



**STATE OF NEW JERSEY**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**DIVISION OF LAND RESOURCE PROTECTION**  
 Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420  
 Telephone: (609) 777-0454 or Fax: (609) 777-3656  
 www.nj.gov/dep/landuse



## PERMIT

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| <p>In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.</p>   |  | <b>Approval Date</b><br>January 25, 2021   |
|  |  | <b>Expiration Date</b><br>January 24, 2026   |
| <b>Permit Number(s):</b><br>0907-20-0004.1; LUP200001  | <b>Type of Approval(s):</b><br>Waterfront Development Individual Permit -Waterward<br>Waterfront Development Individual Permit – Landward<br>Flood Hazard Area Individual Permit<br>Flood Hazard Area Verification<br>Freshwater Wetlands General Permit 10B<br>Freshwater Wetlands General Permit 11<br>Freshwater Wetlands Transition Area Waiver<br>Water Quality Certificate | <b>Governing Rule(s):</b><br>N.J.A.C. 7:13-1.1(b)<br>N.J.A.C. 7:7-1.1(a)<br>N.J.A.C. 7:7A-1.1(a) |
| <b>Permittee:</b><br>New Jersey Department of Transportation<br>(NJDOT)<br>c/o Ms. Amber Cheney<br>P.O. Box 600<br>Trenton, NJ 08062   | <b>Site Location:</b><br>Block & Lot: Public Right-of-way<br>Municipality: Town of Kearny<br>County: Hudson  |  |
| <b>Description of Authorized Activities:</b><br><p>As part of the overall Portway Intermodal Connector Program, this document authorizes roadway expansion at Pennsylvania Ave./Fish House Road between Milepost 1.39 (Central Ave.) and Milepost 2.40 (Fish House Road). The authorized activities are shown on the approved plans referenced at the end of this permit.</p> <p>The document also verifies that the flood hazard design flood elevation of the Hackensack River on the entirety of the project area is 10.6 feet NAVD88.</p> <p>The Department has determined that the herein approved activities meet the requirements of the (FHACA/CZM) rules. This approval does not obviate the local Floodplain Administrator's responsibility to ensure all development occurring within their community's Special Flood Hazard Area is compliant with the local Flood Damage Prevention Ordinance, and minimum NFIP standards, regardless of any state-issued permits. FEMA requires communities to review and permit all proposed construction or other development within their SFHA in order to participate in the NFIP.</p> |  |  |
| <b>Prepared by:</b><br>Matthew Resnick   | <b>Received and/or Recorded by County Clerk:</b>   |  |
| If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the requirements of the permit and all conditions therein.  |  |  |
| <b>This permit is not valid unless authorizing signature appears on the last page.</b>   |  |  |

**STATEMENT OF AUTHORIZED IMPACTS:**

The authorized activities allow for the permittee to undertake impacts to regulated areas as described below. Additional impacts to regulated areas without prior Department approval shall constitute a violation of the rules under which this document is issued and may subject the permittee and/or property owner to enforcement action, pursuant to N.J.A.C. 7:13-21.8; N.J.A.C. 7:7-2.1; N.J.A.C. 7:7A-19.11.

| <b>FWW GP10B Minor Road Crossings</b> | <b>Permanent Disturbance (Acres)</b> | <b>Temporary Disturbance (Acres)</b> |
|---------------------------------------|--------------------------------------|--------------------------------------|
| <b>Freshwater wetlands</b>            | 0.019                                | 0.004                                |

| <b>FWW GP11 Outfalls/Intake Structures</b> | <b>Permanent Disturbance (Acres)</b> | <b>Temporary Disturbance (Acres)</b> |
|--|--------------------------------------|--------------------------------------|
| <b>Freshwater wetlands</b>                 | 0                                    | 0.006                                |
| <b>Transition areas</b>                    | 0                                    | 0.005                                |

| <b>TAW - Special Activity Linear Development</b> | <b>Permanent Disturbance (Acres)</b> | <b>Temporary Disturbance (Acres)</b> |
|--|--------------------------------------|--------------------------------------|
| <b>Transition areas</b>                          | 0.206                                | 0.124                                |

| <b>Riparian Zone Vegetation</b> | <b>Area of riparian zone (Acres)</b> |
|---------------------------------|--------------------------------------|
| <b>Permanent Disturbed</b>      | 0.474                                |
| <b>Temporary Disturbed</b>      | 0.096                                |

| <b>WFD IP- Commercial/Industrial/Public(Waterward)</b> | <b>Permanent Disturbance (Acres)</b> | <b>Temporary Disturbance (Acres)</b> |
|--|--------------------------------------|--------------------------------------|
| <b>Intertidal subtidal shallows (ISS)</b>              | 0.001                                | 0.006                                |

