

THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE APRIL 7, 2014 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE NOTICE, THE OFFICIAL VERSION WILL GOVERN.

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A

Mitigation for a larger disturbance; N.J.A.C. 7:7A-15.6

Petitioner: Ecologic Mitigation Oxford, LLC

**Take notice** that on February 20, 2014, the Department of Environmental Protection

(Department) received a petition for rulemaking from Neil Yoskin, Esq. on behalf of Ecologic Mitigation Oxford, LLC (petitioner). The petitioner, owner and operator of Oxford Western Wetland Mitigation Bank in Oxford Township, Warren County, requests that the Department amend the Freshwater Wetlands Protection Act Rules regarding mitigation for larger disturbances. Particularly, petitioner requests that N.J.A.C. 7:7A-15.6 be amended to create a preference for the purchase of credits from mitigation banks over restoration, creation or enhancement of wetlands at an offsite location where onsite restoration, creation or enhancement is not feasible. The existing rule establishes a hierarchy for mitigating disturbances, but puts the purchase of credits from an approved mitigation bank on an equal footing with offsite, in-kind mitigation.

Petitioner asserts the requested change would be consistent with Department policies that otherwise discourage the construction of scattered wetlands sites, as well as Federal wetlands policy and regulations that petitioner states favor the use of mitigation banks over offsite, in-kind mitigation.

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Petitioner also asserts that the current rule differs from the Federal regulations and is thus not consistent with Executive Order 2(2010) which directs State agencies to not exceed the requirements of Federal law unless required by State statute or where an exceedance is necessary to achieve a State specific public policy goal. Petitioner further asserts that the rule is not consistent with Department policy to encourage the use of private capital to construct mitigation banks and that there is no articulated New Jersey specific public policy that the rule provision advances. Petitioner states that it has purchased land and obtained approvals for its mitigation bank in a location that will provide a degree of ecological benefit there and in the surrounding area that is proportionally greater than a simple increase in the amount of wetland acreage, but that, without a change in the rule, it is likely that neither the petitioner nor any of the other approved wetland banks in the State will be able to provide the ecological benefits that they were created to provide.

This notice and the full text of the petition filed in this matter is available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.