

6. Any acid-producing soils encountered shall be managed in accordance with the requirements for a regulated activity in an area with acid-producing soils in the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).

7. Bore holes shall be backfilled to the original surface level with appropriate, non-contaminated, soil material.

i. Sand may not be used for backfilling in either freshwater or coastal wetlands. Restoration of all bore holes must maintain the hydrologic integrity of the wetlands. To avoid the potential for draining a wetland by puncturing a hard-pan or confining layer, all borings must be sealed with grout or bentonite in accordance with the Department's Water Monitoring Management Program rules, N.J.A.C. 7:9-6.

ii. Water used to flush a boring may be discharged to the ground provided the boring is not conducted in proximity to a stream or in an area of hazardous waste or acid-producing soils. When the boring is performed in proximity to a stream, and water or drilling fluid is used to remove soil from the hole, the sediment-laden water shall not be allowed to flow overland such that it would enter the stream. Soil erosion and sediment control measures shall be used as necessary to contain/filter excess water. Drilling fluid shall be contained when working adjacent to a fish-populated watercourse during the relevant restricted period, and in any other situation where containment represents the only method of ensuring that there is no impact to adjacent streams.

New Rule, R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Rewrote (a)6.

Recodified from N.J.A.C. 7:7-7.27 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for geotechnical survey borings".
Rewrote the section.

7:7-6.24 General permit 24 - habitat creation, restoration, enhancement, and living shoreline activities

(a) This general permit authorizes habitat creation, restoration, enhancement, and living shoreline activities necessary to implement a plan for the restoration, creation, enhancement, or protection of the habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas, which is sponsored by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a "sponsor" shall endorse the activities in writing.

(b) The following habitat creation, restoration, enhancement, and living shoreline plans are acceptable provided they demonstrate compliance with (c) through (g) below:

1. A fish and/or wildlife management plan created or approved by the Department's Division of Fish and Wildlife;

2. A project plan approved under the Partners for Fish and Wildlife program, Coastal Program, or a similar program administered by the USFWS;

3. A project plan created by the U.S. Department of Agriculture's Natural Resources Conservation Service under the Wetlands Reserve program, the Conservation Reserve program, the Conservation Reserve Enhancement program, the Wildlife Habitat Incentive program (WHIP), or a similar program, and approved by the local Soil Conservation District;

4. A plan approved by the Department's Office of Natural Resource Damages for the restoration, creation or enhancement of natural resources injured as the result of an oil spill or release of a hazardous substance;

5. A mitigation project required or approved by a government agency, such as the USACE;

6. A habitat creation, restoration, or enhancement plan carried out by one of the Federal or State agencies at (b)1 through 5 above or by a government resource protection agency such as a parks commission;

7. A habitat creation, restoration, or enhancement plan carried out by a charitable conservancy provided that the plan is part of a program listed at (b)2 through 5 above;

8. A living shoreline plan designed and/or sponsored by the Department, the USFWS, the Natural Resource Conservation Services, the USACE, the USEPA, or NOAA's Restoration Center; or

9. A living shoreline plan implemented by a college or university for the purpose of research.

(c) Habitat creation, restoration, enhancement, and living shoreline activities that are authorized by this general permit include, but are not limited to, the following:

1. Altering hydrology to restore or create wetlands conditions, such as by blocking, removing, or disabling a human-made drainage ditch or other drainage structure such as a tile, culvert or pipe;

2. Breaching a structure such as a dike or berm in order to allow water into an area;

3. Placing habitat improvement structures such as:

i. Nesting islands;

ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and

iii. Fish habitat enhancement devices or fish habitat improvement structures such as placed boulders, stream deflectors, or brush piles;

4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement;

5. Cutting, burning, or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora; or

6. Establishing a living shoreline to protect, restore, or enhance a habitat.

(d) To be eligible for authorization under this general permit, an applicant shall demonstrate that the proposed project:

1. Is part of a plan for the restoration, creation, or enhancement of the habitat and water quality functions and values of wetlands, wetland buffers, and/or State open waters;

2. Is consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, the Coastal Area Facility Review Act and this chapter;

3. Will improve or maintain the values and functions of the ecosystem; and

4. Will have a reasonable likelihood of success, or, if performed by a college or university, in accordance with (b)9 above, will advance the level of knowledge regarding living shorelines in the State.

