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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF LAND USE REGULATION**

#### **Notice of Increase in the Amount of a Monetary Contribution for Freshwater Wetland**

##### **General Permits**

##### **Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A-11.16(e) and (f)**

**Take Notice** that, in accordance with N.J.A.C. 7:7A-11.16(e) and (f), the New Jersey Department of Environmental Protection (Department) has determined that a change in the amount of a monetary contribution to the in-lieu fee program to mitigate for impacts associated with a general permit is necessary. Monetary contribution to the in-lieu fee mitigation program is one of the mitigation options provided for unavoidable impacts to wetland resources and enforcement actions approved by the Department, with other options available including wetland restoration, creation or enhancement, upland preservation, credit purchase from an approved mitigation bank and land donation.

The Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., specifies measures that may be required to mitigate for adverse environmental impacts to wetlands. As indicated above, one of the measures that may be utilized in certain situations is payment of a monetary contribution provided the contribution is equivalent to the lesser of the cost of purchasing and restoring existing degraded freshwater wetlands, or the cost to purchase property and create freshwater wetlands. In 2008 the Department implemented a simplified method of assessing

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the required contribution based upon multiplication of the applicable base amount times the number of acres impacted. To reflect that the cost of mitigation, like all other costs, changes over time, the 2008 proposal provided for the base figures to be adjusted using the Consumer Price Index for Urban Customers (CPI-U) (see 39 N.J.R. 3587(a); 40 N.J.R. 5581(a)).

Pursuant to N.J.A.C. 7:7A-11.16(f), when the Department determines based on an annual review of the CPI-U as published by the United States Department of Labor, that the singular or cumulative CPI-U adjustment results in a change of \$500.00 or more above the currently codified figure, the Department will publish a notice of administrative change in the New Jersey Register announcing the adjustment and the amount of the adjusted contribution.

The amount of the monetary contribution to mitigate for impacts associated with a general permit is currently set forth at N.J.A.C. 7:7A-11.16(e). Prior to the adjustment made at this time, under N.J.A.C. 7:7A-11.16(e)1, the amount of the monetary contribution for a single-family property owner was determined by multiplying the number of acres of wetlands/State open water impacted by \$42,300. Similarly, under N.J.A.C. 7:7A-11.16(e)2, the monetary contribution for all other property owners was determined by multiplying the number of acres of wetlands/State open water impacted by \$334,000. The per acre monetary contribution figures that had previously been applicable at N.J.A.C. 7:7A-11.6(e)1 and 2 had been updated through a comprehensive rulemaking adopted December 18, 2017 to reflect changes in the CPI-U since the original monetary contribution figures were adopted in 2008 (see, 49 N.J.R. 834(a);

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49 N.J.R. 3849(a)). As explained in the 2017 rulemaking proposal summary at 49 N.J.R. 886 and 887, the adjustments made at that time were determined using the Annual Average CPI-U through 2016.

Based on a review of changes in the CPI-U for the 2016 through 2017 and 2017 through 2018 periods in accordance with N.J.A.C. 7:7A-11.16(f), the Department has determined that an increase in the amount of the monetary contribution is required. Specifically, using the 4.625 percent increase in the Annual Average CPI-U for this two-year period, the amount of the monetary contribution changes more than \$500.00 above the previously codified figures. Accordingly, the adjusted monetary contribution for a single-family homeowner is increased to \$44,200 per acre of wetlands/State open water impacted and for all other property owners, the monetary contribution is increased to \$349,400 per acre of wetlands/State open water impacted. Both numbers are rounded down to the nearest \$100.00 for ease of application.

The adjusted monetary contribution amounts are reflected in the Freshwater Wetland Protection Act Rules at N.J.A.C. 7:7A-11.16(e) and are effective on {date of publication}.

**Full text** of the changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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

(a) - (d) (No change.)

(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 [\$42,300]**\$44,200**, 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 [\$334,000]**\$349,400**, adjusted in accordance with (f) below using the Consumer Price Index for Urban Consumers as published by the United States Department of Labor.

(f) - (g) (No change.)