**PRE-CONSTRUCTION CONDITIONS:**

1. All sediment barriers and other soil erosion control measures shall be installed prior to commencing any clearing, grading or construction onsite, and shall be maintained in proper working condition throughout the entire duration of the project.
2. All solid and hazardous wastes generated by construction activities associated with this project shall be handled and disposed of in accordance with all applicable State and Federal regulations, standards, and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste

Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, the Hazardous Waste rules, N.J.A.C. 7:26G, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

3. In order to protect anadromous fish species within the Hackensack River and tributaries, no grading, construction or clearing is permitted within the channel onsite between April 1<sup>st</sup> through June 30<sup>th</sup> of each calendar year. Furthermore, any activity outside the watercourses, which would likely introduce sediment into the watercourses and/or increase its turbidity, is also prohibited during this period. The Department reserves the right to suspend all regulated activities onsite should it be determined that the permittee has not taken proper precautions to ensure continuous compliance with this condition. If sediment control structures are installed prior to the timing restrictions stated above, construction behind the sediment control structures may proceed during the restricted period

### **SPECIAL CONDITIONS:**

1. All excavated material and dredged material shall be disposed of in a lawful manner outside of any flood hazard area riparian zone, open water, freshwater wetland and adjacent transition area, and in such a way as to not interfere with the positive drainage of the receiving area.
2. Construction equipment shall not be stored, staged or driven within any channel, freshwater wetland or transition area, unless expressly approved by this permit and/or described on the approved plans.
3. Dewatering of cofferdams must include properly sized temporary sediment basins or other filtering methods to adequately reduce turbidity. The stream area to receive return water discharged from dewatering activities must be encompassed by a turbidity barrier. The turbidity barrier must be located parallel to the stream banks and anchored to the shoreline to maintain free flow of the stream center. In order to avoid obstruction of stream flows or fish passage, turbidity barriers must not be placed across the stream channel.
4. The regulated activity shall not expose unset or raw cement to flowing water within any channel or regulated water during construction.
5. Construction may only be performed only under conditions where the stream area is dry or dewatered conditions. No work may be performed where the stream channel is wet.
6. The Department has determined that this project meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8. Any future expansion or alteration of the approved stormwater management system, which would affect water quality, increase the rate or volume of stormwater leaving the site, affect the infiltration capacity on the site, or alter the approved low impact site design, shall be reviewed and approved by the Department prior to construction. This includes any proposed changes to the discharge characteristics of any basin, the construction of new inlets or pipes that tie into the storm sewer network and/or the replacement of existing inlets or pipes with structures of different capacity.
7. The permittee shall make specific arrangements to ensure the continuous maintenance and efficient operation of all proposed stormwater management measures onsite. This includes the inspection (and cleaning where necessary) of any and all constructed swales, basins, inlets at least four times per year and after every major storm totaling 1 inch of rainfall or more, the inspection and cleaning of all manufactured treatment devices per Department certification letters as found on [www.njstormwater.org/treatment.html](http://www.njstormwater.org/treatment.html), and the use of appropriate soil conservation practices onsite,

and any other reasonable effort required to maintain the stormwater management system in good working order.

8. Vegetation within 50 feet of the top of the bank shall only be disturbed in the areas specifically shown on the approved drawing(s). No other vegetation within 50 feet of the top of any stream bank onsite shall be disturbed for any reason. This condition applies to all channels onsite regardless of the contributory drainage area.
9. All riparian zone vegetation that is temporarily cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit. The vegetation to be replanted shall:
  - a. Consist of vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed. For example, herbaceous vegetation may be replaced with the same type of vegetation or with trees, but the trees in forested areas must be replaced with trees of equal or greater density and ecological function and value;
  - b. Consist of native, non-invasive vegetation, except in an actively disturbed area. In an actively disturbed area, the vegetation may be replaced with the same type of vegetation that was cleared, cut, or removed, or with another kind of vegetation typical of an actively disturbed area. For example, lawn grass may be replaced with garden plants or agricultural crops; and
  - c. In cases where replanting would interfere with continued access to or maintenance of a structure that is required by Federal, State, or local law, the vegetation replanted shall meet the requirements to the extent feasible.
10. Any pipes laid through wetlands, transition areas, or State open water must be properly sealed so as to prevent leaking or infiltration. Pipes and backfilled materials must be placed entirely beneath the pre-existing ground elevation.
11. Any excavation within the wetland or wetland transition area, shall be backfilled to the preexisting elevation and the uppermost 18 inches of the excavation shall be backfilled with the original topsoil material.

