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

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SUBCHAPTER 1. GENERAL PROVISIONS

7:7A-1.1 Purpose and scope

(a) 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.

(b) The powers, duties, and functions vested in the Department under this chapter shall not limit, in any manner, the powers, duties, and functions vested under any other law, except as

specifically set forth in this chapter.

(c) 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, 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.

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

(e) This chapter shall not preempt State regulatory programs that 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 concerns (for example, flood danger).

(f) 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.

7:7A-1.2 Effect of a permit

(a) Compliance with a permit 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 does not convey property rights of any sort, or any exclusive privilege.

7:7A-1.3 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-11, Mitigation, are set forth at N.J.A.C. 7:7A-11.1.

"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, or maintained or improved for agricultural purposes, 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. The lack of a commercial harvest or production of a crop on or from a cranberry bog or blueberry field shall not be a determining factor as to whether the agricultural use has been abandoned.

"Administratively complete" means that every item required on the application checklist for a letter of interpretation or permit being sought is included in the application.

"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 CFR Part 230), New Jersey Department of Environmental Protection Flood Hazard Area Control Act 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 CFR 330.6, 40 CFR 233.35(a)6, the Department's Flood Hazard Area Technical Manual, 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 such in the Department's Surface Water

Quality Standards at N.J.A.C. 7:9B.

"Charitable conservancy" means a corporation or trust that meets the definition of a charitable conservancy at N.J.S.A. 13:8B-2. (Note: Effective as of May 1, 2017, the definition of charitable conservancy at N.J.S.A. 13:8B-2 is 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 insures 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.)

"Commissioner" means the Commissioner of the Department, or his or her designated representative.

"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.

"Complete for review" means that an application for a letter of interpretation or a permit is both administratively and technically complete and is ready to be evaluated by the Department for compliance with the applicable requirements of this chapter.

"Conservation restriction" 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 state, scenic or open or wooded condition, 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 of the following:

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.

"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 function 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 1,000 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 New Jersey Sports and Exposition Authority (formerly the New Jersey Meadowlands 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.

"Electronic LOI" or "E-LOI" means an application for a letter of interpretation submitted to the Department electronically.

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

"EPA priority wetlands" or "USEPA priority wetlands" means wetlands that are designated as priority wetlands by the USEPA, and are listed on the "Priority Wetlands List for the State of New Jersey," which is available from the Department at the address set forth at N.J.A.C. 7:7A-1.4.

"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 that 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.

A cranberry bog, blueberry field, or portion thereof that was used for such purposes as of June 30, 1988, and on which any of the activities listed at N.J.A.C. 7:7A-2.4(c)2 and 3 have occurred within the prior five years shall be considered an established, ongoing farming operation and shall not be deemed abandoned. The lack of a commercial harvest or production of a crop on or from the lands shall not be a determining factor as to whether the agricultural use has been abandoned.

"Excavation" means the removal of soil, rocks, or other material resulting in a change in site elevation.

"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.

"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.

"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.

"General permit-by-certification" means a permit to undertake a regulated activity for which the terms and conditions are established in rules promulgated under this chapter at N.J.A.C. 7:7A-5 and 6, and which may be conducted upon Department approval through the electronic permitting process set forth at N.J.A.C. 7:7A-16.6.

"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.

"Grace period" means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

"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.

"Hoophouse" or "polyhouse" means a temporary pipe-frame structure covered with plastic sheeting, with a dirt or fabric floor, that provides for a controlled growing environment to create more favorable growing conditions for crops grown within the covered space. For the purposes of this chapter, a "hoophouse" or "polyhouse" shall not include permanent footings.

"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 https://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, USACE, USEPA, and the Natural Resources Conservation Service.

"Impervious surface" means a surface that is covered with a layer of material, so that it is highly resistant to infiltration by water.

"Individual permit" means a freshwater wetlands permit or open water fill permit that is issued by the Department after an alternatives analysis and other site-specific and project-specific reviews required at N.J.A.C. 7:7A-10.

"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-4, 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 a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone, or other transmission line. 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.

"Loss" means, with respect to freshwater wetlands or State open waters, an alteration of a wetland or water to the extent that the wetland or water, or portion thereof, no longer retains the functions and characteristics of a wetland or water.

"Major discharge" means a discharge or activity that the Department must transmit to USEPA for review in accordance with the Department's 1993 MOA with the USEPA regarding assumption of the Federal 404 program. Provisions regarding USEPA review of major discharges are found at N.J.A.C. 7:7A-19.5. 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 USFWS;
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-11 in order to compensate for freshwater wetlands or State open waters loss or disturbance caused by regulated activities.

"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.

"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 USEPA, USACE, USFWS, 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 percent 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 https://www.wcc.nrcs.usda.gov/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 non-persistent 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 authorization or 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 the Municipal Land Use Law at 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-2.4(f) based on the application for or the grant of a preliminary site plan approval:
   i. 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-2.4, 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 rights-of-way 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 investment or development plan. In determining the property as a whole in a particular case, the Department shall consider existing legal precedent regarding what constitutes "property as a whole" at the time of the determination.

"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-2.3.

"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.

"Site plan" or "plan" means a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering, or other similar illustration, which is submitted to the Department to describe an existing or proposed activity or condition.

"Soil Conservation District" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with N.J.S.A. 4:24-1 et seq. Each Soil Conservation District administers New Jersey Department of Agriculture programs for one or more counties. Soil Conservation Districts are overseen by the New Jersey State Soil Conservation Committee in the New Jersey Department of Agriculture, which promulgates the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90. For the purposes of this chapter only, the term "Soil Conservation District" shall include any exempt municipality authorized to enforce the Standards for Soil Erosion and Sediment Control by ordinance pursuant to N.J.S.A. 4:24-48.

"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.

"Technically complete" means that each item included in an application for a letter of interpretation or a permit provides sufficient information for the Department to declare the application complete for review.

"Temporary disturbance" means a regulated activity that occupies, persists, and/or occurs on a site for no more than six months. Where a disturbance associated with certain regulated activities, such as hazardous substance remediation or solid waste facility closure, is intended to be temporary, but will exceed six months in duration because of the nature of the activity, the Department will consider the disturbance to be temporary for purposes of this subchapter provided the disturbed areas are restored to their original topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

"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-2.3 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.

"USACE" means the United States Army Corps of Engineers.

"USEPA" means the United States Environmental Protection Agency.

"USFWS" means the United States 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.

"Utility line" means a pipe, cable, line, or wire for the transport or transmission of gases, liquids, electrical energy, or communications. This term includes a pole or tower required to support a utility line, but does not include a tower that only transmits or receives electromagnetic 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-3.1, or State open water, as defined above in this section 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. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation, and marinas are examples of water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short-term parking for boaters, storage for boats that are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries, such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.
2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water dependent activity,

boat sales, automobile junk yards, and non-water oriented recreation, such as roller rinks and racquetball courts.

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

"Water quality certificate" means a determination by the Department of the consistency with this chapter of an activity that proposes a discharge to waters of the United States that requires a Federal license or permit pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. Federal licenses and permits for which water quality certificates are issued include, but are not limited to:

1. NJPDES permits by USEPA under Section 402 of the Federal Clean Water Act, 33 U.S.C. § 1342;
2. Permits for the discharge of dredged or fill material issued by the USACE under Section 404 of the Federal Clean Water Act, 33 U.S.C. § 1344;
3. Permits for activities that have a potential to discharge in navigable waters issued by the USACE under Sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. §§ 403 and 404; and
4. Hydropower licenses issued by the Federal Energy Regulatory Commission under Sections 3(11), 4(e) and 15 of the Federal Power Act, 16 U.S.C. §§ 796(11), 797(e), and 808.

"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.

The following waters are generally not considered "waters of the United States." However, the right is reserved to determine on a case by case basis, if particular watercourses or waterbodies are "waters of the United States":

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. Waterfilled depressions created in dry land incidental to construction 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 above definition of "waters of the United States";
6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and
7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices.

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

7:7A-1.4 Forms, checklists, and information; Department address and website

(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (b) below, by telephone at (609) 984-0162, or through the Division's website at https://www.nj.gov/dep/landuse. Further information about the Department can be accessed at https://www.nj.gov/dep.

(b) Applications, fees, and other correspondence shall be submitted to the following addresses:

1. For regular mail:

   New Jersey Department of Environmental Protection

   Division of Land Use Regulation

   Mail Code 501-02A

   PO Box 420

   Trenton, NJ 08625;

2. For hand delivery, courier service, and overnight mail:

   New Jersey Department of Environmental Protection

   Division of Land Use Regulation

   501 East State Street

   5 Station Plaza, Second Floor

   Trenton, New Jersey 08609; and

3. For submittal of an application for authorization under a general permit-by-certification, the Department's website at https://www.nj.gov/dep/online.

(c) Questions regarding the requirements of this chapter or about the status of a particular application can be directed to the Division of Land Use Regulation Technical Support Center at (609) 777-0454, via email at LURTechSupport@dep.nj.gov, or by using an online contact form at https://www.nj.gov/dep/landuse/contact.html.

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

7:7A-1.5 Liberal construction

This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.

7:7A-1.6 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.

SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7A-2.1 When a permit is required

(a) No person shall engage in a regulated activity subject to this chapter without a permit or authorization listed in (b) below. Initiation of a regulated activity without a permit or conducting a regulated activity beyond that specifically authorized by a permit is considered a violation of this chapter and shall subject the person or persons responsible for the regulated activity to enforcement action in accordance with N.J.A.C. 7:7A-22.

(b) A person undertaking any regulated activity under this chapter shall do so only in accordance with:

1. An authorization under a general permit-by-certification, pursuant to N.J.A.C. 7:7A-5 and 6;
2. An authorization under a general permit, pursuant to N.J.A.C. 7:7A-5 and 7;
3. A transition area waiver, pursuant to N.J.A.C. 7:7A-8;
4. An individual permit, pursuant to N.J.A.C. 7:7A-9 and 10; or
5. An emergency authorization, pursuant to N.J.A.C. 7:7A-14.

(c) On March 2, 1994, the Department assumed responsibility for administering the Federal wetlands program (also known as the 404 program) in delegable waters. In non-delegable waters, the USACE retains jurisdiction under Federal law, and both Federal and State requirements apply. Accordingly, a person proposing to engage in a regulated activity in non-delegable waters shall obtain two permits, one from the Department under this chapter and one from the USACE 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 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. 7:7-1.2(b). For a discharge of dredged or fill material in the coastal zone, the Department shall use the standards and procedures in the Coastal Zone Management rules, N.J.A.C. 7:7, to determine whether to issue a water quality certificate.

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 USACE under the Federal 404 program. The USACE 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 USACE are:

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

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

(2) 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:

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

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

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

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

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

7:7A-2.3 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. If the transition area is contained in a conservation restriction, none of the following activities are allowed unless explicitly stated in the conservation restriction:

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; 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; and
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-2.4(f). In addition, an activity that is exempt from freshwater wetlands permit requirements under N.J.A.C. 7:7A-2.4(c) for farming activities, or N.J.A.C. 7:7A-2.4(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-2.4. 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-2.6.

7:7A-2.4 Activities exempted from permit and/or waiver requirement

(a) The following are exempt from the requirement of a freshwater wetlands permit and/or waiver unless the USEPA's regulations providing for the delegation to the State of the Federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the Department shall require a permit for those activities so identified by that agency. 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-22.

(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. Normal silviculture activities must be part of a forest management plan that conforms to best management practices (BMPs) and 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 or other purposes through the use of drainage structures such as tiles or ditches, the Department shall, in the absence of compelling scientific information that wetland hydrology has been effectively removed by factors other than the drainage structures, presume that the area maintains wetlands hydrology for the purpose of identifying a freshwater wetland under N.J.A.C. 7:7A-3.1. 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 that 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 that are in established use for such agricultural and silvicultural wetlands crop production. Any discharge of material into wetlands or waters, excavation of wetlands, or draining of wetlands or waters, that are not in established use for such agricultural and silvicultural wetlands crop production requires a permit. For example, the construction of ditches within the confines of an established cranberry bog is an exempt activity. However, the construction of new ditches in wetlands or waters located outside of the established

cranberry bog requires a permit;

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).

2. Activities associated with the normal maintenance of cranberry bogs and blueberry fields where the maintenance activities and the discharge occur in wetlands and waters that are in established use for cranberry or blueberry production, such as:

i. Periodic flooding;

ii. Sanding;

iii. Control or suppression of weeds or brush in and around the bog or field;

iv. Pest control or suppression; and

v. Maintenance, repair, or cleaning of dams, ditches, underdrains, floodgates, irrigation systems, or other drainage or water control facilities;

3. Activities for the renewal or rehabilitation of a cranberry bog, including but not limited to:

i. Removal of undesirable soil or vegetation;

ii. Grading and leveling;

iii. Installation, reconfiguration, repair, or replacement of water control or supply systems or facilities;

iv. The removal, relocation, or construction of internal dams; and

v. The planting of new vines in an appropriate soil layer;

4. 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-2.6; and

      (6) Sized appropriately for the intended use under (c)3ii(5) above.

5. 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-2.6; and

(6) In accordance with (c)4i(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 (c)4i above; and

6. Installation of temporary farm structures with only a dirt or fabric floor, such as hoophouses, polyhouses, run-in sheds, and pole barns and any grading or land contouring associated therewith, and fencing without foundations on lands that were actively cultivated on or before July 1, 1988, have been in active agricultural use since then, were in active agricultural use at the time that the temporary farm structures were or are to be erected, and are identified as "ModAg" farmed wetlands on the Wetlands Maps promulgated by the Department in 1988.

(d) Normal silviculture activities, in accordance with a forest management plan approved by the State Forester before the conduct of the forest management activities, are 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, 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 USACE 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 USACE permit expires, any application for an extension shall be made to the Department under N.J.A.C. 7:7A-20.4. The Department shall not require a transition area as a condition of any extension of an USACE permit issued prior to July 1, 1988.

7:7A-2.5 Geographic areas exempted from permit and/or waiver requirement

(a) Regulated activities in areas under the jurisdiction of the New Jersey Sports and Exposition Authority 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 USACE, a water quality certificate, 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 https://www.nj.gov/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.

7:7A-2.6 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-2.4(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-18.

(c) To apply for an exemption letter for a normal silviculture activities exemption pursuant to N.J.A.C. 7:7A-2.4(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-18.

(d) To apply for an exemption letter for a transition area exemption pursuant to N.J.A.C. 7:7A-2.4(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-18.

7:7A-2.7 Stormwater management

If a project requires an individual permit under this chapter and the project in its entirety (that means the whole project, not just the portions within wetlands or transition area) 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 this chapter 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-1.1(c), the Pinelands Commission may require equal or more stringent stormwater management regulation of activities in and around freshwater wetland areas within its jurisdiction.

SUBCHAPTER 3. IDENTIFYING FRESHWATER WETLANDS AND TRANSITION AREAS; FRESHWATER WETLANDS RESOURCE VALUE CLASSIFICATION

7:7A-3.1 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.

(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. USGS quad 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 topographic 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 USFWS in cooperation with the USACE, 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-4.

(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 offices listed at (f)1 and 2 below for public inspection. The maps are also available through NJ-GeoWeb at https://www.nj.gov/dep/gis/geowebsplash.htm.

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

7:7A-3.2 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 FW-1 or FW-2 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) For the purposes of (b) above, the Department identifies present and documented habitat for threatened or endangered species using the Landscape Project method, which focuses on habitat areas required to support local populations of threatened and endangered wildlife species. The report entitled New Jersey's Landscape Project, which is updated periodically, provides additional information on mapping methodology and is available at https://www.nj.gov/dep/fgw/ensp/landscape/index.htm. Interested parties may also obtain information by writing to the Division of Fish and Wildlife, Endangered and Nongame Species Program at:

The Landscape Project

State of New Jersey Department of Environmental Protection

Division of Fish and Wildlife Endangered and Nongame Species Program

Mail Code 501-03

PO Box 420

Trenton, NJ 08625-0420.

(d) If the Department becomes aware of an occurrence of an threatened or endangered wildlife species on or proximate to a site that is not mapped as threatened or endangered wildlife species habitat by the Landscape Project, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant of the proposed exceptional resource value classification based on new endangered or threatened species data and provide them with the opportunity to contest the classification decision prior to formally classifying the wetlands of exceptional resource value in accordance with (b) above.

(e) 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.

(f) 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 that:
   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 this chapter, or the classification of the body of water, as FW-1 or FW-2 trout production, to which it discharges.

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

(h) 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.

(i) 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-4.

7:7A-3.3 Identifying a transition area

(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-3.2. A transition area is not required adjacent to a freshwater wetland of ordinary resource value or adjacent to a State open water.

(d) The standard widths of a transition area are set forth at (d)1 and 2 below. These standard widths 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-8.1(a).

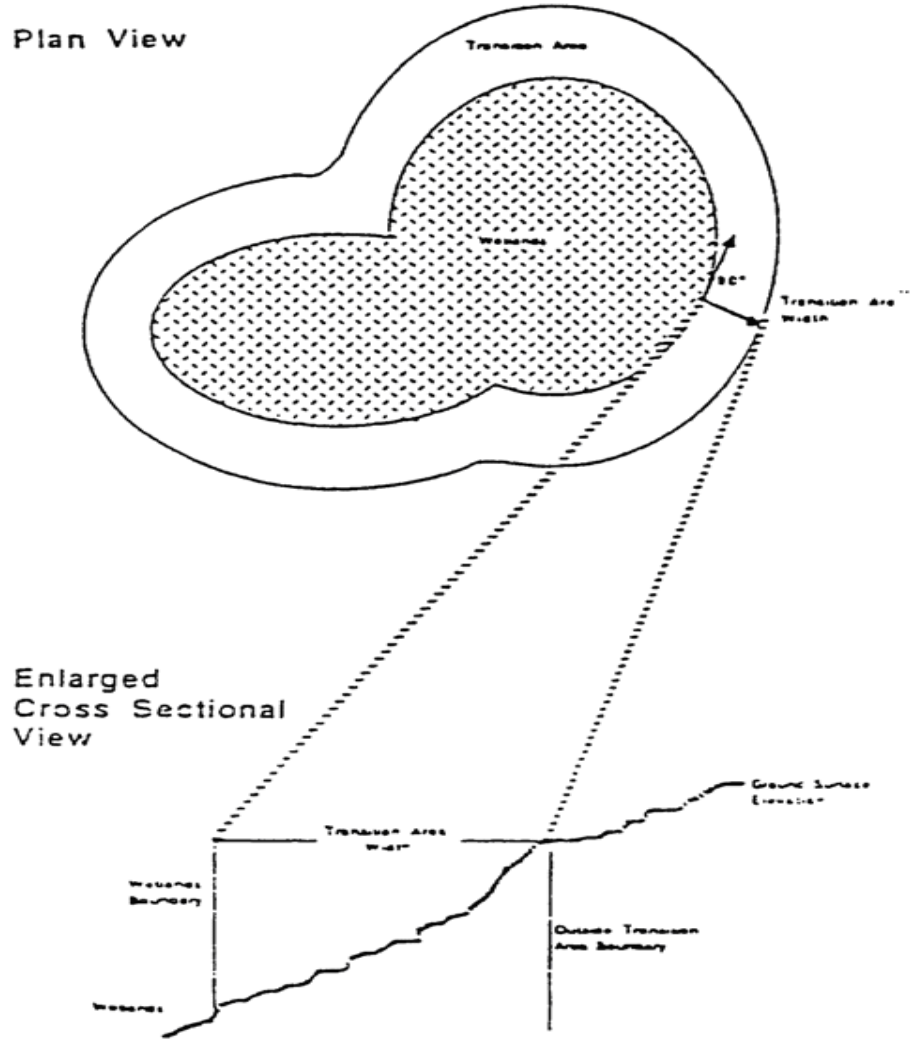
1. The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet.
2. The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet.

(e) A person shall not engage in regulated activities, as described at N.J.A.C. 7:7A-2.3, in a transition area except pursuant to a transition area waiver.

(f) 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 Figure 1 below. 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.
Depicted are a plan and elevational view.



7:7A-3.4 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-4;
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-3.3(d)2; 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-3.3(d)1; 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.

SUBCHAPTER 4. LETTERS OF INTERPRETATION

7:7A-4.1 Purpose and scope

This subchapter sets forth the general provisions relating to letters of interpretation; the types of letters of interpretation; the duration of a letter of interpretation; and the conditions that apply to a letter of interpretation.

7:7A-4.2 General provisions

(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 resource value classification under N.J.A.C. 7:7A-3.2 applies to the 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-4.3 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-4.4 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-4.5 for further details regarding line verification LOIs.

(d) If an area with hydric soils has been drained for farming or other purposes through the use of drainage structures or features, such as tiles or ditches, the Department shall, in the absence of compelling scientific information that wetland hydrology has been effectively removed by factors other than the drainage structures, presume that the area maintains wetlands hydrology for the purpose of identifying a freshwater wetland under N.J.A.C. 7:7A-3.1. 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 shall state the resource value classification of the wetlands under N.J.A.C. 7:7A-3.2 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 shall 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 classification of the wetland.

(f) The Department shall issue an LOI for a portion of a site, also called a footprint of disturbance, under N.J.A.C. 7:7A-4.3(c)2 or 4.5(b)3. Special application requirements shall 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-16.3(a)4i and (b)4.

(g) 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-16.8(b)1, 16.9(b)1, or 16.10(b)1, as applicable. The Department will then review the submitted wetland delineation as part of the permit review process.

(h) Except for a presence/absence LOI for an entire site under N.J.A.C. 7:7A-4.3(c)1, all LOI applicants shall provide the Department with a survey in accordance with N.J.A.C. 7:7A-16.3(a)4. 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.

7:7A-4.3 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 shall apply for a line delineation LOI under N.J.A.C. 7:7A-4.4, or a line verification LOI under N.J.A.C. 7:7A-4.5.

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

1. An entire site, 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-4.4 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 shall 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, 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-4.5 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 shall 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, 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.

7:7A-4.6 Duration 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-16. 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.

7:7A-4.7 Conditions that apply to an issued letter of interpretation delineation or verification

(a) Within 90 calendar days after the Department issues a delineation or verification letter of interpretation on a privately owned lot, or on a publicly owned lot other than a right-of-way, the recipient of the delineation or verification shall submit the following information to the Office of the County Clerk or the registrar of deeds and mortgages in which the site is located, and shall send proof to the Department in accordance with (b) below that this information is recorded on the deed of each lot referenced in the delineation or verification letter of interpretation:

1. The Department file number for the letter of interpretation;
2. The approval and expiration date of the letter of interpretation;
3. A metes and bounds description of the wetland boundary approved under the letter of interpretation;
4. The width and location of any transition area approved under the letter of interpretation; and
5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a freshwater wetland and/or transition area. Certain activities in wetlands and transition areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a freshwater wetland permit. Contact the Division of Land Use Regulation at (609) 292-0060 or https://www.nj.gov/dep/landuse for more information prior to any construction onsite."

(b) Proof that the information at (a) above has been recorded on the deed of each lot referenced in the letter of interpretation shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording

office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the Department within 180 calendar days of the issuance or reissuance of the letter of interpretation.

SUBCHAPTER 5. GENERAL PROVISIONS FOR GENERAL PERMITS-BY-CERTIFICATION AND GENERAL PERMITS

7:7A-5.1 Purpose and scope

This subchapter sets forth the standards for the Department to issue, by rulemaking, general permits-by-certification and general permits; the use of these permits to conduct authorized activities; the standards governing the use of more than one of these permits on a single site; the duration of authorizations under these permits; and the conditions that apply to these permits.

7:7A-5.2 Standards for issuance, by rulemaking, of general permits-by-certification and general permits

(a) The Department will, in accordance with the rulemaking provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., promulgate each general permit-by-certification or general permit, except for general permit numbers 6 and 7, after publication of a notice of rule proposal in the New Jersey Register and consideration of public comment. In addition, the Department will send a copy of the draft general permit-by-certification or general permit to the USEPA, and will follow the procedures for USEPA comment found at N.J.A.C. 7:7A-19.5.

(b) The Department will promulgate a general permit-by-certification or general permit only if all of the following conditions are met:

1. 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 has provided public notice and an opportunity for a public hearing with respect to the proposed general permit-by-certification or general permit. After a general permit-by-certification or general permit has been promulgated pursuant to this subchapter, the Department will not hold public hearings on individual applications for authorization under a general permit-by-certification or general permit.

(c) Each general permit-by-certification or 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-by-certification or general permit applies, including, when appropriate, limits on the type(s) of water(s) or wetlands where activities may be conducted.

(d) The Department will include in each general permit-by-certification or general permit promulgated pursuant to this subchapter appropriate conditions applicable to particular types of sites or development that must be met in order for a proposed activity to qualify for authorization under the general permit-by-certification or general permit.

(e) The Department may, through rulemaking in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., repeal a general permit-by-certification or general permit and thereafter require individual permits for activities previously covered by the general permit-by-certification or general permit, if it finds that the general permit-by-certification or 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.

7:7A-5.3 Use of an authorization pursuant to a general permit-by-certification or a general permit to conduct regulated activities

(a) An activity that meets the requirements of a general permit-by-certification may be conducted when the person proposing to conduct the activity receives the automatic authorization resulting from completion of the application submission through the Department's electronic permitting system in accordance with N.J.A.C. 7:7A-16.6.

(b) An activity that meets the requirements of a general permit may be conducted when the person proposing to conduct the activity receives authorization from the Department in accordance with N.J.A.C. 7:7A-19, 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 https://www.nj.gov/pinelands.

(c) Each general permit-by-certification or 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-by-certification or general permit that covers activities in freshwater wetlands satisfies the requirement for a freshwater wetlands permit. An authorization issued under a general permit-by-certification or 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-by-certification or general permit that covers activities in a transition area satisfies the requirement for a transition area waiver.

(d) Each authorization under a general permit shall include an access transition area waiver that allows access to the authorized activity, in accordance with N.J.A.C. 7:7A-8.1(a)5. 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.

(e) The Department shall deny an application for authorization under a general permit 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-20.3 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-by-certification or general permit apply to the entire site upon which activities authorized under the general permit-by-certification or general permit occur. An applicant shall not segment a project or its impacts by applying for a general permit-by-certification or 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 authorizations under a general permit-by-certification or a general permit for different portions of the same project.

(g) Unless otherwise specified, the limits on disturbance under a general permit-by certification or 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-by-certification, general permit, or combination thereof, an individual freshwater wetlands or open water fill permit must be obtained under N.J.A.C. 7:7A-9 in order to authorize the activity under this chapter. If a regulated activity in a transition area is not covered by any general permit-by-certification, general permit**,** or combination thereof, a transition area waiver must be obtained under N.J.A.C. 7:7A-8 in order to authorize the activity under this chapter.

