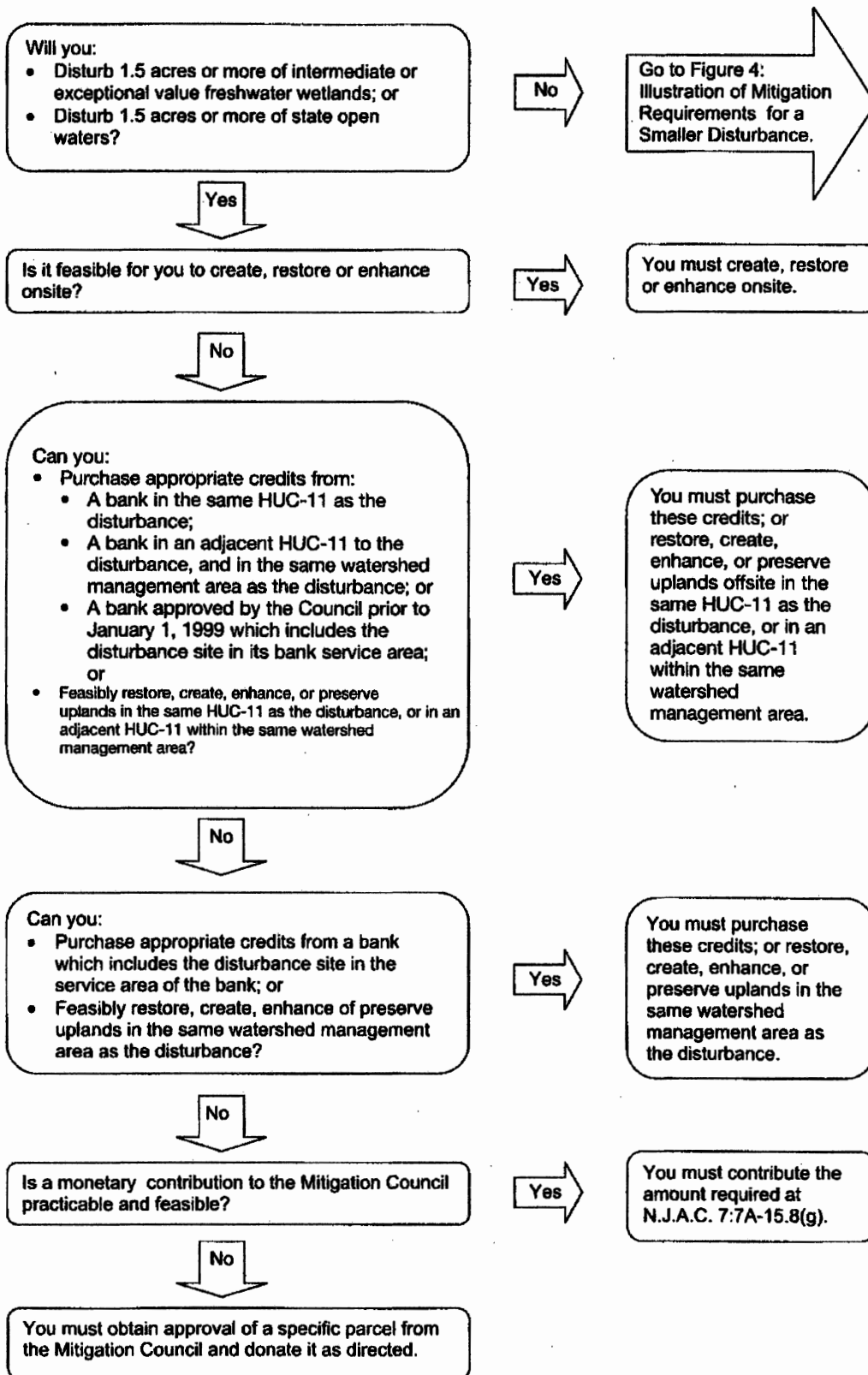


Figure 5: Flow Chart Illustrating Mitigation Alternatives for a Larger Disturbance
 (See N.J.A.C. 7:7A-15.6 for complete requirements)



Amended by R.2008 d.291, effective October 6, 2008.
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (d)3 and (e)2, inserted "or" preceding and deleted "or upland preservation," following "enhancement;"; in (e)1, substituted "in the same watershed management area as the disturbance" for "which includes the disturbance site in its bank service area"; rewrote the introductory paragraph of (f); and added (f)1, (f)2 and (g).
Petition for Rulemaking.
See: 46 N.J.R. 647(a).

