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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF LAND RESOURCE PROTECTION**

#### **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 to freshwater wetlands associated with a general permit is necessary. The increase, which is established under a regulatory formula tied to the Consumer Price Index (CPI), will be approximately 4.7 percent. Monetary contribution to the in-lieu fee mitigation program is one of the mitigation options that may be utilized both to compensate for unavoidable impacts to wetland resources authorized by a Department permit and to address impacts that are the subject of a Department enforcement action. Other mitigation options include 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 the Department may require freshwater wetlands permittees to undertake in order to mitigate

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adverse environmental impacts to wetlands. One of these measures is payment of a monetary contribution that 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 calculating this contribution which sets the required contribution as the multiplication of an applicable base amount of mitigation costs by the number of acres impacted. To reflect that the cost of mitigation changes over time, the assessment method at N.J.A.C. 7:7A-11.16(e) provides for the base contribution amount for single-family property owners and to all other property owners to be adjusted using the Consumer Price Index for Urban Customers (CPI-U).

Pursuant to N.J.A.C. 7:7A-11.16(f), when the Department determines, based on an annual review of the CPI-U, that the singular or cumulative CPI-U adjustment results in a change of \$500.00 or more above the then-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). Between March 16, 2021, and the effective date of this notice, the amount of the monetary contribution for a single-family property owner was determined by multiplying the number of acres of wetlands or State open water impacted by \$45,500. Similarly, pursuant to 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 or State open

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water impacted by \$360,000. The Department had last updated the per-acre monetary contribution figures through a notice of administrative change published March 15, 2020, to reflect changes in the CPI-U for the 2019-2020 period (see 53 N.J.R. 426(a)).

Based on a review of changes in the CPI-U from 2020 through 2021 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 4.7 percent increase in the Annual Average CPI-U from 2020 to 2021, the amount of the monetary contribution changes more than \$500.00 above the previously codified amount. Accordingly, the Department is increasing the adjusted monetary contribution for a single-family homeowner to \$47,600 per acre of wetlands or State open water impacted; and for all other property owners, the Department is increasing the monetary contribution to \$377,000 per acre of wetlands or State open water impacted. Both numbers are rounded down to the nearest \$100.00 for ease of application.

It is important to note that in many instances, the total impact amount is a fraction of an acre, so the total monetary contribution would be a fraction of the adjusted monetary contribution amount. For example, the monetary contribution for a single-family homeowner that has impacted 0.1 acres of wetlands is \$4,760, while the monetary contribution for all other property owners for the same impact is \$37,700. Accordingly, in the 0.1-acre impact example, the applicable fee is increased by \$210.00 for a single-family homeowner and \$1,700.00 for all other property owners.

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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 November 7, 2022.

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

#### SUBCHAPTER 11. MITIGATION

##### 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 [\$45,500]**\$47,600**, 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 [\$360,000]**\$377,000**, 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.)