#### **RIPARIAN ZONE MITIGATION CONDITIONS:**

1. **At least 90 days prior to commencing regulated activities authorized by this permit**, the permittee shall submit a proposal to mitigate for the loss of **0.136 acres** of scrub-shrub riparian zone vegetation. The proposal shall be designed in accordance with the standards at N.J.A.C. 7:13-13. Activities authorized by this permit shall not begin until the permittee has obtained written approval of a mitigation plan from the Department (N.J.A.C. 7:13-13.2(b)).
2. **All mitigation shall be conducted prior to or concurrent with the regulated activity that causes the disturbance.** (N.J.A.C. 7:13-13.3(a)1). Concurrent means that at any given time, the mitigation must track at the same or greater percentage of completion as the project as a whole.
3. If the permittee is purchasing credits from a mitigation bank to satisfy a mitigation requirement, prior to the initiation of regulated activities authorized by this permit, the permittee shall submit proof of purchase for **0.136 acres** of mitigation credits from an approved wetland mitigation bank to the

attention of the Mitigation Unit Supervisor, NJDEP, Division of Land Resource Protection at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.

At this time, the following bank(s) are approved to serve the project area; additional banks may be approved at any time, so please contact the Mitigation unit for the most up to date service area information if you would like additional options.

Oradell Reservoir Mitigation Bank - Contact Doug Lashley of GreenVest/Cranbury LLC at 410-987-5500 or at [Doug@greenvestus.com](mailto:Doug@greenvestus.com)

4. If the permittee is considering conducting a creation, restoration or enhancement project, the following conditions shall apply:

**Prior to the initiation of regulated activities authorized by this permit**, the permittee shall sign a Department approved conservation restriction to protect the mitigation area from future development that would remove the vegetation planted. (N.J.A.C. 7:13-13.2(g)). The conservation restriction shall conform to the format and content of the rules at N.J.A.C. 7:13-14 and the Riparian Zone Mitigation Area model located at <http://www.nj.gov/dep/landuse/forms/index.html>. The restriction shall be included on the deed and recorded in the office of the County Clerk (the Registrar of Deeds and Mortgages in some counties) in the county wherein the lands of the mitigation project are located. A metes and bounds description shown on a map must be included within the recorded conservation restriction. Within 10 days of filing the conservation restriction, the permittee must send a copy of the conservation restriction to the attention of the Mitigation Unit Supervisor, NJDEP, Division of Land Resource Protection at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.

5. For creation and restoration projects, the permittee shall obtain a secured bond or other financial surety acceptable to the Division from a firm licensed to provide such services in New Jersey. (N.J.A.C. 7:13-13.15)
6. The permittee shall monitor the riparian project for at least 5 years beginning the year after the riparian zone mitigation project has been completed (N.J.A.C. 7:13-13.12(c)). **The permittee shall submit monitoring reports to the Division of Land Resource Protection, no later than December 31<sup>st</sup> of each full monitoring year.**
  - a. All monitoring reports except the final one should include the requirements and goals of the mitigation proposal and a detailed explanation of the ways in which the mitigation has or has not achieved progress toward those goals. If mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented and a timeline for completion.
  - b. The final monitoring report must include documentation and data demonstrating that:
    - i. The goals of the riparian zone mitigation as stated in the approved riparian zone mitigation proposal and the permit conditions have been satisfied.
    - ii. At least 85 percent of the mitigation plantings have survived and that at least 85 percent of the mitigation area is established with native species similar to ones identified on the mitigation planting plan. All plant species in the mitigation area must be healthy and thriving. All trees must be at least 5 feet in height; and
    - iii. The site is less than 10 percent occupied by invasive or noxious species; and

- iv. The conservation restriction for the mitigation site has been executed and recorded.
7. If the riparian mitigation project does not meet the success criteria established above the project shall be considered a failure and the permittee shall submit a revised riparian mitigation plan. The revised plan shall be submitted within 60 days of receipt of notification from the Division indicating the riparian mitigation project was a failure.
8. If the Division determines that the riparian zone mitigation project is not constructed in conformance with the approved plan, the permittee will be notified in writing by the Department and will have 60 days to submit a proposal to indicate how the project will be corrected.
9. For preservation projects, the application shall provide documentation showing that the proposed preservation area will fully compensate in accordance with N.J.A.C. 7:13-13.13 for the loss of functions and values caused by the disturbance.