(i) An authorization under a general permit-by-certification or general permit does not relieve the person conducting the authorized regulated activities from the obligation to obtain any other applicable permits or approvals required by law.

7:7A-5.4 Use of more than one general permit or general permit-by-certification on a single site

(a) A person may undertake more than one regulated activity on a single site. The activities may be authorized under one or more general permits-by-certification and/or general permits, provided:

1. The individual limits of each general permit-by-certification and/or general permit are complied with. If activities under one general permit-by-certification and/or 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-by-certification and/or general permit shall be summed in order to determine if the limits in the general permit-by-certification and/or 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-7.11) 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-7.11(c)1). In a second example, if an applicant proposes a minor road crossing under general permit 10B (N.J.A.C. 7:7A-7.10B) 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-7.10B(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-by-certification or general permits, or combination thereof, 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-7.6(a)1) for a minor road crossing of 0.60 acres. In addition, other than the combination of an access transition area waiver (see N.J.A.C. 7:7A-8.1(a)5), a transition area waiver averaging plan (see N.J.A.C. 7:7A-8.2), a special activity transition area waiver for linear development (see N.J.A.C. 7:7A-8.3(e)), or a special activity waiver for redevelopment (see N.J.A.C. 7:7A-8.3(f)), with a general permit, the Department shall not authorize the combination of a general permit or general permit-by-certification with a transition area waiver for a single 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.
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, 23, 24, and 25, and general permits-by-certification 8 and 24 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-7.13. 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 25 at N.J.A.C. 7:7A-7.25. 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-8.1(a)5; and

iv. Disturbance authorized under general permit 17 on a publicly owned site or on land dedicated for conservation and/or recreation purposes;

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

(d) In addition to the limits above in this section, 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-5.5 Duration of an authorization under a general permit-by-certification

(a) An authorization under a general permit-by-certification is valid for five years from the date of issuance of the authorization.

(b) The five-year term of an authorization under a general permit-by-certification shall not be extended.

(c) All regulated activities being conducted pursuant to an authorization under a general permit-by-certification shall immediately cease if the authorization expires.

(d) If an authorization under a general permit-by-certification expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.

7:7A-5.6 Duration of an authorization under a general permit

(a) Except as provided in (b) below, an authorization under a general permit is valid for five years from the date of issuance of the authorization.

(b) The five-year term of an authorization under a general permit may be extended one time for five years pursuant to N.J.A.C. 7:7A-20.4.

(c) If an authorization under a general permit expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization under this chapter authorizing the regulated activities.

1. If no regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review;
2. If any regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on the environment.

7:7A-5.7 Conditions applicable to an authorization pursuant to a general permit-by-certification or a general permit

(a) A person conducting regulated activities pursuant to an authorization under a general permit-by-certification or a general permit shall comply with:

1. The conditions set forth in the general permit-by-certification or general permit itself;
2. The conditions that apply to all general permits-by-certification and general permits set forth at (b) below;
3. The conditions that apply to all permits at N.J.A.C. 7:7A-20.2;
4. The limits on the use of multiple general permits-by-certification or general permits in N.J.A.C. 7:7A-5.4;
5. If required under a particular general permit, mitigation pursuant to N.J.A.C. 7:7A-11;

and

6. Any additional conditions imposed under (f) below.

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

1. Activities performed under a general permit-by-certification or general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit-by-certification or 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;
2. The regulated activities 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 activities 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 activities 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 effect. 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-19.5(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-by-certification or general permit authorization if the applicant, its consultants, engineers, surveyors and/or agents significantly adversely affect a historic property to which the general permit-by-certification or general permit authorization applies, unless the Department determines that circumstances justify issuing the general permit-by-certification or 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 regarding use of dredged or fill material;
7. Any structure or fill authorized shall be maintained as specified in the construction plans;
8. The activities 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;
9. 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 are a part shall comply in its entirety with the Stormwater Management Rules at N.J.A.C. 7:8.
10. If activities under the general permit-by-certification or 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;
11. 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;
12. Best management practices, shall be followed whenever applicable;
13. 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.;
14. The timing requirements at (c) below shall be met; and
15. Activities authorized under a general permit-by-certification or general permit shall not take place in a vernal habitat, or in a transition area adjacent to a vernal habitat, with the exception of activities associated with general permits 1, 6, 6A, and 16, which shall be reviewed on a case-by-case basis in accordance with N.J.A.C. 7:7A-5.3(e).

(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 5.7 below:

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.

Table 5.7[1]

RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

Water and classification	Time period (inclusive) during which activities are prohibited
1. Trout Waters	
• All trout production waters except rainbow trout	September 15 through March 15
• Rainbow trout production waters	February 1 through April 30
• Trout stocked waters • Trout maintenance waters • All regulated waters located within 1 mile upstream of a trout stocked or a trout maintenance water	March 15 through June 15
2. Non-Trout Waters	
• Regulated waters that support general game fish located north of Interstate 195	May 1 through July 31
• Regulated waters that support general game fish located south of Interstate 195	May 1 through June 30
• Regulated waters that support pickerel	Ice out through April 30
• Regulated waters that support walleye	March 1 through May 30
3. Anadromous Waters	
• All unimpeded tidal regulated waters open to the Atlantic Ocean or any coastal bay • All regulated waters identified as anadromous migratory pathways	April 1 through June 30
• Delaware River upstream of U.S. Route 1	April 1 through June 30 and September 1 through November 30
• Delaware River between U.S. Route 1 and Interstate 295 (Delaware Memorial Bridge) • Tidal portions of Raccoon Creek, Rancocas Creek, Crosswicks Creek, and Cooper River	March 1 through June 30 and September 1 through November 30
• All unimpeded tidal regulated waters open to the Delaware River downstream of Interstate 295 (Delaware Memorial Bridge) • Tidal portions of the Maurice River, Cohansey River, and Salem River	March 1 through June 30 and October 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 shall reduce, extend, or otherwise modify a timing restriction listed in Table 5.7, if it determines that one or more of the following requirements is satisfied:

1. Potential adverse impacts to the fishery resource are likely to be reduced if a regulated activity occurs during a restricted time period rather than during an unrestricted time period;
2. A regulated activity is subject to more than one restricted time period, the combined effect of which would limit the regulated activity to fewer than 183 calendar days per year. In such a case, the Department shall allow regulated activities to occur for up to 183 calendar days, provided the applicant demonstrates that additional measures will be taken to reduce potential adverse impacts to fishery resources to a level acceptable to the Department. Note that the 183-calendar day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three months in the fall best protects fishery resources in a particular case;
3. The observance of a timing restriction would adversely impact public health, safety, and/or welfare, and the applicant demonstrates that additional measures are taken where necessary to reduce adverse impacts to fishery resources to an acceptable level; or
4. Due to the nature of the project or an unusual circumstance on site, the timing restriction must be modified 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, and the activity requires approval from the USACE under the Federal 404 program, the activities authorized under the general permit or general permit-by-certification shall not begin until the permittee obtains the required Federal 404 program approval.

(f) In addition to the conditions that apply to every authorization pursuant to a general permit under (a) above, the Department shall establish additional conditions in a specific authorization pursuant to a general permit, on a case-by-case basis in accordance with N.J.A.C. 7:7A-20.3, as required to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

SUBCHAPTER 6. GENERAL PERMITS-BY-CERTIFICATION

7:7A-6.1 General permit-by-certification 8—Construction of an addition to a lawfully existing residential dwelling

(a) General permit-by-certification 8 authorizes construction of an addition to a lawfully existing residential dwelling in freshwater wetlands and/or transition areas, provided the conditions at N.J.A.C. 7:7A-5.7 are met and:

1. The dwelling was lawfully constructed prior to July 1, 1988;
2. The proposed addition is attached to or an extension of the residential dwelling;

3. The proposed activities do not include disturbance of State open waters;
4. The total area of disturbance, including freshwater wetlands, transition areas, and non-regulated areas, is no more than 750 square feet; and
5. The footprint of the existing building has not increased by more than 750 square feet, cumulatively, since July 1, 1988, and the addition will not exceed a cumulative 750-square-foot increase in combination with previous additions.

7:7A-6.2 General permit-by-certification 24—Repair or modification of a malfunctioning individual subsurface sewage disposal (septic) system

(a) General permit-by-certification 24 authorizes activities in freshwater wetlands and transition areas necessary for the repair or modification of a malfunctioning individual subsurface sewage disposal system, provided the conditions at N.J.A.C. 7:7A-5.7 are met and:

1. The total area of disturbance including freshwater wetlands, transition areas, and non-regulated areas is no more than one-quarter acre and all disturbance is located on the same property where the malfunctioning system is located;
2. The proposed activities do not include disturbance of State open waters;
3. The repair or modification of the system is 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; and
4. Prior to applying for this general permit-by-certification, the applicant obtains 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, including a change from disuse or abandonment to any type of use; and
    iii. There is no alternative location on the site that:
        (1) Has a seasonal high water table deeper than 1.5 feet below the existing ground surface; and
        (2) Can be used for a subsurface sewage disposal system.

SUBCHAPTER 7. GENERAL PERMITS

7:7A-7.1 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The previously authorized structure, fill, roadway, utility, ditch, or facility has not been and will not be put to any use other than as specified in any permit authorizing its original construction; and
2. The activities do not expand, widen, or deepen the previously authorized feature, and do 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.

(b) 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 in N.J.A.C. 7:7A-17, but shall not be subject to the application requirements in N.J.A.C. 7:7A-16;
2. The application for authorization shall be submitted to the Department by mail at the address set forth at N.J.A.C. 7:7A-1.4, and shall include the following:
   i. A completed application form as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4;
   ii. A copy of the permit, if any, authorizing the original construction of the stormwater management facility;
   iii. A copy of a USGS quad map for the site;
   iv. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:7A-17; and
   v. The appropriate application fee as set forth at N.J.A.C. 7:7A-18; and
3. 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.

7:7A-7.2 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. Permanent above-ground disturbance of wetlands, transition area, and/or State open waters is 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 section, 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 is no wider than 20 feet unless a wider area is required by law;
3. The trench into which the utility line is placed is 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, such as temporary construction clearing or temporary storage of dirt or equipment, is 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 are placed outside of wetlands, unless the Department's Municipal Finance and Construction Element determines under N.J.A.C. 7:22 and/or 7:14A-23 that there is no feasible alternative to placement in wetlands.

(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) 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 at N.J.A.C. 7:13;
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.

(d) 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.

(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 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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

7:7A-7.3 General permit 3—Discharge of return water

(a) General permit 3 authorizes the discharge of return water from an upland, contained, dredged material management area into State open waters, and placement of a pipe above ground for the discharge through freshwater wetlands and/or transition areas, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met.

(b) The dredging itself may also require other State and Federal permits.

7:7A-7.4 General permit 4—Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters that are undertaken by the Department or by a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, for the investigation, cleanup, removal, or remediation of hazardous substances as defined by or pursuant to the Department's rules governing hazardous substances at N.J.A.C. 7:1E, Appendix A or pollutants as defined by or pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The applicant demonstrates, or provides a certification from a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, that the area of freshwater wetlands, State open waters, and/or transition areas disturbed is the minimum necessary for compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C. This demonstration or certification shall include:

   i. An exploration of all feasible alternative remediation methods acceptable under N.J.A.C. 7:26E and 7:26C; and

   ii. The identification of any remediation methods that would result in less area of

freshwater wetlands, State open waters, and transition areas disturbance with an explanation for why these remediation methods were not chosen; and

2. The applicant provides mitigation, in accordance with N.J.A.C. 7:7A-11, for the total area of freshwater wetlands and/or State open waters disturbed, except that mitigation is not required to compensate for disturbance of wetlands or State open waters that have formed as a direct result of the remediation activities.

(b)The mitigation proposal required under (a)2 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-11 are met, is approved.

7:7A-7.5 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The Department determines that 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 applicant demonstrates that 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 (a)1 above, but the road shall be the minimum size possible.

(b) 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-11.

(c) The mitigation proposal required under (b) 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.

(d) 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.

7:7A-7.6 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The activities disturb no more than one acre of a freshwater wetland and/or State open water that is not a water of the United States; and
2. The activities disturb no more than one-half acre of a freshwater wetland and/or State open water that is a water of the United States. Mitigation shall be performed for all permanent loss and/or disturbance to wetlands and/or State open water that are waters of the United States in accordance with (b) below.
3. The activities do not take place in any of the following:
   i. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-3.2;
   ii. A State open water that is a special aquatic site;
   iii. USEPA priority wetlands; or
   iv. A State open water that is larger than one acre.

(b) 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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

7:7A-7.6A General permit 6A—Transition areas adjacent to non-tributary wetlands

(a) General permit 6A authorizes regulated activities in transition areas adjacent to freshwater wetlands, 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The activities disturb no more than one-half acre of a transition area.
   i. 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;

2. Activities do not take place in a transition area adjacent to the following:
   i. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-3.2; or
   ii. USEPA priority wetlands

7:7A-7.7 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 all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The ditch or swale is located in a headwater;
   i. 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.
2. The activities do not take place in the following:
   i. A ditch or swale that is, or is located within, an exceptional resource value wetland, as described at N.J.A.C. 7:7A-3.2; or
   ii. A ditch or swale that is, or is located within, a USEPA priority wetland.
3. The activities do not result in either of the following:
   i. The loss or substantial modification of more than one acre of freshwater wetlands; or
   ii. 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.

7:7A-7.8 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 all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The activities will not occur in State open waters;
2. The improvement or addition requires no more than a cumulative surface area of 750 square feet of fill and/or disturbance and will not result in new alterations to freshwater wetlands outside of the 750-square-foot area; and
3. The improvement or addition is located within 100 feet of the residential dwelling.

(b) 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:

1. 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
2. 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.

7:7A-7.9 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 rules at N.J.A.C. 16:54-1.3, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The cutting of vegetation **is** 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(a)1iii and 2ii;
2. The activities are 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;
3. Adverse environmental impacts are minimized as follows:
    i. 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;
    ii. The permittee shall leave all tree stumps, brush stumps, and root systems in place;
    iii. 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
    iv. 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.

(b) In addition to meeting all applicable application requirements at N.J.A.C. 7:7A-16, 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.

7:7A-7.10A 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 all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 and 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-7.10B(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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

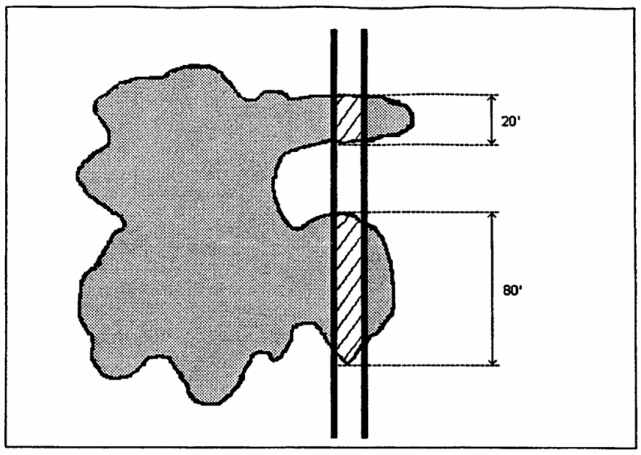


Figure 2
One Road Crossing That Crosses Two Fingers Of One Freshwater Wetland

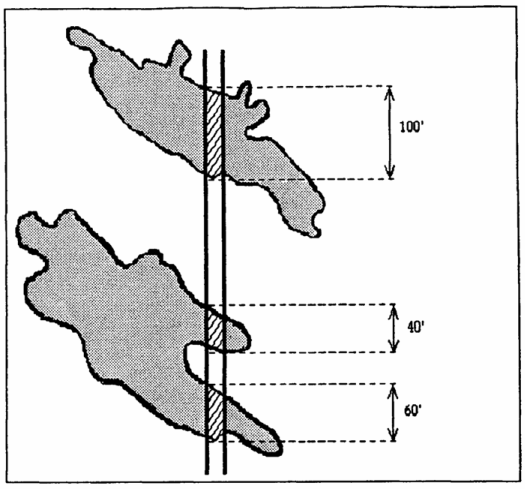


Figure 3
Two Road Crossings, Each Crossing A Different Freshwater Wetland

7:7A-7.10B 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 applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

7:7A-7.11 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 portable 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 (a)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 (a)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) The Department shall issue a general permit 11 authorization only if all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The activities 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 is 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 of rip-rap or other energy dissipating material placed is 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; and/or
   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;
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 wetland and/or transition area above the excavation shall be replanted, in accordance with applicable BMPs, with appropriate indigenous 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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

7:7A-7.12 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) The Department shall issue a general permit 12 authorization only if all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. Disturbance is the minimum necessary to obtain the desired information; and
2. If activities disturb soil, the soil is restored to its pre-existing elevation, retaining its original soil layers, unless the soil disturbance is six inches in diameter or smaller. This paragraph shall not apply if other permits that allow permanent impacts in the same location have been obtained.

7:7A-7.13 General permit 13—Lake dredging

(a) General permit 13 authorizes up to one acre of dredging in palustrine emergent freshwater wetlands necessary to restore or maintain a lake, pond, or reservoir to its original bottom contours provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. Dredging does not occur in wetlands that are not palustrine emergent wetlands;
2. If the lake, pond, or reservoir is to be lowered during dredging:
   i. The permittee obtains a lake lowering permit from the Department's Division of Fish and Wildlife;
   ii. Regulated activities do not begin until the lake, pond, or reservoir is lowered in accordance with the lake lowering permit; and
   iii. All regulated activities are discontinued before the lake, pond, or reservoir is refilled;
3. In order to minimize adverse impacts on fish and on the downstream environment:
   i. All necessary measures, including adjusting the timing of the dredging, are taken to prevent any detrimental effect to spawning of fish in the lake, pond, or reservoir or downstream; and
4. There is a continuous flow of sediment-free water to the area downstream of the lake, pond, or reservoir at all times during activities authorized under general permit 13.

(b) In accordance with N.J.A.C. 7:7A-2.2(b), if a dredging project meets all of 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) 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, provided:

1. Disturbance to wetlands, transition areas, and/or State open waters for access does not exceed one eighth of an acre, unless the applicant demonstrates in accordance with the standards at N.J.A.C. 7:7A-7.10B(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; and
2. Upon completion of dredging, all access disturbances are restored to their pre-existing elevation and condition.

(d) In addition to meeting all applicable application requirements at N.J.A.C. 7:7A-16, an 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 (d)2i above; and
   iii. An estimate of the percentage of that upstream drainage area that is covered by impervious surfaces.

(e) The Department shall not authorize activities under general permit 13 more frequently than once every five years for a particular lake, pond or reservoir.

(f) The permittee shall dispose of dredged material in accordance with the requirements at N.J.A.C. 7:7A-5.7, Conditions applicable to an authorization pursuant to a general permit-by-certification or a general permit. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated.

7:7A-7.14 General permit 14—Water monitoring devices

(a) General permit 14 authorizes the placement and use of water monitoring devices in freshwater wetlands, transition areas, and State open waters, provided the conditions at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The devices consist of one or more of the following:
   i. Water level recording devices;
   ii. Water quality monitoring and testing devices;
   iii. Small weirs or flumes for recording water quantity or velocity;
   iv. The drilling of monitoring wells; and
   v. Similar small scientific devices.
2. The devices will not significantly disrupt the movement of aquatic species native to the water body, or of species that normally migrate through the area.

(b) 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.

(c) 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.

7:7A-7.15 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 provided the conditions at N.J.A.C. 7:7A-5.7 and 20.3, as well as (b) through (g) below are met.

(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 PO 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-17. 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.

7:7A-7.16 General permit 16—Creation, restoration, and enhancement of habitat and water quality functions and values

(a) General permit 16 authorizes regulated activities in freshwater wetlands, transition areas, and State open waters necessary to implement a plan for the creation, restoration, or enhancement of habitat and water quality functions and values of wetlands. Activities authorized under this general permit include, but are not limited to:

1. Altering hydrology to restore, enhance, 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. Aquatic habitat enhancement devices or 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. Removing, planting, cutting, burning, or otherwise managing vegetation in order to

increase habitat diversity or control invasive flora.

(b) Creation, restoration, and enhancement activities are eligible for authorization under this general permit, provided the conditions at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The plan is:
   i. Approved by one of the following agencies:
      (1) The Department's Division of Fish and Wildlife;
      (2) The Department's Office of Natural Resource Restoration;
      (3) The USFWS;
      (4) The USDA Natural Resources Conservation Service;
      (5) A government resource protection agency, such as a parks commission; or
      (6) A charitable conservancy; or
   ii. Required by or approved by a government agency, such as the Department and/or USACE, under a mitigation plan.
      (1) Pursuant to N.J.A.C. 7:7A-11, a mitigation plan submitted to the Department to satisfy the requirements and/or conditions of a permit does not require the submittal of a separate application for an authorization or permit;
2. The project is consistent with the goals of the Freshwater Wetlands Protection Act;
3. The project will improve the values and functions of the ecosystem;
4. The project will have a reasonable likelihood of success;
5. The activities disturb the minimum amount of freshwater wetlands, transition areas, and/or State open waters necessary to successfully implement the project plan; and
6. The activities do 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 areas, conversion of State open waters to wetlands or transition areas, or the conversion of transition areas to freshwater wetlands or State open waters, if the Department determines that such conversion is environmentally beneficial.

(c) This general permit does not authorize an activity unless the sole purpose of the activity is habitat creation, restoration, 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, restoration, or enhancement. Similarly, general permit 16 does not authorize a flood control project that may also result in creation, restoration, or enhancement of some wildlife habitat.

(d) An application for authorization under general permit 16 does not require an application fee under N.J.A.C. 7:7A-18.

(e) 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.

(f) 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-2.4(c), those activities do not lose their exempt status merely by virtue of being part of a project authorized under general permit 16.

7:7A-7.17 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met. 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-18.

7:7A-7.17A 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, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met. 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, incorporated herein by reference, as amended and supplemented. It is available at https://www.transportation.org.

(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.

7:7A-7.18 General permit 18—Dam repair

(a) General permit 18 authorizes activities in freshwater wetlands, transition areas, and State open water 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 10 years prior to submittal of the general permit application, but the applicant documents that public funding was actively sought for repairs during the 10 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 shall meet all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 and 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 Bureau of Dam Safety;
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 at N.J.A.C. 7:13;
    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;
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 in accordance with the requirements at N.J.A.C. 7:7A-12 covering the lake bottom area. The conservation restriction 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 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 expires, the Department's jurisdiction under this chapter shall be based on existing conditions on the site.

7:7A-7.19 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 applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 and 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, 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 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.

7:7A-7.20 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. General permit 20 does not authorize the channelization of a stream or the stabilization of the bottom of the stream. Bank stabilization projects are eligible for authorization under this general permit provided the applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. Vegetative or bioengineering stabilization methods are used to stabilize the eroded bank, 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;
2. The total cumulative length of water body bank affected by the bank stabilization activities meets the applicable length limit below in this paragraph. 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:
    i. For bank stabilization activities involving the placement of rip-rap, no more than 150 feet of stream bank;
    ii. For the following bank stabilization activities, no more than 300 feet of stream bank:
        (1) 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

(2) Soil bioengineering systems not included in (a)2ii(1) 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 (a)2ii(1) 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

iii. For bank stabilization activities that meet the following criteria, no more than 500 feet of stream bank:

(1) The activities are funded by the Department's Bureau of Environmental Analysis, Restoration, and Standards; and

(2) The stream bank is not located in an area that has a threatened or endangered species associated with its wetlands; and

iv. 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.

3. The bank stabilization activities described in (a)2 above may be used in combination. For example, a bank stabilization project might involve 100 feet of rip-rap authorized under (a)2i above, 300 feet of soil bioengineering authorized under (a)2ii above, and 400 feet of vegetative planting measures authorized under (a)2iv above; and

4. Environmental impacts are minimized as follows:

i. Activities under general permit 20 shall not impair surface water flow into or out of any wetland area;

ii. 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;

iii. 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;

iv. 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;

v. 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

vi. 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.

7:7A-7.21 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:

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, necessary for access during construction.

(b) Activities under general permit 21 shall comply with the applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 and the following limits:

1. Temporary disturbance of freshwater wetlands, transition areas, and/or State open waters during construction shall be no more than 60 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 shall be no greater than 0.5 acre and no wider than 20 feet, unless the applicant demonstrates that a wider disturbance is necessary to comply with applicable laws or regulations. For the purposes of this paragraph, installation of a utility line in scrub shrub or emergent wetlands shall not be considered permanent disturbance.

(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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

7:7A-7.22 General permit 22—Expansion of cranberry growing operations in the Pinelands

(a) General permit 22 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 22 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 CFR Part 929).

(b) Activities authorized under general permit 22 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 22 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 22 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 22, 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 22, 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 22 per year to a single cranberry growing operation.

(g) The Department shall not issue an authorization under general permit 22 for activities that wll 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 22, 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 10 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year;
2. No more than 10 acres of forested freshwater wetlands shall be lost and/or disturbed over the five-year term of general permit 22; 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 22 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 22 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 22;
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 22 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 22 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 (l)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 22, 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 22;
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 22 shall:

1. Follow, to the maximum extent practicable, the management practices recommended by the Rutgers Philip E. Marucci Center for Blueberry and Cranberry Research and Extension;
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 220 Davidson Avenue 4th Floor, 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 22 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 22. 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 (that is, discretion) to modify, suspend, or revoke general permit 22 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 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 22 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 22 would have more than minimal individual or cumulative adverse effects on the environment, the Commissioner shall either modify the general permit 22 authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by general permit 22 and provide instructions on how to seek authorization under an individual permit. The Commissioner shall restore authorization under general permit 22 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 22 shall be submitted within 90 days after the general permit becomes operative under (u) below. Within 180 days after general permit

22 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 22 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-19.2 first.

(u) General permit 22 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 MOA 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 MOA 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 22 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.

7:7A-7.23 General permit 23—Spring developments

(a) General permit 23 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 23 include the installation of a collecting trench, a cutoff wall, crushed rock, perforated tubing, and/or a spring box. General permit 23 does not authorize diversion or use of water for irrigation, or for any purpose other than watering livestock. The activities authorized under general permit 23 constitute soil and water conservation practices that are exempt in transition areas under N.J.A.C. 7:7A-2.4(c)1.

(b) Activities under general permit 23 shall disturb no more than one quarter acre of freshwater wetlands and/or State open waters. Activities under general permit 23 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 23 only if all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

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;
3. The activity is located in a farmed wetland that is eligible for a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.; and
4. Any portion of a spring development from which livestock will drink, such as a watering trough or tub, is located outside of wetlands and State open waters.

