized. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. Roads constructed for forestry and silviculture purposes shall be constructed using temporary mats whenever practicable. Once the land use changes from forestry or farming to another use, that is, once the property no longer qualifies for a farmland assessment, all roads employing the placement of fill shall be removed within 30 days;

i. Construction of a farm road shall be undertaken only in accordance with the following:

(1) The road shall be part of a farm conservation plan developed in conjunction with the Natural Resources Conservation Service and approved by the Soil Conservation District, as appropriate;

(2) The location of the road shall be selected to minimize disturbance to wetlands, transition areas and watercourses. If there is an alternative location for a farm road that will have less impact to wetlands, transition areas, and watercourses, the alternative location shall be used;

(3) The road shall be necessary to support or provide access for a farming activity. A road that supports or provides access to proposed development is not a farm road and requires a permit in accordance with this chapter;

(4) The farm road shall not exceed 14 feet in width unless it must be wider to accommodate a large piece of equipment such as a combine. In the latter case, the road shall be no wider than 20 feet;

(5) The farm road shall be built at grade. If not built at grade, the applicant shall demonstrate to the Department why fill material is necessary for the farming operation with any application for an exemption letter under N.J.A.C. 7:7A-2.10; and

(6) In accordance with (5) above, if fill material is necessary, it shall be no more than six inches deep and shall be limited to 0.25 acres of wetland disturbance. In addition, pipes shall be installed to maintain wetland hydrology;

ii. "Maintenance of a farm road" means:

(1) The existing road remains the same width before and after maintenance activities;

(2) The placement of all fill is entirely within the existing footprint of the existing road; and

(3) A culvert shall be used only to replace an existing culvert. If it is necessary to install a culvert for the first time, the Department will consider the project to be construction of a new road subject to the limitations in i. above.

(d) Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester before the conduct of the forest management activities is exempt from the requirement of a freshwater wetlands permit, transition area waiver, or open water fill permit, subject to the limitations of this section. A woodland management plan prepared for tax purposes but that does not address wetlands is insufficient to qualify for the exemption. However, the removal of stumps results in a discharge of dredged or fill material, and a change in use and an impairment of flow or circulation. Therefore, under (b)1 above, the removal of stumps is not exempt and shall require a permit under this chapter.

(e) Until March 2, 1994, when the Department assumed responsibility for the Federal 404 program, the Department issued certain exemptions based on prior local approvals. However, as of March 2, 1994, these exemptions are void as they apply to freshwater wetlands permit and open water fill requirements. The exemptions continue to apply to transition area requirements, and are described at (f) below.

(f) Subject to the limitations of this section including (g) below, the following projects, as defined at N.J.A.C. 7:7A-1.4, are exempt from transition area requirements, but are subject to freshwater wetlands and State open water requirements:

1. A project for which a preliminary site plan or subdivision application received formal preliminary approvals from local authorities pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., prior to July 1, 1989, provided those approvals remain valid

under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law; and

2. A project for which a preliminary site plan or subdivision application, as defined in N.J.S.A. 40:55D-1 et seq., was submitted to the local authorities prior to June 8, 1987 and was subsequently approved. To qualify for an exemption under this paragraph, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute, and thus must have been in fact complete prior to June 8, 1987.

(g) The following limits apply to the transition area exemptions at (f) above:

1. To be eligible for a transition area exemption under (f) above, a project must have preliminary site plan or subdivision approval. The exemptions do not apply to an application for, or grant of, any other approval under the Municipal Land Use Law, such as a sketch plat approval, general development plan, classification determination, building permit, variance, or conditional use approval;

2. A project listed in (f) above shall no longer be exempt from transition area requirements if significant changes are made to the approved site or subdivision plan. A significant change will be deemed to have been made if either of the following criteria is met:

   i. The change would void the preliminary approval; or

   ii. The change would require submittal to or approval of a new or amended application from the local authorities and either of the following criteria is met:

      (1) The change would result in a change in land use on the project site, for example, from single family houses to multi-family units or a golf course; or

      (2) The change would increase impacts to freshwater wetlands, State open waters, or transition areas;

3. A project listed in (f) above shall no longer be exempt if the municipal approval upon which the exemption was based becomes invalid for any reason; and

4. For all development determined to be exempt by the Department, once the development is constructed, the exempted "project" has been built. If, for example, the owner of a commercial building decides afterward that it is necessary to construct an addition, and goes back to the municipal authority for a new or amended site plan or subdivision approval, the exemption has been "used up" and the addition is subject to the permitting requirements of this chapter. Similarly, for residential approvals, once the houses and any accessory structures planned along with the house (for example, detached garages, barns, storage sheds, pools) are constructed, or the certificate of occupancy is issued, the exemption has been exhausted and any later additions or structural improvements are subject to the permitting requirements of this chapter. If there is an interruption of more

than one year before construction of an accessory structure claimed to have been planned along with the house, there is a rebuttable presumption that the structure constitutes a later addition and will require a permit.

(h) If any discharge of dredged or fill material resulting from the activities exempted by this section contains any toxic pollutant listed under section 307 of the Federal Act, such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a freshwater wetlands or open water fill permit.

(i) A project covered by an individual permit issued by the U.S. Army Corps of Engineers prior to July 1, 1988 shall be governed only by the Federal Act, and shall not be subject to additional or inconsistent substantive requirements of this chapter. However, when the ACOE permit expires, any application for an extension shall be made to the Department under N.J.A.C. 7:7A-14.6. The Department shall not require a transition area as a condition of any extension of an ACOE permit issued prior to July 1, 1988.

7:7A-2.9 Geographic areas exempted from permit and/or waiver requirement

(a) Regulated activities in areas under the jurisdiction of the Hackensack Meadowlands Development Commission under N.J.S.A. 13:17-1 et seq. do not require a permit under this chapter, but may require other State and/or Federal wetlands approvals, such as a Federal 404 permit from the ACOE, and/or a Water Quality Certificate issued by the Department, and/or a Federal Consistency Determination issued under the Federal Coastal Zone Management Act, 16 U.S.C. ?? 1451 et seq.

(b) The discharge of dredged or fill material in a freshwater wetlands or State open water under the jurisdiction of the Pinelands Commission is subject to freshwater wetlands and open water fill permit requirements under this chapter. However, regulated activities in areas under the jurisdiction of the Pinelands Commission, other than the discharge of dredged or fill material, are not subject to this chapter. Transition areas are not regulated under this chapter in areas under the jurisdiction of the Pinelands Commission. However, the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction, which include transition area regulations. For information on freshwater wetlands and transition areas in the Pinelands under this chapter and under the Pinelands Comprehensive Management Plan (CMP), contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(c) An application for the discharge of dredged or fill material in areas under the jurisdiction of the Pinelands Commission shall be reviewed as follows:

1. If the discharge is subject to the Pinelands CMP and is eligible for a general permit under this chapter, the Pinelands Commission shall review the discharge under the CMP and shall also review the application for a freshwater wetlands general permit using the standards in this chapter;

2. If the discharge is subject to the Pinelands CMP and requires an individual permit under this chapter, the Pinelands Commission shall review the discharge under the CMP and the Department shall review the application for an individual freshwater wetlands permit using the standards in this chapter; and

3. If the discharge is not subject to the Pinelands CMP but requires an individual or general permit under this chapter, the Department shall review the application for an individual or general freshwater wetlands permit using the standards in this chapter.

(d) Regulated activities in tidally influenced wetlands which are defined as coastal wetlands pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. are not subject to this chapter, but may require other State and/or Federal approvals.

N.J.A.C. 7:7A-2.10 Exemption letters

(a) A person with a project or activity which qualifies for an exemption under this subchapter may obtain a letter from the Department certifying that an activity is exempt. The letter will be

based on the information required by this section, and will be void if the information submitted is not complete and accurate, if the approval upon which it was based becomes invalid for any reason, or if the project or activity is not carried out as represented in the submittal(s) to the Department. This exemption will remain valid for the duration of the approval upon which it was based.

(b) To apply for an exemption letter for a farming, silviculture or ranching exemption under N.J.A.C. 7:7A-2.8(c), an applicant shall submit the following:

1. Certification of farmland assessment eligibility under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq. The Department will accept a copy of the applicant's tax bill showing farmland assessment to document this requirement;

2. A site plan or other drawing, and description of all activities for which the exemption is requested, including the location, total area of the existing and proposed activities, the types of farming, silviculture, or ranching, best management practices currently employed or to be employed, the site conditions in the area in which the activity would take place, the size, location, and use of all proposed dwellings or structures, and the length of time the operation has been ongoing;

3. A copy of the farm conservation plan, as developed in conjunction with the Natural Resource Conservation Service and approved by the Soil Conservation District, as appropriate; and

4. The fee specified in N.J.A.C. 7:7A-11.

(c) To apply for an exemption letter for a forest products harvesting exemption pursuant to N.J.A.C. 7:7A-2.8(d), an applicant shall submit the following:

1. A copy of a forest management plan approved by the State Forester which includes the size of the site, the length of time required to complete the project, and a detailed description of the activities to take place in wetlands, transition areas, and/or State open waters, including the best management practices to be employed and the location and detailed plans for any proposed forest road(s); and

2. The fee specified in N.J.A.C. 7:7A-11.

(d) To apply for an exemption letter for a transition area exemption pursuant to N.J.A.C. 7:7A-2.8(f), an applicant shall submit the following:

1. A folded copy of the preliminary local approval of the site plan or subdivision, including a copy of the site plan or subdivision itself and a copy of the resolution approving the site plan or subdivision;

2. A letter from a municipal official with knowledge of and authority over the approval, including the following:

    i. A statement that the site plan or subdivision approval is still within the period of protection from zoning changes provided for in the Municipal Land Use Law; or if the period of protection has expired, that there have been no changes to the municipal land use ordinances since the approval that would prohibit construction of the project; and

    ii. A statement that the municipal approval that forms the basis for the exemption is still valid; and

3. The fee specified in N.J.A.C. 7:7A-11.

N.J.A.C. 7:7A-2.11 Stormwater management

If a project requires and individual permit under these rules and the project in its entirety (that means the whole project, not just the portions within wetlands or transition areas) meets the definition of "major development" at N.J.A.C. 7:8-1.2, then the project shall comply in its entirety with the Stormwater Management rules at N.J.A.C. 7:8. If an activity requires a general permit under these rules and the regulated activity meets the definition of "major development" at N.J.A.C. 7:8-1.2, then the project of which the regulated activity is a part shall comply in its entirety with the Stormwater Management rules at N.J.A.C. 7:8. In accordance with N.J.A.C. 7:7A-1.6(b), the Pinelands Commission may require equal or more stringent stormwater management regulation of activities in and around freshwater wetland areas within its jurisdiction.

N.J.A.C. 7:7A-2.12 Conservation restrictions or easements

(a) With the exception of a waiver for access, as described at N.J.A.C. 7:7A-6.1(a)6, and for redevelopment waivers when practicable, in accordance with N.J.A.C. 7:7A-6.3(f)4, any transition area modified through a transition area waiver and its adjacent wetlands, and mitigation areas whether on or offsite, shall be permanently protected from any future development through the grant of a conservation restriction or easement as defined at N.J.A.C. 7:7A-1.4 in favor of the Department. A "modified" transition area is the entire transition area on a site after a transition area waiver is obtained. Wetland areas remaining on a site after the Department approves a wetland permit may be restricted in those cases where the Department determines that the restriction is necessary to protect the remaining wetland;

(b) The Department shall provide the applicant with the form of the conservation restriction or easement. The applicant shall not alter the form except in consultation with the Department and only when the Department agrees that an alteration is necessary to address site-specific conditions. The Department's forms are posted at www.state.nj.us/dep/landuse.

(c) The conservation restriction or easement shall require that the designated area be permanently preserved in its natural state, and shall prohibit all regulated activities as described at N.J.A.C. 7:7A-2.3 and 2.6, and any other activities that inhibit the natural succession of vegetation unless specifically authorized. In addition, the conservation restriction or easement shall include the following:

1. A requirement that each owner of the land notify the county and/or municipality of the conservation restriction or easement whenever submitting any application for a local approval involving the land;

2. A requirement that each owner of the land insert notice of the conservation restriction or easement into any deed or other legal instrument by which the owner divests either the fee simple title or possessory interest in the land; and

3. In those cases deemed appropriate by the State Historic Preservation Office in order to ensure that a proposed project will not affect a property that is listed or eligible for listing on the New Jersey or National Register of Historic Places, a historic preservation restriction or easement, with all the attendant rights, restrictions, prohibitions and limitations associated therewith.

(d) Unless the approved permit, waiver, or conservation restriction or easement states otherwise, former agricultural lands that are the subject of a conservation restriction or easement shall be allowed to revert to their natural state and shall not be subject to mowing or other practices that prevent or inhibit the natural succession of vegetation.

(e) The conservation restriction or easement shall run with the land and shall be binding upon the landowner, and all successors in interest in the land or any part of the land on which the restricted area is located. To ensure that notice of the restriction is provided to all present and future interested parties, applicants for mitigation banks and land donations shall follow the requirements at N.J.A.C. 7:7A-15.14. All other applicants for permits shall:

1. Provide a copy of the conservation restriction or easement to the Department within 60 days of receipt of an approved permit;

2. Record the conservation restriction or easement at the county clerk's office prior to transfer of the property, in accordance with N.J.A.C. 7:7A-14.3, or before the commencement of site preparation or regulated activities, as reported in accordance with N.J.A.C. 7:7A-13.1(a)14, whichever comes first; and

3. Ensure that a copy of the recorded conservation restriction or easement is provided to the Department and the municipal clerk with a request that it be placed in the property file for the land containing the restricted area.

(f) With the exception of upland preservation or a land donation in accordance with N.J.A.C. 7:7A-15.2(j), areas subject to the conservation restriction or easement shall be shown on a site plan, which also depicts the approved project with all approved wetland and transition area

impacts, and other relevant site conditions such as encumbrances or areas of known contamination.

(g) A conservation restriction or easement shall include the deed book and page number of the recorded deed that shows that the applicant owns the subject property in fee simple, and a survey prepared in accordance with the requirements at N.J.A.C. 7:7A-10.1(q) including the metes and bounds of the entire restricted area and any approved access.

(h) Upon proper recording of a conservation restriction or easement in accordance with (e)2 above, the restriction shall not be released except in accordance with the provisions of the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A.13:8B-1 et seq.

(i) The Department shall allow de minimis modifications of the restricted area boundary established in a conservation restriction or easement associated with a transition area waiver or wetland permit in accordance with the following:

1. The applicant for the modification shall submit to the Department a written request that includes a request for a modification of the approved transition area waiver or wetlands permit in accordance with N.J.A.C. 7:7A-10.8, together with the reason for the requested conservation restriction or easement modification;

2. The conservation restriction or easement shall have been properly recorded;

3. The proposed modification, at a minimum, will result in an increased level of protection for the regulated resource, or will result in an equivalent area of resource protection that does not compromise in any way the original protected resource; and

4. The proposed modification is consistent with all current applicable Federal, State and local regulations.

(j) The Department shall not allow any de minimis modification of the boundary established in a conservation restriction or easement unless the conservation restriction or easement contains language that expressly reserves the right of the permittee to undertake de minimis modifications of the restricted area. If the restriction does not expressly reserve this right, then (h) above applies.

(k) The Department shall not allow any modification of the boundary established in a conservation restriction or easement associated with a mitigation site.

(l) If the Department approves the applicant's written request to modify the boundary established in a conservation restriction or easement, the applicant shall, within 30 days of such approval, amend the conservation restriction or easement by preparing and submitting to the Department for review and approval a revised site plan and all requirements as described in (f) and (g) above revised to show the modification.

(m) Upon the Department's written approval of the amended conservation restriction or easement, the applicant shall, within 60 days, re-record the documents in accordance with the requirements in (e) above.

SUBCHAPTER 3 LETTERS OF INTERPRETATION

N.J.A.C. 7:7A-3.1 Basic LOI information

(a) A letter of interpretation (LOI) provides the Department's official determination of one or more of the following:

1. Whether there are any freshwater wetlands, transition areas, and/or State open waters present on a site or portion of a site;

2. Where the boundaries of freshwater wetlands, transition areas and/or State open waters are located on a site; and/or

3. What is the resource value classification, under N.J.A.C. 7:7A-2.4, of freshwater wetlands on a site.

(b) A letter of interpretation does not grant approval to conduct any regulated activities. The sole function of a letter of interpretation is to provide or confirm information about the presence or absence, boundaries, and/or resource value classification of freshwater wetlands, transition areas, and/or State open waters.

1. For planning approvals, for demonstrating compliance with ordinances, or for other purposes, a municipality or county may require an applicant to obtain an LOI as a condition of application completeness or as a condition of approval.

(c) The Department issues the following three types of LOIs:

1. A presence/absence LOI, in which the Department determines whether any freshwater wetlands, transition areas, and/or State open waters exist on a site or on a portion of a site (also called a footprint of disturbance LOI). See N.J.A.C. 7:7A-3.2 for further details regarding presence/absence LOIs;

2. A line delineation LOI, in which the Department delineates the boundary lines of freshwater wetlands, transition areas, and/or State open waters for an applicant. See N.J.A.C. 7:7A-3.3 for further details regarding line delineation LOIs; and

3. A line verification LOI, in which the Department confirms or modifies a delineation proposed by the applicant. See N.J.A.C. 7:7A-3.4 for further details regarding line verification LOIs.

(d) If an area with hydric soils has been drained for farming purposes through the use of drainage structures or features such as tiles or ditches, the Department shall presume that the area has wetlands hydrology for the purpose of identifying a freshwater wetland under N.J.A.C. 7:7A-2.3. To rebut this presumption of wetlands hydrology, all drainage structures shall be removed or completely disabled and the area shall be left undisturbed for at least one normal rainfall year, after which the presence or absence of wetlands hydrology shall be determined through use of technical criteria, field indicators, and other information, in accordance with the 1989 Federal manual.

(e) Each LOI that indicates the presence of freshwater wetlands will state the resource value classification of the wetlands under N.J.A.C. 7:7A-2.4 and will specify the width of the transition area. However, in some cases, seasonal conditions make it difficult to determine the resource value classification of a wetland. For example, if there has been a past sighting of a bog turtle (an endangered species) in the area, and an LOI application is submitted in December when the early successional habitat needed by bog turtles may be impossible to identify under snow cover, Department staff cannot determine if the habitat remains suitable for bog turtles until the snow melts. In such a case, the Department will notify the applicant that seasonal conditions do not permit an accurate assessment of resource value, shall provide an explanation of the seasonal conditions involved, and shall give the applicant the option to accept an exceptional resource value classification, or to wait for the LOI until the Department can determine the resource value of the wetland.

(f) The Department shall issue an LOI within the applicable time period below. Average time periods from the Department's receipt of an application to a final decision on the application are set forth for all approvals at N.J.A.C. 7:7A-10.1(k):

1. If the Department does not request additional information regarding an LOI application under N.J.A.C. 7:7A-12.1(c)4, within 30 days after receiving the application;

2. If the Department requests additional information regarding an LOI application under N.J.A.C. 7:7A-12.1(c)4, within 45 days after receipt of information sufficient to declare the application complete;

3. If the applicant chooses to wait for a determination of resource value classification under (e) above, as soon as the Department determines that the resource classification of the wetlands can be definitively determined; and

4. If the Department conducts a site inspection, the time set forth in this subsection for issuance of the letter of interpretation shall be extended by 45 days.

(g) The Department will issue an LOI for a portion of a site, also called a footprint of disturbance, under N.J.A.C. 7:7A-3.2(c)2 or N.J.A.C. 7:7A-3.4(b)2. Special application requirements will apply to such an LOI, in order to ensure that the portion of the site is clearly marked on the plan and on the ground. These requirements are described at N.J.A.C. 7:7A-10.3(b) and (d)4.

(h) The Department shall not issue an LOI if the Department determines that the information submitted in the application for the LOI is inaccurate. In such a case, the applicant may provide corrected information upon the Department's request, or may apply directly for a permit without obtaining an LOI. If the applicant applies for the permit without first obtaining an LOI, the permit application must include all information that would be necessary for the Department to issue an LOI for the site, in accordance with N.J.A.C. 7:7A-10.4(a)2, 10.5(a)1, or 10.6(a)2, as applicable. The Department will then review the submitted wetland delineation as part of the permit review process.

(i) In order to ensure that a delineated wetlands boundary can be located in the future after the LOI is issued, an LOI applicant shall provide the Department with a survey of the approved delineated wetlands and/or State open waters boundary line. The survey may be submitted as part of the LOI application, or if the applicant prefers, the survey may be submitted after the Department inspects the site and approves the delineation as marked on the site with flags or other markers. If the Department requires adjustments to the delineated wetlands and/or State open waters boundary after the survey is submitted, the applicant shall resurvey the delineated boundary after the adjustments are made and the Department has approved the boundary. The issued LOI will reference the approved and surveyed boundary line. The Department shall waive the survey requirement if the applicant demonstrates that the extent of wetlands and/or State open waters on the site can be easily determined in the future without a survey, so that the expense of a survey is not warranted. For example, the Department may waive the survey requirement if an entire site is covered completely with freshwater wetlands and/or State open waters.

(j) If an LOI covers only a portion of a site in accordance with N.J.A.C. 7:7A-3.2(c)2 or 3.4(b)2, the applicant shall provide, in addition to the survey required at (i) above, a survey of the boundaries of the portion of the site that are covered by the LOI.

(k) If a site is located in an area under the jurisdiction of the Pinelands Commission, the Department shall not issue a letter of interpretation. The lead agency in this area for determining the presence, absence, or extent of freshwater wetlands is the Pinelands Commission. However, in cases of disagreement, the Department and the Pinelands Commission retain authority to independently or jointly establish these boundaries.

7:7A-3.2 Presence/absence LOI

(a) A presence/absence LOI identifies whether any freshwater wetlands, State open waters or transition areas exist on a site, or on a portion of a site (footprint of disturbance). A presence/absence LOI also provides the resource value classification for any wetlands on the site.

(b) A presence/absence LOI does not identify the boundaries or location of any freshwater wetlands, transition areas, and/or State open waters found within a site or portion thereof. To obtain an LOI indicating the location or the boundaries of freshwater wetlands, transition areas, and/or State open waters, an applicant must apply for a line delineation LOI under N.J.A.C. 7:7A-3.3, or a line verification LOI under N.J.A.C. 7:7A-3.4.

(c) The Department shall issue a presence/absence LOI for either of the following:

1. An entire site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size; or

2. A portion of a site, also known as a footprint of disturbance, provided the portion is no larger than one acre.

(d) The Department shall issue a presence/absence LOI for more than one portion of a site, provided that:

1. Each portion is no larger than one acre;

2. The applicant submits a separate fee for each portion; and

3. No more than three presence/absence LOIs shall be issued for a single site under this subsection.

7:7A-3.3 Line delineation LOI

(a) A line delineation LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site or a municipal tax lot that is one acre or smaller, and identifies the resource value classification of any freshwater wetlands on the site. For a line delineation LOI, the applicant need not submit a delineation. Rather, the Department will inspect the site and delineate the boundary lines of any freshwater wetlands, transition areas, and/or State open waters.

(b) The Department shall issue a line delineation LOI for a site, as defined at N.J.A.C. 7:7A-1.4, or for a municipal tax lot, that is one acre or smaller. The Department shall not issue a line delineation LOI for a site larger than one acre. The Department shall not issue a line delineation LOI for a portion of a site, unless the portion is a municipal tax lot.

7:7A-3.4 Line verification LOI

(a) A line verification LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site, and the resource value classification of any freshwater wetlands on the site. For a line verification LOI, the applicant must submit a proposed delineation of wetlands, transition areas, and/or State open waters, which the Department will confirm or modify.

(b) The Department shall issue a line verification LOI for the following:

1. A site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size;

2. A municipal tax lot no larger than the site; or

3. A portion of a site, if all of the following criteria are met:

    i. The site is publicly owned;

    ii. The site is larger than 10 acres;

    iii. The portion is no larger than 10 percent of the overall site; and

    iv. The portion is clearly marked on the plan and on the ground.

N.J.A.C. 7:7A-3.5 Application for a letter of interpretation

(a) An applicant for a letter of interpretation shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application contents and procedures. However, if a site is located in an area under the jurisdiction of the Pinelands Commission, the applicant shall instead apply to the Pinelands Commission for a determination regarding the presence, absence, and/or extent of wetlands on the site; and the transition area for any wetlands on site.

(b) The Department shall review an application for a letter of interpretation using the procedures at N.J.A.C. 7:7A-12, Department review of an application.

(c) The Department, in reviewing an application for an LOI, shall consider comments filed by municipal and county governments and interested citizens. Comments should be submitted to the Department in writing within 15 days after the commenter receives notice of the LOI application, to ensure adequate time for the Department to fully consider them. However, comments will be accepted until the Department makes a decision on the application.

N.J.A.C. 7:7A-3.6 Effect, duration, and extension of a letter of interpretation

(a) A person who is issued a letter of interpretation pursuant to this subchapter shall be entitled to rely on the determination of the Department, concerning the presence or absence, or the extent of freshwater wetlands and/or State open waters, for a period of five years from its issuance, unless the letter of interpretation is determined to have been based on inaccurate or incomplete information, in which case the Department may void the original letter of interpretation and issue a new letter of interpretation reflecting the actual conditions on the site. For example, the LOI may be revised to reflect additional wetland areas identified after LOI issuance; or if a threatened or endangered species habitat is disclosed or discovered after the LOI was issued, the Department may correct the resource value classification.

(b) The term of a letter of interpretation may be extended, provided that the information upon which the original letter was based remains valid, but shall not exceed five years from the original expiration date.

(c) Requests for extensions shall be made in writing to the Department before the letter of interpretation has expired but no more than one year before the expiration date and shall be

subject to the application requirements at N.J.A.C. 7:7A-10. Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation.

SUBCHAPTER 4 GENERAL PROVISIONS FOR GENERAL PERMITS

N.J.A.C. 7:7A-4.1 Department issuance of general permits

(a) This section details how the Department will adopt General permits except for general permits numbers 6 and 7. To adopt a general permit, the Department will publish a draft general permit as a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In addition, the Department will send a copy of the draft general permit to USEPA, and will follow the procedures for EPA comment found at N.J.A.C. 7:7A-12.2.

(b) The Department may adopt a general permit only if all of the following conditions are met:

1. After conducting an environmental analysis, the Department determines that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters;

2. The Department determines that the activity will conform to the purposes of the Freshwater Wetlands Protection Act, and will not violate the Federal Act; and

3. The Department provides public notice and opportunity for a public hearing.

(c) In addition to the conditions required by this subchapter, each general permit shall contain limitations as necessary to comply with Federal regulations governing the Department's assumption of the Federal 404 program at 40 CFR §233.21(c) as follows:

1. A description of the activities which are authorized, including limits for any single project. At a minimum, these limits shall include:

   i. The maximum quantity of material that may be discharged;

   ii. The type(s) of material that may be discharged;

   iii. The depth of fill permitted;

   iv. The maximum extent to which an area may be modified; and

   v. The size and type of structure that may be constructed; and

2. A precise description of the geographic area to which the general permit applies, including, when appropriate, limits on the type(s) of water(s) or wetlands where activities may be conducted.

(d) The Department may modify an adopted general permit as it applies to a particular project by adding special conditions which must be met in order to qualify for authorization under the general permit.

(e) The Department may repeal an adopted general permit and thereafter require individual permits for activities previously covered by the general permit, if it finds that the general permit no longer meets the standards of the Freshwater Wetlands Protection Act and this chapter.

(f) The Department shall review each general permit at least every five years. This review shall include public notice and opportunity for public hearing. Upon this review the Department shall modify, readopt or repeal each general permit.

(g) If a general permit is not modified or readopted in accordance with (f) above within five years of publication of its adoption in the New Jersey Register, it shall automatically expire.

N.J.A.C. 7:7A-4.2 Using a general permit to authorize specific activities

(a) To use a general permit to authorize regulated activities, an applicant shall submit an application for a general permit authorization, using the application procedures for all permits and waivers set forth at N.J.A.C. 7:7A-10, except in an area under the jurisdiction of the Pinelands Commission. In such an area, the application shall be submitted to the Pinelands Commission rather than to the Department, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(b) Each general permit specifies whether it covers activities in freshwater wetlands, transition areas, State open waters, or a combination thereof. An authorization issued under a general permit that covers activities in freshwater wetlands satisfies the requirement for a freshwater wetlands permit. An authorization issued under a general permit that covers activities in State open waters satisfies the requirement for an open water fill permit. An authorization issued under a general permit that covers activities in a transition area satisfies the requirement for a transition area waiver.

(c) Each general permit authorization shall include a limited transition area waiver to allow access to the authorized activity, in accordance with N.J.A.C. 7:7A-6.1(a)6. No fee or application is required for this waiver and the disturbance authorized under this waiver is not counted in calculating the amount of disturbance under the general permit. An access transition area waiver allows regulated activities only:

1. In that portion of the transition area bordering on that portion of the freshwater wetland in which the activity authorized by the general permit will take place; and

2. For an activity that the Department determines is necessary to accomplish construction, and for future use, of the activity authorized in the wetlands under the general permit. An activity not directly required in order to obtain access to the activity authorized in the wetlands under the general permit shall require a separate transition area waiver;

   i. If the activity authorized under the general permit eliminates the wetland in its entirety, the transition area associated with that wetland may also be eliminated in its entirety without a separate transition area waiver, except in the case where there is a second wetland with a transition area overlapping the first. In the latter case, a separate transition area waiver is required;

   ii. If the activity authorized under the general permit partially eliminates the wetland, the access shall be limited to the transition area adjacent to the location of the approved wetland filling. Any additional impacts to the transition area shall require a separate transition area waiver; and

   iii. Upon conclusion of the activity authorized in the wetland under the general permit, the Department shall re-establish the wetland transition area adjacent to the new wetland boundary. Any part of the transition area that was temporarily disturbed for access only shall be allowed to revert to preconstruction condition or shall be restored if necessary to reestablish pre-construction conditions.

(d) Usually, a general permit is the only wetlands approval required for activities in freshwater wetlands in New Jersey. However, if an activity is located in non-delegable waters, as defined at N.J.A.C. 7:7A-1.4, both a general permit authorization from the Department and a Federal 404 program approval from the ACOE may be required. In addition, if an activity is located in wetlands or transition areas in an area under the jurisdiction of the Pinelands Commission, approval may be required from the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(e) The Department shall deny an application for a general permit authorization and require an application for an individual permit if the Department finds that:

1. Additional permit conditions added under N.J.A.C. 7:7A-13.2 would not be sufficient to ensure compliance with this chapter and other applicable laws; or

2. Special circumstances make an individual permit necessary to ensure compliance with the Freshwater Wetlands Protection Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act.

(f) The limits on disturbance in each general permit apply to the entire site upon which activities authorized under the general permit occur. An applicant shall not segment a project or its impacts by applying for general permit authorization for one portion of the project and applying for an

individual permit for another portion of the project. Similarly, an applicant shall not segment a project or its impacts by separately applying for general permit authorizations for different portions of the same project.

(g) Unless otherwise specified, the limits on disturbance under a general permit apply to total disturbance, including both temporary and permanent disturbance.

(h) If a regulated activity is not covered by any general permit or combination of general permits, an individual freshwater wetlands or open water fill permit must be obtained under N.J.A.C. 7:7A-7 in order to authorize the activity under this chapter. If a regulated activity in a transition area is not covered by any general permit or combination of general permits, a transition area waiver must be obtained under N.J.A.C. 7:7A-6 in order to authorize the activity under this chapter.

N.J.A.C. 7:7A-4.3 Conditions that apply to all general permit authorizations

(a) A person acting under the authority of a general permit shall comply with:

1. The conditions listed under the general permit itself;

2. The standard conditions for all general permits set forth at (b) below;

3. The conditions for all permits at N.J.A.C. 7:7A-13;

4. The limits on the use of multiple general permits in N.J.A.C. 7:7A- 4.4; and

5. If required under a particular general permit, mitigation pursuant to N.J.A.C. 7:7A- 15.

(b) The following conditions apply to all activities conducted under the authority of a general permit:

1. Activities performed under a general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit for the purpose of eliminating a natural resource in order to avoid regulation. For the purposes of this subsection, project shall mean the use and configuration of all buildings, pavements, roadways, storage areas and structures, and all associated activities. In accordance with N.J.A.C. 7:7A-16., the Pinelands Commission may require more stringent regulation of activities in and around freshwater wetland areas in its jurisdiction;

2. The regulated activity shall not occur in the proximity of a public water supply intake;

3. The activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species;

4. The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; except that the activity may occur in these waters if approved by the National Park Service in accordance with 40 CFR (233).

5. The activity shall not adversely affect properties which are listed or are eligible for listing on the New Jersey or National Register of Historic Places unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact the property's ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of listing or eligibility. The Department shall not issue a conditional permit if it finds that the mitigation proposed is inadequate to compensate for the adverse affect. Any permit for an activity which may adversely affect a property listed or eligible for listing on the New Jersey or National Register of Historic Places shall contain conditions to ensure that any impact to the property is minimized to the maximum extent practicable and any unavoidable impact is mitigated.

   i. If the permittee, before or during the work authorized, encounters a possible historic property, as described at N.J.A.C. 7:7A-12.2(l) that is or may be eligible for listing in the New Jersey or National Register, the permittee shall preserve the resource, immediately notify the Department and proceed as directed;

   ii. The Department shall not issue a general permit authorization if the applicant, its consultants, engineers, surveyors and/or agents significantly adversely affect a historic property to which the general permit authorization applies, unless the Department determines that circumstances justify issuing the general permit authorization;

6. Any discharge of dredged or fill material shall consist of clean, suitable material free from toxic pollutants (see 40 CFR 401) in toxic amounts, and shall comply with all applicable Department rules and specifications regarding use of dredged or fill material;

7. Any structure or fill authorized shall be maintained as specified in the construction plans;

8. During construction activities, all excavation must be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures;

9. The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13;

10. If activities under the general permit meet the definition of "major development" at N.J.A.C. 7:8-1.2, then the project of which the activities area a part shall comply in its entirety with the Stormwater Management Rules at N.J.A.C. 7:8.

11. If activities under the general permit involve excavation or dredging, the applicant shall use an acceptable disposal site for the excavated or dredged material. No material shall be deposited or dewatered in freshwater wetlands, transition areas, State open waters or other environmentally sensitive areas. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated. If any dredged material is contaminated with toxic substances, the dredged material shall be removed and disposed of in accordance with Department-approved procedures;

12. The amount of rip-rap or other energy dissipating material shall not exceed the minimum necessary to prevent erosion, as calculated under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

13. Best management practices, as defined at N.J.A.C. 7:7A-1.4, shall be followed whenever applicable;

14. If the general permit activities are subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15, the activities shall be consistent with those rules and with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; and

15. The timing requirements at (c) below shall be met; and

16. With the exception of activities associated with general permits 1, 6, 6A and 16 activities authorized under a general permit shall not take place in a vernal habitat, as defined at N.J.A.C. 7:7A-1.4, or in a transition area adjacent to a vernal habitat.

(c) In order to protect the fishery resources and/or the spawning of the fish population, any activity which may introduce sediment into a stream or cause a stream to become turbid shall not be performed during the time periods listed in Table A below:

Table A1[1]
RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

WATER BODY OR WATER BODY CLASSIFICATION	TIME PERIOD (INCLUSIVE) DURING WHICH ACTIVITIES SHALL NOT BE PERFORMED
Brook trout production waters; and all other trout production waters except Rainbow trout production waters	September 15 through March 15
Rainbow trout production waters	February 1 through April 30
Trout-stocked waters; Trout maintenance waters; and An area within one mile upstream of a trout-stocked or a trout maintenance water	March 15 through June 15
All unimpeded tidal waters open to the ocean, including: Coastal bays; Delaware Bay and River up to any impassable barrier; and Water bodies identified as anadromous migratory pathways.	April 1 to June 30
Water bodies that support general game fish Water bodies that support pickerel Water bodies that support walleye	May 1 to June 30 Ice out to April 30 March 1 to May 30
Water bodies used by American Shad for migrations in the Delaware River:	
Mouth of Delaware Bay to Delaware Memorial Bridge and Tidal Maurice River	March 1 through June 30, and October 1 through November 30
Delaware Memorial Bridge to Trenton; and Tidal portions of Rancocas, Raccoon, and Crosswicks Creeks	March 1 through June 30; and September 1 through November 30
Delaware River from Trenton to New York State line:	April 1 through June 30; and September 1 through November 30

[1]**Note that the Delaware River Basin Commission (DRBC) imposes additional timing restrictions on certain activities in waters under DRBC jurisdiction. Contact the U.S. Fish and Wildlife Service's River Basin Coordinator through the DRBC at (609)883-9500 for information on these additional timing restrictions.**

(d) The Department may reduce, extend or otherwise modify the timing requirements listed at (c) above on a case-by-case basis provided:

1. The applicant demonstrates that the impact to the fishery resource will be less if the regulated activities occur during the timing restriction rather than during an unrestricted period;

2. The combined effects of the timing restrictions above would restrict activities to less than 183 calendar days per year. In such a case, the Department may allow regulated activities to occur for up to 183 calendar days if the applicant demonstrates to the Department that proper steps will be taken that will minimize the impact to the fishery resources;

3. The Department determines that regulated activities must occur during periods when local schools are not in session in order to avoid increased risks or excessive delays to school buses or vans; or

4. The Department determines that, due to the nature of the project or an unusual circumstance on site, the timing restriction must be modified or extended in order to prevent a substantial adverse impact to the fishery resource, to the aquatic environment, or to a threatened or endangered species or its habitat.

(e) If an activity will take place in a non-delegable water, as defined at N.J.A.C. 7:7A-1.4, and the activity requires approval from the ACOE under the Federal 404 program, the activities authorized under the general permit shall not begin until the permittee obtains the required Federal 404 program approval.

(f) No activity is authorized under a general permit without a written approval from the Department, except for the following, which are subject to the notice and application requirements set forth in the applicable provisions cited below:

1. Maintenance of an off-stream stormwater management facility, as authorized under general permit 1 at N.J.A.C. 7:7A-5.1(d);

2. Repair of a malfunctioning septic system, as authorized under general permit 25 at N.J.A.C. 7:7A-5.25; and

3. Minor channel or stream cleaning activities, as authorized under general permit 26 at N.J.A.C. 7:7A-5.26.

N.J.A.C. 7:7A-4.4 Use of multiple general permits

(a) If an application contains more than one activity on a single site, the Department may authorize the activities under one or more general permits, provided that:

1. The individual limits of each general permit are complied with. If activities under one general permit are conducted in more than one place on a site, the total disturbance caused by all activities at all locations onsite under that general permit shall be summed in order to determine if the limits in the general permit are met. For example, if an applicant seeks authorization for more than one outfall structure under general permit 11 (N.J.A.C. 7:7A-5.11) on a site, the impacts from all of the structures shall be summed and the total must be no greater than 0.25 acres, which is the acreage limit for that general permit (see N.J.A.C. 7:7A-5.11(c)i). In a second example, if an applicant proposes a minor road crossing under general permit 10B (N.J.A.C. 7:7A-5.10B) and two outfall

structures under general permit 11 on the same site, the minor road crossing cannot exceed 0.25 acres, which is the acreage limit for that general permit (see N.J.A.C. 7:7A-10B(b)2), and the combined impact of the two outfall structures cannot exceed the 0.25-acre limit for general permit 11. Other than the combination of general permits 6 and 6A, the Department shall not authorize the combination of two different general permits, or a general permit and a transition area waiver, for a single activity. For example, if an applicant seeks authorization for a road crossing that will have an impact of 0.60 acres, an individual permit will be required because the Department will not authorize 0.25 acres under general permit 10B to be combined with 0.35 acres under general permit 6, which has a one acre limit (see N.J.A.C. 7:7A-5.6(b)1) for a minor road crossing of 0.60 acres;

2. The total combined area of wetlands, State open waters, and transition areas disturbed or modified on the site under general permits 2, 6, 6A, 7, 8, 10A, 10B, 11, 12, 13, 14, 17, 17A, 18, 19, 21, 22, 24, 25, and 26 does not exceed one acre with the exception of the following:

   i. Disturbance of State open waters as part of a lake dredging project under general permit 13 at N.J.A.C. 7:7A-5.13. However, disturbance of wetlands or transition area in the lake or for access to the dredging project shall be counted toward the one acre limit in this subsection;

   ii. Disturbance of State open waters as part of a channel or stream cleaning project under general permit 26 at N.J.A.C. 7:7A-5.26. However, disturbance of wetlands or transition area in the channel or stream or for access to the channel or stream cleaning project shall be counted toward the one acre limit in this subsection;

   iii. Disturbance of a transition area solely for access to a general permit activity performed in a wetland in accordance with N.J.A.C. 7:7A-4.2(c); and

   iv. Disturbance authorized under general permit 17 on a publicly owned site.

3. Disturbance exceeding 0.5 acre under general permit 6 cannot be combined with any other general permit authorization on the same site, except with an authorization under general permit 6A, in which case the total impact to wetlands, State open waters, and transition area shall not exceed one acre. For example, 0.75 acres of disturbance of wetlands or State open waters under general permit 6 can be combined with 0.25 acres of disturbance of transition area under general permit 6A;

4. The Department shall not authorize disturbance under both general permit 10A and general permit 10B for the same site; and

5. The Department shall not authorize multiple crossings of the same wetland or State open water unless:

i. There is no other location, design and/or configuration for the proposed crossing that would provide access to an otherwise developable lot that would reduce or eliminate the disturbance to a wetland or State open water; and

ii. Shared driveways are used to the maximum extent possible to access multiple lots.

(b) The Department may authorize activities under a general permit more than once on the same site, and/or at different times on the same site. However, the total disturbance authorized on a site under general permits since July 1, 1988 shall meet the criteria for use of multiple general permits set forth at (a)1 and 2 above.