7:7A-15.7 Mitigation for a temporary disturbance

(a) Mitigation for a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, shall be performed as follows:

1. For a disturbance of non-forested freshwater wetlands or of State open waters, restoration of the area temporarily disturbed; or
2. For a disturbance of forested freshwater wetlands, either:
 - i. Restoration of the area temporarily disturbed to a forested wetland; or
 - ii. Restoration of the area temporarily disturbed to a non-forested wetland, and in addition, one acre of mitigation in accordance with this subchapter for each acre of disturbance.

(b) The transition area for a temporary disturbance shall be as follows:

1. If the mitigation is restoration performed on the site of the disturbance, the transition area shall be that which was required for the wetland prior to the temporary disturbance; and
2. If additional mitigation is performed under (a)2ii above, the width of the transition area on the mitigation area shall be the width required at N.J.A.C. 7:7A-15.8(b)1 or 3, as applicable.

7:7A-15.8 Amount of mitigation required

(a) This section governs the amount of mitigation required, depending on the mitigation alternative selected under N.J.A.C. 7:7A-15.5 or 15.6, except that this section does not address the amount of a monetary contribution or the size of a land donation. The amount of a monetary contribution or the size of a land donation is not determined by the Department, but instead must be approved by the Wetlands Mitigation Council in accordance with N.J.A.C. 7:7A-15.21 or 15.22.

(b) A mitigation area involving restoration or creation shall include a transition area. The transition area shall not be counted in calculating the acreage of mitigation required. For example, if a person must create one acre of wetlands, the mitigation area shall include one acre of created wetlands and in addition a transition area around the created wetlands. The width of the transition area around a wetland resulting from mitigation shall be:

1. If the mitigation area includes or will include exceptional resource value wetlands, the transition area shall be 150 feet wide;

2. If mitigation is restoration under N.J.A.C. 7:7A-15.7(b)1 of an area temporarily disturbed, the transition area shall be that which was required for the wetland prior to the temporary disturbance; and

3. For all mitigation not listed at (b)1 or 2 above, the transition area shall be 50 feet wide.

(c) If restoration is the mitigation alternative, the Department shall require the following amount of mitigation unless the applicant demonstrates under (j) below that a smaller area will provide equal functions and values:

1. For a disturbance authorized by a permit, other than a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, restoration of two acres of freshwater wetlands and/or State open waters for each acre disturbed, with the addition of any transition area required under (b) above; and
2. For a temporary disturbance authorized by a permit, the amount of restoration required at N.J.A.C. 7:7A-15.7(a).

(d) If creation is the mitigation alternative, the Department shall require creation of two acres of freshwater wetlands and/or State open waters for each acre disturbed, with the addition of any transition area required under (b) above, unless the applicant demonstrates under (j) below that a smaller area will provide equal functions and values.

(e) If enhancement is the mitigation alternative, the Department shall evaluate the wetlands values and functions lost as a result of the disturbance and determine on a case-by-case basis the amount of enhancement required to ensure that the mitigation area results in wetlands of equal functions and values to those lost.

(f) If credit purchase is the mitigation alternative, the Department shall evaluate the wetlands values and functions lost as a result of the disturbance and determine on a case-by-case basis the number of credits required to ensure that the mitigation results in wetlands of equal functions and values to those lost.

(g) If upland preservation is the mitigation alternative, the acreage of upland preserved shall be determined under N.J.A.C. 7:7A-15.9(c).

(h) If monetary contribution is the mitigation alternative, the contribution shall be equal to the lesser of the following costs:

1. The cost of purchasing and enhancing existing degraded freshwater wetlands, resulting in the preservation of freshwater wetlands of equal functions and values to those which are being lost; or