**STANDARD CONDITIONS:**

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit.
2. The issuance of a permit does not convey any property rights or any exclusive privilege.
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit.
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site.
5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee shall inform the Division of Land Resource Protection by telephone at (609) 777-0454 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:
  - i. A description of the noncompliance and its cause;

- ii. The period of noncompliance, including exact dates and times;
  - iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
  - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action, as well as, in the appropriate case, suspension and/or termination of the permit.
9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit.
10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29.
11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.
12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores.
13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
  - i. Enter upon the permittee's premises where a regulated activity, project, or development is located or conducted, or where records must be kept under the conditions of the permit;
  - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
  - iii. Inspect, at reasonable times, any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action; and
  - iv. Sample or monitor at reasonable times, for the purposes of assuring compliance or as otherwise authorized by the Federal Act, by the Freshwater Wetlands Protection Act, or by any rule or order issued pursuant thereto, any substances or parameters at any location.
14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel while the regulated activity, project, or development is being undertaken. Upon completion of the regulated activity, project, or development, the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.
15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit.

16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity, project, or development, or any portion thereof, is in existence, unless the permit is modified pursuant to the rules governing the herein approved permits.
17. The permittee shall perform any mitigation required under the permit in accordance with the rules governing the herein approved permits.
18. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment.
19. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit.
20. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request.
21. The permittee shall provide monitoring results to the Department at the intervals specified in the permit.
22. A permit shall be transferred to another person only in accordance with the rules governing the herein approved permits.
23. A permit can be modified, suspended, or terminated by the Department for cause.
24. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit.
25. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.
26. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, PO Box 420, Mail Code 401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of regulated activities.
27. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to the Division of Land Resource Protection at the address listed on page one of this permit.

**APPROVED PLANS:**

The drawings hereby approved consist of thirty five (35) sheets, undated, and digitally signed and sealed by Mr. David Murry of HNTB Corporation on January 21, 2020, entitled:

“NEW JERSEY DEPARTMENT OF TRANSPORTATION, PORTWAY, FISH HOUSE ROAD/  
PENNSYLVANIA AVE, CR 659, CONTRACT NO. 001028041”



- “TYPICAL SECTIONS” (Sheets 2 thru 5 of 43);
- “PROFILE” (Sheets 8 thru 10 of 43);
- “FLOOD HAZARD AREA PERMIT PLANS” (Sheets 11 thru 24 of 43), last revised on December 15, 2020;
- “WETLANDS IMPACT PLAN” (Sheets 26 thru 28 of 43);
- “WATERFRONT DEVELOPMENT PLANS” (Sheets 29 thru 31 of 43);
- “GENERAL PLAN AND ELEVATION WALL-1” (Sheets 32 thru 34 of 43);
- “GENERAL PLAN AND ELEVATION WALL-2” (Sheets 35 & 36 of 43);
- “TYPICAL SECTIONS” (Sheet 37 of 43); and
- “CONSTRUCTION DETAILS” (Sheets 38 & 39 of 43).

**APPEAL OF DECISION:**

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at [www.nj.gov/dep/bulletin](http://www.nj.gov/dep/bulletin)). If a person submits the hearing request after this time, the Department shall deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at [www.nj.gov/dep/landuse/forms.html](http://www.nj.gov/dep/landuse/forms.html)). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7th Floor, Trenton, NJ 08625-0402. Additionally, a copy of the hearing request shall be submitted to the Director of the Division of Land Resource Protection at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see [www.nj.gov/dep/odr](http://www.nj.gov/dep/odr) for more information on this process.

If you need clarification on any section of this permit or conditions, please contact the Division of Land Resource Protection’s Technical Support Call Center at (609) 777-0454.

Approved By:

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Joslin C. Tamagno, Environmental Supervisor, ES4  
Bureau of Urban Growth and Redevelopment  
Division of Land Resource Protection

c: Town of Kearny Clerk  
Town of Kearny Construction Official