

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ADOPTS REVISIONS TO THE FRESHWATER WETLANDS PROTECTION ACT RULES – DECEMBER 2017

The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) adopted revisions to the Freshwater Wetlands Protection Act (FWPA) Rules (N.J.A.C. 7:7A) on December 18, 2017. The adopted rules are similar in format and approach as the other land use permitting requirements with the DLUR program. The adoption also included minor changes to the Flood Hazard Control Act Rules (N.J.A.C. 7:13) and Coastal Zone Management Rules (N.J.A.C. 7:7). A few noteworthy adoptions include:

Letters of Interpretation – Applicants applying for a Letter of Interpretation (LOI) will now be able to submit the application through the NJDEP electronic filing system with an Electronic LOI (E-LOI), except for submission of hard copies of the wetland delineation survey plan to the NJDEP. The rules now require the recipient of an LOI to record on the property deed of each lot, within 90 days of issuance of the LOI, a metes and bounds description of the wetland boundary, the width and location of any wetland transition area, and the approval and expiration date of the LOI.

General Permit 4 for Hazardous Site Investigation and Cleanup – The GP requirements have been modified to require certification from a Licensed Site Remediation Professional (LSRP) that the remedial activities are necessary, meet the technical requirements for site remediation, the proposed area of impact to regulated features is the minimum necessary, and that feasible alternative remediation methods were examined.

Use of Multiple General Permits – The NJDEP now allows disturbances exceeding 0.5 acres under General Permit No. 6 (isolated wetlands) to be combined with other general permits as long as the total proposed impacts do not exceed 1 acre.

Transition Area Waivers – The NJDEP has adopted an approach that the deed restriction of the remaining transition area under a waiver will be at the NJDEP's discretion on a permit-by-permit basis. The compensation area under a transition area averaging waiver will require a conservation restriction.

Mitigation – The largest change to freshwater wetlands mitigation standards is the incorporation of the In-Lieu Fee (ILF) Program, which allows an applicant to fulfill their mitigation obligation through a monetary contribution to the ILF Program.

A copy of the rule adoption can be found at: http://www.nj.gov/dep/rules/adoptions/adopt_20171218b.pdf

To discuss this rule adoption and how it might be applicable to your project, please contact your Langan Project Manager or:

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