7:7A-7.24 General permit 24—Malfunctioning individual subsurface sewage disposal (septic) systems

(a) General permit 24 authorizes activities in freshwater wetlands and transition areas necessary for the repair or modification of a malfunctioning individual subsurface sewage disposal system. General permit 24 does not authorize activities in State open waters.

(b) For the purpose of general permit 24:

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) Activities are authorized under general permit 24, provided the applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The activities do not disturb more than one-quarter acre of freshwater wetlands and/or transition areas and shall be located on the same property where the malfunctioning system is located;
2. The repair or modification is not 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; and
3. The repair or modification of the system is 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.

(d) Activities under general permit 24 are not subject to the application contents requirements at N.J.A.C. 7:7A-16, but are subject to the public notice requirements at N.J.A.C. 7:7A-17. There is no application fee for an authorization under general permit 24. Instead, an applicant for authorization under general permit 24 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, including a change from disuse or abandonment to any type of 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.

7:7A-7.25 General permit 25— Minor channel or stream cleaning for local government agencies

(a) General permit 25 authorizes a county, municipality, or a designated agency thereof to conduct activities in freshwater wetlands and transition areas within their jurisdiction, necessary to desnag a channel or stream and/or remove accumulated sediment, debris, and garbage, which are obstructing flow in a channel or stream, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. The project's sole purpose is to remove obstructions to flow, or to desnag a channel or stream;
2. The project is necessary and in the public interest;
3. The project consists solely of either:
   i. The removal of accumulated silt, sediment, debris, and/or garbage from a channel or stream with a natural bed and does not alter the natural bed or banks of the channel; or
   ii. The removal of any accumulated material from a channel or stream previously lined with concrete or similar artificial material;
4. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the channel or stream;
5. The use of heavy equipment in the channel is avoided; and
6. If the project involves sediment removal from a channel with a natural bed, the following requirements are satisfied:
   i. If the project is undertaken by a municipality, or a designated agency thereof, it is located wholly within that municipality;

ii. If the project is undertaken by a county, or designated agency thereof, the project is located wholly within one municipality or, if located within more than one municipality, the channel reach is less than 500 feet in length;

iii. The average width of the channel or stream bed does not exceed 30 feet;

iv. 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

v. The stream is not located in an area that has a threatened or endangered species associated with its wetlands.

(b) In accordance with N.J.A.C. 7:7A-2.2(b), if the project meets all the following criteria, Department approval under this chapter is not required:

1. The project disturbs State open waters only, and does not disturb wetlands located in the channel or stream;
2. The project does not disturb wetlands or transition areas adjacent to the channel or stream; 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 within a channel for an access road, or involves temporary placement of dredged material in the channel prior to removal of the dredged material, the project would be regulated and would require Department approval.

(c) All materials, including dredged material, removed from a channel or stream during activities authorized under general permit 25 shall be placed 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 it is demonstrated that this would cause more environmental harm than placement of the material in these areas. For example, if removal of dredged material requires construction of a long temporary road through wetlands with a very high water table to enable trucks to transport the dredged material offsite, this may cause more environmental harm than spreading the dredged material thinly over a large area.

(d) This general permit does not authorize activities that alter the natural banks of the stream. Such modification may in some cases be authorized under general permit 20. This general permit does not authorize the straightening or realignment of a channel. Straightening or realignment constitutes channel modification and requires an individual permit pursuant to N.J.A.C. 7:7A-9.

(e) An application for authorization under general permit 25 is not subject to the application requirements in N.J.A.C. 7:7A-16, but is subject to the public notice requirements at N.J.A.C. 7:7A-17. An application for authorization under general permit 25 shall be submitted to the Department by mail at the address set forth at N.J.A.C. 7:7A-1.4, and shall include the following:

1. A completed application form as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4;
2. Two sets of plans prepared by an engineer, which clearly depict the segments of channel or stream to be cleaned and the limit of wetlands and/or transition areas to be impacted;

3. The location of the affected portion of the channel, including the county, municipality, and the block(s) and lot(s);
4. One copy of a USGS quad map showing the affected portion of the channel or stream;
5. 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, and the wetlands and/or transition areas to be impacted by the activities;
6. The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, of the affected portion of the channel or stream;
7. A description of the nature of the project and the methods that will be used;
8. A description of the proposed methods that will be used to remove material from the channel or stream and the location where the dredged material will be placed;
9. The appropriate application fee as set forth at N.J.A.C. 7:7A-18;
10. Documentation that the public notice requirements of N.J.A.C. 7:7A-17 have been met; and
11. A certification signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District, which lists each requirement in (a) and (c) above that applies to the project, and states how the requirement has been or will be satisfied.

(f) Within 15 calendar days after completion of a project under general permit 25 that involves the removal of sediment, the permittee shall submit to the Department:

1. A written notice that the project has been completed; and
2. A certification, signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District that lists each requirement in (a) and (c) above that applies to the project, and states how the requirement has been satisfied.

7:7A-7.26 General permit 26—Redevelopment of previously disturbed areas

(a) General permit 26 authorizes the disturbance of certain degraded freshwater wetlands, transition areas, and/or State open waters necessary for redevelopment of an area previously significantly disturbed by industrial or commercial activities, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

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; or

iv. It has been identified as an area of redevelopment by the municipality and formally designated as such by the New Jersey Department of Community Affairs in accordance with N.J.S.A. 40A:12A-6;

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**;**
5. The activities disturb no more than one acre of a freshwater wetlands and/or State open water, which is a not a water of the United States;
6. The activities disturb no more than one acre of a transition area; and
7. The activities disturb no more than one-half acre of a freshwater wetland and/or State open water, which is a water of the United States.

(b) 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-11 and shall be submitted to the Department for review and approval no later than 90-calendar days prior to the initiation of regulated activities authorized by this general permit.

(c) A disturbance authorized under general permit 26 does not count toward the one acre of disturbance allowed under multiple general permits under N.J.A.C. 7:7A-5.4(a)2.

7:7A-7.27 General permit 27 – application of herbicide within freshwater wetlands and transition areas to control invasive plant species

(a) General permit 27 authorizes the application of herbicide within freshwater wetlands and transition areas to control invasive plant species, provided:

1. The area to which the herbicide is applied shall not exceed a total area of one acre on a site; and
2. The activities are conducted pursuant to an aquatic use permit issued by the Department's Bureau of Licensing and Pesticide Operations.

SUBCHAPTER 8. TRANSITION AREA WAIVERS

7:7A-8.1 General provisions for transition area waivers

(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-8.2;
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-8.3;
3. A hardship transition area waiver, addressed at N.J.A.C. 7:7A-8.4;
4. 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-7 that covers transition area disturbances. All general permits except for general permits 1, 6, 7, and 23 authorize activities in transition areas; and
5. 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 and the disturbance authorized under this waiver is not counted in calculating the amount of disturbance under the permit or mitigation proposal. 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 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 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) If necessary, the Department shall include in a transition area waiver additional conditions 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-3.3. Such conditions may 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;

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;
3. The modified transition area shall be permanently marked, in a manner determined appropriate by the Department, so as to clearly delineate its boundary and to prevent people from disturbing the transition area and/or wetland. Examples of appropriate markers include permanent fencing, concrete monuments, and boulders.
    i. In determining the appropriate type of marker, the Department will consider such factors as the type of project proposed, wildlife that may be present, and the likelihood for people to disturb the transition area and/or wetland. For example, it may be necessary to mark the boundary of a modified transition area associated with a single-family home or duplex with permanent fencing because in many of these situations the modified transition area is directly adjacent to back yards and, therefore, the likelihood of homeowners disturbing the transition area is great. However, it may be appropriate to identify a modified transition area associated with a commercial or industrial development with concrete monuments because the likelihood of people disturbing the modified transition area is usually less around these types of developments;
    ii. If the Department determines that it is appropriate to delineate the boundary of the modified transition area with monuments, boulders, or similar markers, the number of markers and spacing between markers shall be determined by the Department and shall be that necessary to clearly identify the modified transition area, taking into consideration the size of the modified transition area to be delineated;
4. The permittee shall execute and record a conservation restriction, in accordance with the procedures at N.J.A.C. 7:7A-12, which prohibits any regulated activities in the remaining transition area as appropriate.

(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 applicant is not eligible for a waiver under this subsection if the applicant took action that rendered its application ineligible for any of the transition area waivers listed in (a) above. 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) Transition area waivers may be conditioned on the recording of a Department-approved conservation restriction in accordance with the requirements at N.J.A.C. 7:7A-12, restricting future activities in the remaining transition area.

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 a conservation restriction 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 a conservation restriction 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-12;
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 a conservation restriction 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-12;
3. If the permittee does not properly record a required conservation restriction, 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-13 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-8.1(a)5, a transition area averaging plan waiver in accordance with N.J.A.C. 7:7A-8.2, a special activity waiver for linear development in accordance with N.J.A.C. 7:7A-8.3(e), and a special activity waiver for redevelopment in accordance with N.J.A.C. 7:7A-8.3(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.

(i) With the exception of a transition area waiver for access approved in accordance with (a)5 above or a transition area waiver meeting the requirements for an individual permit at N.J.A.C. 7:7A-8.3(g), a transition area waiver shall not be approved to allow encroachment within 75 feet of an exceptional resource value wetland.

7:7A-8.2 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.

(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-3.3. 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-3.3, and shall not issue a transition area averaging plan waiver, unless the applicant demonstrates otherwise under N.J.A.C. 7:7A-8.1(d):

1. The portion of the existing, pre-activity transition area that will be reduced has a slope greater than 25 percent;
    i. The percent slope 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.
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-8.1(d):

1. A structure, impervious surface, or stormwater management facility 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;
   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;
   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; or
   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;
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-8.1(c). 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 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 than the characteristics of the reduced portion of the transition area in regards to the transition area's ability to serve the functions listed at N.J.A.C. 7:7A-3.3. For example, if a forested portion of the transition area is reduced, the expanded portion of the transition area must also be forested.

(f) All transition area averaging plan waivers shall be conditioned on the recording of a Department-approved conservation restriction in accordance with the requirements at N.J.A.C. 7:7A-12 restricting future activities in the averaging compensation area.

7:7A-8.3 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 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 five feet off the ground;
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 that meets the requirements at N.J.A.C. 7:7A-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-10.2 and 10.3, and mitigation in accordance with N.J.A.C. 7:7A-11.

7:7A-8.4 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 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-13, 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-13, to alleviate the hardship; and
9. The form letter offer 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 area 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.

7:7A-8.5 Duration of a transition area waiver

A transition area waiver is valid for five years from the date of issuance, and may be extended one time for five years pursuant to N.J.A.C. 7:7A-20.4.

SUBCHAPTER 9. INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

7:7A-9.1 Requirement to obtain an individual permit

A person shall obtain an individual permit under this subchapter in order to undertake any activity that does not meet the requirements of an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7A-6, an authorization under a general permit pursuant to N.J.A.C. 7:7A-7, or a transition area waiver pursuant to N.J.A.C. 7:7A-8.

7:7A-9.2 Duration of an individual permit

(a) An individual permit for any regulated activity is valid for five years from the date of issuance, and may be extended one time for five years pursuant to N.J.A.C. 7:7A-20.4.

(b) All regulated activities authorized by an individual permit shall immediately cease if the permit, including any extension thereof pursuant to N.J.A.C. 7:7A-20.4, expires. If a person intends to commence or continue regulated activities that had been authorized under an individual permit that has expired, the person shall obtain a new individual permit under this chapter authorizing the regulated activities.

1. If no regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised, where necessary, to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review.
2. If any regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised, where feasible, to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original individual permit, and whether continuing construction as approved under the original individual permit would have an adverse impact on the environment.

7:7A-9.3 Conditions applicable to an individual permit

(a) A person conducting regulated activities pursuant to an individual permit shall comply with:

1. The conditions set forth in the individual permit itself; and
2. The conditions that apply to all permits at N.J.A.C. 7:7A-20.2.

(b) In addition to the conditions that apply to every individual permit under (a) above, the Department shall establish conditions in accordance with N.J.A.C. 7:7A-20.3 in a specific individual permit, as required on a case-by-case basis, to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

SUBCHAPTER 10. REQUIREMENTS FOR ALL INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

7:7A-10.1 General provisions for individual permits

(a) A regulated activity or project subject to an individual permit shall meet the applicable requirements below:

1. Requirements for all individual permits at N.J.A.C. 7:7A-10.2;
2. For a non-water dependent activity, the requirements at N.J.A.C. 7:7A-10.3, except if the activity disturbs only State open waters that are not special aquatic sites; and
3. For a non-water dependent activity in an exceptional resource value wetland or trout production water, the requirements at N.J.A.C. 7:7A-10.4.

(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 https://www.nj.gov/pinelands.

7:7A-10.2 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 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-10.3.

(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;
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 that 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 effect. 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-19.5(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. 5:85;

    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-3.3 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-2.7, 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 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.

7:7A-10.3 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-10.2, a non-water dependent activity in a freshwater wetland or special aquatic site shall meet the requirements of this section. If an activity is water-dependent, 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-10.4 are met.

7:7A-10.4 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 11. MITIGATION

7:7A-11.1 Definitions

In addition to the terms defined at N.J.A.C. 7:7A-1.3, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"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 from a mitigation bank, as that term is defined at N.J.A.C. 7:7A-1.3, as a substitute for performance of restoration, creation, enhancement, or upland preservation by a permittee. Each credit counts for a certain acreage amount of mitigation type. Once a credit is applied to satisfy a mitigation obligation under this subchapter, it is exhausted and may not be sold or used again.

"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.

"Fee simple" means absolute ownership in land, unencumbered by any other interest or estate.

"In-kind mitigation" means mitigation that provides similar or higher 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.

"In-lieu fee program" or "ILF Program" means a program approved by the Department and the USEPA that involves the restoration, creation, enhancement, and/or preservation of wetland and State open water habitats through funds paid to a government or non-profit entity to satisfy compensatory mitigation requirements. An in-lieu fee mitigation program sells compensatory mitigation credits to permittees whose obligation to provide mitigation is transferred to the in-lieu fee mitigation program.

"In-lieu fee program instrument" or "ILF Instrument" means the legal document for the establishment, operation, and use of an in-lieu fee mitigation program.

"Land donation" means performing mitigation through giving land that has been determined acceptable for donation by the Wetlands Mitigation Council.

"Mitigation area" means the portion of a site 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-11.12(c).

"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 corrective actions and responsibilities;
12. Financial assurances;

13. Compensation ratios; and
14. Provisions for long-term management and maintenance.

"Mitigation bank site" means the portion of a site, or piece of property, upon which a mitigation bank is proposed or developed.

"Monetary contribution" or "monetary contribution to the in-lieu fee program" means giving money to the Wetlands Mitigation Council.

"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 wetlands and/or State open water but is no longer; or
2. The reversal of a temporary disturbance and the reestablishment of the functions and values of the wetlands and/or State open water that was temporarily disturbed.

"Service area" means the geographic area within which impacts can be mitigated at a specific mitigation bank.

"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 and the execution of legal instruments to prevent development, such as a conservation restriction.

"Watershed Management Area" means an aggregation of HUC 11s 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 viewed on the internet at https://www.nj.gov/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."

7:7A-11.2 General mitigation requirements

(a) Mitigation shall be in-kind and shall fully compensate for any ecological loss. The Department will consider proposals for out-of-kind mitigation, provided the mitigator demonstrates to the Department that the mitigation meets the goals and objectives of this subchapter and would result in equal ecological functions and values as compared to the ecological functions and values of the resource(s) prior to loss or impact. In order to demonstrate equal ecological functions and values, the mitigator shall provide current scientific

literature concerning wetlands, aquatic resources, and mitigation; as well as survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the existing and proposed soil conditions, type and density of vegetation, any existing contamination or other degradation, sediment and pollution removal ability and flood storage capacity of the wetland resources, all proposed soil erosion protection measures, and existing, as well as any anticipated, wildlife habitat conditions. The documentation shall also detail how the mitigation proposal will replace the ecological values of the wetland resource lost or disturbed.

(b) Mitigation proposals may be submitted as part of a permit application for concurrent review. The determination as to whether a permit application should be approved shall be independent of the analysis of proposed mitigation for compliance with this subchapter. Where a mitigation proposal is not submitted as part of a permit application for an otherwise approvable project and this chapter requires mitigation for wetland, State open water, and/or transition area impacts proposed, the Department shall place a condition upon any permit issued requiring submission and Department approval of a mitigation proposal prior to the commencement of any regulated activities under the permit.

(c) A mitigator shall carry out the full acreage amount of mitigation required under this subchapter, unless the mitigator demonstrates, through use of productivity models or other similar studies, that a smaller mitigation area will result in replacement wetland resources of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a mitigation ratio of less than 1:1. The mitigator shall demonstrate equal ecological value in accordance with (a) above.

(d) Mitigation for an individual permit is not required in cases where the Department determines that environmental impacts to the freshwater resources are *de minimis* and where the applicant demonstrates avoidance and minimization of impacts.

(e) When mitigation is required in order to compensate for impacts to a freshwater wetland, State open water, and/or transition areas resulting from regulated activities, the Department shall authorize any regulated activities required to undertake and complete the mitigation through:

1. An authorization under a general permit;
2. A freshwater wetlands individual permit;
3. An open water fill individual permit;
4. A special activity transition area waiver at N.J.A.C. 7:7A-8.3(g);
5. Approval of a mitigation proposal submitted to comply with a condition of a permit;
6. An enforcement document specifying mitigation requirements; or
7. Approval of a mitigation proposal submitted to comply with the requirements of an enforcement document.

(f) To be approved under this subchapter, mitigation must have a high probability of long-term success which, at a minimum, requires the following:

1. Adequate financial and other resources dedicated to the project;
2. A project design that takes advantage of and works within the existing conditions in the proposed mitigation area to the extent possible;
3. Hydrology in and around the mitigation area 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. Soils in the mitigation area must be adequate to support wetland conditions; and
5. Assignment of responsibility for long-term maintenance of the mitigation area to an entity that has adequate resources to ensure maintenance as required by this subchapter.

(g) Mitigation shall not commence until the Department has approved a mitigation proposal through one of the approvals listed at (e) above. In addition, for mitigation through a monetary contribution to the in-lieu fee mitigation program or a land donation, the amount of money or the particular parcel of land must also be approved by the Wetlands Mitigation Council.

(h) Mitigation approved under this subchapter may also require additional State or Federal permits or approvals, such as a flood hazard area permit or a coastal permit from the Department or an approval from the USACE. Mitigation shall not commence until all necessary permits or approvals are obtained.

(i) If the Department requires mitigation as part of a remedy for a violation under this chapter, the Department shall determine the amount of mitigation necessary and the particular alternative required in consideration of the extent (area) and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a remedy for a violation shall provide for mitigation that is at least as ecologically valuable as mitigation that would otherwise be required under this chapter under a permit. The Department may require a greater amount of mitigation than that required under a permit where necessary to provide at least equal ecological value due to the duration of time that the freshwater resource(s) was impaired as a result of the particular regulated activities undertaken in violation of this chapter.

(j) A mitigation area shall be permanently protected from future development by a conservation restriction in accordance with N.J.A.C. 7:7A-12.

(k) Mitigation may consist of one or more mitigation alternatives set forth under this subchapter.

(l) Mitigation for multiple disturbances by a single permittee may, upon Department approval, be aggregated into a single mitigation project. Such an aggregated mitigation project shall not be used as mitigation for disturbances by any person other than the permittee, unless the permittee obtains approval of the project as a mitigation bank under this subchapter.

(m) Mitigation provided to satisfy a mitigation requirement of a Federal or local law or another State law shall not substitute for, or otherwise satisfy, any mitigation requirement under this chapter unless the mitigation project also meets the requirements of this subchapter. For example, a mitigation project proposed to meet a mitigation requirement of the Coastal Zone Management Rules at N.J.A.C. 7:7 shall satisfy a mitigation requirement imposed under this

chapter only if the proposed mitigation project meets the requirements of this subchapter.

(n) If the mitigator encounters a possible historic property that is or may be eligible for listing in the New Jersey or National Register, the mitigator shall preserve the resource, immediately notify the Department, and proceed as directed by the Department.

(o) Specific requirements for each type of mitigation project are located as follows:

1. Mitigation for temporary disturbance at N.J.A.C. 7:7A-11.8;
2. Requirements for wetland restoration, creation, or enhancement at N.J.A.C. 7:7A-11.12;
3. Requirements for upland preservation at N.J.A.C. 7:7A-11.13;
4. Requirements for credit purchase from an approved mitigation bank at N.J.A.C. 7:7A-11.14;
5. Requirements for land donation at N.J.A.C. 7:7A-11.15;
6. Requirements for a monetary contribution to the ILF Program at N.J.A.C. 7:7A-11.16; and
7. Requirements for mitigation for transition area impacts (N.J.A.C. 7:7A-8.3(g)) at N.J.A.C. 7:7A-11.11.

7:7A-11.3 Timing of mitigation

(a) Mitigation shall be performed within the applicable time period below:

1. Except for restoration of a temporary disturbance under (a)2 below, mitigation required under a general permit authorization, individual permit, or special activity transition area waiver shall be performed prior to or concurrently with the regulated activity that causes the disturbance;
2. Mitigation for any temporary disturbance shall commence immediately upon completion of the regulated activity that caused the disturbance and shall continue until completion, which shall not exceed six months after the cessation of the regulated activities that caused the disturbance; and
3. Mitigation required as part of an enforcement action shall be performed in accordance with the schedule set forth in the enforcement document.

(b) All mitigation shall be continued until completion according to the schedule in the approved mitigation proposal.

(c) 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.

(d) 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.

7:7A-11.4 Property suitable for mitigation

(a) The Department shall approve mitigation only on property that is owned in fee simple and under legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of this chapter.

(b) Any offsite mitigation shall be carried out on private property, except that a government agency 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.

(c) The following shall not constitute mitigation under this subchapter:

1. The installation of a new public facility, or improvement to an existing public facility, that is intended for human use, such as a ball field, nature trail, or boardwalk; or
2. A stormwater management facility, such as a basin.

(d) 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.

(e) The Department shall not approve creation, restoration, or enhancement in an area that the Department has determined is currently of high ecological value, for example if the area contains a mature, well developed, ecologically desirable natural community; or a forested habitat.

(f) The Department shall not approve creation, restoration, or enhancement in an area that the Department has determined is a significant cultural or historic resource, as identified in

accordance with N.J.A.C. 7:7A-19.5.

(g) 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.

(h) The Department shall not approve mitigation that would:

1. Destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; or
2. In any way jeopardize the continued existence of any local population of a threatened or endangered species.

(i) The Department shall not approve mitigation in an area where the proposed mitigation poses an ecological risk. For purposes of this section, ecological risk means that the mitigation may result in the reintroduction of contamination to ecological communities, the exposure of humans to contamination, or the contamination of the mitigation site by subsequent exposure to new areas of contamination requiring remediation. The mitigator shall properly characterize and assess the mitigation area in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9 to determine ecological risk.

1. If the Department determines based on the characterization and assessment that the mitigation activities at the proposed site do not pose an ecological risk, the Department shall complete its review of the proposed mitigation site to determine whether the proposed mitigation satisfies the requirements of this subchapter.
2. If the Department determines based on the characterization and assessment that the proposed mitigation activities at the proposed site do pose an ecological risk, the mitigator shall not be permitted to use the site for mitigation unless the mitigator remediates the site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8, 5.1, and 5.2. The Department shall allow the mitigator to proceed with the mitigation project only after it demonstrates that the remediation and/or mitigation activities will fully address the ecological risk and that the proposed mitigation satisfies the requirements of this subchapter.

(j) Properties where a substantial amount of soil must be removed in order to achieve suitable wetland hydrology are not acceptable mitigation sites**.**

7:7A-11.5 Conceptual review of a mitigation area

(a) This section sets forth the requirements for the conceptual review of potential mitigation areas except for mitigation bank sites. The requirements for conceptual review of a mitigation bank site are set forth at N.J.A.C. 7:7A-11.26(a) and (b).

(b) The Department encourages applicants to obtain the conceptual review of any land being considered as a potential mitigation area, prior to purchase of land for mitigation purposes and/or submittal of a mitigation proposal.

(c) To obtain conceptual review of a mitigation area, the applicant shall submit a written request to the address set forth at N.J.A.C. 7:7A-1.4, including:

1. A brief description of the area and the mitigation project being considered;
2. A map showing the location and extent of the prospective mitigation area, including topography if available;
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. Consent from the owner of the prospective mitigation area allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the mitigation area.

(d) The Department's guidance on a proposed mitigation area is not binding and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has authorized, or will authorize, any mitigation activities at the proposed mitigation area, or issue any other approval.

7:7A-11.6 Basic requirements for mitigation proposals

(a) A mitigation proposal required under this chapter shall be submitted at least 90 calendar days prior to the commencement of regulated activities authorized by a permit.

(b) A mitigation proposal to remedy a violation under this chapter shall be submitted by the deadline set forth in the Department's enforcement document.

(c) A mitigation proposal shall include all information necessary for the Department to determine if the requirements of this subchapter are met.

(d) The applicant shall provide notification in accordance with N.J.A.C. 7:7A-17 for all mitigation proposals to be carried out at a location that is not the location of the permit activity that include creation, enhancement, or restoration (except restoration for a temporary disturbance).

(e) The information required to be submitted in a mitigation proposal for restoration, creation, and/or enhancement, uplands preservation, and land donation is set forth in the appropriate mitigation proposal checklist, available from the Department's website at the address set forth at N.J.A.C. 7:7A-1.4 and described at (h) and (i) below.

(f) The information required to be submitted in a mitigation proposal for a monetary contribution to the Department's ILF Program in accordance with N.J.A.C. 7:7A-11.16 is set forth in the appropriate monetary contribution checklist, available from the Department's website at the address set forth at N.J.A.C. 7:7A-1.4. The checklists require the following information:

1. A copy of the permit (if issued) authorizing the impact(s) being mitigated; and
2. A demonstration that the contribution amount addresses the factors specified at N.J.A.C. 7:7A-11.16.

(g) A mitigation proposal for the purchase of bank credits shall consist of a description of the type and quantity of wetland resource disturbance for which mitigation is being proposed, a copy of the permit (if issued) authorizing the disturbance being mitigated, and identification of the mitigation bank from which appropriate credits will be purchased.