(e) Activities under this general permit, except for living shoreline activities, which are subject to the requirements of (f) below, shall comply with the following:

1. If the proposed habitat creation, restoration, or enhancement activity is to take place in special areas, as defined at N.J.A.C. 7:7-9, the general permit authorization shall be issued only if the Department finds that there are no practicable alternatives that would involve less or no disturbance or destruction of special areas;

2. The activities shall disturb the minimum amount of special areas as defined at N.J.A.C. 7:7-9 necessary to successfully implement the project plan;

3. The activities shall not decrease the total combined area of special areas on a site. However, the Department may approve 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 one special area to another special area if the Department determines that such conversion is environmentally beneficial; and

4. If the activities involve the removal of a dam, the activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's Dam

Safety Section in the Division of Engineering and Construction.

(f) Living shoreline activities shall comply with the following:

1. The project area below the mean high water line is one acre in size or less, unless the applicant is a county, State, or Federal agency that demonstrates that a larger project size is necessary to satisfy the goals of the project;

2. The project shall disturb the minimum amount of special areas as defined at N.J.A.C. 7:7-9, necessary to successfully implement the project plan. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if the Department determines that the activities causing the reduction are sufficiently environmentally beneficial to outweigh the negative environmental effects of the reduction; and

3. Where the living shoreline is intended to restore an existing shoreline to a previous location, the living shoreline, including all associated fill, shall not exceed the footprint of the shoreline as it appeared on the applicable Tidelands Map, except for a structural component of the project intended to reduce wave energy.

(g) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(h) This general permit does not authorize an activity unless the sole purpose of the activity is habitat creation, restoration, enhancement, or a living shoreline. For example, this general permit does not authorize construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement.

New Rule, R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Added new (f); and recodified former (f) and (g) as (g) and (h).

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (f), substituted "access" for the second occurrence of "trust rights". Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

Sections was "Coastal general permit for habitat creation and enhancement activities". Rewrote the section.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Recodified from N.J.A.C. 7:7-7.29 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for habitat creation, restoration, enhancement, and living shoreline activities". Rewrote the section. Recodified from N.J.A.C. 7:7-7.29 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "Coastal general permit for habitat creation, restoration, enhancement, and living shoreline activities". Rewrote the section.

(e) In a portion of an undeveloped flood hazard area that is 100 feet or farther from a navigable waterway, development is conditionally acceptable provided the development would not prevent potential water-dependent use in any portion of the flood hazard area within 100 feet of a navigable water body.

(f) Development in flood hazard areas shall conform with the applicable design and construction standards of the following:

1. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and implementing rules at N.J.A.C. 7:13, except in lands regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., pursuant to N.J.S.A. 58:16A-60;
2. The Uniform Construction Code, N.J.A.C. 5:23; and
3. The Federal flood reduction standards, 44 C.F.R. Part 60.

(g) Development in a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7-13.

(h) If endangered and/or threatened wildlife or species habitat is present in the flood hazard area such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7-9.36, then the requirements of N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats, shall apply.

(i) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.

(j) Rationale: The goal of this rule is to reduce losses of life and property resulting from unwise development of flood hazard areas, and allow uses compatible with periodic flooding, agriculture and forestry, recreation, and fish and wildlife habitat and uses which require a water's edge location. This rule is consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The rule will ensure that the State's waterfront is not pre-empted by uses which could function equally well at inland locations.

Flood hazard areas adjacent to rivers are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystems, providing flood storage capacity, physical and biochemical water filtration, primary productivity, and wildlife habitats.

For these reasons, the preferred rule is to preserve those flood hazard corridors that are in an undeveloped state with

native or adapted forest vegetation for conservation purposes and to allow limited exceptions for water dependent uses, infill, and uses for which there is no feasible alternative location.

