

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having overall responsibility for the construction and/or completion of the regulated project or activity, such as the position of contractor, construction site supervisor, or position of equivalent responsibility. A duly authorized representative may, thus, be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted with the application to the Department.

(c) If an authorization under (b) above is no longer accurate because a different individual or position has overall responsibility for the construction and/or completion of the regulated facility or activity, a new authorization satisfying the requirements of (b) above must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) If an application, report, survey, environmental impact statement, or other document required under this chapter is prepared for an applicant by a professional such as a consultant, engineer, architect, surveyor, attorney, or scientist, the document shall include the certification required under (e) below, signed by the professional responsible for preparing the document. This certification shall be in addition to the certification signed by the applicant.

(e) Any person signing a document under (a) or (b) above shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

(f) Any survey submitted under this chapter shall be performed by a surveyor licensed in New Jersey. In addition, the Department may in some cases require that other documents be submitted, signed, sealed, and/or certified by a person with relevant qualifications such as a license or certification.

Amended by R.1992 d.117, effective March 16, 1992.
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Punctuation only.

Amended by R.2001 d.312, effective September 4, 2001.
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

7:7A-10.11 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.

New Rule: R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

SUBCHAPTER 11. FEES

7:7A-11.1 General fee provisions

(a) Each application submitted to the Department under this chapter shall include a fee, except as provided at (b) below. An application that does not include the fee required under this subchapter shall be considered administratively incomplete, and shall be handled accordingly under N.J.A.C. 7:7A-12.1. The fees for each application are set forth in the fee tables below.

(b) The following applications shall not require an application fee:

1. An application submitted by an agency of the State under N.J.A.C. 7:7A-2.1(b);
2. An application for authorization under general permit 16 or general permit 25, found at N.J.A.C. 7:7A-5.16 and 5.25, respectively;
3. An application for authorization of activities on public land under general permit 17, found at N.J.A.C. 7:7A-5.17; and
4. An application for a minor modification under N.J.A.C. 7:7A-14.3(c).

(c) All fees shall be paid by personal check, certified check, attorney check, government purchase order, or money order, in accordance with the applicable application checklist.

(d) If proposed activities require approval under this chapter and in addition require one or more other Land Use Regulation Program permits (such as a CAFRA permit, waterfront development permit, coastal wetlands permit, or flood hazard area permit), the application fee shall be the sum of the following:

1. The highest single application fee of all the permits required for the project; and
2. Seventy-five percent of the application fee for each additional approval required.

(e) Any fee required under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(f) An application fee is refundable if the Department returns the application as administratively incomplete under N.J.A.C. 7:7A-12.1(b). An application fee is not refundable once the application has been declared administratively complete under N.J.A.C. 7:7A-12.1. However, if the Department denies an application, or if the applicant withdraws the application under N.J.A.C. 7:7A-12.6, the Department shall credit the fee towards a new application for a revised project on the same site, if the new application is submitted within one year of the denial or withdrawal.

(g) 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.

FEE TABLES

Application fees for LOIs (N.J.A.C. 7:7A-3):

Type of LOI	Fee
Presence/absence LOI—whole site	\$100.00
Presence/absence LOI under N.J.A.C. 7:7A-3.2—portion of a site or footprint of disturbance	\$200.00
Line delineation LOI under N.J.A.C. 7:7A-3.3—site smaller than one acre	\$250.00
Line verification LOI under N.J.A.C. 7:7A-3.4—site smaller than one acre	\$250.00
Line verification LOI under N.J.A.C. 7:7A-3.4—site one acre or larger	\$250.00 plus \$35.00 per acre affected ¹ , up to \$50,000
LOI extension under N.J.A.C. 7:7A-3.6	\$100.00, or 25% of original fee, whichever is greater

LOI (any type) and a transition area waiver, (any type) if the site is one acre or smaller	\$350.00 Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a transition area waiver, (any type) if the site is larger than one acre	\$450.00 plus \$40.00 per acre affected ² Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a general permit authorization	Sum of applicable LOI and general permit authorization fees
LOI (any type) and an individual permit	Applicable individual permit fee
Any general permit authorization, except: 1. General permit 16 (wildlife management); 2. General permit 25 (septic repair); or 3. General permit 17 (trail/ boardwalk) on public land.	\$250.00
Authorization under any of the following: 1. General permit 16 (wildlife management); 2. General permit 25 (septic repair); or 3. General permit 17 (trail/ boardwalk) on public land	None