(h) The mitigation proposal checklists identified at (e) above require the following information:

1. Basic information regarding the applicant, the specific impacts for which the mitigation is intended to compensate, and a copy of the permit (if issued) or enforcement document that 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-11.9 or 11.10, 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 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 in accordance with N.J.A.C. 7:7A-16.2(j);
8. Consent from the owner of the proposed mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area;
9. The following material necessary to explain and illustrate the existing and proposed conditions at the mitigation site:
    i. Visual materials, such as maps, site plans, planting plans, surveys, topography, diagrams, delineations, and/or photographs;
    ii. A narrative describing the existing conditions and proposed mitigation, as well as supporting soil or vegetation samples; and

iii. A preventive maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented;

10. A specific breakdown of each resource for which mitigation is being proposed (for example, 0.01 acres of forested wetlands or 0.4 acres of scrub shrub wetlands) and the type and quantity of proposed mitigation for each resource;
11. Information and/or certifications regarding the presence or absence of endangered and/or threatened wildlife and plant species habitat, or other features on the proposed mitigation area that are relevant to determining compliance with this chapter.
12. A certification that the proposed mitigation will not adversely affect historic resources that are listed or are eligible for listing on the New Jersey or National Register of Historic Places;
13. 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;
14. Information regarding relevant features of other properties in the vicinity of the mitigation area, such as whether nearby properties are publicly owned, or contain preserved open space or significant natural resources;
15. 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;
16. Cost estimates to perform the mitigation and maintain the mitigation area after construction and/or transfer is completed;
17. A preliminary characterization and assessment of the site in accordance with N.J.A.C. 7:7A-11.4(h) to enable the Department to determine if contamination is present and if the proposed mitigation activities pose an ecological risk;
18. A description of post-construction activities, including schedules for monitoring, maintenance, and reporting; and
19. Contingency measures that will be followed if the mitigation project fails or shows indications of failing.

(i) In addition to the information required by the mitigation proposal checklist as set forth at (h) above, a proposal to create, restore, or enhance wetlands shall also include a projected water budget for the proposed mitigation site. The water budget shall:

1. Detail the sources of water for the mitigation project, as well as the water losses;
2. Document that an ample supply of water is available to create, enhance, or restore wetland conditions, as applicable;
3. Contain sufficient data to show that the mitigation project will, indefinitely into the future, have sustained wetland hydrology; and
4. Include the following regional information for the proposed and existing site conditions:

i. The tidal range (low, high, and spring high tide) over the course of a month (where applicable);

ii. The elevation of the existing reference wetland system in the vicinity of the project site;

iii. The salinity range of adjacent waters (where applicable); and

iv. A detailed discussion relating to the created substrate of the proposed mitigation site.

7:7A-11.7 Department review and approval of a mitigation proposal

(a) The Department shall, within 30 calendar days of receipt of a mitigation proposal submitted to comply with a condition of a permit, review the proposal for completeness in accordance with N.J.A.C. 7:7A-11.6, and:

1. Request any necessary additional information; or
2. Declare the mitigation proposal complete for further review.

(b) If a mitigation proposal is intended to compensate for a major discharge the Department shall consult with the 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.

7:7A-11.8 Mitigation for a temporary disturbance

(a) Mitigation for a temporary disturbance 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 N.J.A.C. 7:7A-11.12(c), as applicable.

7:7A-11.9 Mitigation hierarchy 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. However, if a smaller disturbance is a temporary disturbance, it is governed by N.J.A.C. 7:7A-11.8.

(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 the purchase of in-kind credits from a mitigation bank with a service area that includes the site of the disturbance in accordance with N.J.A.C. 7:7A-11.14, or, if that is not feasible, then either through onsite restoration, creation, or enhancement or offsite restoration, creation, or enhancement within the same watershed management area as the disturbance. In determining the feasibility of onsite or offsite mitigation for a smaller disturbance the Department shall consider the following factors regarding the proposed mitigation area:

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;
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;
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; and
5. Availability of parcels for offsite mitigation that meet the requirements of (f) below.

(d) If mitigation as described at (c) above is not feasible, mitigation shall be in the form of one or more of the following, as determined in consultation with the Department:

1. Monetary contribution to the ILF Program in accordance with N.J.A.C. 7:7A-11.16; and/or
2. Upland preservation in accordance with N.J.A.C. 7:7A-11.13.

(e) If mitigation as described at (d) above is not feasible, mitigation shall be in the form of a land donation in accordance with N.J.A.C. 7:7A-11.15.

(f) In order to demonstrate that offsite mitigation under (c) above is not feasible, an applicant shall provide to the Department a list of at least six sites within the same watershed management area to accommodate the required mitigation. With respect to each site on the list, the applicant shall explain why:

1. The site is not located at a practical elevation suitable for wetlands;
2. The site lacks an adequate water supply;
3. The site is not available for purchase; and
4. The site does not meet the requirements of N.J.A.C. 7:7A-11.4(i) regarding ecological risk.

7:7A-11.10 Mitigation hierarchy 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. However, if a larger disturbance is a temporary disturbance it is governed by N.J.A.C. 7:7A-11.8.

(b) A larger disturbance is a disturbance not listed at N.J.A.C. 7:7A-11.9(b).

(c) Mitigation for a larger disturbance shall be performed through restoration, creation, or enhancement onsite or, if that is not feasible, then offsite in the same watershed management area as the disturbance or through the purchase of credits from a mitigation bank with a service area that includes the area of disturbance. In determining the feasibility of onsite or offsite mitigation for a larger disturbance, the Department shall consider the following factors regarding the proposed mitigation area:

1. Size. Generally, the larger a mitigation area is, 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;
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;
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; and
5. Availability of parcels for offsite mitigation that meet the requirements of (f) below.

(d) If mitigation as described at (c) above is not feasible, mitigation shall be required in the form of one or more of the following, as determined in consultation with the Department:

1. A monetary contribution to the Department's ILF Program in accordance with N.J.A.C. 7:7A-11.16; or
2. Upland preservation, in accordance with N.J.A.C. 7:7A-11.13.

(e) If mitigation as described at (d) above is not feasible, mitigation shall be in the form of a land donation approved by the Wetland Mitigation Council in accordance with N.J.A.C. 7:7A-11.15.

(f) In order to demonstrate that offsite mitigation under (c) above is not feasible, an applicant shall provide to the Department a list of at least six sites within the same watershed management area to accommodate the required mitigation. With respect to each site on the list, the applicant shall explain why:

1. The site is not located at a practical elevation suitable for wetlands;
2. The site lacks an adequate water supply;
3. The site is not available for purchase; and
4. The site does not meet the requirements of N.J.A.C. 7:7A-11.4(i) regarding ecological risk.

7:7A-11.11 Mitigation for transition area impacts in accordance with N.J.A.C. 7:7A-8.3(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-8.3(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:

1. The purchase of credits from a mitigation bank with a service area that includes the area of disturbance; or
2. Offsite restoration or enhancement in the same watershed management area as the disturbance.

(c) If transition area mitigation is not feasible under (b) above, mitigation shall be performed through:

1. A monetary contribution to the Department's ILF Program in accordance with N.J.A.C. 7:7A-11.16;
2. Upland preservation, in accordance with N.J.A.C. 7:7A-11.13; or
3. A land donation approved by the Wetland Mitigation Council in accordance with N.J.A.C. 7:7A-11.15.

7:7A-11.12 Requirements for restoration, creation, or enhancement

(a) This section sets forth the requirements that apply to a creation, restoration, or enhancement mitigation project.

(b) If creation or restoration is the mitigation alternative, wetlands shall be created or restored at a creation or restoration to lost or disturbed ratio of 2:1, unless the applicant demonstrates in accordance with (b)1 below that creation or restoration at a ratio of less than 2:1 will provide equal ecological functions and values. The mitigation project shall be designed to include a

wetlands transition area pursuant to (c) below. The wetlands transition area shall not be counted in the acreage of mitigation provided by the wetlands creation or restoration.

1. A mitigator may create or restore wetlands at a ratio of less than 2:1 if the mitigator demonstrates through the use of productivity models or other similar studies that restoring or creating a lesser area of wetlands will result in replacement wetlands of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions; flood storage capacity; soil erosion and sediment control functions; and wildlife habitat conditions and detail how the mitigation proposal will replace the ecological values of the wetlands lost or disturbed.

(c) 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 determined as follows:

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-11.8(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 (c)1 or 2 above, the transition area shall be 50 feet wide.

(d) If enhancement is the mitigation alternative, the Department shall determine, on a case-by-case basis, the amount of enhancement required to ensure that the mitigation results in wetlands of equal or better functions and values to those lost.

(e) Within 60 calendar days after construction of a creation, restoration, or enhancement wetlands mitigation project is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different timeframe for the submittal of the construction completion report if it determines that doing so would better facilitate 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 (including species, size, and densities), and any structures included in the approved mitigation proposal;
2. Photographs of the completed mitigation; and
3. An explanation for any deviation from the approved mitigation proposal.

(f) In addition to the construction completion report required under (e) above, the mitigator shall submit a post-construction monitoring report to the Department each year for five years after completion of construction, unless a different timeframe for submittal is specified in the

approved mitigation proposal. The Department may modify the frequency and/or duration of required reporting if it determines that such modification is necessary to ensure the success of the mitigation. Post-construction monitoring shall begin the first full growing season after the mitigation project is completed.

(g) The post-construction monitoring reports required under (f) above shall be submitted to the Department by December 31 of each reporting year, and shall include:

1. An executive summary;
2. The requirements and goals of the approved mitigation proposal;
3. A detailed explanation of the ways in which the mitigation has or has not achieved progress toward the goals of the approved mitigation proposal. If mitigation has not achieved anticipated progress, the report shall also include a list of corrective actions to be implemented and a timeframe for completion;
4. Information required by the wetlands mitigation monitoring project checklist available from the Department at the address set forth at N.J.A.C. 7:7A-1.4. For a wetlands mitigation project, the checklist requires the following information:
    i. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;
    ii. Photographs of the mitigation site with a location map indicating the location and direction of each photograph;
    iii. An assessment of the success of the planted vegetation; a separate assessment of the species that are naturally colonizing the mitigation site; and an overall assessment of plant coverage including documentation concerning invasive or noxious plant species and the percent coverage of these species on the site;
    iv. An assessment of the hydrology of the mitigation site including, where appropriate, monitoring well data, stream gauge data, relevant tidal data, photographs, and field observation notes collected throughout the monitoring period;
    v. A field delineation of the wetlands at the wetlands mitigation project site, based on techniques specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published in 1989 by the USEPA, USACE, USFWS, and U.S. Department of Agriculture's Conservation Services, incorporated herein by reference, available at https://digitalmedia.fws.gov/digital/collection/document/id/1341; and
    vi. A plan showing the flagged wetlands delineation and global positioning system data points.

(h) The standards by which the wetlands mitigation project shall be determined to be successful are set forth at (h)1 through 5 below. The mitigator shall submit a post-construction monitoring report as required at (g) above demonstrating that these standards have been met. The standards are:

1. The goals of the approved mitigation proposal (including the required transition area)

have been achieved;

2. The mitigation site is a wetland, as documented through monitoring well data, stream gauge data, relevant tidal data (when appropriate), photographs, and field observation notes collected throughout the monitoring period;
3. The wetland community comprised of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation proposal and permit conditions has been achieved, or, if not yet achieved, all site indicators suggest that the site is on a positive trajectory to meeting the desired wetland plant community;
4. The mitigation provided meets all applicable requirements of this subchapter; and
5. The mitigator has executed and recorded a conservation restriction for the mitigation area that meets the requirements of N.J.A.C. 7:7A-12.

(i) If a mitigation project does not meet the success criteria in (h) above, the Department, in consultation with the permittee, shall determine the appropriate corrective action(s) that the mitigator shall implement. Corrective action may include regrading or replanting the mitigation site, relocation of the mitigation project to another, more suitable site, and/or extending the monitoring period as necessary to ensure success of the mitigation.

(j) If the mitigator makes the demonstrations required for a restoration, creation, or enhancement project at (h) above, the Department shall issue a declaration that the mitigation is successful.

7:7A-11.13 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 watershed management area 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;
   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 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-11.2(a). 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-3.3, plus an additional area at least 150 feet wide, measured from the outer edge of the transition area.

(d) The Department shall declare mitigation through upland preservation successful upon:

1. Demonstration that any required conservation restriction has been recorded in accordance with N.J.A.C. 7:7A-12;
2. Documentation that the property has been transferred in fee simple to a government agency or Department approved charitable conservancy; and
3. Documentation that a maintenance fund for maintenance and supervision of the mitigation area has been transferred to the governmental agency or charitable conservancy. The amount of the maintenance fund shall be determined by agreement between the mitigator and the agency or conservancy.

7:7A-11.14 Requirements for credit purchase from an approved mitigation bank

(a) If the Department determines that credit purchase is the appropriate mitigation alternative, the Department shall evaluate the values and functions lost as a result of the impacts and determine the number of credits required to ensure that the mitigation results in wetlands, State open waters, or transition areas of equal functions and values to those lost.

(b) The mitigator shall prepare and execute all documents necessary to ensure that the credits have been purchased from a Department-approved mitigation bank with available credits.

(c) The Department shall determine mitigation through credit purchase successful upon receipt of documentation from the permittee that the credit purchase was made as required. Documentation shall include a written certification from the mitigation bank operator, indicating the number of credits purchased and the Department permit number.

7:7A-11.15 Requirements for a land donation

(a) If the Department determines that a 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.

(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.

(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 municipality 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 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;
    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.

(e) 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 transferred in fee simple to a government agency or a Department approved charitable conservancy and that the transfer has been recorded with each county in which the preserved land is located;
3. The mitigator has provided 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
4. The required conservation restriction has been recorded in accordance with N.J.A.C. 7:7A-12.

7:7A-11.16 Requirements for a monetary contribution to the Department's in-lieu fee program

(a) This subchapter includes the requirements for a monetary contribution to the Department's ILF Program, described at N.J.A.C. 7:7A-11.23, to compensate for wetland impacts in accordance with the State of New Jersey In-Lieu Fee Mitigation Program Instrument (ILF Instrument) made and entered into by and among the Department, the USEPA, and the Wetlands Mitigation Council.

(b) For mitigation through a monetary contribution to the ILF Program, the mitigator shall first obtain the Department's authorization to use monetary contribution as the mitigation alternative. After the Department determines that monetary contribution is the appropriate mitigation alternative, the mitigator shall either:

1. For an individual permit, obtain approval from the Wetlands Mitigation Council for the amount of the monetary contribution; or
2. For a general permit, calculate the amount of the monetary contribution in accordance with (e) below.

(c) The Wetlands Mitigation Council shall approve the amount of a monetary contribution for an individual permit only if the contribution is equal to the lesser of the following:

1. The cost of buying and 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.

(d) In determining the costs at (c)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.

(e) 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-7:

1. For single-family property owners, the acreage of wetlands/State open water impacts multiplied by $45,000, adjusted in accordance with (f) below, using the Consumer Price Index for Urban Consumers 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 $355,700, adjusted in accordance with (f) below using the Consumer Price Index for Urban Consumers as published by the United States Department of Labor.

(f) When the Department determines, based on an annual review of the Consumer Price Index for Urban Consumers as published by the United States Department of Labor under (e)1 or 2 above, that the singular or cumulative Consumer Price Index adjustment(s) results in a change of $500.00 or more above the currently codified figure, the Department shall publish a notice of administrative change announcing the adjustment and the amount of the adjusted monetary contribution in the New Jersey Register.

(g) The Department shall declare mitigation through a monetary contribution to the ILF Program 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;
   ii. The monetary contribution has been completed in accordance with the ILF Instrument and the Council resolution approving the contribution, all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal; and
   iii. The ILF Program Administrator has received the payment in full; or
2. For a monetary contribution for a general permit:
   i. The amount has been properly calculated in accordance with (e) above; and
   ii. The ILF Program Administrator has received the payment in full.

7:7A-11.17 Financial assurance for mitigation projects; general provisions

(a) Financial assurance in accordance with this section is required for mitigation projects involving restoration, creation, or enhancement activities as mitigation for impacts to wetlands, State open waters, and transition areas. Financial assurance is not required for a mitigation proposal or mitigation bank proposal submitted by a government agency or an entity that is exempt from the requirement to provide financial assurance under Federal law.

(b) The person responsible for conducting mitigation identified at (b)1 or 2 below shall establish and maintain financial assurance in accordance with this section:

1. Where mitigation is required pursuant to a permit, the permittee or mitigation bank sponsor of a mitigation project or mitigation bank; or
2. Where mitigation is required as part of the remedy for a violation, the person designated to provide mitigation in the enforcement document.

(c) The person identified at (b) above shall establish and maintain financial assurance in the amount specified at (f) below, until the Department determines that the mitigation site or mitigation bank has satisfied the applicable performance standards, permit conditions, enforcement document, or settlement agreement.

(d) Financial assurance shall comprise one or more of the instruments identified at (d)1 through 5 below. A template for each of the types of financial assurance identified at (d)1 through 4 is available from the Department at the address set forth at N.J.A.C. 7:7A-1.4.

1. A fully funded trust fund, in accordance with N.J.A.C. 7:7A-11.18;
2. A line of credit, in accordance with N.J.A.C. 7:7A-11.19;
3. A letter of credit, in accordance with N.J.A.C. 7:7A-11.20;
4. A surety bond, in accordance with N.J.A.C. 7:7A-11.21; and/or
5. Other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the Department to meet the requirements of this section.

(e) Financial assurance that meets the requirements of this section shall be provided at least 30 calendar days prior to undertaking mitigation activities approved under a permit or mitigation banking instrument, or as required under an enforcement document or settlement.

(f) The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and shall include the following:

1. Construction costs, equal to 115 percent of the estimated cost of completing the creation, restoration, or enhancement; and
2. Maintenance costs, equal to 115 percent of the estimated cost of monitoring and maintaining the site, including the cost to replant the mitigation area.

(g) The Department shall review the financial assurance annually and adjust the amount as necessary to reflect current economic factors.

(h) The Department shall require additional financial assurance if additional construction and/or monitoring is required to ensure success of the mitigation project.

(i) The portion of the financial assurance required under (f)1 above shall be released upon the Department's determination that the construction (including grading, hydrologic modifications, and planting) of the mitigation project or bank has been successfully completed in accordance with the approved mitigation proposal.

(j) The portion of the financial assurance required under (f)2 above shall be released when the Department determines that the mitigation project or bank is successful pursuant to N.J.A.C. 7:7A-11.12(h) or 11.25(j) (for a mitigation bank) as applicable.
(k) If the Department determines that the person responsible for conducting mitigation and providing financial assurance as specified at (b) above has failed to perform a mitigation project or bank as required by a permit, mitigation banking instrument, enforcement document, or settlement agreement, the Department shall:

1. Provide written notice of this determination to the person; and
2. Require that the mitigation project or bank be brought into conformance with the permit, mitigation banking instrument, enforcement document or settlement agreement within 30 calendar days after receipt of the notice, unless the timeframe for compliance is extended in writing by the Department.

(l) No sooner than 30 days from the date the person required to establish the financial assurance receives the notice under (k) above, the Department may, at its discretion, perform the mitigation project or bank by drawing on the funds available in the financial assurance.

7:7A-11.18 Financial assurance; fully funded trust fund requirements

(a) A person who chooses to establish a fully funded trust fund as financial assurance pursuant to this subchapter shall submit to the Department the original fully funded trust fund agreement. The trust fund agreement shall:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;
2. Include any applicable Department file number and the name, street address, lot and block numbers, municipality, and county of the mitigation site;
3. Specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the Department;
4. Specify that the trustee may only disburse funds with the Department's written approval;
5. Specify that funds shall be utilized solely for the purposes of conducting the mitigation project or mitigation bank as approved by the Department;
6. Specify that the Department may access the fully funded trust fund to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:7A-11.17(l); and
7. Identify the Department as the sole beneficiary of the fully funded trust fund.

(b) Any person responsible for conducting a mitigation project or bank that uses a fully funded trust fund to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the trustee confirming the value of the trust in the amount that the Department has approved, and confirming that the trust shall continue for the next consecutive 12-month period.

7:7A-11.19 Financial assurance; line of credit requirements

(a) A person who chooses to establish a line of credit agreement as financial assurance pursuant to this subchapter shall submit to the Department the original line of credit. The line of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey or by a Federally regulated bank;
2. Include any applicable Department file number, and the name, street address, lot and block numbers, municipality, and county of the mitigation site;
3. Specify that the line of credit shall be issued for a period of one year and shall be automatically extended thereafter for a period of at least one year;
4. Specify that, if the issuer of the line of credit decides not to extend the line of credit beyond the then-current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt;
5. Specify that the lender shall disburse only those funds that the Department approves in writing;
6. Specify that the funds in the line of credit shall be utilized solely for the purposes of conducting the mitigation project or bank; and
7. Specify that the Department may access the line of credit to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:7A-11.17(l).

(b) A person responsible for conducting a mitigation project or bank who uses a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

7:7A-11.20 Financial assurance; letter of credit requirements

(a) A person who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds pursuant to this subchapter shall submit to the Department the original letter of credit. The letter of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey or by a Federally regulated bank;
2. Include any applicable Department file number, and the name, street address, lot and block numbers, municipality, and county of the mitigation site;
3. Specify that the letter of credit is irrevocable and issued for a period of at least one year and that it will be automatically extended thereafter for a period of at least one year;
4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then-current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
5. Specify that the Department may access the letter of credit to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:7A-11.17(l).

7:7A-11.21 Financial assurance; surety bond requirements

(a) A person who chooses to provide a surety bond as a financial assurance to guarantee the availability of funds pursuant to this subchapter shall complete and submit to the Department the original surety bond. The surety bond shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey or is listed as acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury;
2. Include any applicable Department file number, and the name, street address, lot and block numbers, municipality, and county of the mitigation site;
3. Specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then-current expiration date, the issuer shall notify the person using the surety bond and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
4. Specify that the Department may access the surety bond to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:7A-11.17(l).

7:7A-11.22 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; and

3. Managing the Department's ILF Program in accordance with the ILF Instrument and N.J.A.C. 7:7A-11.23 and 11.24. As the ILF Program Administrator, the Council is responsible for:
   i. Accepting approved monetary contributions to the Wetlands Mitigation Fund;
   ii. Disbursing funds from the Wetlands Mitigation Fund to finance the following activities:
      (1) Buying land in order to conduct mitigation, or to preserve wetlands, transition areas, uplands, and/or State open waters;
      (2) Enhancing or restoring wetlands on public lands; and
      (3) Conducting research to monitor the success of mitigation as part of a Council-funded and approved creation, restoration, or enhancement project.
   iii. Requesting proposals for ILF grant applications;
   iv. Reviewing grant applications and managing grant contracts; and
   v. Establishing and maintaining Accounting Reports for the ILF Program that meet the requirements set forth in the ILF Instrument and 40 CFR 230.98(i)(3).

(b) If the Council transfers funds or land, the Council shall first execute and record a conservation restriction that meets all applicable requirements at N.J.A.C. 7:7A-12, and that ensures that the funds or land will be used only for mitigation and freshwater wetlands conservation.

(c) 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.

(d) ILF grant funding procedures, including how to apply for a grant, are found at N.J.A.C. 7:7A-11.24.

(e) 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 set forth at N.J.A.C. 7:7-1.4.

7:7A-11.23 New Jersey In-Lieu Fee Mitigation Program

(a) The Department's ILF Program provides a third-party compensatory mitigation option for unavoidable impacts to wetland resources and enforcement actions approved by the Department.

(b) The ILF Program will be used for all activities and program management related to the selection, design, acquisition, implementation, monitoring, management, and long-term protection of ILF Program projects.

(c) The ILF Program Instrument sets forth guidelines and responsibilities for the establishment, use, operation, protection, monitoring, and maintenance of the ILF Program to ensure that work

associated with the ILF Program produces the necessary compensatory mitigation credits to compensate for unavoidable impacts to wetland resources. The ILF Program Instrument is intended to ensure New Jersey's Wetland Mitigation Fund complies with EPA's 2008 regulations governing in-lieu fee programs (40 CFR 230.98). The Council will sell credits to satisfy compensatory mitigation requirements only if all of the terms of the ILF Program Instrument are satisfied.

(d) The Council shall receive 10 percent of each monetary contribution when contributions are deposited into the ILF Program account. This administrative fee will be used for reasonable overhead and related costs of administering the ILF Program.

(e) The Council shall disperse mitigation fund dollars in accordance with the ILF Program Instrument for ILF projects within primary and secondary service areas of the State.

(f) The Council is authorized to sell credits to provide compensatory mitigation for impacts authorized by the Department within each service area, provided:

1. The Council collects the monetary contributions in accordance with the ILF Instrument; and
2. In the event that a project funded by the Council fails to result in mitigation, and the Council fails to timely fund an alternative mitigation project, the Council deducts the outstanding mitigation obligations from its pool of available credits.

(g) The Department will only consider the Council to be a feasible alternative for mitigation if the Council maintains a minimum balance of 10 credits and the Department is satisfied the Council is accurately accounting for its mitigation obligations.

(h) If the Council does not perform in accordance with the ILF Instrument, or this subchapter, the Department will reevaluate whether using the Council is a feasible means of ensuring mitigation.

(i) If the Department determines that Council is no longer a feasible alternative for mitigation, the Department shall ensure that all outstanding wetland mitigation obligations are met in accordance with this subchapter.

7:7A-11.24 New Jersey In-Lieu Fee Mitigation Program grant funding procedures

(a) The Program Administrator shall publish, on the Department's website, a request for grant proposals for the water regions in which funding is available in the Wetland Mitigation Fund in accordance with the ILF Program Instrument.

(b) To be eligible for funding, interested applicants must submit a conceptual ILF grant proposal in response to the request for proposals. A conceptual proposal shall be prepared in accordance with the ILF Program Instrument and shall:

1. Identify the location of the project (including service area, county, and municipality);
2. Identify the amount of wetlands to be preserved, enhanced, created, or restored;

3. Identify the amount of money requested for the project;
4. Include a detailed explanation of the proposed budget;
5. Identify the amount of proposed credits to be generated; and
6. Include a summary of the proposal.

(c) If the Council determines that a conceptual proposal is eligible to be submitted as a full proposal, the full proposal shall be submitted within 90 days after conceptual approval and shall include:

1. The information required in the appropriate restoration, creation, and/or enhancement mitigation proposal checklist, available from the Department's website at the address set forth at N.J.A.C. 7:7A-1.4, and described at N.J.A.C. 7:7A-11.6(i); and
2. The following information prepared in accordance with the ILF Program Instrument:
   i. A cover page that identifies the title of the project, location of the project including lot and block numbers, municipality, county, and watershed management area, applicant's name, address, phone number, and e-mail, funding amount requested, and project cost;
   ii. A scope of work that includes background information, goals, objective, and approach, and project partners;
   iii. A project implementation schedule;
   iv. Detailed budget narratives justifying all proposed expenses; and
   v. An appendix that includes any prior permits or Letters of Interpretation issued for the property; maps, aerial photographs, photographs, plans, or drawings of the proposed project, a map of known contaminated sites, and a landscape map for the project area.