(c) If a general permit is not listed at (a)2 above, any acreage disturbed under that general permit is not counted towards the one acre limit in (a)2 above, regardless of whether the general permit is used singly or in combination with other general permits, and regardless of whether the general permit is used once or repeatedly.

(d) In addition to the limits above, the Department shall not authorize activities under general permit numbers 13, 15, or 18 more often than once every five years on a single site.

7:7A-4.5 Application for authorization to act under General Permits

(a) An applicant for authorization to act under a general permit shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application contents and procedures, unless the activity is one of the following, in which case the application requirements are found in the general permit itself:

1. Maintenance of an off-stream stormwater management facility under N.J.A.C. 7:7A-5.1(d);

2. Repair or modification of a malfunctioning individual subsurface sewage disposal system under N.J.A.C. 7:7A-5.25; or

3. Minor channel or stream cleaning under N.J.A.C. 7:7A-5.26.

SUBCHAPTER 5 ADOPTED GENERAL PERMITS

N.J.A.C. 7:7A-5.1 General permit 1--Maintenance and repair of existing features

(a) General permit 1 authorizes activities in freshwater wetlands and State open waters, required to carry out the repair, rehabilitation, replacement, maintenance or reconstruction of a previously authorized, currently serviceable structure, fill, roadway, utility line, active irrigation or drainage ditch, or stormwater management facility lawfully existing prior to July 1, 1988 or permitted under this chapter. General permit 1 does not cover transition areas because these activities are not regulated in transition areas under N.J.A.C. 7:7A-2.6 and thus may be performed in a transition area without Department approval under this chapter.

(b) To be authorized under general permit 1, the previously authorized structure, fill, roadway, utility, ditch or facility shall not have been and will not be put to any use other than as specified in any permit authorizing its original construction. Activities under general permit 1 shall not expand, widen or deepen the previously authorized feature, and shall not deviate from any plans of the original activity, except that minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional freshwater wetlands or State open waters upon completion of the activity.

(c) If the activity is the ongoing maintenance of an off-stream stormwater management facility created in uplands, including a wetland constructed in uplands for stormwater management purposes after September 4, 2001, the following shall apply:

1. The application for authorization shall be subject to the public notice requirements at N.J.A.C. 7:7A-10.8 but shall not be subject to the other application requirements in N.J.A.C. 7:7A-10;

2. The application for authorization shall include the information required by the application checklist, including information identifying and describing the site and the project, and a copy of the permit, if any, authorizing the original construction of the stormwater management facility;

3. The Department shall process the application for authorization using the procedures at (d) below; and

4. For the purposes of this subsection, maintenance includes removal of sediment and debris and mowing of vegetation, as necessary to ensure that the stormwater management facility will function as it was originally designed and/or permitted. Maintenance does not include enlargement of a stormwater management structure, excavation below the original bottom of a structure, or any other change in its design.

(d) Upon receipt of an application for authorization under (c) above, the Department shall process the application as follows:

1. Within 20 days of the Department's receipt of the application, the Department shall notify the applicant if the application is not administratively complete (that is, if it does not include all of the information required under (c) above). If the Department so notifies the applicant, the time period in (d)2 below shall not begin to run. If the Department does not so notify the applicant, the application shall be deemed administratively complete 20 days after the Department receives it; and

2. If the application is administratively complete, the Department shall have 30 days after receipt of the complete application to notify the applicant that the activities are not authorized under general permit 1, or that the activities may be authorized but require a full application review under N.J.A.C. 7:7A-10. If the Department does not so notify the

applicant, the application is automatically approved, to the extent that the activity does not violate other laws then in effect.

(e) Activities under general permit 1 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.2 General permit 2--Underground utility lines

(a) General permit 2 authorizes activities in freshwater wetlands, transition areas, and/or State open waters, necessary for the construction and/or maintenance of an underground utility line.

(b) If a utility line is jacked or directionally drilled underground, so that there is no surface disturbance of any freshwater wetlands, transition areas, or State open waters and there is no draining or dewatering of freshwater wetlands, no Department approval is required under this chapter. Jacking or directional drilling is regulated under this chapter if any disturbance occurs to the ground surface in the freshwater wetlands, transition area, or State open water; for example, if the drilling is conducted from a pit located in a freshwater wetland or transition area.

(c) Activities under general permit 2 shall comply with the following limits:

1. Permanent above-ground disturbance of wetlands, transition area, and/or State open waters shall be no greater than 0.5 acre. Anything that changes the character of the existing wetland, even if only to a different wetland type, is permanent disturbance. For example, maintained clearing over a utility line is permanent disturbance. For the purposes of this subsection, installation of a utility line in scrub shrub or emergent wetlands shall not be considered permanent disturbance;

2. Permanently maintained clearing over the utility line shall be no wider than 20 feet unless a wider area is required by law;

3. The trench into which the utility line is placed shall be no wider than necessary to comply with the United States Occupational Safety and Health Administration safety standards for excavations, set forth at 29 CFR Part 1926, Subpart P;

4. Temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, such as temporary construction clearing or temporary storage of dirt or equipment, shall be the minimum size necessary for compliance with applicable laws;

5. The activities shall not cause any change in preconstruction elevation of a freshwater wetland, transition area, or State open water; and

6. Manholes and siphons for sewer lines shall be placed outside of wetlands, unless the Department's Municipal Finance and Construction Element determines under N.J.A.C. 7:22 and/or N.J.A.C. 14A-23 that there is no feasible alternative to placement in wetlands.

(d) In order to minimize environmental impact, a permittee shall:

1. Dispose of any excess soil or bedding material immediately upon completion of construction. This material shall be disposed of outside of freshwater wetlands, transition areas, State open waters, and areas regulated under the Department's Flood Hazard Area Control Act rules;

2. Backfill the uppermost 18 inches of any excavation with the original topsoil material;

3. Replant the disturbed area with indigenous wetlands plants;

4. Stabilize the disturbed area in accordance with the requirements of the appropriate Soil Conservation District; and

5. Ensure that the activities do not interfere with the natural hydraulic characteristics of the wetland, such as the flow characteristics of groundwater on the site.

(e) Any pipes laid through wetlands, transition areas, or State open waters shall be:

1. Properly sealed so as to prevent leaking or infiltration;

2. Designed so as not to form or provide a conduit for groundwater to be discharged or drained from the wetland; and

3. Placed entirely beneath the pre-existing ground elevation in order to allow free passage of surface and ground water, unless the applicant shows that placing some or all of the pipe above ground would be more environmentally beneficial.

(f) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for all permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(g) Activities under general permit 2 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.3 General permit 3--Discharge of return water

(a) General permit 3 authorizes the discharge of return water from an upland, contained, dredged material disposal area into State open waters, and placement of a pipe above ground for the discharge through freshwater wetlands and/or transition areas. The dredging itself may also require other State and Federal permits.

(b) Activities under general permit 3 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.4 General permit 4--Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters, which are undertaken by the Department or expressly approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, for the investigation, cleanup or removal of:

1. Hazardous substances as defined in the Department's rules governing hazardous substances at N.J.A.C. 7:1E, Appendix A; or

2. Pollutants, as defined in the New Jersey Water Pollution Control Act implementing rules at N.J.A.C. 7:14A.

(b) There is no acreage limit on activities under general permit 4. However, disturbance shall be the minimum that is necessary for compliance with the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and mitigation shall be performed for all disturbances of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit except that mitigation is not required to compensate for disturbance of wetlands of State open waters that have formed as a direct result of the remediation activities. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.

(c) The mitigation proposal required under (b) above may be incorporated into the document approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and/or it may be submitted as part of the General permit application. The Department shall not issue an authorization under general permit 4 until the mitigation proposal, or an equivalent document that ensures that the requirements of N.J.A.C. 7:7A-15 are met, is approved. Mitigation shall be performed prior to or concurrently with cleanup activities.

(d) Activities under general permit 4 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.5 General permit 5--Landfill closures

(a) General permit 5 authorizes activities in freshwater wetlands, transition areas and/or State open waters that are undertaken by the Department's Division of Solid and Hazardous Waste, or authorized through a solid waste facility closure and post-closure plan or disruption approval issued by the Department under N.J.A.C. 7:26-2A.9.

(b) General permit 5 authorizes a disturbance authorized through a closure plan, post-closure plan, or disruption approval only if:

1. The activities that will cause the disturbance are necessary to properly close the solid waste facility and to properly maintain and monitor it after closure. For example, an access road necessary for landfill closure may be authorized under general permit 5, but an access road that is not necessary for landfill closure, but that will facilitate development of the site, is not authorized under general permit 5; and

2. The amount of disturbance is the minimum necessary in order to adequately close and/or maintain the landfill. For example, a disturbance for an access road through wetlands may be necessary to properly close the landfill in accordance with (b)2 above, but the road shall be the minimum size possible.

(c) There is no acreage limit on activities under general permit 5. However, mitigation shall be performed to compensate for disturbance of freshwater wetlands and/or State open waters authorized under general permit 5, except that mitigation is not required for disturbance of wetlands located on top of the landfill, or on the intermediate or permanent cover of the landfill. The mitigation shall meet the procedural and substantive requirements at N.J.A.C. 7:7A-15.

(d) The mitigation proposal required under (c) above may be incorporated into the closure and post-closure plan or disruption approval and/or it may be submitted as part of the general permit application.

(e) The Department shall not issue an authorization under general permit 5 until the mitigation proposal is approved. Activities under general permit 5 shall not begin until the Department has approved the mitigation proposal. Mitigation shall be performed prior to or concurrently with closure or disruption activities.

(f) Activities under general permit 5 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.6 General permit 6--Non-tributary wetlands

(a) General permit 6 authorizes regulated activities in freshwater wetlands, and/or State open waters, if the freshwater wetlands and/or State open waters are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream.

(b) Activities under general permit 6 shall be limited as follows:

1. The activities shall disturb no more than one acre of a freshwater wetland and/or State open water, which is not a water of the United States, as defined at N.J.A.C. 7:7A-1.4; and

2. The activities shall disturb no more than one-half acre of a freshwater wetland and/or State open water, which is a water of the United States, as defined at N.J.A.C. 7:7A-1.4.

(c) Activities under general permit 6 shall not take place in any of the following:

1. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-2.4;

2. A State open water that is a special aquatic site, as defined at N.J.A.C. 7:7A-1.4;

3. USEPA priority wetlands;

4. A State open water that is larger than one acre.

(d) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters that are also waters of the United States. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters that are also waters of the United States unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(e) Activities under general permit 6 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.6A General permit 6A—Transition areas adjacent to non-tributary wetlands

(a) General permit 6A authorizes regulated activities in transition areas adjacent to freshwater if the freshwater wetlands are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream.

(b) Activities under general permit 6A shall disturb no more than one-half acre of a transition area. If the activity authorized under general permit 6 eliminates a wetland in its entirety,

authorization under general permit 6A is not required for activities in the associated transition area;

(c) Activities under general permit 6A shall not take place in a transition area adjacent to the following:

1. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-2.4; or

2. USEPA priority wetlands.

(d) Activities under general permit 6A shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.7 General permit 7--Human-made ditches or swales in headwaters

(a) General permit 7 authorizes activities in freshwater wetlands that are human-made ditches or in freshwater wetlands that are swales, provided the ditch or swale is located in a headwater. In accordance with the definition of a "swale" at N.J.A.C. 7:7A-1.4, a swale may be naturally occurring or of human construction.

(b) For the purpose of this section, "headwater" means a water or wetland that is upstream of the point on a non-tidal stream where the average annual flow is less than five cubic feet per second. The Department may estimate this point from available data by using area annual precipitation, area drainage basin maps, and the average annual runoff coefficient, or by similar means. For a stream that is dry for long periods of the year, the Department may establish the downstream boundary of the headwater as that point in the stream where water flow exceeds five cubic feet per second at least 50 percent of the time. In general, the Department considers a water body with a drainage area of less than 50 acres to be a headwater.

(c) Activities under general permit 7 shall not take place in the following:

1. A ditch or swale that is, or is located within, an exceptional resource value wetlands, as described at N.J.A.C. 7:7A- 2.4; or

2. A ditch or swale that is, or is located within, a USEPA priority wetland, as defined at N.J.A.C. 7:7A-1.4.

(d) Activities under general permit 7 shall not result in either of the following:

1. The loss or substantial modification of more than one acre of freshwater wetlands; or

2. A disruption of a surface water connection, resulting in the isolation of wetlands or State open waters which were not isolated at the time of the general permit application.

(e) Activities under general permit 7 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.8 General permit 8--House additions

(a) General permit 8 authorizes activities in freshwater wetlands and/or transition areas, necessary for the construction of additions or appurtenant improvements to residential dwellings lawfully existing prior to July 1, 1988, provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and/or disturbance and will not result in new alterations to a freshwater wetlands outside of the 750 square foot area. General permit 8 does not authorize activities in State open waters.

1. If requested within five years of the destruction of a dwelling, this permit authorizes the replacement of a residential dwelling that was lawfully existing prior to July 1, 1988, within the same footprint of the previous dwelling with an increase of up to 750 square feet of fill and/or disturbance provided that:

    i. The applicant provides documentation that the dwelling was habitable at the time of destruction. "Habitable" means that persons could legally occupy the dwelling and that the dwelling had utilities including a functioning septic system or legal connection to a sewer; and

    ii. There is a foundation remaining or other evidence, such as a deed or plot plan, of the size and location of the overall building footprint.

(b) To be authorized under general permit 8, an addition or improvement shall be located within 100 feet of the residential dwelling.

(c) Activities under general permit 8 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.9 General permit 9--Airport sight line clearing

(a) General permit 9 authorizes the selective cutting of certain vegetation in freshwater wetlands and transition areas, at a public use aeronautical facility, as defined in the New Jersey Department of Transportation (NJDOT) rules at N.J.A.C. 16:54-1.3.

(b) General permit 9 authorizes the cutting of vegetation only as necessary to comply with the protected air space provisions for a public use aeronautical facility, mandated by the Federal Aviation Administration (FAA) and set forth in the New Jersey Department of Transportation rules at N.J.A.C. 16:54-4.2.

(c) General permit 9 covers only activities necessary to enable an aeronautical facility to comply with New Jersey Department of Transportation rules. The cutting of vegetation in wetlands and/or transition areas as part of a project that increases the area of pavement or buildings at an airport is not authorized under general permit 9, and would require an individual permit under this chapter.

(d) In addition to meeting all applicable application requirements at N.J.A.C. 7:7A-10, an applicant for authorization under general permit 9 shall provide a certification from the Director of the Division of Aeronautics in the New Jersey Department of Transportation, containing:

1. A copy of the current license for the public use aeronautical facility;

2. A description of the area that must be cleared to ensure compliance with New Jersey Department of Transportation rules, including descriptions and drawings of the required approach slopes, the airport layout, and/or other aspects of the facility, as applicable; and

3. A statement citing the applicable regulation, and an explanation of why the proposed cutting of vegetation is necessary to bring existing operations into compliance with New Jersey Department of Transportation and FAA rules, or to maintain the compliance of existing operations with those rules.

(e) The permittee shall minimize adverse environmental impacts as follows:

1. Activities shall be timed to minimize disturbance of threatened and endangered species. The Department will specify the required timing in the general permit authorization when issued;

2. The permittee shall leave all tree stumps, brush stumps, and root systems in place;

3. The permittee shall minimize disturbance of freshwater wetlands and transition areas through use of matting, equipment running on oversized tires, or other similar practices; and

4. Cut vegetation shall be disposed of in a manner that will minimize adverse environmental impacts on wetlands and transition areas, taking into consideration State Forest Fire Service requirements at N.J.S.A. 13:9-23 and/or other applicable laws.

(f) Activities under general permit 9 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.10A General permit 10A—Very minor road crossings

(a) General permit 10A authorizes the following activities in freshwater wetlands, transition areas, and/or State open waters:

1. Construction of one or more new road crossings, including attendant features such as shoulders, sidewalks and embankments;

2. Expansion, widening, or upgrading of one or more existing paved or unpaved roads or drives; and

3. Activities necessary to reduce horizontal curves in an existing paved road to comply with New Jersey Department of Transportation safety regulations.

(b) The Department shall issue a general permit 10A authorization only if the activities comply with the limits in one of the following scenarios:

1. Short crossing scenario:

   i. The disturbance of freshwater wetlands and/or State open waters is no longer than 100 feet for each crossing, as calculated under (e) below; and

   ii. The total cumulative disturbance of freshwater wetlands, transition area, and State open waters onsite under general permit 10A is one quarter acre or less; or

2. Long crossing scenario: The total cumulative disturbance of freshwater wetlands, transition area, and State open waters onsite under general permit 10A is one eighth acre or less. Under the long crossing scenario, the length of the crossing is not limited.

(c) If a proposed road crossing skirts along the edge of a wetland or transition area or touches the wetland or transition area, without actually crossing through the wetland or transition area, the applicant shall, in addition to meeting the requirements at (b) above, demonstrate in accordance with N.J.A.C. 7:7A-5.10B(d) that there is no alternative onsite location and/or configuration for the road crossing that would provide access to the developable upland with less adverse environmental impact.

(d) Activities under general permit 10A shall minimize environmental impact as follows:

1. The applicant shall design the crossing to ensure that fish passage is unimpeded during times when the water level is at its lowest, unless the applicant demonstrates that the water body is unsuitable for habitation by fish and will remain so for the foreseeable future. The applicant shall ensure fish passage by maintaining the existing gradient and bottom contours of the water body to the extent possible, and by using arches, culverts, or other structures that will ensure fish passage;

2. The applicant shall install cross drains or other devices to ensure that the crossing does not alter the hydrology of the freshwater wetlands and/or State open waters on either side of the crossing; and

3. The amount of rip-rap or other energy dissipating material used shall be the minimum necessary to prevent erosion, and shall not exceed 200 cubic yards of fill below the top of

bank or high water mark, unless a larger amount is required in order to comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

(e) The length limit at (b)1 above applies to each separate road crossing on the site. The following apply to the calculation of the length of disturbance caused by a road crossing:

1. The length of the disturbance resulting from a crossing is measured along its longest dimension;

2. A crossing that connects more than two upland areas that are separated by the same wetland or State open water is considered one crossing. That is, a road that repeatedly traverses the same wetland or State open water is considered one crossing. Thus, the total length of disturbance is the sum of all the lengths of crossing that traverse that particular wetland or water. For example, if a road crosses three arms of an irregularly shaped wetland, the total length of disturbance would be the sum of the lengths of all three crossings. See figures 2 and 3 below for an illustration of this; and

3. If the road crosses State open waters with adjacent wetlands, the total length of disturbance is the sum of the disturbances in both the State open waters and the adjacent wetlands.

(f) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(g) Activities under general permit 10A shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

Figure 2
One Road Crossing That Crosses Two Fingers Of One Freshwater Wetland

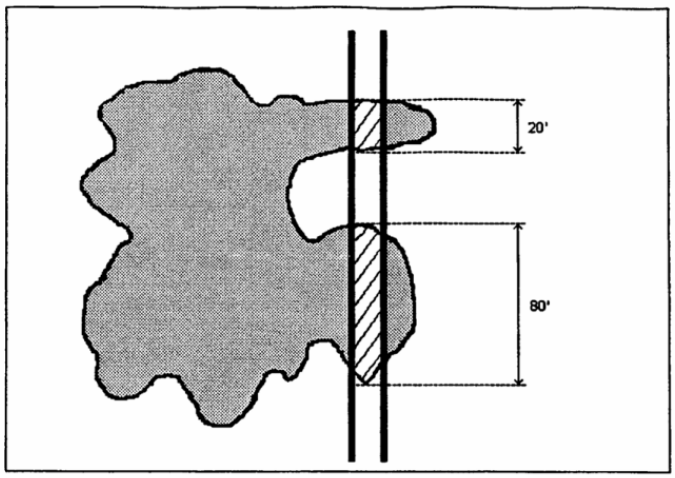


Figure 2
One Road Crossing That Crosses Two Fingers Of One Freshwater Wetland

Figure 3
Two Road Crossings, Each Crossing A Different Freshwater Wetland

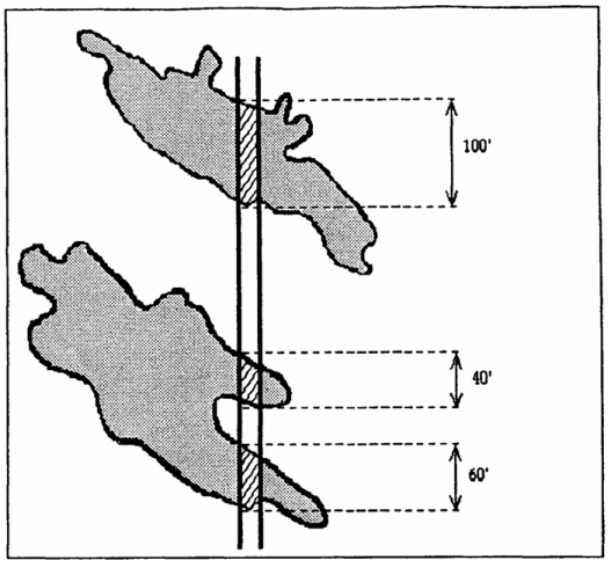


Figure 3
Two Road Crossings, Each Crossing A Different Freshwater Wetland

N.J.A.C. 7:7A-5.10B General permit 10B--Minor road crossings

(a) General permit 10B authorizes the following activities in freshwater wetlands, transition areas, and/or State open waters:

1. Construction of one or more new road crossings necessary to gain access to an otherwise inaccessible, developable, upland site, including attendant features such as shoulders, sidewalks and embankments;

2. Expansion, widening, or upgrading of one or more existing paved or unpaved roads, including attendant features such as shoulders, sidewalks and embankments; and

3. Activities necessary to reduce horizontal curves in an existing paved road to comply with New Jersey Department of Transportation safety regulations.

(b) The Department shall issue a general permit 10B authorization only if all of the following criteria are met:

1. The applicant demonstrates in accordance with (d) below that there is no alternative onsite location and/or configuration for the road crossing that would provide access to the developable upland with less adverse environmental impact; and

2. The total area of freshwater wetlands, transition areas, and/or State open waters disturbed under general permit 10B shall not exceed one quarter of an acre.

(c) Activities under general permit 10B shall minimize environmental impact as follows:

1. The applicant shall design the crossing to ensure that fish passage is unimpeded during times when the water level is at its lowest, unless the applicant demonstrates that the water body is unsuitable for habitation by fish and will remain so for the foreseeable future. The applicant shall ensure fish passage by maintaining the existing gradient and bottom contours of the water body to the extent possible, and by using arches, culverts, or other structures that will ensure fish passage;

2. The applicant shall install cross drains or other devices to ensure that the crossing does not alter the hydrology of the freshwater wetlands and/or State open waters on either side of the crossing;

3. The amount of rip-rap or other energy dissipating material used shall be the minimum necessary to prevent erosion, and shall not exceed 200 cubic yards of fill below the top of bank or high water mark, unless a larger amount is required in order to comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90; and

4. The cartway, shoulder, and side slopes of the roadway shall be the minimum necessary for the crossing and shall not exceed the limits in the New Jersey Department of

Community Affairs' Residential Site Improvement Standards at N.J.A.C. 5:21. If the project is not a residential development, the cartway, shoulder, and side slopes of the roadway shall be the minimum necessary for safety.

(d) In evaluating whether there is an alternative onsite location and/or configuration for a road crossing under (b)1 above, the Department shall make the presumptions at (d)1 through 5 below. However, these presumptions may be rebutted based on site-specific or unusual circumstances:

1. Disturbance of a non-transition area upland would have less adverse environmental impact than disturbance of a transition area, State open water or freshwater wetland;

2. Disturbance of a transition area would have less adverse environmental impact than disturbance of a freshwater wetland or State open water;

3. Disturbance of a freshwater wetland would have less adverse environmental impact than disturbance of a State open water;

4. Expansion or upgrading of an existing and currently serviceable drive or crossing would have less adverse environmental impact than placement of a new crossing; and

5. Placement of a new crossing in an area that is already significantly disturbed would have less adverse environmental impact than disturbance of a previously undisturbed wetland and/or State open water.

(e) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(f) Activities under general permit 10B shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.11 General permit 11--Outfalls and intake structures

(a) General permit 11 authorizes activities in freshwater wetlands, transition areas, and State open waters necessary for the construction of:

1. A stormwater outfall structure;

2. An outfall structure that discharges other than stormwater into state open waters, and which is covered by a valid NJPDES permit issued by the Department under N.J.A.C. 7:14A;

3. An intake structure located in a State open water, for which all approvals required by the Department other than this general permit authorization have been obtained;

4. A well that is part of a non-public water system, as defined under the Department's Safe Drinking Water Act rules at N.J.A.C. 7:10-1.3, (this includes certain small private potable water wells) provided that:

    i. There is no alternative onsite location for the well that would have less environmental impact;

    ii. The source of the water supply to the well does not affect the hydrology of the freshwater wetlands; and

    iii. All approvals required by the Department other than this general permit authorization have been obtained;

5. Conveyance structures, such as pipes and headwalls, associated with an outfall or intake listed in 1, 2, or 3 above; and

6. Energy dissipation structures, such as rip-rap, gabion baskets, and scour holes, associated with an outfall or intake listed in 1, 2, or 3 above.

(b) General permit 11 does not authorize the construction or placement of a detention or retention facility in freshwater wetlands, transition areas, or State open waters.

(c) Activities under general permit 11 shall comply with the following limits:

1. The activities shall disturb no more than one quarter acre of freshwater wetlands, transition areas, and/or State open waters, including both temporary and permanent disturbance;

2. The area disturbed during construction of a conveyance structure shall be no wider than is necessary to comply with the United States Occupational Safety and Health Administration safety standards for excavations, set forth at 29 CFR Part 1926, Subpart P; and

3. The amount or rip-rap or other energy dissipating material placed shall be the minimum necessary to prevent erosion, and shall not exceed 10 cubic yards of fill per outfall, unless

a larger amount is required in order to comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

(d) In addition to meeting all other requirements under general permit 11, an intake structure shall:

1. Be designed and equipped so as to minimize impacts to fish and other fauna through measures including, but not limited to, the following:

   i. The structure's location and orientation;

   ii. Protective structures that prevent entrapment of fauna in the structure itself, or in a diversionary canal or embayment;

   iii. Protective structures that prevent aquatic biota from being sucked up against the structure (impingement) or being sucked up into the structure (entrainment). Examples of such structures are radial wells, fish bucket screens, and wedge-wires; and

2. Be designed so as to ensure that the wetlands are not drained;

3. Have an intake velocity no greater than 0.5 feet of water per second; and

4. Comply with all applicable requirements for intake structures in the Department's Safe Drinking Water Act rules at N.J.A.C. 7:10-11.8(c).

(e) All activities under general permit 11 shall comply with the specifications and requirements in the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90, including activities which are exempted from or not regulated by those Standards.

(f) For any excavated area in freshwater wetlands, transition areas, and/or State open waters, the following requirements apply:

1. The excavation shall be backfilled to the preexisting elevation;

2. The uppermost 18 inches of the excavation shall be backfilled with the original topsoil material if feasible; and

3. The area above the excavation shall be replanted, in accordance with applicable BMPs, with indigenous wetlands species.

(g) Any pipes laid through wetlands, transition areas, or State open waters shall be:

1. Properly sealed so as to prevent leaking or infiltration;

2. Designed so as not to form a path for groundwater to be discharged or drained from the wetland; and

3. Placed entirely beneath the pre-existing ground elevation unless the applicant shows that placing some or all of the pipe above ground would be more environmentally beneficial.

(h) A swale in a wetland or transition area shall not be used as a substitute for stormwater treatment. However, a swale may be used to convey stormwater through a wetland or transition area if:

1. Conditions on the site make it impracticable to use a buried pipe; and

2. The applicant demonstrates that the swale will not result in drainage of the wetlands or transition areas. To demonstrate this, the applicant shall provide profiles and cross-sections along the entire length of the swale, and any other information necessary to demonstrate that drainage will not occur.

(i) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(j) Activities under general permit 11 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.12 General permit 12--Surveying and investigating

(a) General permit 12 authorizes activities in freshwater wetlands, transition areas and State open waters necessary for surveying and investigative activities such as:

1. Soil borings dug by machine;

2. Hand dug soil borings larger than three feet in diameter or depth. A hand dug soil boring three feet or less in diameter and depth is not regulated pursuant to N.J.A.C. 7:7A-2.2(c) and thus does not require Department approval;

3. Cutting of vegetation by machine for a survey line that is no wider than five feet;

4. Cutting of vegetation by hand for a survey line larger than three feet wide. Cutting of vegetation by hand for a survey line that is three feet wide or less is not regulated pursuant to N.J.A.C. 7:7A-2.2(c) and thus does not require Department approval; and

5. Digging of exploratory pits and/or other temporary activities necessary for a geotechnical or archaeological investigation.

(b) Disturbance under general permit 12 shall be the minimum necessary to obtain the desired information.

(c) If activities under general permit 12 disturb soil, the soil shall be restored to its pre-existing elevation, retaining its original soil layers, unless the soil disturbance is 6 inches in diameter or smaller. This subsection shall not apply if other permits which allow permanent impacts in the same location have been obtained.

(d) Activities under general permit 12 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.13 General permit 13--Lake dredging

(a) General permit 13 authorizes up to one acre of dredging in palustrine emergent freshwater wetlands, as defined at N.J.A.C. 7:7A-1.4, necessary to restore or maintain a lake, pond, or reservoir, as defined at N.J.A.C. 7:7A-1.4, to its original bottom contours. General permit 13 does not authorize dredging or other disturbances in wetlands that are not palustrine emergent wetlands. General permit 13 does not authorize disturbance of transition areas except as necessary to obtain access to a dredging project pursuant to (e) below.

(b) In accordance with N.J.A.C. 7:7A-2.2(b), if a dredging project meets all the following criteria, the project does not require Department approval under this chapter:

1. The project disturbs State open waters only, and does not disturb wetlands located in the lake, pond, or reservoir;

2. The project does not disturb wetlands or transition areas adjacent to the lake, pond, or reservoir; and

3. The project does not involve the discharge of dredged or fill material in the State open water. For example, if the project involves placement of fill in a lake bed for an access road, or involves temporary placement of dredged material on the lake bed prior to removal of the dredged material, the project would be regulated and would require Department approval.

(c) If the lake, pond or reservoir is to be lowered during dredging:

1. The permittee shall obtain a lake lowering permit from the Department's Division of Fish and Wildlife;

2. Regulated activities shall not begin until the lake, pond or reservoir is lowered in accordance with the lake lowering permit; and

3. All regulated activities shall be discontinued before the lake, pond or reservoir is refilled.

(d) In order to minimize adverse impacts on fish and on the downstream environment, the permittee shall:

1. Take all necessary measures, including adjusting the timing of the dredging, to prevent any detrimental effect to spawning of fish in the lake, pond or reservoir or downstream; and

2. Ensure that there is a continuous flow of sediment-free water to the area downstream of the lake, pond or reservoir at all times during activities under general permit 13.

(e) The permittee may temporarily disturb wetlands (palustrine emergent or otherwise), transition areas, or State open waters, beyond those disturbed directly by the dredging, in order to obtain vehicular access for the dredging. Disturbance for access shall be limited to one eighth of an acre, unless the applicant demonstrates in accordance with the standards at N.J.A.C. 7:7A-5.10B(d) that there is no alternative onsite location and/or configuration that would provide access to the dredging with less adverse environmental impact. If such a demonstration is made, the access disturbance may be increased as necessary but shall not exceed one quarter acre. All access disturbances under this subsection shall be restored to their pre-existing elevation and condition upon completion of dredging.

(f) The application for authorization under general permit 13 shall include:

1. Documentation, including but not limited to, aerial photography, original construction plans, core borings, and/or other information, showing that dredging will go no deeper than the original configuration and bottom contours of the lake, and will not enlarge the lake beyond the original configuration; and

2. For a lake larger than five acres, the following information:

   i. A USGS quad map showing all of the upstream land and water surface area which drains to the lake. The map shall be marked to identify the main land uses in that upstream drainage area;

   ii. A list of the sources of sediment in the lake, including all stormwater pipes, outfalls, ditches and similar features that discharge directly into the lake or that discharge into a tributary to the lake within 1,000 feet of the lake. The location of each listed source shall be indicated on the map required in (f)2i above; and

iii. An estimate of the percentage of that upstream drainage area that is covered by impervious surfaces.

(g) The Department shall not authorize activities under general permit 13 more frequently than once every five years for a particular lake, pond or reservoir.

(h) The permittee shall dispose of dredged material in accordance with the requirements in the standard conditions for all general permits at N.J.A.C. 7:7A-4.3. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated.

(i) Activities under general permit 13 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.14 General permit 14--Water monitoring devices

(a) General permit 14 authorizes the placement and use of the following in freshwater wetlands, transition areas, and State open waters:

1. Water level recording devices;

2. Water quality monitoring and testing devices;

3. Small weirs or flumes for recording water quantity or velocity;

4. The drilling of monitoring wells; and

5. Similar small scientific devices.

(b) General permit 14 does not authorize any activity that significantly disrupts the movement of aquatic species native to the water body, or of species which normally migrate through the area.

(c) If an applicant cannot determine at the time of application how many monitoring wells will be needed, the Department may issue a "blanket" authorization under general permit 14 for drilling of monitoring wells, such as those used in cleanups of contaminated groundwater. A "blanket" authorization allows the placement of multiple monitoring wells on a site over the term of the permit authorization, provided that the permittee reports the number and location of all wells to the Department when all of the wells have been drilled. To be eligible for a "blanket" authorization, the monitoring wells must be approved by the Department's Division of Remediation Management and Response or by the U.S. Environmental Protection Agency.

(d) An item listed at (a) above is not regulated under this chapter and therefore does not require Department approval if it meets both of the following criteria:

1. The item is placed into and/or used in State open waters only, and not in freshwater wetlands or transition areas; and

2. The placement and/or use of the item does not involve the placement of fill, as defined at N.J.A.C. 7:7A-1.4.

(e) Activities under general permit 14 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.15 General permit 15--Mosquito control activities

(a) General permit 15 authorizes activities in freshwater wetlands, transition areas, and State open waters necessary for mosquito control water management activities conducted by a county mosquito control agency, or by a Federal agency on Federal land.

(b) The agency shall submit an individual, site-specific project proposal to the State Office of Mosquito Control Coordination. If the State Office of Mosquito Control Coordination determines that the project is necessary to control a documented mosquito problem affecting existing residents, the agency shall submit an application to the Department for authorization to act under general permit 15.

(c) In conducting activities under general permit 15, an agency shall:

1. Comply with "Best Management Practices for Mosquito Management", issued by the State Mosquito Control Commission, and available from the Department at P.O. Box 400, Trenton, N.J., 08625;

2. Use best management practices including, but not limited to, shallow swales no more than three feet wide, and low sills no more than three feet wide;

3. Minimize disturbance of vegetation; and

4. Use only light equipment.

(d) The agency shall remove excavated or dredged material. Alternatively, if the agency demonstrates that the material will not alter the character of the wetlands, the agency may spread it evenly in a shallow layer no more than three inches deep.

(e) The agency shall ensure that excessive drainage does not occur, and that the existing hydrologic condition of the hydric soils is maintained.

(f) A county agency applying for authorization under general permit 15 shall provide public notice of the application in accordance with this subsection, and shall not be subject to the public

notice requirements found at N.J.A.C. 7:7A-10.8. The county agency shall publish a display advertisement describing the proposed general permit activities. The advertisement shall be:

1. At least four column inches in size;

2. Published in a newspaper with local circulation, including the municipality; and

3. Published in a newspaper with regional circulation, including the county.

(g) The Department shall not authorize activities under general permit 15 more frequently than once every five years for a particular site.

(h) Activities under general permit 15 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.16 General permit 16--Habitat creation and enhancement activities

(a) General permit 16 authorizes habitat creation and enhancement activities in freshwater wetlands, transition areas, and State open waters, necessary to implement a plan for the restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, which is sponsored or substantially funded by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a "sponsor" shall be an active participant in or substantial financial contributor to the activities, and shall approve the activities in writing.

(b) General permit 16 authorizes any of the following:

1. A fish and/or wildlife management plan created or approved by the Department's Division of Fish and Wildlife;

2. A project plan approved under the Partners for Fish and Wildlife program, administered by the U.S. Fish and Wildlife Service;

3. A project plan created by the U.S. Department of Agriculture's Natural Resources Conservation Service under the Wetlands Reserve program, the Conservation Reserve program, the Conservation Reserve Enhancement program, the wildlife habitat incentive program (WHIP), or a similar program, and approved by the local Soil Conservation District;

4. A plan approved by the Department's Office of Natural Resource Damages for the restoration, creation or enhancement of natural resources injured as the result of an oil spill or release of a hazardous substance;

5. A mitigation project required by and approved by a government agency, such as the U.S. Army Corps of Engineers;

6. A habitat creation or enhancement plan carried out by one of the Federal or State agencies at 1 through 5 above or by a government resource protection agency such as a parks commission; or

7. A habitat creation or enhancement plan carried out by a charitable conservancy, as defined at N.J.A.C. 7:7A-15.1, provided that the plan is part of a program listed at 2 through 5 above.

(c) To be eligible for authorization under general permit 16, an applicant shall demonstrate that the proposed project:

1. Is part of a comprehensive plan for the restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, transition areas, and/or State open waters;

2. Is sponsored or partially funded by an appropriate entity in accordance with (b) above;

3. Is consistent with the goals of the Freshwater Wetlands Protection Act;

4. Will improve the values and functions of the ecosystem; and

5. Will have a reasonable likelihood of success.

(d) General permit 16 does not authorize an activity unless the sole purpose of the activity is habitat creation or enhancement. For example, general permit 16 does not authorize construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement. Similarly, general permit 16 does not authorize a flood control project that may also result in creation or enhancement of some wildlife habitat.

(e) Examples of habitat creation and enhancement activities that may be authorized under general permit 16 are:

1. Altering hydrology to restore or create wetlands conditions, such as by blocking, removing, or disabling a human-made drainage ditch or other drainage structure such as a tile, culvert or pipe;

2. Breaching a structure such as a dike or berm in order to allow water into an area;

3. Placing habitat improvement structures such as:

   i. Nesting islands;

   ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and

iii. Fish habitat enhancement devices or fish habitat improvement structures such as placed boulders, stream deflectors, or brush piles;

4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement; and

5. Cutting, burning or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora.

(f) Activities under general permit 16 shall meet the following requirements:

1. The activities shall disturb the minimum amount of freshwater wetlands, transition areas, and/or State open waters necessary to successfully implement the project plan;

2. The activities shall not decrease the total combined area of freshwater wetlands, State open waters and/or transition areas on a site. However, the Department may approve such a decrease if the Department determines that the activities causing the decrease are sufficiently environmentally beneficial to outweigh the negative environmental effects of the decrease. In addition, the Department may approve conversion of wetlands to State open waters or transition area, conversion of State open waters to wetlands or transition area, or the conversion of transition area to freshwater wetlands or State open waters, if the Department determines that such conversion is environmentally beneficial; and

3. The area of habitat enhancement or creation shall be protected from any future development by a recorded conservation restriction or easement in accordance with N.J.A.C. 7:7A-2.12.

(g) An application for authorization under general permit 16 does not require an application fee under N.J.A.C. 7:7A-11.

(h) If a project complies with general permit 16 and also includes an activity covered under another general permit, the entire project shall be authorized through general permit 16 and shall not require authorization under the other general permit, provided that each activity covered by another general permit complies with that general permit's requirements and limits. For example, if a habitat creation project includes bank stabilization activities, and meets all requirements of general permit 20 as well as general permit 16, the Department may authorize the project under general permit 16 alone.

(i) If an activity is exempt under this chapter, it shall not require authorization under general permit 16 solely by virtue of being conducted as part of a program included in (b) above. For example, if a farmer proposes a habitat enhancement project that is eligible for authorization under general permit 16, and some of the activities involved in the project meet the requirements for the farming exemption under N.J.A.C. 7:7A-2.8(c), those activities do not lose their exempt status merely by virtue of being part of a project authorized under general permit 16.

(j) Activities under general permit 16 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.17 General permit 17--Trails and boardwalks

(a) General permit 17 authorizes activities in freshwater wetlands, transition areas, and/or State open waters necessary for construction of a trail and/or boardwalk for use by pedestrians, bicycles, and other non-motorized methods of transport. General permit 17 does not authorize construction of a restroom, gazebo, rain shelter, or any covered or enclosed structure. General permit 17 does not authorize construction of a roadway for use by automobiles, golf carts, motorcycles, motorized trail bikes, all-terrain vehicles, or other motor vehicles.

(b) The total area of freshwater wetlands, transition areas, and/or State open waters disturbed under general permit 17 shall not exceed one quarter acre, except that this limit shall not apply to a site that is publicly owned.

(c) The trail or boardwalk shall be no wider than six feet, unless the applicant demonstrates that it must be wider in order to comply with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7.

(d) The trail or boardwalk shall:

1. Be located and configured so as to minimize adverse environmental impact; and

2. Incorporate features designed to educate the user about the importance of freshwater wetlands, transition areas, and State open waters; for example, through signs identifying plants and animals or explaining hydrology, ecology, or other significant environmental features or phenomena.

(e) The permittee shall take all measures necessary to ensure that activities under general permit 17 do not interfere with the natural hydrology of the area, such as installation at grade or use of cross drains to allow the passage of water. The permittee shall minimize the impact of the activities on vegetation.

(f) An application for authorization under general permit 17 for a project on publicly owned land does not require an application fee under N.J.A.C. 7:7A-11.

(g) Activities under general permit 17 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.17A General permit 17A—Non-Motorized, Multiple-use Paths

(a) General permit 17A authorizes activities in freshwater wetlands, transition areas, and/or State open waters necessary for construction of a non-motorized, multiple use path for use by bicycles,

skate boards, rollerblades and other non-motorized methods of transport. General permit 17A does not authorize construction of a restroom, gazebo, rain shelter, or any covered or enclosed structure. General permit 17A does not authorize construction of a roadway for use by automobiles, golf carts, motorcycles, motorized trail bikes, all-terrain vehicles, or other motor vehicles.