Application fees for general permit authorizations

(N.J.A.C. 7:7A-5):

Type of general permit	Fee
Multiple general permit authorizations for one site	\$250.00 plus \$100.00 for each additional general permit
General permit authorization extension	\$100.00
Combined general permit 2 authorization and flood hazard area permit	\$487.50
General permit 10A, 11, or 20 authorization combined with a major flood hazard area permit	\$2,187.50
General permit 10A, 11 or 20 combined with a minor flood hazard area permit	\$487.50

Combined general permit 26 authorization and flood hazard area permit	\$250.00
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Application fees for transition area waivers (N.J.A.C. 7:7A-6):

Type of transition area waiver	Fee
Any transition area waiver, if: 1. The entire site is covered by a valid line delineation or line verification LOI; and 2. The site is one acre or smaller.	\$100.00
Any transition area waiver, if: 1. The affected portion of the site is covered by a valid line delineation or line verification LOI; and 2. The site is over one acre.	\$250.00 plus \$20.00 [er acre affected ³
Any transition area waiver, if: 1. The site is not covered by a valid LOI, or has a presence/absence LOI only; and 2. The site is one acre or less.	\$350.00 Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
Any transition area waiver if: 1. The site is not covered by a valid LOI, or has a presence/absence LOI only; and 2. The site is larger than one acre.	\$450.00 plus \$40.00 per acre affected ⁴ Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
Multiple transition area waivers (unless all are special activity transition area waivers)	Sum of all fees for all of the applicable transition area waivers
Multiple special activity transition area waivers for a single site	\$250.00 plus \$100 for each additional special activity waiver
Transition area waiver (any type) and an individual freshwater wetlands or open water fill permit	Either the applicable transition area waiver fee or the individual permit fee, whichever is higher
Transition area waiver (any type) and one or more general permit authorizations	The applicable transition area waiver fee, plus \$250.00 for the first general permit authorization, and \$100.00 for each additional general permit authorization
Transition area waiver extension	\$100.00

Application fees for exemption letters (N.J.A.C. 7:7A-2.10):

Type of approval	Fee
Exemption letter	\$100.00

Application fees for individual permits (N.J.A.C. 7:7A-7):

Type of approval	Fee
Individual freshwater wetlands or open water fill permit	\$1,000 plus \$100.00 per 1/10 acre affected ⁵
Individual permit extension	\$500.00

Application fees for modifications (N.J.A.C. 7:7A-14):

Type of approval	Fee
Minor modification	None
General permit authorization modification	\$100.00
Major modification	25% of the application fee originally charged for the approval that is being modified, or \$100.00, whichever is higher.

1 When these fee tables refer to a cost "per acre," this means the cost is per acre or fraction thereof. For example, an area of one and one third acres would have the same fee as an area of two acres. When these fee tables refer to a cost "per 1/10 acre," this means the cost is per tenth of an acre or fraction thereof, such that an area of 0.12 acres would have the same fee as an area of 0.2 acres. When these fee tables refer to an "acre affected," this means an acre of freshwater wetlands, State open waters, or transition area that will be affected by a regulated or prohibited activity; or in the case of an LOI, an acre of land that will be covered by the LOI.

2 See note 1 above.

3 See note 1 above.

4 See note 1 above.

5 See note 1 above.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

At (a) added to list of documents which must be accompanied by a fee.

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Added subsection (d).

Amended by R.1995 d.205, effective April 17, 1995. See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-11.1, Application contents for Individual Freshwater Wetlands and Open Water Fill Permits, was repealed.

7:7A-11.2 (Reserved)

Repealed by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Section was "Recordkeeping".

7:7A-11.3 through 7:7A-11.4 (Reserved)

SUBCHAPTER 12. DEPARTMENT REVIEW OF APPLICATIONS

7:7A-12.1 Completeness review

(a) Within 20 working days, as defined at N.J.A.C. 7:7A-1.4, after receiving an application, the Department shall review the application as follows:

1. If all items required by the application checklist are included, the Department shall declare the application administratively complete. However, if an included item is clearly deficient, the item shall not be considered to be included and the Department shall declare the application administratively incomplete; and

2. If each application item is adequate to allow the Department to determine if the proposed project complies with this chapter, the Department shall declare the application technically complete.