(d) Prior to the Council and the grantee entering into a contract, the Council shall send all approved proposals to the USEPA for review and consultation as follows:

1. The grantee must address any comments or concerns raised by the USEPA; and
2. The USEPA shall have 15 business days to review the proposed project. The USEPA may or may not issue comments on the project. If no response is received by the Council from the USEPA, the Council will assume that the USEPA has no objections to the project and will proceed with the contracting process.

(e) Each approved project shall have a project contract agreement. The grantee and the Council shall be held to the terms and the conditions of the contract.

(f) At any point during the contract, if the grantee fails to perform in accordance with the proposal, the contract, or the permit, the Council can take the steps necessary to terminate the contract and return any unused money back to the Wetland Mitigation Fund to be reallocated to another wetland mitigation project.

7:7A-11.25 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 approval in accordance with N.J.A.C. 7:7A-11.26.

(b) If the establishment of a mitigation bank involves regulated activities as described at N.J.A.C. 7:7A-2.2 or 2.3, the bank operator shall obtain all necessary approvals from the Department prior to undertaking 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. Construction of the wetland creation, enhancement, and restoration components of an approved mitigation bank shall be initiated no later than one year after the date of the first credit transaction.

(d) The Department shall determine how many mitigation credits each mitigation bank operator may receive or sell, based on the increase in 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 considering the following:

1. The functions and values provided by the bank site at the time the mitigation bank proposal is submitted, such as 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/or State open waters on the proposed bank site;
5. The potential for the completed mitigation site to be a valuable component of the 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 a mitigation bank a

schedule, as set forth at (e)1 through 8 below, under which a bank operator may sell credits. The Department shall adjust the amount of credits that can be released under (e)2 through 8 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, including securing all construction permits, posting adequate and effective financial assurance in accordance with N.J.A.C. 7:7A-11.17, and filing of the conservation restriction;
2. Up to 10 percent of the credits shall be released upon successful establishment of the approved hydrologic regime, such that this regime will persist 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 10 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 10 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 a two-year period;
6. 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; and
7. 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 four consecutive years; and
8. The remaining 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) Preservation credits may be released in their entirety when the conditions set forth at (e)1 above have been met.

(g) The mitigation bank operator shall execute and record a conservation restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction shall meet the requirements of N.J.A.C. 7:7A-12.

(h) 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 frequently if required by the banking instrument approving the bank.

(i) If the mitigation 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 corrective 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 corrective action, in order to reflect the change in values and functions that will result from the changes to the bank.

(j) Upon completion of the monitoring period and all other requirements in the banking instrument approving the bank, the Department shall determine the mitigation bank is successful, provided the mitigation bank operator:

1. Demonstrates that the bank is successful, as set forth within the banking instrument and the permit;
2. Transfers the mitigation bank site in fee simple to a government agency or Department-approved charitable conservancy;
3. Provides 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 proper 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 laws. 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. Ensures that the transfer, and the conservation restriction required under (g) above, are recorded with the county or other appropriate agency.

(k) If the Department determines that the mitigation bank operator is in default of any provision of the mitigation banking instrument, 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 less than the number of credits already sold, the Department may assert its rights to the financial assurance provided under N.J.A.C. 7:7A-11.17(k) and (l).

7:7A-11.26 Application for a mitigation bank

(a) A prospective mitigation bank operator may obtain conceptual review of a proposed mitigation bank before buying land or preparing a detailed mitigation bank proposal. In a conceptual review, Department staff will discuss the apparent strengths and weaknesses of the proposed mitigation bank. Guidance provided through a conceptual review is not binding on the Department and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has or will authorize any mitigation activities at the proposed mitigation area or issue any other approval.

(b) 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 the presence of historic or archaeological resources in accordance with N.J.A.C. 7:7A-19.5 or the potential of mitigation activities to pose an ecological risk as defined in N.J.A.C. 7:7A-11.4(h).
    i. If available, the applicant shall provide a copy of the characterization and other information required at N.J.A.C. 7:7A-11.4(h) to determine ecological risk;
3. The proposed mitigation alternative(s) being considered, such as 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 current owner(s) of the mitigation bank site, and any prospective owner(s), as of the date the request for conceptual review is submitted; and
7. Consent from the owner of the proposed mitigation bank site, allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

(c) To obtain Department approval of a proposed mitigation bank, an applicant shall submit the information required by the wetlands mitigation bank proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:7A-1.4. The checklist shall require a draft mitigation banking instrument that includes the following:

1. A letter of interpretation covering the entire proposed mitigation bank site, issued by the Department under N.J.A.C. 7:7A-4;
2. A functional assessment of the bank site prior to construction and proposed site conditions after construction;
3. The goals and objectives of the bank;
4. Ownership of the bank site including disclosure of any leases, easements, or other encumbrances;
5. The size of the bank site, as well as type and amount of the resources for which credits from the bank could serve as suitable compensation;
6. A description of baseline conditions on the bank site, including all relevant natural features and parameters, as well as pollutants, contamination, and other factors that could affect the bank's ability to provide mitigation credits;
7. For a bank proposal that includes creation, restoration, and/or enhancement of wetlands or waters, a projected water budget prepared in accordance with N.J.A.C. 7:7A-11.6(i);

8. The proposed service area within which the mitigation bank credits can be used to compensate for a disturbance. The service area shall be designated to give priority to mitigation for impacts in the same watershed management area(s) as the proposed bank;
9. Method for determining credits and debits;
10. Accounting procedures;
11. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:7A-11.25(e);
12. Performance standards to enable the Department to determine if and when the mitigation bank is successful;
13. Reporting protocols and a monitoring plan;
14. Contingency and corrective actions that will be taken by the mitigation bank operator in case the bank fails;
15. Financial assurances meeting the requirements of N.J.A.C. 7:7A-11.17;
16. Provisions for long-term management and maintenance of the mitigation bank site;
17. Site plans, cost estimates and schedules for construction, completion, and transfer of the mitigation bank;
18. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction, financial assurance, property transfer, and/or agreement with a charitable conservancy to maintain the site;
19. Identification of the persons who will construct, operate, and maintain the mitigation bank and mitigation bank site; and
20. Documentation that public notice of the proposed mitigation bank was provided in accordance with N.J.A.C. 7:7A-17.

(d) The Department's approval of a mitigation bank shall incorporate conditions necessary to ensure that the requirements of this subchapter are met.

SUBCHAPTER 12. CONSERVATION RESTRICTIONS

7:7A-12.1 Conservation restriction form and recording requirements

(a) Any conservation restriction required under this chapter shall conform with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., and shall:

1. Run with the land and be binding, in perpetuity, upon:
    i. For mitigation areas, the land owner and successors in interest to any interest in the land or any part of the land covered by the mitigation area; and

ii. For conservation restrictions required under this chapter that do not include a mitigation area, the land owner and successors in interest to any interest in the land or in any part thereof;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq., in the chain of title for all properties affected by the restriction; and

3. Be in the form and include such terms as specified and approved by the Department. 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. Form conservation restrictions are available from the Department's website at the address set forth at N.J.A.C. 7:7A-1.4; and

4. 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, include a historic preservation restriction or easement with all of the attendant rights, restrictions, prohibitions, and limitations associated therewith.

(b) The conservation restriction shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the regulated activity, project, project site, or mitigation area is located, and proof that the conservation restriction has been recorded shall be provided to the Department as follows:

1. For a permit that authorizes the establishment of a mitigation bank, prior to the release of any credits;

2. For any other permit for which a conservation restriction is required, prior to the sooner of either:

   i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or

   ii. The date that is 90 calendar days after the issuance of the permit or approval of the mitigation plan, if a mitigation plan is submitted pursuant to a condition of the permit in accordance with N.J.A.C. 7:7A-11.2(e).

(c) Proof that the conservation restriction has been recorded under (b) above shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the Department within 180 days of the issuance of the permit or approval of the mitigation plan, if a mitigation plan is submitted pursuant to a condition of the permit.

(d) The conservation restriction shall include a requirement that each owner of any interest in the land subject to the conservation restriction shall:

1. Notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted; and

2. 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 any possessory interest in the land subject to the conservation restriction.

(e) Any conservation restriction shall be enforceable by the Department. The Department may also direct that the conservation restriction be made enforceable by a government agency or by a charitable conservancy whose trustees have no other ownership interest in the land.

(f) If the mitigation area is donated land or a mitigation bank that requires approval by the Wetland Mitigation Council, the conservation restriction shall be approved by both the Department and the Wetland Mitigation Council.

7:7A-12.2 Property owners' reservation of rights

(a) Except for a conservation restriction associated with a mitigation site, the property owner or grantor may request approval from the Department to undertake a *de minimis* modification of the area subject to a conservation restriction recorded in accordance with this subchapter. The Department shall approve the modification in writing, if it determines that the modification will result in an equivalent level of protection of the regulated resource or the modification will result in an equivalent area of resource protection and will not compromise the original protected resource.

(b) The property owner or grantor may reserve the right to abandon the project. At any time prior to the start of any site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, the property owner or grantor may inform the Department in writing that it is abandoning the project and request that the Department void the permit. Upon confirmation that no site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, has occurred, the Department shall provide to the permittee or grantor an executed release of the conservation restriction, which the permittee or grantor may then record.

SUBCHAPTER 13. RECONSIDERATION BY DEPARTMENT OF ITS ACTION OR INACTION CONCERNING A PERMIT

7:7A-13.1 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. Any of the following requirements are 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;
    ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification or denial of an individual freshwater wetlands permit would constitute a taking of property, and the Department initiates the reconsideration; or
    iii. The issuance, modification, or denial of an individual freshwater wetlands permit is for a single-family home or duplex and the Department initiates the reconsideration prior to the filing of a takings complaint.

(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-19.5;

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;

v. The existence of, or likelihood of obtaining, services to the property such as sewers or electricity; and

vi. Land uses on adjacent properties and in the area where the property is located;

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-3.2, 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-19.5, 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 a result of the reconsideration of the application of a rule(s) in this chapter 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 this section shall include the following items:

1. A completed application form, as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4, indicating a request for reconsideration and the type of permit being requested;
2. Unconditional written consent from the owner of the site for Department representatives to enter the site to conduct site inspections;
3. Documentation in accordance with N.J.A.C. 7:7A-17.5 that public notice of the request was provided in accordance with the requirements at N.J.A.C. 7:7A-17. The public notice shall follow the form provided by the Department, and shall state that a request for reconsideration has been submitted to the Department, that the request can be reviewed at the municipal clerk's office or at the Department, and that comments may be submitted to the Department within 15 calendar days of receipt of the notice. 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 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 and nature, as well as the 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 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, including easements as shown on the tax duplicate, 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 calendar 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. The list of property owners certified by the municipality shall be no more than one year old;
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 would 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. Site plans 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-19.5, 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-11, 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 if the property owner contested the permit decision; 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 and iii, 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-17; 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 publication of the 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 calendar 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 calendar 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.

(n) The property owner or any other person with a particularized property interest who is aggrieved by the Department's determination on a reconsideration of the Department's action or inaction concerning a permit may request an adjudicatory hearing on the reconsideration determination pursuant to the procedures set forth at N.J.A.C. 7:7A-21.1.

SUBCHAPTER 14. EMERGENCY AUTHORIZATIONS

7:7A-14.1 Standards for issuance of an emergency authorization

(a) The Department shall issue an emergency authorization only if the person seeking such authorization demonstrates that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and the threat, severe loss, or degradation:

1. Can only be prevented or ameliorated through undertaking a regulated activity; and
2. Is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a permit for the preventive or ameliorative activity.

7:7A-14.2 Procedure to request an emergency authorization

(a) A person requesting an emergency authorization shall provide the Department with the following information by telephone and, in addition, by fax, electronic mail, or letter, unless the nature of the emergency is so immediate that only telephone notice is feasible:

1. The name, address, and contact information for the owner(s) of the property upon which the regulated activity will be conducted and for the owner(s) of any other properties affected by the proposed regulated activity;
2. A demonstration that the property owner(s) has given permission for the proposed

regulated activity or, in the case of a public entity proposing activities on private property through power of eminent domain, a written statement of the public entity's intention to conduct the regulated activity;

3. The street address, lot and block numbers, municipality, and county of the property upon which the regulated activity is proposed;
4. The nature and cause of the threat to life, severe loss of property, or environmental degradation, including the condition of existing structures, the vulnerability of people and/or property, and the threat to the environment;
5. The date and time at which the person requesting the emergency authorization learned of the threat to life, severe loss of property, or environmental degradation;
6. The nature and extent of the proposed regulated activity;
7. The proposed start and completion dates for the proposed regulated activity;
8. Photographs of the area where the regulated activity will be conducted;
9. If possible, a site plan showing the proposed regulated activity and anticipated impacts of the proposed activity to freshwater wetlands, State open waters, and/or transition areas; and
10. Any other information necessary for the Department to ensure compliance with the requirements of this chapter.

(b) A person requesting an emergency authorization need not comply with the public notice requirements at N.J.A.C. 7:7A-17 or submit an application fee. However, public notice and an application fee are required, as applicable, for the application for the permit, that, as required at N.J.A.C. 7:7A-14.3(f), must be submitted for the activities conducted under the emergency authorization.

(c) 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 https://www.nj.gov/pinelands.

7:7A-14.3 Issuance of emergency authorization; conditions

(a) The Department shall issue or deny an emergency authorization within 15 calendar days after receiving a request that meets the requirements of N.J.A.C. 7:7A-14.2. The Director of the Division of Land Use Regulation, or the Director's designee, shall provide this decision to the person who requested the emergency authorization verbally and, if the decision is to issue the emergency authorization, shall provide written confirmation within five working days thereafter.

(b) Notice of the issuance of the emergency permit shall be published and public comments received, in accordance with the provisions of 40 CFR 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.

(c) The Department's written confirmation of its decision to issue the emergency authorization shall include:

1. A full description of the activities authorized under the emergency authorization;
2. The timeframes within which the regulated activities authorized under the emergency authorization must be commenced and conducted as set forth in (e) below;
3. A requirement that the person conducting the regulated activities authorized under the emergency authorization provide regular updates of progress at the site;
4. Any limits or other criteria necessary to ensure compliance to the maximum extent practicable with all requirements of this chapter; and
5. A requirement to provide mitigation for impacts to wetlands, State open waters, and transition areas in accordance with N.J.A.C. 7:7A-11, as appropriate.

(d) If the Department receives a request for an emergency authorization 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.

(e) The regulated activities authorized under the emergency authorization shall be commenced and conducted within the following timeframes:

1. Activities authorized under the emergency authorization shall be commenced within 30 calendar days after the Department's verbal decision is provided pursuant to (a) above, unless the Department establishes a different timeframe in accordance with (g) below. If the emergency activities are not commenced within 30 calendar days or by the date established under (g) below, as applicable, the emergency authorization is automatically void as of the 30th calendar day after the verbal approval or as of the date established in accordance with (g) below, as applicable; and
2. Activities authorized under the emergency authorization, including any required restoration, shall be completed within 60 calendar days after the Department's verbal decision is provided in accordance with (a) above, unless the Department establishes a different timeframe in accordance with (g) below. If the regulated activities authorized under the emergency authorization are not completed within 60 calendar days or by the date established in accordance with (g) below, as applicable, the regulated activities shall cease until either a permit is obtained, or another emergency authorization is obtained.

(f) The person to whom the emergency authorization is provided shall submit a complete application in accordance with N.J.A.C. 7:7A-16 for a permit for the activities conducted under the emergency authorization within 90 calendar days after the Department's verbal decision is provided in accordance with (a) above, or by a different date established in accordance with (g) below, as applicable.

(g) The Department shall establish a timeframe different from those set forth at (e) or (f) above where the applicant demonstrates that the timeframe set forth at (e) or (f) cannot feasibly be met for all or a portion of the authorized activities or where the Department determines that a

different timeframe is necessary to facilitate the regulated activities. Except where further time is required to complete restoration of the freshwater wetland subsequent to completion of the emergency activity, in no case will an emergency authorization extend for more than 90 days.

(h) The person to whom the emergency authorization is provided shall conduct all activities authorized under the emergency authorization in accordance with all requirements that apply to that activity under this chapter to the maximum extent practicable.

(i) The permit application submitted under (f) above shall, in addition to meeting the application requirements for the specific permit, include:

1. A demonstration that the regulated activities conducted under the emergency authorization meet the requirements of this chapter, or an explanation as to why full compliance could not be achieved; and
2. "As-built" site plans, signed and sealed by an engineer, land surveyor, or architect, as appropriate, showing the regulated activities that were or are being conducted under the emergency authorization.

(j) Upon review of the application submitted under (f) above, the Department shall require design changes, restoration, and/or stabilization measures as necessary to ensure the requirements of this chapter are met to the maximum extent practicable.

(k) The Department may modify or terminate an emergency authorization at any time without prior notice if the Department determines that modification or termination is necessary to protect public health, safety, and welfare, and/or the environment.

(l) If the person to whom the emergency authorization was provided conducts any regulated activity not authorized under the emergency authorization and/or the permit obtained thereafter for the activities governed by the emergency authorization, such shall constitute a violation of this chapter subject to enforcement action under N.J.A.C. 7:7A-22.

SUBCHAPTER 15. PRE-APPLICATION CONFERENCES

7:7A-15.1 Purpose and scope

(a) A pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project and the application procedures and standards that will apply to the project. A prospective applicant may request a pre-application conference for any project. In the appropriate case, the Department may determine that the questions raised by a prospective applicant can be adequately addressed by telephone or in writing.

(b) A pre-application conference is not mandatory, but is recommended for large and/or complicated projects.

(c) Discussion or guidance offered by the Department at a pre-application conference shall not constitute a commitment by the Department to approve or deny an application.

(d) There is no fee for a pre-application conference.

(e) Where the prospective applicant's project will require approvals from several Department programs, the applicant is encouraged to contact the Department's Office of Permit Coordination and Environmental Review at (609) 292-3600 for assistance in coordinating the various applications.

7:7A-15.2 Request for a pre-application conference; scheduling; information required

(a) A request for a pre-application conference shall be directed by electronic mail to LURTechSupport@dep.nj.gov, or by writing to the address set forth at N.J.A.C. 7:7A-1.4 to the attention of "Supervisor, (county in which the proposed project is located)."

(b) A request for a pre-application conference for any project shall include the following:

1. A written description of the site and the proposed project including the dimensions, number, and uses of proposed structures;
2. Site plans or conceptual designs depicting the proposed project, if available;
3. The street address, lot and block numbers, municipality, and county of the property upon which the regulated activity is proposed; and
4. A copy of any Letter of Interpretation that the Department has issued for the site. If a Letter of Interpretation has not been issued, the prospective applicant shall provide the general location of freshwater wetlands, transition areas, and State open waters.

(c) Within 10 calendar days of receipt of the material submitted in accordance with (b) above, the Department shall:

1. Determine that a pre-application conference is necessary and contact the prospective applicant to schedule a pre-application conference; or
2. Determine that a pre-application conference is not necessary and that the prospective applicant's questions can be addressed in writing or by telephone. Where the Department makes such a determination, the Department shall address the questions within 20 calendar days of receipt of the material submitted in accordance with (b) above.

SUBCHAPTER 16. APPLICATION REQUIREMENTS

7:7A-16.1 Purpose and scope

(a) This subchapter sets forth the application requirements for:

1. A letter of interpretation, including an E-LOI, and an extension or modification of a letter of interpretation;

2. An authorization under a general permit-by-certification;
3. An authorization under a general permit, with the following exceptions:
   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 24; and
   iii. Minor channel cleaning performed by a local government agency under general permit 25;
4. A transition area waiver; and
5. An individual permit.

(b) The application requirements for the following are set forth elsewhere in this chapter:

1. For an exemption letter, see N.J.A.C. 7:7A-2.6;
2. For the ongoing maintenance of an off-stream stormwater management facility created in uplands under general permit 1, see N.J.A.C. 7:7A-7.1;
3. For an authorization under general permit 24, see N.J.A.C. 7:7A-7.24;
4. For an authorization under general permit 25, see N.J.A.C. 7:7A-7.25;
5. For a mitigation proposal, see N.J.A.C. 7:7A-11;
6. For an emergency authorization, see N.J.A.C. 7:7A-14; and
7. For an extension, transfer, or modification of an approval, see N.J.A.C. 7:7A-20.4, 20.5, or 20.6, respectively.

7:7A-16.2 General application requirements

(a) The Department provides a checklist for each type of application submitted under this subchapter. The checklist identifies the submissions required under the rules to be part of an application, and also the appropriate level of detail and the format of the information to be submitted for each type of application. For example, where the rules require, as part of an application, the submittal of a site plan or photographs showing certain types of information, the corresponding checklist will indicate, based on the type of development the particular permit covers; the number of copies of the plan to be submitted; the scale and details of the information to be illustrated on the plan; and the number and orientation of photographs of the location of the proposed development. The checklist will also indicate that the plan should be folded or prepared in a certain manner to facilitate processing. Checklists can be downloaded from the Department's website at https://www.nj.gov/dep/landuse or obtained by contacting the Department at the address set forth at N.J.A.C. 7:7A-1.4.

(b) The level of detail and documentation required for an application shall be commensurate with the size and impact of the proposed regulated activity or project, its proximity to critical areas, and its potential for impacts to freshwater wetlands, transition areas, and/or State open waters. The Department shall, upon request, provide the applicant with guidance regarding the

appropriate level of detail for an application based on the activity the applicant proposes to undertake.

(c) The following persons may submit an application under this subchapter:

1. The owner(s) of a site on which a regulated activity is proposed or conducted, or which is the subject of a letter of interpretation;
2. An agent designated by the owner(s) of a site to obtain or operate under a letter of interpretation or permit on behalf of the owner(s);
3. A public entity proposing an activity within a right-of-way or easement that is held or controlled by that entity or that will be appropriated by that entity under the power of eminent domain; or
4. A person that has the legal authority to perform the activities proposed in the application on the site, and to carry out all requirements of this chapter.

(d) An application shall be certified as set forth in (j) below by the following individual(s), or by a duly authorized representative, as described at (e) below:

1. If the applicant is a corporation, a principal executive officer of at least the level of vice president;
2. If the applicant is a partnership or sole proprietorship, a general partner or the proprietor, respectively;
3. If the applicant is a municipality, or a State, Federal, or other public entity, either a principal executive officer or ranking elected official; or
4. If the applicant is an entity not covered at (d)1, 2, or 3 above, all individual owners of record of the property upon which the activities will occur.

(e) An individual is a duly authorized representative of the applicant under (d) above only if the authorization is:

1. Made in writing by an individual required to certify under (d) above and is provided to the Department as part of the application; and
2. Specifies that the authorized representative is either:
    i. The individual who has overall responsibility to obtain the letter of interpretation and/or operate, construct, or complete the activity, such as a contractor, construction site supervisor, or other individual of equivalent responsibility; or
    ii. In a position of responsibility equivalent to that of the individual described in (e)2i above. In this case, the individual holding the specified position is the duly authorized representative for purposes of (d) above.

(f) If the written authorization provided to the Department under (e) above is no longer accurate because a different individual or position has overall responsibility to obtain the letter of interpretation or permit and/or operate, construct, or complete the activity, a new authorization

satisfying the requirements of (e) above shall be submitted to the Department prior to or concurrent with any reports, information, or applications requiring the applicant's certification.

(g) If an application includes activities within a right-of-way or easement, the application shall include written consent for the activity from the holder(s) of the right-of-way or easement.

1. For a gas pipeline located within a municipally owned right-of-way, written consent shall consist of one of the following:
   i. Written consent from the municipality in the form of a resolution of the governing body or an ordinance;
   ii. A municipal designation of the route pursuant to N.J.S.A. 48:9-25.4; or
   iii. A Board of Public Utilities designation of route pursuant to N.J.S.A. 48:9-25.4.

(h) Any survey or site plan submitted as part of an application shall be signed and sealed by an engineer, land surveyor, or architect, as appropriate, unless the proposed regulated activity or project is one for which no survey, topography, or calculations are necessary to demonstrate the requirements of this chapter are met, in which case the applicant may elect to prepare his or her own site plan;

(i) Any professional report, survey, calculation, or other document prepared by a consultant, engineer, land surveyor, architect, attorney, scientist, or other professional and submitted as part of an application shall be certified in accordance with (j) below. This certification is separate from the certification of the application by the applicant.

(j) The certification required by (d) and (i) above is as follows:
"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 knowingly submitting false information, including the possibility of fine and imprisonment."

(k) Failure to provide complete and accurate information of which the applicant or its agents are aware, or reasonably should have been aware, may result in denial of an application or termination of the authorization under the general permit-by-certification or general permit, the transition area waiver, or the individual permit under N.J.A.C. 7:7A-20.9, and may subject the applicant or its agents to enforcement action under N.J.A.C. 7:7A-22.

(l) When a proposed regulated activity or project requires more than one approval under this chapter, or requires, in addition, an approval under the Coastal Zone Management Rules at N.J.A.C. 7:7, and/or the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13, an applicant may submit a single application for all of the approvals, except for an authorization under a general permit-by-certification, provided that the application meets all application requirements of each such approval included.

7:7A-16.3 Additional application requirements for an LOI

(a) In addition to meeting the requirements at N.J.A.C. 7:7A-16.2, an application for an LOI shall include the following material, in the number and format specified in the appropriate application checklist:

1. A completed application form, available from the Department at the address set forth at N.J.A.C. 7:7A-1.4. This form requires basic information regarding the requested LOI, including LOI type, name and address of the applicant and any designated agent(s), the specific site or portion of site that is the subject of the application, and certifications as to the truth and accuracy of the information provided and as to the ownership of the property;
2. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:7A-17;
3. The appropriate application fee as set forth at N.J.A.C. 7:7A-18;
4. A survey, certified in accordance with N.J.A.C. 7:7A-16.2(j), shall be submitted for every LOI, except a presence/absence LOI for an entire site. All surveys shall be conducted and documentation provided in accordance with the requirements at N.J.A.C. 7:36 Appendix 2, or a subset of these requirements as may be defined by the appropriate LOI checklist.
    i. The survey for a presence/absence LOI for a portion of a site under N.J.A.C. 7:7A-4.3(c)2 shall identify the portion(s) of the site that is the subject of the application; and
5. Consent from the owner of the site allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site. This consent shall continue in effect for the duration of the application review and decision process, including for the duration of any appeal made from the decision on the application.