(b) The total area of freshwater wetlands, transition areas, and/or State open waters disturbed under general permit 17A shall not exceed one-quarter acre.

(c) The non-motorized, multiple use path shall be designed in accordance with the American Association of State Highway and Transportation Officials (AASHTO) "guide for the development of bicycle facilities", published 1999, as amended and supplemented. It is available at www.communitymobility.org/pdf/aashto.pdf.

(d) The non-motorized, multiple use path shall be aligned to minimize impacts to wetlands, State open waters, and wetlands transition areas.

(e) The permittee shall take all measures necessary to ensure that activities under general permit 17A do not interfere with the natural hydrology of the area, such as installation at grade or use of cross drains to allow the passage of water. The permittee shall minimize the impact of the activities on vegetation.

(f) Activities under general permit 17A shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.18 General permit 18--Dam repair

(a) General permit 18 authorizes activities in freshwater wetlands, transition areas, and State open waters as necessary for the repair, rehabilitation, replacement, maintenance, reconstruction, or removal of a dam, as defined in the Department's dam safety rules at N.J.A.C. 7:20-1.2.

(b) A dam that is currently serviceable may be repaired, rehabilitated, replaced, maintained or reconstructed under general permit 18. A dam is considered currently serviceable if it meets any of the following criteria:

1. The dam is in use, that is, the dam is impounding water at a normal pool elevation for which it was designed, at the time of submittal of the general permit application;

2. The dam is not in use, and has been out of use for no more than five years prior to submittal of the general permit application; or

3. The dam is not in use, but has been out of use for up to ten years prior to submittal of the general permit application, but the applicant documents that public funding was actively sought for repairs during the ten years.

(c) A dam that is not currently serviceable, as defined in (b) above, may not be repaired,\ rehabilitated, replaced, maintained or reconstructed, but may be removed.

(d) Activities under general permit 18 are subject to the following limits:

1. All activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's Dam Safety Section in the Division of Engineering and Construction;

2. There shall be no more than one acre of permanent disturbance of wetlands, transition areas, and/or State open waters. Draining of a State open water or freshwater wetland by removing a dam shall not be considered permanent disturbance under this paragraph;

3. Temporary disturbance shall be the minimum necessary to comply with the dam safety permit;

4. The permittee shall minimize adverse impacts on freshwater wetlands, transition areas, and/or State open waters through the use of best management practices including, but not limited to:

    i. Disposing of any excess soil, gravel, or other material immediately upon completion of construction. This material shall be disposed of outside of freshwater wetlands, transition areas, State open waters, and areas regulated under the Department's Flood Hazard Area Control Act rules;

    ii. Backfilling the uppermost 18 inches of any excavation with the original topsoil material;

    iii. Replanting the disturbed area with indigenous wetlands plants;

    iv. Stabilizing the disturbed area in accordance with the requirements of the appropriate Soil Conservation District; and

5. A repaired, rehabilitated, replaced, maintained or reconstructed dam shall not deviate from its original structure, except for minor deviations due to changes in materials or construction techniques, or deviations required for safety reasons in accordance with the Department's Dam Safety Standards, N.J.A.C. 7:20; and

6. Activities under general permit 18 shall not increase the normal water surface elevation over the historic elevation as of the date the dam was originally completed.

(e) If a dam is removed under general permit 18, and the dam owner also owns or controls any of the property containing the lake bottom, the Department may require the owner to execute and record a conservation restriction or easement in accordance with the requirements at N.J.A.C. 7:7A-2.12 covering the lake bottom area. The conservation restriction or easement shall prohibit

any development or regulated activity for five years from the date the dam is removed, in order to allow the stream corridor and associated wetlands in the lake bottom area to revert to their natural state. The conservation restriction or easement shall include the land covered by the lake bottom, and all associated wetlands, as they exist at the time the dam is removed. When the conservation restriction or easement expires, the Department's jurisdiction under this chapter shall be based on existing conditions on the site.

(f) Activities under general permit 18 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.19 General permit 19--Docks and piers

(a) General permit 19 authorizes:

1. Activities in freshwater wetlands and/or transition areas necessary to construct or improve a dock or pier on pilings in order to obtain access to State open waters. General permit 19 does not cover docks or piers on pilings in State open waters because the placement of pilings to support a dock or pier in State open waters is not a regulated activity pursuant to N.J.A.C. 7:7A-2.2(c)5 and therefore does not require approval under this chapter; and

2. Activities in freshwater wetlands, transition areas, and/or State open waters, necessary for the construction of a public boat ramp. Private boat ramps are not covered by this general permit.

(b) All activities under general permit 19, when combined, shall meet the following criteria, as applicable:

1. For a dock or pier, the activities shall disturb no more than one tenth acre of wetlands and/or transition area. Wetlands or transition area shaded by a dock or pier shall be considered disturbed for the purposes of general permit 19;

2. For a boat ramp, the activities shall disturb no more than one tenth acre of freshwater wetlands, transition areas, and/or State open waters; and

3. For a dock or pier and a boat ramp on the same site, the combined activities shall disturb no more than one tenth acre of freshwater wetlands, transition areas, and/or State open waters.

(c) A dock or pier shall be elevated on pilings so that it does not affect the hydrology of the surrounding wetland. In tidal wetlands that are subject to this chapter but not subject to the Department's coastal permitting program under N.J.A.C. 7:7 or N.J.A.C. 7:7E, a dock or pier shall be elevated at least four feet above the ground surface.

(d) The portion of a dock, pier or boat ramp that crosses freshwater wetlands and/or transition areas shall be perpendicular to the shoreline of the State open waters, unless a different configuration would cause less impact to wetlands and aquatic resources.

(e) A public dock or pier is a dock or pier which is open to all members of the public. A private dock or pier is a dock or pier which is not a public dock or pier.

(f) A private dock or pier shall meet the following requirements, in addition to the requirements at (b) through (d) above:

1. There shall be no more than one crossing over wetlands and/or transition areas per lot for dock or pier access. If there is an existing dock on the lot, general permit 19 does not authorize another crossing over wetlands and/or transition areas for dock or pier access. However, general permit 19 does authorize improvements to the portion of the dock or pier that crosses wetlands and/or transition areas, within the limits in general permit 19. In such a case, the total disturbance resulting from the existing dock or pier and additions made under general permit 19 shall not exceed one tenth of an acre; and

2. The portion of the dock or pier that crosses wetlands and/or transition areas shall be no wider than six feet unless the portion must be wider in order to comply with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7, in which case the portion shall be the minimum width necessary to comply.

(g) An applicant who proposes to build a public dock or pier shall, in addition to meeting the requirements at (b) through (d) above, ensure that the portion of the dock or pier that crosses wetlands and/or transition areas is no more than six feet wide unless:

1. The portion must be wider in order to comply with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7, in which case the portion shall be the minimum width necessary to comply; or

2. The primary purpose of the dock or pier is to provide group instruction or a similar function, in which case the portion of the dock or pier shall be the minimum width\ necessary to accomplish this purpose.

(h) An applicant who proposes to build a public boat ramp shall, in addition to meeting the requirements at (b) through (d) above, demonstrate that there is no feasible onsite alternative location that will involve less or no disturbance of wetlands, transition areas, and/or State open waters.

(i) Activities under general permit 19 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.20 General permit 20--Bank stabilization

(a) General permit 20 authorizes activities in freshwater wetlands, transition areas, and/or State open waters, necessary to stabilize the bank of a water body in order to reduce or prevent erosion. Examples of bank stabilization activities are the placement of gabions, rip-rap, or geotextiles along a stream bank. General permit 20 does not authorize the channelization of a stream or the stabilization of the bottom of the stream.

(b) The applicant shall use vegetative or bioengineering stabilization methods unless the applicant demonstrates that, based on the velocity and configuration of the channel or other factors, the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90 require other methods. (c) The total cumulative length of water body bank affected by bank stabilization activities under general permit 20 shall meet the applicable length limit below in this subsection. These limits apply to the total linear footage of stream bank affected, regardless of which side of the stream it is on, or whether the activities are contiguous. For example, a bank stabilization using only rip-rap could disturb one bank of a stream for a distance of 150 feet, or both banks for 75 feet. The applicable length limits are as follows:

(c) The total cumulative length of water body bank affected by bank stabilization activities under general permit 20 shall meet the applicable length limit below. These limits apply to the total linear footage of stream bank affected, regardless of which side of the stream it is on, or whether the activities are contiguous. For example, a bank stabilization using only rip-rap could disturb one bank of a stream for a distance of 150 feet, or both banks for 75 feet. The applicable length limits are as follows:

1. For bank stabilization activities involving the placement of rip-rap, no more than 150 feet of stream bank;

2. For the following bank stabilization activities, no more than 300 feet of stream bank:

    i. Soil bioengineering systems for stream bank stabilization set forth at, and performed in accordance with, 650.1601(d)(2) in Chapter 16 of the NRCS Engineering Field Handbook, published December 1996, incorporated herein by reference as amended and supplemented; and

    ii. Soil bioengineering systems not included in (c)2i above but approved by the Department in writing, which are appropriate to the site and which provide environmental benefits similar to those provided by the measures in (c)2i above. Examples of such measures are the placement of coconut fiber rolls or sand filled textile containers, parallel to the shoreline of a stream bank; and

3. For bank stabilization activities that meet the following criteria, no more than 500 feet of stream bank:

    i. The activities are funded by the Department's Division of Watershed Management, or are included on an "action now" list, prepared for each region of the State by the Division of Watershed Management. These "action now" lists are available from the Division of Watershed Management at (609) 984-0058; and

ii. The stream bank is not located in an area that has a threatened or endangered species associated with its wetlands; and

4. For vegetative planting measures for stream bank stabilization set forth at, and performed in accordance with, 650.1601(d)(1) in Chapter 16 of the NRCS Engineering Field Handbook, there is no length limit.

(d) The bank stabilization activities described in (c) above may be used in combination. For example, a bank stabilization project might involve 100 feet of rip-rap authorized under (c)1 above, 300 feet of soil bioengineering authorized under (c)2i above, and 400 feet of vegetative planting measures authorized under (c)3i above.

(e) A permittee shall minimize environmental impacts as follows:

1. Activities under general permit 20 shall not impair surface water flow into or out of any wetland area;

2. If wetlands or transition areas must be disturbed to provide access to stabilization activities, the area disturbed shall be the minimum necessary, and shall be no wider than 20 feet at any point;

3. The Department shall allow replacement of previously eroded material as part of the bank stabilization only if the applicant demonstrates that such replacement would be environmentally beneficial;

4. Activities under general permit 20 shall comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

5. The activity shall be a single and complete project, not associated with any other regulated activity. For example, the bank stabilization activity cannot be conducted at the same location as a minor road crossing or a stormwater outfall structure; and

6. The amount of rip-rap or other stabilization material placed shall be the minimum necessary to prevent erosion, and shall not exceed 150 cubic yards of fill below the top of bank or high water mark, unless a larger amount is required in order to comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

(f) Activities under general permit 20 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.21 General permit 21--Above ground utility lines

(a) General permit 21 authorizes the following activities in freshwater wetlands, transition areas, and/or State open waters, necessary for the construction of an above ground utility line, as defined at N.J.A.C. 7:7A-1.4:

1. Installation of poles, towers, or other supports from which to suspend a pipe, wire or cable;

2. Construction of a pad mounted transformer;

3. Placement of an above ground pipe, wire or cable;

4. Clearing of vegetation under and around utility lines, within the limits at (b) below; and

5. Minor, temporary disturbances, as defined at N.J.A.C. 7: 7A-1.4, necessary for access during construction.

(b) Activities under general permit 21 shall comply with the following limits:

1. Temporary disturbance of freshwater wetlands, transition areas, and/or State open waters during construction shall be no more than sixty feet wide, including vegetative clearing and disturbance for access under (a)5 above; and

2. Permanent disturbance of freshwater wetlands, transition areas, and/or State open waters, including the area of vegetative clearing to be maintained underneath the utility line. For the purposes of this subsection, installation of a utility line in scrub shrub or emergent wetlands shall not be considered permanent disturbance. Permanent disturbance shall be:

   i. No greater than 0.5 acre; and

   ii. No wider than twenty feet, unless the applicant demonstrates that a wider disturbance is necessary to comply with applicable laws.

(c) Activities under general permit 21 shall not interfere with the natural hydrologic characteristics of the wetland, transition area, or State open water. The applicant shall place the utility line on pilings if necessary, in order to satisfy this condition.

(d) After the utility line is constructed, any freshwater wetlands, transition areas, or State open waters disturbed, which are not within the cleared area to be maintained under (b)2 above, shall be allowed to revert to their natural condition.

(e) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the

wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(f) Activities under general permit 21 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.22 (RESERVED)

N.J.A.C. 7:7A-5.23 General permit 23--Expansion of cranberry growing operations in the Pinelands

(a) General permit 23 authorizes the expansion of certain cranberry growing operations in the Pinelands. To be eligible for authorization under the general permit, the cranberry growing operation must be a single, discrete legal entity that, prior to the date general permit 23 becomes operative under (u) below:

1. Is located in the Pinelands, as defined at N.J.A.C. 7:50-2.11;

2. Is in active cranberry production; and

3. Was reported as a cranberry growing operation to the United States Department of Agriculture Cranberry Marketing Committee under the Federal Cranberry Marketing Order (7 C.F.R. Part 929, as amended).

(b) Activities authorized under general permit 23 include, but are not limited to, the construction or expansion of a bog, reservoir, canal, ditch, dike, tail water recovery system, water quality improvement system, or other similar support type facility. General permit 23 does not authorize:

1. Construction or expansion of maintenance or storage sheds;

2. Construction or expansion of housing; or

3. Establishment of new sites for storing or stockpiling sand or other materials.

(c) The Department shall authorize activities under general permit 23 only if the activities will be conducted on the area with the lowest number ranking on the list at (d) below, which is available and has the following characteristics:

1. The area is water accessible, that is, has direct access to free drainage and can be directly served by existing sources of water, or can feasibly be connected to a water source. The Natural Resources Conservation Service can assist the applicant in determining whether

an area is water accessible. To minimize environmental impact, areas which can reasonably be served by existing infrastructure are preferred; and

2. Has access to a water supply with a minimum flow rate of 227 gallons per minute per acre (that is, one acre foot of water for every bog acre in production per day).

(d) For the purposes of general permit 23, State open waters and wetland types are ranked in the order that they shall be considered for use for the expansion of a cranberry growing operation, as follows:

1. State open waters;

2. Abandoned blueberry fields;

3. Abandoned cranberry bogs;

4. Abandoned agricultural fields;

5. Freshwater wetlands dominated by emergent vegetation;

6. Freshwater wetlands dominated by scrub/shrub vegetation;

7. Forested freshwater wetlands that are not Atlantic white-cedar wetlands; and

8. Atlantic white-cedar wetlands.

(e) For the purposes of general permit 23, if a freshwater wetlands area was forested, but the trees have been harvested within the five years immediately preceding submittal of an application for authorization, the area is considered forested.

(f) The Department shall not issue more than one authorization under general permit 23 per year to a single cranberry growing operation.

(g) The Department shall not issue an authorization under general permit 23 for activities that will cause a net loss of freshwater wetlands at a single cranberry growing operation.

(h) The Department shall limit authorizations issued to any single cranberry growing operation under general permit 23 so as to ensure that the loss and/or disturbance of freshwater wetlands and/or State open waters at that single operation meets all of the following criteria:

1. No more than ten acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year;

2. No more than ten acres of forested freshwater wetlands shall be lost and/or disturbed over the five year term of general permit 23; and

3. No more than four of the 10 acres lost and/or disturbed under (h)2 above shall be Atlantic white-cedar wetlands.

(i) The Department shall limit authorizations issued Statewide so as to ensure that the total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters under general permit 23 meets all of the following criteria:

1. No more than 60 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year that general permit 23 is operative, except that if the Department authorizes fewer than 60 acres of loss and/or disturbance in any year, up to 30 acres of unused loss or disturbance may be carried forward to a subsequent year, but in no case shall more than 90 acres of freshwater wetlands and/or State open waters be lost or disturbed in one year;

2. No more than 300 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed during the five year term of general permit 23;

3. No more than 80 of the 300 acres lost and/or disturbed under (i)2 above shall be forested freshwater wetlands; and

4. No more than 25 of the 80 acres of forested freshwater wetlands lost and/or disturbed under (i)3 above shall be Atlantic white-cedar wetlands.

(j) If an applicant proposes activities under general permit 23 that will result in the loss and/or disturbance of Atlantic white-cedar wetlands, the applicant shall, in addition to meeting all other requirements, demonstrate that there is no suitable upland area available, which is owned by the applicant, which the applicant could use in order to eliminate or minimize impacts to Atlantic white-cedar wetlands. For purposes of this subsection, a suitable upland area is an upland area which meets all of the following criteria:

1. The area is water accessible, as described at (c)1 above, and has adequate water as required at (c)2 above;

2. Soils of the area are composed of Klej, Lakehurst, Pemberton, Hammonton, Woodstown or other soil types that are somewhat poorly drained or moderately well drained, as defined in the applicable county soil survey, published by the United States Department of Agriculture's Natural Resources Conservation Service, as amended and/or supplemented;

3. The seasonal high water table is within 24 inches of the surface; and

4. All of the soil to be excavated can be used in the construction of new bogs and sanding operations, or, if the soil cannot be used for construction, a storage or disposal site is available.

(k) If an applicant proposes activities under general permit 23 in an Atlantic white-cedar wetlands that is larger than five acres, the applicant shall, in addition to meeting all other requirements of this section, submit a written statement from the Natural Resources Conservation Service that the activities will minimize, to the extent feasible, the impacts to the remaining Atlantic white-cedar wetlands.

(l) If an applicant proposes activities that will result in the loss and/or disturbance of more than one half acre of freshwater wetlands and/or State open waters, the applicant shall transfer Pinelands Development Credits (PDCs) to the Department in accordance with the following:

1. The applicant shall transfer PDCs in the following ratios to acres of loss and/or disturbance:

    i. For Atlantic white-cedar wetlands, four tenths of a PDC for every acre of loss and/or disturbance;

    ii. For forested freshwater wetlands that are not Atlantic white-cedar wetlands, fifteen one hundredths of a PDC for every acre of loss and/or disturbance;

    iii. For emergent or scrub/shrub wetlands, one tenth of a PDC for every acre of loss and/or disturbance; and

    iv. For wetlands that are abandoned blueberry, cranberry, or agricultural fields, or State open waters, zero PDCs;

2. Each portion of the site that is one quarter acre or larger shall be assigned its own PDC requirement, and these requirements shall be summed to calculate the PDC requirement for the entire site. A portion smaller than one quarter acre will be given the ranking of the area surrounding it. For example, an applicant may have three acres of state open waters, and one eighth acre of Atlantic white-cedar wetlands surrounded by eight and seven eighths acres of scrub/shrub wetlands. The disturbance of the state open waters requires no PDCs under (l)1iv above. The one eighth acre of Atlantic white-cedar wetlands is smaller than one quarter acre and therefore is treated as part of the surrounding scrub/shrub wetlands. Under (l)1iii above, nine tenths of a PDC are required for the disturbance of the scrub/shrub wetlands. This would be the total for the site; and

3. The total PDC requirement for the site shall be rounded up to the nearest one quarter PDC. Under the example at 2 above, the PDC requirement for the entire site is nine tenths of a PDC, which would then be rounded up to one PDC.

(m) The applicant shall transfer any PDCs required under (l) above to the Department, or to a nonprofit or governmental agency designated by the Department, prior to beginning activities authorized under general permit 23, and no later than 90 days after receiving the general permit authorization. The Department or its designee shall convey the PDCs to the Pinelands Development Credit Bank in accordance with the MOA established under (n) below, and shall use the resulting funds to establish and/or restore Atlantic white-cedar wetlands in the Pinelands.

(n) The Department shall enter into a memorandum of agreement (MOA) with the Pinelands Commission and the Pinelands Development Credit Bank. The MOA shall include a general plan for implementing the Atlantic white-cedar restoration program required by this section, and shall:

1. Identify at least one potential site for Atlantic white-cedar restoration;

2. Include a requirement for at least one acre of Atlantic white-cedar restoration for each acre of Atlantic white-cedar wetlands lost and/or disturbed under general permit 23;

3. Include clear success criteria for the Atlantic white-cedar restoration program; and

4. Ensure that Atlantic white-cedar restoration efforts will not adversely impact existing areas of forested wetlands.

(o) To minimize impacts to freshwater wetlands and/or State open waters, a permittee under general permit 23 shall:

1. Follow, to the maximum extent practicable, the management practices recommended by the Rutgers Cranberry and Blueberry Experiment Station;

2. Stabilize all disturbed areas in accordance with the New Jersey Field Office Technical Guide, 1998 edition, as amended and supplemented, issued by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), available from the NRCS at 1370 Hamilton Street, Somerset, New Jersey 08873;

3. Use only suitable, clean, non-toxic fill material;

4. Use integrated pest management techniques; and

5. Design and carry out the activities to avoid irreversible adverse impacts on the survival of any local populations of threatened or endangered plants of the Pinelands, consistent with the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.27.

(p) The requirements of (c), (j), (k), (l), and (m) above shall not apply to the proposed activities under general permit 23 if the Department determines that the activities:

1. Will improve water conservation or water quality; and

2. Will result in a loss and/or disturbance of one half acre or less of freshwater wetlands and/or State open waters at that cranberry growing operation during the five year term of the general permit.

(q) Each year, the Commissioner shall make a finding as to whether the pace of impacts under the general permit is proportional to the pace of Atlantic white-cedar restoration efforts. The

Commissioner shall consult with the Pinelands Commission, and shall consider, among other factors, whether restoration efforts are making reasonable progress towards the goals in the Department's overall plan for Atlantic white-cedar restoration. The Department shall publish the Commissioner's finding as a public notice in the New Jersey Register by October 31 of each year:

1. If the Commissioner finds that the pace of impacts is proportional to the pace of restoration efforts, the Department shall publish a finding of continuance of the general permit. A finding of continuance shall remain in effect until the next October 31 following the publication of the finding; or

2. If the Commissioner finds that the pace of impacts is out of proportion to the pace of Atlantic white-cedar restoration efforts, the Department shall publish a finding of temporary hold of general permit authorizations, and shall stop issuing authorizations under general permit 23. A finding of temporary hold shall remain in effect until the Commissioner determines that the pace of impacts under the general permit has again become proportional to restoration efforts, and the Department publishes a finding of continuance.

(r) The Commissioner reserves the right (i.e., discretion) to modify, suspend, or revoke general permit 23 authorizations. Modification means the imposition of additional or revised terms or conditions on the authorization. Suspension means the temporary cancellation of the authorization while a decision is made to either modify, revoke, or reinstate the authorization. Revocation means the cancellation of the authorization. The Commissioner may assert discretionary authority by modifying, suspending, or revoking general permit 23 authorizations for a specific geographic area or class of waters, whenever the Commissioner determines sufficient concerns for the environment under the Freshwater Wetlands Protection Act or the Federal Section 404(b)(1) Guidelines, or if the Commissioner otherwise determines that the general permit would result in more than minimal adverse environmental effects either individually or cumulatively. Whenever the Commissioner determines that a proposed specific activity covered by general permit 23 would have more than minimal individual or cumulative adverse effects on the environment, the Commissioner must either modify the general permit 23 authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by general permit 23 and provide instructions on how to seek authorization under an individual permit. The Commissioner will restore authorization under general permit 23 at any time that the Commissioner determines that the reason for asserting discretionary authority has been satisfied by a condition, project modification, or new information.

(s) An application for authorization under general permit 23 shall be submitted within 90 days after the general permit becomes operative under (u) below. Within 180 days after general permit 23 becomes operative, the Department shall make a final decision on all applications submitted within the 90 day deadline. Thereafter, applications shall be submitted to the Department by January 1 of each year. The Department shall issue decisions on applications by March 1 of each year.

(t) If the Department receives applications for authorization under general permit 23 which would, if approved, result in a total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters that exceeds the limits at (i) above, the Department shall give priority to applications involving areas with the lowest number rankings on the list at (d) above, taking into consideration overall environmental impacts. If two or more applications involve similarly ranked land and similar environmental impacts, the Department shall give priority to the application submitted and determined complete under N.J.A.C. 7:7A-9.5(d) first.

(u) General permit 23 shall become operative as of the date that the Department publishes a notice in the New Jersey Register announcing that:

1. The Department has signed the Memorandum of Agreement required under (n) above; and

2. Twenty-five thousand dollars has been deposited from public sources to the fund established by the Department under the Memorandum of Agreement for the implementation of the Atlantic white-cedar restoration program.

(v) In order to ensure compliance with the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., general permit 23 will be added to the list of general permits subject to coordination procedures with the U.S. Fish and Wildlife Service under the Department's Memorandum of Agreement regarding the Endangered Species Act and New Jersey's assumption of the Federal 404 program.

N.J.A.C. 7:7A-5.24 General permit 24--Spring developments

(a) General permit 24 authorizes activities in farmed wetlands, or in State open waters, necessary for the construction of a spring development or other structure that diverts or collects water for the purpose of watering livestock. Activities authorized under general permit 24 include the installation of a collecting trench, a cutoff wall, crushed rock, perforated tubing, and/or a spring box. General permit 24 does not authorize diversion or use of water for irrigation, or for any purpose other than watering livestock. The activities authorized under general permit 24 constitute soil and water conservation practices that are exempt in transition areas under N.J.A.C. 7:7A-2.8(c)1.

(b) Activities under general permit 24 shall disturb no more than one quarter acre of freshwater wetlands and/or State open waters. Activities under general permit 24 shall not drain, or remove from jurisdiction, any additional or adjacent wetlands other than the one quarter acre directly impacted by the general permit activities.

(c) An activity is authorized under general permit 24 only if:

1. The activity is necessary to implement a farm management plan developed by the Natural Resources Conservation Service and approved by the appropriate Soil Conservation District;

2. The activity will be conducted at an established, ongoing farming, ranching or silviculture operation, as defined at N.J.A.C. 7:7A-1.4; and

3. The activity is located in a farmed wetland, as defined at N.J.A.C. 7:7A-1.4, that is eligible for a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.

(d) Any portion of a spring development from which livestock will drink, such as a watering trough or tub, shall be located outside of wetlands and State open waters.

(e) Activities under general permit 24 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.25 General permit 25--Malfunctioning individual subsurface sewage disposal (septic) systems

(a) General permit 25 authorizes activities in freshwater wetlands and transition areas necessary for the repair or modification of a malfunctioning individual subsurface sewage disposal system. General permit 25 does not authorize activities in State open waters.

(b) For the purpose of general permit 25:

1. "Individual subsurface sewage disposal system" means a system for disposal of sanitary sewage into the ground which is designed and constructed to retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field. This does not include outhouses, dry wells or similar facilities; and

2. "Malfunctioning" means that the use is impaired, and the system is not functioning to treat sewage as it was designed.

(c) All activities under general permit 25 on the site shall disturb no more than one-quarter acre of freshwater wetlands and/or transition areas combined and shall be located on the same property where the malfunctioning system is located.

(d) The Department shall not authorize activities under general permit 25 if the need for repair or modification is directly or indirectly caused by an expansion of the facility the individual subsurface sewage disposal system serves, or by a change in its use, including a change from disuse or abandonment to any type of use. Any repair or modification of the system shall be limited to serve only those volumes of sanitary sewage, estimated in accordance with N.J.A.C. 7:9A-7.4, that were approved prior to the malfunction.

(e) Activities under general permit 25 are not subject to the application contents requirements at N.J.A.C. 7:7A-10, except for the public notice requirements at N.J.A.C. 7:7A-10.8, and there is no application fee for an authorization under general permit 25. Instead, an applicant for

authorization under general permit 25 shall submit the following in writing to the Department, at least 30 days prior to starting work:

1. A description and plan of the activities;

2. The location of the site, including the county and municipality, and the block and lot, identified on both a regional map and a tax map; and

3. A letter from the local board of health with jurisdiction over the individual subsurface sewage disposal system, stating that:

   i. The proposed activities are authorized under, and comply with, the Department's Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A;

   ii. The proposed activities are not directly or indirectly caused by an expansion of the facility the individual subsurface sewage disposal system serves, or a change in its use; and

   iii. There is no alternative location on the site that:

      (1) Has a seasonal high water table deeper than one and one half feet below the existing ground surface; and

      (2) Can be used for a subsurface sewage disposal system.

(f) Upon receipt of an application under general permit 25, the Department shall process the application as follows:

1. Within 20 days of the Department's receipt of the application, the Department shall notify the applicant if the application is not administratively complete (that is, if it does not include all of the information required under (d) above). If the Department so notifies the applicant, the time period in (e)2 below shall not begin to run. If the Department does not so notify the applicant, the application shall be deemed administratively complete 20 days after the Department receives it; and

2. If the application includes all of the information required under (d) above, the Department shall have 30 days after receipt of the complete application to notify the applicant that the activities are not authorized under general permit 25, or that the activities may be authorized but require a full application review under N.J.A.C. 7:7A-10. If the Department does not so notify the applicant, the application is automatically approved, to the extent that the activity does not violate other laws then in effect.

(g) Activities under general permit 25 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

N.J.A.C. 7:7A-5.26 General permit 26-- Minor channel or stream cleaning for local government agencies

(a) General permit 26 authorizes a county, municipality or a designated agency thereof to conduct activities in freshwater wetlands, transition areas and State open waters within their jurisdiction, necessary to remove accumulated sediment, debris and garbage from a channel or stream in order to remove obstructions to flow, or to desnag the channel or stream.

(b) To be authorized under general permit 26, a channel or stream cleaning, clearing, or desnagging project shall meet all of the following criteria:

1. The sole purpose of the activities is to remove obstructions to flow, or to desnag a channel or stream;

2. The activities are necessary and in the public interest;

3. The activities will disturb only the channel or stream bed, and shall not disturb the stream bank or its vegetation, except in areas necessary to gain access to the channel or stream. Where access is needed, disturbance to the stream bank and its vegetation shall be the minimum necessary for access;

4. The activities shall not alter the natural banks of the stream. Such modification may in some cases be authorized under general permit 20. General permit 26 does not authorize the straightening or realignment of a channel or stream. Straightening or realignment constitutes channel modification and requires an individual permit;

5. The activities shall consist only of:

    i. The removal of accumulated sediment, debris and/or garbage from a channel or stream with a natural bed. General permit 26 does not authorize removal of material below the natural bottom; or

    ii. The removal of any accumulated material from a channel or stream previously channelized with concrete or similar artificial material;

6. The permittee shall make every effort to perform work from only one stream bank;

7. The permittee shall ensure that the use of heavy equipment within the stream channel is avoided to the maximum extent practicable; and

8. The permittee shall ensure that vegetation and tree canopy on the more southerly or westerly stream banks is preserved in order to shade the channel or stream.

(c) If a channel or stream cleaning, clearing, or desnagging project involves removal of sediment, it shall meet all of the requirements at (b) above, and in addition, the affected portion of the channel or stream shall meet all of the following criteria:

1. It is less than 500 feet long;

2. The channel or stream bed is 15 feet or less in average width;

3. The channel or stream has a documented history of flooding that is sufficiently severe so that the flooding results, or can result, in property damage necessitating the proposed cleaning, clearing, or desnagging;

4. The stream is not classified as a Pinelands water or category one water under the Department's Surface Water Quality Standards at N.J.A.C. 7:9B; and

5. The stream is not located in an area that has a threatened or endangered species, as defined at N.J.A.C. 7:7A-1.4, associated with its wetlands.

(d) All materials, including dredged material, removed from a channel or stream during activities authorized under general permit 26 shall be disposed of outside of freshwater wetlands, transition areas, State open waters, and areas regulated under the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13, unless the applicant demonstrates that this would cause more environmental harm than disposing of the material in these areas. For example, if removal of dredged material requires construction of a long temporary road through a very wet area to enable trucks to transport the dredged material offsite, this might cause more environmental harm than using a large blower to spread the dredged material thinly over a large area of wetlands.

(e) Activities under general permit 26 are not subject to the application requirements in N.J.A.C. 7:7A-10, except for the public notice requirements at N.J.A.C. 7:7A-10.8. An application for authorization under general permit 26 shall include the following:

1. The location of the affected portion of the channel or stream, including the county and municipality, and the block(s) and lot(s);

2. A USGS quad map showing the affected portion of the stream;

3. Color photographs and a brief narrative description of the affected portion of the channel or stream, including the access points where workers and equipment will be brought to the channel or stream;

4. The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, f the affected portion of the channel or stream;

5. A description of the nature of the project and the methods that will be used;

6. A description of the disposal location and methods for all material that will be removed from the channel or stream;

7. Documentation that the public notice requirements of N.J.A.C. 7:7A-10.8 have been met; and

8. A certification that meets both of the following criteria:

   i. The certification is signed by a licensed professional engineer who is the county or municipal engineer, or who is employed by the appropriate Soil Conservation District; and

   ii. The certification lists each condition in (b), (c) and/or (d) above that applies to the project, and states whether the condition has been satisfied or will be satisfied.

(f) Within 15 days of the Department's receipt of an application submitted under (e) above for a project that does not involve sediment removal, the Department shall do one of the following:

1. Notify the applicant either that the application is not administratively complete (that is, that it does not include all of the information required under (e) above), or that the application is administratively complete but that the application requires a full application review under N.J.A.C. 7:7A-10. If the application is not administratively complete, the Department shall request more information. If the application requires a full application review, the Department shall provide the applicant with the reasons for this. For example, an application may require a full review because of a sighting of a threatened or endangered species which must be investigated;

2. Notify the applicant that the project does not qualify for authorization under general permit 26; or

3. Take no action. If the Department takes no action, the channel or stream cleaning project is authorized under general permit 26 to the extent that the project does not violate other laws then in effect.

(g) Within 60 days of the Department's receipt of an application submitted under (e) above for a project that does involve sediment removal, the Department shall do one of the following:

1. Notify the applicant that the application is not administratively complete (that is, that it does not include all of the information required under (e) above) and request more information;

2. Notify the applicant that the project does not qualify for authorization under general permit 26; or

3. Take no action. If the Department takes no action, the channel or stream cleaning project is authorized under general permit 26 to the extent that the project does not violate other laws then in effect.

(h) If the Department notifies the applicant under (f)2 or (g)2 above that a channel or stream cleaning, clearing, or desnagging project is not authorized under general permit 26, the Department shall provide the applicant with the technical reasons for the decision. If the Department's technical reasons are based upon the inability to determine the natural stream bed, the Department shall, at the request of the applicant, assist in identifying the natural stream bed.

(i) Upon completion of a project under general permit 26 that involves the removal of sediment, the permittee shall submit to the Department a written notice that the project has been completed. The notice shall contain a certification that meets both of the following criteria:

1. The certification is signed by a licensed professional engineer who is the county or municipal engineer, or who is employed by the appropriate Soil Conservation District; and

2. The certification states each condition in (b), (c) and/or (d) above that applies to the project, and states whether the condition has been satisfied.

(j) Activities under general permit 26 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

N.J.A.C. 7:7A-5.27 General permit 27--Redevelopment of previously disturbed areas

(a) General permit 27 authorizes the disturbance of certain degraded freshwater wetlands, transition areas, and/or State open waters necessary for redevelopment, as defined at N.J.A.C. 7:7A-1.4, of an area previously significantly disturbed by industrial or commercial activities.

(b) General permit 27 authorizes activities only if:

1. The activities are located in wetlands that were previously disturbed or were formed as a result of previous disturbance by commercial or industrial activities;

2. The area is abandoned or underutilized;

3. The area meets at least one of the following criteria:

   i. It has been identified on the inventory of brownfield sites compiled by the Brownfields Redevelopment Task Force pursuant to N.J.S.A. 58:10B-23b;

   ii. It is the subject of a redevelopment agreement entered into pursuant to N.J.S.A. 58:10B-27;

iii. It has been identified as an environmental opportunity zone pursuant to N.J.S.A. 54:4-3.150 et seq.; and

4. The freshwater wetlands, transition areas, and/or State open waters to be disturbed are significantly degraded by human disturbance or alteration and are of little ecological value. Examples of significantly degraded wetlands are those that have formed as a result of a landfill cap, ponding of contaminated ground or surface water, or as a result of demolition of structures on a previously developed site.

(c) Activities under general permit 27 shall be limited as follows:

1. The activities shall disturb no more than one acre of a freshwater wetland, and/or State open water, which is not a water of the United States, as defined at N.J.A.C. 7:7A-1.4;

2. The activities shall disturb no more than one acre of a transition area; and

3. The activities shall disturb no more than one-half acre of a freshwater wetland and/or State open water, which is a water of the United States, as defined at N.J.A.C. 7:7A-1.4.

(d) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(e) A disturbance authorized under general permit 27 does not count toward the one acre of disturbance allowed under multiple general permits under N.J.A.C. 7:7A-4.4(a)2.

(f) Activities under general permit 27 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and N.J.A.C. 7:7A-13.2, Establishing permit conditions.

SUBCHAPTER 6 TRANSITION AREA WAIVERS

N.J.A.C. 7:7A-6.1 General transition area waiver provisions

(a) This section sets forth the requirements for transition area waivers. The Department issues the following types of transition area waivers:

1. An averaging plan transition area waiver, addressed at N.J.A.C. 7:7A-6.2;

2. A special activity transition area waiver for stormwater management, linear development, redevelopment, or activities eligible for an individual permit, addressed at N.J.A.C. 7:7A-6.3;

3. A matrix type width reduction transition area waiver, addressed at N.J.A.C. 7:7A- 6.4;

4. A hardship transition area waiver, addressed at N.J.A.C. 7:7A-6.5;

5. A general permit transition area waiver. If a general permit authorizes disturbance of a transition area, an authorization issued under the general permit constitutes a transition area waiver for the activities covered by the general permit. This waiver is not addressed in this section, but in each general permit in N.J.A.C. 7:7A-5 that covers transition area disturbances. All general permits except for general permits 1, 6, 7, 22 and 24 authorize activities in transition areas; and

6. An access transition area waiver. Each general permit authorization, individual freshwater wetlands permit and mitigation proposal shall include a limited transition area waiver to allow access to the authorized activity. No fee or application is required for this waiver. However, an access transition area waiver will allow regulated activities only:

   i. In that portion of the transition area bordering on that portion of the freshwater wetland in which the authorized activity is to take place; and

   ii. For an activity that the Department determines is necessary to accomplish the permitted activity. An activity not directly required in order to obtain access to the permitted activity shall require a separate transition area waiver. If the activity authorized under the permit eliminates the wetland in its entirety, the transition area associated with that wetland may also be eliminated in its entirety without a separate transition area waiver. If the activity authorized under the permit partially eliminates the wetland, the access shall be limited to the transition area adjacent to the location of the approved wetland filling. Any additional impacts to the transition area shall require a separate transition area waiver.

(b) The Department shall include in a transition area waiver additional conditions as necessary to ensure that an activity does not result in a substantial impact on the adjacent wetlands, and does not impair the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-2.5. Such conditions shall include but are not limited to the following:

1. Construction activities shall be conducted in such a way that there will be no regulated activities in the transition area or the wetland except any that are authorized by a permit, as defined at N.J.A.C. 7:7A-1.4;

2. The structure is designed and shall be used in such a way that there will be no regulated activities in the transition area or the wetland except any that are authorized by a permit, as defined at N.J.A.C. 7:7A-1.4;

3. The transition area and/or wetland is fenced, using a type of fencing that protects and maintains all functions and values of the resources, prior to construction of the structure (including site preparation), and the fence is permanently maintained, so as to clearly delineate its boundary and to prevent people from entering and/or disturbing the transition area and/or wetland;

4. The permittee shall execute and record a conservation restriction or easement, in accordance with the procedures at N.J.A.C. 7:7A-2.12, which prohibits any regulated activities in the transition area and wetlands as appropriate; and

5. During construction activities, all excavation must be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures.

(c) If a site has more than one freshwater wetland, the Department shall treat each wetland and its associated transition area separately for purposes of transition area waivers. To determine whether a freshwater wetland area is all one wetland or is made up of multiple separate wetlands, the Department shall consider the following factors:

1. The proximity of the wetland areas to each other; and

2. Whether the wetland areas are hydrologically connected.

(d) An applicant whose application does not meet the requirements for any of the transition area waivers listed in (a) above may obtain a transition area waiver through scientifically documenting that a proposed activity will have no substantial impact on the adjacent wetlands. This documentation may include, but is not limited to, nutrient or sediment transport models, buffer models, or wildlife habitat suitability studies. An application submitted under this subsection shall address the following, as they relate to the adjacent wetlands:

1. Sediment, nutrient, and pollutant transport and removal;

2. Impacts on sensitive species; and

3. Surface water quality impacts.

(e) With the exception of a waiver for redevelopment for which it is not practicable, in accordance with N.J.A.C. 7:7A-6.3(f)4 or access, all transition area waivers shall be conditioned on the recording of a Department-approved conservation restriction or easement, as defined at N.J.A.C. 7:7A-1.4, and in accordance with the requirements at N.J.A.C. 7:7A-2.12, restricting future activities in the entire transition area and adjacent wetlands on the site.

1. If the permittee does not conduct regulated activities before the transition area waiver expires, the following apply with regard to the transition area:

    i. If no activities have been conducted, regardless of whether or not the conservation restriction or easement was recorded, the permittee shall obtain a new transition area waiver to conduct regulated activities in the transition area; or

    ii. If no activities have been conducted and the conservation restriction or easement was properly recorded, but the permittee wants to reconfigure the project to use portions of the property contained within the restriction or easement, the permittee shall apply for a new transition area waiver, together with a request for a modification of the conservation restriction or easement in accordance with the procedures at N.J.A.C. 7:7A-2.12(i);

2. In the case of a subdivision for which a transition area waiver was approved, if one or more lots remain undeveloped when the transition area waiver expires, the following shall apply with regard to the transition area:

    i. If no activities have been conducted on a lot which was part of a larger subdivision, regardless of whether or not the conservation restriction or easement was recorded, the permittee shall apply for a new transition area waiver for the lot, using the same plan that was used to obtain the transition area waiver for the subdivision as a whole. That is, if a transition area waiver averaging plan was obtained for the subdivision as a whole and that transition area waiver averaging plan expires, the individual lot owner shall apply for a transition area averaging plan for the individual lot using the original averaging plan for the subdivision as a whole. The Department shall consider proposed changes to the originally approved plan only if the conservation easement or restriction was recorded and the changes meet the standards for a de minimis modification at N.J.A.C. 7:7A-2.12(i);

3. If the permittee does not properly record the required conservation restriction or easement, he or she shall be in violation of the Freshwater Wetlands Protection Act and this chapter.