(b) If the application is not administratively complete under (a)1 above, the Department shall return the application to the applicant with a list of the missing items. The applicant may resubmit the application at any time. If the application is resubmitted within one year, the original application fee shall be credited to the fee for the resubmitted application. If the application is not resubmitted, the applicant may obtain a fee refund upon request.

(c) If the application is administratively complete under (a)1 above, the Department shall:

1. Notify the applicant that the application is administratively complete;

2. Transmit a copy of the application to other agencies if required under this chapter. For example, an application for an individual permit for a major discharge must be transmitted to EPA for comment under N.J.A.C. 7:7A-12.2;

3. Publish notice of the application in the DEP Bulletin; and

4. If the application is not technically complete under (a)2 above, request any additional information necessary for technical completeness.

(d) If the Department requests additional information under (c)4 above, the applicant shall provide copies of the additional information to the persons who received a copy of the initial application under N.J.A.C. 7:7A-10.9, and to the reviewing agencies who received a copy under (c)2 above.

(e) If an application is returned for incompleteness under (b) above, the applicant may submit a new application without repeating the public notice requirements of N.J.A.C. 7:7A-10.9 if the new application:

1. Is submitted within 60 days after the date the Department returned the original submittal; and

2. Is sufficiently similar to the original submittal that the original public notice would provide reasonable notice of the characteristics of the new submittal to potential interested parties.

(f) If a person submits an application and does not receive a response from the Department within the deadlines imposed in this subchapter, the person shall not be entitled to assume that the application is approved, except if the application is for authorization of the following activities and complies with the applicable general permit:

1. Maintenance of a stormwater management facility under general permit 1;

2. Repair of a malfunctioning individual subsurface sewage disposal system under general permit 25; or

3. Minor channel or stream cleaning activities under general permit 26.

Repeal and New Rule, R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Section was "Initial Department action for Individual Freshwater Wetlands and Open Water Fill Permits".

7:7A-12.2 USEPA review

(a) Because the Department has assumed responsibility for the Federal 404 program in most freshwater wetlands and State open waters in New Jersey, the Federal Act requires that the USEPA oversee the State's administration of the program set forth in this chapter. The procedures in (b) through (j) below explain USEPA's oversight role, and the procedures which the State will follow to facilitate USEPA's oversight. In areas where the Department has assumed the Federal 404 program, the Department's freshwater wetlands or open water fill permit constitutes the permit required under this chapter as well as the Federal 404 permit, unless the permit specifies otherwise.

(b) The Department shall transmit the following items to USEPA for review:

1. Each new proposed draft general permit. In general, an application for authorization to act under an adopted general permit will not require USEPA review, unless the activity proposed under the general permit itself constitutes a major discharge;

2. Each application involving a major discharge, as defined at N.J.A.C. 7:7A-1.4;

3. Any permit application, or category of permit applications, that the Department determines is appropriate for USEPA review;

(h) If a mitigation requirement arises from a violation rather than a permit, the Department shall determine the mitigation alternative required on a case-by case basis, taking into consideration the size and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a settlement of an enforcement action shall provide for mitigation that is at least as ecologically valuable as mitigation that would be required under this chapter as a result of a permit. This may include an increase in mitigation to compensate for the time lapse between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

(i) A mitigation area shall be permanently protected from future development in accordance with N.J.A.C. 7:7A-15.14.

(j) If mitigation is performed through uplands preservation or land donation, the mitigator shall transfer all rights in the mitigation area to a government agency or charitable conservancy in accordance with N.J.A.C. 7:7A-15.17(c) or 15.19(c), respectively. A mitigation banker shall also transfer a mitigation bank to a government agency or charitable conservancy after the bank is successfully completed, in accordance with N.J.A.C. 7:7A-15.23(i).

(k) Upon approval by the Department, a permittee may aggregate the mitigation for multiple disturbances, so as to perform mitigation for more than one disturbance with a single mitigation project. Such an aggregated mitigation project shall be used only as mitigation for disturbances performed by the permittee, unless the permittee obtains Council approval of the project as a mitigation bank under this subchapter.