(b) In addition to meeting the requirements at (a) above, an application for a line verification LOI issued under N.J.A.C. 7:7A-4.5 shall include the following material, in the number and format specified in the appropriate application checklist:

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. Data sheets or other materials that explain and support the delineation including, but not limited to:
    i. Soil logs describing the soil characteristics at the location of each soil boring, including a description of the field indicators, or lack thereof, for hydrology as

outlined in the 1989 Federal Manual and as specified in the appropriate application checklist; and

ii. A description of the vegetative species on the site recorded at each soil boring location as specified in the appropriate application checklist;

3. If the applicant would like the Department to verify that a wetland is an isolated wetland, a request for that determination, and supporting documentation demonstrating that the wetland is isolated. For example, if inlets or pipes are present in the vicinity of the subject wetland, a map of the storm sewer system depicting the endpoint and invert elevations of the inlet or pipe; 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-4.5(b)3i through iii, and information identifying the subject portion of the site in accordance with N.J.A.C. 7:7A-4.5(b)3iv.

(c) 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-16.4 Application requirements for an E-LOI

(a) An application for an LOI may be submitted electronically via the "NJDEP online business portal" (portal). The web address for the portal is: https://www.nj.gov/dep/online. All application information and supporting documentation can be submitted electronically with the exception of any required surveys, which must be mailed or delivered to the Department for review.

(b) The portal requires an applicant submitting an application for an LOI electronically to provide the following, as specified in the appropriate application checklist:

1. The type of LOI being requested;
2. The name of or other identifier for the application;
3. The location of the specific site or portion of site that is the subject of the application, including address, city, state, zip code, municipality, State plane coordinates, and, as applicable, lot and block numbers;
4. Contact information for the applicant, property owner, and any designated agent(s), including: name, address, telephone number, e-mail address, municipality, county, organization, and organization type;
5. The following certifications:

   i. A certification that the site identified in the application is the actual location subject to the application;

   ii. A certification that the applicant has obtained written consent from the property owner that the application can be made on the property owner's behalf. This

certification is required regardless of whether the applicant and property owner are the same person;

iii. A certification of truth and accuracy of the information provided;

iv. A certification that any required survey has been conducted and documentation provided as required by this chapter; and

v. A certification that the applicant has obtained written consent from the property owner allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site;

6. To accomplish the certifications under (b)5 above, the PIN that was issued to the applicant upon registering with the Department's online permitting system; and

7. The appropriate application fee set forth at N.J.A.C. 7:7A-18.

(c) In addition to meeting the requirements of (b) above, an applicant submitting an LOI electronically is required to upload the following digital documents to the portal, in the format and number specified in the appropriate application checklist:

1. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:7A-17;

2. Color photographs of the site as described in the application checklist;

3. Consent from the owner of the site allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site. The electronic submission of a signed Property Owner's Certification Form shall serve as the property owner's consent. This consent shall continue in effect for the duration of the application review and decision process, including for the duration of any appeal made from the decision on the application;

4. A document, which includes the names and qualifications of the person(s) who prepared the material and, if applicable, the person(s) who performed the delineation;

5. A copy of the tax map(s) for the subject site;

6. A digital copy of all required surveys; and

7. A written narrative and/or reports necessary to accurately describe the site, its location, and existing site conditions.

(d) In addition to meeting the requirements of (a), (b), and (c) above, an applicant submitting an LOI electronically is required to upload to the portal the following shapefile(s) in the format specified in the appropriate application checklist and guidance documents:

1. For all E-LOIs, a shapefile that defines the boundaries of the site;

2. For an application for a presence/absence E-LOI for a portion(s) of a site under N.J.A.C. 7:7A-4.3(c)2, a shapefile that defines the footprint of disturbance;

3. For an application for a line delineation E-LOI under N.J.A.C. 7:7A-4.4, the Department will delineate the wetlands and/or wetland transition areas on the site. Once the Department has flagged the site, the applicant must submit a shapefile(s) that defines the

limit of wetlands, State open waters, and/or transition areas as indicated by the Department delineation.

4. For an application for a line verification E-LOI under N.J.A.C. 7:7A-4.5:
   i. A shapefile(s) that defines the limit of wetlands, State open waters, and/or transition areas, as appropriate; and
   ii. Data sheets for sample locations that include soil borings and a description of vegetation.

(e) In addition to meeting the requirements of (c) and (d) above, an applicant submitting an E-LOI, with the exception of an applicant submitting an E-LOI application for a presence/absence LOI for an entire site, is required to submit a paper survey to the Division for review that meets the requirements of N.J.A.C. 7:7A-16.3(a)4, in the format and number specified in the appropriate application checklist.

7:7A-16.5 Application requirements for an LOI extension

(a) In addition to meeting the requirements of N.J.A.C. 7:7A-16.3(a)1, 2, and 3, an application to extend an LOI shall include the following material, in the number and format specified in the appropriate application checklist:

1. A copy of the original LOI that the applicant wishes to extend;
2. A copy of the survey or site plan submitted as part of the application for the original LOI that the applicant wishes to extend; and
3. Any other information reasonably necessary to determine if the information in the original LOI remains accurate.

7:7A-16.6 Additional application requirements for an authorization under a general permit-by-certification

(a) An application for authorization under a general permit-by-certification shall be submitted electronically through the Department's online permitting system at https://www.nj.gov/dep/online.

(b) The online application for a general permit-by-certification requires an applicant to provide the following:

1. The number (and subject matter) of the general permit-by-certification under which the application for authorization is being submitted;
2. The name of or other identifier for the proposed development or project;
3. The location of the proposed development or project, including address, city, state, zip code, municipality, State plane coordinates, and lot and block numbers;
4. Information specific to the proposed project related to the requirements of the general permit-by-certification under which the application is being submitted, such as, for

example, the area of proposed disturbance to wetlands under general permit-by-certification 8 (see N.J.A.C. 7:7A-6.1);

5. Contact information for both the applicant and the property owner, including: name, address, telephone number, e-mail address, municipality, county, organization, and organization type;
6. A certification as to each of the following:
   i. That the site identified in the application is the actual location of the project site;
   ii. That public notice of the application has been provided in accordance with N.J.A.C. 7:7A-17;
   iii. That the applicant has obtained written consent from the property owner that the application can be made on the property owner's behalf. This certification is required regardless of whether the applicant and property owner are the same person; and
   iv. That conditions specific to the general permit-by-certification under which the application for authorization is being submitted are or will be met. For example, an applicant for authorization under general permit-by-certification 24 must certify that the total area of disturbance is no more than one-quarter acre;
7. To accomplish the certification under (b)6 above, the PIN that was issued to the applicant upon registering with the Department's online permitting system; and
8. The application fee for a general permit-by-certification set forth at N.J.A.C. 7:7A-18.

(c) Once the online application process is successfully completed, the authorization will be accessible to the applicant through the Department's online permitting system at https://www.nj.gov/dep/online.

7:7A-16.7 Additional application requirements for an authorization under a general permit, for an individual permit, or for a transition area waiver

(a) In addition to meeting the requirements at N.J.A.C. 7:7A-16.2, an application for an authorization under a general permit, for an individual permit, or for a transition area waiver shall include the following material, in the number and format specified in the appropriate application checklist:

1. A completed application form, available from the Department at the address set forth at N.J.A.C. 7:7A-1.4. This form requires basic information regarding the regulated activity or project, including the name and address of the applicant and any designated agent(s), the specific location of the regulated activity or project, the types of approvals being sought, a brief description of the proposed activities, and certifications as to the truth and accuracy of the information provided and as to the ownership of the property;
2. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:7A-17;
3. The appropriate application fee as set forth at N.J.A.C. 7:7A-18;

4. Site plans, certified in accordance with N.J.A.C. 7:7A-16.2(j), which include the following, both on and adjacent to the site, as applicable:
   i. Existing features, such as lot lines, structures, land coverage, and vegetation, which are necessary to demonstrate that the proposed regulated activity or project meets the requirements of this chapter;
   ii. All proposed regulated activities; the size, location, and details of any proposed structures, roads, or utilities; details of any clearing, grading, filling, excavation, and dredging; the location and area of wetlands, transition areas, and/or State open waters that will be disturbed and the limits of disturbance;
   iii. Existing and proposed topography where necessary to demonstrate that the proposed regulated activity or project meets the requirements of this chapter. All topography shall reference NGVD or include the appropriate conversion factor to NGVD; and
   iv. Details of any proposed soil erosion and sediment control measures;
5. State plane coordinates for a point at the approximate center of the site, except for a linear activity or project as provided at (a)5i below. The accuracy of the State plan coordinates shall be within 50 feet of the actual center point for the site;
   i. State plane coordinates shall be provided for a linear activity or project, such as a roadway, utility, stream bank stabilization project, or sediment and debris removal project, as follows:
      (1) For a linear activity or project of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the delineation or linear activity or project and the coordinates for points located at 1,000-foot intervals along the entire length of the linear activity or project; and
      (2) For a linear activity or project of less than one-half mile in length, the State plane coordinates shall include the coordinates for the end points of the linear activity or project;
6. In addition to the site plan specified at (a)4 above, other visual representations, such as photographs, graphs, maps, and tables, that illustrate existing site conditions and the proposed activity or project;
7. Calculations, analyses, reports, data, and supporting materials necessary to demonstrate that the proposed activity or project meets the requirements of this chapter, and the requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8, if applicable;
8. Information about the anticipated impacts of the proposed activity or project, including any monitoring or reporting methods that will be used;
9. Information and certifications regarding the presence or absence of endangered or threatened species habitat, critical habitat for fauna or flora, historic or archaeological resources, or other features on the site that are relevant to determining compliance with the requirements of this chapter;
10. 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;

11. Any information necessary to ensure compliance with State and/or Federal law, and/or to determine whether an application for an authorization under a general permit, an individual permit, or a transition area waiver meets State and/or Federal standards;
12. 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 40 CFR 233.30; and
13. Consent from the owner of the site allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site. This consent shall continue in effect for the duration of the application review and decision process, including for the duration of any appeal made from the decision on the application.

(b) If a proposed activity or project for which an authorization under a general permit, an individual permit, or a transition area waiver is sought requires mitigation in accordance with this chapter, the applicant may submit a mitigation proposal as part of the application for the authorization. If the applicant does not submit a mitigation proposal with the application, the applicant shall submit the mitigation proposal at least 90 calendar days before the start of activities authorized by the permit, in accordance with N.J.A.C. 7:7A-11.

7:7A-16.8 Additional requirements specific to an application for authorization under a general permit

(a) In addition to the requirements at N.J.A.C. 7:7A-16.2 and 16.7, an application for authorization under a general permit shall meet the requirements of this section.

(b) An application for authorization under a general permit shall include the following:

1. A line delineation LOI issued under N.J.A.C. 7:7A-4.4 or a line verification LOI issued under N.J.A.C. 7:7A-4.5, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-4.3 is not sufficient. If no LOI has been issued, or if only a presence/absence LOI has been issued, the application shall include 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 activity;
2. 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. Documentation regarding when the lot that is the subject of the general permit was created by subdivision;
4. A history of the ownership of the property beginning June 30, 1988, to present; and
5. 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.

(c) An application for a general permit authorization 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.

7:7A-16.9 Additional requirements specific to an application for an individual permit

(a) In addition to meeting the requirements at N.J.A.C. 7:7A-16.2 and 16.7, an application for an individual permit shall meet the requirements of this section.

(b) An application for an individual permit shall include the following:

1. A line delineation LOI issued under N.J.A.C. 7:7A-4.4 or a line verification LOI issued under N.J.A.C. 7:7A-4.5, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-4.3 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application shall include all information required for an application for a line delineation LOI or line verification LOI;
2. 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. A copy of the deed and/or other legal documents pertaining to the site;
4. An environmental report that includes:
    i. A narrative that describes the basic project purpose of the proposed activity, including whether it is water dependent;
    ii. Maps (such as freshwater wetlands maps and USDA soil surveys) that provide an environmental inventory of the site;
    iii. Information regarding special aquatic sites, public lands, critical habitat, and other relevant environmental features of the site;
    iv. An analysis of any potential temporary and/or permanent adverse environmental impact(s), whether onsite or offsite, of the proposed regulated activity or project on freshwater wetlands, State open waters, transition areas, fishery resources, and threatened or endangered species and their habitat.
    v. An alternatives analysis that allows the Department to evaluate whether the requirements of N.J.A.C. 7:7A-10.2 are met, including 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:

(A) Document(s) showing when the property as a whole was acquired and its purchase price;

(B) Documentation of any investments made to maintain and/or develop the property as a whole;

(C) Documentation of attempts by the property owner to sell the property or to obtain other property; and

vi. A description of all measures taken to reduce any potential adverse environmental impact(s) to the resources listed at (b)4iv above.

7:7A-16.10 Additional requirements specific to an application for a transition area waiver

(a) In addition to meeting the requirements at N.J.A.C. 7:7A-16.2 and 16.7, an application for a transition area waiver shall meet the requirements of this section.

(b) An application for a transition area waiver shall include the following:

1. A line delineation LOI issued under N.J.A.C. 7:7A-4.4, or a line verification LOI issued under N.J.A.C. 7:7A-4.5, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-4.3 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application shall include all information required for an application for a line delineation LOI or line verification LOI.

(c) In addition to the information required at (b) above, an application for a special activity transition area waiver based upon an individual permit criteria under N.J.A.C. 7:7A-8.3(g) shall include the information required for an individual permit application at N.J.A.C. 7:7A-16.9(b).

(d) In addition to the information required at (b) above, an application for a hardship transition area waiver under N.J.A.C. 7:7A-8.4 shall include the information contained in N.J.A.C. 7:7A-13.1(i)4, 5, 7, and 8i, ii, and iii, and a statement indicating that the property owner has requested a hardship transition area waiver.

7:7A-16.11 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 17. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

7:7A-17.1 Purpose and scope

(a) An applicant shall provide public notice in accordance with this subchapter for the following:

1. An application for a letter of interpretation, including the extension of a letter of interpretation, pursuant to N.J.A.C. 7:7A-4;
2. An application for an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7A-5 and 6;
3. An application for an authorization under a general permit pursuant to N.J.A.C. 7:7A-5 and 7, except for general permit 15 for mosquito control activities at N.J.A.C. 7:7A-7.15, which is subject only to the notice requirements found at N.J.A.C. 7:7A-7.15(f);
4. An application for an individual freshwater wetland permit or open water fill permit pursuant to N.J.A.C. 7:7A-9 and 10;
5. An application for a transition area waiver pursuant to N.J.A.C. 7:7A-8;
6. A mitigation proposal pursuant to N.J.A.C. 7:7A-11, which is not submitted as part of a permit application; and
7. An application for a major technical modification pursuant to N.J.A.C. 7:7A-20.6.

(b) A person who requests a reconsideration of the Department's action or inaction concerning a permit under N.J.A.C. 7:7A-13 shall provide public notice in accordance with N.J.A.C. 7:7A-13.1(i)3.

(c) An applicant is not required to provide public notice for the following:

1. A request for an exemption letter pursuant to N.J.A.C. 7:7A-2.6;
2. An application for an emergency authorization pursuant to N.J.A.C. 7:7A-14;
3. An application for an administrative modification or a minor technical modification pursuant to N.J.A.C. 7:7A-20.6; or
4. The transfer of a permit pursuant to N.J.A.C. 7:7A-20.5.

(d) When a proposed regulated activity or project requires more than one approval under this chapter, or requires, in addition, an approval under the Coastal Zone Management rules at N.J.A.C. 7:7, and/or the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, an applicant may provide combined public notice for all applications submitted, provided the combined notice meets all of the notice requirements applicable to each application.

(e) Failure to provide public notice as required under this subchapter shall be cause for the Department to cancel an application under N.J.A.C. 7:7A-19.8.

7:7A-17.2 Timing of public notice of an application

For any of the applications listed in N.J.A.C. 7:7A-17.1(a), the applicant shall provide public notice in accordance with this subchapter no more than 30 calendar days prior to submitting the application, and no later than the date the application is submitted to the Department.

7:7A-17.3 Contents and recipients of public notice of an application

(a) For any of the applications listed in N.J.A.C. 7:7A-17.1(a), the applicant shall provide a copy of the entire application, as submitted to the Department, to the municipal clerk in each municipality in which the site is located.

(b) For any of the applications listed in N.J.A.C. 7:7A-17.1(a), the applicant shall provide notice of the application to all of the persons or entities at (b)1 through 6 below, in accordance with the timeframe specified at N.J.A.C. 7:7A-17.2. The notice shall include the information specified at (e) below.

1. The construction official of each municipality in which the site is located;
2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the site is located;
3. The 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. The local Soil Conservation District if the regulated activity or project will disturb 5,000 square feet or more of land; and
6. All owners of real property, including easements, located within 200 feet of the site of the proposed regulated activity, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, unless the regulated activity or project is one of those listed at (c)1 through 5 below, in which case the notice shall be provided as set forth in (c) below. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department.

(c) For an application for an LOI, regulated activity, or project listed at (c)1 through 5 below, unless the application is for an individual permit or for a mitigation proposal to create, enhance, or restore wetlands, State open waters. and/or transition areas, which is not submitted as part of a permit application, the applicant shall provide the notice required at (b)6 above by publishing newspaper notice and, in addition, sending the notice at (e) below, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development or project, excluding any conveyance lines suspended above the ground or small utility support structures, such as telephone poles.

1. A linear project of one-half mile or longer;
2. A trail or boardwalk of one-half mile or longer;
3. A public project on a site of 50 acres or more;
4. An industrial or commercial project on a site of 100 acres or more; or
5. A project to remove sediment or debris from a channel of one-half mile or longer.

(d) If the application is for an individual permit, in addition to providing notice required at (b) above, the applicant shall:

1. Provide notice by publishing newspaper notice in accordance with N.J.A.C. 7:7A-17.4; and
2. If the proposed project involves more than 10 acres of fill, publish a newspaper notice that meets the requirements of N.J.A.C. 7:7A-17.4(b) in a newspaper with regional circulation in the region in which the site is located.

(e) The public notice required at (b) and (c) above, other than newspaper notice, shall:

1. Include all of the following:
   i. A brief description of the area the applicant wishes the LOI to cover, and/or the site and regulated activity or project;
   ii. A site plan, showing the location and boundaries of the site and depicting the area the applicant wishes the LOI to cover, and/or the proposed regulated activity, or project in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the regulated activity or project in relation to the property boundary is clearly shown; and
   iii. A copy of the form notice letter, available from the Department's website at the address set forth at N.J.A.C. 7:7A-1.4. The form notice letter explains that: an application will be submitted to the Department for an LOI and/or the specific regulated activity or project depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office; and comments or information on the requested LOI or proposed regulated activity or project and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7A-1.4 within 15 calendar days of receipt of the letter; and
2. Be sent by certified mail or by delivery whereby the signature of the person to whom the notice is delivered is obtained, except that an applicant may obtain written permission from the specific municipal or county entity to submit notice to it electronically.

7:7A-17.4 Content and format of newspaper notice

(a) The newspaper notice pursuant to N.J.A.C. 7:7A-17.3(c) shall be either a legal notice or a display advertisement in the official newspaper of the municipality in which the site is located, or if there is no official newspaper, a newspaper of general circulation in the municipality.

(b) The newspaper notice pursuant to N.J.A.C. 7:7A-17.3(c) shall include all of the following:

1. The mailing address and telephone number of the Department as set forth at N.J.A.C. 7:7A-1.4;
2. The name and mailing address of the applicant;
3. The type of approval being sought;
4. A description of the proposed regulated activity, or project;
5. The street address of the site;
6. A list of each lot, block, municipality, and county within which the LOI is requested and/or the proposed, regulated activity or project will occur; and
7. The standard language of the form notice letter available from the Department website at the address set forth at N.J.A.C. 7:7A-1.4.
    i. The form notice letter explains that: an application will be submitted to the Department for the specific regulated activity or project as identified pursuant to (b)4, 5, and 6 above; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office; and comments or information on the requested LOI or proposed regulated activity or project and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7A-1.4 within 15 calendar days of the date of the notice.

7:7A-17.5 Documenting public notice of an application

(a) An applicant shall include as part of the application documentation that the required public notice of the application has been provided, as follows:

1. For public notice other than newspaper notice, the documentation shall consist of:
    i. A copy of the certified United States Postal Service white mailing receipt for each public notice that was mailed, or other written receipt;
    ii. A certified list of all owners of real property, including easements, located within 200 feet of the property boundary of the site (including name, mailing address, and lot and block numbers) prepared by the municipality for each municipality in which the project is located. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department; and
    iii. A copy of each public notice letter that was mailed; and
2. For newspaper notice, the documentation shall consist of:
    i. A copy of the published newspaper notice; and
    ii. The date and name of the newspaper in which notice was published.

SUBCHAPTER 18. APPLICATION FEES

7:7A-18.1 Application fees

(a) This subchapter establishes the application fees for:

1. An exemption letter pursuant to N.J.A.C. 7:7A-2.6;
2. A letter of interpretation pursuant to N.J.A.C. 7:7A-4;
3. An authorization under a general permit pursuant to N.J.A.C. 7:7A-7, except for:
   i. General permit 16—Habitat creation and enhancement activities, N.J.A.C. 7:7A-7.16;
   ii. General permit 17—Trails and boardwalks, N.J.A.C. 7:7A-7.17, for a project located on publicly-owned land; and
   iii. General permit 24—Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-7.24;
4. An authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7A-6, except for general permit-by-certification 24—Repair or modification of a malfunctioning individual subsurface sewage disposal (septic) system, N.J.A.C. 7:7A-6.2.
5. A transition area waiver pursuant to N.J.A.C. 7:7A-8;
6. A freshwater wetlands individual permit and an open water fill individual permit pursuant to N.J.A.C. 7:7A-9;
7. 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;
8. 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-20.6; and
9. An extension of a letter of interpretation pursuant to N.J.A.C. 7:7A-4.6, 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-20.4.

(b) There is no application fee for:

1. An application submitted by an agency of the State;
2. An authorization under the following general permits:
   i. General permit 16—Habitat creation and enhancement activities, N.J.A.C. 7:7A-7.16;
   ii. General permit 17—Trails and boardwalks, N.J.A.C. 7:7A-7.17, for a project located on publicly-owned land; and
   iii. General permit 24—Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-7.24;

3. An authorization under general permit-by-certification 24—Repair or modification of a malfunctioning individual subsurface sewage disposal (septic) system, N.J.A.C. 7:7A-6.2;
4. An emergency authorization pursuant to N.J.A.C. 7:7A-14;
5. The transfer of an emergency authorization, authorization under a general permit, a transition area waiver, or an individual permit pursuant to N.J.A.C. 7:7A-20.5; or
6. An administrative modification pursuant to N.J.A.C. 7:7A-20.6.

(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) 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.

(f) The fees for applications under this chapter are set forth in Table 18.1 below:

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.

Table 18.1
APPLICATION FEES

Exemption letter

	Fee
Exemption letter pursuant to N.J.A.C. 7:7A-2.6	$500.00

Letter of Interpretation (LOI)

	Fee
Presence/absence LOI pursuant to N.J.A.C. 7:7A-4.3	$1,000
Footprint of disturbance LOI pursuant to N.J.A.C. 7:7A-4.3	$1,000
Delineation LOI pursuant to N.J.A.C. 7:7A-4.4	$1,000
Line verification LOI pursuant to N.J.A.C. 7:7A-4.5	$1,000 plus $100.00 per acre of the site (or fraction thereof)

Authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7A-6

	Fee
General permit-by-certification 24—Repair or modification of a malfunctioning individual subsurface sewage disposal (septic) system, N.J.A.C. 7:7A-6.2	No fee
Any other general permit-by-certification	$1,000

Authorization under a general permit pursuant to N.J.A.C. 7:7A-7

	Fee
General permit 16—Habitat creation and enhancement activities, N.J.A.C. 7:7A-7.16	No fee
General permit 17—Trails and boardwalks, N.J.A.C. 7:7A-7.17, for a project located on publicly-owned land	No fee
General permit 24—Malfunctioning individual subsurface sewage disposal (septic) systems, N.J.A.C. 7:7A-7.24	No fee
Any other general permit	$1,000

Transition area waiver pursuant to N.J.A.C. 7:7A-8

	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-10

	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-20.6

	Fee
Administrative modification	No fee
Minor technical modification	$500.00
Major technical modification of a transition area waiver, general permit authorization, 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-4.6 or of an authorization under a general permit, a transition area waiver, or an individual permit pursuant to N.J.A.C. 7:7A-20.4

	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[1]
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)
Modification of previously reviewed stormwater calculation	Thirty percent of the original stormwater fee

[1]The additional application fee for stormwater review set forth in this table shall not exceed $20,000

7:7A-18.2 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 https://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 19. APPLICATION REVIEW

7:7A-19.1 General application review provisions

(a) This subchapter sets forth the review procedures for applications for a letter of interpretation, applications for authorization under a general permit, applications for an individual permit, and applications for a transition area waiver. These procedures also apply to applications for a water quality certificate.

(b) The review procedures for the following are set forth elsewhere in this chapter:

1. For a request for a written determination of exemption from the permit requirements of this chapter, see N.J.A.C. 7:7A-2.6;
2. For a mitigation proposal, see N.J.A.C. 7:7A-11;
3. For a request for an emergency authorization, see N.J.A.C. 7:7A-14; and
4. For a request to extend, transfer, or modify a letter of interpretation or an approval, see N.J.A.C. 7:7A-20.4, 20.5, or 20.6, respectively.

(c) An applicant may submit a revised application at any time during the application review process. Except for applications for authorization under general permit 25 for minor channel cleaning for local government agencies at N.J.A.C. 7:7A-7.25, the applicant shall send a copy of the revised portions of the application to the municipal clerk of each municipality in which the site is located and shall provide notice explaining the revisions to any person listed at N.J.A.C. 7:7A-17.3(b) whom the Department determines would likely be affected by the revised application. The applicant shall provide documentation in accordance with N.J.A.C. 7:7A-17.5 that the notice was provided.

1. If an applicant submits a revised application less than 30 calendar days prior to the deadline for Department decision established pursuant to N.J.A.C. 7:7A-19.7(b), the revised application shall state that the applicant consents to a 30-calendar day extension of the decision deadline in accordance with N.J.A.C. 7:7A-19.7(c).

(d) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review.