(f) The process at N.J.A.C. 7:7A-17 is also available to applicants for a transition area waiver.

(g) A transition area waiver allowing the reduction of the transition area adjacent to an exceptional resource value wetland shall be conditioned on a transition area averaging plan which provides an average transition area width of at least 100 feet.

(h) With the exception of a transition area waiver for access in accordance with N.J.A.C. 7:7A-6.1(a)6 and a special activity waiver for redevelopment in accordance with N.J.A.C. 7:7A-6.3(f), the Department shall not issue a transition area waiver under this section and a general permit authorization for the same site and for the same activity, if the combined effect of the transition area waiver and general permit authorization would be to expand the general permit activity beyond the limits set forth in the general permit. For example, if an applicant proposes one road crossing on a site, the Department will not permit the combination of a general permit 10 authorization with an averaging plan for the same road crossing because to do so would cause the crossing to exceed the 0.25 acre limit of general permit 10.

(i) With the exception of an transition area waiver for access approved in accordance with (a)6 above or a transition area waiver meeting the requirements for an individual permit at N.J.A.C. 7:7A-6.3(g), transition area waiver shall not be approved to allow encroachment within 75 feet of an exceptional resource value wetland.

N.J.A.C. 7:7A-6.2 Transition area averaging plan waiver

(a) A transition area averaging plan waiver modifies the overall shape of a transition area without reducing its total square footage. The Department may approve a transition area averaging plan waiver for activities adjacent to an intermediate or exceptional resource value freshwater wetlands. A diagram of an example transition area averaging plan is shown in N.J.A.C. 7:7A-6, Appendix A.

(b) The Department shall issue a transition area averaging plan waiver only if the transition area, as modified, will continue to serve the purposes of a transition area set forth in N.J.A.C. 7:7A-2.5. The Department shall presume that the following will result in a transition area that will not serve the purposes set forth in N.J.A.C. 7:7A-2.5, and shall not issue a transition area averaging plan waiver, unless the applicant demonstrates otherwise under N.J.A.C. 7:7A-6.1(d):

1. The portion of the existing, pre-activity transition area that will be reduced has a slope greater than 25 percent, as calculated under N.J.A.C. 7:7A-6.4(g);

2. A new individual subsurface sewage disposal (septic) system that discharges onsite will be placed within the existing, pre-activity transition area;

3. An outfall structure that will discharge unfiltered or untreated stormwater into wetlands will be placed within the existing, pre-activity transition area; or

4. The proposed averaging compensation area is separated from the wetland by an intervening structure.

(c) In addition to the presumptions at (b) above, the Department shall also presume that, for a transition area adjacent to an intermediate resource value wetland, the following will result in a substantial impact on the adjacent freshwater wetlands, and the Department shall not issue a

transition area averaging plan waiver unless the applicant demonstrates otherwise under N.J.A.C. 7:7A-6.1(d):

1. A structure, impervious surface, or stormwater management facility, as defined at N.J.A.C. 7:7A-1.4, will be placed within 20 feet of freshwater wetlands; or

2. The transition area averaging plan proposes to:

   i. Reduce any portion of the transition area to less than 10 feet wide:

   ii. Reduce a transition area to less than 25 feet wide in an area containing critical habitat for fauna or flora, as defined at N.J.A.C. 7:7A-1.4;

   iii. Reduce a transition area to 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

   iv. Reduce a transition area to less than 25 feet wide within the watershed of a current or proposed National Wildlife Refuge; or

   v. Compensate for a decrease in a transition area by increasing the width of any portion of the transition area to more than 75 feet;

   vi. Result in an average transition area width that is less than 25 feet.

(d) In addition to the presumptions at (b) and (c) above, the Department shall also presume that, for a transition area adjacent to an exceptional resource value wetland, the following will result in a substantial impact on the adjacent freshwater wetlands, and the Department shall not issue a transition area averaging plan waiver unless the applicant demonstrates that the activity would qualify for an individual permit under this chapter:

1. The freshwater wetland adjacent to the transition area is a breeding or nesting habitat for a threatened or endangered species as defined a N.J.A.C. 7:7A-1.4;

2. The freshwater wetland adjacent to the transition area discharges directly to a trout production water or a tributary thereof, except that a transition area averaging plan waiver shall not be disallowed under this subsection if:

   i. The freshwater wetlands and transition area remaining adjacent to the trout production water after the averaging is at least 150 feet wide, measured from the top of the bank of the trout production water; or

   ii. The wetland drains to a tributary that is separated from the trout production water by an intervening lake; or

3. The transition area averaging plan proposes to:

i. Reduce any portion of the transition area to less than 75 feet wide; or

ii. Compensate for a transition area reduction by increasing the width of any portion of the transition area to more than 225 feet.

(e) Each transition area averaging plan shall be specific to a particular freshwater wetland and its associated transition area. To determine whether a freshwater wetland area is all one wetland or made up of multiple separate wetlands, the Department shall consider the factors listed at N.J.A.C. 7:7A-6.1(f). If an applicant proposes to expand a transition area to compensate for a reduction elsewhere, the expanded portion of the transition area shall:

1. Be an extension of the same transition area that is being reduced, located adjacent to the same freshwater wetlands as the reduced transition area;

2. Be located on the same site, as defined at N.J.A.C. 7:7A-1.4, as the reduction;

3. Be owned in fee simple by the applicant, unless the applicant demonstrates sufficient legal authority over the site to carry out all requirements of this chapter. For example, the expanded portion of the transition area shall not be subject to a utility easement or other encumbrance; and

4. Have the same ecological characteristics as the reduced portion of the transition area, including the vegetation types, or have characteristics that are equivalent or better as regards the transition area's ability to serve the functions listed at N.J.A.C. 7:7A-2.5. For example, if a forested portion of the transition area is reduced, the expanded portion of the transition area must also be forested.

N.J.A.C. 7:7A-6.3 Special activity transition area waiver

(a) The Department shall issue a transition area waiver for certain special activities meeting the criteria in this section. However, the Department will issue a special activity waiver under this section only if the activities will not result in a substantial impact on the adjacent freshwater wetlands, and the proposed project will minimize impacts to the freshwater wetland and transition area.

(b) The Department shall issue the following types of special activity transition area waivers:

1. A stormwater management transition area waiver under (d) below;

2. A linear development transition area waiver under (e) below;

3. A redevelopment transition area waiver under (f) below; and

4. An individual permit transition area waiver under (g) below.

(c) When considering alternative locations under this section:

1. The Department shall consider an alternative location feasible if it is available and capable of being used after taking into consideration cost, existing technology, and logistics in light of the overall project purpose; and

2. The Department shall consider an alternative location infeasible if its use for the project would cause other, more significant adverse environmental consequences.

(d) The Department shall issue a special activity transition area waiver for stormwater management if there is no feasible alternative onsite location for the stormwater management facility. An alternative onsite location shall not be considered infeasible merely because it would require one or more of the following:

1. Relocating part or all of the facility outside of the transition area and into the upland;

2. Modifying the type of facility;

3. Redesigning the layout, size, scope or configuration of the buildings, roads or other aspects of the project in order to accommodate the facility; or

4. Reducing the scope, size, or density of the project.

(e) The Department shall issue a special activity transition area waiver for linear development, as defined at N.J.A.C. 7:7A-1.4, if there is no feasible alternative location for the linear development. In considering alternative locations, the Department shall consider the factors at (c) above and the following:

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

    i. Modifying the route of the linear development to avoid or reduce impacts to freshwater wetlands and transition areas; or

    ii. Reducing the width of the linear development; and

2. An alternative shall not be excluded from consideration merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained or used to fulfill the basic purpose of the proposed activity.

(f) The Department shall issue a special activity transition area waiver for redevelopment of a significantly disturbed area if all of the following conditions are met:

1. The area of proposed activity is significantly disturbed so that it is not functioning as a transition area at the time of application, for example, the area is covered by an impervious surface such as pavement, by gravel or paver blocks, or by a deck that is less

than 5 feet off the ground. For example, a lawn is not considered to be so significantly disturbed that it is not functioning as a transition area;

2. The significant disturbance in the area of proposed activity was legally existing in the transition area prior to July 1, 1989, or has been permitted under this chapter;

3. No additional disturbance is proposed that would expand the disturbed area; and

4. Where practicable, any remaining disturbed portion of the transition area shall be planted with indigenous plants that are beneficial to the wetland, and protected from future development by a conservation restriction or easement that meets the requirements at N.J.A.C. 7:7A-2.12.

(g) The Department shall issue a special activity transition area waiver for an activity if the applicant demonstrates that, if the activity were instead proposed in a freshwater wetland, it would meet the standards for a freshwater wetlands individual permit at N.J.A.C. 7:7A-7.2 and 7.4, and mitigation in accordance with N.J.A.C. 7:7A-15.26.

N.J.A.C. 7:7A-6.4 Matrix type width reduction transition area waiver

(a) This section sets forth the requirements for a matrix type width reduction transition area waiver, or "transition area matrix waiver," for a project proposed in a transition area adjacent to an exceptional or intermediate resource value wetland.

(b) The Department shall issue a transition area matrix waiver only if all of the following criteria are met:

1. If the freshwater wetland is located adjacent to a waterway that meets either of the criteria at (b)1i or ii below, the activities must be approved by the National Park Service:

   i. The waterway is a component of the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C.§§1271 et seq. or N.J.S.A. 13:8-45 et seq.; or

   ii. The waterway is in an official study status for designation by Congress or the State Legislature as a "study river" for possible inclusion in either system described in (b)1i above;

2. The proposed activities would not cause the disturbance or exposure of acid producing deposits, as defined at N.J.A.C. 7:7A-1.4;

3. The site is not located adjacent to a local, county, State, or Federal park, wildlife refuge, sanctuary, management area or area listed on the New Jersey Register of Natural Areas; and

4. The application does not include construction or expansion of any of the following:

i. A mineral extraction and/or processing operation, including mining or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, limestone, or other minerals;

ii. A wastewater treatment or individual subsurface disposal system located within 150 feet of an exceptional resource value wetland or within 50 feet of an intermediate resource value wetland;

iii. A solid waste facility; or

iv. A facility for the storage, processing, or disposal of hazardous substances as defined in the Department's rules governing the prevention and reporting of discharges of hazardous substances at N.J.A.C. 7:1E-1.7.

(c) The only type of exceptional resource value wetland for which a transition area matrix waiver may be issued is a wetland that meets both of the following criteria:

1. The wetland is located on a tributary to an FW1 water or on a tributary to an FW2 trout production water; and

2. The wetland does not:

   i. Contain a present or documented habitat for threatened or endangered species, as defined at N.J.A.C. 7:7A-1.4; or

   ii. Discharge into FW1 waters or trout production waters.

(d) The Department shall not issue a transition area matrix waiver for a transition area on an intermediate resource value wetland that is a critical habitat for fauna or flora, as defined at N.J.A.C. 7:7A-1.4.

(e) The Department shall determine the width of a transition area using the matrix in Table B or Table C below, as applicable, based on the factors listed at (e)1 through 3 below:

1. The slope of the portion of the transition area contained within the site, as determined under (g) below;

2. The dominant vegetational community in the portion of the transition area contained within the site, as determined under (h) below; and

3. The development intensity of the proposed project, as determined under (i) below.

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Table B

Matrix for determining the width of a transition area (in feet) on an exceptional resource value wetlands

		Development intensity		
Dominant Vegetational community	*Slope %*	*Low (0-10%)*	*Moderate (> 10-40%)*	*High (> 40%)*
Herbaceous	0-2	100	120	140
	> 2	150	150	150
Scrub/shrub	0-2	75	75	80
	> 2-5	95	115	130
	> 5	150	150	150
Forest	0-2	75	75	75
	> 2-5	75	75	75
	> 5-10	75	85	95
	> 10-15	95	105	115
	> 15-20	115	125	135
	> 20	135	145	150

Table C

Matrix for determining the width of a transition area on an intermediate resource value wetlands

Conditions	*Transition area width*
Forest </= 1% slope < 20% development intensity	25 feet
Scrub/shrub or herbaceous </= 1% slope < 20% development intensity	35 feet
Forest </= 3% slope < 40% development intensity	35 feet

(f) For a transition area on an intermediate resource value wetland, if a site and/or proposed project does not meet one of the three sets of conditions in the matrix in Table C, a transition area matrix waiver is not available.

(g) The percent slope of the transition area for use in the applicable matrix at (e) above shall be established by measuring the distance perpendicular to the contour of the slope on the plan. The percent slope shall be calculated for each two-foot contour interval at 10-foot intervals. For example, any location in the transition area where there is a one-foot rise over a 10-foot horizontal run constitutes a 10 percent slope; a two-foot rise over a 10-foot horizontal run constitutes a 20 percent slope.

(h) The dominant vegetational community in a transition area is the plant community which covers the most surface area of the transition area on the site. Transition area vegetational communities are classified as follows:

1. An herbaceous vegetational community is characterized by annual and perennial plant species or bare ground;

2. A scrub-shrub vegetational community is characterized by shrub and herbaceous plant species with an average height equal to or less than 20 feet. For the purposes of this section, a forested area with little or no herbaceous or shrub layer (understory) shall be considered a scrub-shrub vegetational community; and

3. A forested vegetational community is characterized by tree species with an average height greater than 20 feet accompanied by an herbaceous or shrub layer.

(i) To determine the development intensity of a site for use in the applicable matrix at (e) above, an applicant shall:

1. Determine the total area of the site in square feet;

2. Identify all freshwater wetlands, transition areas, or State open waters on the site, and determine the area, in square feet, covered by each;

3. Total the areas identified in (i)2 above;

4. Subtract (i)3 from (i)1. This is the net land area;

5. Determine the total area, in square feet, on the site which will be covered with impervious surfaces, as defined at N.J.A.C. 7:7A-1.4, when the proposed project is completed;

6. Divide the total proposed impervious surface from (i)5 by the net land area from (i)4; and

7. Multiply (i)6 by 100 percent. This is the development intensity of the project, for use in the applicable matrix at (e) above.

N.J.A.C. 7:7A-6.5 Hardship transition area waiver

(a) The Department shall issue a hardship transition area waiver under this section if a site is not susceptible to a reasonable use if developed as authorized by this chapter, and this limitation results from unique circumstances peculiar to the site which:

1. Do not apply to or affect other property in the local region;

2. Relate to or arise out of the site itself, rather than the personal situation of the applicant; and

3. Are not the result of any action or inaction by the applicant, the site owner or the owner's predecessors in title.

(b) The Department shall presume that a hardship under (a) above exists and shall issue a hardship transition area waiver that reduces the transition area in an amount determined under (c) below, provided that the applicant demonstrates that all of the following criteria are met:

1. The presence of transition areas on the site makes it impossible to build a single family dwelling on the site under the other provisions of this chapter;

2. The lot or lots that make up the site were created by a subdivision occurring prior to July 1, 1988;

3. The site has been owned continuously by the applicant since prior to July 1, 1988;

4. The site is not contiguous with an improved property that was owned by the applicant on July 1, 1988;

5. The applicant has not received a hardship transition area waiver based on these hardship criteria at any time during the five years prior to the present application for a hardship transition area waiver;

6. The applicant has unsuccessfully attempted to purchase adjacent properties for fair market value in order to create a developable upland;

7. The applicant has offered the site for sale at fair market value as determined by a fair market value appraisal, performed by a State-licensed appraiser and using a form letter provided by the Department, to adjacent property owners and the offer was refused or is not reasonable, assuming a minimum beneficial economically viable use, in accordance with N.J.A.C. 7:7A-17, to alleviate the hardship;

8. The applicant has offered the site for sale at fair market value as determined by a fair market value appraisal, performed by a State-licensed appraiser, and using a form letter provided by the Department, to interested public and/or private conservation organizations on a list provided by the Department, and the offer was refused or is not reasonable, assuming a minimum beneficial economically viable use, in accordance with N.J.A.C. 7:7A-17, to alleviate the hardship;

9. The form letter of sale under (b)7 and 8 above shall be sent by certified mail and shall:

   i. Indicate that the offer is open for a period of at least 90 days;

   ii. Include a copy of a fair market value appraisal, performed by a State-licensed appraiser; and

   iii. Include a full disclosure that the property is contained within a wetland transition areas that restricts its use.

(c) The amount of transition area reduction authorized under a hardship transition area waiver shall be the minimum amount necessary to construct one single family home and any necessary appurtenances, such as a driveway or septic system. However, the transition area shall not be reduced under this section to less than 75 feet for a transition area adjacent to exceptional resource value wetlands, or 25 feet for a transition area adjacent to intermediate resource value wetlands.

N.J.A.C. 7:7A-6.6 Application for a transition area waiver

An application for a transition area waiver shall include the information required at 7:7A-10, Application contents and procedures. The applicant shall follow the application procedures at 7:7A-10, and the Department will review the application using the procedures at 7:7A-10.

SUBCHAPTER 7 INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

N.J.A.C. 7:7A-7.1 General provisions for individual permits

(a) To be authorized under an individual permit, an activity shall meet the following requirements:

1. All activities that require an individual permit shall meet all of the requirements at N.J.A.C. 7:7A-7.2;

2. In addition to the requirements at N.J.A.C. 7:7A-7.2, a non water-dependent activity, as defined at N.J.A.C. 7:7A-1.4, shall meet the requirements at N.J.A.C. 7:7A-7.4, except if the activity disturbs only State open waters that are not special aquatic sites as defined at N.J.A.C. 7:7A-1.4; and

3. In addition to the requirements at N.J.A.C. 7:7A-7.2, a non water-dependent activity in an exceptional resource value wetland or trout production water shall meet the requirements at N.J.A.C. 7:7A-7.5.

(b) The Department shall not consider a mitigation proposal in determining whether an individual permit will be issued for a project.

(c) Each individual permit applies to the entire site upon which permitted activities occur. An applicant shall not segment a project or its impacts by applying for general permit authorization for one portion of the project and applying for an individual permit for another portion of the project. Similarly, an applicant shall not segment a project or its impacts by separately applying for individual permits for different portions of the same project.

(d) In some cases, a regulated activity that requires an individual permit and is located in an area under the jurisdiction of the Pinelands Commission also requires approval by the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

N.J.A.C. 7:7A-7.2 Standard requirements for all individual permits

(a) This section sets forth requirements that apply to all activities to be covered by an individual permit, including both water-dependent activities, as defined at N.J.A.C. 7:7A-1.4, and non water-dependent activities. Additional individual permit requirements that apply only to non water-dependent activities are found in N.J.A.C. 7:7A-7.4.

(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:

1. Has no practicable alternative which would meet the requirements at (b)1i and ii below:

    i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and

    ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;

2. Will result in the minimum feasible alteration or impairment of the aquatic ecosystem including existing contour, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland and hydrologic patterns of the HUC 11 in which the activity is located;

3. Will not destroy, jeopardize or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of a local population of a threatened or endangered species, as defined at N.J.A.C. 7:7A-1.4;

4. Will not be likely to result in the destruction or adverse modification of a habitat which is determined by the Secretary of the United States Department of the Interior or the Secretary of the U.S. Department of Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.;

5. Will not cause or contribute to a violation of any applicable State water quality standard;

6. Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to the Water Pollution Control Act;

7. Will not violate any requirement imposed by the United States government to protect any marine sanctuary designated pursuant to the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401 et seq.;

8. Will not cause or contribute to a significant degradation, as defined at 40 C.F.R. 230.10(c), of ground or surface waters;

9. Will not adversely affect a property which is listed or is eligible for listing on the New Jersey or National Register of Historic Places unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact the property's ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of listing or eligibility. The Department shall not issue a conditional permit if it finds that the mitigation proposed is inadequate to compensate for the adverse affect. Any permit for an activity which may adversely affect a property listed or eligible for listing on the New Jersey or National Register of Historic Places shall contain conditions to ensure that any impact to the property is minimized to the maximum extent practicable and any unavoidable impact is mitigated;

   i. If the permittee, before or during the authorized work, encounters a possible historic property, as described at N.J.A.C. 7:7A-12.2(l), that is or may be eligible for listing on the New Jersey or National Register, the permittee shall preserve the resource, immediately notify the Department and proceed as directed by the Department;

10. Will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or implementing rules at N.J.A.C. 7:13;

11. Is otherwise lawful;

12. Is in the public interest, as determined by the Department in consideration of the following:

    i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development. In determining whether a proposed activity is in the public interest, the Department shall consider, as one source of guidance, the goals, strategies, policy objectives and policies of the New Jersey State Development and Redevelopment Plan, adopted and/or readopted by the State Planning Commission pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning Act rules, N.J.A.C. 17:32;

    ii. The relative extent of the public and private need for the proposed regulated activity;

    iii. Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, to accomplish the purpose of the proposed regulated activity;

    iv. The extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;

    v. The quality and resource value classification pursuant to N.J.A.C. 7:7A-2.5 of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

    vi. The economic value, both public and private, of the proposed regulated activity to the general area; and

    vii. The functions and values provided by the freshwater wetlands and probable individual and cumulative impacts of the regulated activity on public health and fish and wildlife;

13. Will not involve a discharge of dredged material or a discharge of fill material, unless the material is clean, suitable material free from toxic pollutants in toxic amounts, which meets Department rules for use of dredged or fill material;

14. Is consistent with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., unless the activities are not subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15; and

15. In accordance with N.J.A.C. 7:7A-2.11, is part of a project that in its entirety complies with the Stormwater Management rules at N.J.A.C. 7:8.

(c) The following shall apply to the Department's consideration of whether an alternative is practicable under (b)1 above:

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes;

    i. In considering cost in accordance with (c)1 above, the Department shall consider the acquisition history of the property as a whole, as defined at N.J.A.C. 7:7A-1.4, and the amount, nature, and date of investments that the applicant has made in the property as a whole; and

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

N.J.A.C. 7:7A-7.3 (Reserved)

N.J.A.C. 7:7A-7.4 Additional requirements for a non water-dependent activity in a wetland or special aquatic site

(a) In addition to meeting the requirements of N.J.A.C. 7:7A-7.2, a non water-dependent activity in a freshwater wetland or special aquatic site, as defined in N.J.A.C. 7:7A-1.4, shall meet the requirements of this section. If an activity is water-dependent, as defined at N.J.A.C. 7:7A-1.4, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.

(b) There shall be a rebuttable presumption that there is a practicable alternative to a non water-dependent activity in a freshwater wetland or in a special aquatic site, which alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.

(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:

1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;

2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;

3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;

4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and

5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-7.5 are met.

7:7A-7.5 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters

(a) If an applicant proposes a non water-dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:

1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

SUBCHAPTER 8 EMERGENCY PERMITS

N.J.A.C. 7:7A-8.1 Emergency permits

(a) The Department may issue a temporary emergency freshwater wetlands permit, open water fill permit, or transition area waiver only if:

1. An unacceptable threat to life, severe loss of property, or severe environmental degradation will occur if an emergency permit is not issued; and

2. The anticipated threat or loss may occur before a permit or waiver can be issued or modified under the procedures otherwise required by this chapter.

(b) An emergency permit may be approved orally by the Director of the Department's Division of Land Use Regulation or issued in writing, except that if it is approved orally, the Department shall issue a written authorization within five days after the oral approval.

(c) The emergency permit shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency regulated activities, including mitigation, and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days;

2. Require mitigation pursuant to N.J.A.C. 7:7A-15 of the freshwater wetland and/or State open waters within this 90 day period, except that if more than 90 days from the issuance of the emergency permit is required to complete mitigation, the emergency permit may be extended to complete this mitigation only;

3. Fully describe the work that will be conducted under the emergency permit; and

4. Specify the procedures that the permittee must follow under N.J.A.C. 7:7A-8.2 below to obtain a freshwater wetlands or open water fill permit, or transition area waiver.

(d) Notice of the issuance of the emergency permit shall be published and public comments received, in accordance with the provisions of 40 C.F.R. 124.10 and 124.11, and of the Federal Act and applicable State law, provided that this notification shall be mailed no later than 10 days after issuance of the emergency permit.

(e) The emergency permit may be terminated at any time without prior hearing upon a determination by the Department that this action is appropriate to protect human health or the environment.

(f) Emergency activities in an area under the jurisdiction of the Pinelands Commission may require approval by the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan. For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/ pinelands.

N.J.A.C. 7:7A-8.2 Obtaining an emergency permit

(a) A person in need of an emergency permit shall inform the Department as to the extent of work to be performed, the reason for the emergency, and the location of the project. This information shall include a written description of the work, plans of the work, and photographs of the site, and shall be presented to the Department in writing prior to the issuance of the emergency permit.

(b) If the Department receives a request for an emergency permit for a major discharge, the Department will notify the Regional Administrator of Region II of the USEPA before issuing an emergency permit, and will send a copy of the written permit to the USEPA upon issuance.

(c) If the Director of the Department's Land Use Regulation Program gives oral approval for an emergency permit, the emergency work may be started. The person who received the oral approval shall keep Department staff informed by telephone at least once per week regarding the situation at the site. The Department will offer guidance and instructions in performing the work

(d) If the Director of the Department's Land Use Regulation Program does not give oral approval, the Department may issue a written emergency permit at any time within 15 days after the initial request.

(e) Within 15 days after the Department gives an oral approval under (c) above, the permittee shall submit the following to the Department:

1. "As-built" drawings, showing all activities conducted under the emergency permit, including all excavation, grading, structures, and other regulated activities;

2. The applicable fee specified at 7:7A-11; and

3. Any other information necessary for the Department to ensure compliance with this chapter.

(f) After following the application review procedures at 7:7A-12, the Department shall issue a freshwater wetlands permit, open water fill permit, or transition area waiver for the activities covered by the emergency permit. This permit or waiver may contain conditions, including, but not limited to, mitigation under 7:7A-15, necessary to minimize and/or compensate for any adverse impacts to the freshwater wetlands, State open waters, or transition areas resulting from the activities performed under the emergency permit.

(g) Any regulated activities performed, other than those described to the Department in the request for the emergency permit and approved by the Department under this section, shall constitute a violation that is subject to enforcement action under 7:7A-16.

SUBCHAPTER 9 PRE-APPLICATION CONFERENCES

N.J.A.C. 7:7A-9.1 Purpose

A pre-application conference is recommended for any project that is complex or controversial. It allows the Department to inform potential applicants of the various procedures and policies which apply to the freshwater wetlands, open water fill, stream encroachment, and coastal program permitting process. Department staff will candidly discuss the apparent strengths and weaknesses of the proposed permit application at this conference, but all guidance provided at a pre-application conference shall be non-binding on the Department. A Department decision on a project or any aspect of a project is binding only if it is incorporated into a permit obtained in accordance with this chapter.

N.J.A.C. 7:7A-9.2 Request for a pre-application conference

(a) Potential applicants may request a pre-application conference with the Department. A request for a pre-application conference shall be made in writing and shall include:

1. A project description;

2. A plan view of the project;

3. A tax lot and block designation of the site;

4. The location of the project site, including the municipality and county;

5. A copy of any LOI issued for the site. If no LOI has been issued, the general location of freshwater wetlands, transition areas, and State open waters;

6. A copy of the appropriate United States Soil Conservation Service map(s) locating the project; and

7. A United States Geological Survey quadrangle map showing the site.

(b) The Department encourages the applicant to obtain a letter of interpretation prior to the pre-application conference.

(c) If a pre-application conference is to be held, the Department shall schedule the pre-application conference within 15 days after receiving a request for one. If a pre-application conference is not scheduled within this deadline, the applicant may apply directly for a permit.

SUBCHAPTER 10 APPLICATION CONTENTS AND PROCEDURE

N.J.A.C. 7:7A-10.1 Basic application information

(a) This subchapter describes the application contents and procedures required for most Department permits, waivers, and authorizations.

(b) This subchapter applies to an application for all of the following:

1. A letter of interpretation, including an extension or modification of a letter of interpretation;

2. Authorization to act under a general permit, except that the following activities are subject to application requirements in the general permits listed below, and are not subject to any of the application requirements in this subchapter except for the public notice requirements at N.J.A.C. 7:7A-10.8:

   i. The ongoing maintenance of an off-stream stormwater management facility created in uplands under general permit 1;

   ii. The repair or modification of an individual subsurface disposal system (septic system) under general permit 25; and

   iii. Minor channel or stream cleaning performed by a local government agency under general permit 26;

3. A transition area waiver;

4. An individual open water fill permit;

5. An individual freshwater wetlands permit; and

6. A minor modification, major modification, or extension of a permit, including a transition area waiver or general permit authorization.

(c) This subchapter does not apply to the following:

1. An exemption letter. Application requirements for an exemption letter are found at N.J.A.C. 7:7A-2.10; or

2. A mitigation proposal. Application requirements for a mitigation proposal are found at N.J.A.C. 7:7A-15.12.

(d) An application shall be submitted by the owner of the site which is the subject of the application, or by a person who has the legal authority to perform the activities proposed in the application on the site, and to carry out all requirements of this chapter. Others may assist the owner in preparing an application, and may submit reports or other information in accordance with N.J.A.C. 7:7A-10.9.

(e) An applicant shall include on an application all planned activities which are related to the proposed project.

(f) Failure to provide complete and accurate information required in this subchapter of which the applicant, its consultants, engineers, surveyors or agents are, or reasonably should have been, aware may result in denial or termination of the permit under N.J.A.C. 7:7A-14.5, and may subject the applicant, its consultants, engineers, surveyors and/or agents to penalties for submittal of false information under N.J.A.C. 7:7A-16.9.

(g) For each application, the applicant shall provide all information necessary for the Department to determine if the requirements of this chapter are met. The Department will provide an application checklist setting forth the information required for an administratively complete application. Each application checklist will require different information depending on the type of approval sought.

(h) Application checklists and application forms for the Division of Land Use Regulation approvals can be downloaded and/or printed from the Division of Land Use Regulation website at www.state.nj.us/dep/landuse, or they can be obtained by contacting the Department at the address in N.J.A.C. 7:7A-1.3.

(i) In general, the level of detail and documentation required for an application shall be reasonably commensurate with the size and impact of the proposed project, its proximity to critical areas, and its potential to adversely affect freshwater wetlands, transition areas, and/or

State open waters. The Department shall, upon request, provide applicants with guidance regarding the appropriate level of detail.

(j) An applicant shall supply each required document in multiple copies as specified in the application checklist. In some cases, the application checklist shall also specify the size or material (such as mylar) of a document, and may require the document to be folded for easier handling.

(k) To minimize permit processing time, an applicant should carefully review the application checklist and make sure the application includes all required information. Following are the Department's average application processing times for 2000, from the date an application is submitted until the Department's final decision on the application. An applicant should assume that at least this amount of time will be required for Department review of the application. Some applications will take longer, depending on how quickly the applicant responds to Department requests for additional information, and on the size and complexity of the application:

1. For a letter of interpretation, approximately 69 calendar days;

2. For an authorization under a general permit, approximately 65 calendar days;

3. For an individual transition area waiver, approximately 71 calendar days; and

4. For an individual permit, approximately 161 calendar days.

(l) If a project requires more than one permit or waiver under this chapter, one application may be submitted for all permits or waivers.

(m) If a project requires approvals from the Division of Land Use Regulation under other chapters, the Department encourages, but does not require, the applicant to submit one application for all project approvals. If an application covers more than one Division of Land Use Regulation approval, the application shall:

1. Comply with the application requirements of each permit program;

2. Include the application fee required at N.J.A.C. 7:7A-11; and

3. Include a comprehensive environmental plan, showing all activities on the site that are regulated by the Division of Land Use Regulation.

(n) An applicant shall keep all data used to complete an application, and any information submitted to the Department during the application review process, for three years after the application is submitted to the Department, or for the duration of the permit if one is issued, whichever is longer.

(o) If a project requires mitigation, the applicant shall submit a mitigation proposal complying with the mitigation proposal requirements at N.J.A.C. 7:7A-15 with the application, or

alternatively, the applicant shall submit the mitigation proposal later, during the application review process or after a permit is approved. Regardless of when the mitigation proposal is submitted, regulated activities shall not begin on a site for which mitigation is required until the Department approves the mitigation proposal and the mitigation is also begun.

(p) An application for regulated activities in an area under the jurisdiction of the Pinelands Commission shall be submitted to the Pinelands Commission rather than to the Department, except for an application for an individual freshwater wetlands permit, which shall be submitted to the Department in accordance with this subchapter.

(q) When a survey is required, it shall be conducted and the documentation provided in accordance with the requirements at N.J.A.C. 7:36 Appendix 2, specifically scope of work: property surveys at 3.4.2; corner markers at 3.5.2.10.1, deed description at 3.5.4, metes and bound description and reduced survey plan at 3.6.6, and digital files at 3.6.7.

N.J.A.C. 7:7A-10.2 Basic content requirements for all applications

(a) This section includes basic information required for every approval covered by this subchapter (see N.J.A.C. 7:7A-10.1(b)). Each application checklist will require this information and in addition will require information specific to the type of approval sought. The additional information required for each specific approval is set forth below at N.J.A.C. 7:7A-10.3 through 10.7.

(b) The application checklist for every application covered by this subchapter shall require the following:

1. An application form, including a certification of truth and accuracy that meets the requirements at N.J.A.C. 7:7A-10.9, completed as directed in the instructions and/or application checklist. The application form will include basic information regarding the site, the applicant, and the activities proposed;

2. Unconditional written consent from the owner of the site, as defined at N.J.A.C. 7:7A-1.4, for Department representatives to enter the site to conduct site inspections;

3. The appropriate fee, set forth at N.J.A.C. 7:7A-11;

4. Visual materials, including, but not limited to, maps, plans, surveys, diagrams, or photographs as necessary to accurately portray the site, existing conditions on the site, all areas of Department land use regulatory jurisdiction, and any activities proposed on the site;

5. Written narrative information and/or reports as necessary to accurately describe the site, its location (including State plane coordinates), site conditions including areas of Department land use regulatory jurisdiction, and any planned activities, including schedules for performing regulated activities, if appropriate;

6. Documentation that the applicable requirements at N.J.A.C. 7:7A-10.8, Public notice requirements for applications, have been met;

7. Information and certifications regarding the presence or absence of endangered or threatened species habitat, historic or archaeological resources or other features on the site that are relevant to determining compliance with the requirements of this chapter;

8. Information necessary to demonstrate compliance with the stormwater management requirement at N.J.A.C. 7:7A-2.11;

9. The names and addresses of all consultants, engineers, and other persons providing technical assistance in preparing the application; and

10. Any other information not listed in this subsection, if necessary to ensure compliance with the Federal rules governing the Department's assumption of the Federal 404 program at 40CFR§233.30.

(c) In addition to the information required at (b) above, the Department may require any information necessary to clarify information previously submitted, to ensure compliance with State and/or Federal law, or to determine whether an application meets State and/or Federal standards.

(d) Whenever the Department requires a construction plan or other visual depiction of proposed activities, the Department may require that certain information pertinent to the construction work be placed directly on the plan in order to provide notice of Department construction requirements to the workers who will carry out the permitted activities.

(e) Failure to provide all information of which the applicant, its consultants, engineers, surveyors, or agents are or should be aware may result in denial or termination of the permit under N.J.A.C. 7:7A-14.5, and may subject the applicant, its consultants, engineers, surveyors, or agents to penalties for submittal of false information under N.J.A.C. 7:7A-16.10.

N.J.A.C. 7:7A-10.3 Additional application requirements for an LOI

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, an application checklist for an LOI shall require the information specified in this section.

(b) The application checklist for a presence/absence LOI for a portion of a site under N.J.A.C. 7:7A-3.2 shall require information identifying the portion(s) of the site which is the subject of the application.

(c) No additional information is required for an application for a line delineation LOI issued under N.J.A.C. 7:7A-3.3.

(d) The application checklist for a line verification LOI issued under N.J.A.C. 7:7A-3.4 shall require the following:

1. A proposed delineation of all freshwater wetlands, transition areas, and State open waters on the site, or portion thereof, which is the subject of the application. The delineation shall be clearly marked in the field as required by the application checklist. When delineating a State open water one to five feet in width measured from top of bank, with no wetland boundary, the delineation shall indicate the centerline of the State open water with several data points numbered and shown on the plans. When delineating a State open water that is greater than five feet in width, the delineation shall include two survey lines, with numbered points, depicting the top of bank on both sides of the State open water;

2. Soil borings and/or other physical indicators of the presence or absence of freshwater wetlands, transition areas, and/or State open waters;

3. Data sheets or other materials that explain and support the delineation; and

4. If the LOI is for a portion of a site, documentation that the site and portion meet the requirements at N.J.A.C. 7:7A-3.4(b)2i through iii, and information identifying the subject portion of the site in accordance with N.J.A.C. 7:7A-3.4(b)2iv.

N.J.A.C. 7:7A-10.4 Additional application requirements for a general permit authorization

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a general permit authorization shall require:

1. Any information specified as an application requirement in the general permit itself at N.J.A.C. 7:7A-5, if not included in N.J.A.C. 7:7A-10.2;

2. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI, covering the portion of the site that will be affected by the general permit activities. In addition, the application checklist shall require the total area, in acres, of wetlands and State open waters on the site before the regulated activity is performed, and the total area, in acres, of wetlands and State open waters, on the site that will remain after the regulated activity is performed. The total area of wetlands and State open waters on the site can be approximated using a planimeter or other mapping technique;

3. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the

proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies;

4. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the soil or sediment on the site;

5. Documentation regarding when the lot that is the subject of the general permit was created by subdivision;

6. A history of the ownership of the property beginning June 30, 1988 to present; and

7. A listing of contiguous lots that were in common ownership with the lot on which the activities are proposed and the ownership history of each lot beginning June 30, 1988 to present.

N.J.A.C. 7:7A-10.5 Additional application requirements for a transition area waiver

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, an application checklist for a transition area waiver, as defined at N.J.A.C. 7:7A-1.4, shall require the following:

1. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI;

2. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies; and

3. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the soil or sediment on the site.

(b) In addition to the information required at (a) above, the application checklist for a special activity transition area waiver based upon an individual permit criteria under N.J.A.C. 7:7A-6.3(g) shall require:

1. The applicable fee for a transition area waiver set forth at N.J.A.C. 7:7A-11;

2. The information required for an individual freshwater wetlands permit application at N.J.A.C. 7:7A-10.6(b); and

3. A mitigation proposal in accordance with the requirements at N.J.A.C. 7:7A-15.26.

(c) In addition to the information required at (a) above, the application checklist for a hardship transition area waiver under N.J.A.C. 7:7A-6.5 shall require the information contained in N.J.A.C. 7:7A-17.1(i)4, 5, 7, 8i through iii, and a statement indicating that the property owner has requested a hardship transition area waiver.

N.J.A.C. 7:7A-10.6 Additional application requirements for an individual freshwater wetlands or open water fill permit

(a) In addition to the basic information required for all applications in N.J.A.C. 7:7A-10.2, the application checklist for an individual freshwater wetlands or open water fill permit shall require the following information:

1. The basic project purpose of the proposed activity, including whether it is water-dependent, as defined at N.J.A.C. 7:7A-1.4;

2. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI. In addition, the application checklist shall require the total area of wetlands and State open waters, in acres, on the site before the regulated activity is performed, and the total area, in acres, of wetlands and State open waters on the site that will remain after the regulated activity is performed. The total area of wetlands and State open waters on the site can be approximated using a planimeter or other mapping technique;

3. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies; and

4. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the sediment on the site.

5. A copy of the deed and/or other legal documents pertaining to the site;

6. Information regarding special aquatic sites, public lands, critical habitat, and other relevant environmental features of the site; and

7. An alternatives analysis that meets the requirements at (b) below.

(b) To ensure that the Department can evaluate all potential alternatives to a proposed project, the application checklist for an individual freshwater wetlands permit shall require an alternatives analysis that allows the Department to evaluate whether the requirements of N.J.A.C. 7:7A-7.2 are met, including, at a minimum the following:

1. A description of all alternatives considered, including offsite alternatives as well as onsite alternatives that could minimize environmental impacts on the site, and the reasons for rejecting each alternative;

2. Information regarding the history of the property as a whole, as necessary to evaluate the cost to the property owner of various alternatives. Such information may include:

   i. Document(s) showing when the property as a whole, as defined at N.J.A.C. 7:7A-1.4, was acquired and its purchase price;

   ii. Documentation of any investments made to maintain and/or develop the property as a whole;

   iii. Documentation of attempts by the property owner to sell the property or to obtain other property; and

3. Documentation of the environmental impacts of the proposed project, and of ways to minimize those impacts.

N.J.A.C. 7:7A-10.7 Additional application requirements for a modification or extension

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a modification shall require the applicable information required in this section.

(b) An application checklist for a minor modification shall require the following:

1. For a change in ownership or operational control of a permitted site or activity under N.J.A.C. 7:7A-14.3(c)3:

   i. A certification that no other change in the original permit is necessary; and

   ii. A written request to transfer the approval, which includes all of the following:

      (1) The notarized signature of each original owner of the site, or any legal designee thereof;

      (2) The name and address of each new owner (or contract purchaser) of the site;

(3) A list of any adjacent property already owned by the new owner;

(4) The date the property will be or has been transferred to the new owner;

(5) A statement by the new owner (or contract purchaser), signed and notarized, accepting the permit and all conditions; and

(6) A copy of a recorded conservation restriction or easement, if required as a condition of the approval being transferred; or

2. For a minor modification not covered at (b)1 above, a copy of the permit condition proposed for modification, the proposed modification, and information demonstrating that the modification is a minor modification under N.J.A.C. 7:7A-14.3(c).