The location acceptability for a site under this rule applies only to flood hazard areas which have not been disturbed by filling. Sites subject to this rule, therefore, tend to be in a more natural state than sites subject to the filled water's edge rule. Accordingly this rule is more restrictive, discouraging development which would unnecessarily disturb vegetation, and requiring water dependency within 100 feet of a navigable water body.

The development of one or two single-family homes or duplexes within an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body is conditionally acceptable provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.

New Rule, R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on wetlands recodified to 3.27.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (a), rewrote the first sentence of the introductory paragraph; in (b), substituted a reference to flood hazard areas for a reference to undeveloped flood hazard areas, and deleted a former second sentence; and rewrote (c), (d) and (g).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a), substituted "the Department" for "DEP" throughout the introductory paragraph and deleted "Alluvial Flood Margins," and substituted "rules" for "policies" in 3; rewrote (b); in (c), amended the N.J.A.C. reference; in (e), substituted "stormwater management" for "Stormwater Runoff".

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Rewrote the section.

Recodified from N.J.A.C. 7:7E-3.25 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

7:7-9.26 Riparian zones

(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula. Regulated waters are defined in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2.

(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian

zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and
4. Along an amorphously-shaped feature, such as a wetland complex, through which a regulated water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;
2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:
 - i. Any trout production water and all upstream waters (including tributaries);
 - ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - iv. Any segment of a water flowing through an area that contains acid producing soils; and
3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or (c)2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 establish 300-foot Special Water Resource Protection Areas along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

(e) Development in riparian zones shall conform with the requirements for a flood hazard area individual permit under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-9, 10 and 11 or, in the alternative as applicable, a flood hazard area permit-by-rule at N.J.A.C. 7:13-7 or a flood hazard area general permit at N.J.A.C. 7:13-8.

(f) If endangered and/or threatened wildlife or species habitat is present in the riparian zone such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7-9.36, then the requirements of N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats, shall apply.

(g) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.

(h) The construction of a restaurant at a marina facility is acceptable within the riparian zone provided it meets the standards of N.J.A.C. 7:7-15.3(d)8.

(i) Rationale: Healthy riparian systems are essential to the natural environment. Loss of soil and plant life that occurs adjacent to regulated waters not only threatens public and private property, but directly impacts water quality and the health of fish and wildlife. The extreme importance of preserving and restoring adequate stream corridor buffers has been well documented in recent decades. Riparian zone functions include stream bank stabilization, removal of sediment, nutrients and contaminants, flood storage, wildlife habitat, aesthetics, and recreation and education.

New Rule, R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on wetlands buffers recodified to 3.28 and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

Repealed by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Section was "Alluvial Flood Margins".

New Rule, R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Section was "Reserved".

Recodified from N.J.A.C. 7:7E-3.26 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

7:7-9.27 Wetlands

(a) Wetlands 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.

1. Wetlands areas are identified and mapped on the following:

- i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 (generalized locations only);
- ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEP at a scale of 1:2,400; and
- iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii above are available from the Division of Land Use Regulation by e-mailing TidelandsMapServices@dep.state.nj.us and those referenced in (a)1iii above are available through NJ-GeoWeb (see <http://www.nj.gov/dep/gis/newmapping.htm>).

2. Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

3. The maps referenced under (a)1i, iii, and 2 above shall be useful as an indicator to assist in the preliminary determination of the presence or absence of wetlands only. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary on a specific site.

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.3, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, coastal activities under the jurisdiction of the New Jersey Meadowlands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located waterward of the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-4, 5, and 7. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands landward of the mean high water line that does not require a zoning certificate, resolution, or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7-9.43(c) in the Hackensack Meadowlands District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-4, 5, and 7.

i. The mitigation requirements at (i) below shall apply to any coastal activity or development reviewed under this subsection, unless, where the coastal activity or development is reviewed under the conditions, limits, and requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-4 and 5, those conditions, limits, and requirements do not require mitigation.

(c) Except as provided at (d) below, development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent;

2. Has no prudent or feasible alternative on a non-wetland site;

3. Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and

4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

(d) The establishment of a living shoreline in wetlands to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7-12.23. Where the Department finds the establishment of a living shoreline acceptable, mitigation shall not be required.