(l) An activity that is required in order to satisfy Federal, State, or local government requirements, other than those imposed under this chapter, shall not qualify as mitigation under this subchapter. For example, if land is required by a county to be preserved as open space, the Department shall only approve the parcel for a land donation if the applicant also performs wetlands restoration or enhancement in accordance with this subchapter.

(m) A permittee may use one mitigation alternative or a combination of mitigation alternatives to compensate for a permitted disturbance.

7:7A-15.3 Timing of mitigation

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

1. Mitigation for a disturbance authorized by a permit, other than a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, shall be performed prior to or concurrently with the permitted activity, and shall be continued to completion according to the schedule in the approved mitigation proposal;

2. Mitigation for a temporary disturbance authorized by a permit shall be started immediately following completion of the activity that caused the disturbance, and shall be continued to completion within six months after the end of the activity that caused the disturbance; and

3. Mitigation required as part of an enforcement action shall be performed in accordance with a schedule in the enforcement document.

(b) If a permittee fails to perform mitigation within the applicable time period in (a) above, the acreage of mitigation required shall be increased by 20 percent each year after the date mitigation was to begin. This shall compensate for the absence of the functions and values that were to be provided by the mitigation project during the delay. For example, a permit may authorize a disturbance, and require 10 acres of creation to compensate for that disturbance. If the disturbance is begun on January 1, 2001, but the mitigation is not performed prior to or concurrently with the disturbance and continued according to the approved schedule as required under (a)1 above, the acreage of creation required increases to 12 acres on January 1, 2002, in order to compensate for the absence of wetlands functions and values from the ecosystem during the time between the disturbance and the creation.

(c) In order to ensure compliance with (a) above, if mitigation is required for a publicly funded project, all work necessary to complete the mitigation shall be included in the contract awarded for the project, unless the applicant demonstrates that the mitigation will be performed by the applicant's staff and will not be awarded through a contract.

7:7A-15.4 Property suitable for mitigation

(a) Any offsite restoration, creation, enhancement, land donation, or upland preservation shall be carried out on private property, except that a government agency, as defined at N.J.A.C. 7:7A-1.4, may create, restore, or enhance on public land in accordance with this subchapter, as mitigation for a project funded solely with public monies, if the land was not acquired with Green Acres funding, as defined at N.J.A.C. 7:36-2.1, and either of the following criteria is met:

1. The land is obtained or held by the government agency for mitigation; or
2. The land is obtained by the government agency by default or operation of law, through a tax lien or other similar circumstance.

(b) An improvement to a public facility which is intended for human use, such as a ball field, nature trail, or boardwalk, does not constitute mitigation.

(c) A person seeking property for a mitigation project under this subchapter shall review the applicable watershed management area plan, if any, approved by the Department under the Water Quality Management Planning Act,

N.J.S.A. 58:11A-1 et seq., and implementing rules at N.J.A.C. 7:15 to determine if suitable properties are listed, and shall also review the applicable county mitigation inventory, if any, prepared in accordance with N.J.S.A. 13:9C-1 et seq.

(d) The Department shall not approve mitigation through creation, restoration, or enhancement in an area that is already highly ecologically valuable, for example if the area contains a mature, well developed, ecologically desirable natural community; a State open water that supports fish; a forested habitat; or significant cultural or historic resources.

(e) The Department shall approve mitigation through creation, restoration, or enhancement only on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, or the person responsible for performing the mitigation shall demonstrate that the person has legal rights to the property sufficient to enable compliance with all requirements of his chapter. If a property is affected by an easement or other encumbrance, the person responsible for performing the mitigation shall ensure that the encumbrance is extinguished or shall demonstrate that the encumbrance will not inhibit compliance with the mitigation requirements of this chapter.

(f) The Department shall require a habitat assessment if the Department deems such an assessment necessary to determine if an area is suitable for mitigation through enhancement. Any habitat assessment shall be performed in accordance with a scientific protocol approved by the Department.

(g) The Department shall not approve mitigation that would destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

(h) The Department shall not approve mitigation in an area that contains contamination, unless the mitigator obtains a No Further Action letter for the mitigation area from the Department's Site Remediation Program, and in addition demonstrates that the mitigation activities will not pose a risk of exposing contaminants or reintroducing them into the environment.