(c) An application for a minor modification does not require public notice under N.J.A.C. 7:7A-10.8.

(d) An application checklist for a major modification shall require the same information as an application for a new individual permit, except that the application need only address the portions of the existing permit affected by the proposed modification. Portions of the existing permit that are not affected by the proposed modification are not subject to public notice, public hearing, or other procedures that would apply to a new application.

(e) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a permit extension under N.J.A.C. 7:7A-14.6 shall include information reasonably necessary for the Department to evaluate whether the project or activities will comply with this chapter if extended as proposed.

(f) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for an LOI extension under N.J.A.C. 7:7A-3.6 shall include any information reasonably necessary to determine if the information in the original LOI remains correct.

N.J.A.C. 7:7A-10.8 Public notice requirements for applications

(a) This section sets forth basic public notice requirements for applications. The application checklist for each type of permit, waiver, or general permit authorization will include more detail regarding how to comply with the notice requirements for the approval sought. An applicant shall fulfill the requirements in this section before submitting the application, and the application must include documentation that this section has been complied with.

(b) The public notice requirements in this section apply to the applications listed in N.J.A.C. 7:7A-10.1(b), except that:

1. An application by a county or municipal agency for authorization to act under general permit 15, mosquito control activities, shall be subject only to the notice requirements found in that general permit at N.J.A.C. 7:7A-5.15; and

2. An application for a minor modification under N.J.A.C. 7:7A-14.3 shall not require public notice.

(c) Each notice or application required to be provided under this section shall be sent by certified mail, return receipt requested or through other courier or mail delivery service that provides written proof of delivery of letters and packages.

(d) An applicant shall provide a copy of the complete application, as submitted to the Department, to the municipal clerk in each municipality in which the project site is located.

(e) In addition to all other requirements in this section, an applicant shall provide a notice of the application, which meets the requirements in (g) below, to the following:

1. The construction official of each municipality in which the site is located;

2. The municipal environmental commission, or other government agency with similar responsibilities;

3. The municipal planning board of each municipality in which the site is located;

4. The planning board of each county in which the site is located;

5. All owners of land within 200 feet of the proposed disturbance, or of the site. If the proposed project is a linear development greater than one half mile long, the requirement for landowner notice under this paragraph may instead be met by following the procedures in (f) below; and

6. For an individual permit application, a Department-generated list of interested parties in the area, if such a list exists.

(f) If the proposed project is a linear development, as defined at N.J.A.C. 7:7A-1.4, or a trail or boardwalk, which is greater than one-half mile long, an applicant for a permit other than an individual permit may satisfy the requirement in (e)5 above to notify neighboring landowners by:

1. Sending a notice complying with (g) below to all owners of land within 200 feet of any proposed above surface structure (not including conveyance lines suspended above the ground or small utility support structures such as telephone poles) related to the linear facility, such as a pump station, access road, treatment plant, power substation, grade separated interchange or similar structure; and

2. Publishing a display advertisement. The advertisement shall be:

i. At least four column inches in size;

ii. Published in the newspaper of record for each municipality in which the site is located; and

iii. Published in a newspaper with regional circulation in the region in which the site is located.

(g) The notice of application required under this section shall include:

1. A brief description of the proposed project;

2. A map showing the location of the project site; and

3. A copy of a form letter to the neighboring landowners specified in (e)5 above, with all blanks filled in to provide specific information regarding the proposed project. This form letter will be supplied by the Department with the application checklist.

(h) The notice of application required under this section may cover applications for more than one project. However, for each project application covered by the notice, the information at (g)1 through 3 above must be included in the notice of application.

(i) An applicant for an individual permit or for an open water fill permit shall comply with (c) through (g) above, as applicable, and, in addition, shall:

1. Publish a display advertisement at least four column inches in size in the newspaper of record for each municipality in which the site is located; and
2. If the proposed project involves more than ten acres of fill, publish a display advertisement in a newspaper with regional circulation in the region in which the site is located.

(j) An applicant proposing to create, enhance or restore wetlands to satisfy a mitigation requirement in accordance with N.J.A.C. 7:7A-15.11 shall comply with (c) through (e) and (g) above except that the notice required in accordance with (e) above shall be sent to municipal and county officials and all owners of land within 200 feet of the proposed mitigation project site.

(k) If an applicant amends an application during the application review process, the applicant shall comply with the notice requirements at N.J.A.C. 7:7A-12.6(f).

(l) Upon request, the Department shall provide the applicant with copies of any comments submitted to the Department on the application.

N.J.A.C. 7:7A-10.9 Signatories to permit applications and reports

(a) A permit application shall be signed by the person or persons specified below:

1. For a corporation, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
3. For a municipality, State, Federal, or other public entity, by either a principal executive officer or ranking elected official; or
4. For an entity not covered at (a)1 through 3 above, by all individual owners of record.

(b) All reports required by permits and other information requested by the Department shall be signed by a person described in (a) above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;
2. The authorization specifies either an individual or a position having overall responsibility for the construction and/or completion of the regulated project or activity, such as the position of contractor, construction site supervisor, or position of equivalent responsibility. A duly authorized representative may, thus, be either a named individual or any individual occupying a named position; and
3. The written authorization is submitted with the application to the Department.

(c) If an authorization under (b) above is no longer accurate because a different individual or position has overall responsibility for the construction and/or completion of the regulated facility or activity, a new authorization satisfying the requirements of (b) above must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) If an application, report, survey, environmental impact statement, or other document required under this chapter is prepared for an applicant by a professional such as a consultant, engineer, architect, surveyor, attorney, or scientist, the document shall include the certification required under (e) below, signed by the professional responsible for preparing the document. This certification shall be in addition to the certification signed by the applicant.

(e) Any person signing a document under (a) or (b) above shall make the following certification:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(f) Any survey submitted under this chapter shall be performed by a surveyor licensed in New Jersey. In addition, the Department may in some cases require that other documents be submitted, signed, sealed, and/or certified by a person with relevant qualifications such as a license or certification.

7:7A-10.10 Confidentiality

(a) Any information submitted to the Department under this chapter may be claimed as confidential by the submitter at the time of submittal.

(b) Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Effluent data;

3. Permit application; and

4. Permit decision.

(c) Claims of confidentiality for all information not listed in (b) above will be denied unless the claimant can show that the information should be kept confidential under the requirements and procedures of 40 CFR Part 2.

SUBCHAPTER 11. APPLICATION FEES

7:7A-11.1 Application fees

(a) This subchapter establishes the application fees for:

1. An exemption letter pursuant to N.J.A.C. 7:7A-2.10;
2. A letter of interpretation pursuant to N.J.A.C. 7:7A-3;
3. An authorization under a general permit pursuant to N.J.A.C. 7:7A-5, except for:
   i. General permit 16 – Habitat creation and enhancement activities, N.J.A.C. 7:7A-5.16;
   ii. General permit 17 – Trails and boardwalks, N.J.A.C. 7:7A-5.17, for a project located on publicly-owned land; and
   iii. General permit 25 – Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-5.25;
4. A transition area waiver pursuant to N.J.A.C. 7:7A-6;
5. A freshwater wetlands individual permit and an open water fill individual permit pursuant to N.J.A.C. 7:7A-7;
6. A water quality certificate issued under this chapter pursuant to N.J.A.C. 7:7A-2.1(d) where a permit is not also issued;
7. A modification of an authorization under a general permit, a transition area waiver, or a freshwater wetlands or open water fill individual permit pursuant to N.J.A.C. 7:7A-14.3; and
8. An extension of a letter of interpretation pursuant to N.J.A.C. 7:7A-3.6, or of an authorization under a general permit, a transition waiver, or a freshwater wetlands or open water fill individual permit, pursuant to N.J.A.C. 7:7A-14.6.

(b) There is no application fee for:

1. An application submitted by an agency of the State pursuant to N.J.A.C. 7:7A-2.1(b);
2. An authorization under the following general permits:
   i. General permit 16---Habitat creation and enhancement activities, N.J.A.C. 7:7A-5.16;
   ii. General permit 17---Trails and boardwalks, N.J.A.C. 7:7A-5.17,for a project located on publicly-owned land; and
   iii. General permit 25---Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-5.25; or
3. An emergency permit pursuant to N.J.A.C. 7:7A-8.

(c) All application fees shall be paid by money order, check (personal, bank, certified, or attorney) or government purchase order payable to the "Treasurer, State of New Jersey."

(d) Any fee required under this chapter that is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, shall be payable in installments in accordance with N.J.A.C. 7:1L.

(e) An application fee is refundable if the Department returns the application as administratively incomplete under N.J.A.C. 7:7A-12.1(b). An application fee is not refundable once the application has been declared administratively complete under N.J.A.C. 7:7A-12.1. However, if the Department denies an application, or if the applicant withdraws the application under N.J.A.C. 7:7A-12.6, the Department shall credit the fee toward a new application for a revised project on the same site, if the new application is submitted within one year of the denial or withdrawal.

(f) In some cases, an applicant's act or omission makes it necessary for Department staff to perform more than one site visit during the review of an application. In such a case, the Department shall assess an additional fee of up to $ 1,000 for each additional site visit. No permit, waiver, or letter of interpretation shall be issued until this fee has been paid.

(g) The fees for applications under this chapter are set forth in Table A below:

Table A
APPLICATION FEES

Exemption letter

	Fee
Exemption letter pursuant to N.J.A.C. 7:7A-2.10	$500.00

Letter of Interpretation (LOI)

	Fee
Presence/absence LOI pursuant to N.J.A.C. 7:7A-3.2	$1,000
Footprint of disturbance LOI pursuant to N.J.A.C. 7:7A-3.2	$1,000
Delineation LOI pursuant to N.J.A.C. 7:7A-3.3	$1,000
Line verification LOI pursuant to N.J.A.C. 7:7A-3.4	$1,000 plus $100.00 per acre of the site (or fraction thereof)

Authorization under a general permit pursuant to N.J.A.C. 7:7A-5

	Fee
General permit 16---Habitat creation and enhancement activities, N.J.A.C. 7:7A-5.16	No fee
General permit 17---Trails and boardwalks, N.J.A.C. 7:7A-5.17, for a project located on publicly-owned land	No fee
General permit 25---Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-5.25	No fee
Any other general permit	$1,000

Transition area waiver pursuant to N.J.A.C. 7:7A-6

	Fee
Transition area waiver with a valid letter of interpretation	$1,000 plus $100.00 per acres of disturbed regulated area (or fraction thereof)
Transition area waiver without a valid letter of interpretation	$1,000 plus $100.00 per acre of disturbed regulated area (or fraction thereof) and the application fee for the appropriate LOI

Freshwater wetlands or open water fill individual permit pursuant to N.J.A.C. 7:7A-7

	Fee
Freshwater wetlands or open water fill individual permit for the construction of one single-family home or duplex and/or appurtenant improvements, which is not being constructed as part of a residential subdivision or multi-unit development	$2,000
Freshwater wetlands or open water fill individual permit for any other activity	$5,000 plus $2,500 per acre of disturbed regulated area (or fraction thereof)

Water quality certificate pursuant to N.J.A.C. 7:7A-2.1(d)

	Fee
Water quality certificate where a permit is not also issued	$5,000 plus $2,500 per acre of disturbed regulated area (or fraction thereof)

Modification of an authorization under a general permit, a transition area waiver or a freshwater wetlands or open water fill individual permit pursuant to N.J.A.C. 7:7A-14.3

	Fee
Minor modification of an authorization under a general permit	$500.00

Minor modification of a transition area waiver	$500.00
Minor modification of a freshwater wetlands or open water fill individual permit	$500.00
Major modification of a transition area waiver, freshwater wetlands or open water fill individual permit	30 percent of the original application fee or $500.00, whichever is greater

Extension of a letter of interpretation (LOI) pursuant to N.J.A.C. 7:7A-3.6 or of an authorization under a general permit, a transition area waiver, or an individual permit pursuant to N.J.A.C. 7:7A-14.6

	Fee
Extension of a presence/absence LOI	$500.00
Extension of a footprint of disturbance LOI	$500.00
Extension of a delineation LOI	$500.00
Extension of a verification LOI	50 percent of the original application fee or $500.00, whichever is greater
Extension of an authorization under a general permit	$500.00
Extension of a transition area waiver	$500.00
Extension of a freshwater wetlands or open water fill individual permit	50 percent of original application fee or $500.00, whichever is greater

Additional application fee for stormwater review if a project is a "major development" pursuant to the Stormwater Management Rules (see N.J.A.C. 7:8-1.2)

	Fee
Base fee for any major development	$3,000
Additional fee for review of groundwater recharge calculations (see N.J.A.C. 7:8-5.4)	$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)	$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)	$250.00 per acre of impervious surface subject to water quality review (or fraction thereof)

7:7A-11.2 Adjustment of application fees

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and
2. Publish a notice of administrative change in the New Jersey Register that:
   i. States that the Application Fee Adjustment Report is available on the Department's website at www.nj.gov/dep/landuse; and
   ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following:
   i. The number and type of Department staff required to perform each activity for which fees are charged and the projected total salaries of those staff for the upcoming State fiscal year;
   ii. The total cost of fringe benefits for those Department staff, calculated as the projected total salaries of those staff multiplied by a percentage set by the New Jersey Department of the Treasury that reflects costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
   iii. Indirect costs attributable to those Department staff, calculated as the total salaries and fringe benefits for those staff multiplied by a percentage known as the indirect cost rate. The indirect cost rate is negotiated annually with the U.S. Environmental Protection Agency and is the total of the Department's costs for management and administrative costs applicable to multiple cost objectives (including but not limited to, indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent, and the Department's share of the Statewide Cost Allocation Plan) divided by total Department direct salaries plus applicable fringe benefits; and
   iv. Projected operating costs attributable to those Department staff, including, but not limited to, costs for postage, telephone, travel, supplies, and data system management;
2. Project the total amount of revenue expected to be received from application fees in the upcoming State fiscal year. This projection shall consider the following:
   i. The number and type of applications received in previous State fiscal years;
   ii. Any trend toward increasing or decreasing construction activities in regulated areas and such trend's impact, if any, on the number and type of applications anticipated for the upcoming State fiscal year;
   iii. Other data concerning economic trends reasonably likely to influence the number and type of applications anticipated for the upcoming State fiscal year; and
   iv. The application fees in effect at the time such projection is made;

3. Project the total amount of money to be available from sources other than application fees, such as State appropriations or Federal grants, for the upcoming State fiscal year;
4. Subtract the amounts in (b)2 and 3 above from the amount in (b)1 above. The remainder is the projected fee revenue shortfall for the upcoming State fiscal year; and
5. Divide the projected fee revenue shortfall in (b)4 above by the total amount of revenue expected to be received from application fees in (b)2 above to determine the fee adjustment factor. The amounts of the adjusted application fees for the upcoming State fiscal year shall be obtained by increasing the existing fees by the fee adjustment factor.

SUBCHAPTER 12 DEPARTMENT REVIEW OF APPLICATIONS

N.J.A.C. 7:7A-12.1 Completeness review

(a) Within 20 working days, as defined at N.J.A.C. 7:7A-1.4, after receiving an application, the Department shall review the application as follows:

1. If all items required by the application checklist are included, the Department shall declare the application administratively complete. However, if an included item is clearly deficient, the item shall not be considered to be included and the Department shall declare the application administratively incomplete; and

2. If each application item is adequate to allow the Department to determine if the proposed project complies with this chapter, the Department shall declare the application technically complete.

(b) If the application is not administratively complete under (a)1 above, the Department shall return the application to the applicant with a list of the missing items. The applicant may resubmit the application at any time. If the application is resubmitted within one year, the original application fee shall be credited to the fee for the resubmitted application. If the application is not resubmitted, the applicant may obtain a fee refund upon request.

(c) If the application is administratively complete under (a)1 above, the Department shall:

1. Notify the applicant that the application is administratively complete;

2. Transmit a copy of the application to other agencies if required under this chapter. For example, an application for an individual permit for a major discharge must be transmitted to EPA for comment under N.J.A.C. 7:7A-12.2;

3. Publish notice of the application in the DEP Bulletin; and

4. If the application is not technically complete under (a)2 above, request any additional information necessary for technical completeness.

(d) If the Department requests additional information under (c)4 above, the applicant shall provide copies of the additional information to the persons who received a copy of the initial

application under N.J.A.C. 7:7A-10.8, and to the reviewing agencies who received a copy under (c)2 above.

(e) If an application is returned for incompleteness under (b) above, the applicant may submit a new application without repeating the public notice requirements of N.J.A.C. 7:7A-10.8 if the new application:

1. Is submitted within 60 days after the date the Department returned the original submittal; and

2. Is sufficiently similar to the original submittal that the original public notice would provide reasonable notice of the characteristics of the new submittal to potential interested parties.

(f) If a person submits an application and does not receive a response from the Department within the deadlines imposed in this subchapter, the person shall not be entitled to assume that the application is approved, except if the application is for authorization of the following activities and complies with the applicable general permit:

1. Maintenance of a stormwater management facility under general permit 1;

2. Repair of a malfunctioning individual subsurface sewage disposal system under general permit 25; or

3. Minor channel or stream cleaning activities under general permit 26.

N.J.A.C. 7:7A-12.2 USEPA review

(a) Because the Department has assumed responsibility for the Federal 404 program in most freshwater wetlands and State open waters in New Jersey, the Federal Act requires that the USEPA oversee the State's administration of the program set forth in this chapter. The procedures in (b) through (j) below explain USEPA's oversight role, and the procedures which the State will follow to facilitate USEPA's oversight. In areas where the Department has assumed the Federal 404 program, the Department's freshwater wetlands or open water fill permit constitutes the permit required under this chapter as well as the Federal 404 permit, unless the permit specifies otherwise.

(b) The Department shall transmit the following items to USEPA for review:

1. Each new proposed draft general permit. In general, an application for authorization to act under an adopted general permit will not require USEPA review, unless the activity proposed under the general permit itself constitutes a major discharge;

2. Each application involving a major discharge, as defined at N.J.A.C. 7:7A-1.4;

3. Any permit application, or category of permit applications, that the Department determines is appropriate for USEPA review;

4. Any permit application that USEPA requests to review;

5. Any additions or changes made to an application listed at (b)2 through 4 above after the application has been submitted to USEPA, as a result of a contested case proceeding in the Office of Administrative Law; and

6. For informational purposes, an initial decision issued by an administrative law judge in a contested case proceeding which involves an application listed at (b)2 through 4 above.

(c) For an item that requires USEPA review under (b) above, the Department shall promptly transmit to the Regional Administrator:

1. A complete copy of the item;

2. Notice of every significant action taken by the Department related to the consideration of the permit application or other item; and

3. A copy of any decision on the application or other item.

(d) If USEPA intends to comment upon, object to, or make recommendations with respect to an item, or with respect to the Department's failure to accept the recommendations of an affected state pursuant to N.J.A.C. 7:7A-12.3(d), USEPA may notify the Department of this intent within 30 days of receipt of the permit application or other item. If the Department has been so notified, the permit or other item shall not be issued until after the receipt of such comments or within 90

days of the USEPA's receipt of the application or other item, or the Department response, whichever comes first. The USEPA may notify the Department within 30 days of receipt that there is no comment but that USEPA reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) When the Department has received a USEPA objection or requirement for a permit condition under this section, the State shall not issue the Federal 404 permit unless the steps required by the USEPA to eliminate the objection have been taken. However, the Department may issue a freshwater wetlands permit. Such a permit shall satisfy only the requirements of the New Jersey Freshwater Wetlands Protection Act and the permit shall not constitute a 404 permit. In such a case, the applicant would be responsible for obtaining any necessary 404 program approvals from the ACOE.

(f) Within 90 days after receiving an objection or requirement for a permit condition by the USEPA, the Department or any interested person may request that the USEPA hold a public hearing on the objection or requirement. USEPA shall conduct a public hearing if requested by the Department, or if warranted by significant public interest based on requests received.

(g) If USEPA holds a public hearing under (f) above, USEPA shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition. USEPA shall notify the Department of this decision.

(h) If USEPA holds a public hearing, the Department shall have 30 days after USEPA gives the Department notice of its decision under (g) above to take either of the actions at (i)1 or 2 below. If USEPA does not hold a public hearing, the Department shall have 90 days after receiving USEPA's original objection or requirement for a permit condition to take either of the actions at (i)1 or 2 below.

(i) The Department shall take one of the following actions within the applicable deadline in (g) or (h) above:

1. If the USEPA has withdrawn the objection or requirement for a permit condition, the State may issue the Federal 404 permit; or

2. If the USEPA has not withdrawn the objection or requirement for a permit condition, the Department must do one of the following:

    i. Issue a revised permit satisfying the USEPA's objection or including the required permit condition;

    ii. Notify USEPA of its intent to deny the permit. If the Department intends to deny the permit it shall notify EPA of this intent within 30 days after receiving USEPA's notification; or

iii. Issue a State freshwater wetlands permit that does not constitute a Federal 404 permit and require the applicant to apply to the appropriate Federal agency for a permit under the Federal 404 program.

(j) No Federal 404 permit shall be issued by the Department in the following circumstances, although the Department may issue a State freshwater wetlands permit that does not constitute a Federal 404 permit:

1. When the Regional Administrator has objected to issuance of the permit and the objection has not been resolved;

2. When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the USEPA under Section 404(c) of the Federal Act, or when the discharge would fail to comply with a restriction imposed thereunder; or

3. If the Army Corps of Engineers determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

(k) The Department shall submit an application to the U.S. Fish and Wildlife Service for review of the potential for impacts on Federally listed threatened or endangered species in accordance with the 1993 Memorandum of Agreement between the Department and the U.S. Fish and Wildlife Service, and all modifications, addenda, and clarifications thereto, executed in order for the Department to assume responsibility for the Federal 404 program.

(l) The Department shall identify all wetland permit applications for proposed projects that may affect properties which are listed, or are eligible for listing, on the New Jersey or National Register of Historic Places. In accordance with N.J.A.C. 7:4-8.1(a), an "effect" on "property which is listed or is eligible for listing on the New Jersey or National Register of Historic Places" can be direct or indirect and occurs whenever any aspect of the project causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualified a historic property to meet the criteria of evaluation for inclusion in the New Jersey or National Register. Applications reflecting any of the following characteristics shall be deemed to present a high probability of the presence of historic and archaeological resources, requiring assessment and shall require, with the wetlands permit application, the submittal of a Phase IA historical and archaeological survey, and an architectural survey, defined at N.J.A.C. 7:7A-1.4:

1. Proposed projects containing known historic or archaeological resources, based upon information contained within the application, or as identified on copies of historic property maps prepared by the Department;

2. Proposed projects on sites that exceed 20 acres in size which include a permanent water body (for example wetlands, pond, lake, river or perennial stream) or are located within 250 feet of a permanent water body;

3. Proposed projects for which available maps, photographs, or other information, or observations made during a site visit, indicate the presence of buildings, structures, or ruins over 50 years old that could potentially be affected by the proposed project;

4. Proposed projects including new, replacement, reconstructed, or rehabilitated bridges or culverts; and

5. Proposed projects on which letters are received from concerned citizens or others indicating the possible presence of historic properties within or adjacent to the project.

(m) In order to demonstrate due diligence in identifying historic sites that may be affected by a wetlands permit application, as well as provide the Department with information regarding sites with historic or potentially historic resources, the applicant shall submit with each permit application:

1. Clear color photographs of all buildings, structures, ruins of buildings and structures, and burial grounds on the site;

2. A key map of the site locating all photographs provided in 1. above; and

3. All information and copies of correspondence, known, received or in the possession of project representatives or the applicant, regarding historic districts, buildings, structures, ruins, burial grounds, and archaeological sites on or near the project site.

(n) Applicants who are or will be pursuing Federal financial assistance, permits, licenses, or other approvals for the project that is the subject of the freshwater wetlands permit application, shall supply a copy of the consultation comments provided by the Department's Historic Preservation Office (HPO) in its role as staff to the Federally designated State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470(f)), together with a statement detailing how the comments have been incorporated into the project, with the State freshwater wetlands permit application. The Department will consider that information as a part of its review under this chapter.

1. If an applicant is not and will not be pursuing Federal financial assistance as described in (n) above, the applicant shall provide the Department with a statement to that effect.

(o) Public entities that are or will be pursuing a project authorization application, pursuant to N.J.A.C. 7:4-7, for the project that is the subject of the freshwater wetlands permit application shall comply with either (o)1 or 2 below. For the purposes of this subsection, "public entities" means the State, county, municipality, or an agency or instrumentality thereof:

1. If the public entity has received a project authorization from the Department pursuant to N.J.A.C. 7:4-7 prior to applying for a State freshwater wetlands permit, a copy of the project authorization shall be submitted with the permit application. The Department will consider that authorization as a part of its review under this chapter; or

2. If the public entity has not yet begun the process for obtaining a project authorization pursuant to N.J.A.C. 7:4-7 at the time of application for a State freshwater wetlands permit, the applicant shall consult directly with the Department's Historic Preservation Office to initiate the project authorization process at the same time as the permit application is processed.

(p) At sites where activities require a freshwater wetlands and/or State open water permit, the demolition of buildings or structures potentially over 50 years of age, or the disturbance of soils, shall not be undertaken prior to receipt of such permit. Undertaking such activities without a permit shall be considered a violation of this chapter.

N.J.A.C. 7:7A-12.3 Public comment on an application

(a) The Department shall publish notice in the DEP Bulletin of each administratively complete application in accordance with N.J.A.C. 7:7A-12.1, except for an application for a minor modification. The DEP Bulletin is available at www.state.nj.us/dep/bulletin/. This notice shall constitute notice of the application to all interested persons except those who must be notified by the applicant under N.J.A.C. 7:7A-10.8.

(b) The Department shall make copies of all applications available for public inspection by appointment in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(c) The applicant shall transmit a copy of each application to the clerk of the municipality in which the project is located in accordance with N.J.A.C. 7:7A-10.8, to be made available for public inspection.

(d) The public shall have 30 days to comment on an application after the Department publishes notice of the application in the DEP Bulletin under (a) above. The Department shall consider all written public comments submitted within this time. The Department may, in its discretion, consider comments submitted after this date.

(e) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any state(s) other than New Jersey, the Department shall provide an opportunity for such state(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted, the Department shall notify the affected state and the USEPA in writing, prior to permit issuance, of the Department's intent not to accept these recommendations, together with the reasons for so doing. The EPA shall then have the same amount of time provided for applications and draft general permits in N.J.A.C. 7:7A-12.2 to comment upon, object to, or make recommendations regarding the Department's action.

N.J.A.C. 7:7A-12.4 Hearings on an application for an individual permit or transition area waiver

(a) Within 30 days after a notice of an application for an individual permit or transition area waiver is published in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on the application. Requests shall state the nature of the issues proposed to be raised at the hearing. The DEP Bulletin is available at www.state.nj.us/dep/bulletin/.

(b) The Department may issue or deny an individual permit or transition area waiver without a public hearing. However, the Department will hold a public hearing if:

1. There is a significant degree of public interest in the application, as manifested by written requests for a hearing within the 30 day hearing request period set forth in (a) above. In considering the degree of public interest, the Department will consider whether the issues raised in the hearing requests are relevant to the application review;

2. A public hearing is requested by USEPA; or

3. The Department determines that the public interest would be served by holding a hearing.

(c) If a hearing is to take place, the Department shall, within 30 days after the end of the 30 day hearing request period set forth in (a) above:

1. Set a date and time for the public hearing;

2. Choose a location for the hearing, in the county where the freshwater wetlands, transition areas, and/or State open waters affected by the application are located;

3. Notify the applicant; and

4. Publish a notice announcing the date, place, and time of the public hearing in the DEP Bulletin.

(d) A public hearing held under this section shall be a non-adversarial proceeding, conducted solely to provide information to the public and the Department regarding the application under review.

(e) The applicant shall give public notice of the public hearing by doing the following, at least 30 days before the hearing:

1. Sending a completed public hearing notice form, obtained from the Department at the address in N.J.A.C. 7:7A-1.3 or the Division of Land Use Regulation website at www.state.nj.us/dep/landuse, to the following:

i. All persons to whom a complete application must be sent under N.J.A.C. 7:7A-10.8(d);

ii. All persons to whom a notice of an application must be sent under N.J.A.C. 7:7A-10.8(e); and

iii. All persons who submitted comments on the application during the hearing request period set forth in (a) above; and

2. Publishing a display advertisement containing the completed hearing notice form, in accordance with N.J.A.C. 7:7A-10.8 (h).

(f) The applicant shall submit proof that public notice of the hearing has been provided in accordance with this section. This proof of notice shall be submitted to the Department at least three days prior to the public hearing. If proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which such notice was published.

(g) The Department shall maintain a copy of the hearing transcript and all written comments received. The transcript and written comments shall be made part of the official record on the application and shall be available for public inspection in the Department's Trenton Office. See N.J.A.C. 7:7A-1.3 for address.

(h) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with a transcript.

(i) The presiding official at the non-adversarial public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and to ensure the maintenance of an orderly forum. At the conclusion of statements by interested persons, the applicant shall be afforded the opportunity to speak on the statements offered by interested persons.

(j) Any interested person may submit information and comments concerning the application. The information and/or comments must be submitted in writing within 15 days after the hearing.

N.J.A.C. 7:7A-12.5 Final decisions

(a) The Department shall issue or deny a permit or waiver within 180 days of submittal of a complete application, provided the Department has satisfied all of the requirements in N.J.A.C. 7:7A-12.2.

(b) If the Department issues or denies a permit, the Department shall send notice thereof to the applicant.

(c) The Department may issue a permit imposing conditions necessary for compliance with the Freshwater Wetlands Protection Act, this chapter, the Federal Act and the New Jersey Water Pollution Control Act. Any regulated activities undertaken under the authority of any issued permit, waiver, or general permit authorization shall constitute an acceptance by the applicant of the entire permit including all conditions therein.

(d) Decisions by the Department shall be published in the DEP Bulletin and a copy of every issued individual permit which requires USEPA review under N.J.A.C. 7:7A-12.2 shall be transmitted to USEPA.

(e) The permit application review process may be extended by mutual agreement between the applicant and the Department.

N.J.A.C. 7:7A-12.6 Cancellation, withdrawal, resubmission and amendment of applications

(a) The Department may cancel an application, whether or not the application has been declared administratively complete. An applicant may withdraw, amend, and/or resubmit its application. This section applies to all applications, including an application for a permit as defined at N.J.A.C. 7:7A-1.4, an application for a letter of interpretation, and a request for an exemption letter.

(b) The Department shall cancel an application if the Department requests additional information regarding the application, and the information is not submitted within 30 days after the date of the request. Before canceling an application, the Department shall send the applicant a letter stating that the application will be cancelled. If, within 15 days of the date of the Department's letter, the applicant submits the information, or a letter providing good cause for the delay, the Department shall extend the time required for submittal of the information. If the applicant does not submit the information or a letter providing good cause, the Department shall cancel the application.

(c) If the Department cancels an application, the application fee shall not be refunded. The Department will purge the cancelled application from its files and a new application, including a new application fee, shall be required if the applicant wishes to pursue the project.

(d) An applicant may withdraw an application at any time in the application review process. If an application is withdrawn, the application fee shall not be refunded. However, if the requirements of (e)2 below are met, the fee may be credited toward a future application.

(e) If the Department cancels an application, or if the applicant withdraws an application, the applicant may resubmit an application for a revised project on the same site. The Department shall treat the resubmitted application as a new application. The fees for the resubmitted application shall be as follows:

1. If the Department cancelled the original application under (b) above, a new fee under N.J.A.C. 7:7A-11 shall be required;

2. If the applicant withdrew the original application under (d) above, and resubmits the application within one year of the date of withdrawal, the original application fee shall be credited to the new application.

(f) An applicant may choose to amend an application at any time as part of the permit review process. If an applicant amends an application:

1. The applicant shall provide a copy of the new or changed information to the same persons who received a complete copy of the initial application under N.J.A.C. 7:7A-10.8, Public notice requirements for applications. The information need not be provided to persons who received only a notice of the application, unless the Department determines that the change will increase the environmental impact of the project; and

2. The amendments shall constitute a new submission and the Department may, at its discretion, require reinitiation of the entire application and review process.

7:7A-12.7 Resubmittal of a denied application

If the Department denies an application, the applicant may resubmit an application for a revised project on the same site. The Department shall treat the resubmitted application as a new application. The resubmitted application shall include a new fee in accordance with 7:7A-11.

SUBCHAPTER 13 CONTENTS OF PERMITS AND WAIVERS

N.J.A.C. 7:7A-13.1 Standard conditions that apply to all permits

(a) The following conditions apply to all permits issued under this chapter, including all waivers and general permit authorizations:

1. Duty to comply: The permittee shall comply with all conditions of the permit. Any noncompliance with a permit, including a waiver or general permit authorization, constitutes a violation of the Freshwater Wetlands Protection Act and this chapter, and is grounds for enforcement action, for termination, termination and reissuance, or modification, or for denial of an extension. In some cases, noncompliance with a permit or general permit authorization, may also constitute a violation of the Water Pollution Control Act and/or the Federal Act;

2. Duty to reapply: If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit, the permittee must apply for and obtain a permit extension or a new permit, prior to the permit's expiration;

3. Duty to halt or reduce activity: It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

4. Duty to minimize environmental impacts: The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. Mitigation consistent with N.J.A.C. 7:7A-15 will also be required for freshwater wetlands permits, open water fill permits and some general permits;

5. Proper operation and maintenance: The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit. This provision requires the proper execution of any approved mitigation proposal designed to mitigate losses caused by the permitted activity. The permittee shall maintain the authorized work areas in good condition and in accordance with the permit;

6. Permit actions: The permit may be modified, suspended, or terminated for cause. The filing of a request by the permittee for a modification, or a notification of planned changes or anticipated noncompliance does not stay any condition of a permit, including a waiver or general permit authorization;

7. Property rights: The permit does not convey any property rights of any sort, or any exclusive privilege;

8. Duty to provide information: The permittee shall furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for modifying, terminating and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the permit or waiver;

9. Inspection and entry: The permittee shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

    i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

    ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

    iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

    iv. Sample or monitor at reasonable times, for the purposes of assuring compliance or as otherwise authorized by the Federal Act, by the Freshwater Wetlands Protection Act,

or by any rule or order issued pursuant thereto, any substances or parameters at any location;

10. Monitoring and records requirements are as follows:

    i. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity;

    ii. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by the Department at any time;

    iii. Records of monitoring information shall include:

        (1) The date, exact place, and time of sampling or measurements;

        (2) The individual(s) who performed the sampling or measurements;

        (3) The date(s) analyses were performed;

        (4) The individual(s) who performed the analyses;

        (5) The analytical techniques or methods used; and

        (6) The results of such analyses;

11. Signatory requirement: All applications, reports, or information submitted to the Department shall be signed and certified as required in N.J.A.C. 7:7A-10.9; and

12. Reporting requirements are as follows:

    i. Planned changes: The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted project or activity;

    ii. Anticipated noncompliance: The permittee shall give advance notice to the Department of any planned changes in the permitted project or activity which may result in noncompliance with permit requirements;

    iii. Transfers: The permit is not transferable to any person except after notice to the Department. The Department may require modification or termination and reissuance of the permit to change the name of the permittee and incorporate such other

requirements as may be necessary to comply with N.J.A.C. 7:7A-14.3. In some cases, modification or termination and reissuance is mandatory;

iv. Monitoring reports: Monitoring results shall be reported at the intervals specified elsewhere in the permit;

v. Twelve hour reporting: The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 12 hours from the time the permittee becomes aware of the potentially dangerous circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

vi. Other noncompliance: The permittee shall report all instances of noncompliance not reported pursuant to (a)12i, iv and v above, at the time monitoring reports are submitted. The reports shall contain the information listed in (a)12v above; and

vii. Other information: Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information; and

13. Duty to mitigate: The permittee shall perform any mitigation required under the permit prior to or concurrently with regulated activities in accordance with N.J.A.C. 7:7A-15.3(a). If a permittee performs permitted activities without performing required mitigation, the acreage of mitigation required shall be increased by 20 percent each year in accordance with N.J.A.C. 7:7A-15.3(b); and

14. Construction notification: The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, NJDEP, P.O. Box 422, 401 East State Street, Trenton, NJ 08625-0422, seven days prior to the commencement of site preparation or of regulated activities, whichever comes first. The notification shall contain proof of recording of a conservation restriction or easement, if one was required as part of the permit.

(b) The permittee need not comply with the conditions of a permit, including a waiver or general permit authorization, to the extent and for the duration that such noncompliance is authorized in an emergency permit approved by the Department under N.J.A.C. 7:7A-8.

(c) If a permit, including a transition area waiver or general permit authorization, is issued, regulated activities are not authorized under the permit, and construction shall not be started, until the Department receives a written acceptance of the all terms and conditions of the permit from the permittee. A permit acceptance form is available from the Department as part of each

application checklist. If a permittee begins regulated activities prior to submittal of the written permit acceptance, the permittee shall be deemed to have accepted all terms and conditions of the permit as of the date the activities were begun.

(d) A copy of the permit, including an authorization or transition area waiver, shall be kept on the site and shall be available for public inspection. All projects authorized by an individual or general permit or transition area waiver shall be posted with a sign, prominently displayed at the main entrance to the property or work site, at all times from commencement to completion of the permitted activity. The sign shall contain at least the following information:

1. The work which is authorized by the Department;

2. The type of permit that authorized the work, and the Department's file number;

3. A Department phone number for verification; and

4. The location on the site at which the permit and plans may be inspected.

(e) A permit, including a waiver or general permit authorization, runs with the land and is binding upon the permittee and the permittee's successors in interest in the land or in any part thereof.

(f) A permit, including a waiver and/or a general permit authorization, issued under this chapter does not relieve a permittee from the obligation to obtain any other permits or approvals required by law.

N.J.A.C. 7:7A-13.2 Establishing permit conditions

(a) In addition to the standard conditions required in all permits under N.J.A.C. 7:7A-13.1, the Department shall establish conditions in a permit, including a waiver or general permit authorization, as required on a case-by-case basis, to assure compliance with all applicable requirements of the Federal Act, the Freshwater Wetlands Protection Act, the Water Pollution Control Act, this chapter and other applicable rules or regulations. For the purposes of this subsection, an applicable requirement is a statutory or regulatory requirement which takes effect before the Department's final administrative decision on a permit, or before the modification or termination and reissuance of a permit.

(b) In addition to the standard requirements in N.J.A.C. 7:7A-13.1, each permit shall include information meeting the following requirements, when applicable:

1. A specific identification and description of the authorized activity, including:

    i. The name and address of the permittee and the permit application identification number;

    ii. The use or purpose of the regulated activity;

iii. The type and quantity of the materials to be discharged or used as fill;

iv. Any structures proposed to be erected;

v. The location and boundaries of the activity site(s), including a detailed sketch and the name and description of affected freshwater wetlands, State open waters, and transition areas, identification of the HUC 11, as defined at N.J.A.C. 7:7A-1.4; and

vi. A reference to the specific site plans depicting the approved regulated activity(ies);

2. Provisions ensuring that the regulated activity will be conducted in compliance with the environmental guidelines issued under section 404(b)(1) of the Federal Act (40 C.F.R. Part 230), the Freshwater Wetlands Protection Act, and this chapter, including conditions to ensure that the regulated activity shall be conducted in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of the waters of the United States, such as requirements for restoration or mitigation;

3. Any requirements necessary to comply with water quality standards established under applicable Federal or State law. If an applicable water quality standard is promulgated or modified after the permit or waiver is issued, the permit or waiver shall be modified as provided in N.J.A.C. 7:7A-14;

4. Requirements necessary to comply with any applicable toxic effluent standard or prohibition under section 307(a) of the Federal Act or applicable State or local law. If an applicable toxic effluent standard or prohibition is promulgated or modified after the permit or waiver is issued, the permit or waiver shall be modified as provided in N.J.A.C. 7:7A-14;

5. Applicable best management practices (BMPs) as defined at N.J.A.C. 7:7A-1.4;

6. Any conditions necessary for general permits as required under N.J.A.C. 7:7A-4 or 5;

7. A specific date on which the permit shall automatically expire if the authorized work has not been commenced, unless before the automatic expiration date the permit is terminated and reissued, or modified, or extended; and

8. Reporting of monitoring results. All permits and waivers shall specify:

i. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

ii. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

iii. Applicable reporting requirements based upon the impact of the regulated activity.

(c) The Department may in some cases include a permit condition requiring a preconstruction meeting on the site of permitted activities. Such a condition shall specify how many days prior to construction the permittee must notify the Department so that the preconstruction meeting can be scheduled.

(d) All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or regulations or requirements shall be given in the permit.

N.J.A.C. 7:7A-13.3 Duration of permits

(a) A permit, including a waiver or general permit authorization, shall be effective for a fixed term not to exceed five years from the date the Department issues the permit. An extension may be available in some cases under N.J.A.C. 7:7A-14.6.

(b) This section does not govern letters of interpretation or exemption letters. Provisions governing the duration and extension of LOIs are found at N.J.A.C. 7:7A-3.6. Provisions governing the duration of exemption letters are found at N.J.A.C. 7:7A-2.10.

N.J.A.C. 7:7A-13.4 Effect of a permit

(a) Compliance with a permit, including a general permit authorization, during its term constitutes compliance, for enforcement purposes, with sections 301, 307, and 403 of the Federal Act, with the Freshwater Wetlands Protection Act, and with this chapter. Because transition areas are not regulated under the Federal Act, compliance with a transition area waiver during its term constitutes compliance, for enforcement purposes, with the Freshwater Wetlands Protection Act and with this chapter. However, a permit may be modified, terminated and reissued, suspended, or terminated during its term for cause as set forth in this chapter.

(b) The issuance of a permit, including a waiver or general permit authorization, does not convey property rights of any sort, or any exclusive privilege.