(e) The Department shall publish notice in the DEP Bulletin of the receipt of each administratively complete application, the status of the application during review, and the Department's decision to approve or deny the application. Publication in the DEP Bulletin constitutes constructive notice to interested persons of Department actions on applications for a letter of interpretation, applications for authorization under a general permit, applications for an individual permit, applications for a transition area waiver, or applications for a water quality certificate. Actual notice of the Department's decision to approve or deny an application will be provided, in accordance with N.J.A.C. 7:7A-19.7, to the applicant and to persons who specifically request such notice.

(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. Ongoing maintenance of an off-stream stormwater management facility created in uplands, including a wetland constructed in uplands for stormwater management purposes, under general permit 1;
2. Repair of a malfunctioning individual subsurface sewage disposal system under general

permit 24, or general permit-by-certification 24; or

3. Minor channel or stream cleaning activities under general permit 25.

(g) 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 fact-finding meeting on the application. Requests shall state the nature of the issues proposed to be raised at the meeting.

1. The Department may issue or deny an individual permit or transition area waiver without a fact-finding meeting. However, the Department shall hold a fact-finding meeting if the Department determines that:
   i. There is a significant degree of public interest in the application, as manifested by written requests for a meeting within the 30-day meeting request period set forth in (g) above. In considering the degree of public interest, the Department will consider whether the issues raised in the meeting requests are relevant to the application;
   ii. A fact-finding meeting is requested by the USEPA; or
   iii. The Department determines that based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding meeting.

7:7A-19.2 Completeness review

(a) Except for the applications identified at (a)1, 2, and 3 below, the completeness review process for all applications for a letter of interpretation, applications for authorization under a general permit, applications for a transition area waiver, applications for an individual permit, and applications for a water quality certificate, is set forth at (b) through (g) below.

1. For an application for authorization under general permit 1 for ongoing maintenance of an off-stream stormwater management facility created in uplands, including a wetland constructed in uplands for stormwater management purposes under N.J.A.C. 7:7A-7.1, the completeness review process is set forth at N.J.A.C. 7:7A-19.3;
2. For an application for authorization under general permit 24 for repair of a malfunctioning individual subsurface sewage disposal system under N.J.A.C. 7:7A-7.24, the completeness review process is set forth at N.J.A.C. 7:7A-19.3; and
3. For an application for an authorization under general permit 25 for minor channel or stream cleaning for local government agencies at N.J.A.C. 7:7A-7.25, the completeness review process is set forth at N.J.A.C. 7:7A-19.4.

(b) Within 20 working days after receiving an application, where day one of the 20-working day period is the date the application is received, the Department shall take one of the following actions:

1. Determine the application is both administratively and technically complete, issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the application, and 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 the USEPA for comment under N.J.A.C. 7:7A-19.5;
2. Determine the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or
3. Determine the application is administratively incomplete and return the application.

(c) Within 15 calendar days after receiving the additional information submitted pursuant to (b)2 above for a technically incomplete application, the Department shall take one of the following actions:

1. Determine the application is technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the additional information, and transmit a copy of the application to other agencies if required under this chapter; or
2. Determine the additional information is not sufficient and issue notification to the applicant in writing that the application remains technically incomplete. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall declare the application complete for review, effective as of the date the Department received the additional information.

(d) The applicant shall send the additional information submitted to the Department pursuant to (b)2 and (c)2 above to the municipal clerk of each municipality in which the project is located and shall provide notice explaining that additional information has been submitted to the Department to any person listed at N.J.A.C. 7:7A-17.3 whom the Department determines would likely be affected by the additional information. The applicant shall provide documentation in accordance with N.J.A.C. 7:7A-17.5 that the additional information and notice were provided.

(e) An applicant shall submit all additional information pursuant to (b)2 or (c)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7A-19.8, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.

(f) If the Department does not take one of the actions in (b) above within 20 working days after receiving an application, the application shall be declared complete for review, effective as of the date the application was received by the Department.

(g) If the Department does not take one of the actions in (c) above within 15 calendar days after receiving additional information submitted for a technically incomplete application, the application shall be declared complete for review, effective as of the date the additional information was received by the Department.

7:7A-19.3 Department review and decision on an application for authorization for maintenance of a stormwater management facility, including a wetland constructed in uplands for stormwater management purposes, under general permit 1 and repair of a malfunctioning individual subsurface sewage disposal system under general permit 24

(a) Within 20 working days after receiving an application for authorization under general permit 1 for maintenance of a stormwater management facility, including a wetland constructed in uplands for stormwater management purposes, or an application for authorization under a general permit 24 for repair of a malfunctioning individual subsurface sewage disposal system, where day one of the 20-working day period is the date the application is received, the Department shall take one of the following actions:

1. Determine the application is administratively and technically complete and declare the application complete for review effective as of the date the Department received the application; or
2. Determine the application is not administratively and technically complete and notify the applicant that the application is incomplete. If the Department so notifies the applicant, the time period in (b) below shall not begin to run. If the Department does not so notify the applicant, the application shall be deemed administratively complete.

(b) 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 general permit 24, or that the activities may be authorized but require a full application review under N.J.AC. 7:7A-19.2. If the Department does not so notify the applicant, the application for authorization under general permit 1 or general permit 24 shall be deemed approved, subject to conditions applicable to all general permits in accordance with N.J.A.C. 7:7A-5.7 and the conditions applicable to all permits at N.J.A.C. 7:7A-20.2.

(c) The Department shall provide notice of the decision on an application for authorization under a general permit 1 and general permit 24 in the DEP Bulletin and to any person who specifically requested notice of the decision on a particular application.

7:7A-19.4 Department review and decision on an application for authorization under general permit 25 for minor channel or stream cleaning for local government agencies

(a) Within 15 calendar days after receiving an application for authorization under a general permit 25 for activities that do not include the removal of sediment, or within 60 calendar days after receiving an application for activities that include the removal of sediment, where day one of the 15- or 60-calendar-day period is the date the application is received, the Department shall take one of the following actions:

1. Determine the application is both administratively and technically complete, and declare the application complete for review effective as of the date the Department received the application, and approve or deny the application in accordance with the following:
   i. Determine that the application meets the requirements of this chapter and issue an authorization approving the application in writing. The authorization shall include any conditions necessary to ensure compliance with this chapter; or
   ii. Determine that the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial;
2. Determine the application is administratively complete but technically incomplete and notify the applicant that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or
3. Determine the application is administratively incomplete and return the application.

(b) If the Department does not make a decision to approve or deny an application for an authorization under a general permit 25 by the applicable deadline set forth in (a) above, the applicant is authorized to commence stream cleaning activities to the extent that the project does not violate other laws then in effect.

1. An authorization issued under this subsection shall include the standard conditions set forth in N.J.A.C. 7:7A-20.2.
2. An authorization issued under this subsection shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:7A-22 for any activity undertaken in violation of this chapter.

(c) The Department shall provide notice of the decision on an application for authorization under general permit 25 in the DEP Bulletin and to any person who specifically requested notice of the decision on a particular application.

7:7A-19.5 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 the 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;
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 the 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-19.6(e), the 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 the 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 fact-finding meeting.

(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:

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 (m)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.

7:7A-19.6 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-19.1, except for an application for an administrative modification or a minor technical modification. The DEP Bulletin is available at https://www.nj.gov/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-17.3.

(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-1.4 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-17.3, 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 USEPA shall then have the same amount of time provided for applications and draft general permits in N.J.A.C. 7:7A-19.5 to comment upon, object to, or make recommendations regarding the Department's action.

7:7A-19.7 Department decision on an application that is complete for review

(a) The Department shall issue an LOI within the applicable time period below:

1. If the Department does not request additional information regarding an LOI application under N.J.A.C. 7:7A-19.2(b)1, 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-19.2(b)2, 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 N.J.A.C. 7:7A-3.2, 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.

(b) Within 90 calendar days after an application for an authorization under a general permit, application for transition area waiver, or application for an individual permit is declared complete for review in accordance with N.J.A.C. 7:7A-19.2, the Department shall:

1. Determine that the application meets the requirements of this chapter and issue an authorization, waiver, or individual permit approving the application in writing. The authorization, waiver, or individual permit shall include any conditions necessary to ensure compliance with this chapter; or
2. Determine that the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.

(c) The 90-calendar day deadline set forth in (b) above may be extended for 30 calendar days by mutual agreement between the applicant and the Department. An applicant consenting to an extension shall do so in writing. The deadline shall not be extended by less than or greater than 30 calendar days.

(d) If the Department does not make a decision to approve or deny an application for an authorization of a general permit, an individual permit, a transition area waiver, or a water quality certificate by the applicable time period set forth in (b) above, the person shall not be

entitled to assume that the application is approved.

(e)The review time set forth in (b) above does not apply to applications that require USEPA review in accordance with N.J.A.C. 7:7A-19.5.

(f) If the Department issues or denies a permit, the Department shall send notice thereof to the applicant.

(g) 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-19.5 shall be transmitted to USEPA.

7:7A-19.8 Cancellation of an application

(a) The Department shall cancel an application for any of the following reasons:

1. An applicant does not submit additional information within the time frame prescribed by the Department under this subchapter for an application that has been determined to be technically incomplete;
2. The applicant does not submit a fee required under N.J.A.C. 7:7A-18, or the Department cannot collect the fee for any reason (for example, if a check is returned for insufficient funds); or
3. The applicant does not comply with the applicable public notice requirements at N.J.A.C. 7:7A-17.

(b) To cancel an application, the Department shall:

1. Send the applicant a written notice of its intent to cancel the application and notifying the applicant that the fee and/or additional information identified pursuant to (a) above must be provided to the Department within 15 calendar days.
2. If, by the 15-calendar-day deadline, the applicant submits a written statement providing good cause for the delay in providing the fee and/or additional information, the Department shall extend the time required for submittal.
3. If the applicant does not submit the fee and/or additional information, or a statement of good cause for delay under (b)2 above, the Department shall cancel the application and send the applicant a written notice of the cancellation.

7:7A-19.9 Withdrawal of an application

An applicant may withdraw an application in writing at any time during the Department's review of the application. The Department shall promptly acknowledge the withdrawal in writing.

7:7A-19.10 Re-submittal of an application after denial, cancellation, or withdrawal

If an application for a letter of interpretation, an application for an authorization under a general permit, an application for a transition area waiver, an application for an individual permit, or an

application for a water quality certificate is denied or cancelled by the Department, or is withdrawn by the applicant, the applicant may re-submit the application in accordance with N.J.A.C. 7:7A-16. The Department shall treat a re-submitted application as a new application and shall review it in accordance with this subchapter.

7:7A-19.11 Fee refund or credit when an application is returned, withdrawn, or cancelled

(a) Except as provided in (b) below, the Department shall, upon written request of an applicant, fully refund the submitted application fee in the following circumstances:

1. The application is returned because it is not administratively complete;
2. The application is withdrawn within 60 calendar days of its submittal to the Department and is not technically complete; or
3. The application is withdrawn within 20 working days of its submittal to the Department, whether or not the application is administratively or technically complete.

(b) The Department shall not refund a fee for an application that has been approved or denied or a fee that has been previously credited under (c) below.

(c) If an application is withdrawn by the applicant under circumstances other than those identified at (a)2 and 3 above, or is cancelled under N.J.A.C. 7:7A-19.8, any application fee that was paid to the Department shall be credited toward the application fee for one new application, provided the new application is submitted:

1. Within one year of cancellation or withdrawal;
2. By the same applicant;
3. For the same site; and
4. For the same project.

SUBCHAPTER 20. PERMIT AND WAIVER CONDITIONS; MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF AUTHORIZATIONS AND PERMITS

7:7A-20.1 Purpose and scope

(a) This subchapter sets forth the conditions that apply to all permits.

(b) This subchapter sets forth the procedures for:

1. Extending the term of: a transition area waiver, the duration of which is governed by N.J.A.C. 7:7A-8.5; an authorization under a general permit, the duration of which is governed by N.J.A.C. 7:7A-5.6; or an individual permit, the duration of which is governed by N.J.A.C. 7:7A-9.2;

2. Transferring an emergency authorization, a transition area waiver, an authorization under a general permit, or an individual permit to a new owner of the site where the regulated activity or project authorized under the authorization or permit is taking place;
3. Modifying a transition area waiver, an authorization under a general permit, or an individual permit;
4. Suspending a transition area waiver, an authorization under a general permit, an individual permit, or an emergency authorization; and
5. Terminating a transition area waiver, an authorization under a general permit, an individual permit, or an emergency authorization.

7:7A-20.2 Conditions that apply to all permits

(a) The Department places conditions on a permit to ensure that the approved project complies with this chapter. The conditions that apply to all permits are set forth in (c) below.

(b) If a permittee undertakes any regulated activity authorized under a permit, such action shall constitute the permittee's acceptance of the permit in its entirety, as well as the permittee's agreement to abide by the permit and all conditions therein.

(c) The following conditions apply to all permits, including all waivers and general permit authorizations:

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit;
2. The issuance of a permit does not convey any property rights or any exclusive privilege;
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit;
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District having jurisdiction over the site;
5. 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;
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7A-20.8;
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and

welfare, or the environment. The permittee shall inform the Division of Land Use Regulation by telephone at (609) 292-0060 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:

i. A description of the noncompliance and its cause;

ii. The period of noncompliance, including exact dates and times;

iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and

iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action under N.J.A.C. 7:7A-22, as well as, in the appropriate case, suspension and/or termination of the permit;

9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit;

10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq., and N.J.A.C. 7:29;

11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties;

12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores;

13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:

i. Enter upon the permittee's premises where a regulated 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, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action under N.J.A.C. 7:7A-22; 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;

14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures

within or adjacent to the channel while the regulated activity(ies) is being undertaken. Upon completion of the regulated activity(ies), the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas;

15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit;
16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity or project, or any portion thereof, is in existence, unless the permit is modified pursuant to N.J.A.C. 7:7A-20.6;
17. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7A-1.4;
18. The permittee shall perform any mitigation required under the permit in accordance with N.J.A.C. 7:7A-11;
19. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment;
20. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit;
21. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request;
22. The permittee shall provide monitoring results to the Department at the intervals specified in the permit;
23. A permit shall be transferred to another person only in accordance with N.J.A.C. 7:7A-20.5;
24. A permit can be modified, suspended, or terminated by the Department for cause;
25. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit;
26. 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
27. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, PO Box 420, Mail Code 401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of regulated activities.

7:7A-20.3 Establishing permit conditions

(a) In addition to the standard conditions required in all permits under N.J.A.C. 7:7A-20.2, 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-20.2, 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 and watershed management area; 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 findings and/or environmental guidelines issued under section 404(b)(1) of the Federal Act at 40 CFR 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 and/or waters of the State, 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-20.6.
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-20.6;
5. Applicable best management practices (BMPs);

6. Any conditions necessary for general permits as required under N.J.A.C. 7:7A- 5 or 7;
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.

7:7A-20.4 Extension of an authorization under a general permit, a transition area waiver, and an individual permit

(a) A person may request one five-year extension of an authorization under a general permit, the duration of which is governed by N.J.A.C. 7:7A-5.6, an individual permit, the duration of which is governed by N.J.A.C. 7:7A-9.2, and a transition area waiver, the duration of which is governed by N.J.A.C. 7:7A-8.5.

(b) The Department shall issue an extension only if:

1. A person submits a request for extension that meets the requirements of (c) below and that is received by the Department at least 90 calendar days prior to the expiration of an individual permit or transition area waiver, and at least 30 calendar days prior to the expiration of a general permit authorization. The Department shall not accept a request for extension received more than one year prior to the expiration of an authorization, transition area waiver, or individual permit;
2. The person requesting the extension demonstrates that there has been no significant change in the overall condition of the site, including the wetlands boundary and resource value classification;
3. The person requesting the extension demonstrates that regulated activities approved under any authorization, waiver, or individual permit for which an extension is sought

have not been revised or amended, unless the permittee has obtained a modification of the authorization, waiver, or individual permit under N.J.A.C. 7:7A-20.6; and

4. For an individual permit, the person requesting the extension demonstrates that the rules in this chapter governing the regulated activities authorized under the permit for which an extension is sought have not been amended such that the activities do not meet the rules as amended. In this instance, the individual permit shall expire on the date set forth therein, and the permittee shall comply with the requirements of N.J.A.C. 7:7A-9.2.

(c) A request for an extension of a transition area waiver, an authorization under a general permit, or an individual permit shall include:

1. A completed application form as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4;
2. The appropriate application fee as set forth at N.J.A.C. 7:7A-18; and
3. A narrative demonstrating that the requirements of (b) above are met.

(d) Within 15 calendar days after receiving a request for an extension of an authorization under a general permit or within 30 calendar days after a request for an extension of a waiver or individual permit, the Department shall take one of the actions identified in (d)1 or 2 below. During the Department's review of the extension request, regulated activities subject to the authorization or individual permit may continue.

1. The Department shall determine that the request meets the requirements of this section and issue an extension in accordance with (g) below; or
2. The Department shall determine that the request meets the criteria for denial at (e) below and deny the extension request.

(e) The Department shall deny a request for an extension for any of the following reasons:

1. The waiver, authorization, or individual permit for which the extension is sought is not one specified in (a) above;
2. The Department receives the request more than one year prior to the expiration date of the waiver, authorization, or individual permit for which the extension is sought;
3. The Department receives the request after the expiration date of the waiver, authorization, or individual permit for which the extension is sought;
4. The term of the waiver, authorization, or individual permit for which the extension is sought has been extended before;
5. The applicant does not demonstrate that all of the requirements at (b) above are met;
6. The request does not include all of the information required to be submitted under (c) above; or
7. The waiver, authorization, or individual permit for which the extension is sought has been terminated in accordance with N.J.A.C. 7:7A-20.9.

(f) If the Department denies a request for an extension under (e) above:

1. The waiver, authorization, or individual permit shall expire on its original expiration date or on the date of receipt of the denial by the permittee, whichever is later, unless already terminated in accordance with N.J.A.C. 7:7A-20.9; and
2. All regulated activities authorized under any authorization under a general permit, transition area waiver, or individual permit shall cease on the expiration date of the authorization, waiver, or individual permit specified in (f)1 above, and shall not commence again unless and until a new authorization, waiver, or individual permit is obtained in accordance with N.J.A.C. 7:7A-16.

(g) If the Department determines that the requirements of this section have been met, the Department shall issue an extension of the waiver, authorization under a general permit, or individual permit for one five-year period, beginning on the original expiration date of the waiver, authorization under a general permit, or individual permit. The extension shall be in writing, and shall include any conditions the Department determines are necessary to ensure the requirements of this chapter are met.

7:7A-20.5 Transfer of an emergency authorization, authorization under a general permit, a transition area waiver, or an individual permit

(a) If the site for which the Department has issued an emergency authorization, an authorization under a general permit, a transition area waiver, or an individual permit, is transferred to a new owner, the authorization, waiver, or individual permit, including all conditions, shall be automatically transferred to the new owner, provided the authorization, waiver, or individual permit is valid on the date that the site is transferred to the new owner.

(b) The authorization, waiver, or individual permit transferred under (a) above shall continue in effect provided that, within 30 calendar days after the transfer of ownership of the site, the new owner submits the following information to the Department:

1. The name, address, and contact information of the new owner; and
2. Documentation that the transfer will not alter any condition on which the original authorization, waiver, or individual permit was based and will not otherwise circumvent any requirement of this chapter.

7:7A-20.6 Modification of an authorization under a general permit, a transition area waiver, or an individual permit

(a) A transition area waiver that is valid in accordance with N.J.A.C. 7:7A-8.5, an authorization under a general permit that is valid in accordance with N.J.A.C. 7:7A-5.6, or an individual permit that is valid in accordance with N.J.A.C. 7:7A-9.2, may be modified in accordance with this section through an administrative modification, a minor technical modification, or a major technical modification. An authorization under a general permit-by-certification shall not be modified. A modification of an authorization under a general permit, a transition area waiver, or an individual permit may be requested by a permittee or, in the cases set forth at (h) below, the Department may modify a permit on its own initiative.

(b) The term of a waiver, an authorization under a general permit, or an individual permit shall not be extended by a modification.

(c) An administrative modification of a waiver, an authorization under a general permit, or an individual permit applies to a change to a site plan or other document on which the original waiver, authorization under a general permit, or individual permit was based, but which does not alter the design or layout of the project or affect the wetland limits. An administrative modification may include:

1. Correcting a drafting or typographical error on a site plan or report;
2. Improving topographical or other data in order to make the waiver, authorization under a general permit, or individual permit more accurately reflect the site, the extent of regulated areas, and/or the permitted activities; or
3. Adding notes, labels, or other clarifying information to the approved site plan, if required to do so by the Department or another government entity.

(d) A minor technical modification of a waiver, an authorization under a general permit, or an individual permit applies to a change in the design or layout of a project, including any associated change to an approved site plan or other document, that the applicant demonstrates does not result in new or additional impacts to the wetland or transition area. A minor technical modification may include:

1. A change in materials or construction techniques;
2. A reduction in the amount of development on the site, such as deletion of a permitted structure or activity, or a reduction in the footprint of a regulated activity or project;
3. A change in the size, shape, or location of the regulated activities or project, provided the total area of disturbance does not increase.

(e) A major technical modification of a waiver, an authorization under a general permit, or an individual permit applies to any change in regulated activities or project authorized pursuant to the waiver, authorization, or individual permit, including any associated change to an approved site plan or other document, which is not addressed under (c) or (d) above and that does not require a new permit in accordance with (f) below.

(f) Notwithstanding any other provision in this section, the Department shall not issue a modification of a waiver, an authorization under a general permit, or an individual permit if the Department determines that the person requesting the modification proposes changes that will constitute a substantial redesign of the regulated activities or project or that will significantly increase the environmental impact of the regulated activities. In such a case, the applicant shall submit a new application for a waiver, an authorization, or an individual permit in accordance with N.J.A.C. 7:7A-16 and the Department shall review the application in accordance with N.J.A.C. 7:7A-19. Changes for which a new application shall be submitted include:

1. A change to the basic purpose or use of a regulated activity or project, such as a change from the construction of a hospital to the construction of an apartment complex;

2. An expansion of a regulated activity or project beyond that which was described in the public notice of the application provided in accordance with N.J.A.C. 7:7A-17;
3. A substantial redesign of the regulated activity or project such that the Department determines a new engineering analysis of the site and/or regulated activity or project is necessary;
4. A significant change in the size or scale of the regulated activity or project, including the addition of structures;
5. A significant change in the impact of the regulated activity or project on any wetland or transition area; or
6. A change that would result in impacts to a site not owned or controlled by the permittee.

(g) The modified transition area waiver, modified authorization under a general permit, or modified individual permit, including all conditions listed therein, shall be recorded within 30 calendar days of receipt by the person requesting such modification, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. Where the site subject to the modified waiver, modified authorization under a general permit, or modified individual permit is located within two or more counties, the modified waiver, authorization, or permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded modified verification, authorization, or permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7A-1.4.

(h) The following are causes for which the Department may modify an authorization under a general permit, a transition area waiver, or an individual permit, 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-20.9, 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 transfer as required under N.J.A.C. 7:7A-20.5.

(i) 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 within **10** days of the permittee's receipt of the notice.

7:7A-20.7 Application for a modification

(a) This section sets forth requirements for an application to modify a transition area waiver, an authorization under a general permit, or an individual permit. The general application requirements at N.J.A.C. 7:7A-16.2 apply to applications for modifications in addition to the application requirements in this section.

(b) To apply for an administrative modification to a waiver, an authorization under a general permit, or an individual permit under N.J.A.C. 7:7A-20.6(c), the person requesting the modification shall submit:

1. A description of the proposed change to the site plan or other document on which the original waiver, authorization, or individual permit was based;
2. The site plans approved as part of the waiver, authorization, or individual permit with revisions illustrating the proposed change;
3. A copy of the waiver, authorization, or individual permit for which the modification is requested; and
4. Any information necessary to ensure compliance with State and/or Federal law.

(c) To apply for a minor technical modification of a waiver, an authorization under a general permit, or an individual permit under N.J.A.C. 7:7A-20.6(d), the person requesting the modification shall submit:

1. A completed application form as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4;
2. The appropriate application fee set forth at N.J.A.C. 7:7A-18;
3. A description of the scope and purpose of the proposed change to the regulated activity or project authorized under the authorization or individual permit;
4. The site plans approved as part of the waiver, authorization, or individual permit with revisions illustrating the proposed change in the regulated activity or project;
5. A copy of the waiver, authorization, or individual permit for which the modification is requested;
6. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the regulated activity or project, as applicable;

7. A revised environmental report if the proposed modification is of an individual permit. The revised environmental report shall address the aspects of the regulated activity or project that are proposed to be changed and demonstrate that the regulated activity or project for which the modification is requested continues to comply with all requirements of this chapter; and
8. Any information necessary to ensure compliance with State and/or Federal law.

(d) To apply for a major technical modification of a waiver, an authorization under a general permit, or an individual permit under N.J.A.C. 7:7A-20.6(e), the person requesting the modification shall submit:

1. A completed application form as described at N.J.A.C. 7:7A-16.7(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7A-1.4;
2. Documentation that public notice of the application for the major technical modification was provided in accordance with N.J.A.C. 7:7A-17;
3. The appropriate application fee set forth at N.J.A.C. 7:7A-18;
4. A description of the scope and purpose of the proposed change to the regulated activity or project authorized under the waiver, authorization, or individual permit;
5. The site plans approved as part of the waiver, authorization, or individual permit with revisions illustrating the proposed change;
6. A copy of the waiver, authorization, or individual permit for which the modification is requested;
7. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the regulated activity or project, as applicable;
8. Calculations, analyses, data, and supporting materials necessary to demonstrate that the regulated activity or project as proposed to be changed meets the requirements of this chapter, if applicable;
9. For a modification of an individual permit, a revised environmental report addressing the aspects of the regulated activity or project that are proposed to be changed and a demonstration that the regulated activity or project for which the modification is requested continues to comply with all requirements of this chapter; and
10. Any information necessary to ensure compliance with State and/or Federal law.

7:7A-20.8 Suspension of a waiver, an authorization under a general permit, an individual permit, or an emergency authorization

(a) The Department shall suspend an individual permit, a waiver, general permit authorization, or an emergency authorization for good cause, including, but not limited to, the following:

1. The waiver, authorization under a general permit, individual permit, or emergency authorization was based on false or inaccurate information;
2. The permittee or person to whom an emergency authorization was issued has not complied with a condition of the waiver, authorization under a general permit, individual permit, or emergency authorization;

3. The permittee or person to whom an emergency authorization was issued has undertaken activities onsite that violate this chapter;
4. The permittee or person to whom an emergency authorization was issued has misrepresented or failed to fully disclose all relevant facts pertaining to the waiver, authorization under a general permit, individual permit, or emergency authorization;
5. The permittee or person to whom an emergency authorization was issued has failed to fully and correctly identify impacts of the regulated activity or project in the application for the waiver, authorization under a general permit, individual permit, or emergency authorization;
6. The regulated activities conducted pursuant to the waiver, authorization under a general permit, individual permit, or emergency authorization have caused unanticipated environmental impacts;
7. The permittee or person to whom an emergency authorization was issued has made a change in the project that, under N.J.A.C. 7:7A-20.6, would require a modification to the waiver, authorization under a general permit, or individual permit, but the permittee did not first obtain the required modification; or
8. The Department determines that suspension of the waiver, authorization under a general permit, individual permit, or emergency authorization is necessary for emergency reasons or to protect public health, safety, and welfare, or the environment.