(e) Dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(f) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

(g) Development that adversely affects white cedar stands such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

(h) For projects which require a waterfront development permit, the use of former dredged material management areas for continued placement of dredged material is conditionally acceptable provided:

1. The site has existing dikes or berms in sound condition, and/or has sufficient volume of previously placed dredged material with suitable geotechnical and engineering properties within the dredged material management area to allow for the construction or reconstruction of structurally sound dikes or berms. Where the construction or reconstruction of structurally sound dikes and berms is required:

i. These structures shall be designed:

(1) By a New Jersey licensed professional engineer; and

(2) In accordance with the requirements of Appendix G; and

ii. Any material placed on the exposed surfaces of the dikes and berms shall comply with the appropriate Soil Remediation Standards (N.J.A.C. 7:26D Appendix 1);

2. There are no anticipated adverse effects on threatened or endangered species;

3. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);

4. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;

5. The former dredged material management area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

6. The required waterfront development permit and water quality certificate are obtained.

(i) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with N.J.A.C. 7:7-17.

(j) Rationale: The environmental values and fragility of wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the passage of the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). Tidal and freshwater wetlands are the most environmentally valuable land areas within the coastal zone.

Wetlands contribute to the physical stability of the coastal zone by serving as (i) a transitional area between forces of the open sea and upland areas that absorb and dissipate wind-driven storm waves and storm surges, (ii) a flood water storage area, and (iii) a sediment and pollution trap.

Also, wetlands naturally perform the wastewater treatment process of removing phosphorous, nitrogenous, and other water pollutants, unless the wetlands are stressed.

The biological productivity of New Jersey's wetlands is enormous and critical to the functioning of estuarine and marine ecosystems. The emergent cord grasses and associated algal mats convert inorganic nutrients into organic plant material through the process of photosynthesis. In this way, the primary base for estuarine and marine food webs is provided. The principal direct dietary beneficiaries of organic wetland detritus are bacteria and protozoan, which are in turn fed upon by larger invertebrates. Important finfish, shellfish, and other resources feed upon these invertebrates. New Jersey's wetlands are prime wintering habitat annually for hundreds of thousands of migratory waterfowl. Approximately two-thirds of marine finfish and shellfish are known to be estuarine, and, therefore, wetlands dependent.

Inland herbaceous wetlands, such as bogs and marshes, play an important role in regulating the quality of the water in streams that flow to the estuaries. They retard runoff and store storm waters. They are important areas for primary productivity for estuarine systems. They are critical habitats and movement corridors for several species of plants and animals that are endangered or threatened.

disturbed elevation, and identifies all proposed plantings, including type, size, and number of plants.

(d) Mitigation for unavoidable, permanent, significant impacts to submerged vegetation habitats shall consist of the restoration of habitat for the appropriate species in accordance with scientifically documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years.

(e) Priority shall be given to in-kind restoration of submerged vegetation habitat in as close proximity as possible to the site of the impacts to submerged vegetation.

(f) Mitigation for submerged vegetation habitat shall not consist of planting submerged vegetation within unvegetated interpatch areas of existing submerged vegetation habitat or of increasing bottom coverage within existing submerged vegetation beds. A vegetation bed is an area where submerged vegetation rhizomes overlap, or where submerged vegetation shoots intermingle within less than one square meter.

7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation

(a) This section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.15 or 12.11(f) for the filling of intertidal and subtidal shallows or tidal waters, respectively.

(b) Mitigation for the filling of intertidal and subtidal shallows or tidal waters shall be performed through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters on the site where the filling occurred.

(c) If the onsite mitigation for the filling of intertidal and subtidal shallows described at (b) above is not feasible, mitigation shall be performed as follows:

1. At a single-family home or duplex property that is not part of a larger development, mitigation for the filling of intertidal and subtidal shallows shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal and subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single-family home or duplex, mitigation for the filling of intertidal and subtidal shallows shall be performed in accordance with the hierarchy at (d) through (g) below.