SUBCHAPTER 14 CHANGES TO ISSUED PERMITS OR WAIVERS

N.J.A.C. 7:7A-14.1 General provisions for changing an issued permit

(a) The Department may modify a permit, including a waiver or general permit authorization for cause, or may approve a modification in response to a modification application from the permittee. The Department shall process a modification in accordance with N.J.A.C. 7:7A-14.3.

(b) The Department shall suspend a permit for cause in accordance with N.J.A.C. 7:7A-14.4, or in response to a request from the permittee.

(c) The Department shall terminate a permit for cause in accordance with N.J.A.C. 7:7A-14.5, or in response to a request from the permittee.

(d) The Department may extend a permit in accordance with N.J.A.C. 7:7A-14.6.

(e) Each modification, suspension, or termination that would require EPA review under N.J.A.C. 7:7A-12.2 if it were an application for a new permit shall be transmitted to EPA for review.

(f) The Department shall not modify, suspend, or terminate a Federal 404 permit if USEPA objects under N.J.A.C. 7:7A-12.2.

(g) The Department need not modify, suspend or terminate a permit prior to taking enforcement action under N.J.A.C. 7:7A-16.

N.J.A.C. 7:7A-14.2 Transfer of a permit

If a permittee wishes to transfer ownership of a site to another person or ownership of permitted activities on a site to another person, the permittee shall submit an application for a modification, which meets the requirements at N.J.A.C. 7:7A-14.3 prior to transferring the permit. If all permitted activities are completed, including any required mitigation, a modification is not required. Unless a permit modification has been issued to the new permittee, only the original permittee may conduct regulated activities on the site.

N.J.A.C. 7:7A-14.3 Modification of a permit

(a) With the exception of a modification due to a change in ownership or operational control of a project, as described in (c)3 below, which is mandatory, a modification of a permit, including a transition area waiver or general permit authorization, may be requested by a permittee or, in the cases set forth at (f) below, the Department may modify a permit on its own initiative.

(b) A permittee shall apply for a change to an existing permit through one of the following:

1. A minor modification under (c) below. A minor modification may be made to any permit, including a transition area waiver or general permit authorization;

2. A major modification under (d) below. A major modification may only be made to an individual freshwater wetlands permit, open water fill permit, or transition area waiver; and

3. A general permit authorization modification under (e) below.

(c) The following changes are minor modifications that may be made to any permit or in the case of a change in ownership or operational control shall be made to any permit, including a general permit authorization or transition area waiver:

1. Correction of a typographical error that does not materially affect the terms of the permit or waiver;

2. An increase in the frequency of monitoring or reporting by the permittee;

3. A change in ownership or operational control of a project, where no other change in the original permit or waiver is necessary. If any other change in the permit is necessary, the change shall be made through a major modification;

   i. A permit may be transferred to another person, provided:

      (1) The permit is valid;

      (2) The permit is not an emergency permit;

      (3) The permit is transferred to a person who currently owns the site, or who is under contract to purchase the site, on which activities authorized under the permit are to be conducted. A transfer of a permit to a contract purchaser shall become valid only upon the actual transfer of the site to the new owner;

      (4) The Department determines that the transfer will not alter a basic condition upon which the original permit was granted or otherwise circumvent a requirement of this chapter as described in (A) below;

         (A) The Department shall not approve the transfer of a permit if doing so would alter a basic condition or premise upon which the original permit was granted or would otherwise circumvent a requirement of this chapter. For example, a permit issued to a public entity may be granted in consideration of the fact that the public entity has powers of eminent domain or is acting in the public interest. Since such factors would not exist if the applicant were a private party, the basic premise upon which the permit was approved may be invalid and therefore the Department would not approve the transfer. In another example, if an applicant receives a permit based upon the Department's finding of no alternative to the proposed activity, but the person to whom the permittee proposes to transfer the site has an alternative, the basic premise upon which the permit was approved no longer exists. In such cases, the Department would not approve the transfer of the permit to the new owner; and

      (5) The permittee to whom the permit was transferred notifies the Department before conducting site preparation or regulated activities, in accordance with N.J.A.C. 7:7A-13.1(a)14; and

      (6) The original permittee, who wants to transfer the permit, provides to the Department proof of recording of any conservation restriction or easement that was a requirement of the permit being transferred.

4. A change in materials, construction techniques, or the minor relocation of an activity on a site, if the change is required by another permitting agency. However, this change is not a minor modification if the change would result in additional wetland, State open water or transition area impacts over those of the original permit or waiver.

(d) Any change not listed at (c) above as a minor modification, if affecting a project covered by an individual freshwater wetlands permit, open water fill permit, or transition area waiver, shall constitute a major modification. To obtain approval for a major modification, an applicant shall meet the same substantive and procedural standards that would apply to an application for a new individual permit, except that the application need only address the portions of the permit affected by the proposed modification. Portions of the permit that are not affected by the proposed modification are not subject to public notice, public hearing, Department review, or other procedures that would apply to an application for a new individual permit.

(e) Any change not listed at (c) above as a minor modification, if affecting a project covered by a general permit authorization, shall meet the following requirements:

1. The changed project would continue to be authorized under the same general permit; and

2. The proposed change would not result in a significant change in the scale, use or environmental impact of the project as approved. A change that will result in a reduction in environmental impact shall not constitute a significant change. Examples of significant changes include, but are not limited to, increased clearing, grading, filling or impervious surfaces, a change in stormwater management technique, and movement of the project to a different wetland or location.

(f) The following are causes for which the Department may modify a permit, including a transition area waiver or general permit authorization, on its own initiative:

1. The permittee proposes substantial changes or additions to the permitted activity, and these changes or additions justify conditions that are not in the existing permit or waiver;

2. The Department receives information that was not available at the time the permit was issued (other than revised regulations, guidance, or test methods), which would have justified different conditions at the time of issuance. This includes information indicating that cumulative environmental effects of issued permits are unacceptable;

3. Circumstances relating to the permitted activity have changed since the permit was issued and justify changed conditions;

4. Cause exists for the Department to terminate the permit under N.J.A.C. 7:7A-14.5, but the Department determines that a modification will ensure that the project complies with this chapter;

5. The standards or rules on which the permit was based have been amended, or changed by judicial decision, after the permit was issued; or

6. The ownership or operational control of the site has been transferred to a person other than the permittee, the permitted activities are not completed, and the permittee has not applied for a minor modification reflecting the transfer as required under (c) above.

(g) If the Department intends to modify a permit, the Department shall notify the permittee in writing. The notice shall:

1. State the reasons for the modification;

2. Order the permittee to immediately stop the activities that had been authorized under the permit; and

3. Notify the permittee of the right to request a meeting with the Department, or a public hearing, within ten days of the permittee's receipt of the notice.

(h) An applicant for a modification shall follow the procedures at N.J.A.C. 7:7A-10.7. An application for a modification to a general permit authorization does not require public notice in accordance with N.J.A.C. 7:7A-10.8. An application for a minor modification does not require a fee under N.J.A.C. 7:7A-11, or public notice under N.J.A.C. 7:7A-10.8.

(i) An application for a modification shall be reviewed in accordance with the applicable provisions of N.J.A.C. 7:7A-12, Department review of applications.

7:7A-14.4 Suspension of a permit, waiver, or general permit authorization

(a) When the Department suspends a permit, including a waiver or general permit authorization, any work that is being conducted under the authority of the permit shall stop immediately upon receipt of the notice required under (c) below.

(b) The Department shall suspend a permit if:

1. The Department makes a written determination that immediate suspension would be in the public interest; or

2. Cause exists for the Department to terminate the permit under N.J.A.C. 7:7A-14.5, but the Department determines that suspension is more appropriate.

(c) The Department shall notify the permittee of a suspension in writing. The notice shall:

1. State the reasons for the suspension, including the written determination of public interest, if one was prepared under (b)1 above;

2. Order the permittee to immediately stop the activities that had been authorized under the suspended permit; and

3. Notify the permittee of the right to request a meeting with the Department, or a public hearing, within ten days of the permittee's receipt of the notice.

(d) If the permittee requests a public hearing regarding the suspension, the Department and permittee shall follow the procedures at N.J.A.C. 7:7A-12.4.

(e) The Department shall reinstate, modify or terminate the permit after the hearing or meeting or, if no hearing or meeting is held, within a reasonable amount of time after the notice required under (c) above.

7:7A-14.5 Termination of a permit

(a) The following are causes for the Department to terminate a permit, including a waiver or general permit authorization, during its term, or to deny a permit extension:

1. Noncompliance by the permittee with any portion or condition of the permit, including pursuing land uses other than those authorized by an individual permit. For example, if an individual permit authorizes construction of a 10,000 square foot preschool, construction of a 10,000 square foot retail store on the same footprint would constitute noncompliance with the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

3. A Department determination that the issuance of the permit was based on false or inaccurate information; or

4. The permit has unanticipated negative environmental impacts such as, but not limited to, excessive erosion and subsequent siltation, destruction of vegetation not covered by the permit, or die-off of aquatic biota, which become apparent during the performance of the permitted activities.

(b) Prior to a termination, the Department shall furnish written notice to the permittee by certified mail. The permittee shall stop all regulated activities immediately upon receiving the notice. Within 10 days after receiving the notice, the permittee shall:

1. Remedy the violation or unanticipated negative environmental impacts;

2. Submit a plan for bringing the activities back into compliance or correcting the unanticipated impacts; or

3. Request a hearing under N.J.A.C. 7:7A-1.7.

(c) If the permittee has not taken one of the actions required at (b) above within 10 days after receiving the Department's notice, the permit, waiver, or general permit authorization shall automatically terminate and the permittee shall remedy the unanticipated negative environmental impacts or violations. Once the impacts or violations are remedied, the Department may reinstate the permit or require the applicant to apply for a new permit.

(d) If a permittee submits a plan under (b)2 above, the permittee shall begin implementation of the plan immediately upon the Department's approval of the plan, and shall remedy the violations or unanticipated impact within 60 days.

(e) If a permit, including a waiver or general permit authorization, is terminated, the permittee shall restore the site to its pre-activity condition to the maximum extent practicable and feasible, or otherwise compensate for any loss in resource value through mitigation under N.J.A.C. 7:7A-15. This restoration or compensation shall be completed within 90 days after the permit is terminated, unless the Department authorizes in writing a longer period of time.

N.J.A.C. 7:7A-14.6 Permit extensions

(a) This section governs the extension of a permit, including a waiver or a general permit authorization. This section does not apply to LOIs or exemption letters. Provisions governing the duration and extension of LOIs are found at N.J.A.C. 7:7A-3.6. Provisions governing the duration of exemption letters are found at N.J.A.C. 7:7A-2.10.

(b) The Department shall issue one five-year extension of a permit only if:

1. The permittee applies for the extension at least 90 days prior to the expiration of an individual permit or individual transition area waiver, and at least 30 days prior to the expiration of a general permit authorization; and

2. The permittee demonstrates that there has been no significant change in any of the following between the date the permit was issued and the date the application for extension is submitted:

    i. The project and activities that were approved in the original permit;

    ii. The rules governing the site; and

    iii. The conditions on the site, including the wetlands boundary and resource classification.

(c) The Department shall deny a permit extension if the permittee has violated the terms of the original permit, or if any of the other causes for termination at N.J.A.C. 7:7A-14.5 exist.

(d) If the requirements in this section for an extension are not met, the permit shall expire and regulated activities shall stop until a new permit is obtained.

(e) An application for an extension of a permit shall meet the application requirements at N.J.A.C. 7:7A-10, including the public notice requirements at N.J.A.C. 7:7A-10.8.

SUBCHAPTER 15 MITIGATION

N.J.A.C. 7:7A-15.1 Mitigation definitions

In addition to the terms defined at N.J.A.C. 7:7A-1.4, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Charitable conservancy" means a corporation or trust that meets the definition of a charitable conservancy at N.J.S.A. 13:8B-2, and amendments thereto. As of September 4, 2001, N.J.S.A. 13:8B-2 defines a charitable conservancy as a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.

"Council" means the Wetlands Mitigation Council.

"Creation" means the establishment of freshwater wetland or State open water characteristics and functions in uplands.

"Credit purchase" means the purchase of credits in a mitigation bank, as defined below, as a substitute for performance of restoration, creation, enhancement, or upland preservation by the purchaser. Each credit counts for a certain acreage amount of restoration, creation, or enhancement. Once a credit is applied to satisfy a mitigation obligation under this subchapter, it is exhausted and may not be sold or used again.

"Degraded wetland" means a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland which has been partially filled or excavated, contaminated with hazardous substances, or which has an ecological value substantially less than that of undisturbed wetlands in the region.

"Enhancement" means the improvement of the ability of an existing, degraded wetland or State open water to support natural aquatic life, through substantial alterations to the soils, vegetation and/or hydrology. Improvement of a wetland or water that is not degraded does not constitute enhancement. Conversion of a State open water to a wetland does not by itself constitute enhancement, although the Department may approve a mitigation proposal that includes this in some cases as part of a larger mitigation project. The addition of human-made habitat improvement devices such as duck boxes does not constitute enhancement nor does the removal of trash or debris.

"In-kind mitigation" means mitigation that provides similar values and functions as the area disturbed, including similar wildlife habitat, similar vegetative species coverage and density, equivalent flood water storage capacity, and equivalency of other relevant values or functions. In the case of a mitigation bank, this is accomplished through the purchase of credits in a bank at which similar values and functions have been established.

"Land donation" means performing mitigation through giving land that has been determined acceptable for donation by the Wetlands Mitigation Council.

"Mitigation" means activities carried out in accordance with this subchapter in order to compensate for the loss or disturbance of freshwater wetlands or State open waters.

"Mitigation area" means the portion of a site, right-of-way, or piece of property upon which mitigation is proposed or performed. If a mitigation area includes a wetland, a transition area is included as part of the mitigation area in accordance with N.J.A.C. 7:7A-15.8(b).

"Mitigation bank" means an operation in which wetlands, uplands and/or other aquatic resources are restored, created, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to freshwater wetlands and/or State open waters.

"Mitigation bank service area" means a geographic area within which a mitigation bank's credits may be used to compensate for a disturbance.

"Mitigation bank site" means the portion of a site, right-of-way, or piece of property upon which a mitigation bank is proposed or created.

"Mitigation banking instrument" means documentation of Department approval of the objectives and administration of the bank including, as appropriate:

1. Bank goals and objectives;

2. Ownership of bank lands;

3. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion in the bank, including a site plan and specifications;

4. Description of baseline conditions at the bank site;

5. Geographic service area;

6. Wetland classes or other aquatic resource impacts suitable for compensation;

7. Methods for determining credits and debits;

8. Accounting procedures;

9. Performance standards for determining credit availability and bank success;

10. Reporting protocols and monitoring plan;

11. Contingency and remedial actions and responsibilities;

12. Financial assurances;

13. Compensation ratios; and

14. Provisions for long-term management and maintenance.

"Monetary contribution" means giving money to the Wetlands Mitigation Fund.

"Out-of-kind mitigation" means mitigation that is not in-kind mitigation.

"Restoration" means:

1. The reestablishment of wetland and/or State open water characteristics and functions in an area that was once a freshwater wetlands and/or State open water but is no longer. For example, an area that has been drained and farmed could be restored to its original condition by blocking or removing drainage devices and replanting with appropriate wetlands plants; or

2. The reversal of a temporary disturbance and the reestablishment of the functions and values of the freshwater wetlands and/or State open water that was temporarily disturbed.

"Upland preservation" means the permanent protection of transition areas or other uplands from disturbance or development, through transfer of the property to a charitable conservancy as defined in this section, and the execution of legal instruments to prevent development, such as a conservation restriction or easement.

"Watershed Management Area" means an aggregation of HUC 11s, as defined at N.J.A.C. 7:7A-1.4, designated by the Department as a watershed management area and shown on the map entitled "New Jersey's Watersheds, Watershed Management Areas, and Water Regions," dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department's Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at http://www.state.nj.us/dep/gis.

"Wetlands Mitigation Council" or "Council" means the body established under N.J.S.A. 13:9B-14 to perform the functions enumerated at N.J.S.A. 13:9B-15. The Wetlands Mitigation Council administers the Wetlands Mitigation Fund.

"Wetlands Mitigation Fund" means the repository for monetary contributions made for mitigation purposes, established at N.J.S.A. 13:9B-14a as the "Wetlands Mitigation Bank."

N.J.A.C. 7:7A-15.2 General mitigation requirements

(a) The Department shall not consider a mitigation proposal in determining whether to approve a permit for a project.

(b) The Department may require mitigation in accordance with this chapter in order to compensate for impacts to a freshwater wetland, State open water and/or transition areas resulting from the following:

1. Regulated activities authorized under an individual or general freshwater wetlands or open water fill permit;

2. Certain violations of the Freshwater Wetlands Protection Act and/or this chapter; and

3. Regulated activities approved in accordance with a special activity transition area waiver at N.J.A.C. 7:7A-6.3(g).

(c) Mitigation shall, at a minimum, fully compensate for the loss of ecological value caused by a disturbance, by replacing any freshwater wetlands and/or State open waters values and functions lost or disturbed with equal values and functions. To do this, mitigation shall meet all of the following criteria:

1. The mitigation alternative and the location of the mitigation shall comply with N.J.A.C. 7:7A-15.5 or 15.6, whichever applies;

2. If the mitigation is restoration, creation, or enhancement:

    i. The acreage amount of mitigation shall be that required under N.J.A.C. 7:7A-15.8; and

    ii. The mitigation shall be in-kind mitigation, as defined at N.J.A.C. 7:7A-15.1, unless the Department determines that, because of special circumstances, out-of-kind mitigation would be more likely to provide equal functions and values;

3. If the mitigation is credit purchase, the credits purchased shall be appropriate to the type of disturbance and the purchase shall comply with this chapter and the Council's authorization of the mitigation bank. For example, if credits were awarded by the Council for use as mitigation for disturbances of wetlands within a certain service area, the credits shall not be considered appropriate as mitigation for a disturbance outside of the service area. The amount of credits shall be determined under N.J.A.C. 7:7A-15.8(f);

4. If the mitigation is uplands preservation, the mitigation shall meet the requirements of N.J.A.C. 7:7A-15.9;

5. If the mitigation is a monetary contribution, the amount of the monetary contribution shall be approved by the Council in accordance with N.J.A.C. 7:7A-15.21; and

6. If the mitigation is land donation, the land to be donated shall be approved by the Council in accordance with N.J.A.C. 7:7A-15.22.

(d) To be approved under this subchapter, mitigation must have a high probability of long term success. At a minimum, this requires the following:

1. Adequate financial and other resources must be dedicated to the project;

2. The project must be designed to take advantage of and work within the existing conditions in the proposed mitigation area to the extent possible;

3. The hydrology in and around the mitigation area must be adequate to support wetland conditions year round and indefinitely into the future. The hydrology for a proposed wetland mitigation site shall not include discharged stormwater;

4. The soils (and hydrology) in the mitigation area must be adequate to support wetland conditions; and

5. The responsibility for long term maintenance of the mitigation area must be clearly assigned to an entity that has the resources to ensure long term maintenance of the mitigation area. For upland preservation or land donation, a maintenance fund shall be created in accordance with N.J.A.C. 7:7A-15.17(c) or 15.19(c), respectively.

(e) Mitigation under this subchapter requires prior Department approval. In addition, if the mitigation shall be through a monetary contribution or a land donation, the amount of money or the particular parcel of land must also be approved by the Wetlands Mitigation Council.

(f) All correspondence with the Department and/or the Mitigation Council, including requests for application forms and checklists, and applications for Council approval or funding, shall be addressed to:

Mitigation Staff
NJDEP Division of Land Use Regulation
PO Box 439
Trenton, New Jersey, 08625
(609) 984-0194
lurweb@dep.state.nj.us

(g) When the Department requires mitigation, the permit, approval or enforcement document under which the mitigation is required shall authorize any regulated or prohibited activities, as defined at N.J.A.C. 7:7A-1.4, necessary to accomplish the mitigation. When mitigation is required for a disturbance that is not subject to a Department-issued permit, for example, when mitigation is required by the ACOE, the mitigation itself must be authorized through a permit or

enforcement document issued by the Department under this chapter. In some cases, mitigation also involves activities that require approval through one or more other Division of Land Use Regulation permits, such as a flood hazard area, CAFRA, or Waterfront Development permit; or through other State or Federal permits. In such a case, mitigation shall not begin without these approvals.

(h) If a mitigation requirement arises from a violation rather than a permit, the Department shall determine the mitigation alternative required on a case-by case basis, taking into consideration the size and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a settlement of an enforcement action shall provide for mitigation that is at least as ecologically valuable as mitigation that would be required under this chapter as a result of a permit. This may include an increase in mitigation to compensate for the time.

(i) A mitigation area shall be permanently protected from future development in accordance with N.J.A.C. 7:7A-15.14 and in accordance with N.J.A.C. 7:7A-2.12.

(j) If mitigation is performed through uplands preservation or land donation, the mitigator shall transfer all rights in the mitigation area to a government agency or charitable conservancy in accordance with N.J.A.C. 7:7A-15.17(c) or 15.19(c), respectively. A mitigation banker shall also transfer a mitigation bank to a government agency or charitable conservancy after the bank is successfully completed, in accordance with N.J.A.C. 7:7A-15.23(i).

(k) Upon approval by the Department, a permittee may aggregate the mitigation for multiple disturbances, so as to perform mitigation for more than one disturbance with a single mitigation project. Such an aggregated mitigation project shall be used only as mitigation for disturbances performed by the permittee, unless the permittee obtains Council approval of the project as a mitigation bank under this subchapter.

(l) An activity that is required in order to satisfy Federal, State, or local government requirements, other than those imposed under this chapter, shall not qualify as mitigation under this subchapter. For example, if land is required by a county to be preserved as open space, the Department shall only approve the parcel for a land donation if the applicant also performs wetlands restoration or enhancement in accordance with this subchapter.

(m) A permittee may use one mitigation alternative or a combination of mitigation alternatives to compensate for a permitted disturbance.

(n) Upon approval of the Department, a permittee may aggregate onto one site the mitigation for multiple small (less than 0.5 acre in size), wetland disturbances resulting from the same project but that span several Watershed Management Areas.

N.J.A.C. 7:7A-15.3 Timing of mitigation

(a) Mitigation shall be performed within the applicable time period below:

1. Mitigation for a disturbance authorized by a permit, other than a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, shall be performed prior to or concurrently with the permitted activity except that no regulated activities shall occur before the Department has approved a mitigation proposal, and shall be continued to completion according to the schedule in the approved mitigation proposal;

2. Mitigation for a temporary disturbance authorized by a permit shall be started immediately following completion of the activity that caused the disturbance, and shall be continued to completion within six months after the end of the activity that caused the disturbance; and

3. Mitigation required as part of an enforcement action shall be performed in accordance with a schedule in the enforcement document.

(b) If a permittee fails to perform mitigation within the applicable time period in (a) above, the acreage of mitigation required shall be increased by 20 percent each year after the date mitigation was to begin. This shall compensate for the absence of the functions and values that were to be provided by the mitigation project during the delay. For example, a permit may authorize a disturbance, and require 10 acres of creation to compensate for that disturbance. If the disturbance is begun on January 1, 2001, but the mitigation is not performed prior to or concurrently with the disturbance and continued according to the approved schedule as required under (a)1 above, the acreage of creation required increases to 12 acres on January 1, 2002, in order to compensate for the absence of wetlands functions and values from the ecosystem during the time between the disturbance and the creation.

(c) In order to ensure compliance with (a) above, if mitigation is required for a publicly funded project, all work necessary to complete the mitigation shall be included in the contract awarded for the project, unless the applicant demonstrates that the mitigation will be performed by the applicant's staff and will not be awarded through a contract.

N.J.A.C. 7:7A-15.4 Property suitable for mitigation and the criteria for addressing contaminated sites

(a) Any offsite restoration, creation, enhancement, land donation, or upland preservation shall be carried out on private property, except that a government agency, as defined at N.J.A.C. 7:7A-1.4, may create, restore, or enhance on public land in accordance with this subchapter, as mitigation for a project funded solely with public monies, if the land was not acquired with Green Acres funding, as defined at N.J.A.C. 7:36-2.1, and any one of the following criteria is met:

1. The land is obtained or held by the government agency for mitigation;

2. The land is obtained by the government agency by default or operation of law, through a tax lien or other similar circumstance; or

3. The land obtained or held by the government agency is, or was formerly a wetland and the government agency is proposing to restore and/or enhance the wetland for mitigation.

(b) An improvement to a public facility which is intended for human use, such as a ball field, nature trail, or boardwalk, does not constitute mitigation.

(c) A person seeking property for a mitigation project under this subchapter shall review the applicable watershed management area plan, if any, approved by the Department under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing rules at N.J.A.C. 7:15 to determine if suitable properties are listed, and shall also review the applicable county mitigation inventory, if any, prepared in accordance with N.J.S.A. 13:9C-1 et seq.

(d) The Department shall not approve mitigation through creation, restoration, or enhancement in an area that is already highly ecologically valuable, for example if the area contains a mature, well developed, ecologically desirable natural community; a State open water that supports fish; a forested habitat; or significant cultural or historic resources, as identified in accordance with N.J.A.C. 7:7A-12.2.

(e) The Department shall approve mitigation through creation, restoration, or enhancement only on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, or the person responsible for performing the mitigation shall demonstrate that the person has legal rights to the property sufficient to enable compliance with all requirements of his chapter. If a property is affected by an easement or other encumbrance, the person responsible for performing the mitigation shall ensure that the encumbrance is extinguished.

(f) The Department shall require a habitat assessment if the Department deems such an assessment necessary to determine if an area is suitable for mitigation through enhancement. Any habitat assessment shall be performed in accordance with a scientific protocol approved by the Department.

(g) The Department shall not approve mitigation that would destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

(h) The Department shall not approve mitigation in an area that contains contamination until all potential contaminated areas have been identified, and all remediation of the area(s) is completed so that there is no potential for the mitigation activities to result in the reintroduction of contamination to ecological communities or exposure of humans to contamination, and there is no potential for the mitigation site to be contaminated by the belated discovery of new areas of contamination requiring remediation. The Department will determine on a case by case basis whether it is feasible on a site containing contamination to conduct onsite mitigation;

1. If the Department determines that there is reason to suspect contamination on the proposed mitigation area, the site must be properly characterized and assessed to ensure there is no ecological risk associated with the proposal. To obtain this characterization,

the mitigator shall remediate the site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

2. The applicant shall not submit a proposed mitigation bank containing known or suspected contamination to the Department for conceptual approval in accordance with N.J.A.C. 7:7A-15.25(a) until the site has been fully characterized in accordance with 1. above.

(i) Stormwater management facilities designed to treat stormwater shall not constitute mitigation.

N.J.A.C. 7:7A-15.5 Mitigation for a smaller disturbance

(a) This section governs, for a smaller disturbance, the mitigation alternative required and the location of mitigation in relation to the disturbance. (See Figure 4 below for an illustration of the information in this section.) However, if a smaller disturbance is a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, it is governed by N.J.A.C. 7:7A-15.7. The acreage amount of mitigation required for both smaller and larger disturbances is determined under N.J.A.C. 7:7A-15.8.

(b) A smaller disturbance is:

1. A disturbance of 1.5 acres or less of freshwater wetlands or State open water; or

2. A disturbance affecting only ordinary resource value wetlands.

(c) The Department presumes that onsite mitigation for a smaller disturbance is not feasible. Therefore, mitigation for a smaller disturbance shall be performed through credit purchase in accordance with (d) below, unless the applicant demonstrates under (e) below that one of the following will be more environmentally beneficial:

1. Onsite restoration, creation or enhancement; or

2. Offsite restoration, creation, or enhancement, which is performed in the same HUC 11, as defined at N.J.A.C. 7:7A-1.4, as the disturbance, or performed in an adjacent HUC 11 within the same watershed management area as the disturbance.

(d) Mitigation through credit purchase shall be performed as follows:

1. Through the purchase of credits from either of the following:

   i. A mitigation bank located in the same HUC 11 as the disturbance; or

   ii. A mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area. The service area for

each mitigation bank is set forth in the Wetlands Mitigation Council approval for the bank;

2. If no credits are available from a bank listed in (d)1 above, through the purchase of credits from a mitigation bank located in a HUC 11 that is both adjacent to the HUC 11 in which the disturbance is located and within the same watershed management area, as defined at N.J.A.C. 7:7A-15.1, as the disturbance;

3. If no credits are available from a bank listed in (d)1 or 2 above, through the purchase of credits from a mitigation bank located anywhere in the same watershed management area as the disturbance; or

4. If no credits are available from a mitigation bank located in (d)1, 2, or 3 above, through the purchase of credits from a mitigation bank which includes the disturbance site in its bank service area.

(e) In determining if onsite or offsite mitigation for a smaller disturbance would be environmentally beneficial for the purposes of (c) above, the Department shall consider the following factors and any other relevant factors specific to the site or project:

1. Size. Generally, the larger a mitigation area, the greater its potential environmental benefit. A mitigation area that is associated with a large existing wetland complex is more likely to be environmentally beneficial for the purpose of (c) above;

2. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;

3. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial; and

4. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream.

(f) If credit purchase under (d) above, and onsite or offsite mitigation under (c) above are not feasible, mitigation shall be performed through a monetary contribution in accordance with N.J.A.C. 7:7A-15.21 or, if the Department determines that no other mitigation alternative is practicable or feasible, mitigation shall be performed through upland preservation, in accordance with N.J.A.C. 7:7A-15.9, or a land donation approved by the Wetlands Mitigation Council, in accordance with N.J.A.C. 7:7A-15.22.

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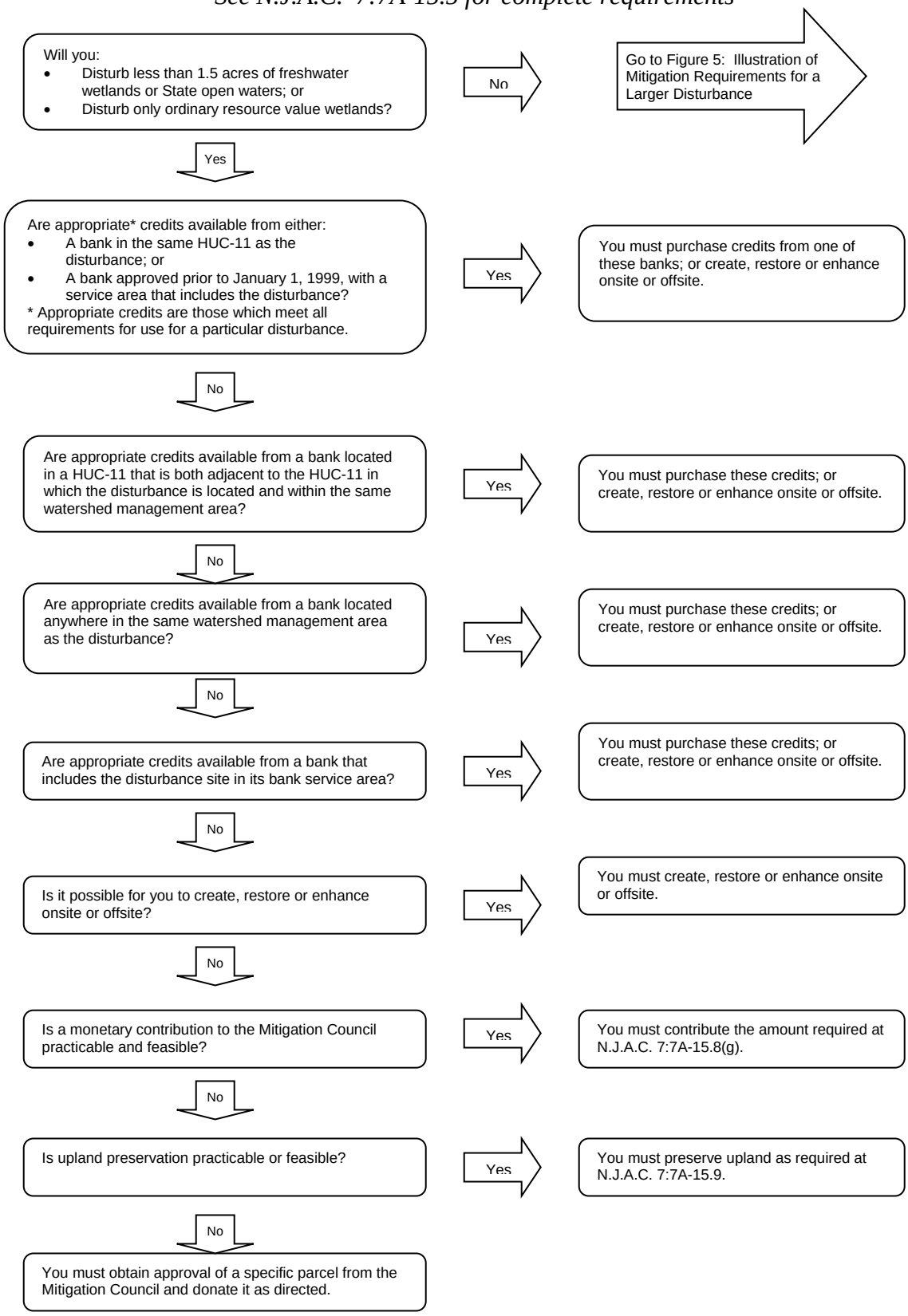
Figure 4: Flow chart Illustrating Mitigation Alternatives for a Smaller Disturbance
See N.J.A.C. 7:7A-15.5 for complete requirements



N.J.A.C. 7:7A-15.6 Mitigation for a larger disturbance

(a) This section governs, for a larger disturbance, the mitigation alternative required and the location of mitigation in relation to the disturbance. (See Figure 5 below for an illustration of the information in this section.) However, if a larger disturbance is a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, it is governed by N.J.A.C. 7:7A-15.7. The acreage amount of mitigation, regardless of the size of the disturbance, is determined under N.J.A.C. 7:7A-15.8.

(b) A larger disturbance is a disturbance not listed at N.J.A.C. 7:7A-15.5(b).

(c) Mitigation for a larger disturbance shall be performed through restoration, creation, or enhancement, carried out on the site of the disturbance to the maximum extent feasible. Onsite mitigation shall not be performed through upland preservation.

(d) If onsite restoration, creation, or enhancement is not feasible, mitigation shall be performed through any of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank located in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area;

2. The purchase of credits from a mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area; or

3. Offsite restoration, creation, or enhancement, in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area as the disturbance.

(e) If mitigation under (d) above is not feasible, mitigation shall be performed through either of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank in the same watershed management area as the disturbance; or

2. Restoration, creation, or enhancement, in the same watershed management area as the disturbance.

(f) If mitigation is not feasible under (c), (d) or (e) above, mitigation shall be performed through:

1. The purchase of credits from a mitigation bank which includes the disturbance site in its bank service area; or

2. Restoration, creation or enhancement in the same drainage basin.

(g) If mitigation is not feasible under (c), (d), (e) or (f) above, mitigation shall be performed through:

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1. A monetary contribution in accordance with N.J.A.C. 7:7A-15.21;

2. Upland preservation, in accordance with N.J.A.C. 7:7A-15.9; or

3. A land donation approved by the Wetland Mitigation Council in accordance with N.J.A.C. 7:7A-15.22.

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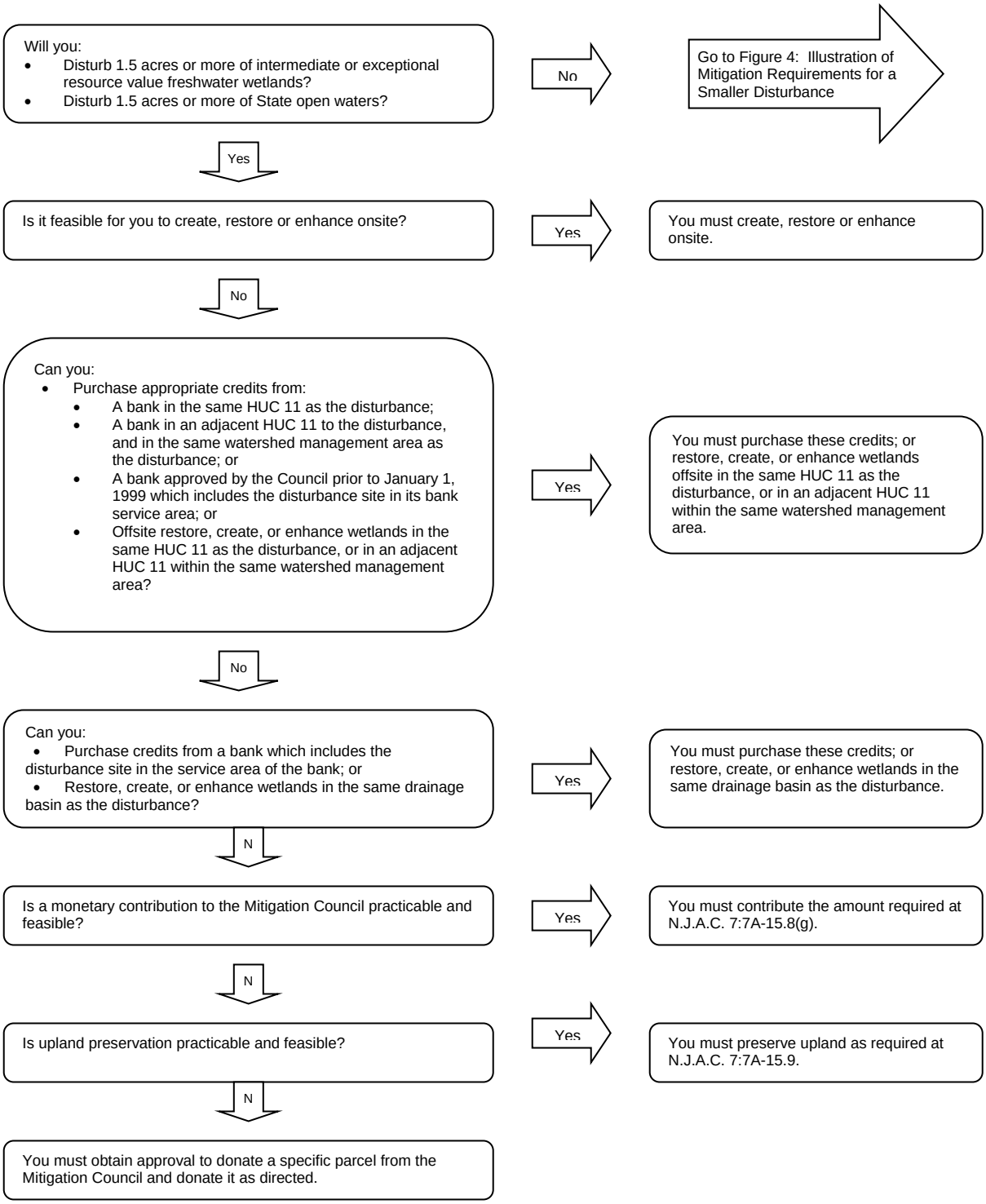
Figure 5: Flow chart Illustrating Mitigation Alternatives for a Larger Disturbance
See N.J.A.C. 7:7A-15.6 for complete requirements



7:7A-15.7 Mitigation for a temporary disturbance

(a) Mitigation for a temporary disturbance, as defined at 7:7A-1.4, shall be performed as follows:

1. For a disturbance of non-forested freshwater wetlands or of State open waters, restoration of the area temporarily disturbed; or

2. For a disturbance of forested freshwater wetlands, either

   i. Restoration of the area temporarily disturbed to a forested wetland; or

   ii. Restoration of the area temporarily disturbed to a non-forested wetland, and in addition, one acre of mitigation in accordance with this subchapter for each acre of disturbance.

(b) The transition area for a temporary disturbance shall be as follows:

1. If the mitigation is restoration performed on the site of the disturbance, the transition area shall be that which was required for the wetland prior to the temporary disturbance; and

2. If additional mitigation is performed under (a)2ii above, the width of the transition area on the mitigation area shall be the width required at 7:7A-15.8(b)1 or 3, as applicable.

7:7A-15.8 Amount of mitigation required

(a) This section governs the amount of mitigation required, depending on the mitigation alternative selected under N.J.A.C. 7:7A-15.5 or 15.6, except that this section does not address the amount of a monetary contribution or the size of a land donation. The amount of a monetary contribution or the size of a land donation is not determined by the Department, but instead must be approved by the Wetlands Mitigation Council in accordance with N.J.A.C. 7:7A-15.21 or 15.22.

(b) A mitigation area involving restoration or creation shall include a transition area. The transition area shall not be counted in calculating the acreage of mitigation required. For example, if a person must create one acre of wetlands, the mitigation area shall include one acre of created wetlands and in addition a transition area around the created wetlands. The width of the transition area around a wetland resulting from mitigation shall be:

1. If the mitigation area includes or will include exceptional resource value wetlands, the transition area shall be 150 feet wide;

2. If mitigation is restoration under N.J.A.C. 7:7A-15.7(b)1 of an area temporarily disturbed, the transition area shall be that which was required for the wetland prior to the temporary disturbance; and

3. For all mitigation not listed at (b)1 or 2 above, the transition area shall be 50 feet wide.

(c) If restoration is the mitigation alternative, the Department shall require the following amount of mitigation unless the applicant demonstrates under (j) below that a smaller area will provide equal functions and values:

1. For a disturbance authorized by a permit, other than a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, restoration of two acres of freshwater wetlands and/or State open waters for each acre disturbed, with the addition of any transition area required under (b) above; and

2. For a temporary disturbance authorized by a permit, the amount of restoration required at N.J.A.C. 7:7A-15.7(a).

(d) If creation is the mitigation alternative, the Department shall require creation of two acres of freshwater wetlands and/or State open waters for each acre disturbed, with the addition of any transition area required under (b) above, unless the applicant demonstrates under (j) below that a smaller area will provide equal functions and values.

(e) If enhancement is the mitigation alternative, the Department shall evaluate the wetlands values and functions lost as a result of the disturbance and determine on a case-by-case basis the amount of enhancement required to ensure that the mitigation area results in wetlands of equal functions and values to those lost.