7:7A-15.5 Mitigation for a smaller disturbance

(a) This section governs, for a smaller disturbance, the mitigation alternative required and the location of mitigation in relation to the disturbance. (See Figure 4 below for an illustration of the information in this section.) However, if a smaller disturbance is a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, it is governed by N.J.A.C. 7:7A-15.7. The acreage amount of mitigation required for both smaller and larger disturbances is determined under N.J.A.C. 7:7A-15.8.

(b) A smaller disturbance is:

1. A disturbance of 1.5 acres or less of freshwater wetlands or State open water; or
2. A disturbance affecting only ordinary resource value wetlands.

(c) The Department presumes that onsite mitigation for a smaller disturbance is not feasible. Therefore, mitigation for a smaller disturbance shall be performed through credit purchase in accordance with (d) below, unless the applicant demonstrates under (e) below that one of the following will be more environmentally beneficial:

1. Onsite restoration, creation or enhancement; or
2. Offsite restoration, creation, enhancement, or upland preservation, which is performed in the same HUC 11, as defined at N.J.A.C. 7:7A-1.4, as the disturbance, or performed in an adjacent HUC 11 within the same watershed management area as the disturbance.

(d) Mitigation through credit purchase shall be performed as follows:

1. Through the purchase of credits from either of the following:
 - i. A mitigation bank located in the same HUC 11 as the disturbance; or
 - ii. A mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area. The service area for each mitigation bank is set forth in the Wetlands Mitigation Council approval for the bank;
2. If no credits are available from a bank listed in (d)1 above, through the purchase of credits from a mitigation bank located in a HUC 11 that is both adjacent to the HUC 11 in which the disturbance is located and within the same watershed management area, as defined at N.J.A.C. 7:7A-15.1, as the disturbance;
3. If no credits are available from a bank listed in (d)1 or 2 above, through the purchase of credits from a mitigation bank located anywhere in the same watershed management area as the disturbance; or
4. If no credits are available from a mitigation bank located in (d)1, 2, or 3 above, through the purchase of credits from a mitigation bank which includes the disturbance site in its bank service area.

(e) In determining if onsite or offsite mitigation for a smaller disturbance would be environmentally beneficial for the purposes of (c) above, the Department shall consider the following factors and any other relevant factors specific to the site or project:

1. Size. Generally, the larger a mitigation area, the greater its potential environmental benefit. A mitigation area that is associated with a large existing wetland complex is more likely to be environmentally beneficial for the purpose of (c) above;