(b) The Department shall provide written notice of a suspension by certified mail to the permittee or person to whom the waiver, permit, or authorization was issued in accordance with (c) below, except if the waiver, authorization under a general permit, individual permit, or emergency authorization is suspended for emergency reasons, in which case the Department shall contact the permittee or person to whom the waiver was issued by telephone or by any practical method, and will follow up with written notice.

(c) A notice of suspension shall:

1. State that the waiver, authorization under a general permit, individual permit, or emergency authorization is suspended upon the receipt of the notice by the permittee;
2. Include the reasons for the suspension;
3. State that all regulated activities authorized under the suspended transition area waiver, authorization under a general permit, individual permit, or emergency authorization shall cease immediately upon receipt of the notice by the permittee; and
4. Notify the permittee of the right to, within 10 calendar days after the permittee receives the notice, request:
    i. A meeting with the Department to discuss the suspension; and/or
    ii. An adjudicatory hearing in accordance with N.J.A.C. 7:7A-21.

(d) Within 30 calendar days after receiving a notice of suspension under (b) above, the permittee shall provide the Department with a written strategy to remedy the cause(s) of the suspension. The written strategy shall include:

1. A description of how the strategy will remedy the cause(s) of the suspension;
2. A demonstration that the strategy will bring the regulated activity or project into compliance with this chapter; and
3. A proposed timeframe within which the permittee will execute the strategy.

(e) Within 30 calendar days after the Department receives the written strategy required under (d) above, the Department shall take one of the following actions:

1. Accept the strategy, reinstate the transition area waiver, authorization under a general permit, individual permit, or emergency authorization, and require the permittee to implement the strategy within a prescribed timeframe. The Department may add conditions or revisions as necessary to ensure that the strategy achieves compliance with this chapter;
2. Determine that the strategy is insufficient and request additional detail, information, and/or changes to the strategy, in order to remedy the non-compliance. Within 15 calendar days after the Department receives the requested information, the Department shall take either the action described at (e)1 above or the action described at (e)3 below; or
3. Determine that the strategy is unacceptable to achieve compliance with this chapter, and notify the permittee of its intent to terminate the transition area waiver, authorization under a general permit, individual permit, or emergency authorization pursuant to N.J.A.C. 7:7A-20.9

(f) Noncompliance with any of the requirements of this section shall constitute cause for the Department to terminate the transition area waiver, authorization under a general permit, individual permit, or emergency authorization under N.J.A.C. 7:7A-20.9.

7:7A-20.9 Termination of an authorization under a general permit, an individual permit, a transition area waiver, or an emergency authorization

(a) The Department shall terminate, for good cause, an authorization under a general permit, an individual permit, a transition area waiver, or an emergency authorization that has been suspended pursuant to N.J.A.C. 7:7A-20.8. Good cause for termination includes, but is not limited to, the following:

1. The permittee has not ceased all regulated activities as required in the notice of suspension pursuant to N.J.A.C. 7:7A-20.8(c)3;
2. The permittee has not complied with the requirement at N.J.A.C. 7:7A-20.8(d) to submit a strategy to remedy the causes of the suspension; or
3. The Department has determined that the strategy submitted is unacceptable to achieve compliance with this chapter.

(b) The Department shall provide written notice of its intent to terminate an authorization under a general permit, individual permit, transition area waiver, or emergency authorization by certified mail to the permittee.

(c) The permittee may request an adjudicatory hearing on the notice of intent to terminate in accordance with N.J.A.C. 7:7A-21. The hearing request shall be submitted within 10 calendar days after receipt of the notice of intent to terminate.

(d) If the permittee does not request an adjudicatory hearing under (c) above, or if the adjudicatory hearing request is denied, the transition area waiver, authorization under a general permit, individual permit, or emergency authorization shall automatically terminate, effective 10 calendar days after the permittee received the notice of intent to terminate under (b) above.

(e) If the Department terminates an authorization under a general permit, individual permit, transition area waiver, or emergency authorization, the permittee shall take all of the actions at (e)1, 2, and 3 below. Failure to do so shall constitute a violation of this chapter and shall subject the permittee to enforcement action pursuant to N.J.A.C. 7:7A-22:

1. Remedy any changes to the site made in violation of this chapter;
2. Remedy any adverse impacts to wetlands, transition areas, State open waters, and the environment caused by the regulated activities on the site; and
3. Restore, to the maximum extent practicable, the site to its condition prior to the start of the activities authorized under the transition area waiver, authorization under a general permit, individual permit, or emergency authorization.

SUBCHAPTER 21. REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-21.1 Procedure to request an adjudicatory hearing; decision on the request

(a) This subchapter sets forth the process by which a person may request an adjudicatory hearing to contest a Department decision to approve or deny an application under this chapter. A person seeking to contest an administrative order and/or a civil administrative penalty assessment shall do so in accordance with the adjudicatory hearing request provisions applicable to Department enforcement actions under this chapter at N.J.A.C. 7:7A-22.

(b) To contest a Department decision on an application under this chapter, a person shall submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin. If a person submits the adjudicatory hearing request after this time, the Department shall deny the request.

(c) A person requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:7A-1.4:

1. The name, address, daytime telephone number, fax number, and e-mail address of the

person requesting the hearing, and of the person's authorized representative.

2. A copy of the Department decision on which a hearing is being requested;
3. The date that the Department decision on which a hearing is being requested was received by the person requesting the hearing;
4. A specific admission, denial, or explanation of each fact appearing in the Department decision, or a statement that the person is without knowledge thereof;
5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense;
6. Where the person submitting the hearing request is not the person to whom the decision that is being contested was issued, evidence that a copy of the hearing request has been mailed or delivered to the person to whom the decision was issued.

(d) A person requesting an adjudicatory hearing shall:

1. Submit the original hearing request to:

   New Jersey Department of Environmental Protection

   Office of Legal Affairs

   Attention: Adjudicatory Hearing Requests

   Mail Code 401-04L, PO Box 402

   401 East State Street, 7th Floor

   Trenton, NJ 08625-0402; and
2. Submit a copy of the hearing request to the Director of the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7A-1.4.

(e) Nothing in this subchapter shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, N.J.S.A. 52:14B-3.1, 3.2, and 3.3.

(f) The Department shall notify the requester that the hearing request is granted or denied. If the hearing request is denied, the denial shall provide the reason(s) for the denial. If the hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for a contested case hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) After a hearing, the administrative law judge will submit an initial decision to the Commissioner. Within 45 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.

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

7:7A-21.2 Procedure to request dispute resolution

As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the requester of its determination. If the Department determines the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation.

7:7A-21.3 Effect of request for hearing on operation of permit or authorization

(a) When a permittee requests an adjudicatory hearing to appeal any portion of a permit or an authorization, the operation of the permit or authorization shall be automatically stayed in its entirety, unless the permittee shows good cause in writing why the permit or authorization should continue in effect while being contested. All permitted activities shall stop as of 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.

(b) When a person other than the permittee requests an adjudicatory hearing on a permit or authorization, the operation of the permit or authorization is not automatically stayed. The Department shall stay operation of the permit or authorization only if it determines that good cause to do so exists. If a stay is imposed, all permitted activities shall stop as of the date the stay is imposed, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

7:7A-21.4 Notice of settlement agreement

(a) If the Department and the person requesting an adjudicatory hearing agree to a settlement that may result in the issuance of a freshwater wetland permit or waiver for a regulated activity, notice of the opportunity to comment on the settlement shall be provided as follows:

1. The person who requested the adjudicatory hearing shall send by certified mail a "notice of intent to settle" the matter, using the notice form available from the Department at the address set forth at N.J.A.C. 7:7A-1.4, to the following:
    i. Each person who was provided specific notice of the application that resulted in the decision that is the subject of the adjudicatory hearing request; and
    ii. Each person who commented on the application;
2. The Department shall publish in the DEP Bulletin the notice of intent to settle, and shall accept comments on the notice for at least 30 calendar days; and
3. If, after the 30-calendar-day comment period under (a)2 above, the settlement is finalized, the Department shall publish a notice of the final settlement in the DEP Bulletin.

SUBCHAPTER 22. ENFORCEMENT

7:7A-22.1 General provisions

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:9B-1 et seq. or 58:10A-1 et seq., or any regulation, rule, letter of interpretation, permit, agreement, transition area waiver, order, settlement, exemption letter, or mitigation proposal adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7A-22.20, pursue the remedies specified in (a)1 through 5 below. Pursuit of any of the remedies specified under this section shall not preclude the Department from seeking any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7A-22.3;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7A-22.14;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7A-22.7 through 22.12;
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7A-22.13; and/or
5. Petition the Attorney General to bring a criminal action in accordance with N.J.A.C. 7:7A-22.15.

(b) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any property, facility, building, premises, site, or place for the purpose of investigating an actual or suspected source of pollution of the environment and conducting inspections, collecting samples, copying or photocopying documents or records, and for otherwise ascertaining compliance or noncompliance with any laws, permits, orders, codes, rules, and regulations of the Department.

(c) Each applicant or permittee shall provide, upon request of the Department, any information required to determine compliance with the provisions of N.J.S.A. 13:9B-1 et seq., or 58:10A-1 et seq., or any rule or regulation adopted, or permit or order issued pursuant thereto.

(d) For the purposes of this subchapter, a permit shall mean an authorization under a general permit-by-certification, an authorization under a general permit, an individual permit, a transition area waiver, an exemption letter, an emergency authorization, a letter of authorization, a memorandum of agreement, or other written authorization, or other approval issued pursuant to N.J.S.A. 13:9B-1 et seq. and/or 58:10A-1 et seq.

(e) The burden of proof and degrees of knowledge or intent required to establish a violation of N.J.S.A. 13:9B-1 et seq., 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 that the USEPA must meet in establishing a violation of the Federal Act or implementing regulations.

7:7A-22.2 USEPA review

The Department shall make available without restriction any information obtained or used in the enforcement of N.J.S.A. 13:9B-1 et seq., and/or 58:10A-1 et seq., and/or this chapter, to the USEPA upon request.

7:7A-22.3 Issuance of an administrative order

Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:9B-1 et seq., or 58:10A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 35 calendar days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7A-22.6. After the hearing and upon a finding that a violation has occurred, the Department may issue a final order. If a hearing is not requested within 35 calendar days of receipt of the order, then the order shall become final on the 36th calendar day following receipt. A request for hearing shall not automatically stay the effect of the order.

7:7A-22.4 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-22.12. The amount of the civil administrative penalty for each such violation shall be determined under N.J.A.C. 7:7A-22.7 through 22.12.

(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-22.5(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.

7:7A-22.5 Assessment, settlement, and payment of a civil administrative penalty

(a) To assess a civil administrative penalty under N.J.S.A. 13:9B-1 et seq. or 58:10A-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order, or permit violated;

2. Concisely state the alleged facts that constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7A-22.6.

(b) Payment of the civil administrative penalty is due when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7A-22.6, a notice of civil administrative penalty assessment becomes a final order on the 36th calendar day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies an untimely submitted hearing request pursuant to N.J.A.C. 7:7A-22.6(d), a notice of civil administrative penalty assessment becomes a final order on the 36th calendar day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies a hearing request pursuant to N.J.A.C. 7:7A-22.6(e) because it does not include all the required information, a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial by the violator; or
4. If the Department grants a hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in the contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, R. 4:42-11(a). Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 90 calendar days of the date that payment is due; or
2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 90 calendar days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7A-22.7 through 22.12 according to the factors at (d)1 through 4 below. As provided at N.J.A.C. 7:7A-22.4(c), this subsection does not apply to penalties assessed for violations of N.J.S.A. 58:10A-1 et seq.:

1. Mitigating or extenuating circumstances not previously considered in the assessment of penalties;

2. The timely implementation of measures leading to compliance 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 full payment by the violator of a specified part of a civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that 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.

7:7A-22.6 Procedures to request and conduct an adjudicatory hearing to contest an administrative order and/or notice of civil administrative penalty assessment

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:9B-1 et seq., and/or 58:10A-1 et seq., the violator shall submit a hearing request in writing within 35 calendar days after receipt by the violator of the administrative order and/or notice of a civil administrative penalty assessment being contested. If a violator submits the hearing request after this time, the Department shall deny the request.

(b) A violator requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:7A-1.4:

1. The name, address, daytime telephone number, fax number, and e-mail address of the violator requesting the hearing and the violator's authorized representative;
2. A copy of the Department's administrative order and/or notice of a civil administrative penalty assessment for which a hearing is being requested;
3. The date that the administrative order and/or notice of a civil administrative penalty assessment was received by the violator;
4. A specific admission or denial of each of the facts appearing in the Department's administrative order and/or notice of civil administrative penalty assessment or a statement that the person is without knowledge thereof. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state 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;
5. A statement as to whether the violator agrees to allow the Department to delay the transfer of a granted hearing request to the Office of Administrative Law for the purposes of engaging in settlement negotiations as provided by the Uniform Administrative Procedure Rules at N.J.A.C. 1:1-8.1(b);

6. Information supporting the request and copies of other written documents relied upon to support the request;
7. An estimate of the time required for the hearing (in days and/or hours); and
8. A request, if necessary, for a barrier-free hearing location accessible to physically disabled persons.

(c) A person requesting an adjudicatory hearing shall:

1. Submit the original hearing request to:

   New Jersey Department of Environmental Protection

   Office of Legal Affairs

   ATTENTION: Adjudicatory Hearing Requests

   Mail Code 401-04L, PO Box 402

   401 East State Street, 7th Floor

   Trenton, New Jersey 08625-0402; and
2. Submit a copy of the hearing request to:

   New Jersey Department of Environmental Protection

   Bureau of Coastal and Land Use Compliance and Enforcement

   PO Box 420

   Mail Code 401-04C

   401 East State Street, 4th Floor

   Trenton, New Jersey 08625-0420

(d) If the violator fails to include all the information required by (b) above, the Department may deny the hearing request.

(e) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7A-22.7 Civil administrative penalties for failure to obtain a permit prior to conducting regulated activities

(a) For the failure to obtain a permit prior to conducting regulated activities, the Department may 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-22.8, 22.9, 22.10, or 22.11, in which case the penalty amount shall be determined under whichever of those sections applies. For the purposes of this section, permit shall mean an authorization under a general permit-by-

certification, an authorization under a general permit, an individual permit, a transition area waiver, an exemption letter, an emergency authorization, a letter of authorization, a memorandum of agreement, or other written authorization, or other approval issued pursuant to N.J.S.A. 13:9B-1 et seq., and/or 58:10A-1 et seq.

(b) Each violation of N.J.A.C. 7:7A-2.1 shall constitute an additional, separate, and distinct violation.

(c) Each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate, and distinct offense.

(d) 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.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within Table 22.7A in (g) below by determining the number of points pursuant to (f) below. The civil administrative penalty shall be the amount within Table 22.7A in (g) below, unless adjusted pursuant to (h) and/or (i) below.

(f) The Department shall use the two factors described at (f)1 and 2 below to determine the number of points assigned to each violation.

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 (f)1i or ii above and is assigned one point.
2. The seriousness factor of the violation is assigned points as provided in (f)2i and ii below and shall be based on the type, size, and location of the violation as provided at (f)2i and ii below and 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 (f)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 (f)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.

(g) The Department shall sum the total points assigned according to the two factors in (f) above, and shall determine the base penalty amount per day using the following table:

Table 22.7A
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

(h) The Department shall adjust the amount of the base penalty assessed pursuant to (g) above based upon the mitigating penalty component as calculated in Table 22.7B below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in Table 22.7B below to obtain the mitigating penalty component. Where neither mitigating factor in Table 22.7B applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (g) above, unless adjusted pursuant to (i) below.

Table 22.7B
Mitigating Penalty Component

Mitigating Factor	Multiplier
Where the nature, timing, and effectiveness of any measures taken by the violator to remove the unauthorized regulated activities and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 calendar days of receipt of the notice of violation from the Department	0.50
Where a complete application is submitted within 30 calendar days after receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized regulated activities without the need to modify the regulated activities, provide mitigation, or restore disturbed regulated areas	0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (h)1 above, where applicable, from the base penalty.

(i) The Department may, in its discretion, adjust the amount of a penalty assessed pursuant to (g) and, where applicable, (h) above based upon any or all of the factors listed in (i)1 through 4 below. No such factor constitutes a defense to any violation. The factors are:

1. The compliance history of the violator;
2. The frequency with which a violation has occurred;

3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating, or aggravating circumstances.

(j) The total civil administrative penalty shall be the daily civil administrative penalty determined under (g) and (h) above, multiplied by the number of calendar days during which each violation continued or remained in place without the required permit.

(k) Notwithstanding the maximum civil administrative penalty of $25,000 pursuant to this subsection, 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 with, or by delaying compliance with, any applicable law and/or condition.

7:7A-22.8 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities

(a) For violations other than 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-22.9, 22.10, or 22.11, in which case the penalty amount shall be determined under whichever of those sections applies.

(b) Each violation of N.J.S.A. 13:9B-1 et seq. or 58:10A-1 et seq., or any regulation, rule, letter of interpretation, permit, agreement, transition area waiver, order, settlement, exemption letter, or mitigation proposal adopted or issued by the Department pursuant thereto, shall constitute an additional, separate, and distinct violation.

(c) Where any requirement of N.J.S.A. 13:9B-1 et seq. or 58:10A-1 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto, may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate, and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall use the two factors described at (e) and (f) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty. The applicable daily penalty amount is determined using the base daily penalty matrix in the table below, based on the seriousness of the violation determined pursuant to (e) below and the conduct of the violator determined pursuant to (f) below.

Table 22.8

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

(e) 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, property, the Freshwater Wetlands Protection Act regulatory program, or the environment, or seriously deviates from the applicable law and/or condition. "Serious deviations" include, but are not limited to, those violations that are in complete contravention of the applicable law, requirement, and/or condition, and/or that severely impair or undermine the protection, operation, or intent of the law, requirement, 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 that has caused or has the potential to cause substantial harm to human health, safety, property, the Freshwater Wetlands Protection Act regulatory program, or the environment, or is a substantial deviation from the applicable law and/or condition. "Substantial deviations" include, but are not limited to, violations that are in substantial contravention of the law and/or condition, and/or that substantially impair or undermine the protection, operation, or intent of N.J.S.A. 13:9B-1 et seq., or 58:10A-1 et seq., or any regulation, rule, or permit condition issued by the Department pursuant thereto. 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 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 (e)1 or 2 above.

(f) 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. There is a rebuttable presumption that any violation of a Department permit, transition area waiver, letter of interpretation, agreement, order, settlement, exemption letter, or mitigation proposal or the conditions thereof is 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 (f)1 or 2 above.

(g) The total civil administrative penalty shall be the daily civil administrative penalty determined under (d), (e), and (f) above, multiplied by the number of calendar days during which each violation continued or remained in place prior to removal or restoration.

7:7A-22.9 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.

7:7A-22.10 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.

7:7A-22.11 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-22.4(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.

(d) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:7A-22.12 Economic benefit factor

(a) Notwithstanding the maximum civil administrative penalty of $25,000 pursuant to N.J.A.C. 7:7A-22.4(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.

7:7A-22.13 Civil penalties

(a) Any person who violates N.J.S.A. 13:9B-1 et. seq., or 58:10A-1 et. seq., or any regulation, rule, permit, order, or court order pursuant thereto, or who fails to pay a civil administrative

penalty in full pursuant to N.J.A.C. 7:7A-22.4, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department shall be subject, upon order of a court, to a civil penalty of not more than $25,000 for each violation, and each calendar day during which a violation continues shall constitute an additional, separate, and distinct offense. In addition to any penalties, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq. The Superior Court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law of 1999 in connection with the Freshwater Wetlands Protection Act and the Water Pollution Control Act.

7:7A-22.14 Civil actions

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:9B-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to this act, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Recovery of reasonable costs of any investigation, inspection, or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
3. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;
4. Recovery of 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 any violation for which a civil action has been commenced and brought under this subsection; and /or
5. An order requiring the violator to restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for an off-site restoration alternative as approved by the Department.

(b) Recovery of damages and costs under (a) above shall be paid to the State Treasurer.

7:7A-22.15 Criminal actions

(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of N.J.S.A. 13:9B-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department 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 N.J.S.A. 13:9B-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department 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 and not 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 N.J.S.A. 13:9B-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto; or
2. Falsifies, tampers with, or purposely, recklessly or knowingly renders inaccurate, any monitoring device or method required to be maintained under N.J.S.A. 13:9B-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto.

7:7A-22.16 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.

7:7A-22.17 Recording a notice concerning violation with the deed for the property

(a) On order of the Commissioner, the clerk or registrar of deeds and mortgages of the county where the property on which the violation occurred is located shall record a notice concerning the violation of N.J.S.A. 13:9B-1 et seq., with the deed for the property. Any fees or other charges that are incurred by the Department for the recording of the notice concerning the violation shall be paid by the owner of the affected property or the violator.

(b) The notice concerning the violation shall remain attached to the property deed until the violation has been remedied and the Commissioner has ordered the clerk to remove the notice concerning the violation. The Commissioner shall immediately order the notice removed once the violation is remedied, or upon other conditions set forth by the Commissioner.

7:7A-22.18 "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-22.14 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.

7:7A-22.19 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 calendar days for public comment on the settlement.

7:7A-22.20 Grace period applicability; procedures

(a) Each violation identified in Table 22.20 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-calendar-day grace period as described at (e) below.

(b) Each violation identified in Table 22.20 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 22.20 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 22.20 at (f) below but is comparable to a violation designated as "M" in Table 22.20 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 calendar days as described at (e) below.
2. If the violation is not listed in Table 22.20 at (f) below and is not comparable to a violation listed in Table 22.20 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 calendar days as described at (e) below.
3. If the violation is not listed in Table 22.20 at (f) below but is comparable to a violation designated as "NM" in Table 22.20, 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 22.20 at (f) below and is not comparable to a violation listed in Table 22.20, 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 22.20 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 22.20 unless the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 calendar 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 N.J.S.A. 13:9B-1 et seq., or any rule or regulation promulgated thereunder, or permit 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 calendar 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 calendar 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 22.20 below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table 22.20 and the rule to which the violation description corresponds, the rule shall govern.

Table 22.20

Rule Citation	Violation Description	Type of Violation
N.J.A.C. 7:7A-2.1(a), 2.2(a) and (b), 3.3(e), 2.3(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-5.7 and 9.2	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-5.7 and 9.2	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-8.2(f) and 12	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-16	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-17	Failure to provide appropriate public notice during the permit application process	NM

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Table 22.20

Rule Citation	Violation Description	Type of Violation
N.J.A.C. 7:7A-20.2 and 20.3	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-20.2 and 20.3	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-20.8	Failure to comply with a permit suspension order	NM
N.J.A.C. 7:7A-20.9	Failure to comply with a permit termination order.	NM
N.J.A.C. 7:7A-11.2(e)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-11.3(a)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-11.6(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-11.12(g)5	Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7A-12 prior to the start of mitigation activities	NM
N.J.A.C. 7:7A-11.12(d)	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-11.12(e) and (f)	Failure to submit an annual post-construction monitoring report at the required intervals following the completion of the construction and planting associated with mitigation	M
N.J.A.C. 7:7A-11.12(g)	Failure to demonstrate to the Department at the end of the post-construction monitoring period that the mitigation project is successful	M

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Table 22.20

Rule Citation	Violation Description	Type of Violation
N.J.A.C. 7:7A-11.13(d)2	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-11.13(e)	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-11.16(b)1	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-11.15(a)	Failure to apply to the Wetlands Mitigation Council for approval of the particular parcel of land to be donated following the Department's determination that land donation is an appropriate mitigation alternative	NM

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APPENDIX 1

OBLIGATE AND FACULTATIVE FAUNA SPECIES FOUND IN VERNAL HABITATS

Obligate Species	Facultative Species
Marbled Salamander (*Ambystoma opacum*)	Common Snapping Turtle (*Chelydra serpentina serpentine*)
Blue-spotted Salamander* (*Ambystoma laterale*)	Eastern Mud Turtle (*Kinosternon subrubrum subrubrum*)
Jefferson Salamander (*Ambystoma jeffersonianum*)	Spotted Turtle (*Clemmys guttata*)
Eastern Tiger Salamander* (*Ambystoma tigrinum tigrinum*)	Eastern Painted Turtle (*Chrysemys picta picta*)
Wood Frog (*Lithobates sylvaticus*)	Red-spotted Newt (*Notophthalmus viridescens viridescens*)
Spotted Salamander (*Ambystoma maculatum*)	American Toad (*Anaxyrus americanu*s)
Eastern Spadefoot Toad (*Scaphiopus holbrookii*)	Fowler's Toad (*Anaxyrus fowler*i)
Fairy shrimp (order *Anostraca*)	Pine Barrens Treefrog* (*Hyla andersonii*)
	Northern Gray Treefrog (*Hyla versicolor*)
	Cope's (Southern Gray) Treefrog* (*Hyla chrysoscelis*)
	Northern Cricket Frog (*Acris crepitans*)
	New Jersey Chorus Frog (*Pseudacris kalmi*)
	American Bull Frog (*Lithobates catesbieanus*)
	Northern Green Frog (*Lithobates clamitans*)
	Southern Leopard Frog (*Lithobates sphenocephalus*)
	Four-toed Salamander (*Hemidactylium scutatum*)
	Northern Spring Peeper (*Pseudacris crucifer*)
	Long-tailed Salamander** (*Eurycea longicauda longicauda*)
	Wood Turtle** (*Glyptemys insculpta*)
	Carpenter Frog (*Lithobates virgatipes*)
	Pickerel Frog (*Lithobates palustris*)
	Atlantic Coast Leopard Frog (*Rana kauffeldi*)
	Green Treefrog (*Hyla cinerea*)
	Eastern Box Turtle (*Terrapene carolina carolina*)
	Eastern Musk Turtle (*Sternotherus odoratus*)

*Listed as a New Jersey State endangered species
** Listed as a New Jersey State threatened species