(d) If mitigation for the filling of intertidal and subtidal shallows as described at (b) above at a property other than a single-family home or duplex is not feasible onsite, or if mitigation for the filling of tidal waters as described at (b)

above is not feasible onsite, then mitigation shall be performed offsite through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters within the same estuary as the site of the filling or through the purchase of in-kind credits from a mitigation bank with a service area that includes the site of the filling.

(e) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (d) above is not feasible, then mitigation shall be in the form of restoration, creation, or enhancement of a wetland within the same estuary as the site of the filling in accordance with N.J.A.C. 7:7-17.13 or through the purchase of out-of-kind credits from a mitigation bank with a service area that includes the site of the filling.

(f) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (e) above is not feasible, then mitigation shall be in the form of one or both of the following, as determined in consultation with the Department:

1. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.9; or

2. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.

(g) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (f) above is not feasible, then mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.19.

(h) Within 60 calendar days after the construction of an intertidal and subtidal shallows or tidal waters mitigation site is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different time frame for the submittal of the construction completion report if it determines 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 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.

(i) In addition to the construction completion report required under (h) above, the mitigator shall submit a post construction monitoring report to the Department. Compliance with the standards listed at (k)1 through 4 below shall be demonstrated for each intertidal and subtidal shallows or tidal waters mitigation site for one lunar month after completion of construction of the mitigation site. A lunar

month is the period between two successive full moons. If one or more of the standards listed at (k)1 through 4 below are not met, the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards are met. Failure to meet the standards at (k)1 through 4 below for a given lunar month shall result in corrective action. Corrective action may include regrading or relocation of the mitigation site.

(j) The post-construction monitoring report, required under (i) above, shall be submitted by December 31 of each 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 towards those goals. If the mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented as determined pursuant to (k) below and a timeline for completion;
4. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;
5. Photographs of the mitigation site, with a location map indicating the location and direction of each photograph;
6. An assessment of the hydrology of the mitigation site, including relevant tidal data, photographs, and field observation notes collected throughout the monitoring period; and
7. A field delineation and plan showing the extent and location (using global positioning system data points) of the intertidal and subtidal shallows or tidal waters at the site.

(k) The standards by which a mitigation site where intertidal and subtidal shallows or tidal waters were created shall be determined successful are set forth at (k)1 through 4 below. In accordance with (i) above, the mitigator shall submit a post-construction monitoring report demonstrating that these standards have been met. The standards are:

1. The goals of the approved mitigation proposal have been achieved;
2. The mitigation site is an intertidal and subtidal shallows as defined at N.J.A.C. 7:7-9.15 or a tidal water. The documentation shall include, tidal data, topography for the spring high tide, photographs, and field observation notes collected throughout the monitoring period;
3. The mitigation meets all applicable requirements of this subchapter; and

4. The mitigator has executed and recorded a conservation restriction that meets the requirements of N.J.A.C. 7:7-18.

(l) If the mitigation performed under (e) above is the restoration, creation, or enhancement of a wetland, the mitigator shall demonstrate that the post-construction monitoring standards for a wetland mitigation site at N.J.A.C. 7:7-17.13(d) through (g) are met.

7:7-17.12 Requirements for riparian zone mitigation

As provided at N.J.A.C. 7:7-9.26(e), any development regulated under this chapter in a riparian zone shall meet the requirements for a permit under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. Accordingly, mitigation for impacts to riparian zones shall be provided as required at N.J.A.C. 7:13-10.2(t) and (u) for a regulated activity in a riparian zone.

7:7-17.13 Requirements for wetlands mitigation

(a) This section sets forth the requirements that apply to a wetlands 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 buffer pursuant to N.J.A.C. 7:7-9.28. The wetlands buffer 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) 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 functions and values to those lost.

(d) Within 60 calendar days after the construction of a creation, restoration, or enhancement wetlands mitigation project is completed, the mitigator shall submit a construction

- 3. An individual permit; and
 - 4. A modification of an authorization under a general permit or an individual permit pursuant to N.J.A.C. 7:7-27.5.
- (b) There is no application fee for:
- 1. An applicability determination pursuant to N.J.A.C. 7:7-2.5;
 - 2. An emergency authorization pursuant to N.J.A.C. 7:7-21;
 - 3. A permit-by-rule pursuant to N.J.A.C. 7:7-4;
 - 4. An authorization under the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.24; or
 - 5. An administrative modification of a permit, N.J.A.C. 7:7-27.5.