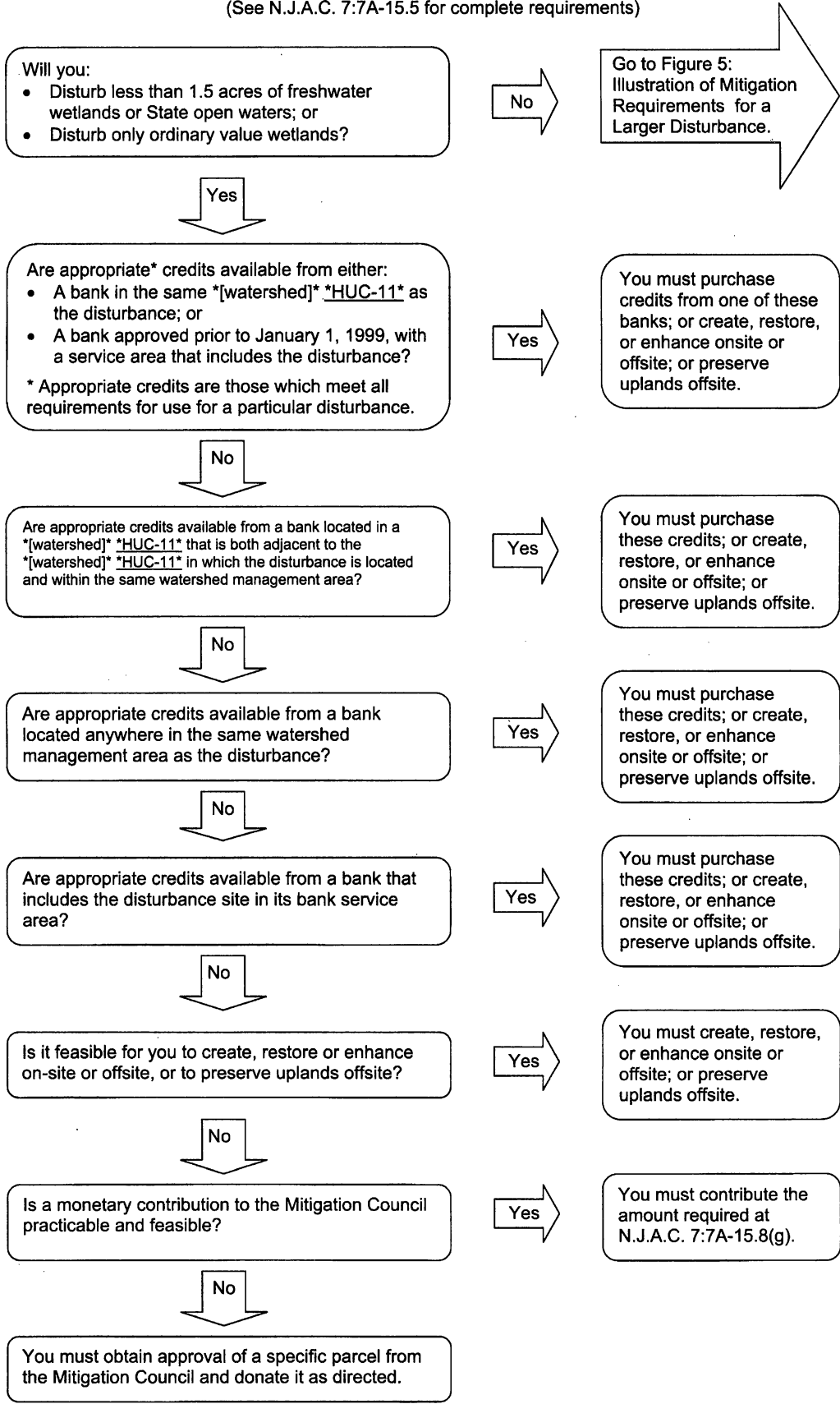
2. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;

3. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial; and

4. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream.

(f) If credit purchase under (d) above is not feasible, and onsite or offsite mitigation under (c) above is not feasible, mitigation shall be performed through a monetary contribution in accordance with N.J.A.C. 7:7A-15.21 or, if the Department determines that no other mitigation alternative is practicable or feasible, mitigation shall be performed through a land donation approved by the Wetlands Mitigation Council, in accordance with N.J.A.C. 7:7A-15.22.

Figure 4: Flow Chart Illustrating Mitigation Alternatives for a Smaller Disturbance
 (See N.J.A.C. 7:7A-15.5 for complete requirements)



7:7A-15.6 Mitigation for a larger disturbance

(a) This section governs, for a larger disturbance, the mitigation alternative required and the location of mitigation in relation to the disturbance. (See Figure 5 below for an illustration of the information in this section.) However, if a larger disturbance is a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, it is governed by N.J.A.C. 7:7A-15.7. The acreage amount of mitigation, regardless of the size of the disturbance, is determined under N.J.A.C. 7:7A-15.8.

(b) A larger disturbance is a disturbance not listed at N.J.A.C. 7:7A-15.5(b).

(c) Mitigation for a larger disturbance shall be performed through restoration, creation, or enhancement, carried out on the site of the disturbance to the maximum extent feasible. Onsite mitigation shall not be performed through upland preservation.

(d) If onsite restoration, creation, or enhancement is not feasible, mitigation shall be performed through any of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank located in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area;

2. The purchase of credits from a mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area; or

3. Offsite restoration, creation, enhancement, or upland preservation, in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area as the disturbance.

(e) If mitigation under (d) above is not feasible, mitigation shall be performed through either of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank which includes the disturbance site in its bank service area; or

2. Restoration, creation, enhancement, or upland preservation in the same watershed management area as the disturbance.

(f) If mitigation is not feasible under (c), (d) or (e) above, mitigation shall be performed through a monetary contribution or, if the Department determines that no other mitigation alternative is not practicable or feasible, through a land donation approved by the Wetlands Mitigation Council in accordance with N.J.A.C. 7:7A-15.22.

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