(f) If credit purchase is the mitigation alternative, the Department shall evaluate the wetlands values and functions lost as a result of the disturbance and determine on a case-by-case basis the number of credits required to ensure that the mitigation results in wetlands of equal functions and values to those lost.

(g) If upland preservation is the mitigation alternative, the acreage of upland preserved shall be determined under N.J.A.C. 7:7A-15.9(c).

(h) If monetary contribution is the mitigation alternative, the contribution shall be equal to the lesser of the following costs:

1. The cost of purchasing and enhancing existing degraded freshwater wetlands, resulting in the preservation of freshwater wetlands of equal functions and values to those which are being lost; or

2. The cost of purchasing property and creating freshwater wetlands of equal functions and values to those which are being lost.

(i) If land donation is the mitigation alternative, the Wetlands Mitigation Council shall determine on a case-by-case basis whether the acreage of land specified in the mitigation proposal will result in a mitigation area large enough to be a valuable component of the freshwater wetlands ecosystem. In making this determination, the Council shall consult the sources, and consider the conditions, referenced in (j) below and in N.J.A.C. 7:7A-15.22(b).

(j) A person shall carry out the full acreage amount of mitigation required under this section, unless the person demonstrates, through use of productivity models or other similar studies, that a smaller mitigation area will result in a mitigation area sufficient to comply with this section. However, under no circumstances shall a mitigation area be smaller than the disturbed area. To demonstrate that a smaller mitigation area will be sufficient to provide equal functions and values to those lost, the person shall provide current scientific literature concerning wetlands, aquatic resources, and mitigation; as well as information regarding the conditions on the site of the disturbance and on the proposed mitigation site, including soil, vegetation, any existing contamination or other degradation, water quality functions, flood storage capacity, soil erosion and sediment control, wildlife habitat, and any other relevant data.

(k) If a proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless the applicant demonstrates that the encumbrance will not prohibit compliance with the mitigation requirements of this chapter.

(l) If a mitigation requirement arises from a violation, the Department shall determine the amount of mitigation required on a case-by case basis, taking into consideration the size and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a settlement of an enforcement action shall require mitigation that provides functions and values at least equal to those that would be required under this chapter as a result of a permit. This may include an increase in mitigation to compensate for the time lapse between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

7:7A-15.9 Requirements for upland preservation

(a) The Department shall approve mitigation through preservation of uplands only if the uplands meet the requirements in this section.

(b) Preserved uplands shall be valuable for the protection of a freshwater wetlands ecosystem. Factors the Department shall consider in evaluating an area for upland preservation include, but are not limited to:

1. The size and configuration of the uplands in relation to freshwater wetlands and/or State open waters, and the effect the preservation of these uplands would have on the wetlands or waters;

2. The diversity of the ecological communities on the entire site;

3. Whether the uplands to be preserved are located in the same HUC 11 as the disturbance;

4. Whether the uplands to be preserved are adjacent to a freshwater wetland that:

    i. Contains exceptional resource value wetlands;

ii. Contains critical habitat for flora or fauna, as defined at N.J.A.C. 7:7A-1.4;

iii. Contains wetlands or waters draining to trout maintenance waters, as defined at N.J.A.C. 7:9B, or into public drinking water sources;

iv. Is adjacent to public lands containing wetland preserves, such as Federal wildlife refuges, State wildlife management areas, State parks or forests, State, County or local wetland preservation areas, or wetland preservation areas held by non-profit conservation organizations;

v. Has unique aspects or characteristics that contribute to its ecological value, such as an unusual or regionally rare type of wetland;

5. The relationship of the proposed uplands to existing and planned development;

6. Whether the uplands have been designated for preservation in a watershed management area plan approved by the Department under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing rules at N.J.A.C. 7:15; and

7. Whether the site contains solid or hazardous waste, or contains water or soil pollution. Uplands that contain waste or pollution shall not be considered valuable for the protection of a freshwater wetlands ecosystem.

(c) The amount of uplands preserved shall be sufficient to ensure that the functions and values resulting from the preservation of the uplands will fully compensate for the loss of functions and values caused by the disturbance, in accordance with N.J.A.C. 7:7A-15.2(c). In determining if an upland preservation proposal will fully compensate for a disturbance, the Department shall consult the sources, and consider the conditions, referenced in N.J.A.C. 7:7A-15.8(j). At a minimum, the uplands preserved shall be:

1. At least five acres in size, and significantly larger than the area that would be required for any other mitigation alternative, to compensate for the fact that uplands preservation, unlike other mitigation alternatives, does not directly replace the wetland values and functions destroyed by a disturbance; and

2. If adjacent to a wetland, the uplands preserved shall include the standard transition area required for the wetlands under N.J.A.C. 7:7A-2.5, plus an additional area at least 150 feet wide, measured from the outer edge of the transition area.

(d) If mitigation is performed through upland preservation, the mitigator shall transfer the mitigation area in fee simple to a government agency or charitable conservancy, as defined at N.J.A.C. 7:7A-1.4, in accordance with N.J.A.C. 7:7A-15.17(c).

N.J.A.C. 7:7A-15.10 Conceptual review of a mitigation area

(a) The Department strongly recommends that an applicant obtain the Department's conceptual review of any land being considered as a potential mitigation area, prior to submittal of a mitigation proposal involving restoration, creation, enhancement, uplands preservation, or land donation.

(b) An applicant may request a conceptual review at any time prior to submittal of a mitigation proposal. However, the Department strongly recommends that an applicant obtain a Department conceptual review before buying the land for a mitigation area.

(c) To obtain the Department's conceptual review of a mitigation area, the applicant shall submit a written request, including:

1. A brief description of the area and the mitigation project being considered;

2. A map showing Department staff how to find the mitigation area;

3. A USGS quad showing the mitigation area;

4. A county soil survey showing the soils in the mitigation area and identifying all potential, suspected and/or known contamination on the site; and

5. Unconditional written consent from the owner of the proposed mitigation area allowing Department representatives to enter the property and inspect the mitigation area.

(d) Upon receipt of a complete request for a conceptual review, the Department may schedule a site inspection. At a site inspection, Department staff shall candidly discuss the apparent strengths and weaknesses of the proposed mitigation area, but all guidance provided shall be non-binding on the Department. A Department decision on a proposed mitigation area or mitigation proposal is binding only if it is incorporated into an approval obtained in accordance with this subchapter. A conceptual review does not grant any property or other rights, and does not authorize mitigation activities.

N.J.A.C. 7:7A-15.11 Basic requirements for all mitigation proposals

(a) A mitigation proposal shall be submitted within the applicable time period below:

1. For mitigation required by an individual permit, the mitigation proposal shall be submitted at least 90 days prior to the start of activities authorized by the permit. Activities authorized by the permit shall not begin until the mitigation proposal is approved and the mitigation has begun;

2. For mitigation required by a general permit authorization, the mitigation proposal shall be submitted no later than 120 days prior to the initiation of regulated activities authorized by the general permit; and

3. For mitigation requirements arising from a violation, the mitigation proposal shall be submitted by the deadline set forth in the Department's enforcement document.

(b) The mitigation proposal shall provide all information necessary for the Department to determine if the requirements of this subchapter are met. The information required for each mitigation alternative is set forth in a mitigation proposal checklist, provided by the Department. To obtain the mitigation proposal checklist for a particular mitigation alternative, contact the Department at the address in N.J.A.C. 7:7A-15.2(f);

1. The applicant shall also provide notification in accordance with N.J.A.C. 7:7A-10.8(j) for all mitigation proposals that include creation, enhancement or restoration (except restoration for a temporary disturbance).

(c) In order to demonstrate that an offsite mitigation alternative is not feasible under this subchapter, an applicant shall provide to the Department a list of at least six potential areas upon which the mitigation alternative might be performed. Each of these potential areas shall:

1. Be located at a practical elevation suitable for a wetland or State open water;

2. Have an adequate water supply;

3. Be large enough for the mitigation proposed;

4. Be available for purchase; and

5. Meet the requirements of N.J.A.C. 7:7A-15.4(h) regarding contamination.

(d) A mitigation proposal submitted as part of a settlement of an enforcement action shall provide for mitigation that is at least as ecologically valuable as mitigation that would be required under this chapter as a result of a permit. This may include an increase in the amount of mitigation to compensate for the time that has elapsed between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

(e) A mitigation proposal shall include as many copies of each item as required by the checklist.

N.J.A.C. 7:7A-15.12 Contents of a mitigation proposal

(a) The application checklist for every mitigation proposal shall require the information listed at (b)1 through 8 below. In addition, each mitigation proposal shall also require information specific to the mitigation alternative proposed, listed at (c) through (g) below.

(b) The application checklist for every mitigation proposal shall require the following:

1. Basic information regarding the applicant, the disturbance for which the mitigation is required, and the permit or other item which is the source of the mitigation requirement;

2. Information to enable the Department to determine the loss of functions and values caused by the disturbance for which the mitigation is required, including scientific information such as scientific literature, models or other studies concerning wetlands, soils, vegetation, hydrology, wildlife habitat and any other factors relevant to the functions and values of the site of the disturbance for which mitigation is required; previous Department approvals or correspondence regarding the disturbance; maps, photographs; soil or vegetation samples; delineations and/or other visual materials relating to the site of the disturbance;

3. Information demonstrating that the proposed mitigation alternative complies with N.J.A.C. 7:7A-15.5 or 15.6, as applicable, including information on the feasibility or practicability of other mitigation alternatives;

4. The names and addresses of all consultants, engineers, and other persons providing technical assistance in preparing the mitigation proposal;

5. Any letters, contracts, agreements, conservation restrictions or easements, or other draft or executed documents necessary to ensure compliance with this subchapter;

6. Any information necessary to ensure compliance with the Federal rules governing the Department's assumption of the Federal 404 program at 40 CFR 233.30;

7. A certification of truth and accuracy; and

8. Unconditional written consent from the owner of the proposed mitigation area allowing the Department to enter the property and inspect the proposed mitigation area.

(c) In addition to the basic information required for all mitigation proposals under (b) above, an application checklist for a proposal to purchase credits shall require information demonstrating that credit purchase is acceptable under N.J.A.C. 7:7A-15.5 or 15.6, and any information necessary for the Department to determine the mitigation bank from which appropriate credits must be purchased under N.J.A.C. 7:7A-15.5 or 15.6.

(d) In addition to the basic information required for all mitigation proposals under (b) above, an application checklist for a proposal to restore, create, or enhance wetlands, to preserve uplands, or to donate land shall also require the following information:

1. Basic information regarding the proposed mitigation area, including, but not limited to, its location and size, ownership, and any legal or other restrictions on the property such as easements;

2. Unconditional written consent from the owner of the proposed mitigation area, as defined at N.J.A.C. 7:7A-15.1, for Department representatives to enter the proposed mitigation area to conduct inspections;

3. Visual materials, including, but not limited to, maps, plans, surveys, diagrams, or photographs showing the proposed mitigation area, existing conditions and features on the proposed mitigation area;

4. Written narrative information and/or reports describing the proposed mitigation area, existing conditions and features on the proposed mitigation area, and the mitigation alternative proposed;

5. Information and/or certifications regarding the presence or absence of endangered or threatened species habitat, or archaeological resources, as described at N.J.A.C. 7:7A-12.2, or other features on the proposed mitigation area that are relevant to determining compliance with this chapter. Failure to provide all such information of which the applicant, its consultants, or agents is aware may result in denial or termination of the permit under N.J.A.C. 7:7A-14.5, and may subject the applicant to penalties for submittal of false information under N.J.A.C. 7:7A-16.9;

6. Information regarding whether the proposed mitigation activities, including any restriction or transfer of the mitigation area, require approval by other Federal, interstate, State and local agencies, and information on any approvals or denials received;

7. Information regarding relevant features of other properties in the vicinity of the mitigation area, such as whether they are publicly owned, contain preserved open space, contain significant natural resources, etc.;

8. Scientific information, including scientific literature, models or other studies concerning wetlands, soils, vegetation, hydrology, wildlife habitat, and any other factors relevant to the functions and values of the proposed mitigation area and mitigation activities;

9. Information to enable the Department to determine the functions and values of the proposed mitigation area, and its potential to be a successful mitigation area, including narrative information, maps, photographs, soil or vegetation samples, delineations and/or other visual materials, describing and/or showing the mitigation area;

10. All past correspondence between the Department and the applicant or permittee, and/or the owner(s) of the proposed mitigation area, regarding the mitigation activities and the mitigation area;

11. Schedules describing in detail the sequence of mitigation activities and estimated dates for completion for each mitigation activity. For example, this might include approximate dates for completing each legal transaction involved in a land donation, or this might include site preparation and planting dates for a wetlands creation project;

12. Estimates of costs involved in performing the mitigation, and in maintaining the mitigation area after construction and/or transfer is completed;

13. Draft documents for protection and transfer of the mitigation area after successful completion of mitigation, in accordance with N.J.A.C. 7:7A-15.14, 15.17(c) and 15.19(c);

14. If the Department determines that there is reason to suspect contamination on the proposed mitigation area, a copy of the characterization and other information obtained from the Department's Division of Remediation Management and Response, as required at N.J.A.C. 7:7A-15.4(h). In addition, in order for the Department to protect the health and safety of the employees who will inspect the potential mitigation site, the applicant shall provide the following:

    i. The applicable human health and ecological effect thresholds for each contaminant identified in the characterization as provided by the Site Remediation Program or the EPA;

    ii. The method of exposure for each contaminant listed in the characterization, for example inhalation, ingestion, dermal contact, or explosive potential;

    iii. The method of transmission of the contaminant identified in the characterization, for example through soil particles, dust particles, vapor or liquid;

    iv. The potential to transmit health risks and or known contaminants off site, for example by way of soil or liquids on footwear, clothing or skin; and

    v. The current status of the cleanup of the site with the Site Remediation Program or the EPA, the name(s) and contact number(s) of the project manager, and all applicable case or file numbers.

(e) In addition to the basic information required for all mitigation proposals under (b) above, and the information required at (c) above, an application checklist for a proposal to restore, create, or enhance wetlands shall require the following information:

1. Visual materials, including, but not limited, to maps, plans, surveys, diagrams, or photographs showing all mitigation activities proposed;

2. Written narrative information and/or reports describing in detail all mitigation activities proposed;

3. A description of post-construction activities, including but not limited to schedules for monitoring, maintenance, and reporting;

4. Contingency measures that will be followed if the mitigation project fails or shows indications of failing;

5. A letter of credit or other financial assurance meeting the requirements of N.J.A.C. 7:7A-15.13; and

6. A certification that the proposed mitigation will not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places in accordance with N.J.A.C. 7:7A-12.2. If the mitigator, before or during approved mitigation, encounters an historic property on the mitigation site that may be eligible for listing in the National Register, the mitigator shall immediately notify the Department and proceed as directed by the Department.

(f) In addition to the basic information required for all mitigation proposals under (b) above, an application checklist for a proposal to make a monetary contribution shall require the following:

1. Information demonstrating to the Department that a monetary contribution is acceptable under N.J.A.C. 7:7A-15.5 or 15.6 and requirements at either (f)1i or ii:

   i. For a monetary contribution to satisfy mitigation requirements for approved individual permits, cost estimates, appraisals, and other information necessary to demonstrate compliance with the requirements for monetary contribution at N.J.A.C. 7:7A-15.21; or

   ii. For a monetary contribution to satisfy mitigation requirements for approved general permits, the calculation demonstrating compliance with N.J.A.C. 7:7A-15.21(d).

(g) In addition to the basic information required for all mitigation proposals under (b) above, an application checklist for a proposal to make a land donation shall require the following:

1. Information demonstrating to the Department that a land donation is acceptable under N.J.A.C. 7:7A-15.5 or 15.6; and

2. All information necessary to demonstrate to the Wetlands Mitigation Council that the parcel of land proposed for donation meets the requirements for land donation at N.J.A.C. 7:7A-15.22.

N.J.A.C. 7:7A-15.13 Financial assurance for a proposal to restore, create, or enhance wetlands

(a) The Department shall approve a proposal for restoration, creation, or enhancement only if the mitigator or mitigation bank operator provides a letter of credit or other financial assurance that meets the requirements of this section, except that this section does not apply to a mitigation proposal submitted by a government agency, as defined at N.J.A.C. 7:7A-1.4, or an entity that is exempt from this requirement under Federal law.

(b) A letter of credit or other financial assurance under this section shall be obtained from a firm licensed to provide such services in New Jersey.

(c) The letter of credit or other financial assurance shall be in an amount sufficient for the Department to hire an independent contractor to complete and maintain the mitigation project or mitigation bank should the mitigator default. At a minimum, the financial assurance shall be based upon itemized estimates provided by third-party contractors and in the following amounts:

1. A construction assurance, equal to 115 percent of the estimated cost of completing the creation, restoration, or enhancement; and

2. A maintenance assurance to assure the success of the mitigation through the completion of the monitoring period, equal to 115 percent of the estimated cost of monitoring and maintaining the site, including the cost to replant the mitigation area.

(d) The Department shall review the financial assurance annually and the mitigator shall adjust the financial assurance to reflect current economic factors, as direct by the Department.

(e) The Department shall require additional financial assurance if additional construction and/or monitoring is required.

(f) The portion of the financial assurance required under (c)1 above shall be released upon the Department's determination that the construction and planting phase of the mitigation project or mitigation bank has been successfully completed in accordance with the approved mitigation proposal.

(g) The portion of the financial assurance required under (c)2 above shall be released upon the Department's declaration that a mitigation project is successful under N.J.A.C. 7:7A-15.16(e), or upon the successful completion of a mitigation bank in accordance with N.J.A.C. 7:7A-15.23(h), as applicable.

N.J.A.C. 7:7A-15.14 Protecting a mitigation area from future development

(a) Every mitigation area, whether onsite or offsite, shall be permanently protected from any future development through one or more binding conservation restrictions or easements, as defined at N.J.A.C. 7:7A-1.4, and in accordance with N.J.A.C. 7:7A-2.12, except if the mitigation is restoration of a temporary disturbance on the site of the disturbance.

(b) The conservation restriction shall run with the land and shall be binding upon the mitigator, the landowner, and their successors in interest in the land or any part of the land on which the mitigation area is located. To ensure that notice of the restriction is provided to all present and future interested parties, the mitigator shall do all of the following:

1. Record the conservation restriction(s) at the county clerk's office prior to completion of the mitigation;

2. Ensure that a copy of the conservation restriction is provided to the municipal clerk with a request that it be placed in the property file for the land containing the mitigation area;

3. Insert into the conservation restriction the following:

   i. A requirement that each owner of the land notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land is submitted;

   ii. A requirement that each owner of the land notify the Department at least 30 days prior to any transfer of fee simple title or possessory interest in the land containing the mitigation area; and

   iii. A requirement that each owner of the land insert notice of the conservation restriction into any subsequent deed or other legal instrument by which the owner divests either the fee simple title or possessory interest in the land.

(c) A conservation restriction for preserved uplands or for donated land shall be enforceable by the Department, by a government agency, or by a charitable conservancy whose trustees have no other interest in the land.

(d) If the mitigation area is donated land or a mitigation bank, the conservation restriction(s)/easement shall require approval by both the Department and the Wetlands Mitigation Council.

7:7A-15.15 Department review of a mitigation proposal

(a) The Department shall, within 30 days after receiving a mitigation proposal, review the proposal for completeness and:

1. Request any necessary additional information; or

2. Declare the mitigation proposal complete.

(b) If a mitigation proposal is intended to compensate for a major discharge, as defined at N.J.A.C. 7:7A-1.4, the Department shall consult with USEPA prior to determining whether to approve the proposal.

(c) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

N.J.A.C. 7:7A-15.16 Requirements that apply after the Department approves restoration, creation or enhancement

(a) After the Department approves mitigation through restoration, creation, or enhancement, the mitigator shall execute and record a conservation restriction or easement covering the mitigation

area. The conservation restriction or easement shall meet the requirements of N.J.A.C. 7:7A-2.12, and shall be executed and filed for recording prior to the start of mitigation activities.

(b) Within 30 days after construction and planting of a restoration, creation, or enhancement project is completed, the mitigator shall submit a construction completion report to the Department. The Department may require a different schedule for submittal of the construction completion report if it determines that a different schedule would be more effective for assessing the progress and success of the mitigation. The construction completion report shall include:

1. An as-built plan of the completed mitigation area, showing grading, plantings (species, densities, etc.), and any structures included in the approved mitigation proposal;

2. Photographs of the completed mitigation;

3. An explanation for any deviation from the approved mitigation proposal; and

4. Any other information necessary for the Department to determine if the mitigation is successful under (d) below.

(c) In addition to the construction completion report required under (b) above, the mitigator shall submit to the Department an annual post-planting monitoring report each year for five years after the completion of planting and construction, or for a different time period if specified in the approved mitigation proposal. The Department may at any time modify the frequency and/or duration of reporting required. The post-planting monitoring report shall be submitted by December 31 of each year, and shall include:

1. An executive summary;

2. A complete listing of the requirements and goals of the approved mitigation proposal; and

3. A detailed explanation of the ways in which the mitigation has or has not achieved progress towards those goals. If the mitigation has not achieved progress, the report shall also include a list of remedial actions necessary to do so.

(d) At the end of the post-planting monitoring period for a restoration, creation, or enhancement project, the mitigator shall demonstrate to the Department that the mitigation project is successful. To do so, the mitigator shall demonstrate that the mitigation satisfies all requirements of this subchapter, all requirements of the approved mitigation proposal, and any applicable permit conditions. At a minimum, the mitigator shall demonstrate that:

1. The post-planting monitoring period required by the approved mitigation proposal has been successfully completed and the monitoring data show that:

    i. The vegetation in the mitigation area meets the requirements for the types of species, area of coverage, and survival rate, as set forth in the approved mitigation proposal;

ii. The soils in the mitigation area meet the requirements in the approved mitigation proposal; and

iii. The hydrologic regime in the mitigation area meets the requirements in the approved mitigation proposal, and will continue to do so; and

2. The areas designated for freshwater wetlands, transition areas, and/or State open waters in the approved mitigation proposal are in fact freshwater wetlands, transition areas, or State open waters as defined at N.J.A.C. 7:7A-1.4; and

3. The mitigation meets all applicable requirements of this subchapter, including:

i. Any requirements at N.J.A.C. 7:7A-15.2 that apply;

ii. The requirements for the amount of mitigation under N.J.A.C. 7:7A-15.8; and

iii. All restrictions, agreements, and other legal documents required by this subchapter have been executed.

(e) If the mitigator makes the demonstrations required for a restoration, creation, or enhancement project at (d) above, the Department shall issue a declaration that the mitigation is successful.

(f) If the mitigator does not make the demonstrations required at (d) above, the mitigator shall perform additional mitigation or other remedial action as directed by the Department, and shall monitor and report on the mitigation or action as directed by the Department.

N.J.A.C. 7:7A-15.17 Requirements that apply after the Department approves credit purchase or uplands preservation

(a) After the Department determines under N.J.A.C. 7:7A-15.5 or 15.6 that mitigation through credit purchase or uplands preservation is the appropriate mitigation alternative, the mitigator shall prepare and execute all documents necessary to ensure that the mitigation will be carried out as approved by the Department.

(b) The Department shall declare mitigation through credit purchase or uplands preservation successful upon:

1. A demonstration that the completed mitigation satisfies all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal; and

2. Submittal to the Department of documents demonstrating that the credit purchase or uplands preservation has occurred as required. Examples of such documents include, but are not limited to:

i. For credit purchase, written certifications from the mitigator and from the mitigation bank operator, stating that the credits were purchased; and

ii. For uplands preservation, a conservation restriction or easement, documentation that the property has been transferred and a maintenance fund established in accordance with (c) below, and that the transfer and restriction have been recorded with the county or other appropriate agency.

(c) No later than 60 days after the Department declares mitigation through uplands preservation successful under (b) above, a mitigator shall:

1. Transfer the mitigation area in fee simple to a government agency or a charitable conservancy, as defined at N.J.A.C. 7:7A-1.4. The agency or conservancy shall first be determined suitable for this responsibility by the Department, and shall agree to preserve the mitigation area as a natural area in perpetuity; and

2. Provide the government agency or charitable conservancy with a maintenance fund for maintenance and supervision of the mitigation area. The amount of the maintenance fund shall be determined by agreement between the mitigator and the agency or conservancy.

N.J.A.C. 7:7A-15.18 Requirements that apply after the Department approves mitigation through a monetary contribution

(a) After the Department determines under N.J.A.C. 7:7A-15.5 or 15.6 that monetary contribution is the appropriate mitigation alternative, the mitigator shall either:

1. If mitigating for an Individual permit, apply to the Wetlands Mitigation Council for approval of the amount of the monetary contribution under the standards at N.J.A.C. 7:7A-15.21(a) through (c); or

2. If mitigating for a general permit, calculate the amount of the monetary contribution under the standards at N.J.A.C. 7:7A-15.21(d).

(b) The Department shall declare mitigation through a monetary contribution successful upon a demonstration that:

1. For a monetary contribution for an individual permit:

i. The Wetlands Mitigation Council has approved the amount of the monetary contribution; and

ii. The monetary contribution has been completed in accordance with the Council resolution approving the contribution, all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal or

2. For a monetary contribution for a general permit:

i. The amount has been properly calculated in accordance with N.J.A.C. 7:7A-15.21(d); and

ii. The monetary contribution has been approved by the Department and completed in accordance with the general permit checklist for monetary contributions.

N.J.A.C. 7:7A-15.19 Requirements that apply after the Department approves mitigation through a land donation

(a) After the Department determines under N.J.A.C. 7:7A-15.5 or 15.6 that land donation is the appropriate mitigation alternative, the mitigator shall apply to the Wetlands Mitigation Council for approval of the particular parcel of land to be donated under the standards at N.J.A.C. 7:7A-15.22.

(b) The Department shall declare mitigation through a land donation successful upon a demonstration that:

1. The Wetlands Mitigation Council has approved the parcel to be donated; and

2. The land donation has been completed in accordance with the Council resolution approving the contribution, all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal.

(c) Within 60 days after the Department declares mitigation through land donation successful under (b) above, a mitigator shall:

1. Transfer the mitigation area in fee simple to a government agency or a charitable conservancy, as defined at N.J.A.C. 7:7A-1.4. The agency or conservancy shall first be determined suitable for the responsibility by the Department, and shall agree to preserve the mitigation area as a natural area in perpetuity;

2. Provide the government agency or charitable conservancy with an adequate maintenance fund for maintenance and supervision of the mitigation area. The amount of the maintenance fund shall be determined by agreement between the mitigator and the agency or conservancy; and

3. Ensure that the transfer and a conservation restriction or easement, in accordance with N.J.AC. 7:7A-2.12 and 15.14 are recorded with the county or other appropriate agency and that a copy is sent to the Department.

N.J.A.C. 7:7A-15.20 Wetlands Mitigation Council

(a) The Wetlands Mitigation Council's duties and functions include:

1. Reviewing the following:

i. Proposed monetary contributions;

ii. Proposed land donations; and

iii. Proposed county mitigation inventories;

2. Advising the Department on mitigation issues;

3. Buying land in order to conduct mitigation, or to preserve wetlands, transition areas, uplands, and/or State open waters;

4. Contracting with a charitable conservancy or appropriate agency to carry out its responsibilities;

5. Conducting research to monitor the success of mitigation as part of a Council-funded and approved creation, restoration or enhancement project;

6. Enhancing or restoring wetlands on public lands; and

7. Disbursing funds from the Wetlands Mitigation Fund to finance the activities listed at (a)3, 4, 5 and 6 above. To request funding for a mitigation project, contact the Council through the mitigation staff at the address in N.J.A.C. 7:7A-15.2(f).

(b) If the Council transfers funds or land, the Council shall first execute and record a conservation restriction or easement or other legally binding document that meets all applicable requirements at N.J.A.C. 7:7A-15.14, and that ensures that the funds or land will be used only for mitigation and freshwater wetlands conservation.

(c) Council meetings are open to the public. A schedule of Council meetings and other information relating to specific Council meetings can be obtained by contacting Council staff at the address in N.J.A.C. 7:7A-15.2(f).

(d) The Wetlands Mitigation Fund shall not be used to aid a permittee or violator in locating a mitigation area required as a condition of a permit, or required in order to resolve a violation.

(e) The Council may contract with a government agency, nonprofit organization, or other appropriate agency to carry out its responsibilities under this chapter. Any such contract shall be subject to review and approval by the USEPA.

N.J.A.C. 7:7A-15.21 Council review of a proposed monetary contribution

(a) For mitigation through a monetary contribution, the mitigator shall first obtain the Department's authorization under N.J.A.C. 7:7A-15.5 or 15.6 to use monetary contribution as the mitigation alternative. For an individual permit, the mitigator shall then obtain approval from the

Wetlands Mitigation Council for the amount of the monetary contribution. For a general permit, the amount of the monetary contribution shall be determined in accordance with (d) below.

(b) The Wetlands Mitigation Council shall approve the amount of a monetary contribution only if the contribution is equal to the lesser of the following:

1. The cost of buying, enhancing and/or restoring existing degraded freshwater wetlands and/or State open waters, resulting in an area that will provide equal functions and values to that disturbed; or

2. The cost of buying uplands and creating freshwater wetlands, and/or State open waters, resulting in an area that will provide equal functions and values to that disturbed.

(c) In determining the costs at (b)1 and 2 above, the Council may consider cost estimates submitted by the applicant and the Department, information obtained from experts in the field of mitigation (including Council members), and any other information available to the Council.

(d) The following analysis shall be used to determine the amount of a monetary contribution when mitigating for general permit impacts at N.J.A.C. 7:7A-5:

1. For single family property owners, the acreage of wetlands/State open water impacts multiplied by $38,000, adjusted annually using the Consumer Price Index for Urban Consumers (CPI-U) as published by the United States Department of Labor; or

2. For all other property owners, the acreage of wetlands/State open water impacts multiplied by $300,000, adjusted annually using the Consumer Price Index for Urban Consumers (CPI-U) as published by the United States Department of Labor.

(e) When the Department determines under (d)1 or 2 above to adjust the amount of a monetary contribution using the Consumer Price Index for Urban Consumers, the Department shall publish in the New Jersey Register a notice of administrative change announcing the adjustment and the amount of the adjusted monetary contribution.

N.J.A.C. 7:7A-15.22 Council review of a proposed land donation

(a) For mitigation through a land donation, the mitigator shall first obtain the Department's authorization under N.J.A.C. 7:7A-15.5 or 15.6 to use land donation as the mitigation alternative. The mitigator shall then obtain approval from the Wetlands Mitigation Council for the particular parcel of land to be donated.

(b) The Council shall approve the proposed parcel of land to be donated only if the amount of land to be donated is sufficient to ensure that the functions and values provided by the donated land will fully compensate for the loss of functions and values caused by the disturbance, in accordance with N.J.A.C. 7:7A-15.2(c).

(c) If a proposed parcel to be donated is also being donated or otherwise restricted in order to satisfy requirements of another government agency, the Council shall not approve the donation unless the applicant also enhances or restores wetlands on the parcel. For example, if land is required by a county to be preserved as open space, the Council shall only approve the parcel for a land donation if the applicant also performs wetlands restoration or enhancement in accordance with this subchapter. If restoration or enhancement cannot be performed on the parcel, the Council shall not accept the parcel as a land donation.

(d) The Council shall approve the proposed parcel of land to be donated only if the applicant demonstrates that the land has the potential to be a valuable component of a wetland or surface water ecosystem. The Council shall evaluate each parcel to determine its potential on a case by case basis, taking into consideration the following:

1. The parcel shall be at least five acres in size, or shall be immediately adjacent to a protected natural area such as a State wildlife management area;

2. The parcel shall not be adversely affected by solid waste; hazardous waste; or air, water, or soil pollution;

3. A functional comparison between the impacted wetland system and the wetland system proposed for donation; and

4. The parcel shall meet at least one, and preferably several, of the following criteria:

    i. Contains exceptional resource value wetlands;

    ii. Contains critical habitat for flora or fauna, as defined at N.J.A.C. 7:7A-1.4;

    iii. Contains wetlands or waters draining to FW1 or category one waters, as defined at N.J.A.C. 7:9B, or into public drinking water sources;

    iv. Contains wetlands or waters that connect one public open space or significant natural resource to another public open space or significant natural resource. For example, a parcel containing a stream that runs through two wildlife preserves that are not adjacent;

    v. Is adjacent to public lands containing wetland preserves, such as a Federal wildlife refuge, a State wildlife management area, a State park or forest, or a State, County or local wetland preservation area; or wetland preservation areas held by a charitable conservancy; or

    vi. Has unique aspects or characteristics that contribute to its ecological value, such as an unusual or regionally rare type of wetland.

N.J.A.C. 7:7A-15.23 Mitigation banks

(a) A mitigation bank requires approval by the Department prior to the sale of any mitigation credits. "Approval" for the purposes of this section means final approval in accordance with N.J.A.C. 7:7A-15.25.

(b) If creation of a mitigation bank involves regulated activities as described at N.J.A.C. 7:7A-2.2 or N.J.A.C. 7:7A-2.6, the bank operator shall also obtain from the Department a freshwater wetlands permit, open water fill permit, and/or transition area waiver, authorizing the regulated activities.

(c) Once the Department has approved a mitigation bank, the bank operator shall carry out all requirements of the banking instrument approving the bank, regardless of whether or when credits are sold.

(d) The Department shall determine how many mitigation credits each mitigation bank operator may sell, based on the increase in wetland values and functions created as a result of the proposed mitigation bank, as well as how the increase in functions and values will interact with the regional wetland and aquatic resources. The Department shall evaluate each mitigation bank to determine its functions and values on a case by case basis, considering the following factors:

1. The functions and values provided by the bank site at the time the mitigation bank proposal is submitted, including, but not limited to, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat functions;

2. Whether the proposed mitigation activities will result in an increase in functions and values over the existing value of the mitigation bank site;

3. The likelihood of long-term success of the proposed mitigation activities in creating functions and values similar to an undisturbed wetland and/or State open water;

4. The amount of wetlands, transition area, and State open waters on the proposed bank site;

5. The potential for the completed mitigation site to be a valuable component of the aquatic ecosystem;

6. The size and scope of the bank;

7. The types of resource losses that have occurred in the area;

8. The similarity or dissimilarity of the bank to other existing aquatic and wetland resources in the area;

9. Available scientific literature regarding credit ratios; and

10. The Department's and other government agencies' experience with mitigation and mitigation banks.

(e) The Department shall include in the banking instrument approving the bank a schedule under which a bank operator may sell credits. The schedule shall be as set forth at (e)1 through 6 below. The Department shall adjust the amount of credits within the ranges at (e)2 through 6 below to reflect the degree of progress the bank has shown toward meeting the goals and performance standards in the approved mitigation proposal:

1. Ten percent of the credits shall be released upon completion of both of the following:

    i. Signing of the banking instrument approving the bank; and

    ii. Compliance with all pre-release credit sale conditions in the banking instrument approving the bank, such as securing all construction permits, posting adequate and effective financial assurance in accordance with N.J.A.C. 7:7A-15.13, and completing the conservation restriction or easement and the agreement providing for transfer of the bank site at completion;

2. Up to 20 percent of the credits shall be released upon successful establishment of the approved hydrologic regime, so that this regime will remain over time under normal hydrologic conditions;

3. Up to 10 percent of the credits shall be released upon completion of planting as required in the banking instrument approving the bank;

4. Up to 20 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for an entire one-year period;

5. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for three consecutive years;

6. Up to 25 percent of the credits shall be released when monitoring in accordance with the banking instrument approving the bank indicates that the performance standards in the banking instrument have been met for five consecutive years.

(f) The mitigation bank operator shall execute and record a restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction or easement shall meet the requirements for protecting mitigation sites from future disturbance, set forth at N.J.A.C. 7:7A-2.12 and 15.14.

(g) The mitigation bank operator shall monitor the bank during and after construction until such time that the last credit is sold, the final inspection is conducted, or the bank is transferred to a charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator shall submit progress reports to the Department at least annually during and after construction, and more often if required by the banking instrument approving the bank.

(h) If the bank falls more than one year behind the schedule for completion specified in the banking instrument approving the bank, the Department may amend the banking instrument approving the bank, and may require remedial action to ensure the successful completion of the bank. The Department may reduce the number of credits that may be sold based on the approved remedial action, in order to reflect the change in wetlands values and functions that will result from the changes to the bank.

(i) Upon completion of the monitoring period and all other requirements in the banking instrument approving the bank, the mitigation bank operator shall:

1. Demonstrate that the bank is successful, using the criteria for successful restoration, creation, or enhancement at N.J.A.C. 7:7A-15.16, or for successful upland preservation at N.J.A.C. 7:7A-15.17, as applicable;

2. Transfer the mitigation bank site in fee simple to a government agency or charitable conservancy;

3. Provide the government agency or charitable conservancy to which the mitigation bank site is transferred with a maintenance fund. The maintenance fund shall support maintenance activities such as trash removal, maintenance of natural features, monitoring the site to ensure its upkeep, maintenance of water control structures, fences, or safety features, and any other activities necessary to ensure the site complies with this chapter and all applicable law. The amount of the maintenance fund shall be determined between the bank operator and the agency or conservancy to which the mitigation bank site is transferred; and

4. Ensure that the transfer, and the conservation restriction or easement required under (h) above, are recorded with the county or other appropriate agency.

(j) A mitigation bank approval shall be valid for five years, or until any Department permit required to conduct the bank activities expires. The Department shall approve a single five year extension if the permit is extended for five years and only if the mitigation bank operator demonstrates that:

1. If extended, the bank shall produce the increase in functions and values upon which the original mitigation bank approval was based;

2. Bank construction was begun prior to expiration of the mitigation bank approval;

3. Bank construction has continued uninterrupted in accordance with the banking instrument approving the bank;

4. All permits required for the construction of the bank are valid; and

5. No significant changes in the conditions on the mitigation bank site, as defined at N.J.A.C. 7:7A-15.1, have occurred.

(k) If a bank approval expires and is not extended under (j) above, the Department shall determine whether the amount of mitigation completed at the bank site is commensurate with the number of credits already sold. If the Department determines that the amount of mitigation completed is not commensurate with the number of credits already sold, the banker shall be considered in default and the Department shall assert its rights to the financial assurance provided under this subchapter.

N.J.A.C. 7:7A-15.24 Application for Wetlands Mitigation Council approval of a monetary contribution or land donation

(a) An application for a proposal to make a monetary contribution or a land donation shall include the information required by the checklist described at N.J.A.C. 7:7A-15.12(f) or (g), respectively. The application checklist may be obtained from the Council staff at the address in N.J.A.C. 7:7A-15.2(f).

(b) Except for a monetary contribution for a general permit, which shall be submitted to the Department in accordance with N.J.A.C. 7:7A-15.21(d), an application for approval of a monetary contribution or land donation shall first be submitted to Council staff at the address in N.J.A.C. 7:7A-15.2(f). Council staff shall notify the applicant of any additional information required to make the application complete and of the schedule for Council meetings. The applicant shall then submit 10 copies of the complete application to the Council staff. These copies shall be submitted at least 30 days before the Council meeting at which the application will be discussed.

(c) Each Council approval shall incorporate conditions as necessary to ensure that the requirements of this chapter are met.

N.J.A.C. 7:7A-15.25 Application for approval of a mitigation bank

(a) A prospective mitigation bank operator shall obtain conceptual review of a proposed mitigation bank before investing in buying land or preparing a detailed mitigation bank proposal. Through a conceptual review, Department staff shall candidly discuss the apparent strengths and weaknesses of the proposed mitigation bank, but all guidance provided shall be non-binding on the Department. A Department decision on a proposed mitigation bank is binding only if it is incorporated into an approval obtained in accordance with this subchapter. A conceptual review does not grant any property or other rights, and does not authorize mitigation activities or sale of credits. The findings provided by the Department as part of the conceptual review shall be valid for a period of three years or until the rules governing conceptual review are amended in a way that would render the conceptual review inconsistent with the new requirements, whichever occurs sooner. Once expired, a new conceptual review shall be required. To obtain conceptual review of a proposed mitigation bank, an applicant shall submit the following to the Department:

1. Information on the location, size, and environmental characteristics of the proposed mitigation bank site;

2. Information on previous uses of the site, including possible contamination and/or historic or archaeological resources, identified in accordance with N.J.A.C. 7:7A-12.2 ;

   i. If contaminated, the applicant shall provide a copy of the characterization and other information obtained from the Department's Division of Remediation Management and Response, as required at N.J.A.C. 7:7A-15.4(h)1;

   ii. To address historic or archaeological resources, if applicable, the applicant shall comply with the provisions at N.J.A.C. 7:7A-12.2;

3. The proposed mitigation alternative(s), for example, creation, restoration, and/or enhancement;

4. Whether the credits generated by the bank will be used solely by the mitigation bank operator, or will be available for use by others;

5. Maps, photographs, diagrams, delineations and/or other visual materials necessary for the Department to generally evaluate the proposed mitigation bank;

6. The names and addresses of all owner(s) of the mitigation bank site, and any proposed owner(s), as of the date the request for conceptual review is submitted; and

7. Unconditional written consent from the owner of the proposed mitigation bank site, allowing Department representatives to enter the property and inspect the site.

(b) To obtain final Department approval of a proposed mitigation bank, an applicant shall submit the information required by the application checklist, available from Department staff at the address in N.J.A.C. 7:7A-15.2(f). The checklist shall require the following types of information:

1. A letter of interpretation covering the entire proposed mitigation bank site, issued by the Department under N.J.A.C. 7:7A-3;

2. All past correspondence between the mitigation bank operator and the Department regarding the proposed mitigation bank site, including any correspondence regarding conceptual review under (a) above;

3. A functional assessment of the bank site prior to construction, and proposed site conditions after construction. The assessment shall include a discussion of how the proposed bank will interact with regional wetland and aquatic resources;

4. Information on the following items, sufficient for the Department to determine if the mitigation bank is consistent with the Federal Guidance for the Establishment, Use and

Operation of Mitigation Banks, published jointly by EPA and other Federal agencies in the November 28, 1995 Federal Register at 60 Fed. Reg. 58605:

i. Mitigation bank goals and objectives;

ii. Ownership of mitigation bank lands including disclosure of all leases, easements, and other encumbrances;

iii. Mitigation bank size, and classes of wetlands, transition areas, uplands, and/or other aquatic resources included in the mitigation bank;

iv. Description of baseline conditions on the mitigation bank site, including natural features and parameters, as well as pollutants, contamination, historic or cultural resources, and other relevant features;

v. The service area within which the mitigation bank credits may be used to compensate for a disturbance. The service area shall be designated to give priority to mitigation for impacts occurring:

(1) In the same HUC 11 as the proposed bank;

(2) Adjacent to the same HUC 11 and within the same watershed management area as the proposed bank;

(3) In the same watershed management area as the proposed bank;

vi. Types of wetlands, transition areas, and/or State open waters for which credits from the bank could serve as suitable compensation;

vii. Method for determining credits and debits;

viii. Accounting procedures;

ix. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:7A-15.23(e);

x. Performance standards to enable the Council to determine if and when the mitigation bank is successful;

xi. Reporting protocols and a monitoring plan;

xii. Contingency and remedial actions that will be taken in case the bank fails, and who is responsible for each. For example, alternative sites, grading plans, or hydrologic manipulations;

xiii. Financial assurances meeting the requirements of N.J.A.C. 7:7A-15.13;

xiv. Proposed compensation ratios, that is, the number of credits the bank operator proposes to generate and sell, based on the type and amount of mitigation performed at the bank; and

xv. Provisions for long-term management and maintenance of the mitigation bank site;

5. Site plans, cost estimates and schedules for construction, completion, and transfer of the mitigation bank;

6. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction or easement, financial assurance, property transfer, or agreement with a charitable conservancy to maintain the site; and

7. Identification of the persons who will construct, operate (debit and credit) and maintain the mitigation bank and mitigation bank site.

(c) An application for approval of a mitigation bank shall be submitted to Department staff at the address in N.J.A.C. 7:7A-15.2(f). Department staff shall notify the applicant of any additional information required to make the application complete. The applicant shall then submit 5 copies of the complete application to the Department staff.

(d) Each Department approval shall incorporate conditions as necessary to ensure that the requirements of this chapter are met.

N.J.A.C. 7:7A-15.26 Mitigation for transition area impacts in accordance with N.J.A.C. 7:7A-6.3(g), special activity transition area waivers based upon individual permit criteria

(a) This section governs the mitigation alternative required and the location of mitigation in relation to the disturbance for a transition area impact in accordance with N.J.A.C. 7:7A-6.3(g) (special activity transition area waivers based upon individual permit criteria). Mitigation for a transition area disturbance shall be performed through restoration or enhancement of transition areas carried out on the site of the disturbance to the maximum extent feasible.

(b) If onsite transition area restoration or enhancement is not feasible, mitigation shall be performed through any of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank located in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area;

2. The purchase of credits from a mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area; or

3. Offsite restoration or enhancement in the same HUC 11 or in an adjacent HUC 11 within the same watershed management area as the disturbance.

(c) If transition area mitigation under (b) above is not feasible, transition area mitigation shall be performed through either of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank in the same watershed management area as the disturbance; or

2. Restoration, enhancement, or upland preservation in the same watershed management area as the disturbance.

(d) If transition area mitigation is not feasible under (b), or (c) above, mitigation shall be performed through:

1. The purchase of credits from a mitigation bank which includes the disturbance site in its bank service area; or

2. Restoration or enhancement in the same drainage basin.

(e) If transition area mitigation is not feasible under (b), (c), or (d) above, mitigation shall be performed through:

1. A monetary contribution in accordance with N.J.A.C. 7:7A-15.21;

2. Upland preservation, in accordance with N.J.A.C. 7:7A-15.9; or

3. A land donation approved by the Wetland Mitigation Council in accordance with N.J.A.C. 7:7A-15.22.

SUBCHAPTER 16 ENFORCEMENT

N.J.A.C. 7:7A-16.1 General provisions

(a) For the purposes of this subchapter (N.J.A.C. 7:7A-16), the term "applicable law and/or condition" means one or more applicable provisions or conditions of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and/or any letter of interpretation, permit, agreement, transition area waiver, order, settlement, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) The burden of proof and degrees of knowledge or intent required to establish a violation of the Freshwater Wetlands Protection Act or of any permit, order, rule or regulation promulgated pursuant thereto shall be no greater than the burden of proof or degree of knowledge or intent which USEPA must meet in establishing a violation of the Federal Act or implementing regulations.

(c) If the Department finds that a person is or has been violating any applicable law and/or condition, the Department may take one or more of the following actions:

1. Issue an administrative order under N.J.A.C. 7:7A-16.3;

2. Bring a civil action under N.J.A.C. 7:7A-16.4;

3. Assess a civil administrative penalty under N.J.A.C. 7:7A-16.5 through 16.13, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7A-16.20;

4. Bring an action for a civil penalty under N.J.A.C. 7:7A-16.14; and/or

5. Bring a criminal action under N.J.A.C. 7:7A-16.15.

(d) For each violation under this chapter, each day during which each violation continues shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(e) Each violation of any applicable law and/or condition shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(f) The Department's pursuit of any of the remedies available under this subchapter shall not preclude the Department's pursuit of any of the other remedies for the same or another violation. Compliance with any Department enforcement order, including payment of a penalty, shall not preclude the Department from pursuing any of the other remedies available under this subchapter in connection with the violation for which the order was issued.

(g) Each applicant and/or permittee shall provide, upon the request of the Department, any information the Department requires to determine compliance with any applicable law and/or condition.

N.J.A.C. 7:7A-16.2 USEPA review

The Department shall make available without restriction any information obtained or used in the enforcement of the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and/or this chapter, to USEPA upon request.

N.J.A.C. 7:7A-16.3 Administrative order

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may issue an order:

1. Specifying each provision of the applicable law and/or condition which has been, or is being violated;

2. Citing the action which constituted the violation;

3. Requiring immediate compliance with the provision or provisions violated;

4. Requiring the restoration or rehabilitation of the freshwater wetlands, State open waters or transition area which is the site of the violation; and

5. Providing notice of the right to a hearing on the matters contained in the order.

N.J.A.C. 7:7A-16.4 Civil action

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may institute a civil action in Superior Court for appropriate relief. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;

2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;

3. Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetlands, State open waters or transition areas resulting from any unauthorized regulated activity for which legal action under this section may have been brought;

4. Assessment against the violator for compensatory damages for any loss or destruction of natural resources, including but not limited to wildlife, fish, aquatic life, habitat, plants, or historic or archaeological resources and for any other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity; and /or

5. A requirement that the violator restore or rehabilitate the site of the violation to the maximum extent practicable, as defined in N.J.A.C. 7:7A-1.4 or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the Department. If the violator does not do so, the Department may take corrective action, and will assess the violator pursuant to this chapter.

N.J.A.C. 7:7A-16.5 Civil administrative penalty

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Freshwater Wetlands Protection Act, or of any permit, transition area waiver, letter of interpretation, agreement, order, settlement, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than $25,000 for each violation, not including any amount assessed for economic benefit as determined under N.J.A.C. 7:7A-16.13. The amount of the civil

administrative penalty for each such violation shall be determined under N.J.A.C. 7:7A-16.8 through 16.13.

(b) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Water Pollution Control Act, or of any permit, approval, agreement, transition area waiver, order, settlement, exemption, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than $50,000 for each violation. The amount of the civil administrative penalty for each such violation shall be determined under the Department's rules implementing the enforcement provisions of that law at N.J.A.C. 7:14-8.

(c) The Department may, in its discretion, settle a civil administrative penalty assessed under this subchapter, in accordance with N.J.A.C. 7:7A-16.6(d). However, if the Department settles a penalty for a violation of the Water Pollution Control Act, the settlement is subject to N.J.A.C. 7:14-8.

N.J.A.C. 7:7A-16.6 Assessment, settlement and payment of a civil administrative penalty

(a) To assess a civil administrative penalty, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify each section of the applicable law and/or condition violated;

2. Concisely state the facts alleged to constitute the violation;

3. Specify the amount of the civil administrative penalty and state the basis thereof; and

4. Advise the violator of the right to request an adjudicatory hearing under N.J.A.C. 7:7A-16.7.

(b) The violator shall pay a civil administrative penalty immediately upon receipt of the Department's final order in a contested case, or as soon as a notice of civil administrative penalty assessment becomes a final order as follows:

1. If no hearing is requested under N.J.A.C. 7:7A-16.7, a notice of civil administrative penalty assessment becomes a final order on the 36th day after the violator receives the notice of civil administrative penalty assessment;

2. If the Department denies a hearing request under N.J.A.C. 7:7A-16.7(c) or (d), a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of the denial; or

3. If the Department grants a hearing, a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of a final order in the contested case.

(c) A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the Department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed under this subchapter, based on an evaluation of the factors at (d)1 through 4 below. As provided at N.J.A.C. 7:7A-16.5(c), this subsection does not apply to penalties assessed for violations of the Water Pollution Control Act:

1. Mitigating or extenuating circumstances not previously considered in the assessment of penalties;

2. The violator's timely implementation of measures leading to compliance, which measures were not previously considered in the assessment of penalties, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The violator's full payment of a specified part of a civil administrative penalty, if payment is made within a time period established by the Department in an administrative order, and if the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

N.J.A.C. 7:7A-16.7 Appeal of an administrative order and/or notice of civil administrative penalty assessment

(a) A violator may request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued under this chapter. To request an adjudicatory hearing, the violator shall submit the following information in writing to the Department at the addresses in (b) below:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact in the administrative order and/or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall state this and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location accessible to physically disabled persons.

(b) A request for an adjudicatory hearing under this subchapter shall be submitted as follows:

1. Submit the original request to:
   Office of Legal Affairs
   ATTENTION: Adjudicatory Hearing Requests
   Department of Environmental Protection
   401 East State Street, 4th Floor
   P.O. Box 402
   Trenton, New Jersey 08625-0402

2. Submit a copy of the request to:
   Bureau of Coastal and Land Use Compliance and Enforcement
   Department of Environmental Protection
   401 East State Street, 4th Floor
   P.O. Box 422
   Trenton, New Jersey 08625-0422

(c) If the Department does not receive the hearing request within 35 days after the violator receives the notice of civil administrative penalty assessment and/or the administrative order which is being contested, the Department shall deny the hearing request.

(d) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) Any adjudicatory hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1

7:7A-16.8 Civil administrative penalty amount for failure to obtain a permit prior to conducting regulated activities

(a) When the Department assesses a civil administrative penalty for the failure to obtain a permit prior to conducting regulated activities, the Department shall use the procedures in this section to determine the amount of the penalty if the violation pertains to freshwater wetlands and/or freshwater wetland transition areas, except if the violation type is listed at N.J.A.C. 7:7A-16.9, 16.10, 16.11, or 16.12, in which case the penalty amount shall be determined under whichever of those sections applies. For the purposes of this section, permit shall have the meaning set forth at N.J.A.C. 7:7A-1.4.

(b) If a violation of this chapter pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this subchapter, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) The Department shall use the two factors described at (c)1 and 2 below, conduct and seriousness, to determine the amount of the base daily civil administrative penalty under this section. Using the standards below, the Department assigns each violation a point value for each factor. The total number of points is used in Table D at (d) below to determine the base penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The conduct factor of the violation shall be classified as major, moderate or minor and assigned points as follows:

i. Major conduct shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned five points;

ii. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

iii. Minor conduct shall include any conduct not identified in (c)1i or ii above and is assigned one point.

2. The seriousness factor of the violation is assigned points as provided in (c)2i and ii below based on the acreage of wetlands and/or transition areas impacted and the resource value of the freshwater wetlands.

i. The acreage of wetlands and/or transition areas impacted shall be assigned points in accordance with (c)2i(1) through (7) below:

(1) A violation impacting greater than seven acres of wetlands and/or transition areas is assigned seven points;

(2) A violation impacting greater than four acres up to and including seven acres of wetlands and/or transition areas is assigned six points;

(3) A violation impacting greater than two acres up to and including four acres of wetlands and/or transition areas is assigned five points;

(4) A violation impacting greater than one acre up to and including two acres of wetlands and/or transition areas is assigned four points;

(5) A violation impacting greater than 0.5 acre up to and including one acre of wetlands and/or transition areas is assigned three points;

(6) A violation impacting greater than 0.25 acre up to and including 0.5 acre of wetlands and/or transition areas is assigned two points; and

(7) A violation impacting up to and including 0.25 acre of wetlands and/or transition areas is assigned one point; and

ii. The resource value classification shall be assigned points in accordance with (c)2ii(1) through (5) below. If the site of a violation contains regulated areas of more than one resource value classification, the points assigned to a violation for the highest resource classification on the site shall apply for the entire site:

(1) A violation impacting exceptional resource classification wetlands is assigned five points;

(2) A violation impacting intermediate resource classification wetlands is assigned four points;

(3) A violation impacting ordinary resource classification wetlands is assigned three points;

(4) A violation impacting only exceptional resource classification transition areas is assigned two points; and

(5) A violation impacting only intermediate resource classification transition areas is assigned one point.

(d) The Department shall sum the total points assigned according to the two factors in (c) above, and shall determine the base penalty amount per day using the following table:

Table D
Base penalty points table

Total Points	Base Penalty Amount Per Day
17	$25,000
16	23,000
15	21,000
14	19,000
13	17,000
12	15,000
11	13,000
10	11,000
9	10,000

8	9,000
7	8,000
6	6,000
5	5,000
4	4,000
3	3,000

(e) The Department shall subtract from the daily base penalty determined pursuant to (d) above a penalty mitigation amount calculated by multiplying the daily base penalty times the penalty mitigating factor multiplier pursuant to (e)1 or 2 below, if applicable.

1. Where the nature, timing and effectiveness of any measures taken by the violator to correct the violation and restore the site to its pre-disturbance condition results in compliance within 30 days of receipt of the notice of violation from the Department, the mitigating factor multiplier is 0.50; or

2. Where a complete application for a general permit or an individual permit is submitted within 60 days of receipt of the notice of violation from the Department and an authorization under a general permit or an individual permit is subsequently obtained for the unauthorized regulated activity cited in the notice of violation without the need for any changes to the regulated activity for which the notice of violation was issued, the mitigating factor multiplier is 0.25.

(f) The total civil administrative penalty shall be the daily civil administrative penalty determined as provided under (c) through (e) above, multiplied by the number of days during which each violation continued.

N.J.A.C. 7:7A-16.9 Civil administrative penalty amount for any violation other than failure to obtain a permit prior to conducting regulated activities, submittal of inaccurate or false information, failure to allow entry, or failure to pay a civil administrative penalty

(a) When the Department assesses a civil administrative penalty for a violation other than the failure to obtain a permit prior to conducting regulated activities, the Department shall use the procedures in this section to determine the amount of the penalty, except if the violation type is listed at N.J.A.C. 7:7A-16.10, 16.11, or 16.12, in which case the penalty amount shall be determined under whichever of those sections applies.

(b) The Department shall use the two factors described at (c) and (d) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty under this section. The applicable daily penalty amount is determined using the base daily penalty matrix in Table E below, based on the seriousness of the violation determined pursuant to (c) below and the conduct of the violator determined pursuant to (d) below.

Table E

Base daily penalty matrix

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
	MAJOR	$25,000	$15,000	$10,000
CONDUCT	MODERATE	$15,000	$ 7,500	$ 5,000
	MINOR	$10,000	$ 5,000	$ 1,000

(c) The seriousness of the violation shall be classified as major, moderate, or minor as follows:

1. "Major" seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health, safety, the Freshwater Wetlands Protection Act regulatory program, or the environment, or seriously deviates from any applicable law and/or condition. "Serious" deviations include, but are not limited to, those violations which are in complete contravention of the applicable law and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the applicable law and/or condition. Violations of "major" seriousness include, but are not limited to:

   i. Any activity that negatively affects water quality;

   ii. Clearing, grading, or filling of freshwater wetlands;

   iii. Clearing, grading, or filling of transition areas when done in conjunction with such activities in freshwater wetlands;

   iv. Clearing, grading, filling, or disturbance of freshwater wetlands and/or transition areas in excess of that authorized by a permit or plan;

   v. Failure to timely record a conservation restriction or easement, and the property has been sold or transferred;

   vi. Failure to report the presence of a historic resource during construction and/or the destruction of a historic resource without Department approval;

   vii. Failure to comply with a historic resource or mitigation requirement; and

   viii. Failure of an applicant or permittee to provide information upon request to determine compliance with any applicable law and/or condition;

2. "Moderate" seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, the Freshwater Wetlands Protection Act regulatory program or the environment, or substantially deviates from the applicable law and/or condition. "Substantial deviations" shall include, but not be limited to, violations which are in substantial contravention of the applicable law and/or condition, and/or which substantially impair or undermine the protection, operation, or intent of the

applicable law and/or condition. The Department shall consider a violation that is limited solely to the transition area but is not associated with a permit to be of moderate seriousness. Violations of "moderate" seriousness also include, but are not limited to:

i. Failure to notify the Department of commencement of construction;

ii. Failure to transfer a permit in accordance with this chapter; and

iii. Failure to timely record a conservation restriction or easement, and the property has not been sold or transferred.

3. "Minor" seriousness shall apply to any violation not included in (c)1 or 2 above.

(d) The conduct of the violator shall be determined as major, moderate, or minor as follows:

1. "Major" conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. The Department presumes a violation of any provision of a permit, transition area waiver, letter of interpretation, agreement, order, settlement, exemption letter, or mitigation proposal, as well as any violation by a person who has previously applied for or received any such instrument pursuant to the Freshwater Wetlands Protection Act and/or this chapter, to be a knowing violation;

2. "Moderate" conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. "Minor" conduct shall include any other conduct not included in (d)1 or 2 above.

(e) The Department shall subtract from the daily base penalty determined using Table E at (b) above a penalty mitigation amount calculated by multiplying the daily base penalty times the penalty mitigating factor multiplier pursuant to (e)1 or 2 below, if applicable.

1. Where the nature, timing and effectiveness of any measures taken by the violator to correct the violation and restore any site disturbance to its pre-disturbance condition results in compliance within 30 days of receipt of the notice of violation from the Department, the mitigating factor multiplier is 0.50; or

2. Where a complete application for a modification of authorization under a general permit, transition area waiver or an individual permit is submitted within 60 days of receipt of the notice of violation from the Department and a modification of the subject authorization(s)is subsequently obtained for the activity that was cited in the notice of violation without the need for any changes to the regulated activity or the site for which the notice of violation was issued, the mitigating factor multiplier is 0.25.

(f) The total civil administrative penalty shall be the daily civil administrative penalty determined as provided under (b) through (e) above, multiplied by the number of days during which each violation continued.

N.J.A.C. 7:7A-16.10 Civil administrative penalty amount for submitting inaccurate or false information

(a) When the Department assesses a civil administrative penalty for submittal of inaccurate information or submittal of a false statement, representation, or certification in an application, record, or other document required to be submitted or maintained under the Freshwater Wetlands Protection Act or under a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty. This section applies with regard to information including, but not limited to, the presence of a historic resource and/or the presence of regulated areas such as freshwater wetlands and freshwater wetlands transition areas on a site.

(b) If a violation described in this section pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this section, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) Each day, from the day that a violator submits inaccurate or false information to the Department, to the day the Department receives a written correction from the violator, shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for each intentional, deliberate, purposeful, knowing, or willful act or omission under this section shall be assessed at the midpoint between $ 10,000 and $ 8,000 unless adjusted under (f) below.

(e) The daily civil administrative penalty for each violation under this section that is not listed in (d) above shall be assessed at the midpoint between $ 1,000 and $ 0 unless adjusted under (f) below.

(f) For a violation under this section, the Department may adjust the civil administrative penalty amount from the midpoint within the range listed in (d) or (e) above, based on the following factors:

1. The violator's compliance history;

2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;

3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

N.J.A.C 7:7A-16.11 Civil administrative penalty amount for failure to allow entry and inspection

(a)The Department shall have the authority to enter any property, facility, premises or site for the purpose of conducting inspections, sampling of soil or water, copying or photocopying documents or records, and for otherwise determining compliance with any applicable law and/or condition.

(b) When the Department assesses a civil administrative penalty under the FWPA against a person who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty. The amount of a civil administrative penalty for refusal of entry and inspection under the WPCA shall be determined under N.J.A.C. 7:14-8.7.

(c) Each day that a person refuses, inhibits or prohibits immediate lawful entry and inspection shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for a violation under this section shall be assessed at the midpoint of the following ranges, except as adjusted under (e) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which the Department has issued an administrative order, freshwater wetlands permit, transition area waiver, approved mitigation proposal or general permit authorization, the civil administrative penalty shall be no more than $10,000 nor less than $ 7,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be no more than $ 7,000 nor less than $ 1,500.

(e) The Department may adjust the daily civil administrative penalty amount, within the applicable range at (d) above, based on the following factors:

1. The violator's compliance history;

2. The nature, timing and effectiveness of measures the violator takes to remedy the effects of the violation;

3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or violation.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

N.J.A.C 7:7A-16.12 Civil administrative penalty for failure to pay a civil administrative penalty

(a) The Department may assess a civil administrative penalty under this section against each violator who fails to pay a civil administrative penalty when due under this chapter.

(b) The daily civil administrative penalty amount assessed under this section shall be equal to the unpaid civil administrative penalty, but shall not exceed the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).

(c) Each day that a civil administrative penalty assessed under this subchapter is not paid after it is due shall constitute an additional, separate and distinct violation.

N.J.A.C 7:7A-16.13 Economic benefit factor

(a) Notwithstanding the maximum civil administrative penalty of $25,000 pursuant to N.J.A.C. 7:7A-16.5(a), the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

(b) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived.

N.J.A.C 7:7A-16.14 Civil penalty

(a) Each person who does any of the following shall be subject, upon the order of a court, to a civil penalty not to exceed $25,000 per day of the violation, not including any amount assessed for economic benefit as determined under N.J.A.C. 7:7A-16.13:

1. Violates the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter;
2. Violates an administrative order or a court order issued pursuant to the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter;
3. Fails to pay in full a civil administrative penalty assessed under this chapter, or fails to make a payment pursuant to a penalty payment schedule entered into with the Department; or
4. Knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department.

(b) A civil penalty imposed under this section may be collected, with costs, in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the penalty enforcement law in conjunction with the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and this chapter.

N.J.A.C 7:7A-16.15 Criminal action

(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of the Freshwater Wetlands Protection Act, or of a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) If a violation described in this section pertains to State open waters, the criminal penalty shall not be governed by this section, but shall be governed by the Water Pollution Control Act at N.J.S.A. 58:10A-10(f).

(c) A person who knowingly, purposely, or recklessly violates the Freshwater Wetlands Protection Act, or any permit, approval, transition area waiver, order, exemption, or rule promulgated or approved pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of no less than $5,000 nor more than $50,000 per day of violation, or imprisonment, or both.

(d) A person shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not more than $50,000 per day of violation, or imprisonment, or both, if the person:

1. Knowingly, purposely, or recklessly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under the Freshwater Wetlands Protection Act, or under a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto; or
2. Falsifies, tampers with or purposely, recklessly or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Freshwater Wetlands Protection Act, or a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

N.J.A.C 7:7A-16.16 Forfeiture of conveyances

All conveyances used or intended for use in the purposeful or knowing discharge into State open waters of any pollutant or toxic pollutant, in violation of the Water Pollution Control Act, are subject to forfeiture to the State under N.J.S.A. 58:10A-10(g) and N.J.S.A. 13:1K-1 et seq. A hearing shall be held prior to any forfeiture under this section. For the purposes of this section, the term "conveyance" means an aircraft, vessel, vehicle, or other equipment or container.

N.J.A.C 7:7A-16.17 Notice of violation recorded on deed to property

(a) On order of the Commissioner:

1. The clerk or register of deeds and mortgages of the county containing the property upon which the violation occurred shall record a notice of violation of the Freshwater Wetlands Protection Act on the deed of the property; and/or

2. The clerk of the Superior Court shall record a notice of violation of the Freshwater Wetlands Protection Act.

(b) The notice of violation shall remain attached to the property deed and shall remain recorded at the Superior Court until the violation has been remedied and the Commissioner has ordered the clerk to remove the notice of violation. The Commissioner shall immediately order the notice removed once the violation is remedied, or upon other conditions set forth by the Commissioner.

N.J.A.C 7:7A-16.18 "After the fact" permit

(a) The Department may issue an "after the fact" permit for a regulated or prohibited activity that has already occurred and that does not meet the standards for approval in this chapter only if all of the following are true:

1. The Department has determined that the restoration of the site to its pre-violation condition would increase the harm to a freshwater wetland, transition area, and/or State open water, or its ecology;

2. The Department has assessed and collected the costs or damages enumerated in N.J.A.C. 7:7A-16.4 from the violator;

3. The Department has required the violator to create or restore freshwater wetlands or State open waters at another location;

4. An opportunity has been afforded for public hearing and comment; and

5. The reasons for the issuance of the "after the fact" permit are published in the DEP Bulletin and in a newspaper of general circulation in the geographic area of the violation.

(b) The issuance of an "after the fact" permit or waiver under this section shall not limit the Department's ability to pursue any other enforcement action for the violation that is the subject of the "after the fact" permit or waiver.

(c) Any person violating an "after the fact" permit issued under this section shall be subject to enforcement under this chapter.

N.J.A.C 7:7A-16.19 Public participation

(a) To provide for public participation in the Department's enforcement process, the Department shall:

1. Investigate and provide responses to all citizen complaints submitted under Department procedures;

2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

3. Publish notice of any proposed settlement of a Department enforcement action in the DEP Bulletin and provide at least 30 days for public comment on the settlement.

N.J.A.C. 7:7A-16.20 Grace period applicability; procedures

(a) Each violation identified in Table F at (f) below by an "M" in the Type of Violation column, for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-day grace period as described at (e) below.

(b) Each violation identified in Table F at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table F at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table F at (f) below but is comparable to a violation designated as "M" in Table F and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

2. If the violation is not listed in Table F at (f) below and is not comparable to a violation listed in Table F but the violation meets all of the criteria of (d)1 through 9 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

3. If the violation is not listed in Table F at (f) below but is comparable to a violation designated as "NM" in Table F, then the violation is a non-minor violation and is not subject to a grace period.

4. If the violation is not listed in Table F at (f) below and is not comparable to a violation listed in Table F, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to the grace period.

5. Comparability of a violation to a violation in Table F at (f) below is based on the nature of the violation (for example, recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table F unless the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit or waiver, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

5. In the case of a violation of the Freshwater Wetlands Protection Act, *N.J.S.A. 13:9B-1* et seq., or any rule or regulation promulgated thereunder, or permit or waiver issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

7. The violation poses minimal risk to the public health, safety and natural resources;

8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

   i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and

   ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 days.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

   i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

   ii. Whether the delay has been caused by circumstances beyond the control of the violator;

   iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

   iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Freshwater Wetlands Protection Act Rules as minor (M) or non-minor (NM) are set forth in Table F below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table F and the rule to which the violation description corresponds, the rule shall govern.

Table F

Rule Citation	*Violation Description*	*Type of Violation*
N.J.A.C. 7:7A-2.1(a), 2.2(a) and (b), 2.5(f), 2.6(a)	Conducting regulated or prohibited activities in a freshwater wetland, transition area and/or State open water without prior Department approval.	NM
N.J.A.C. 7:7A-4.3	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-4.3	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-6.1(h)	Failure to execute and record the required conservation restriction prior to the beginning of activities authorized under a transition area waiver, or transfer of the site.	NM
N.J.A.C. 7:7A-10.1(f)	Failure to provide in the application all information required in this chapter of which the applicant, its consultants, engineers, surveyors, or agents is or should be aware	NM
N.J.A.C. 7:7A-10.9	Failure to provide appropriate public notice during the permit application process	NM
N.J.A.C. 7:7A-13.1	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-13.1	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-14.4(a)	Failure to comply with a permit suspension order	NM
N.J.A.C. 7:7A-14.5(b)	Failure to comply with a permit termination order.	NM
N.J.A.C. 7:7A-15.2(b)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-15.3(a)	Failure to conduct mitigation as required by a	NM

Table F

Rule Citation	*Violation Description*	*Type of Violation*
	Department approval or administrative order	
N.J.A.C. 7:7A-15.11(a)	Failure to submit a mitigation proposal to the Department as required by a Department approval or order	NM
N.J.A.C. 7:7A-15.16(a)	Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7A-15.14 prior to the start of mitigation activities	NM
N.J.A.C. 7:7A-15.16(b)	Failure to submit a construction completion report within the required timeframe of completion of construction and planting of a restoration, creation or enhancement project	M
N.J.A.C. 7:7A-15.16(c)	Failure to submit an annual post-planting report at the required intervals following the completion of the construction and planting associated with mitigation	M
N.J.A.C. 7:7A-15.16(d)	Failure to demonstrate to the Department at the end of the post-planting monitoring period that the mitigation project is successful	M
N.J.A.C. 7:7A-15.17(c)1	Failure to transfer the mitigation area in fee simple to a government agency or charitable conservancy within 60 days after the Department declares mitigation through upland preservation successful	NM
N.J.A.C. 7:7A-15.17(c)2	Failure to provide the government agency or charitable conservancy with a maintenance fund for the mitigation area transferred to the government agency or charitable conservancy	NM
N.J.A.C. 7:7A-15.18(a)	Failure to apply to the Wetlands Mitigation Council for approval of the amount of monetary contribution following the Department's determination that monetary contribution is an appropriate mitigation alternative	NM
N.J.A.C. 7:7A-15.19(a)	Failure to apply to the Wetlands Mitigation Council	NM

Table F

Rule Citation	*Violation Description*	*Type of Violation*
	for approval of the particular parcel of land to be donated following the Department's determination that land donation is appropriate mitigation alternative	

SUBCHAPTER 17 Reconsideration by Department of its action or inaction concerning a permit

N.J.A.C 7:7A-17.1 Reconsideration by Department of its action or inaction concerning a permit

(a) If the issuance, modification, or denial of an individual freshwater wetlands permit would constitute a taking without just compensation, and provided the conditions at (b) below are met, the Department may do any one or more of the following:

1. Compensate the property owner for the lost value of the property;

2. Condemn the affected property pursuant to the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.; and/or

3. Reconsider and modify its action or inaction concerning a permit so as to minimize the detrimental effect to the value of the property.

(b) The Department may reconsider and modify its action or inaction concerning a permit so as to minimize the detrimental effect to the value of the property, provided:

1. The Department has rendered a decision on a permit application under the rules in this chapter as strictly applied;

2. All administrative and judicial appeals of the permit decision have been concluded; and

3. Either of the following requirements is met:

    i. A court has determined that the issuance, modification, or denial of an individual freshwater wetlands permit would constitute a taking of property, and the property owner thereupon submits a request for a reconsideration and modification of the permit action or inaction; or

ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification or denial of a individual freshwater wetlands permit would constitute a taking of property, and the Department initiates the reconsideration.

(c) In making the determination to reconsider and modify its action or inaction concerning a permit so as to minimize the detrimental effect to the value of the property under (a) above, the Department shall prepare a written analysis that evaluates three factors:

1. The investments the property owner made in the property that is the subject of the individual freshwater wetlands permit application and whether the investments were reasonable, and reflected reasonable expectations, in accordance with (d) below;

2. The minimum beneficial economically viable use of the property, in accordance with (e) below; and

3. The environmental impacts of the minimum beneficial economically viable use for the property, and their consistency with the goals of the Freshwater Wetlands Protection Act, in accordance with (f) below.

(d) In determining whether the property owner's investments in the property as a whole were reasonable, and reflected reasonable expectations, the Department shall evaluate the following information:

1. Conditions at the time of the investment. That is, the investment shall have been made in pursuit of development that would likely have been legally and practically possible on the property, considering all constraints existing and reasonably ascertainable at the time of the investment. For example, if a property owner bought property containing freshwater wetlands regulated under this chapter, it would not be reasonable to expect that the property could be developed without constraints. In determining conditions at the time of the investment, the Department shall consider, at a minimum, the following:

   i. Existing zoning and other regulatory requirements and conditions;

   ii. Historic landmarks or other historic or cultural resources, as described at N.J.A.C. 7:7A-12.2;

   iii. The likelihood of obtaining other necessary approvals such as wastewater treatment approvals or approvals from other local, State or Federal agencies;

   iv. Terrain and other site conditions, and/or environmental constraints, which could affect the potential uses of the property as a whole;

2. Costs actually incurred in pursuit of development of the property as a whole;

3. Costs incurred in furtherance of a lawful action. For example, if the property owner began the project without the necessary permits, the cost of defending against an

enforcement action for this violation would not constitute a reasonable investment that reflects reasonable expectations;

4. Costs relating only to the specific property as a whole that is the subject of the individual freshwater wetlands permit application, and not including costs related to other properties; and

5. Any other factor affecting the property or the property owner, which is related to the reasonableness of the investments, the expectations, and/or the proposed use of the property.

(e) In determining the minimum beneficial economically viable use of the property, the Department shall consider existing legal precedent at the time of the determination. A use shall not be excluded from consideration as a minimum beneficial economically viable use merely because it diminishes the value of the property as a whole, does not result in a profit, reduces the marketability of the property as a whole, or does not allow the property owner to recoup all reasonable investments identified under (c) above.

(f) In determining the environmental impacts of any minimum beneficial economically viable uses of the property and the consistency of those impacts with the goals of the Freshwater Wetlands Protection Act, in accordance with (c) above, the Department shall evaluate whether the minimum beneficial economically viable use would:

1. Adversely affect the quality and resource value classification of the wetland, pursuant to N.J.A.C. 7:7A-2.5, and the quantity of freshwater wetlands, transition areas, and/or State open waters to be disturbed;

2. Adversely affect other protected resources, for example, historic or cultural resources, as described at N.J.A.C. 7:7A-12.2, ecologically unique areas or critical wildlife habitat;

3. Result in irreversible losses of values and functions provided by freshwater wetlands, transition areas, and/or State open waters, for example, flood control, endangered species habitat, or water quality and whether such losses could be mitigated; and

4. Adversely affect public health, safety and welfare, and fish and wildlife.

(g) The Department shall not modify its action or inaction concerning a permit and approve a minimum beneficial economically viable use as the result of a reconsideration under this section if that use would cause any one of the following:

1. Irreversible losses of values and functions provided by freshwater wetlands, transition areas and/or State open waters that provide essential breeding, spawning, nesting, feeding, resting, or wintering habitats for fish and wildlife, including migratory birds, endangered species, and commercially and recreationally important wildlife. For the purposes of this section, "irreversible losses" means an alteration to the wetland,

transition area or State open water that would eliminate one or more of the essential characteristics which provides the breeding, spawning nesting, feeding, resting or wintering habitat for the species in question, and that could not be mitigated;

2. Irreversible losses in water quality of FW-1 or FW-2 trout production waters and their tributaries, resulting in degradation of ground or surface waters, in violation of Federal, State or local water quality standards; or

3. Irreversible losses of wetlands and/or State open waters, providing essential flood and storm damage protection by absorption, the storage of water during high runoff periods and the reduction of flood crests, resulting in creation of a public nuisance.

(h) A property owner may request that the Department reconsider and modify its action or inaction concerning a permit under (a) above only after:

1. The conclusion of any administrative and/or judicial appeal of the permit decision; and

2. A court has determined that the issuance, modification, or denial of an individual freshwater wetlands permit without reconsideration would result in a taking of property without just compensation.

(i) A complete request for the Department to reconsider and modify its action or inaction concerning a permit under (a) above shall include the following items:

1. A completed LURP application form, indicating a request for reconsideration and the type of permit being requested;

2. Unconditional written consent from the owner of the site, as defined at N.J.A.C. 7:7A-1.4, for Department representatives to enter the site to conduct site inspections;

3. Documentation that public notice has been given pursuant to the requirements at N.J.A.C. 7:7A-10.8(c), (d), (e) and (g). This notice may be combined with the offer to sell the property required under (i)7 below;

4. Document(s) showing when the property as a whole, as defined at N.J.A.C. 7:7A-1.4, was acquired, the purchase price of the property as a whole and the instrument which documents the applicant's real property interest;

5. Document(s) showing the amount, nature, and date of any investments made to maintain and/or develop the property as a whole, other than the purchase price;

6. The language of a proposed conservation restriction or easement that meets the requirements of (m)2 below;

7. Documentation that the property has been offered for sale in a letter, following the form provided by the Department, to all owners of property within 200 feet of the property as a

whole, and to the land conservancies, environmental organizations, and government agencies on a list supplied by the Department; and that no reasonable offer to purchase, that assumes a minimum beneficial economically viable use, has been received. This documentation shall include the following:

i. A copy of each letter that the property owner sends under this subsection;

ii. All responses the property owner receives to the letters sent under this subsection. Each response shall be submitted to the Department within 15 days after the property owner's receipt of the response; and

iii. A list, certified by the municipality, of all owners of real property within 200 feet of the property as a whole, including owners of easements as shown on the tax duplicate;

8. The written offer of sale required under (i)7 above shall be sent by certified mail and shall:

i. Indicate that the offer is open for a period of at least 90 calendar days;

ii. Include a copy of a fair market value appraisal, performed by a State-licensed appraiser, that assumes that a minimum beneficial economically viable use of the property will be allowed;

iii. Include full disclosure of the location on the property of any freshwater wetlands, transition areas, and/or State open waters; and

iv. Indicate that the property owner has requested a reconsideration of the Department's action or inaction concerning a permit under this section;

9. A development plan showing the project that is proposed in order to provide a minimum beneficial economically viable use;

10. Information and/or certifications regarding the presence or absence of endangered or threatened species habitat, historic or archaeological resources, as described at N.J.A.C. 7:7A-12.2, or other features on the site relevant to determining compliance with the requirements of this chapter;

11. A mitigation proposal that complies with N.J.A.C. 7:7A-15, to offset the impacts of the project on freshwater wetlands, transition areas, and/or State open waters;

12. Documentation that the proposed project will cause the least environmental impact possible, while still providing a minimum beneficial economically viable use of the property consistent with constitutional standards;

13. A copy of the court determination that the Department's issuance, modification, or denial of an individual freshwater wetlands permit would constitute a taking without just compensation; and

14. Documents showing that the property owner has concluded all administrative and judicial appeals of the Department's decision on the application for an individual freshwater wetlands permit. Such documentation shall include the last of the following (submitted after the appeal period for the applicable decision has expired):

    i. A Department decision on the application for an individual freshwater wetlands permit, made in accordance with the rules as strictly applied;

    ii. A final decision issued by the Commissioner regarding the Department's decision on the application for an individual permit; and

    iii. Documentation that all appeals of any final decision issued by the Commissioner under (i)14ii above have been concluded; and

15. The names and addresses of all consultants, engineers, and other persons providing technical assistance in preparing the request for reconsideration.

(j) In the case where the Department initiates the reconsideration of whether to modify its action or inaction concerning a permit under (a) above, the Department shall, upon initiation of the reconsideration process follow all steps described in (j)1 through 3 below. In the case where the property owner is requesting that the Department reconsider and modify its action or inaction concerning a permit, the Department shall, upon initiation of the reconsideration process, follow the steps described in (j)1i, 1iii, 2 and 3 below:

1. Provide the following notifications:

    i. Publication in the DEP Bulletin;

    ii. In accordance with the requirements at N.J.A.C. 7:7A-10.8 (c), (d), and (e)1 through 4 and 6; and

    iii. To those who provided comments on the previous application that is the subject of the reconsideration;

2. Include in the notice the applicant's name; project name, if applicable; project number; county and municipality of the project; and an executive summary describing the development that is the subject of the reconsideration; and

3. Provide a 15-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(k) If the Department determines to approve a development upon reconsideration under this section, the Department shall provide notice of the development that the Department proposes to allow under the reconsideration following the same procedure described at (j) above except that the Department shall provide a 30-day comment period commencing from the date of notice in the DEP Bulletin.

(l) The Department shall complete the written analysis required under (c) above, which shall incorporate its decision on the request for reconsideration and modification of its action or inaction concerning a permit, as follows:

1. For a request for reconsideration under (b) and (h) above, no later than 180 days from the Department's receipt of a complete request under (h) above; or

2. For a reconsideration initiated by the Department under (b) above, no later than 180 days from the publication of notice in the DEP Bulletin under (j) above.

(m) If the Department approves a development upon reconsideration and modification of its action or inaction concerning a permit under (a) above, the approval shall, at a minimum:

1. Be the minimum relief necessary to enable the property owner to realize a minimum beneficial economically viable use of the property as a whole, consistent with constitutional standards; and

2. Ensure that any part of the property as a whole that the Department does not allow to be developed upon reconsideration and modification of its action or inaction concerning a permit will be protected from future development by a recorded conservation restriction.

APPENDIX 1

OBLIGATE AND FACULTATIVE FAUNA SPECIES FOUND IN VERNAL HABITATS

Obligate Species	*Facultative Species*
Marbled Salamander	Snapping Turtle
Blue-spotted Salamander*	Eastern Mud Turtle
Jefferson Salamander	Spotted Turtle
Eastern Tiger Salamander*	Eastern Painted Turtle
Wood Frog	Red-spotted Newt
Spotted Salamander	American Toad
Eastern Spadefoot Toad	Fowler's Toad
Jefferson x Blue-spotted Salamander*	Pine Barrens Treefrog*
Fairy shrimp (order Anostraca)	Northern Gray Treefrog
	Southern Gray Treefrog*

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

Upland Chorus Frog
Northern Cricket Frog
New Jersey Chorus Frog
Bull Frog
Green Frog
Southern Leopard Frog
Four-toed Salamander
Northern Spring Peeper
Long-tailed Salamander**
Wood Turtle**

*Listed as a New Jersey State endangered species
** Listed as a New Jersey State threatened species