(c) All application fees shall be paid by money order, check (personal, bank, certified, or attorney) or government purchase order made 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) The fee payable at the time of application for a CAFRA or waterfront development individual permit shall not exceed \$30,000. If the fee for an individual permit application determined under (g) below exceeds \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. The Department shall provide the applicant with documentation of such costs, and the applicant shall pay a supplemental fee in that amount.

(f) The application fee for a CAFRA individual permit or a waterfront development individual permit for a mixed residential and non-residential development shall be the sum of the applicable fees for residential development and non-residential development set forth at (g) below.

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

Table A
APPLICATION FEES

Determination of exemption	
	Fee
Request for a written determination of exemption from CAFRA pursuant to N.J.A.C. 7:7-2.2(f)	\$500.00

Request for a written determination of exemption from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.4(h)	\$500.00
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Authorization under a general permit by certification
\$600.00

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

	Fee
General permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-6.24	No fee
Any other general permit	\$1,000

CAFRA individual permit

	Fee
CAFRA individual permit for the development of one single family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
CAFRA individual permit for any other residential development	\$3,000 per unit
CAFRA individual permit for a commercial, industrial, or public development	\$3,000 per acre of the site (or fraction thereof)

Coastal wetlands individual permit

	Fee
Coastal wetlands individual permit for the development of one single family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Coastal wetlands individual permit for any other development	\$3,000 per acre of wetlands to be disturbed (or fraction thereof)

Waterfront development individual permit

	Fee
Waterfront development individual permit for the development of one single-family home or duplex and/or accessory development located landward of the mean high water line, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000

Waterfront development individual permit for any other residential development located landward of the mean high water line	\$3,000 per unit
Waterfront development individual permit for a commercial, industrial, or public development located landward of the mean high water line	\$3,000 per acre of the site (or fraction thereof)
Waterfront development individual permit for development located waterward of the mean high water line, such as a dock or bulkhead, at a single-family or duplex lot, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Waterfront development individual permit for any other development located waterward of the mean high water line	\$3,000 per acre of water area impacted by the development (or fraction thereof)

Request for a modification of a waterfront development, coastal wetlands, or CAFRA individual permit pursuant to N.J.A.C. 7:7-27.5

	Fee
Administrative modification	No fee
Minor technical modification of a waterfront development, coastal wetlands, or CAFRA general permit authorization or individual permit	\$500.00
Major technical modification of a waterfront development, coastal wetlands, or CAFRA general permit authorization or individual permit	30 percent of the original application fee or \$500.00, whichever is greater

Request to extend a general permit authorization or an individual permit pursuant to N.J.A.C. 7:7-27.3

	Fee
Request to extend a general permit authorization	\$240.00
Request to extend a waterfront development individual permit for activities located waterward of the mean high water line	25 percent of the total original permit application fee up to a maximum of \$3,000

Additional application fee for stormwater review if a project is a "major development" pursuant to the Stormwater Management Rules (see N.J.A.C. 7:8-1.2)

	Fee
Base fee for any major development	\$3,000

Additional fee for review of ground-water 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)
Additional fee if project disturbs vegetation within a Special Water Resource Protection Area (see N.J.A.C. 7:8-5.5)	\$2,000

Amended by R.2006 d.344, effective October 2, 2006.

See: 37 N.J.R. 3120(a), 38 N.J.R. 4205(a).

In (a)4, deleted "and" from the end; in (a)5, substituted "; and" for a period at the end; and added (a)6.

Repeal and New Rule, R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Section was "Purpose and scope".

Recodified from N.J.A.C. 7:7-10.1 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

7:7-25.2 Adjustment of application fees

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and
2. Publish a notice of administrative change in the New Jersey Register that:
 - i. States that the Application Fee Adjustment Report is available on the Department's website at www.nj.gov/dep/landuse; and
 - ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following: