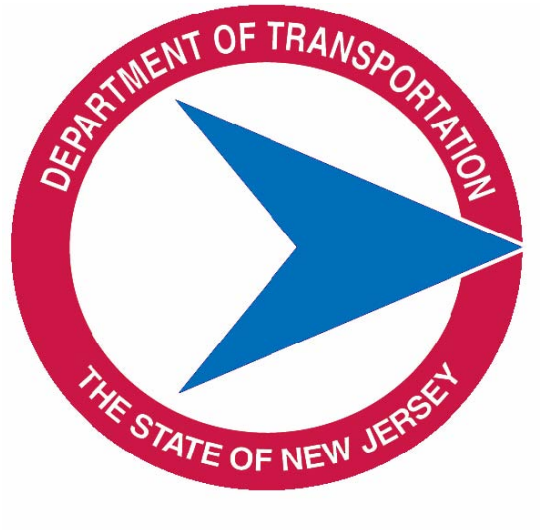
State of New Jersey
Department of Transportation

Environmental Overview of Regulations and Permits



2016

Prepared by

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Acknowledgements

An initial draft of this document was created by John Mole', a former NJDOT Supervising Environmental Specialist. Prior to his retirement in 2012, Mr. Mole' utilized his years of knowledge in the Environmental Process and drafted the original 24-page environmental regulations and permitting overview document. The intent was to give transportation designers a high level overview or starting point for understanding the environmental issues that may need to be considered in developing an NJDOT project.

In recent years, this document has undergone major expansion to encompass the majority of environmental regulations that may affect NJDOT's mission and operations. The primary author of the current document is Walter Marks, a Senior Environmental Scientist with McCormick Taylor, Inc., and former NJDOT Principal Environmental Specialist. In addition, numerous NJDOT and Federal Highway Administration (FHWA) subject matter experts contributed topical matter or provided technical reviews for the document, including:

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Executive Summary

This overview document provides a brief background of the Federal or State environmental laws that obligate the NJ Department of Transportation (NJDOT) to comply with specific environmental regulations. The overview includes the jurisdictional agency and its regulatory process, applicability to NJDOT projects, available exemptions, interagency agreements, and other streamlined environmental documentation and permitting options, as well as major environmental documents and permits for projects causing adverse social, economic, or environmental impacts. Standard timeframes are provided for completing environmental processes and obtaining agency permits. In addition, all environmental regulations, permits, and processes are cross-referenced to the applicable NJDOT Capital Project Delivery Activity Descriptions.

Environmental regulations and processes are complex, with periodic agency rulemaking often modifying regulatory compliance requirements. This document provides general guidelines that promote a clear, consistent approach for identifying current environmental compliance requirements for NJDOT projects. Updates will be performed periodically to maintain a "living document" pertinent to NJDOT's policies and objectives.

Section 1.0 introduces the environmental principle of "avoid, minimize, and mitigate." This section explores the integration of this guiding principle throughout the NJDOT Capital Project Delivery Process, including a comprehensive overview of the Federal and State regulatory processes, environmental documentation, agency permitting, and construction compliance activities applicable to NJDOT projects.

Section 2.0 focuses on Federal environmental regulations, including early project documentation and FHWA approvals required under the National Environmental Policy Act and Section 4(f). Other Federal processes including Section 106 are discussed, as well as other Federal agency coordination activities and construction permits required for NJDOT projects, such as US Army Corps of Engineers permits.

Section 3.0 spotlights NJ State environmental regulations and permits. This section focuses primarily on the NJ Department of Environmental Protection (NJDEP), including early project development approvals under NJ Executive Order 215, and the numerous Division of Land Use Regulation permits and other NJDEP approvals that may be required during Final Design. Other State regulated areas such as the NJ Pinelands and NJ Meadowlands are discussed, as well as NJDOT Major Access Permits.

Section 4.0 concludes the overview document, reiterating the need to consult with the NJDOT Bureau of Landscape Architecture and Environmental Solutions or Bureau of Environmental Program Resources for all environmental issues and approvals that may be required throughout the NJDOT Capital Project Delivery Process.

1.0 Introduction

The purpose of this document is to provide a general overview of the numerous Federal and State environmental laws, regulations, agency reviews, permits, and other approvals that may be required for NJ Department of Transportation (NJDOT) highway and bridge projects. This document aims to provide NJDOT's project managers and decision-makers with a general understanding of how environmental rules apply and affect NJDOT's capital program and operations.

This is an overview document and should not be considered a comprehensive "how to" technical guidance manual. The NJDOT Bureau of Landscape Architecture and Environmental Solutions (BLAES) or Bureau of Environmental Program Resources (BEPR) should always be contacted to determine and obtain all required agency coordination, environmental studies, documents, permits, and other regulatory approvals.

Environmental laws and regulations require that NJDOT projects **first avoid**, **then minimize**, and **lastly mitigate negative impacts** to the natural, cultural, and manmade environment. In general terms, if an impact to an environmental resource (e.g., a wetland) can be avoided, then it should be avoided. If avoidance is not possible, then the least harmful project alternative (minimized impact) should be chosen. If the minimized impact remains adverse or unacceptable, then the impact should be mitigated to alleviate environmental harm.

In practical application during NJDOT's Capital Project Delivery Process, the principle "avoid, minimize, and mitigate" steers a project toward selecting the most feasible and prudent alternative that results in the least environmental harm, in balance with other engineering and transportation considerations (e.g., design standards, costs, right-of-way [ROW], utilities), to best address the project purpose and need.

During Concept Development (CD) and Preliminary Engineering (PE), project managers seek to avoid or minimize environmental impacts by comparing various project alternatives, including the "No Build" alternative. This ultimately results in the selection of a Preferred Alternative during PE, which is advanced through Final Design (FD) and ultimately Construction.

Environmental Screenings conducted during CD provide the initial identification of possible social, economic, and environmental concerns. Environmental constraints are mapped on the project base plans and alternatives are considered to avoid environmentally sensitive and regulated areas. Input is obtained from the affected public, local governments, and applicable regulatory agencies. A well-supported Project Purpose & Need Statement and Project Description are generated, which will define the project scope and serve as the basis for all regulatory approvals and project decision-making.

During CD, NJDOT determines which environmental document will be required under the National Environmental Policy Act (NEPA). These include Environmental Impact Statements (EIS), Categorical Exclusions (CE), and Environmental Assessments (EA). During PE, the NEPA document is prepared along with supporting technical environmental studies, which may be very intensive, or quite abbreviated, depending on the scope of the project. NEPA documents address compliance with a variety of primarily Federal regulations, including Section 4(f) and the Section 106 Process. Federal Highway Administration (FHWA) approval of the NEPA document (or NJDOT Certified CE approval) allows the project to advance to FD and pursue ROW.

Most NJDOT capital projects are Federally funded and must comply with NEPA. Other State-funded projects may require environmental approval during PE under NJ State Executive Order No. 215 (EO 215), which is administered by the NJ Department of Environmental Protection (NJDEP).

Based on the environmental analysis and agency coordination that occur during CD/PE, the project manager will be aware of the permits and other approvals needed to design and construct a project, including environmental restrictions and potential mitigation requirements. Thus, the project manager can develop a project during ROW/FD with "reasonable assurance" of obtaining these permits and approvals, provided there are no changes to the project scope.

During FD, the NJDOT works primarily with the NJDEP and the US Army Corps of Engineers (USACE) to obtain State and Federal construction permits for a project. Additional approvals or clearances may be required from other regulatory or jurisdictional agencies. NJDOT also self-certifies project compliance with the NJDOT Standards for Soil Erosion and Sediment Control (SESC).

There are many overlapping rules and permit requirements that could apply to the same geographic area or particular environmental resource. More than one agency can regulate the same area (e.g., tidal waters and wetlands in the Pinelands are potentially regulated by the NJ Pinelands Commission, NJDEP, or USACE, or all of these agencies). NJDEP Pre-Application Conferences are often held to discuss agency jurisdictions and permitting requirements. NJDOT can request these meetings by submitting a project information package per NJDEP's *Pre-Application Request Submittals* checklist. Similar meetings can be held with other jurisdictional agencies.

To compensate for adverse environmental impacts, the NJDOT is sometimes required to perform various mitigation activities, which normally must be completed prior to or concurrent with project construction. A typical example is wetland mitigation mandated by the NJDEP or USACE. Other common mitigation includes stormwater management, riparian zone vegetation, reforestation, noise walls, replacement of Green Acres parkland, archaeology data recovery, contaminated site remediation, and public access. The requirements for mitigation must be identified early and remain important considerations throughout project development, including the time and costs relating to mitigation site planning and design; site selection and ROW; development of a compatible construction schedule; construction (and monitoring) of the mitigation site including corrective actions; and sometimes long-term performance monitoring to ensure a successful mitigation site, which can extend beyond construction completion.

During FD, NJDOT prepares Environmental Plans that reflect all agency permits and authorizations, regulatory conditions including seasonal work restrictions, mitigation requirements, and other environmental limitations, notes, and directives to be included in the final plans and specifications. During construction, in addition to specific agency conditions and restrictions, the Environmental Plans are intended to guide construction personnel to be aware and take heed of environmentally sensitive areas.

The Environmental Plans must be maintained and copies of all permits must be displayed at the project's construction field office at all times. NJDOT personnel routinely perform site inspections to ensure all environmental requirements are being met. In addition, regulatory agencies have the right to enter and perform construction site inspections at will. Therefore, it is vital that a project comply at all times with the Environmental Plans and permits to avoid potential agency enforcement actions.

2.0 Federal Laws, Regulations, and Permits

2.1 National Environmental Policy Act of 1969 (NEPA)

This Act created the Council on Environmental Quality (CEQ) in 1970 to advise the President on environmental matters and establish rules for implementing a comprehensive environmental policy for all Federal agencies. As the recipient of Federal transportation funds, NJDOT must comply with FHWA's implementing NEPA regulations (codified at 23 CFR 771 *Environmental Impact and Related Procedures*). The NJDOT prepares an EIS, CE, or EA for all Federally funded projects, based on project likelihood to cause significant social, economic, and environmental impacts. NEPA applies to any **Federal action**, which includes any Federally funded project or a project that needs a Federal permit/approval.

NEPA provides a planning and decision-making framework for selecting the most feasible and prudent project alternative that avoids and minimizes negative social, economic, and environmental impacts. NEPA requires the full disclosure of both positive and negative impacts for a project. By doing so, NEPA recognizes that a project can cause a negative impact(s), but also provide an overall public benefit, and thus allow the least harmful project alternative to move forward in the NJDOT Capital Project Delivery Process.

NEPA requires Federal agencies, such as FHWA, to disclose the potential environmental impacts of their proposed actions to the public and seek comment prior to implementation. Per 23 CFR 771.105(c), FHWA's policy is that public involvement and a systematic interdisciplinary approach are essential parts of the development process for proposed FHWA actions. NJDOT implements its NEPA public involvement responsibilities as discussed below in **Subparts 2.1.1, 2.1.2, and 2.1.3**. In addition, see **Subsection 3.2** for further information on NJDOT's comprehensive Public Involvement Action Plan.

NEPA documents are completed during PE and typically evaluate impacts relating to noise, air quality, natural ecosystems and water resources, communities/ROW takes, disadvantaged populations/Environmental Justice, historic and archaeological resources/Section 106, contaminated areas, Section 4(f) sites, etc.

With the passage of each Federal transportation funding program, efforts for more efficient use of funds are made, which often include environmental streamlining provisions to improve project delivery during the NEPA process. Examples include earlier public and agency coordination, greater linkage between planning and environmental review processes, using programmatic approaches where possible, consolidating environmental documents, and setting deadlines for decision-making in environmental reviews.

The FHWA website offers an **Environmental Review Toolkit** with extensive information and guidance on the NEPA process, as well as other Federal environmental requirements.

2.1.1 Environmental Impact Statement (EIS)

NJDOT Activity Descriptions: 3620 – 3730

An EIS (23 CFR 771.123-127) is required by NEPA for Federal actions "significantly affecting the quality of the human environment." An EIS is the most rigorous environmental document that normally applies to large, complex NJDOT projects that are expected to result in significant environmental impacts. A typical example is a new highway on new alignment.

An EIS follows a formal procedure to fully ensure regulatory compliance for Federally funded projects, and also prevent legal actions against the Federal agency. An EIS requires the preparation of intensive environmental studies and rigorous analysis of alternatives, including the "No Build" or "No Action" alternative.

Formal EIS procedures require early and continuous agency consultation and public involvement at key decision-making junctures, including establishing the project Purpose and Need, performing environmental studies, addressing public and agency concerns, identifying feasible and prudent alternatives, and providing formal review opportunities for agencies and the public.

An EIS is a multi-step process. All EISs begin with the publication of a Notice of Intent (NOI) in the Federal Register, which states that a Federal agency (e.g., FHWA) intends to prepare an EIS for a particular project. The Federal agency then conducts a coordinated agency effort to develop the EIS scope and an approach that complies with all applicable laws, and a schedule to complete any permit, approval, review, or study required for the project.

A Draft EIS (DEIS) with supporting Technical Studies is prepared and then circulated for public and agency comments. Following a formal Public Hearing, a Preferred Alternative is selected and a Final EIS (FEIS) is prepared. The Federal agency issues a Record of Decision (ROD) that completes the NEPA process. The ROD includes a list of Environmental Commitments (see **Section 2.1.5**) that usually includes mitigation for negative environmental impacts, which must be satisfied during FD and Construction. The ROD normally ends the EIS process unless project or regulatory changes occur later, in which case a Supplemental EIS (23 CFR 771.130) may be required.

On average, the EIS process requires four to six years to complete.

2.1.2 Categorical Exclusion (CE)

NJDOT Activity Descriptions: 3870, 3875, 3890, 3900

A CE refers to a specific "category" of Federal actions which, based on past experience, will not individually or cumulatively cause significant environment impacts. Such Federal actions are "excluded" from the requirement to prepare an EIS or EA.

Projects classified as CEs meet the definition contained in the original CEQ regulations at 40 CFR 1508.4. FHWA's regulations at 23 CFR 771.117 define the type of projects that are typically classified as CEs for FHWA transportation projects.

Almost all of NJDOT's Federally funded projects are CEs. These include common projects such as roadway resurfacing, rehabilitation, and reconstruction projects; bridge repairs and replacements; intersection and signal improvements; minor realignments and widening; drainage improvements including stormwater management; and Americans with Disabilities Act (ADA) compliance projects.

The NJDOT and the FHWA NJ Division Office have developed a comprehensive environmental documentation form for CEs, known as a Categorical Exclusion Document (CED). The CED provides a concise evaluation of environmental impacts and concludes that no significant adverse impacts will occur. Per the FHWA-NJ Division Office, a CED is to be completed as required by NEPA and will not have an expiration date, unless substantive project changes occur that warrant a new CED or other NEPA document.

NJDOT and the FHWA-NJ Division Office have a Programmatic Agreement that outlines the policies and procedures for the processing of CEs. This allows the NJDOT BLAES and BEPR to "Certify" most CEs without individual FHWA approval, subject to certain conditions.

Although a public hearing is not required by NEPA, public information centers and officials briefings are normally held to provide disclosure and obtain public input during CED preparation. The CED requires a statement regarding Public Reaction to a project.

On average, the CED process requires three to six months to complete.

2.1.3 Environmental Assessment (EA)

NJDOT Activity Descriptions: 3540 – 3610

NJDOT prepares an EA (23 CFR 771.119) when it is unclear if a project will cause significant adverse environmental impacts. Intensive studies are only performed for those social, economic, and environmental resources that might experience significant adverse impacts.

Although a public hearing is not required by NEPA, a public hearing and comment period is usually held to fully disclose the EA findings and obtain public and agency input in a formal venue.

If the EA concludes that a project will not result in significant individual or cumulative environmental impacts, a Finding of No Significant Impact (FONSI) is prepared for FHWA approval. FHWA's issuance of a FONSI concludes the NEPA process. If the EA concludes there is a potential for significant environmental impacts, an EIS must be prepared for the project.

On average, the EA/FONSI process requires two to three years to complete.

2.1.4 Environmental Reevaluation (ER)

NJDOT Activity Descriptions: 4075, 4645, 4860

An ER revisits the findings of an approved NEPA document to ensure its continued validity.

ERs are initiated by the NJDOT and documented on an FHWA-approved ER form. The ER includes an evaluation that focuses on any change in the project, its surroundings, new information or requirements, or other factors that may cause the findings of the NEPA document (or the most recent ER) to no longer be valid. This evaluation is conducted by NJDOT Environmental staff, the NJDOT Project Manager, and any technical specialists deemed necessary, including the project consultant if applicable.

There are three triggers for the ER process:

- A new ER is **required** at every major FHWA authorization request (e.g., FD, ROW, Utilities, Construction) [23 CFR 771.129(c)].
- Changes to the project scope, design, ROW, environmental setting, impacts, mitigation, laws, regulations, policies, guidelines, or public reaction. ERs **can** be completed in advance of a typical FHWA authorization request whenever there are project changes that can be documented in an ER (i.e., when the project changes do not require a new CED or other supplemental NEPA document).
- Greater than three years have elapsed since FHWA's approval of the DEIS [23 CFR 771.129(a)] or FHWA's last major approval action for the FEIS [23 CFR 771.129(b)].

Depending on the magnitude and severity of project changes, the NJDOT and FHWA should consult to determine what steps are necessary for the ER and whether revised/new NEPA documentation may be required. This might include additional agency coordination, environmental studies, and alternatives analyses.

The ER required for Construction is accompanied by a Construction Environmental Authorization Checklist/Inventory prepared by NJDOT Environmental staff, which documents a project's compliance with all NEPA and other environmental commitments, including required permits and other approvals.

2.1.5 Environmental Commitments

Environmental commitments reflect NJDOT's regulatory responsibilities and environmental stewardship practices to avoid, minimize, and mitigate environmental harm during the design and construction of a transportation project.

An initial list of environmental commitments is contained at the end of a CED, EA/FONSI, or FEIS/ROD. Environmental commitments can be added later in project development (e.g., specific permit conditions). Environmental commitments are ultimately reflected in the approved agency permits, Memoranda of Agreement (MOA), Mitigation Plans, and the project's Environmental Plans and specifications.

Environmental commitments commonly include development of a SESC plan; contractor directions such as use of orange caution fence to protect sensitive environmental areas during construction; obtaining agency permits and adhering to permit conditions; ensuring that agency MOAs are fulfilled, including any agency consultation/coordination required (e.g., State Historic Preservation Officer [SHPO] commitments); and ensuring that mitigation obligations are met.

Upon NEPA document approval, environmental commitments must be tracked to ensure they are being addressed during ROW, FD/permitting, and Construction.

2.1.6 Community Impact Assessment (NEPA Social and Economic Impacts)

NJDOT Activity Descriptions: 3790 – 3810

NEPA applies to Federal actions that cause significant **social**, **economic**, and environmental impacts; and also emphasizes the importance of community involvement in the NEPA process. While NJDOT's Public Involvement Process (**Section 3.2**) provides for public outreach and project disclosure, NEPA also requires that Federal actions address impacts on people and their communities (i.e., social and economic impacts).

In keeping with NEPA, the Federal-aid Highway Act of 1970 (23 USC 109(h)) specifies that projects on the Federal-aid Highway System assure that all possible adverse effects be fully considered in developing a project, and that final decisions be made in the "best overall public interest" considering adverse economic, social, and environmental effects such as:

- air, noise, and water pollution
- destruction or disruption of man-made and natural resources, aesthetic values, community cohesion, and availability of public facilities and services
- adverse employment effects, and tax and property value losses
- injurious displacement of people, businesses, and farms
- disruption of desirable community and regional growth

NJDOT conducts Socioeconomic Studies which focus on Community Impact Assessment (CIA). CIA is a process to evaluate the effects of a transportation project on a community and its quality of life. The CIA process continuously shapes the project and provides documentation of the current and anticipated socioeconomic condition of a geographic area, with and without project implementation.

In addition to the requirements of 23 U.S.C. 109(h), CIA addresses all matters of importance to people. Common issues include mobility, access, safety, employment, property values, tax revenues, displacement/relocation of residents and businesses, changes in land use patterns, property isolation, aesthetics, and EJ impacts.

For further information, see the *Socioeconomic Guidance Manual: A Practitioner's Guide*, available on the NJDOT website.

2.2 Executive Order 12898 (EO 12898) of 1994 - Environmental Justice (EJ)

NJDOT Activity Descriptions: 3790 – 3810

The legal foundation of EO 12898 (Clinton 1994) is Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs and activities supported by Federal financial assistance.

EO 12898 requires that Federal agencies and recipients of Federal aid, to the greatest extent practicable by law, develop a strategy that prevents disproportionately high and adverse human health or environmental effects on low income and minority populations.

A fundamental concept in avoiding impacts to EJ populations is to ensure the full and fair participation by all potentially affected communities in the transportation decision-making process. The intent of EO 12898 is to provide more access to information and equitable opportunities for public involvement through an enhanced public participation process. A component of Title VI is addressing populations with limited English proficiency as part of NJDOT's public outreach efforts (see **Section 3.2**).

FHWA Order 6640.23A defines and provides guidance for determining if a project or its alternatives would result in a disproportionately high and adverse effect. Demographic studies are conducted including GIS overlays that map out EJ communities. When an EJ impact is unavoidable, NEPA documents must clearly demonstrate all avoidance and minimization efforts; how EJ populations were involved in decision-making; what the actual impacts are; and what "practicable" mitigation commitments will be made.

Potential EJ impacts are evaluated as part of CIA/Socioeconomics (see **Section 2.1.6**) and must be addressed in all NEPA documents. EJ must continue as an integral component of the NJDOT Capital Project Delivery Process throughout all project phases.

2.3 Section 4(f) of the US Department Of Transportation Act of 1966

NJDOT Activity Descriptions: 3400 – 3510

The USDOT Act of 1966 included a special provision, known as Section 4(f), which stipulated that FHWA and other USDOT agencies cannot approve the "**use"** of land from publicly-owned parks, recreational areas, wildlife and waterfowl refuges; or public and private historical sites, unless:

- There is no feasible and prudent avoidance alternative; and.
- The project includes all possible planning to minimize harm to the protected resource.

A "**use**" occurs when:

- Land is **permanently incorporated** into a transportation facility (e.g., a ROW fee take or permanent easement); or
- There is a **temporary occupancy** of land that is adverse; or
- There is a "**constructive use**", which occurs when there are no ROW takes or easements, but proximity impacts are so severe that the Section 4(f) property is substantially impaired (e.g., a noisy highway proposed near a public amphitheater).

Section 4(f) **only** applies to programs and projects administered by USDOT agencies. For FHWA projects, the implementing regulations for Section 4(f) are codified in 23 CFR 774 (Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites).

Section 4(f) requires coordination and written consultation with the Federal, State, and local agencies having jurisdiction over the land (relative to the significance of the land, primary use of the land, development of mitigation measures, etc.).

In the case of a **Temporary Occupancy** that is not adverse, the regulations provide an **exception**, subject to certain conditions, by which "temporary occupancies of land…are so minimal as to not constitute a use within the meaning of Section 4(f)." Written concurrence is required by the officials having jurisdiction over the Section 4(f) property.

There are **three** methods available for FHWA to document and approve the use of Section 4(f) protected land by a highway project:

- *de minimis* Impact Determination
- Programmatic Section 4(f) Evaluation
- Individual Section 4(f) Evaluation

Section 4(f) documents are usually prepared and processed concurrently with a NEPA EIS, EA, or CE. In other cases, such as the late discovery or designation of a Section 4(f) site, a "self standing" Section 4(f) document can be prepared.

A ***de minimis* Impact Determination** is a finding by the FHWA that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), a project results in either:

- A Section 106 finding (see **Section 2.4**) of no adverse effect on a historic property, or no historic properties affected; or
- A determination that the project will not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for Section 4(f) protection.

A *de minimis* impact determination must include supporting documentation for any measures to minimize harm, all appropriate agency coordination, and written concurrence by the jurisdictional agency (e.g., SHPO) with FHWA's intention to make a *de minimis* impact determination. In the case of a park, recreation area, or refuge, the public must be afforded an opportunity to review and comment on the effects of the project on the protected activities, features, or attributes of the Section 4(f) property (public review and comment for historic sites are provided via the Section 106 Process).

A **Programmatic Section 4(f) Evaluation** provides that, if a project meets certain conditions, it will satisfy the Section 4(f) requirements that there is no feasible and prudent alternative; and that the project includes all possible planning to minimize harm. These conditions generally relate to the type of project, severity of impacts, evaluation of alternatives, establishment of measures to minimize harm, adequate coordination with jurisdictional agencies, and the NEPA classification (EIS, CE, or EA).

There are five approved Nationwide Programmatic Section 4(f) Evaluations:

- **Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges**: This evaluation applies to the use of historic bridge structures to be replaced or rehabilitated with Federal funds which is on or is eligible for listing on the National Register of Historic Places. This includes bridges that are individually eligible or are contributing elements to a historic district.
- **Final Nationwide Section 4(f) Evaluation and Approval for Federally Aided Highway Projects with Minor Involvements with Historic Sites**: This programmatic evaluation is applicable to projects that improve existing highways and use minor amounts of land (including non-historic improvements thereon) from historic sites that are adjacent to existing highways; where the impact is determined to be "no effect" or "no adverse effect" when applying Section 106 criteria. This evaluation does not apply to the construction of a highway on new location or projects for which an EIS is being prepared.
- **Final Nationwide Section 4(f) Evaluation and Approval for Federally Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges**: This programmatic evaluation is applicable for projects that improve existing highways and require the use of minor amounts of publicly-owned public parks, recreation lands, or wildlife and waterfowl refuges adjacent to existing highways. This evaluation does not apply to construction of a highway on a new location or projects for which an EIS is being prepared.
- **Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property**: This programmatic evaluation is applicable for projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property; which in the view of the FHWA and official(s) with jurisdiction over the Section 4(f) property, will result in a net benefit to the Section 4(f) property. A "net benefit" is achieved when the project results in overall enhancement of Section 4(f) property.
- **Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects**: This 1977 "negative declaration" applies to independent bikeway and walkway projects that require the use of land from Section 4(f) resources, and would not cause significant adverse impacts.

Programmatic Section 4(f) Evaluations are streamlined processes, but are not automatic approvals or exemptions from the requirements of Section 4(f). In fact, Section 4(f) does apply to each of these types of projects, and the standards for feasible and prudent alternatives and minimization of harm must be met. However, the level of documentation, agency coordination, and the FHWA approval process are vastly streamlined when compared to a typical Individual Section 4(f) Evaluation.

An **Individual Section 4(f) Evaluation** must be completed when the use of Section 4(f) property is greater than a *de minimis* impact; and a Programmatic Section 4(f) Evaluation cannot be applied to the situation. An Individual Section 4(f) Evaluation is a multi-step process requiring extensive coordination and agreement on impacts and mitigation by the officials with jurisdiction on the Section 4(f) site. The use of Section 4(f) protected lands undergoes the highest level of scrutiny regarding feasible and prudent avoidance alternatives; the selection of the alternative resulting in the least overall harm to the Section 4(f) property; and that all possible planning to minimize harm to the Section 4(f) property has occurred.

A Draft Individual Section 4(f) Evaluation is prepared for FHWA review. Upon FHWA approval, the Draft document is circulated to the US Department of the Interior (USDOI) and the jurisdictional agency for review and comment. The public may review and comment on a Draft document during the NEPA process (see below). NJDOT evaluates all comments received and, if necessary, responds to comments and revises the document accordingly. A Final Individual Section 4(f) Evaluation is ultimately prepared for FHWA review and approval, which includes a 30-day legal sufficiency review.

2.4 Section 106 of the National Historic Preservation Act Of 1966

NJDOT Activity Descriptions: 3300 – 3380; 4550

The provisions of the National Historic Preservation Act (NHPA) of 1966 are far reaching in their scope. For NJDOT purposes, the Act established several institutions including the Advisory Council on Historic Preservation (ACHP), a State Historic Preservation Officer (SHPO) for each state, the National Register of Historic Places (NRHP), and the Section 106 Review (or Consultation) Process.

Section 106 pertains to the type of work that NJDOT routinely undertakes. Section 106 requires that federal agencies evaluate the impact of all federally funded or permitted projects on historic properties, through a process known as *Section 106 Consultation.* The implementing regulations issued by the ACHP, entitled *Protection of Historic Properties* (36 CFR Part 800), describe the review process mandated by Section 106. In the infrequent circumstance where a NJDOT project involves historic properties on **federal** lands, the review process occurs under Section 110 of the Act.

The main purpose for the Section 106 review process is to minimize potential harm and damage to “historic properties”, which generally include buildings, structures, objects, districts, archaeological sites, etc., which are listed in or eligible for listing in the National Register of Historic Places.

The Commissioner of the NJDEP is the SHPO for New Jersey. The NJDOT routinely conducts historical and archaeological surveys, and consults with the NJDEP Historic Preservation Office (HPO) in accordance with the Section 106 Process for all of its Federally funded projects.

Section 106 Consultation is a four step process that leads to implementation of a project after minimizing potential harm and damage to historic properties. Prior to engaging in the Section 106 consultation process, NJDOT Environmental staff will first determine:

- If the proposed project comprises an “undertaking” (generally a project, activity, or program funded, in whole or in part, or permitted, by a federal agency); and
- If the proposed project has the potential to cause effects on historic properties.

The four step Section 106 process is described in 36 CFR 800 Subpart B, and includes:

- Initiation (36 CFR 800.3)
- Identification (36 CFR 800.4)
- Assessment of Adverse Effects (36 CFR 800.5)
- Resolution of Adverse Effects (36 CFR 800.6)

The NJDOT, FHWA, and NJDEP HPO maintain an interagency agreement that includes a list of *Undertakings Which Have Limited or No Effect on Cultural Resources in New Jersey*. NJDOT Environmental staff can determine if certain NJDOT projects or project activities qualify for this list, in which case no further Section 106 Consultation with the SHPO is required.

The Role of the Public and Tribal Organizations

Section 106 Consultation requires the consideration of the views of those who may have a general interest (e.g., "the public") or special interest (known as "interested" and "consulting parties") in the proposed project. Their opinions must be given consideration at each of the four stages of the process. There are also provisions for inclusion of Native Americans in the consultation process.

Post Review Involvement

The Section 106 Process must be completed during the NEPA and Section 4(f) documentation stage (i.e., PE). However, NJDOT's responsibilities with respect to historic properties continue during FD and Construction.

- Mitigation for adverse effects may be required during final design, including further agency consultation, and the execution of a Memorandum of Agreement (MOA). Common mitigation includes photographic and documentary recordation of historic structures (e.g., historic bridges), and archaeological data recovery.
- Other treatment measures to fulfill SHPO conditions/commitments are often developed during FD to minimize impacts on historic properties.
- Modifications during FD/Construction require review by NJDOT BEPR or BLAES to decide if Section 106 must be re-opened to address changes/constructability issues.
- Monitoring during construction may be required to document archeological resources
- Unanticipated archaeological resources discovered during construction must be dealt with appropriately (36 CFR 800.13)

In addition, most MOAs require submission of documentation to the consulting parties that the stipulations of the MOA have been satisfied.

Coordination with Other Agencies

Other federal and state agencies involved with a NJDOT project may have different procedures or additional requirements for completing Section 106 consultation, or they may be able to adopt the Section 106 findings from the NJDOT/FHWA compliance work completed under NEPA or Section 4(f). NJDOT environmental staff should be consulted to ensure proper interagency consultation is initiated early to address these circumstances.

Projects Requiring Federal or Non-Federal Permits

Even if Federal funds are not involved, the requirement for a Federal permit (e.g., USACE Section 404 permit) will trigger the need to comply with Section 106. Furthermore, to obtain a NJDEP Division of Land Use Regulation (DLUR) permit (e.g., a Freshwater Wetlands or CAFRA permit), an NJDOT project cannot adversely affect properties that are listed in, or eligible for listing in, the NJ or NRHP; unless the NJDOT demonstrates that the project avoids or minimizes impacts to the maximum extent practicable, and any unavoidable impact is mitigated. Therefore, even for non-Federal actions, NJDOT follows the "process" of identifying historic properties, determining impacts, and developing mitigation measures in consultation with the NJDEP SHPO.

2.5 Endangered Species Act of 1973

NJDOT Activity Descriptions: 3765 – 3785

Section 7 of the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1536, as amended), requires Federal agencies to **consult** with the US Fish & Wildlife Service (USFWS) and/ or the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service (formerly National Marine Fisheries Service) when proposing an **action** that may affect Federally listed threatened and endangered (T&E) species or their designated habitat. T&E species include a wide variety of animals and plants.

Endangered means that a species is in immediate danger of becoming extinct throughout all or a significant portion of its range. **Threatened** means that a species is likely to become endangered in the foreseeable future. Factors that might cause a species to require ESA protection include loss of habitat and breeding areas, introduction of competing non-native or invasive species, and pollution including stormwater runoff.

The law requires that Federal agencies, in consultation with the USFWS or NOAA Fisheries Service, or both of these agencies, ensure that their Federal actions (e.g., FHWA funding or a USACE permit) are not likely to **jeopardize** the continued existence of any Federally listed T&E species, or result in the destruction or adverse modification of designated critical habitat of such species.

Any action that causes a **take** of any Federally listed T&E species is prohibited. A **take** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a T&E species, or attempt to do so. With respect to listed plants, it is illegal to remove, damage, or destroy a T&E plant. State-funded projects provide similar species protection under the NJ Endangered Species Conservation Act (see **Section 3.5**).

During the NEPA process, the NJDOT routinely conducts T&E species surveys and environmental impact studies in coordination with the agencies to ensure a transportation project will not adversely affect T&E species or their habitat. If adverse impacts cannot be avoided or reduced to an acceptable level, compensatory mitigation is developed in coordination with the agency involved. These mitigation requirements are normally implemented as USACE and NJDEP permit conditions.

To mitigate potential adverse impacts, the agencies will often require NJDOT to implement seasonal construction restrictions that coincide with the species' vital lifecycle activities; such as breeding, spawning, nesting, foraging, hibernating, and migratory periods. Common examples include seasonal restrictions on tree cutting to protect nesting or foraging T&E birds; and in-water work restrictions to protect T&E or migratory fish. In the latter case, NJDOT often uses temporary cofferdams to isolate in-water work areas, which are installed outside the restricted season. In this way, work can be conducted within the cofferdam during the restricted season without adversely impacting protected fish.

In more rare cases, the agencies can determine that a project **May affect – is likely to adversely affect** a species, which could result in a **Jeopardy** statement causing the need to reevaluate the project and analyze other alternatives; or possibly terminate the project due to withdrawal of FHWA funding or inability to obtain NJDEP/USACE permits.

2.6 Clean Water Act of 1972 (USACE Section 404 Permits)

NJDOT Activity Descriptions: 4385 – 4395

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. The Federal Water Pollution Control Act Amendments of 1972, commonly known as the Clean Water Act (CWA), created the basic legal structure for regulating discharges of pollutants into **Waters of the United States**; and also for establishing and regulating acceptable surface water quality standards.

Waters of the United States include all tidal and non-tidal waterways associated with interstate or foreign commerce (past, present, or future by reasonable improvement), all interstate waters and wetlands, impoundments of jurisdictional waters, and the territorial seas; and all tributaries to the above waters; and all waters adjacent to the above waters, including wetlands, ponds, lakes, impoundments, and similar waters.

Certain waters require a case-specific jurisdictional determination, including all waters located within the 100-year floodplain of certain jurisdictional waters, and all waters located within 4,000 feet of the high tide line or ordinary high water mark of certain jurisdictional waters. Excluded from the definition are certain types of ditches, any stormwater control feature created in dry land, and groundwater.

Section 404 of the CWA makes it unlawful to discharge dredged or fill material into **Waters of the United States,** unless a permit is obtained from the USACE. In 1994, the NJDEP assumed regulatory authority under Section 404 for most **non-tidal** waters and wetlands in NJ (these **intra**state waters are known as **delegable** waters, for which a USACE permit is not required). The USACE retains Section 404 jurisdiction for all tidal and **inter**state Waters of the United States in NJ (known as **non-delegable** waters).

A **Section 404 Permit** is needed for the filling of Waters of the United States up to the Army Corps High Tide Line (generally the spring high water line), including wetlands within 1000 feet of any mean high water line (MHWL).

Common NJDOT construction activities requiring a Section 404 permit include excavation, dredging, filling, and depositing dredged materials into waterways and wetlands. Such activities include stormwater outfall pipes, headwalls, wingwalls, and riprap slope protection; roadway/drainage bank protection (bulkheads, revetments); bridge abutments and piers; culverts; dams; and overhead and underwater utility lines.

The USACE permitting program and specific types of permits available for NJDOT purposes are discussed under **Section 2.7.1**.

Section 401 of the CWA requires a USACE determination that a discharge of dredged or fill material will not negatively affect the quality of "Waters of the United States." The NJDEP issues Water Quality Certificates for its permits consistent with Federal Section 401 requirements (see **Section 3.6.9**).

Section 402 of the CWA established the US Environmental Protection Agency (USEPA) **National Pollutant Discharge Elimination System (NPDES)** permit program to regulate water pollution from "point source discharges" into Waters of the United States. Several states, including NJ, are authorized by USEPA to administer their NPDES program (hence NJ Pollutant Discharge Elimination System (NJPDES), as discussed at **Section 3.9**.

2.7 Rivers and Harbors Act of 1899 (USACE Section 10 Permits)

NJDOT Activity Descriptions: 4385 – 4395

The federal Rivers and Harbors Act of 1899 requires authorization for a number of different activities in **navigable** Waters of the United States. The purpose of this Act is to preserve the public right of navigation and to prevent interference with interstate and foreign commerce.

Section 10 of the Rivers and Harbors Act requires authorization from the **USACE** for:

- Construction of any structure in or affecting any navigable Waters of the United States;
- The excavation from or deposition of material in these waters; or
- Any obstruction or alteration in these waters.

NJDOT obtains **USACE Section 10 Permits** for most of its bridge improvements over navigable waters, including pilings, piers, and bridge abutments up to the MHWL.

Generally speaking, any work or structures proposed waterward of a MHWL will require both a USACE Section 10 permit and a USACE Section 404 permit (see **Section 2.6**), which are often combined under a single permit or authorization.

Section 9 of the Rivers and Harbors Act requires a permit for "construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States." The **USACE** has jurisdiction over dams and dikes, while the **US Coast Guard** (USCG) has jurisdiction over bridges and causeways. The USCG now administers bridge permits under a different law (see **Section 2.10**), with the provisions of Section 9 retained for USCG bridge permitting purposes.

While both the USACE and USCG regulate navigable Waters of the United States, USACE Section 10 Permits are different from USCG Bridge Permits, based on each agency's jurisdictional definition of **navigable** Waters of the United States.

USACE regulations (33 CFR 329.4) define navigable waters as "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce."

USCG regulations (33 CFR 2.36) define a navigable waterway as, among other things, 1) "internal waters of the United States that are subject to tidal influence"; and 2) "internal waters of the United States not subject to tidal influence that…are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made objections that require portage."

2.7.1 US Army Corps of Engineers Permitting Program

NJDOT Activity Descriptions: 4385 – 4395

As mentioned above, the USACE administers a Federal permitting program to regulate activities subject to Section 404, Section 10, or both.

All of NJDOT's projects are located in the USACE North Atlantic Division and are regulated and reviewed by one of two USACE Regulatory Districts (see **Appendix A, Figure 5-1**):

- The USACE Philadelphia District regulates all of southern NJ (generally from I-195 south) and the western portion of NJ along the Delaware River. The Philadelphia District is considered the USACE Lead District for NJ.
- The USACE New York District regulates the remainder of NJ including all of northeast and portions of central NJ.

For NJDOT purposes, there are only limited **exemptions** to the requirement to obtain a USACE Section 404 or Section 10 permit, including:

- Projects that do not result in a discharge of dredged or fill material are not subject to Section 404 jurisdiction.
- Projects limited to in-kind general maintenance, including maintenance of existing drainage ditches, as well as emergency reconstruction of recently damaged transportation structures. Maintenance **does not** include any modification that changes the original design, location, or materials used.
- The construction of temporary sedimentation basins on a construction site that do not include the placement of fill material into Waters of the United States.

There are **two USACE Statewide Programmatic General Permits** (SPGP) available:

- **SPGP 17** – Construction activities in substantially developed artificial tidal lagoons and their access channels. For NJDOT purposes, this includes outfalls and associated temporary cofferdams at these specific locations.
- **SPGP 19** – For NJDOT purposes, the replacement of existing bulkheads within 18 inches of existing serviceable bulkhead structures.

The **USACE Nationwide Permit (NWP) Program** provides a streamlined application and approval process under Section 404, Section 10, or both, for a variety of NJDOT project activities that cause minimal impacts to Waters of the United States. Many NWPs require a "Pre-Construction Notification" (PCN) application to obtain USACE authorization. The PCN documents a project's compliance with the terms of the specific NWP, a variety of NWP general conditions, and also regional conditions for specific geographic areas (e.g., NJ).

NWP 3 (Maintenance) is widely used for activities that go beyond the above-noted maintenance exemptions. This includes the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, and allows minor deviations in design, location, and materials used. Minor stream channel modification, removal of accumulated sediments and debris, and scour protection are provided.

NWP 7 (Outfall Structures) includes both new construction and modification of existing outfalls that comply with Federal water quality requirements.

NWP 14 (Linear Transportation Projects) allows the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails) in Waters of the United States. This may include localized stream channel modification and bank stabilization to construct or protect the linear transportation project. Temporary structures, fills, and work areas, including cofferdams and dewatering areas, are also allowed.

NWP 23 (Approved Categorical Exclusions) is widely used by the NJDOT for its Federally funded projects, whereby the USACE is recognizing that minimal environmental impacts are expected to occur, as determined by FHWA's prior review and approval of a project's CE pursuant to NEPA. NWP 23 is applicable to several types of CEs used for NJDOT projects.

Other available NWPs include NWP 6 (Survey Activities), NWP 31 (Maintenance of Existing Flood Control Facilities), NWP 41 (Reshaping Existing Drainage Ditches), and NWP 43 (Stormwater Management Facilities).

The **standard time frame for obtaining a NWP authorization is 45 days** from the submission of a complete application.

A **USACE Individual Permit (IP)** is required for NJDOT projects affecting Waters of the United States that exceed NWP limits/conditions or otherwise do not qualify for an exemption or SPGP. These are projects that will tend to cause significant adverse environmental impacts and require extensive agency coordination and analysis of avoidance and minimization alternatives.

The **standard time frame for obtaining IP approval is 60 days** from the submission of a complete application.

Mitigation is normally required for permanent impacts over 0.1 acre to Waters of the United States. Mitigation is often developed concurrently with NJDEP permitting requirements.

There are no permit fees for USACE permits.

2.8 General Bridge Act of 1946 (US Coast Guard Bridge Permits)

NJDOT Activity Descriptions: 4385 – 4395

A US Coast Guard (USCG) Bridge Permit is often referred to as a Section 9 permit, because years ago bridges were approved under Section 9 of the Rivers and Harbors Act of 1899 (see **Section 2.7**). However, the current authority under which the USCG issues bridge permits is the General Bridge Act of 1946. The purpose of the Act is to preserve the public right of navigation and prevent interference with interstate and foreign commerce. USCG policy is to protect the freedom of navigation and the quality of the environment, meeting the "reasonable needs" both of navigation and land traffic.

All of NJDOT's projects are located in the USCG Atlantic Area; and are regulated and reviewed by one of two USCG Districts (see **Appendix A, Figure 5-2**):

- The USCG Northeast Atlantic District (formerly First District) regulates northeast NJ.
- The USCG Mid-Atlantic District (formerly Fifth District) regulates the remainder of NJ.

A USCG permit is required when a bridge crosses waters which are:

- Tidal and used by recreational boating, fishing, and other small vessels **21 feet or greater in length**; or
- Used or could be used by reasonable improvement as a means to transport interstate or foreign commerce.

USCG approval is required to construct a new bridge, or reconstruct or modify an existing bridge, over navigable Waters of the United States as described above. The USCG must approve the bridge location, alignment, and appropriate navigational clearances in all bridge permit applications. Additional information can be found in the USCG Bridge Permit Application Guide and NJDOT Bridges and Structures Design Manual.

Typical NJDOT activities requiring a USCG bridge permit are:

- Constructing a new bridge or causeway over a canal, channel, stream, river, lake, bay, or other navigable body of water.
- Modifying an existing bridge or causeway.
- Altering structural configuration or navigational clearances; significantly modifying any substructure or superstructure components; changing a fender surface from wood to steel; or violating any navigational conditions of the original permit.
- Constructing a temporary bridge used during construction of a permanent bridge.

The standard time frame for obtaining a USCG Bridge Permit approval is three to six months from the submission of a complete application.

USCG permits are not required for the following projects:

- Constructing a bridge crossing non-tidal water that is not used or susceptible to use for transporting interstate or foreign commerce.
- Removing an existing bridge that will not be replaced by another bridge.
- Retaining all or part of a bridge over navigable water for non-transportation purposes.
- Repairing or replacing worn/obsolete parts on an existing bridge except per above.

USCG Bridge Permit Exemption:

Under the provisions of Section 123(b) of the Federal Aid Highway Act of 1987, certain bridges constructed with FHWA funds are exempt from requiring a USCG permit. Section 144(h) establishes the applicability for exempting bridges over water bodies that:

- Are not used or are not susceptible to use in their natural condition, or by reasonable improvement, as a means to transport interstate or foreign commerce; and
- If tidal, are used only by recreational boating, fishing, and other small vessels **less than 21 feet in length**.

Construction in waters exempt from a USCG permit may be subject to other USCG authorizations, such as approval of navigation lights and signals, and timely notice to local mariners of waterway changes.

2.9 Executive Order 11988 (EO 11988) of 1977 - Floodplain Management

Executive Order 11988, Floodplain Management, was amended by Executive Order 12148 that delegated authority to FEMA (last amended 11/13/2013).

EO 11988 Section 2.(a)(1) states that before taking an action, each (Federal) agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, an evaluation (i.e., the 8-Step process below) will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act.

The purpose of EO 11988 (Floodplain Management) is to reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains. The Order requires that Federal agencies avoid, to the extent possible, the long and short-term impacts associated with the occupancy and modification of floodplains, and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

EO 11988 guidelines address an 8-Step decision-making process to be implemented for Federal projects that have potential floodplain impacts. The process should include early public notice and review opportunities, and the examination of practicable alternatives to avoid and minimize floodplain impacts.

The requirements of EO 11988 are implemented by the FHWA under USDOT Order 5650.2; and codified at 23 CFR 650, Subpart A, and 23 CFR 771.

NJDOT projects also comply with EO 11988 through the issuance of USACE Section 404 permits (see **Subsection 2.6** and **Subpart 2.7.1**) and NJDEP Flood Hazard Area Control Act permits (see **Subpart 3.6.4**), which both regulate floodplain impacts and include a public notice and comment period during the agency permit review process.

2.10 Executive Order 11990 (EO 11990) of 1977 - Protection of Wetlands

The purpose of EO 11990 is to "minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands." The Order requires Federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The procedures require the determination of whether or not the proposed project will be in or will affect wetlands. If so, a wetlands assessment must be prepared that describes the alternatives considered. The procedures include a requirement for public review of assessments.

The requirements of EO 11990 are implemented by the FHWA under USDOT Order 5660.1A, and codified at 23 CFR 777.

NJDOT projects further comply with EO 11990 through the issuance of USACE Section 404 permits (see **Subsection 2.6** and **Subpart 2.7.1**) and NJDEP Freshwater Wetlands and Coastal Wetlands permits (see **Subparts 3.6.3 and 3.6.8**), which all regulate wetland impacts and include a public notice and comment period during the agency permit review process.

2.11 Magnuson–Stevens Fishery Conservation and Management Act Amendments of 1996

NJDOT Activity Descriptions: 3765 – 3785

Originally the Fishery Conservation and Management Act of 1976, major amendments in 1996 (by two senators, Magnuson and Stevens) included the Sustainable Fisheries Act, whose purposes are "to promote the protection of **essential fish habitat** in the review of projects conducted under Federal permits (e.g., USACE Section 404/10 permits), licenses, or other authorities (e.g., FHWA) that affect or have the potential to affect such habitat."

"**Essential Fish Habitat**" (EFH) is broadly defined to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." For NJDOT purposes, the regulated area extends to specific fish species that are managed by the NOAA Fisheries Service within a certain geographical area along the NJ coast.

In coordination with the FHWA or USACE or both, the NJDOT must evaluate the impacts of a proposed project, including temporary construction impacts, and consult with the NOAA Fisheries Service when a project may adversely affect designated EFH.

If a project would adversely affect EFH, the NOAA Fisheries Service provides conservation recommendations including measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from a proposed NJDOT project. These recommendations are usually implemented as USACE and NJDEP permit conditions, and often include seasonal restrictions on in-water activities during construction, or mitigation requirements to restore, create, or enhance EFH; or both.

2.12 Wild and Scenic Rivers Act of 1968

NJDOT Activity Descriptions: 4385 – 4395

This Act established the National Wild and Scenic Rivers System "to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations." The Act extends to designated rivers and "Study Rivers."

The Act is administered by the National Park Service (NPS), and prohibits Federal support for actions, such as construction of dams or other in-stream activities, which would harm the free-flowing condition, water quality, or outstanding resource values of a designated river. Designated segments need not include the entire river and may include tributaries. The protected boundaries include the river itself, and a 0.25 mile buffer along either bank.

Rivers are classified as wild, scenic, or recreational. Regardless of classification, each river in the National System is administered with the goal of protecting and enhancing the values that caused it to be designated.

NJ has about 6,450 miles of river, with 263 miles designated as wild & scenic, including:

- Delaware River (Upper)
- Delaware River (Middle)
- Delaware River (Lower)
- Great Egg Harbor River
- Maurice River
- Musconetcong River
- White Clay Creek

NPS approval is required for NJDOT projects that involve designated portions of these rivers. NJDOT projects must be designed with the goal of protecting and enhancing the values that caused the river to be designated (including its 0.25 mile buffer). Without NPS approval, NJDEP and USACE permits cannot be obtained.

2.13 Safe Drinking Water Act of 1974 (USEPA Sole Source Aquifers)

NJDOT Activity Descriptions: 3765 – 3785

The Safe Drinking Water Act (SDWA) is the primary Federal law ensuring the quality of drinking water. Under the SDWA, the USEPA sets drinking water quality standards; and oversees the States, localities, and water suppliers who implement those standards.

Section 1424(e) of the SDWA provides USEPA authority to designate aquifers that are the sole or principal drinking water source for an area, and which, if contaminated, would create a significant hazard to public health. These areas may have no alternative drinking water source(s) that could physically, legally, and economically supply all those who depend on the aquifer for drinking water. All sole or principal source aquifers are collectively known as **Sole Source Aquifers** (SSA).

After a SSA is designated, no commitment for Federal financial assistance may be provided for any project that the USEPA determines may contaminate the aquifer through its recharge area, so as to create a significant hazard to public health.

USEPA guidelines establish a “project review area” applicable to most aquifers. It includes an aquifer “recharge zone” and “stream-flow source zone,” which typically overlap. The recharge zone is the areal extent of the aquifer. The stream-flow source zone is the upstream area that contributes recharge water to the aquifer.

Seven SSAs are defined in NJ and their project review areas cover most of the State (see **Appendix A, Figure 5-3**). Four of these aquifers extend into neighboring states.

- Buried Valley SSA (NJ)
- Rockaway River SSA (NJ)
- Ridgewood SSA (NJ)
- Highlands SSA (NJ/NY)
- New Jersey Coastal Plain SSA (NJ/DE/PA)
- Northwest New Jersey (15 Basin) SSA (NJ/NY)
- Ramapo River SSA (NJ/NY)

The NJDOT conforms to a **1984 Memorandum of Understanding (MOU) between FHWA, Region I and USEPA, Region 2**. Per this MOU, the FHWA will provide early notification to the USEPA (i.e., during the NEPA process) of proposed Federally financially-assisted projects for which one of the following criteria apply:

- Construction of additional through-traffic lanes, interchanges, or rotaries on existing roadways
- Construction of a two or more lane highway on new alignment
- Construction of rest areas with on-site sewage disposal facilities
- Other projects which, in the opinion of FHWA, may have an effect on the water quality of the aquifer to the extent that the project might contaminate its recharge zone, thereby creating a significant hazard to public health

Applicable NJDOT projects require a groundwater assessment to determine project impacts on groundwater quality. This study is normally included in a project's NEPA EIS or EA (for which the above project types usually qualify, as opposed to a CE).

2.14 Farmland Protection Policy Act of 1981

NJDOT Activity Descriptions: 3790 – 3810

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact that Federal programs (e.g., Federal aid highways) have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. For the purpose of FPPA, "farmland" includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest, pasture, cropland, or other land, but not water or urban built-up land.

If a Federal aid highway project has the potential to convert important farmland to non-farm use, the NJDOT coordinates with the US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). The NRCS uses a land evaluation and site assessment system to establish a farmland conversion impact rating score on proposed sites of Federally funded and assisted projects. This score is used as an indicator for the NJDOT to consider alternative sites (roadway locations/alignments) if the potential adverse impacts on the farmland exceed the recommended allowable level.

The assessment is completed on form AD-1006, Farmland Conversion Impact Rating. The NJDOT completes the site assessment portion of the AD-1006, which assesses non-soil related criteria such as the potential for impact on the local agricultural economy and compatibility with existing agricultural use.

2.15 Clean Air Act of 1970

NJDOT Activity Descriptions: 3740 – 3760

The Clean Air Act is a Federal law designed to control air pollution on a national level. It requires the USEPA to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. The law regulates air emissions from stationary and mobile sources.

The Clean Air Act authorizes the USEPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and welfare from risks posed by certain widespread air pollutants, such as Carbon Monoxide (CO) and particulate matter (PM), and to regulate emissions of hazardous air pollutants. In addition to setting these pollutant standards, the USEPA directed the States to develop State Implementation Plans (SIPs) to achieve these standards.

The NJDOT must comply with the Clean Air Act, as amended, on both a program level and on a project-specific basis. On the program level, Federal funds allocated to the NJDOT through NJ's three Metropolitan Planning Organizations are conditioned upon NJDOT's adherence to a conforming SIP. This means that any NJDOT project that is listed in the Statewide Transportation Improvement Program (STIP) has already been determined to adhere to a conforming SIP. On a project-specific level, such as an intersection improvement or highway widening, the project must be designed so traffic queuing or increased traffic volumes do not result in a violation of the NAAQS.

As a recipient of FHWA and Federal Transit Administration (FTA) funds, NJDOT complies with the Clean Air Act via the USEPA Transportation Conformity Regulations (TCR), dated March 2012. The rules apply to areas of the State that do not attain certain NAAQS standards for CO, PM10 (microns), and PM2.5 (microns); where transportation projects could cause or worsen localized or regional air quality conditions. The TCR includes procedures for determining regional transportation emissions and localized concentrations ("hot spots") of these pollutants. The TCR also contains a list of Exempt Projects and a list of Projects Exempt from Regional Emissions Analyses for CO, which apply to most NJDOT projects that do not add travel lanes or increase traffic volumes.

In recent years, NJ has attained compliance (conformity) with the NAAQS for CO, PM2.5, and PM10 statewide (except for a few urban areas that require a CO maintenance program). Thus, most NJDOT projects do not need to undergo localized hot spot analyses. This is due, in part, to NJDOT roadway improvements resulting in enhanced Levels of Service, and thus, less regional and local air pollution from motor vehicles.

CEDs contain a section for documenting conformity with the Clean Air Act and USEPA TCR, including an entry that references the NJDOT STIP.

2.16 Federal Highway Administration Noise Regulations

NJDOT Activity Descriptions: 3815 – 3835; 4140, 4145, 4150, 4175

FHWA's Final Rule for "Procedures for Abatement of Highway Traffic Noise and Construction Noise" (23 CFR 772) is the guiding document for all proposed highway projects that require analysis or abatement of highway traffic noise. The regulations include traffic noise prediction requirements, noise analysis, noise abatement criteria, and requirements for informing the affected community. The regulations apply to all FHWA funded projects. NJDOT's *Traffic Noise Management Policy and Noise Wall Design Guidelines*, available on NJDOT's website, was developed based on the current FHWA rule.

The NJDOT applies its noise policy to all of its projects, regardless of funding, when there are sensitive receptors in the vicinity of a roadway that might be affected by traffic noise impacts. Sensitive receptors include residences, schools, libraries, places of worship, motel/hotels, etc., where elevated traffic noise can adversely impact the quality of life.

A traffic noise impact is defined as occurring when the predicted traffic noise levels approach (within one decibel), equal, or exceed the noise abatement criteria for various types of human activities (i.e., sensitive receptors) adjacent to the roadway, or when the predicted traffic noise levels exceed 10 decibels over the existing noise levels.

Noise abatement typically includes construction of noise barriers, but might include landscaping or vegetative screenings to reduce "perceived" impacts of traffic noise.

NJDOT's Noise Policy defines three types of projects:

Type I Projects: Noise impact studies are performed for new roadways and significant improvements to existing roadways. Typically, these projects include new roadway alignments, widening that includes additional lanes, and roadway improvements that involve significant horizontal or vertical alignment changes. Noise studies are required and consideration for noise impact abatement is an integral part of the project scope.

Type II Projects: Noise impact studies are performed for existing roadways to improve quality of life, where no other transportation improvement is planned. These studies and construction of abatement measures are not required to satisfy any Federal mandate. Currently, there are five projects in NJDOT's Type II program, which will be considered for noise abatement when funding becomes available. Only those noise sensitive areas that existed (or had final site plan approval) prior to highway construction will be considered for noise mitigation. No additional projects will be accepted to the Type II program.

Type III Projects: Noise impact studies are **not** required for projects that do not alter the noise environment to a significant degree. Project examples include paving, bridge replacement, and projects that do not substantially change roadway geometrics.

For all Type I and Type II projects, the engineering feasibility and reasonableness of noise barriers must be considered. Factors that can affect the construction of noise barriers include safety, utilities, drainage, access, and maintenance. Any proposed noise abatement must be desired by the affected community, result in certain noise (decibel) reduction, be cost-effective per specific criteria (generally up to $50,000 per residence), not cause other environmental impacts, and have wall heights that are limited to 20 feet.

NJDOT's Noise Policy also provides for consideration of aesthetic treatments for noise barriers, a community involvement process, and coordination with local officials.

3.0 New Jersey (NJ) Laws, Regulations, and Permits

3.1 Executive Order 215 of 1989 (EO 215) – Environmental Assessment

NJDOT Activity Descriptions: 3910 – 3945

EO 215 requires departments, agencies, and authorities of the State to prepare and submit to the NJDEP an EA or EIS in support of major construction projects. EO 215 is also applicable to projects where the State grants at least 20 percent financial assistance. The objective of EO 215 is to reduce or eliminate the potential adverse social, economic, and environmental impacts of projects initiated or funded by the State of NJ.

Projects with construction costs over $1 million require an EA; projects with both construction costs over $5 million **and** land disturbance over five acres, require an EIS. Guidelines for EA/EIS preparation under EO 215 are attached to the Order.

There are several **exemptions** to the Order for NJDOT's purposes, which are often applied to State-funded Local Aid projects, including:

- Maintenance or repair projects
- Facilities or equipment replaced in kind at the same location
- Projects subject to CAFRA review
- Projects with an approved NEPA EIS/ROD or NEPA CE (a project processed as a NEPA EA is not exempt but NJDEP will accept the NEPA EA for EO 215 review)

The NJDOT/NJDEP have a 1992 MOA regarding the processing of State aid projects under EO 215. The MOA expands on the criteria used to determine project exemptions under the first two bullets above.

The **standard timeframe for NJDEP review of an EO 215 document is 60 days** from NJDEP receipt of a complete submission. EO 215 specifies that a project will be automatically approved if the NJDEP review is not completed within that timeframe.

3.2 NJDOT Public Involvement Action Plan

NJDOT Activity Descriptions: 2025, 2030, 2035, 2130, 2270, 2310, 2440, 2450, 2460, 2515, 3185, 3865

The NJDOT Office of Community and Constituent Relations implements a Public Involvement Action Plan (PIAP) for every NJDOT Capital project. The PIAP is established during Concept Development (CD) and continues throughout the NJDOT Capital Project Delivery Process. The PIAP for a project will typically include meetings with local officials (Public Officials Briefings) and Public Information Centers held in the project area. Other meetings may be held with identified special interest groups, such as neighborhood associations and community activist groups, watershed associations, local/regional bus service providers, emergency services providers, business groups, etc.

The NJDOT tailors a project's PIAP to provide for the disclosure of environmental issues as required by other environmental laws and regulations. For example, the PIAP might address deforestation impacts per the NJ No Net Loss Reforestation Act, historic property impacts per Section 106 of the NHPA, and impacts to disadvantaged populations per Federal EJ requirements. ROW issues including proposed displacements and relocation assistance are also addressed.

Certain projects require a specific public hearing to obtain public input before a project can be advanced or approved, such as a NEPA Public Hearing, NJDEP Green Acres Public Hearing for parkland takings, NJDEP CAFRA Hearing for NJ coastal zone impacts, and hearings to discuss noise studies and proposed noise walls.

All PIAP public outreach events must provide reasonable notice of the event and be held at a convenient time and place. Notices must be provided in English and non-English languages when applicable. NJDOT's procedures for receiving both oral and written statements from the public must be clearly articulated. Formal Public Hearings normally require a stenographer and transcript of the proceedings. Public outreach events must be ADA accessible and provide for the participation of disadvantaged project stakeholders, including hearing impaired, visually impaired, and those of limited English proficiency.

3.3 NJ Green Acres Bond Act of 1961 (NJDEP Green Acres Program)

NJDOT Activity Descriptions: 4720 – 4780

The **NJ Green Acres Program** (GAP) was created in 1961 to meet NJ's recreation and conservation needs. Administered by the NJDEP, the GAP focuses primarily on acquiring land for recreational purposes and open space conservation.

The GAP also provides funding to local governments and non-profits for the acquisition, development, and improvement of parkland and open space. Once lands are acquired or developed with GAP funds, they become "encumbered" and restricted to use solely for recreation and conservation purposes **in perpetuity**. Lands directly financed by the GAP are known as "funded parkland." In addition, once a county or municipality accepts GAP funds, all other lands that it holds for recreation and conservation purposes are subject to the same GAP restriction, even if no GAP funds were directly used to acquire or develop those lands. These lands are known as "unfunded parkland."

Upon receiving GAP funds, each local government unit maintains a Recreation and Open Space Inventory (ROSI), which is a list of all municipal and county parkland and open space holdings contained in each municipality. However, not every encumbered property may be found on this list and any publicly owned property that might be affected by a project should be researched adequately to determine potential GAP encumbrance.

The NJDEP GAP, Bureau of Legal Services and Stewardship, oversees GAP-encumbered parkland for compliance with the **NJDEP Green Acres Program Rules** (N.J.A.C. 7:36). These rules are stringent, with the intent to strongly discourage any change or loss of encumbered parkland or open space through diversion of use or disposal of the property

"Dispose" or "disposal" means to sell, donate, exchange, grant, convey, or transfer permanent possession of any legal interest in parkland, in fee simple or by (permanent) easement or other legal mechanism, to another person or entity for purpose(s) contrary to the Green Acres restrictions.

"Divert" or "diversion" means to use or allow the use or control of parkland for other than recreation and conservation purposes, contrary to the Green Acres restrictions. For example, granting a nonexclusive easement, or leasing or using parkland for other than recreation and conservation purposes, is to "divert" it to a non-recreational use.

Almost any activity performed by the NJDOT that affects encumbered parkland will constitute a diversion or disposal, which is classified as either "Major" or "Minor." Examples include bridge improvements; through roads or other transportation improvements; rights-of-way; public or private utility or other non-recreation easements (surface or subsurface); stormwater management facilities including detention,

retention, or sedimentation basins; and outfall structures including drainage easements. Limited project activities do not constitute a diversion or disposal, which can only be determined via review by the appropriate NJDOT BLAES or BEPR staff.

An application for a Major or Minor diversion or disposal of parkland must be submitted to the NJDEP Green Acres Program. NJDOT must justify the purpose and need for the highway improvement, demonstrate an evaluation of avoidance and minimization alternatives, and compensate Green Acres for the unavoidable loss of the land either with replacement land or monetarily. There are **many** steps and procedural requirements involved in the Green Acres application process, including public hearings, a pre-application, a final application, and determining equitable compensation; as well approvals initially by the Green Acres staff level and ultimately by the NJDEP Commissioner and the NJ State House Commission. The State House Commission only meets quarterly during the year, which needs to be taken into consideration when developing project schedules.

A Minor disposal/diversion application requires about 12 months to complete. A Major disposal/diversion application requires about 18 months to complete.

The Green Acres Program is part of the **NJDEP Division of Parks & Forestry**, which administers all NJ State Parks. State-level parkland resources are similarly protected and a **Special Use Permit** may be required for NJDOT project impacts.

3.4 NJ Register of Historic Places Act of 1970

NJDOT Activity Descriptions: 3300 – 3325; 3390, 3395, 4550

Since 1970, the State of New Jersey has recognized and protected historic properties through the New Jersey Register of Historic Places (NJRHP) Act (N.J.S.A. 13:1B-15.128 et seq.). The law allows historic properties to be nominated and listed in the NJRHP, which is maintained by the NJHPO. Once a property is listed in the NJRHP, any public undertaking that would encroach upon, damage, or destroy the registered historic property requires review by the NJHPO.

The review procedures require submission of an Application for Project Authorization for undertakings initiated by state, county, or local government entities that may result in effects to a NJRHP-listed property.

Many of the same criteria, standards, and guidelines that are used to make evaluations under Section 106 of the NHPA (see **Section 2.4**) are similarly used for evaluating project impacts in accordance with the NJRHP Act. However, the two differ in that the NHPA applies to properties listed in and eligible for listing in the NRHP, while the NJRHP Act regulates **only those properties that are listed in the NJRHP**.

An effect occurs when an undertaking impacts the historic characteristics that qualified a property to be listed in the NJRHP. These effects may be beneficial or adverse, and may be direct or indirect. When such effects adversely impact a listed property, and do not meet the *Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties*, the project is considered an **encroachment**. Examples include demolition of a contributing resource in a historic district, taking of property from a historic resource, or alteration of key character-defining elements of a listed property.

Undertakings that may encroach on a listed property must be reviewed by the NJ Historic Sites Council and ultimately must have written authorization from the Commissioner of the NJDEP prior to initiating work. The Council will consider the public benefit of the proposed undertaking; whether prudent and feasible alternatives exist; and whether sufficient measures have been taken to avoid, reduce, or mitigate the encroachment.

Based on review by NJHPO staff, **a project determined not to be an encroachment will be authorized in writing within 45 days** of receipt of the technically complete application.

A project determined to be an encroachment may take up to 120 days to complete the review process. The procedures for submitting an Application for Project Authorization and the review process are found in the NJRHP Act Rules at N.J.A.C. 7:4..

3.5 NJ Endangered Species Conservation Act of 1973

NJDOT Activity Descriptions: 3765 – 3785

The NJ Endangered Species Conservation Act of 1973 (N.J.S.A. 23:2A-1) established laws to protect and restore T&E wildlife in NJ. The NJDEP Division of Fish and Wildlife created the Endangered and Nongame Species Program (ENSP) to restore and maintain these species.

The NJ Endangered Species Conservation Act of 1973 requires essentially the same as Section 7 of the Federal Endangered Species Act of 1973 (see **Section 2.5**), except "consultation" with a NJ agency is not directly required by the law. However, the intent of agency consultation nonetheless occurs via the EO 215 process or via an application for a NJDEP Division of Land Use Regulation (DLUR) permit. Similar to the Federal ESA, a "take" is expressly prohibited under the NJ Act.

NJ defines **Endangered Species** as those whose prospects for survival in NJ are in immediate danger because of a loss or change in habitat, over-exploitation, predation, competition, disease, disturbance, or contamination. Assistance is needed to prevent future extinction in NJ. **Threatened Species** are those who may become endangered if conditions surrounding them begin to or continue to deteriorate. There are other wildlife classifications including **Stable**, **Species of Special Concern**, and **Undetermined**.

The NJDEP DLUR coordinates with the ENSP during the review of permit applications for projects that might affect T&E species/habitat or cause other wildlife concerns. ENSP recommendations for avoiding, minimizing, and mitigating adverse impacts to T&E species are typically included as NJDEP DLUR permit conditions, such as seasonal in-water construction restrictions to protect resident or migratory fish.

In addition to the protection of wildlife/animal species, the **NJ Endangered Plant Species List Act** (N.J.S.A. 13:1B-15.151 through 15.158) and implementing **Rules** (N.J.A.C. 7:5C) developed NJ's official Endangered Plant Species List. Impacts to listed plants are similarly considered by the NJDEP DLUR during permit application review.

3.6 NJDEP Land Use Regulation Program

NJDOT Activity Descriptions: 4385 – 4395

The following table summarizes the laws and implementing rules that require NJDEP DLUR permits to conduct various regulated activities. Depending on project scope and location, one or more of these permits may be required to proceed to construction. An overview of these regulations, and their applicability to NJDOT activities, is provided in the following sections. Extensive regulatory permit information is provided on the NJDEP DLUR website.

Table 3-1 NJDEP Land Use Regulation Laws and Rules

NJDEP Land Use Regulation Laws and Rules		
Law / Rule	**Natural Feature Protected**	**Activities Regulated**
Freshwater Wetlands Protection Act (N.J.S.A. 13:9B) and Rules at N.J.A.C. 7:7A	Freshwater wetlands	Disturbance, including filling and excavation, in a freshwater wetland or State open water.
	Transition Areas (buffers) around freshwater wetlands.	Disturbances up to 150 feet adjacent to freshwater wetlands.
	Open water areas such as lakes, ponds, rivers, and streams.	Disturbance, including filling and excavation, in a State open water.
Flood Hazard Area Control Act (N.J.S.A. 58:16A) and Rules at N.J.A.C. 7:13	Flood Hazard Areas of regulated waters including rivers, lakes, and streams; tidal and non-tidal.	Placement of structures or fill that could block or displace flood waters, or increase flooding.
	Riparian Zones (vegetated buffers) adjacent to regulated waters.	Clearing, cutting, or removal of vegetation within a certain distance of a regulated water.
Coastal Area Facility Review Act – CAFRA (N.J.S.A. 13:19) and Coastal Zone Management Rules at N.J.A.C. 7:7	A large geographic area containing the NJ coastal zone, known as the CAFRA area.	Development on a beach or dune; plus a certain distance landward of these areas or a MHWL.
Waterfront Development Law (N.J.S.A. 12:5-3) and Coastal Zone Management Rules at N.J.A.C. 7:7	All tidal waterways and sometimes adjacent land areas.	In the CAFRA area, development at or below a MHWL.
		Outside the CAFRA area, development in all tidal waterways and lands within a certain distance of a MHWL.
		In the NJ Meadowlands, development at or below a MHWL.
Wetlands Act of 1970 (N.J.S.A. 13:9A) and Coastal Zone Management Rules at N.J.A.C. 7:7	Wetlands shown on NJDEP Coastal Wetland Maps (1971/1972) that occur waterward of the promulgated Upper Wetland Boundary.	Placement of structures, fill, excavation, pesticide application, or similar activity.
Tidelands Act (Riparian Lands) (N.J.S.A. 12:3-1)	Tidelands Claims Areas (Lands now or formerly flowed by the mean high tide of a natural waterway).	Use of Tidelands Claim Areas.

3.6.1 NJDEP DLUR Application Form and Permit Fees

The **NJDEP DLUR Application Form** is required with every permit application submitted for NJDEP review. This form requires a variety of project information and several signatures by the NJDOT, the project consultant, or both, depending on who prepares the application, plans, and supporting reports. The form also includes a checklist of the specific permits that are being applied for, as well as required **Permit Fees**. With the exception of applications for freshwater wetlands permits (which do not require a fee for State agencies) and tidelands instruments (which are paid by the Division of Right of Way and Access Management later in the process), NJDOT must pay a fee for all other permit applications when submitted for NJDEP review. The fees applicable to each type of permit are specified in the respective NJDEP rules and are calculated directly on the DLUR Application Form. Additional fees for Major Development subject to review under the NJDEP Stormwater Management Rules are also required.

NJDEP DLUR permit fees can be a considerable project expense, particularly for projects with larger construction disturbance areas or multiple regulated activities.

3.6.2 NJDEP Statewide Permits for NJDOT Work

The NJDOT has a **Statewide Highway Permit for Maintenance Activities** issued by the NJDEP that authorizes **certain limited NJDOT maintenance activities** within NJDOT ROW that disturb freshwater wetlands, State open waters, flood hazard areas, riparian zones, coastal wetlands, and waterfront development areas. This is **not** a blanket approval for all types of maintenance activities. This Statewide permit contains numerous conditions that must be met (including advance notification to the NJDEP under certain circumstances), but can streamline the permitting process since a separate NJDEP permit is not needed for a qualifying NJDOT maintenance project. A NJDEP DLUR Application Form and Permit Fees are not required to utilize this Statewide permit.

The NJDOT has a **Statewide Geotechnical Boring Permit** issued by the NJDEP that authorizes soil/geologic borings to obtain data for the design of bridge piers, retaining walls, embankments, and other roadway facilities. This permit applies to freshwater wetlands, coastal wetlands, State open waters, CAFRA, and waterfront development areas. This Statewide permit does not cover flood hazard areas/riparian zones, except for riparian vegetation disturbances to lawn areas only. Any other geotechnical boring activity in a flood hazard area/riparian zone requires a separate permit under N.J.A.C. 7:13. This permit contains numerous conditions that must be met (including advance notification to several agencies under certain circumstances), but can streamline the permitting process since a separate NJDEP permit is not needed (except as noted above) for each qualifying NJDOT project that requires geotechnical borings. A NJDEP DLUR Application Form and Permit Fees are not required to utilize this Statewide permit.

3.6.3 NJDEP Freshwater Wetlands Permits

NJDOT Activity Descriptions: 4385 – 4395; 4350, 4375, 4380, 4355

The NJ legislature passed the Freshwater Wetlands Protection Act (FWPA) in 1987 to "preserve the purity and integrity of freshwater wetlands from unnecessary and undesirable disturbance." The Act is implemented by the FWPA Rules at N.J.A.C. 7:7A.

The FWPA Rules regulate disturbances to freshwater wetlands, wetland transition areas, and State open waters. The FWPA Rules also apply to certain coastal wetlands that were not mapped under the Wetlands Act of 1970 or that occur landward of a designated Upper Wetland Boundary (see **Section 3.6.8**).

"**Freshwater wetlands**" are lands characterized by certain hydrologic conditions that support a prevalence of vegetation that is adapted to growing in saturated soil conditions. Freshwater wetlands provide many valuable functions including fish and wildlife habitat, storage of flood waters, natural water quality improvement/filtration, and shoreline erosion protection, as well as food production (cranberries, blueberries, wild rice), recreational opportunities (hunting, fishing), and carbon sequestration.

NJDOT identifies and delineates wetlands using a three-parameter methodology accepted by NJDEP and USACE. This methodology uses certain characteristics of soils, vegetation, and hydrology to determine the presence, absence, and areal extent of wetlands.

The "**transition area**" is a regulated zone located immediately adjacent to a wetland boundary, which acts as a buffer between the wetland and nearby uplands, and which itself provides a wide variety of ecological functions and benefits. The regulated buffer varies in width between 0 and 150 feet depending on the **Resource Value Classification** (i.e., quality) of the freshwater wetland. Higher quality wetlands have wider transition areas, which may be quite larger than the actual wetland area.

A freshwater wetland of **Exceptional resource value** (e.g., associated with trout production waters or T&E species habitat) is considered a higher quality wetland and has a transition area width of 150 feet.

A freshwater wetland of **Ordinary resource value** (e.g., small isolated wetlands, drainage ditches, etc.) is considered a lower quality wetland and has no transition area.

A freshwater wetland of **Intermediate resource value** is any freshwater wetland not defined as Exceptional or Ordinary. It has a transition area width of 50 feet.

"**State open waters**" (SOW) include most surface watercourses and waterbodies in the State, both tidal and non-tidal. State open waters do not have a buffer regulated under the FWPA Rules (but other NJDEP rules do provide a protected buffer for regulated waters). The term excludes groundwater and freshwater wetlands in addition to some other exclusions (e.g., non-tidal drainage ditches excavated on dry land and stormwater management facilities created in uplands).

The FWPA Rules regulate impacts to non-tidal State open waters. Tidal open waters are regulated under the NJ Waterfront Development Law (see **Section 3.6.7**).

The impact thresholds to qualify for many streamlined freshwater wetlands approvals (e.g., General Permits) include project disturbances to wetlands, transition areas, and State open waters; thus, it is important to avoid/minimize impacts to all regulated areas.

An applicant can request a Letter of Interpretation (LOI) from the NJDEP to:

- Indicate the presence or absence of wetlands, State open waters, or transition areas on a site;
- Verify or delineate the boundaries of freshwater wetlands, State open waters, and transition areas on a site; or
- Assign a resource value classification to a wetland.

Depending on the magnitude and type of impact, there are three categories of NJDEP freshwater wetlands permits that typically apply to projects: **General Permits**, **Transition Area Waivers**, and **Individual Permits**.

The FWPA Rules also provide for atypical **Emergency Permits**, which are intended to address an unacceptable threat to life, severe loss of property, or severe environmental degradation, for which there is insufficient time to follow normal permitting procedures. Specific procedures and timeframes are required to obtain an emergency permit.

General Permits (GPs) are for projects resulting in minimal impacts to regulated Freshwater Wetlands, Transition Areas, and State open waters, provided that various conditions and restrictions are met. GPs provide for a streamlined application and approval process, as compared to Individual Permit requirements.

Common freshwater wetlands GPs applicable to NJDOT activities include GP 1 (repair, rehabilitation, replacement, maintenance, or reconstruction of a legally existing structure, fill, roadway, utility line, active drainage ditch, or stormwater management facility), GP 10 (minor road crossings), GP 11 (stormwater outfalls including conveyance pipes, headwalls, riprap), and GP 18 (dam repair). GPs can be combined if the total disturbance of all GPs generally does not exceed one acre, and the limits of each GP are not exceeded.

GP approvals will often contain **conditions**, such as tree removal timing restrictions during construction to protect T&E species. Several GPs (including GP 10 and GP 11) require **mitigation** for permanent impacts of 0.1 acre or more to freshwater wetlands and State open waters. The mitigation is intended to compensate for the wetland areal coverage and ecological functions that would be lost by conducting the project.

Most GPs utilized by the NJDOT do not require a formal **alternatives analysis** (AA). However, certain GPs (e.g., GP 10B [minor road crossings]) require an AA to show there is no onsite location or configuration for a regulated activity that would result in less adverse environmental impacts.

Transition Area Waivers are issued by the NJDEP to conduct certain regulated activities in a transition area adjacent to an intermediate or exceptional resource value wetland. Most projects that impact a wetland also impact its transition area; thus most freshwater wetland permits include a transition area waiver. In cases where a transition area is disturbed but the wetland is not, a separate transition area waiver is normally required.

There are six types of Transition Area Waivers:

- Averaging Plan Transition Area Waiver
- Special Activity Transition Area Waiver – commonly used by NJDOT for stormwater management facilities in a transition area, linear development that cannot feasibly avoid a transition area, and activities eligible for an Individual Permit.
- Matrix Type Width Reduction Transition Area Waiver
- Hardship Transition Area Waiver
- General Permit Transition Area Waiver - NJDEP's approval of most freshwater wetland GPs includes a transition area waiver approval as part of the GP authorization.
- Access Transition Area Waiver – commonly used by NJDOT to provide access through the portion of the transition area that borders the impacted wetland area. This type of waiver is usually included with a GP or Individual Permit authorization.

An **Individual Permit** (IP) is for activities having substantial impacts to regulated Freshwater Wetlands, Transition Areas, and State open waters, and seeks to eliminate and reduce impacts through an intensive AA. "Substantial impacts" means a regulated disturbance does not fall into one of the standard GP or transition area waiver categories (for "minimal" disturbance activities). If the regulated disturbance cannot be eliminated

or reduced to fit within a GP category, an AA is conducted to see if there are ways to achieve a project with less disturbance. To successfully pass the AA "test" and obtain an IP, the AA must demonstrate that there is no viable avoidance alternative and the selected alternative minimizes impacts to the greatest practicable extent. The IP will usually contain numerous conditions including mitigation requirements for unavoidable adverse impacts. The IP process is typically complicated, lengthy, and costly.

The **standard time frame for obtaining a Freshwater Wetlands GP or TA Waiver is 90 days** from the submission of a complete application. Additional time may be needed for mitigation plan approval.

The **standard time frame for obtaining a Freshwater Wetlands IP is 180 days** from the submission of a complete application. Additional time may be needed for mitigation plan approval.

3.6.4 NJDEP Flood Hazard Area Control Act Permits

NJDOT Activity Descriptions: 4385 – 4395

The NJ Flood Hazard Area Control Act of 1975 is implemented by the NJDEP Flood Hazard Area Control Act Rules (hereafter the FHA Rules) at N.J.A.C. 7:13. The stated purpose of the rules is "to minimize damage to life and property from flooding caused by development within fluvial and tidal flood hazard areas, to preserve the quality of surface waters, and to protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat." In the past, permits issued under these rules were known as Stream Encroachment permits.

The FHA Rules apply to "**regulated waters**," which are all waters in NJ except:

- Any manmade canal;
- Any coastal wetland regulated under the Wetlands Act of 1970; and
- Any segment of water that has a drainage area of less than 50 acres, provided the water has no discernible channel; **or** is confined within a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin; **or** is not connected to a regulated water by channel or pipe.

The FHA Rules regulate both the FHA and the Riparian Zone of regulated waters, which generally overlap (see **Appendix A, Figure 5-4**).

A **Flood Hazard Area** exists along every regulated water that has a drainage area of 50 acres or more. The rules regulate development/disturbance within the FHA of regulated waters, which can exacerbate the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff, and obstructing the movement of floodwaters. In addition, structures improperly built in FHAs are subject to flood damage and threaten the health, safety, and welfare of those using them.

The FHA of regulated waters includes the immediate floodway and the adjacent flood fringe, which is commonly considered the 100-year floodplain of such waters. Generally, impacts to the floodway are prohibited or highly restricted, while impacts to the flood fringe are allowable assuming compensation for flood storage displacement is provided.

The "**floodway**" is the inner portion of the FHA, which is determined mathematically to be required to carry and discharge floodwaters resulting from the 100-year flood under certain conditions. The floodway always includes the channel and usually land adjacent to the channel. The floodway is normally characterized by faster and deeper flows than the "**flood fringe**," which is the portion of the flood hazard area outside of the floodway.

The Atlantic Ocean and other non-linear tidal waters, such as bays and inlets, do not have a floodway. The entire FHA along these tidal waters is considered to be a flood fringe.

The current FHA Rules require using one of six methods to determine the FHA and its floodway, and require factors of safety depending on the mapping resources available. These methods will provide the FHA design flood elevation; therefore, the limit of the FHA on a particular project site can be determined along with FHA impacts.

A **Riparian Zone** is a vegetative buffer that exists along every regulated water, except there is no riparian zone along the Atlantic Ocean or along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit, or peninsula (however, some of these areas may still be subject to the FHA portion of the rules).

The rules regulate the clearing, cutting, or removal of vegetation within the Riparian Zone of regulated waters, which is essential for maintaining bank stability and water quality.

The riparian zone includes the land and vegetation in the regulated water itself, along with land/vegetation within a certain distance of the regulated water. This distance is generally measured from the waterway's top of bank. When a discernible bank is not present, the riparian zone is measured based on certain water features present.

The width of the riparian zone is:

- 300 feet along both sides of Category 1 Waters (i.e., exceptional quality waters) and all upstream tributaries in the same subwatershed.
- 150 feet along trout production/maintenance waters and their tributaries (limited to one mile for trout maintenance waters); waters flowing through certain T&E species habitats; and waters flowing through potential acid-producing soils (APS).
- 50 feet along all other regulated waters.

The FHA Rules dictate an area of Maximum Allowable Disturbance to Riparian Zone Vegetation, and all temporary and permanent vegetation disturbances count towards the impact area limits.

Once a vegetation disturbance limit has been exceeded, 2:1 **mitigation** (e.g., replace two acres of trees for each acre lost) is generally required for the portion of the vegetation disturbance exceeding the limit. However, in certain cases, the entire riparian vegetation impact must be mitigated. In addition, all temporary riparian zone vegetation impacts/disturbances must be restored to pre-construction conditions.

For NJDOT projects, Riparian Zone mitigation should focus on available ROW (e.g., ramp infields, medians, proposed stormwater management basin areas).

To prevent fatal flaws in project development, it is important to determine riparian zone widths and potential impacts/mitigation prior to FD or ROW acquisition.

Regulated Activities

The following typical NJDOT activities require an FHA permit in a regulated area(s):

- The alteration of topography through excavation, grading, or placement of fill
- The clearing, cutting, or removal of vegetation in a riparian zone
- The creation of impervious surface
- The storage of unsecured material
- The construction, reconstruction, or enlargement of a structure

FHA Permits

Projects with minor impacts often qualify for **FHA Permits-by-Rule (PBRs) or GPs**, including:

- Repairing a lawfully existing structure
- Reconstructing a lawfully existing structure outside a floodway
- Placing open guiderail along a public highway
- Raising a roadway profile by less than three inches
- Bridge superstructure reconstruction above the FHA elevation
- Bridge or culvert scour protection where there is an existing scour problem
- Maintenance of stormwater management structures/conveyances

Many PBRs do not require preparation of a permit application, or NJDEP notice or approval prior to their use, if the proposed project adheres to the limits and conditions of the PBR.

Projects with impacts that exceed PBR/GP limitations require an **FHA IP**, which often entails an intensive AA and can be complicated, lengthy, and costly.

FHA Emergency Permits are available to address imminent threats to public health, safety, and welfare, for which there is insufficient time to follow normal permitting procedures. Specific procedures and timeframes are required for an emergency permit.

FHA Applicability Determinations (whether an activity is regulated) are available from the NJDEP, as well as **FHA Verifications** (approval of FHA design flood elevation).

FHA Revisions are available for verifications, GPs, IPs, or NJDEP delineated streams.

Some activities also require filing a **Hardship Exception** when unavoidable impacts exceed the regulatory limits established in the rules.

The **standard time frame for obtaining an FHA permit is 90 days** from the submission of a complete application to the NJDEP.

3.6.5 NJDEP Coastal Zone Management Program

NJDOT Activity Descriptions: 4385 – 4395; 4350, 4375, 4380, 4355

NJ protects coastal waters and adjacent lands under three primary permit programs:

- Coastal Area Facility Review Act (CAFRA)
- Waterfront Development Law (WFD)
- Wetlands Act of 1970 (Coastal Wetlands-CW).

These permits require compliance with the NJDEP Coastal Zone Management (CZM) Rules at N.J.A.C. 7:7.

All projects in the designated NJ coastal zone (see **Section 3.6.6**) must be consistent with the state's federally approved CZM plan. NJDEP coastal permits include a **Coastal Zone Consistency Determination** to demonstrate Federal CZM compliance.

The CZM Rules are “cross-accepted” or “married” to other NJDEP permit/regulatory programs, including Freshwater Wetlands and Food Hazard Area permits, and the NJDEP Stormwater Management Rules. Most of these “separate” regulatory requirements are directly addressed in a coastal permit application. Typically, if a project needs a WFD permit, it does not need a separate FHA permit. However, when applicable, a separate Freshwater Wetland permit application is usually prepared and accompanies a coastal permit application that is submitted to the NJDEP for review and approval.

The **CZM Rules** either prohibit or require minimization/mitigation of impacts to several dozen special resource areas in the NJ coastal zone, including beaches and dunes, shellfish habitat, migratory fish (e.g., shad, herring), submerged vegetation habitat, flood hazard areas, riparian zones, wetlands and buffers, parks, historic sites, and T&E species habitat. There are specific standards applied for projects that may impact beach and dune activities, and for projects requiring a T&E habitat impact assessment (for plants and animals) or wildlife species habitat evaluation. These rules also mandate public access to the tidal waterfront. The rules also regulate activities in general water areas (e.g., bridges, outfalls), require limits on impervious cover and vegetation disturbances, and require a project location alternatives analysis for transportation and traffic uses.

The **CZM Rules** are also administrative in nature. The rules define the CAFRA, WFD, and CW regulated areas in the NJ coastal zone, as well as the permits and procedures required for conducting regulated activities that affect those regulated areas. The CZM rules also dictate various coastal permit fees and NJDEP enforcement procedures/penalties.

The CZM Rules offer an extensive selection of **Coastal PBRs, General Permits-by-Certification (GPBC),** and **GPs** for a variety of project types. Unfortunately, most are not applicable to typical NJDOT projects, except for limited applications such as a utility pipe attached to a bridge, bulkhead construction or reconstruction, geotechnical borings (note NJDOT has a Statewide permit, see **Section 3.6.2**), certain tidelands issues (see **Section 3.6.10**), and hazardous site investigations/remediation. Therefore, most NJDOT projects require **IPs** pursuant to CAFRA, WFD, and CW, as applicable. Each of these is discussed further below.

If there is uncertainty about whether a particular activity is regulated, a written applicability determination can be requested from the NJDEP to determine the applicability of CAFRA, WFD, or CW, or a combination of these, to a proposed project.

Emergency Permits are available to address imminent threats to public health, safety, and welfare, for which there is insufficient time to follow normal permitting procedures. Specific procedures and timeframes are required to obtain an emergency permit.

Of all the protected coastal resources, NJDOT projects typically require **mitigation** for adverse impacts to shellfish areas, wetlands, submerged vegetation habitat, and intertidal/subtidal shallows (tidal open water areas). Requirements for **public access to the waterfront** are also common to NJDOT projects.

There are many nuances regarding the applicability of NJDEP coastal permits to NJDOT projects and the level of environmental compliance and potential mitigation that may be associated with a particular regulated activity. Depending upon the type and location of a project, different portions of the CZM Rules may or may not be applicable.

Projects that require combination permits under CAFRA, WFD, and CW are prepared as a single permit application under one cover, but must include all NJDEP forms/checklists and address all regulatory policies and procedures, as applicable to each coastal permit.

The **standard time frame for obtaining any coastal permit is 90 days** from the submission of a complete application to the NJDEP.

3.6.6 NJDEP CAFRA Permits

NJDOT Activity Descriptions: 4385 – 4395

CAFRA regulates development activities in the NJ coastal zone, which generally includes NJ's extensive coastal plain along the Atlantic Ocean and the Delaware River (see **Appendix A, Figure 5-5**). NJDOT projects are typically considered "public development" under the terms of CAFRA.

CAFRA regulates any development located on a beach or dune.

CAFRA also regulates any development located between the MHWL of any tidal waterway, or the landward limit of a beach or dune (whichever is most landward), to a certain point landward of these features depending on the location of a proposed project. The **minimum distance landward is 150 feet**. However, that distance **can extend up to 500 feet landward depending on the situation.**

It is important to note that CAFRA regulates **all** development relating to a proposed project, even if only a part of that development/project is located in a CAFRA regulated area. For example, if a project on Route 47 only triggers CAFRA in one specific location within that project area, the entire project will be regulated under CAFRA.

There are numerous **CAFRA Exemptions** available and applicable to typical NJDOT projects located in the regulated CAFRA area:

- Maintenance and repair of existing stormwater management facilities which receive, store, convey, or discharge stormwater runoff.
- Construction of less than 1,200 linear feet (LF) of new stormwater pipes.
- If located more than 150 feet from a MHWL or landward limit of a beach/dune (whichever is most landward), CAFRA exempts the construction of a new road of less than 1,200 LF; or the extension of a road or the extension of a stormwater management facility by less than 1,200 LF.
- The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction complies with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction meets additional conditions in the Rules.
- Services provided by any government entity, within the existing public right-of-way, which involve:
  - The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways (note that paving an existing unpaved road is not considered a substantially similar functional replacement).
  - Public highway lane widening, intersection, and shoulder improvements (including new paving or repaving) that do not increase the number of travel lanes.
  - Public highway signing, lighting, guiderail, and other non-intrusive safety projects, including traffic control devices.
  - Re-striping of public highways (and the addition of toll booths) provided there is no increase in asphalt or concrete pavement.

Although these CAFRA exemptions do not require any certification or approval from the NJDEP, a written determination of exemption from CAFRA can be requested to support other required NJDEP permits or approvals.

Activities that are not exempt from CAFRA or eligible for a Coastal PBR/GPBC/GP, will require a CAFRA IP application.

3.6.7 NJDEP Waterfront Development Permits

NJDOT Activity Descriptions: 4385 – 4395

Regulated Areas

When a project is located within CAFRA or the NJ Meadowlands District (NJMD):

WFD regulates activities located within any tidal waterway, up to and including the MHWL (this permit is known as **WFD "in-water"**).

When a project is located outside of CAFRA or NJMD jurisdiction:

WFD regulates activities located within any tidal waterway, up to and including the MHWL (this permit is known as **WFD "in-water"**); **and**

WFD also regulates activities located **landward** of the MHWL, to a point that is either 500 feet from the MHWL or to the first paved public road, railroad, or surveyable property line that existed on September 26, 1980 and generally parallels the waterway (this permit is known as **WFD "upland"**).

WFD applies to all tidal manmade waterways (e.g., canals) and tidal manmade lagoons.

Regulated Activities

A WFD permit is required for the construction, reconstruction, alteration, expansion, or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the above WFD regulated areas.

For typical NJDOT purposes, the following are WFD "in-water" regulated activities:

- Removal or deposition of sub-aqueous materials (e.g., excavation, dredging, or filling) within a tidal waterway, up to and including the MHWL.
- Construction or alteration of bulkheads, bridges, culverts, pilings, pipes, and other similar structures within a tidal waterway, up to and including the MHWL.

All of the above activities (excavation, filling, construction/alteration of structures) are also regulated in the "upland" WFD area, except for certain **Exemptions,** including the following:

- The reconstruction, conversion, alteration, or enlargement of any existing structure located more than 100 feet landward of the MHWL, provided no change in land use results and enlargements do not exceed 5,000 square feet (SF).
- Minor additions to or changes in existing structures that do not result in adverse environmental impacts to Special Areas (per the CZM Rules), and provided the additions are within existing cleared areas, set back a minimum of 15 feet landward of the MHWL, and there is no change to the existing land use of the site.
- The redecking and replacement of bridge surfaces, provided there is no change in width, length, or height.

Although these WFD exemptions do not require any certification or approval from the NJDEP, a written determination of exemption from WFD can be requested to support other required NJDEP permits or approvals.

Activities that are not exempt from WFD or eligible for a Coastal PBR/GPBC/GP, will require a WFD IP.

WFD and Tidelands (see Section 3.6.10)

The WFD Law applies to any tidal waterway, up to and including the MHWL. Similarly, NJDEP Tidelands Claims Areas include all areas now or formerly flowed by the tide. Thus, in most cases, a project that requires a Tidelands instrument (i.e., a Grant or License) for affecting a currently flowed tidal waterway, also requires a WFD permit.

The CZM Rules also state that "a WFD permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands instrument" and "A Waterfront Development permit application…must be submitted in conjunction with an application for a tidelands instrument." From a historical standpoint, there exists a variety of previously constructed State transportation infrastructure that resulted in the filling of Tidelands Claims Areas without proper instruments. These may include bridges, culverts, cross pipes, roadway slopes, outfalls, etc. When the NJDOT currently proposes a transportation improvement project that involves such a formerly filled area, the NJDOT seeks to legalize the former filling via NJDEP Coastal GP 20, which the NJDEP offers for that specific purpose (i.e., "legalization of the filling of tidelands").

In some rare cases, a project will require a Tidelands instrument but not a WFD permit. In such cases, an applicability determination or exemption determination is requested of the NJDEP to support the Tidelands application.

3.6.8 NJDEP Coastal Wetlands Permits

NJDOT Activity Descriptions: 4385 – 4395; 4350, 4375, 4380, 4355

As required by the Wetlands Act of 1970, the NJDEP mapped Coastal Wetlands in 1971/1972, extending from Trenton on the Delaware River, south around the Cape May Peninsula, and then north to Perth Amboy on the Arthur Kill.

Coastal Wetlands Permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970, which are located waterward of the Upper Wetland Boundary (UWB) as shown on legally promulgated maps.

It is important to clarify the above for regulatory purposes, as follows:

- All wetlands with boundaries and plant species specifically shown on certain coastal wetlands maps published in 1971/1972, **and** whose boundaries are located waterward of a legally established UWB on those maps, will be regulated by the NJDEP as Coastal Wetlands under the CZM Rules.
- By default, any wetlands occurring landward of a UWB will be regulated under the NJDEP FWPA Rules at N.J.A.C. 7:7A. In addition, any wetlands that exist waterward of a UWB, but whose boundaries and species are not specifically shown on promulgated maps, will also be regulated under the NJDEP FWPA Rules.

The above approach to identifying a wetland as "coastal" or "freshwater" is for regulatory purposes only. The vast majority of wetlands that exist along the NJ coast exist in saline or brackish hydrology, and support a predominance of halophytic vegetation (literally, "salt-loving plants"); and therefore, are not physical freshwater systems. Biologically, most vegetation adapted to growing in freshwater hydrology could not exist under saline or brackish conditions. (The salt would kill them.) Nonetheless, the rules governing freshwater wetlands at N.J.A.C. 7:7A will apply to many wetlands in the NJ coastal zone due to the inherent limitations of the legislative context of the Wetlands Act of 1970.

For NJDOT purposes, regulated activities in Coastal Wetlands include:

- Maintenance or repair of bridges, roads, and highways (excluding emergency repairs)
- Installation of utilities
- Construction of Impoundments
- Use of pesticides
- Driving or placing a mechanical conveyance that may alter or impair the natural contour of the wetlands or the natural vegetation
- Filling, excavation, or the construction of any structure

Prohibited activities in Coastal Wetlands include:

- Placing, depositing, or dumping any solid waste, garbage/trash/debris
- Applying any pesticides on areas containing certain coastal wetland vegetation
- Storage or disposal of pesticides
- Application of persistent pesticides

Coastal Wetland buffers extend up to 300 feet and are determined on a case by case basis. However, wetlands regulated under the FWPA Rules at N.J.A.C. 7:7A will have wetland buffers of 0 - 150 feet depending on the Resource Value Classification.

3.6.9 NJDEP Water Quality Certificate

NJDOT Activity Descriptions: 4385 – 4395

A "Water Quality Certificate" means a NJDEP determination issued for a proposed project that requires a Federal license or permit, pursuant to the Federal Clean Water Act.

As discussed in **Section 2.6**, NJDEP has been delegated regulatory authority under Section 404 of the Federal Clean Water Act for most non-tidal waters and wetlands in NJ. An application for the above NJDEP permits that includes a discharge of dredged or fill material, is also reviewed by NJDEP for water quality consistency under Section 401 of the Federal Clean Water Act, to ensure the discharge does not negatively affect water quality.

All applicable NJDEP permits are issued with a Water Quality Certificate, as required under the Federal Clean Water Act.

In cases where a discharge of dredged or fill material into Waters of the United States does not require a NJDEP permit (e.g., an activity is exempt), but nonetheless occurs in delegable waters in NJ, the NJDEP requires an independent application for a Water Quality Certificate, which is reviewed by the NJDEP using the standards and procedures established under the applicable NJDEP rules (FWPA Rules or CZM Rules). Likewise, in non-delegable waters where an NJDEP is not required (such as the NJ Meadowlands where only the USACE regulates wetlands), the NJDEP requires an independent application for a Water Quality Certificate.

3.6.10 NJDEP Tidelands

NJDOT Activity Descriptions: 4655, 4660

Under the Tidelands Act (Riparian Lands) of 1864, the NJDEP claims jurisdiction to all formerly flowed tidal areas, as well as currently flowed tidal waters, up to the MHWL. The term “Tidelands Claims” refers to all areas now or formerly flowed by the tide.

In cases where there is a difference between the MHWL of a historically flowed area and a current MHWL, the NJDEP will claim jurisdiction to the wider (more landward) MHWL.

The NJDEP Bureau of Tidelands Management (BTM) maintains a collection of all Tidelands maps for NJ. Each area designated by a 7-digit number has three maps applicable to that area. NJDEP's historical Claims are shown on maps entitled "Now or Formerly Flowed by the Tide." NJDEP also provides mapping of all Tidelands Conveyances that it has approved. Conveyances are licenses, leases, and grants of riparian lands to public and private owners or users of Tidelands Claims. NJDEP also provides Tidelands Base Maps (Aerials) which were meant to be overlain by the Claims and Conveyances maps.

As discussed in **Section 3.6.7**, a proposed NJDOT project sometimes encounters a formerly filled Tidelands Claim area. In these cases, a Riparian Grant is requested from the NJDEP BTM. A Riparian Grant is similar to a fee simple property purchase, where the NJDEP is selling its property rights to a formerly flowed tidal area. With the exception of manmade lagoons, this is the **only** instance currently where the NJDEP will issue a Riparian Grant (i.e., it will not sell its Tidelands Claims for any other reason).

In all other cases where a proposed NJDOT project encounters a Tidelands Claim, the NJDOT applies for a Tidelands License, which is a short term rental agreement from the State for the use of its tidelands property. Typical NJDOT activities that require a Tidelands License are Bridges (10 year license), and Utilities or Utility-related Structures including pipes and stormwater outfalls (24 year license).

A **Tidelands License typically takes three to six months to obtain**. A **Tidelands Grant requires more complex processing and typically takes 12-18 months**.

There is **no fee required when applying for a Grant or License**, but a sale price or rental price (respectively) is required once the legal instrument is approved by the NJDEP. An application processing charge will also be assessed. Generally, the minimum cost of a Grant is $1000, and the base fee for a License is $100 plus the value of the rented land.

Written proof of filing for all required NJDEP Tidelands instruments is a prerequisite to submitting a NJDEP WFD or CW Permit application for a project.

The NJDOT Division of ROW, Technical Support Section, is the lead NJDOT unit for dealing with Tidelands issues. Further information can be found in NJDOT's *Tidelands Application Guidelines*, available on the NJDOT website.

3.7 NJDEP Dam Safety Permits

NJDOT Activity Descriptions: 4385 – 4395

The requirements of the Safe Dam Act of 1981 are implemented by the NJDEP Dam Safety Standards (N.J.A.C. 7:20), which are administered by the NJDEP Bureau of Dam Safety and Flood Control. The Standards set forth the rules for constructing, repairing, or modifying dams in NJ; provide design criteria for dam construction; procedures for dam inspection; and Dam Safety Permit application requirements and procedures.

NJDOT prepares Dam Safety Permit applications for the numerous dams it owns throughout NJ. In many cases, NJDOT's roadway is the actual dam that impounds the flow of a stream, often with a bridge crossing that includes a spillway to regulate the downstream outflow and maintain the desired water surface elevation of the upstream impounded waters.

The Standards pertain to any structure that raises the surface water elevation of a stream **more than five feet** above its usual mean low water height. All such structures and their appurtenances are regulated under the Dam Safety Standards including NJDEP review of floodplain and vegetation impacts, and thus are **not** regulated under the NJDEP FHA Rules. Any structure that raises the water level of a stream **five feet or less** above its usual mean low water elevation is regulated under the NJDEP FHA Rules. Also, any project activity not directly related to the required dam improvement will not be accepted as part of the Dam Safety Permit, and thus may be subject to the NJDEP FHA Rules (e.g., correcting a substandard roadway curve in the project area that is not directly necessary to meet the purpose and need for the dam improvement).

In the Pinelands area, except for dams that pose a safety or security concern, the Dam Safety Standards only apply to dams that raise waters of any river or stream eight feet or more above the ground surface, have a drainage area of one square mile or more, and where the water surface created by the dam or reservoir is 100 acres or more.

The Dam Safety Standards specify that no dam may be constructed in a waterway that is a "runway" for migratory fish without installing a fish ladder or other approved structure. Also, unless approved by NJDEP, no trees are permitted on dam embankments.

A typical Dam Safety Permit application includes various hydrologic and hydraulic (H&H) and other engineering calculations, construction plans and specifications, an Operation and Maintenance Manual, and an Emergency Action Plan (for Class I and II dams only, which are dams whose failure might cause loss of life or substantial property damage).

Dam Safety Permit applications are often submitted concurrently with NJDEP Freshwater Wetlands GP 18 (dam repair) applications.

The **standard timeframe for Dam Safety Permit approval is 90 days** from NJDEP receipt of a complete application.

3.8 NJDEP Stormwater Management Rules

NJDOT Activity Descriptions: 2145, 2230, 2370, 4310, 4270

The NJDEP Stormwater Management (SWM) Rules of 2004 (N.J.A.C. 7:8) apply to all "Major Development", which is defined as the disturbance of one acre or more of land, **or** the increase of impervious surface by 0.25 acre or more. The rules are implemented by NJDOT through the NJPDES Highway Agency GP (see **Section 3.9**) and NJDEP DLUR permits (i.e., Freshwater Wetlands, FHA, CAFRA, WFD, and CW). (For projects that do not require a permit from the NJDEP DLUR and result in the **disturbance of one acre or more**, NJDOT self-certification for compliance with N.J.A.C. 7:8 is required to satisfy the post-construction provision of the NJPDES Highway Agency GP.)

Once a project triggers review under the SWM Rules, it must meet certain minimum design and performance standards, as applicable, for **Erosion Control, Stormwater Runoff Quality, Stormwater Runoff Quantity, and Groundwater Recharge**; and must meet certain **Maintenance Requirements** for stormwater infrastructure.

To achieve the applicable standards, all projects subject to the SWM Rules must first evaluate and incorporate a series of **nine nonstructural stormwater management strategies** into a project's site design to the maximum extent practicable. Examples include minimizing land disturbance, soil compaction, and impervious surfaces, protecting natural drainage features and vegetation, providing vegetated open channel conveyance systems, and designing source controls for trash, debris, and other potential stormwater pollutants.

If nonstructural strategies do not fully achieve the applicable standards, then **structural stormwater management measures** must be included to reach the necessary requirements. Common structural measures for NJDOT projects include detention, infiltration, and bioretention basins, constructed wetlands, wet ponds, subsurface gravel wetlands, and manufactured treatment devices (MTDs) installed in the drainage system leading to an outfall. MTDs are very common on NJDOT projects with limited ROW availability, and also as a pretreatment to enhance the effectiveness of other SWM measures. All MTDs must be certified by the NJDEP.

The **NJ Stormwater Best Management Practices (BMP) Manual** accompanies the SWM regulations. The BMP Manual provides technical guidance for nonstructural strategies and structural SWM measures to achieve SWM Rules compliance.

The need for SWM compliance should be evaluated early, first during the CD phase and further during PE as part of the project's NEPA document, including the need for ROW that might be required for basins and other BMPs. All BMPs should focus on available NJDOT ROW, such as roadway medians and ramp infields, to avoid additional ROW costs; and certain BMPs might not be feasible in areas of limited ROW availability.

Erosion Control: This standard is met through NJDOT's development and certification of a SESC Plan in accordance with NJDOT Standards.

Water Quality: This standard applies to NJDOT projects causing a net increase of 0.25 acre or more of impervious surface. (For projects that do **not** require NJDEP DLUR permits, the water quality standard is **only applicable** if the project causes disturbance of one acre or more. For projects that require NJDEP DLUR permits, the water quality standard applies to any increase in impervious surface of 0.25 acre or more.)

In addition to typical new impervious surfaces such as new pavement and sidewalk, "new impervious surface" includes any activity that reduces the water quality treatment or runoff through roadway or drainage improvements (e.g., adding curb to an existing vegetated umbrella section, thus removing the treatment the vegetation provides to the stormwater runoff pollutant load). Guiderail non-vegetative treatment is also usually considered impervious surface.

Once the 0.25 acre threshold for water quality is triggered, an NJDOT project must provide certain Total Suspended Solids (TSS) removal rates for the stormwater runoff generated from the water quality design storm (1.25 inches of rainfall in two hours). Stormwater nutrient loads, particularly Total Nitrogen and Total Phosphorus, also must be reduced to the maximum extent practicable. Methods to reduce these pollutants include using fertilizers low in these pollutants, selecting low maintenance vegetation, and selecting BMPs that can assist in reducing Nitrogen and Phosphorous in the runoff.

For NJDOT projects, the required TSS removal rates for water quality treatment vary depending on the project and the receiving waterbody, as follows:

- 0 percent for pavement mill/overlay;
- 50 percent for reconstruction of existing pavement;
- 80 percent for new pavement; and
- 95 percent where a project results in a discharge into a 300-foot riparian zone as defined by the Flood Hazard Area Control Act Rules at NJAC 7:13.

In addition to the 95 percent TSS removal requirement for a project that discharges within 150 feet from the top of bank of a 300-foot the riparian zone **AND** requires an NJDEP FHA IP permit, a detailed AA must be performed to demonstrate that the project is in the public interest, addresses a public need, and minimizes the impacts to the Riparian Zone. The AA must demonstrate that no feasible or prudent alternative exists (including No Build) that would avoid or substantially reduce adverse impacts to the Riparian Zone. Details of requirements for projects within the Riparian Zone are available at NJAC 7:13.

Water Quantity: This standard applies for **all** projects that trigger the SWM Rules through any of the following three options:

Option 1: Reduce the post-development peak flows for the 2, 10, and 100-year storm events to 50%, 75%, and 80%, respectively, of the pre-development flows. This is the most typical method to show compliance with the quantity standard.

Option 2: Maintain the pre-development hydrographs for the 2, 10, and 100-year storm events. This is generally met if the runoff volume for the post-development conditions is equal to or less than the pre-development conditions.

Option 3: Perform a regional stormwater management analysis. This is rarely done.

In a tidal flood hazard area, this standard **only** applies if there is an increased volume of stormwater runoff that could increase flood damages below the point of discharge. This option requires the evaluation of structures that may be impacted in lower storm events.

Groundwater Recharge: This standard applies to **all** projects that trigger the SWM Rules. It essentially requires no difference between the pre-construction and post-construction groundwater volume at a site over a year, which is determined through the New Jersey Groundwater Recharge Spreadsheet which is available from the New Jersey Stormwater BMP Manual webpage.

The groundwater recharge standard does **not** apply to activities in **previously developed portions** of an "**urban redevelopment area.**" This includes various land uses shown on NJ State Plan Policy Maps, including Metropolitan Planning Areas, Designated Centers/Cores/Nodes, and Urban Enterprise Zones. "Previously developed areas" are areas previously cleared of vegetation where woody vegetation has not reestablished. Only those portions of a site that have been previously developed are exempt from the groundwater recharge requirements. Many NJDOT projects can demonstrate that this standard does not apply under this definition.

In addition, stormwater runoff that comes from areas of high pollutant loading is not allowed to be recharged. This includes contaminated areas typically identified during a project's Hazardous Waste Screening, such as gas stations and similar commercial land uses, landfills, and industrial sites. NJDOT maintenance yards/vehicle maintenance facilities may also qualify.

Implementing the design and performance standard for groundwater recharge cannot result in potential adverse hydraulic impacts, such raising the groundwater table so that there is increased flooding in another structure such as a basement or a septic system.

Maintenance Requirements: The SWM Rules require that all stormwater management BMPs, both nonstructural and structural) have a Maintenance Plan that includes standard tasks for BMP maintenance. It must also include specific tasks and triggers regarding how and when to evaluate that the specific BMP is functioning properly and how to fix identified problems. Standard tasks include removing sediment and trash, mowing grass,

trimming plants, restoring vegetation, and performing corrective actions or repairs. Specific triggers for BMP function evaluation may be the need to evaluate an infiltration BMP one to two days after the end of a storm to ensure infiltration is occurring. Specific maintenance tasks may include raking or replacement of the sand surface of an infiltration BMP or looking into inspection ports for subsurface BMPs (MTDs, underground basins) to ensure that they are working as designed. The maintenance plan must also discuss what constitutes problems and the different means to address those problems. The maintenance plan must include contact information for the persons responsible for maintaining the stormwater management facilities, training of maintenance personnel, inspection schedule, cost estimate or number of hours required yearly, maintenance equipment required, and repair and replacement instructions. NJDOT must provide for the performance of each specific maintenance. The Maintenance Plan is included both as part of the NJDEP Permit application when applicable, and as part of the plans necessary for self-certification.

Temporary Projects do not need to comply with the SWM Rules in the following cases:

- All temporary disturbance must be removed, and all disturbed areas must be restored to pre-activity topography and vegetated cover, within six months of the start of work; **or**
- The temporary disturbance is necessary for a roadway construction project undertaken by a public entity or public transportation agency, provided:
  - There is no feasible alternative that would minimize or eliminate the need for the temporary disturbance;
  - The temporary disturbance, including any proposed stream crossings, cannot cause erosion or increase flooding; **and**
  - All disturbed vegetation/topography must be restored to the maximum extent practicable.

The SWM Rules provide a **Linear Development exemption** for underground and aboveground utility lines, as well as construction of a pedestrian public access (including a sidewalk to a maximum width of 14 feet) provided the access is made of permeable material. This exemption could be used by the NJDOT in limited circumstances.

If a project is unable to meet any of the quantity/quality/recharge Standards, the SWM Rules provide a **Waiver from Strict Compliance** for the enlargement of an existing public roadway or railroad, or the construction or enlargement of a public pedestrian access. The waiver process requires an intensive alternatives analysis and proof that property condemnation would be required to comply with the respective Standards. Any waiver from strict compliance on a project requiring self-certification must be documented to demonstrate that it meets the waiver provisions under the SWM Rules.

The NJDEP publishes a list of **Frequently Asked Questions** based on policy and procedural questions that the NJDEP has received since enacting the 2004 SWM Rules/BMP Manual.

3.9 NJ Pollutant Discharge Elimination System (NJPDES) Permits

NJDOT Activity Descriptions: 4385 – 4395

As discussed in **Section 2.6**, under the CWA, the USEPA established the **National Pollutant Discharge Elimination System (NPDES) permit program** to regulate water pollution from "point source discharges" into Waters of the United States. Several states, including NJ, are authorized by USEPA to administer their NPDES program (hence **NJ**PDES permits). The NJDOT is subject to three types of NJPDES stormwater GPs:

NJPDES 5G3 Construction Activity Stormwater General Permit (NJG0088323)

NJPDES 5G3 Construction Activity Stormwater GP is required for projects that disturb one or more acres of land, including clearing, grading, and excavation. NJDOT routinely prepares and submits an electronic Request for Authorization (RFA) to the NJDEP Bureau of Nonpoint Pollution Control to obtain a project-specific authorization under this permit.

This GP requires a Stormwater Pollution Prevention Plan, including SESC and Construction Site Waste Control, routine inspections, annual reports and certifications, and reports of noncompliance. NJDOT has incorporated the requirements into its Standard Specifications, including items for concrete washout areas, oil spill kits, etc.

This permit is not applicable to routine maintenance projects performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

NJPDES Highway Agency Stormwater General Permit (NJ0141887)

NJPDES Highway Agency Stormwater GP is required to authorize all new and existing stormwater discharges to surface water and groundwater from small municipal separate storm sewer systems (MS4) at highways or other thoroughfares (including a maintenance or service facility or rest area) owned or operated by a Highway Agency (e.g., NJDOT). The NJDOT maintains three approved GPs for the NJDOT North, Central, and South regions.

"**Municipal separate storm sewer systems**" means (for NJDOT purposes) a conveyance or system of conveyances under NJDOT jurisdiction (i.e., NJDOT roadway drainage systems including pipes, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed and used for collecting or conveying stormwater.

This permit is incorporated into NJDOT's programs, projects, and operations, including:

- Stormwater Pollution Prevention Plans
- Post-construction stormwater management for new development and redevelopment
- Compliance with the NJDEP SWM Rules for projects that disturb one acre or more
- Retrofits of existing inlet grates/curb openings and compliant new grates/curb openings, which reduce large solids/floatables entering NJDOT drainage systems
- Drainage system and stormwater facility inspection and maintenance
- Outfall pipe stream scour remediation
- Storm drain inlet labeling and outfall pipe mapping
- Identification and removal of illegal sewer connections to NJDOT's drainage systems
- Street sweeping
- Roadside litter pickup program
- Roadside vegetation management
- Maintenance yard operations (equipment washing, de-icing materials storage, fueling)
- Employee training

NJPDES Public Complex Stormwater General Permit (NJ0141879)

The NJPDES Public Complex Stormwater GP is required to authorize the discharge of stormwater from large publicly-owned complexes such as colleges, universities, prisons and hospital complexes. The NJDOT maintains a NJPDES Public Complex Stormwater GP for the Headquarters complex in Ewing.

3.10 NJ Soil Erosion and Sediment Control Act of 1975

NJDOT Activity Descriptions: 4410, 4430, 4850

The NJ Soil Erosion and Sediment Control (SESC) Act of 1975, and 1979 amendments, require that all construction projects that involve the disturbance of 5,000 SF or more shall include measures to protect the environment from the effects of soil erosion and sedimentation. Disturbance regulated by the Act includes any "clearing, excavating, storing, grading, filling, or transporting of soil or any other activity which causes soil to be exposed to the danger of erosion." The SESC Act is regulated through the 15 county-based semiautonomous Soil Conservation Districts (SCD) in NJ. The SCDs primarily regulate construction projects per the *Standards for Soil Erosion and Sediment Control in New Jersey*, adopted in September 1999, as well as additional local SESC standards that may be implemented by a particular SCD.

The NJDOT is a self-certifying agency for SESC utilizing Vegetative and Engineering Standards developed by NJDOT, in conjunction with and approved by the NJDEP and the NJ Department of Agriculture, State Soil Conservation Committee. The NJDOT SESC Standards are specifically developed for, and are applicable to use, **only** on NJDOT projects or projects within NJDOT ROW.

NJDOT's *SESC Standards*, 2008 Edition, are as stringent as that required by the NJ Act and other environmental laws and regulations, but are further tailored to meet the unique SESC challenges of NJDOT's construction projects. Additionally, the NJDOT has allocated SESC items to their own section in the 2007 NJDOT Standard Specifications, and provides standard and customized SESC notes on each project's Environmental Plans that are ultimately provided to the contractor with the final contract plans and special provisions.

Acid soils are an important factor in SESC in portions of the NJ coastal plain where certain geologic formations are present (see **Appendix A, Figure 5-6**). Acid soils contain iron sulfides that, when exposed to air, produce sulfuric acid and result in soil pH levels falling to 4.0 or less, which can adversely impact vegetation and aquatic systems. Potential acid soils should be tested during a project's early geotechnical investigations to properly identify and, if necessary, manage and dispose of acid soils that may be encountered during construction.

NJDOT requires and monitors its contractors to implement an SESC maintenance program throughout construction, and further provides for the maintenance of its built infrastructure to continually manage potential erosion and sediment transport impacts.

3.11 NJ No Net Loss Reforestation Act of 1993

NJDOT Activity Descriptions: 3010, 4440, 4450

The NJ No Net Loss Reforestation Act of 1993 requires that each State entity (e.g., the NJDOT) that proposes to deforest an area of 0.5 acre or more, on land it owns or maintains, must submit a plan for compensatory reforestation to the NJDEP Division of Parks and Forestry (DPF) for approval.

The reforestation plan must establish a goal of no net loss of existing forested area. The plan is subject to review and comment by the Community Forestry Council prior to obtaining NJDEP DPF approval. No project that would deforest land at least 0.5 acre in size, that is owned or maintained by the NJDOT, may commence without this approval.

In addition, whenever the NJDOT owns or maintains land where at least one acre is proposed for deforestation, at least 180 days prior to deforestation, the NJDOT must hold a public forum(s) within the affected municipality(ies) to present its reforestation plan. A 60 day comment period must be provided for oral and written public comments, after which the NJDOT must provide written responses to the commenters and DPF.

The NJDOT is not required to conduct a separate public forum, but may instead incorporate the above into an applicable project's Public Involvement Action Plan (see **Section 3.2**); including advising the public that a reforestation plan will be presented.

The NJ Forest Service (part of the DPF) administers and implements the Act via the *NJ No Net Loss Reforestation Act Program Guidelines.* The *Guidelines* establish the basic framework of an approved reforestation plan, including methods for the planting, protection, care, and management of trees and other natural resources.

There is a hierarchy that must be followed regarding the location of the reforestation area**.**

Other requirements include:

- Use of native species when practicable.
- Replacement of trees shall be determined by a Tree Replacement Factor that provides the required tree type, number, and density for the reforested area.
- Trees to be planted must be selected from "Trees for New Jersey Streets" published by the NJ Shade Tree Federation and per recommended planting specifications.
- Diversity in species composition is required to reduce the risk of widespread loss of trees to single insect and disease infestation.

For NJDOT purposes, the only available **exemption** to the Act is **activities to actively manage existing utility easements**.

The NJDOT must sign an MOA with the NJDEP DPF that guarantees DPF reimbursement for labor hours for review and implementation of NJDOT's reforestation plan.

The NJDEP provides an option whereby the NJDOT can meet the requirements of the Act by making a monetary contribution in lieu of either onsite or offsite plantings. This option relieves the NJDOT from having to administer and manage a tree planting project. The noted MOA can be utilized to agree to an equitable financial compensation with the DPF.

3.12 Site Remediation Reform Act of 2009

NJDOT Activity Descriptions: 3840 – 3860; 4520, 4540, 4570, 4590, 4665

With the passage of the NJ Spill Compensation and Control Act in 1976, the NJDEP initiated the first program in the country for the cleanup of contaminated sites that posed a danger to human health and the environment. NJDEP later expanded its cleanup efforts under the Environmental Cleanup Responsibility Act (later replaced by the Industrial Site Recovery Act) and the Underground Storage Tank Act.

The **Site Remediation Reform Act** (SRRA) of 2009 set forth sweeping changes to site remediation in NJ. SRRA established an obligation for responsible parties to remediate contaminated sites in a timely manner. SRRA created a category of remediation

professionals known as **Licensed Site Remediation Professionals (LSRP)**. LSRPs act on behalf of NJDEP to oversee environmental investigation and remediation of contaminated sites. The SRRA requires that the LSRP comply with all remediation statutes/rules and consider NJDEP-developed guidance in remediation decisions.

The NJDOT commonly encounters contaminated sites that affect the planning, design, ROW, and construction of the State's transportation infrastructure. The NJDOT must carefully investigate any properties proposed for ROW acquisition to preserve the State's "innocent purchaser rights." NJDOT routinely conducts a Hazardous Waste (HW) Screening during CD/PE to identify potential Areas of Concern (AOC). It is vital that the HW Screening be conducted early to identify any health and safety concerns for other project personnel performing field activities at a project site. In most cases, the screening effort is sufficient for the purposes of common NEPA documentation (CED).

When an identified AOC requires further evaluation of potential soil or groundwater contamination, the NJDOT hires an environmental consultant (usually during FD) to conduct Site Investigations (Initial Sampling for contaminants), Remedial Investigations (Detailed Sampling), prepare a Materials Management Plan/Remedial Action Work Plan, and, if needed, a Property Acquisition Environmental Cost Estimate Report.

NJDEP's Linear Construction Technical Guidance Document is designed to help the person conducting a linear construction project (i.e., most NJDOT projects) to ensure that contamination encountered during the project is handled in a manner that is protective of human health, safety, and the environment. The technical guidance describes certain practices that should be used to address contamination that is identified during a linear construction project. The guidance includes information on roles and responsibilities, project planning and implementation, best management practices for health and safety and contaminated media management, reporting, and the involvement of LSRPs.

3.13 NJDEP Treatment Works Approval Permits

NJDOT Activity Descriptions: 4385 – 4395

The NJDEP Treatment Works Approval (TWA) program regulates the construction and operation of industrial and domestic wastewater collection, conveyance and treatment facilities, including treatment plants, pumping stations, interceptors, sewer mains and other collection, holding and conveyance systems. The TWA process also involves assessing the design of new sewer lines and other wastewater conveyance facilities (force mains, pumping stations, etc.) as well as evaluating downstream conveyance and treatment capacity. The administrative and technical requirements of the TWA program are stipulated in N.J.A.C. 7:14A-22 and 23, respectively.

NJDOT requires TWA approvals in circumstances when NJDOT constructs, alters, or replaces sanitary sewer lines in its transportation infrastructure; as part of a highway or bridge project; or relating to NJDOT maintenance yards, services facilities, or rest areas.

TWA permits require an application form; Engineers Report, including hydraulic calculations; and various Statements of Consent by Sewerage Authority, Utility Owner, and Waste Water Treatment Facility Owners. Construction plans, including profiles and standard details are submitted, as well as a construction cost estimate and specifications. Public Notification is also sent to the Township and County.

NJDEP TWA permits are issued 30 to 90 days following receipt of a complete application, and require an application fee.

3.14 Delaware and Raritan (D&R) Canal Commission

NJDOT Activity Descriptions: 4385 – 4395

The D&R Canal Commission (D&RCC) was established in 1974 and implements the *Regulations for the Review Zone of the Delaware and Raritan Canal State Park*, which is a land-use regulatory program to control development that could have drainage, visual, or other ecological impact on the Canal Park.

The D&RCC is the primary jurisdictional agency for the entire "Review Zone," and reviews all private and public projects within the Review Zone.

Other jurisdictional agencies include:

- The **NJ Water Supply Authority** has jurisdiction regarding the D&R Canal Water Transmission Complex
- The **NJDEP DPF** has jurisdiction regarding the D&R Canal State Park
- The **NJDEP DLUR** has jurisdiction under the FWPA and FHA Act. Note that the canal itself is not subject to regulation under the FHA Rules, but the FHA Rules can still be triggered for work proposed in the FHA of the Delaware River or other watercourses.
- The **NJDEP SHPO** oversees all cultural resources in the D&R Canal Historic District
- The **USACE** maintains jurisdiction over work near the Delaware River (an interstate waterway). Some work associated with the canal is also under USACE jurisdiction.

Unlike the NJ Pinelands Commission or the NJ Highlands Commission, D&RCC approval for a project is separate from all other required State permits. For example, approval from the NJDEP-DLUR does not constitute approval by the D&RCC, and vice versa.

The NJDEP Stormwater Management Rules are fully integrated in the D&RCC *Regulations*.

The Review Zone consists of Zone A and Zone B (see **Appendix A, Figure 5-7**):

Zone A includes all areas within 1,000 feet of the centerline of the Canal, except in Princeton Township where the west bank of Carnegie Lake is the boundary of Zone A; and where the Raritan River is within 1,000 feet, its furthest bank is the boundary. If any part of a project is within Zone A, then the entire project is considered to be in Zone A.

Zone B is the balance of the Review Zone. Zone B begins at the boundary of Zone A and includes the Canal's extensive drainage area of almost 400 square miles, including parts of Mercer, Hunterdon, Somerset, Middlesex, and Monmouth Counties.

The regulations categorize projects as either Major or Minor. Both types of projects are reviewed in Zone A, but only Major projects are reviewed in Zone B.

Four specific types of impacts are reviewed by the D&RCC:

- Stormwater runoff and water quality impact
- Stream corridor impact
- Visual, historic and natural quality impact
- Traffic impact

The scope of review depends upon the size and location of the proposed project and can involve all four of the aforementioned impacts.

The D&RCC regulations mandate a buffer, defined below, for any watercourse, and its tributaries, which flow into the Park and upstream to where the drainage area is less than 50 acres:

- 100 feet from the 100-year flood line, or
- 300 feet from the top of bank, whichever is greater

For NJDOT purposes, there are several prohibited uses of D&RCC lands/waters:

- Regrading of the existing topography in stream corridors
- Parking facilities, driveways and roads that parallel stream corridors
- Construction of new structures, including but not limited to retaining walls and detention or retention basins in stream corridors
- Removal of native vegetation, actions that cause the death of native vegetation, and the installation of non-native vegetation in stream corridors
- New outfalls that directly discharge to the Canal or within stream corridors that discharge to the Canal, or new tie-in to drainage systems discharging into the Canal
- New outfall structures within the Park or within 300 feet of the Canal

Only limited **Exemptions** are available in the *Regulations*, including for NJDOT purposes:

- Any project located outside of the Review Zone; or
- Any project in Zone B that is not a Major project.

The *Regulations* provide for an optional **JD** that will indicate whether a project is subject to review by the D&RCC, and a written **Exemption Letter** can be requested. If the project is subject to D&RCC review, the JD will identify the Review Zone where a proposed project is located, whether the project is Major or Minor, and whether the project requires an Individual approval or qualifies for a GP.

A **Waiver to Strict Adherence** may be obtained for projects that cannot fully meet the standards and requirements of the *Regulations*.

There are two GPs provided in the *Regulations*, but only one applies for NJDOT purposes. **GP 1 – Maintenance and Repair of Existing Features**, authorizes projects in Zone A that are necessary to carry out the repair, rehabilitation, maintenance, or reconstruction of a structure, road, utility line, or stormwater management measure or basin lawfully existing prior to January 1980, or any time approved by the D&RCC.

Individual Approval from the D&RCC is required for any NJDOT project that is not otherwise exempt or qualified for GP 1.

The **standard timeframe for D&RCC GP Authorization is 30 days** from receipt of a complete application.

The **standard timeframe for D&RCC Individual Approval is 45 days** from receipt of a complete application.

Application fees are required for the above approvals, including specific fees for reviews of the four specific types of impacts discussed above.

Many NJDOT projects along Route 29 and the Route 1 corridor (Trenton to New Brunswick) have a high potential to affect the D&R Canal and Park. The NJDOT also has jurisdictional and maintenance responsibilities for highway bridges over the D&R Canal.

3.15 NJ Highlands Council

NJDOT Activity Descriptions: 4385 – 4395

The Highlands Water Protection and Planning Act (HWPPA) of 2004 enacted policies for the proper planning and management of land uses and development/sprawl in the Highlands Region in northwest NJ. The Act is implemented through the HWPPA Rules (Highlands Rules) at N.J.A.C. 7:38, which incorporate a variety of NJDEP regulatory standards for environmental protection, land use, and water resource management.

The Highlands Region is composed of a Highlands **Preservation** Area and a Highlands **Planning** Area (see **Appendix A, Figure 5-8**), which together cover 1,343 square miles in northwest NJ, including portions of seven counties and 88 municipalities. The Highlands Region is noted for its scenic beauty, trout streams, Category 1 waters, exceptional wetlands, T&E species habitat, and historic and recreational resources. It provides drinking water for over five million NJ residents.

All Highlands open waters and wetlands have 300-foot buffers. Artificial surface waters, including NJDOT stormwater basins, are considered regulated Highlands open waters.

Under the Highlands Rules, the **NJDEP conducts a Highlands permitting review and approval process** for activities defined as "**Major Highlands Development**" in the **Highlands Preservation Area** portion of the Highlands Region.

"**Major Highlands Development**" is any project in the Highlands Preservation Area that:

- Ultimately disturbs one or more acres; or
- Results in a cumulative increase in impervious area of 0.25 acre or more; or
- Results in the ultimate disturbance of 0.25 acre or more of forest; or
- Requires certain NJDEP environmental land use or water permits/approvals, including NJDEP Freshwater Wetland permits, NJDEP FHA permits, NJDEP SWM Rules compliance, and NJPDES permits).

In addition to the NJDEP permitting process, the 15-member **Highlands Council** is legislatively charged with reviewing proposed projects throughout the Highlands Region for consistency with the Highlands Act and Highlands Regional Master Plan (RMP). The Council is also responsible for collaborating with other State agencies to ensure consistency with the Highlands Act and RMP, and coordinates all activities and programs affecting the Highlands Region. **Unless a project is otherwise exempt under the Rules, Highlands Council approval is a prerequisite to obtaining NJDEP approval for Major Highlands Development in the Highlands Preservation Area.**

Many NJDOT roadways and drainage system infrastructure intersect with the boundaries of the Highlands Preservation Area. According to the HWPPA, any natural geographic feature (e.g., a river or stream) used for the boundary description of the preservation area is considered to lie totally within the preservation area; and any road, railroad, or railroad ROW used for the boundary description of the preservation area is considered to lie totally outside of the preservation area.

If needed, the NJDOT can request an official **NJDEP JD** to determine whether NJDOT property is located within the regulated boundaries.

Any project proposed in the Highlands Preservation Area that requires an NJDEP environmental land use or water permit (except NJPDES Permits and Treatment Works Approvals) must obtain one of the following from the NJDEP DLUR:

- A **Highlands Preservation Area Approval (HPAA)**, for which a project must satisfy all applicable regulatory requirements of the Highlands Rules. An HPPA also constitutes an approval pursuant to the NJDEP FWPA, FHACA, and the Safe Drinking Water Act (NJPDES); **or**
- A **Highlands Applicability and Water Quality Management Plan (WQMP) Consistency Determination** (aka **Highlands Applicability Determination or HAD**), which addresses the following:
  - Whether a proposed project meets the definition of "Major Highlands Development"
  - Whether a proposed project is exempt from the Highlands Act
  - Whether a proposed project is consistent with the applicable area-wide WQMP. (The NJDEP WQMP rules at N.J.A.C. 7:15 apply to septic and sewage/wastewater systems [i.e., Treatment Works Approvals], and thus are not typically applicable to NJDOT capital projects.)

If needed, a HAD must be obtained before submitting an application for an NJDEP environmental land use or water permit.

When a project is certain to be regulated under the Highlands Act, the NJDOT can apply directly to the NJDEP DLUR for a HPAA without first obtaining an HAD.

There are several **exemptions** in the HWPPA that can apply to NJDOT projects in the regulated Highlands Preservation Area, including:

- Routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity, provided that the activity is consistent with the goals and purposes of the Highlands Act, and does not result in the construction of any new through-capacity travel lanes.
- Construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit, provided that the activity does not result in the construction of any new through-capacity travel lanes.
- Contaminated site remediation per NJDEP Remediation Standards.

In addition, there are further exemptions to the requirement to obtain a HAD, which are similar to the above-listed exemptions but incorporate stricter limitations on activities that can be conducted.

There are two **Highlands GPs** available, which are limited for NJDOT purposes:

- **GP 1** – Habitat Creation and Enhancement Activities (only applicable to a mitigation project required by a government agency, such as the USACE or NJDEP)
- **GP 2** – Bank Stabilization (only bioengineering techniques are allowed)

It is important to note that if a project does not meet the definition of a Major Highlands Development or is otherwise exempt from the HWPPA, then the NJDEP FWPA and FHA Rules are still applicable should a proposed project involve impacts to resources under their respective jurisdictions.

The Highlands Rules also provide for **Emergency Approvals**, including for NJDOT purposes, a **Waiver for the Protection of Public Health and Safety**.

The **typical timeframe for a HAD is 1-2 months** from receipt of a complete application.

The **standard timeframe for a Highlands GP approval is 120 days** from receipt of a complete application.

The **standard timeframe for an HPAA or HPAA with waiver is 180 days** from receipt of a complete application.

The NJDOT must pay a **fee** for an HPAA needed in the Highlands Preservation Area, including additional component reviews as applicable (e.g., stormwater review fees, FHA review fees, waiver fee, etc.). However, the NJDOT is **not** required to pay a fee for a HAD or a pre-application meeting. There is no fee for a Highlands GP 1, but a fee is required for GP 2.

3.16 NJ Pinelands Commission

NJDOT Activity Descriptions: 4385 – 4395

The Pinelands National Reserve (PNR) was created by the US Congress under the National Parks and Recreation Act of 1978. The PNR occupies 22 percent of NJ's land area, including nearly 1.1 million acres in parts of seven counties and 56 municipalities.

The NJ Pinelands Protection Act became effective on June 28, 1979, with implementing Pinelands Protection Act Rules (hereafter the Pinelands Rules) at N.J.A.C. 7:50. The Pinelands Rules regulate the use of resources and “development” within the geographic boundaries of the “Pinelands Area,” which is a subset of the PNR that includes 938,325 acres comprised of the “Pinelands Protection Area” and the “Pinelands Preservation Area” (see **Appendix A, Figure 5-9**).

The Pinelands Rules are implemented by the Pinelands Comprehensive Management Plan (CMP) and administered by the NJ Pinelands Commission (NJPC). A “permit” issued by the NJPC for development in the Pinelands Area is known as a **Public Development Approval**. Under the Pinelands Rules, "development" includes the “alteration, either physically or chemically, of a shore, bank, or flood plain, seacoast, river, stream, lake, pond, wetlands or artificial body of water.”

While the NJ Pinelands Commission is the primary jurisdictional agency concerning development activities in the Pinelands Area, there are many other State and Federal agencies with jurisdictional authorities in the Pinelands Area. The Pinelands Area shares a common boundary with the regulated NJ CAFRA Zone. NJDEP WFD jurisdiction in the Pinelands Area (i.e., outside the CAFRA Area) includes all tidal water areas plus an upland area up to 500 feet landward from a MHWL. The NJDEP also holds Tidelands Claims along many currently or formerly flowed tidal waters occurring in the Pinelands Area. NJDEP-mapped Coastal Wetlands (Wetlands Act of 1970) occur mainly in association with the Mullica River in the southeastern portion of the Pinelands Area. Most remaining wetlands throughout the Pinelands area are regulated as freshwater wetlands under N.J.A.C. 7:7A. The NJDEP does not regulate wetland transition areas in the Pinelands Area; however, the NJPC does. Pinelands wetland transition areas can extend up to 300 feet and are determined on a case by case basis. The NJDEP also regulates the FHA and Riparian Zone of regulated waters in the Pinelands Area under N.J.A.C. 7:13. On the Federal level, the USACE retains Section 404 jurisdiction for all tidal waters and associated wetlands in the Pinelands Area. The USFWS retains jurisdiction under the Endangered Species Act of 1973. The National Park Service retains jurisdiction over Wild & Scenic Rivers that traverse the Pinelands Area (e.g., Maurice River).

Potential impacts to Cultural Resources (CR) in the Pinelands Area are subject to review and approval by certain Pinelands CR staff. Project consultation with the NJDEP SHPO does not substitute for and is not accepted as an "approval" regarding CR in the Pinelands Area. However, consultation may be required with the NJDEP SHPO for certain projects.

As discussed at **Section 2.6**, the NJDEP has been delegated Section 404 jurisdiction (i.e., regulating the discharge of dredged and fill material) for most non-tidal open waters and freshwater wetlands under the FWPA Rules (N.J.A.C. 7:7A). The NJPC, in a separate agreement, has been delegated the authority to review NJDEP Freshwater Wetlands General Permit (FWGP) applications for projects affecting freshwater wetlands and State open waters in the Pinelands Area. For such projects, the NJPC will review and approve the Public Development and FWGP applications concurrently. The NJDEP will review all freshwater wetlands IP applications in the Pinelands Area.

The NJDEP also has a **1998 MOA** that allows the NJPC to approve or disapprove certain minor stream encroachment (FHA) permit applications under N.J.A.C. 7:13. For NJDOT purposes, activities include construction of utility line crossings, footbridges, and minor grading work in regulated flood hazard areas. These activities are subject to various conditions including fisheries-related timing restrictions. This MOA does not apply if an NJPC application is not required or an NJDEP Freshwater Wetlands IP is required.

Pinelands Rules **exemptions** include a list of activities not considered "development." For NJDOT purposes, these include:

- Construction, repair, or removal of any sign
- Clearing of less than 1,500 SF of land
- Demolition of any structure less than 50 years old
- Repaving of existing paved roads, provided there is no increase in pavement width
- Fences, provided no more than 1,500 SF of land is to be cleared
- Tree pruning

The NJDOT has a **1995 MOA** with the NJPC that streamlines approvals for relatively minor NJDOT projects in the Pinelands Area. Subject to certain conditions and notification requirements, NJDOT projects include roadway resurfacings and drainage ditch maintenance, certain bridge and culvert replacements, construction of drainage pipes and inlets, and certain roadway intersection improvements. No application fee is required for a NJDOT project processed in accordance with this MOA.

NJDOT projects that exceed the criteria of the 1995 MOA, or that are not otherwise exempt from the Pinelands Rules, typically constitute "development" (specifically "linear development"), and require **Public Development Approval** from the NJPC.

The Commission staff will issue a **Certificate of Filing** upon receipt of a complete Public Development application, which is required to apply for most NJDEP permits.

The **standard timeframe for NJPC Public Development Approval is 30 days** from receipt of a complete application.

The NJPC can also issue a **Waiver of Strict Compliance** for projects that do not meet the land use or environmental standards of the Pinelands Rules (i.e., projects that will adversely impact Pinelands resources). Such waivers involve additional review time and are difficult to obtain.

Fees are required to obtain NJPC Public Development Approvals.

3.17 NJ Meadowlands Commission

NJDOT Activity Descriptions: 4385 – 4395

The NJ Meadowlands is an extensive tidal marshland in the Hackensack/Passaic River watersheds. The Hackensack Meadowlands Reclamation and Development Act of 1969 created the NJ Meadowlands District and the Hackensack Meadowlands Development Commission. The agency was renamed the New Jersey Meadowlands Commission (NJMC) in 2001.

The 1969 legislation gave the Commission a three-fold mandate:

- To provide for the orderly development of the region
- To provide facilities for solid waste
- To protect the delicate balance of nature

The NJMC oversees all development, including transportation improvements, in the NJ Meadowlands District (see **Appendix A, Figure 5-10**). A major goal of the NJMC is to ensure that the marshlands survive as a thriving ecological network after decades of industrial abuse and neglect. The NJDOT works with the NJMC on a variety of transportation projects, particularly involving drainage and flooding issues. NJDOT projects require a Resolution of Support from the NJMC, which is necessary to obtain NJDEP and USACE permits.

In the NJ Meadowlands, the NJDEP FWPA Rules do not apply, and NJDEP-mapped Coastal Wetlands coverage ends much to the south of the district boundaries. Thus, all wetlands in the NJ Meadowlands are under sole USACE jurisdiction. The USACE retains Section 404/10 jurisdiction over all Waters of the United States in the NJ Meadowlands.

A JD by the NJDEP and USACE should be sought to resolve tidal waterway issues and identify appropriate permits for NJDOT projects in the NJ Meadowlands District. While the USACE generally considers all waters as tidal, the NJDEP sometimes considers a segment of water non-tidal, in which case a NJDEP FHA permit might be triggered. Concurrently, any work at or below a MHWL requires a NJDEP WFD Permit. There are also many NJDEP Tidelands Claims traversing the NJ Meadowlands District.

In short, determinations regarding proposed work activities, their location, and impacts should be brought to the attention of both the USACE and NJDEP to confirm which regulatory guidelines and permits apply to a particular NJDOT project.

The NJ Meadowlands is a major ecological area and home to numerous T&E and other protected terrestrial and marine species. It is also a major migratory bird breeding/stopover area. NJDOT projects in the NJ Meadowlands should anticipate seasonal work restrictions for in-water work, tree clearing, and construction noise.

NJDEP Site Remediation/LSRP Approval (see **Section 3.12**) is often required due to the extensive historical dumping and contamination of the NJ Meadowland, typically when NJDOT construction activities call for subsurface interactions.

Other common environmental issues in the NJ Meadowlands may include cultural resources/historic sites and parkland/Green Acres encumbrances.

3.18 NJDOT Major Access Permits

NJDOT Activity Descriptions: 3105, 4705, 4710, 4715

Property owners seeking traffic access to State roadways and transportation infrastructure must submit applications for access to the NJDOT. Major Access Permits are required for greater than 500 daily trips, while permits for fewer than 500 trips are considered Minor.

Access related issues must be addressed per the NJ State Highway Access Management Code and NJDOT Access Design Guidelines (BDC12T-01 and BDC14T-03).

For the purposes of this Environmental Overview document, an applicant for an access permit might prepare a Request for Waiver for relief from NJDOT's Access Code provisions, citing for example "existing social, economic, or environmental constraints" or an "approving agency imposition of conditions beyond the control of the applicant," per Attachment 8 of the NJDOT Access Design Guidelines. Sometimes the NJDOT will review applications with regard to environmental concerns including tie-ins to the State highway drainage system.

4.0 Conclusion

This Overview provides general information for NJDOT personnel and others concerning Environmental Regulations and Permitting that typically affect NJDOT's mission and operations. The rules and regulations go beyond that which is covered in this Overview document, and thus this document should not be considered a comprehensive "how to" technical guidance manual. For additional information or to obtain environmental documents, permits, or approvals, contact the appropriate NJDOT "Subject Matter Experts" in the NJDOT BLAES or BEPR.

5.0 Appendix A – Figures

List of Figures

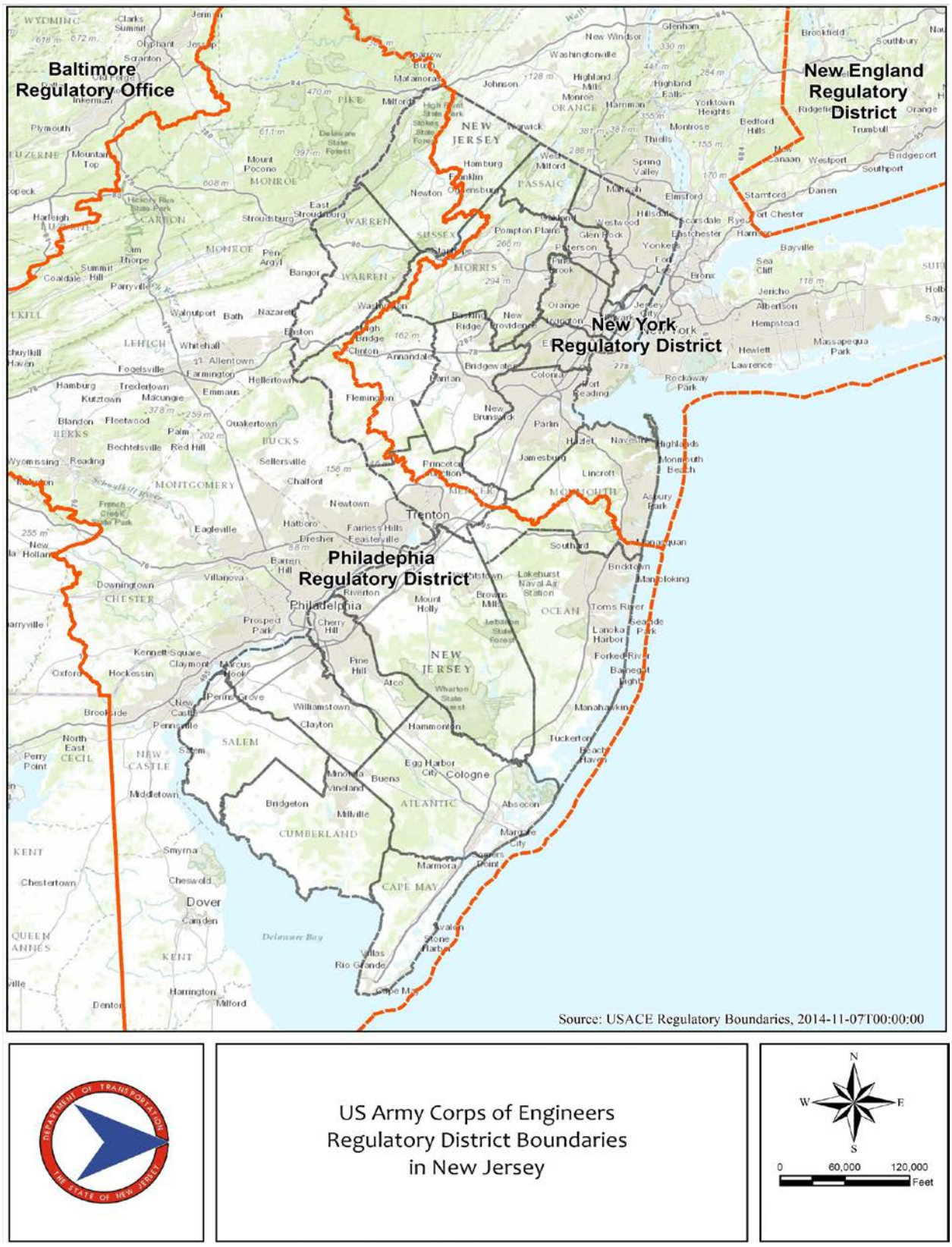


Figure 5-1. USACE Regulatory Districts

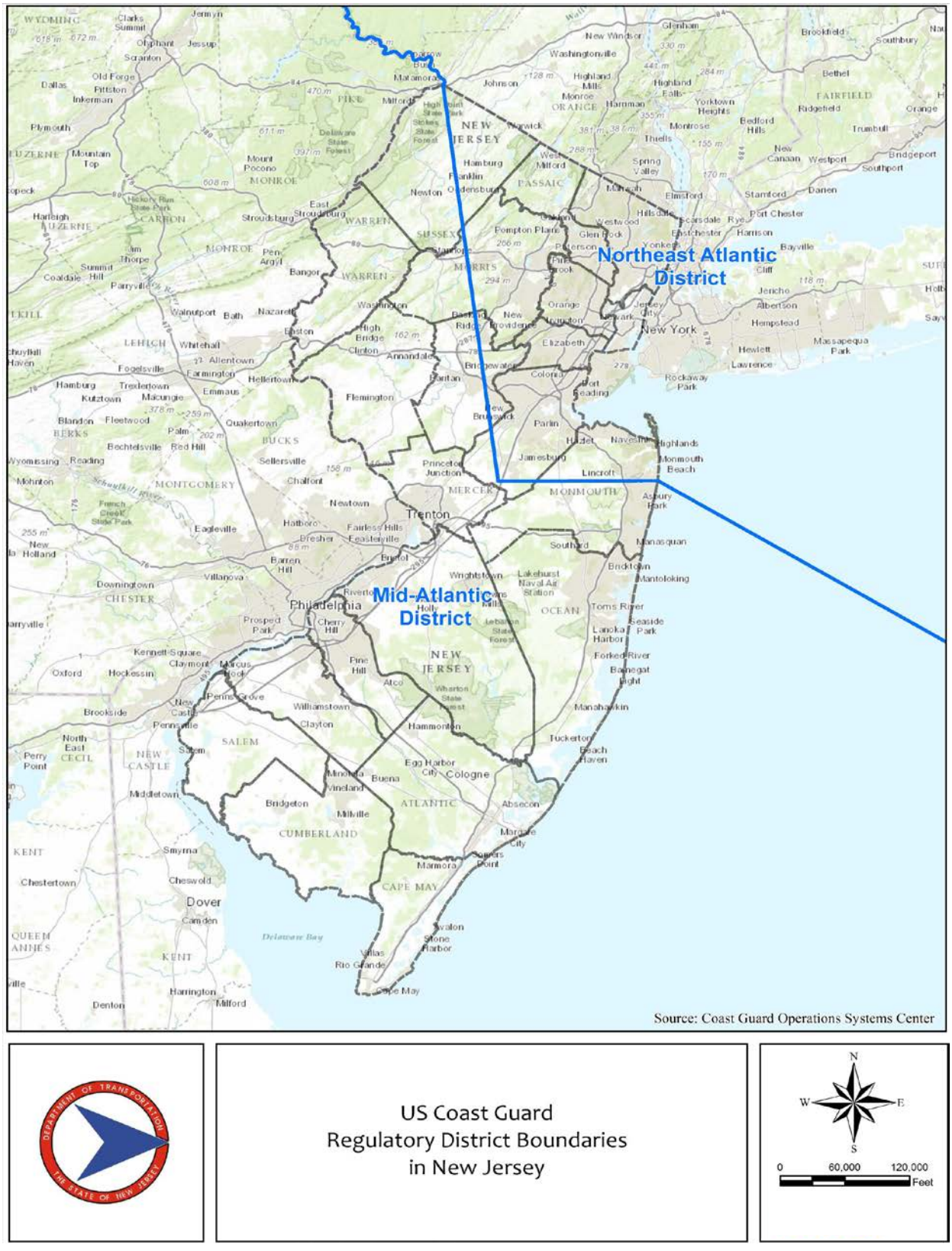


Figure 5-2. USCG Regulatory Districts

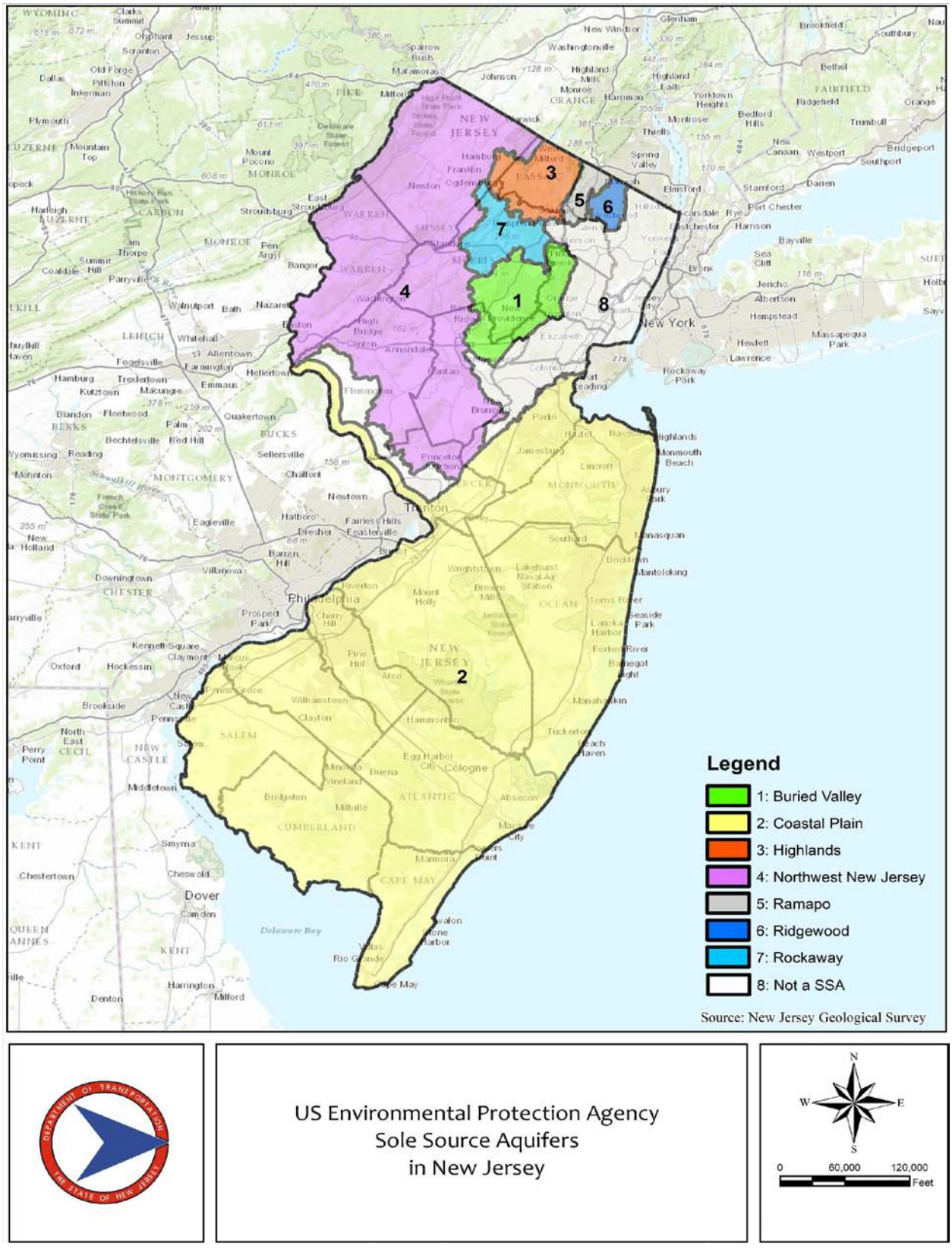
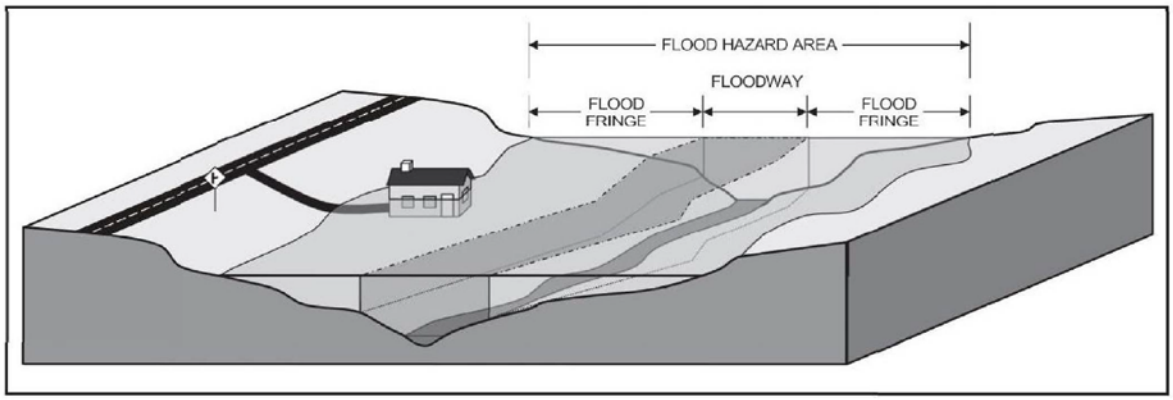
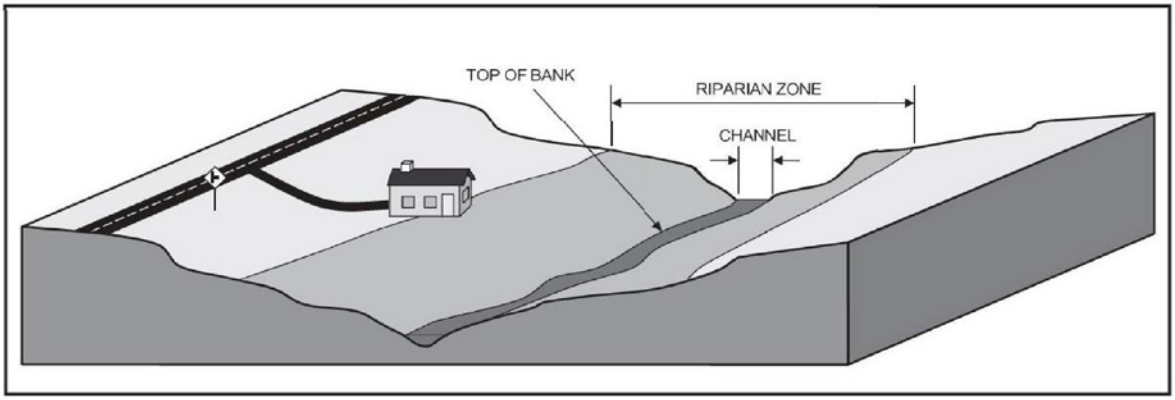


Figure 5-3. Sole Source Aquifers in New Jersey



THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE



THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150 OR 300 FEET OF THE CHANNEL

SOURCE: NJDEP FHACA RULES (NJAC 7:13)

NJDEP Flood Hazard Area Control Act Rules
Typical Overlap of Regulated Flood Hazard Area and Riparian Zone

Figure 5-4. FHA and Riparian Zone Overlap

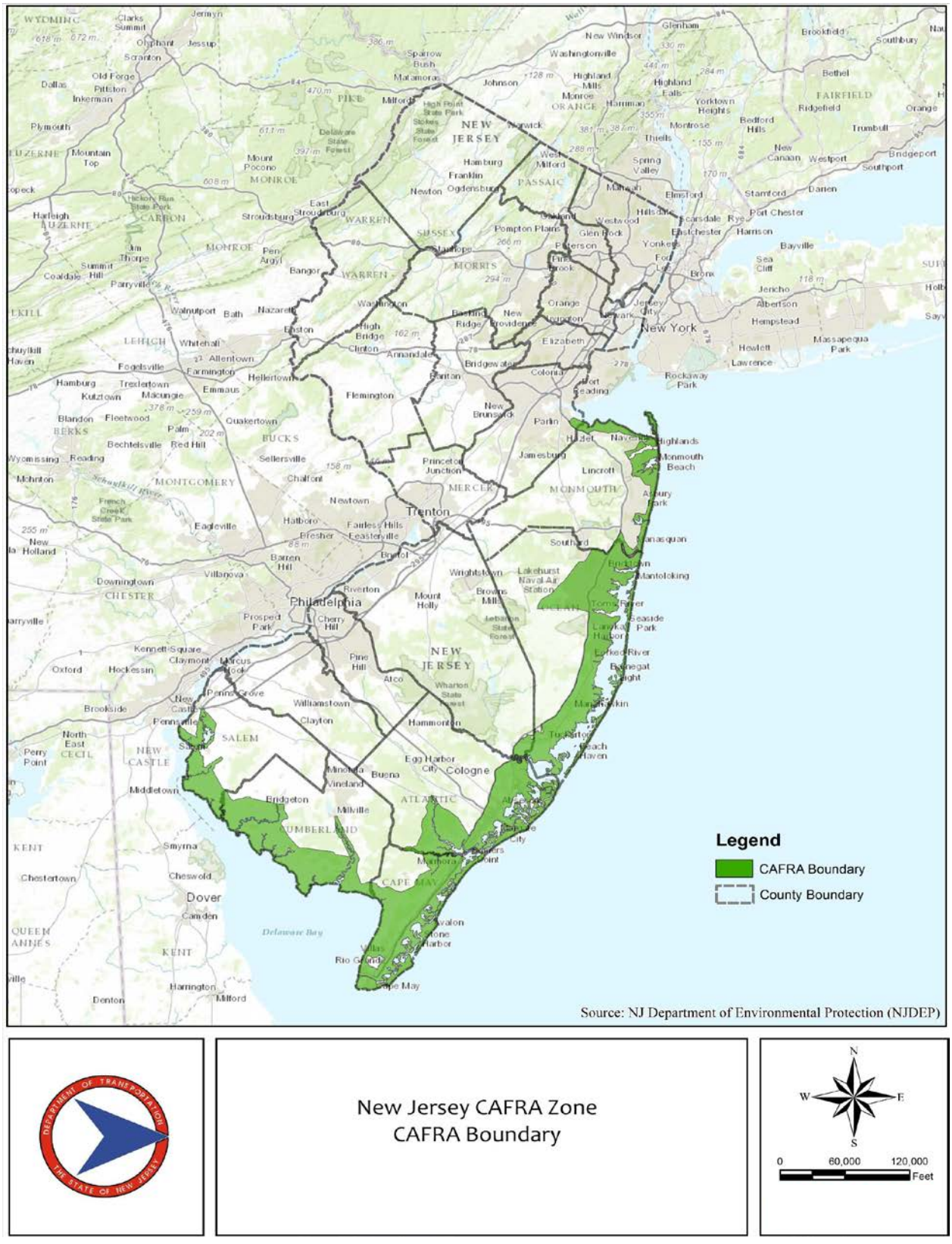


Figure 5-5. CAFRA Area

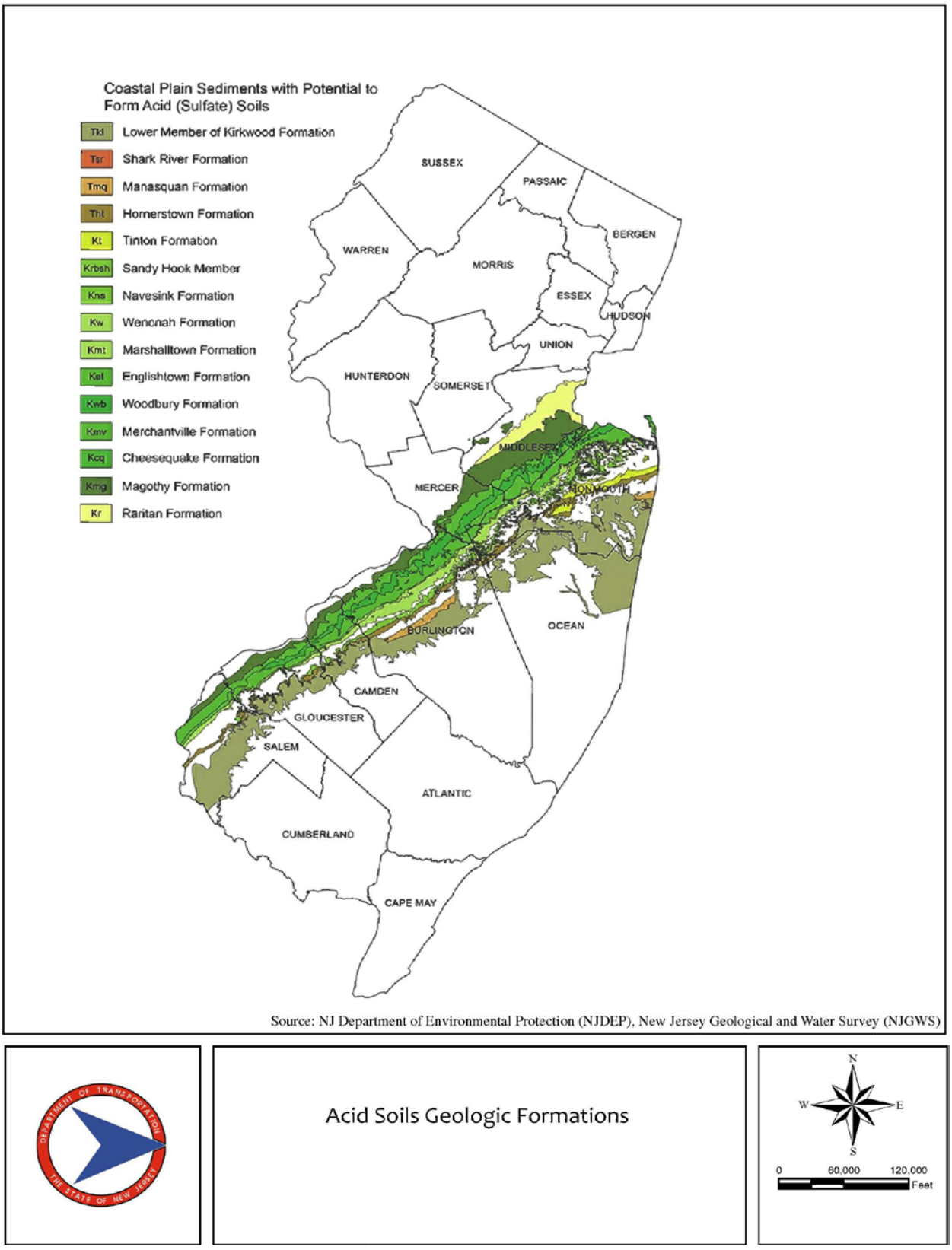


Figure 5-6. Acid Soils Geologic Formations

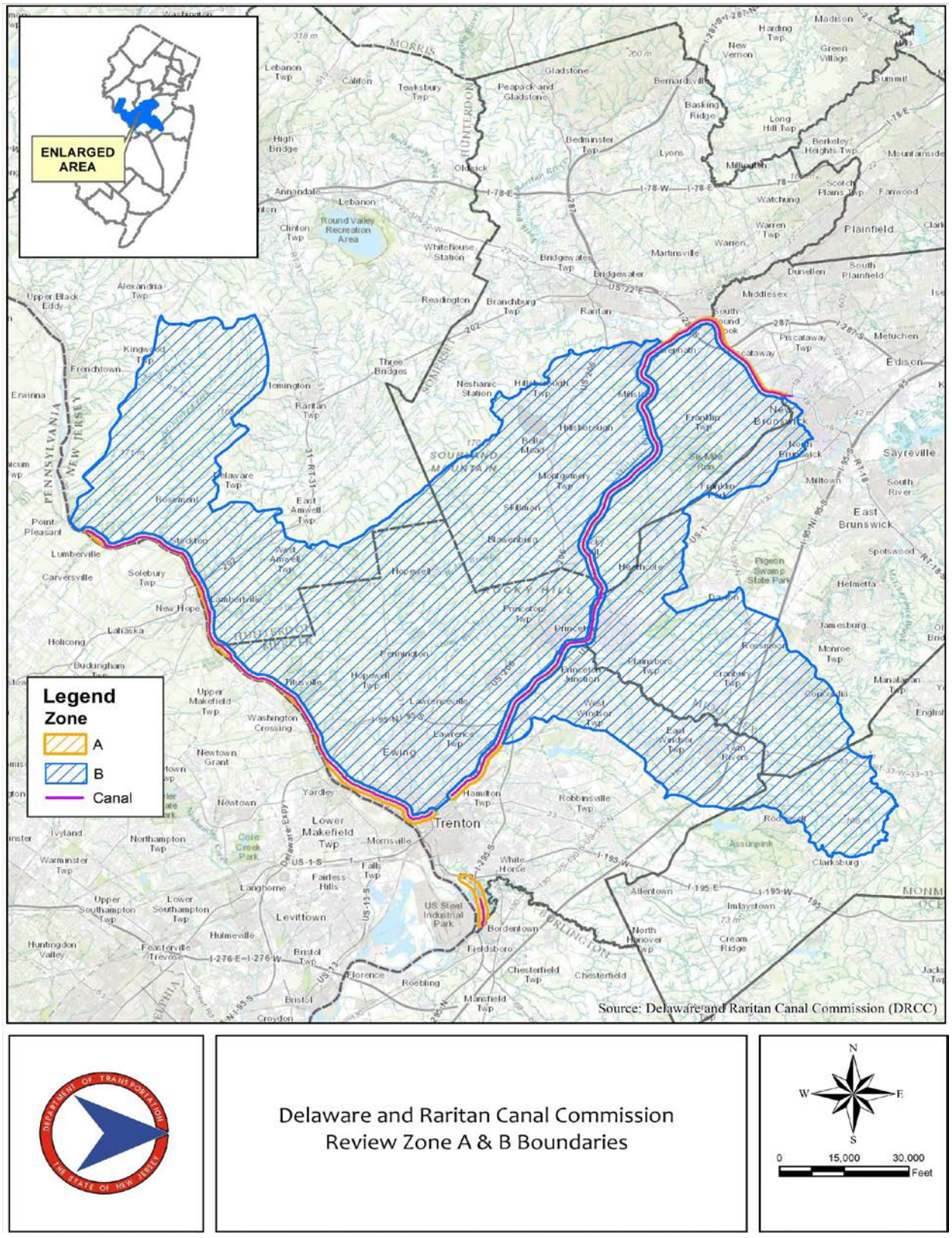


Figure 5-7. D&RCC Review Zones A & B

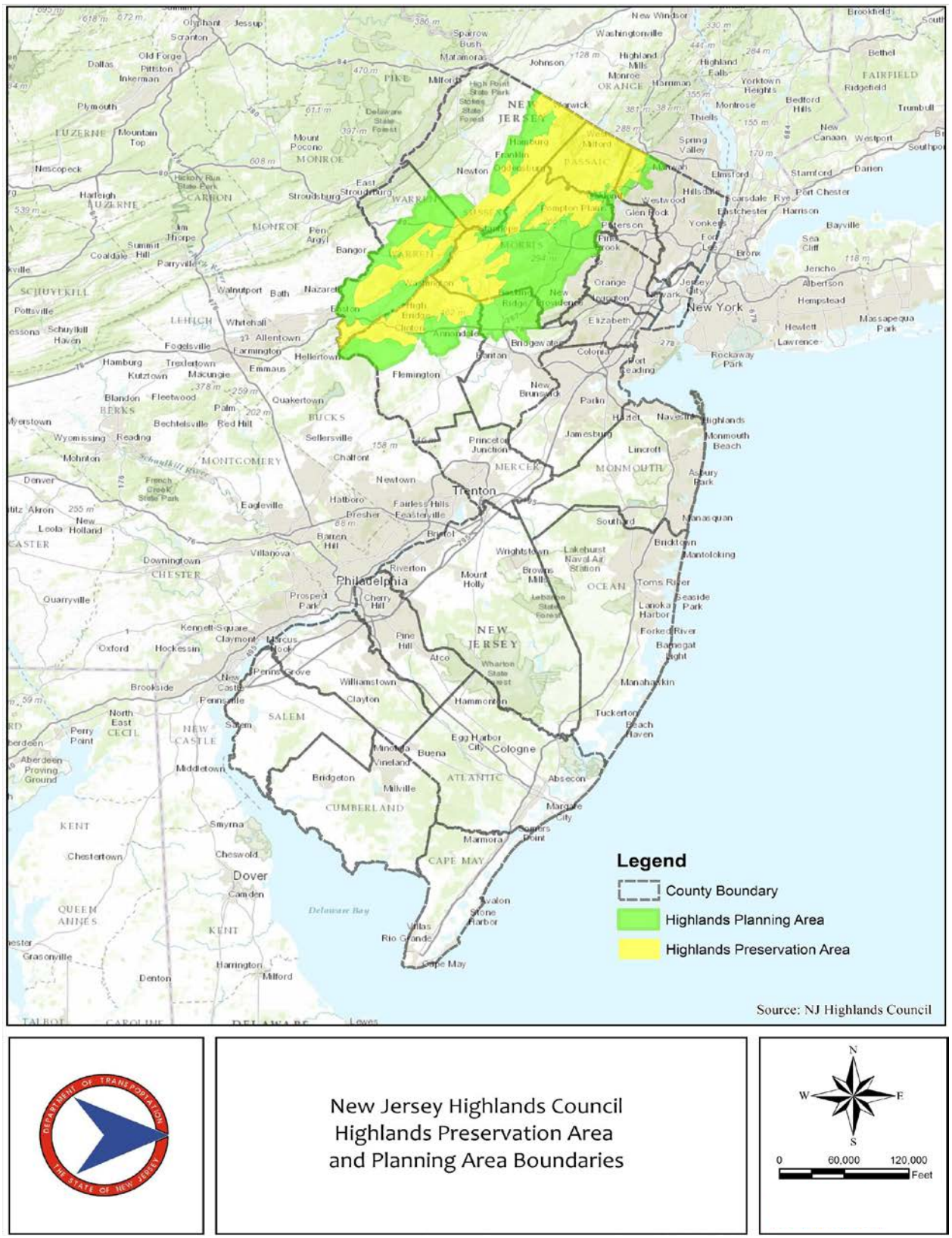


Figure 5-8. Highlands Preservation Area and Planning Area

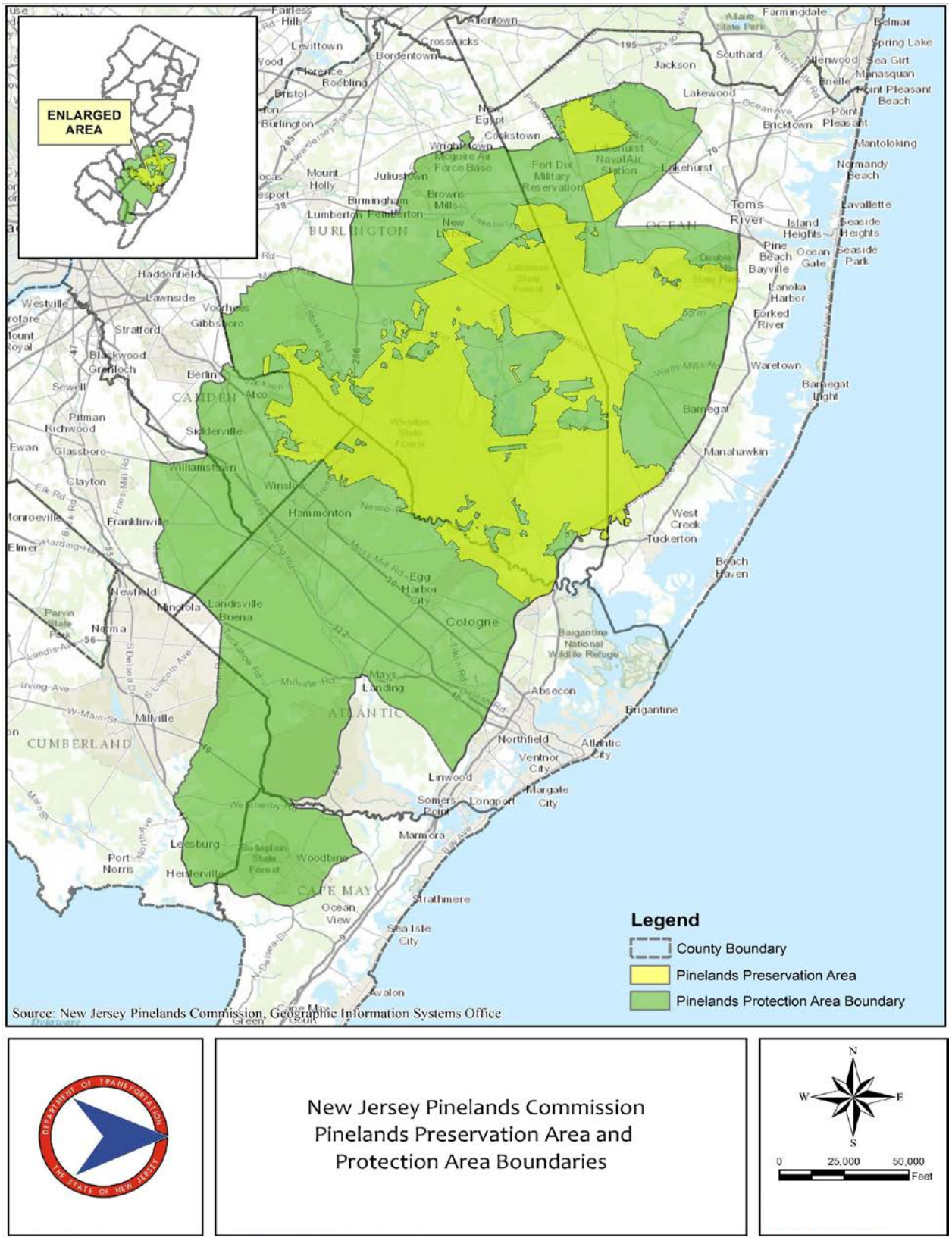


Figure 5-9. Pinelands Preservation Area and Protection Area

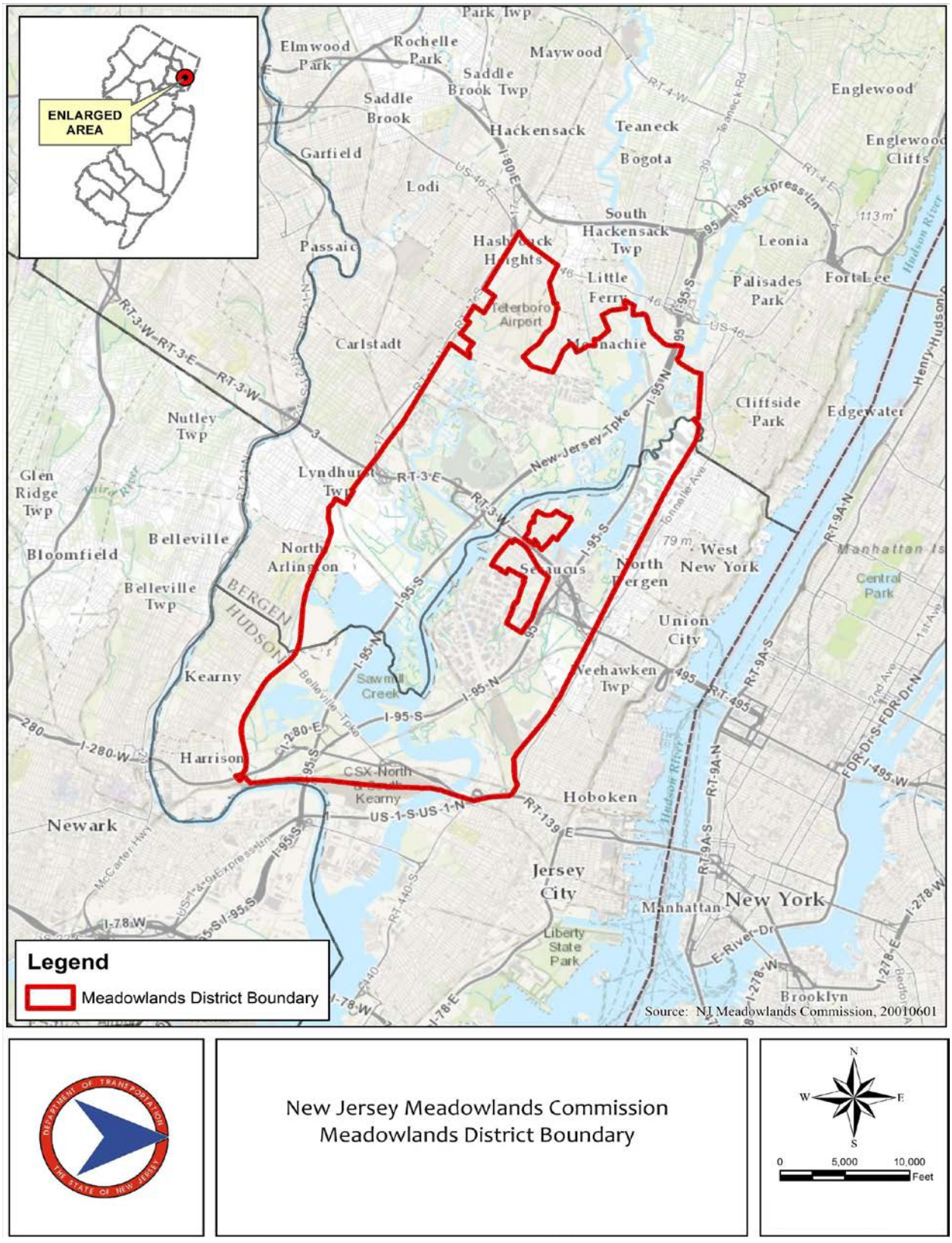


Figure 5-10. Meadowlands District

6.0 Appendix B - Glossary of Acronyms

AA	Alternatives Analysis
ACHP	Advisory Council on Historic Preservation
AOC	Area of Concern
APS	Acid Producing Soils
BDC	Baseline Document Change
BEPR	Bureau of Environmental Program Resources
BLAES	Bureau of Landscape Architecture and Environmental Solutions
BMP	Best Management Practices
BTM	Bureau of Tidelands Management
CAFRA	Coastal Area Facility Review Act
CD	Concept Development
CE	Categorical Exclusion
CED	Categorical Exclusion Document
CEQ	Council on Environmental Quality
CIA	Community Impact Assessment
CMP	Comprehensive Management Plan
CO	Carbon Monoxide
CR	Cultural Resources
CW	Coastal Wetland
CWA	Clean Water Act
CZM	Coastal Zone Management
D&RCC	Delaware and Raritan Canal Commission
DEIS	Draft Environmental Impact Statement
DLUR	Division of Land Use Regulation
DPF	Division of Parks & Forestry
EA	Environmental Assessment
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EJ	Environmental Justice
ENSP	Endangered and Nongame Species Program
EO	Executive Order
ER	Environmental Reevaluation
ESA	Endangered Species Act

FD	Final Design
FEIS	Final Environmental Impact Statement
FHA	Flood Hazard Area
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FPPA	Farmland Protection Policy Act
FTA	Federal Transit Administration
FVA	Functional Value Assessment
FWPA	Freshwater Wetlands Protection Act
GAP	Green Acres Program
GP	General Permit
GPBC	General Permit by Certification
H&H	Hydrology and Hydraulic
HAD	Highlands Applicability Determination
HPAA	Highlands Preservation Area Approval
HW	Hazardous Waste
HWPPA	Highlands Water Protection and Planning Act
IP	Individual Permit
JD	Jurisdictional Determination
LF	Linear Feet
LSRP	Licensed Site Remediation Professional
MHWL	Mean High Water Line
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MS4	Municipal Separate Storm Sewer System
MTD	Manufactured Treatment Device
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NJ	New Jersey
NJDEP	NJ Department of Environmental Protection
NJDOT	NJ Department of Transportation
NJHPO	NJ Historic Preservation Office
NJMC	NJ Meadowlands Commission
NJMD	NJ Meadowlands District

NJPC	NJ Pinelands Commission
NJPDES	NJ Pollutant Discharge Elimination System
NJRHP	NJ Register of Historic Places
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWP	Nationwide Permit
PBR	Permit-by-Rule
PCN	Pre-Construction Notification
PE	Preliminary Engineering
PIAP	Public Involvement Action Plan
PM (#)	Particulate Matter (Size in Microns)
PNR	Pinelands National Reserve
PRS	Project Reporting System
PW	Pinelands Waters
RFA	Request for Authorization
RMP	Regional Master Plan
ROD	Record of Decision
ROSI	Recreation and Open Space Inventory
ROW	Right-of-Way
SCD	Soil Conservation District
SDWA	Safe Drinking Water Act
SESC	Soil Erosion and Sediment Control
SF	Square Feet
SHPO	State Historic Preservation Officer
SIP	State Implementation Plan
SOW	State Open Water
SPGP	Statewide Programmatic General Permit
SRP	Site Remediation Program
SRRA	Site Remediation Reform Act
SSA	Sole Source Aquifer
STIP	State Transportation Improvement Plan

SWM	Stormwater Management
SWRPA	Special Water Resource Protection Area
T&E	Threatened and Endangered
TCR	Transportation Conformity Regulations
TSS	Total Suspended Solids
TWA	Treatment Works Approval
URA	Urban Redevelopment Area
USACE	US Army Corps of Engineers
USCG	US Coast Guard
USDA	US Department of Agriculture
USDOT	US Department of Transportation
USEPA	US Environmental Protection Agency
USFWS	US Fish & Wildlife Service
UWB	Upper Wetlands Boundary
WFD	Waterfront Development (Law or Permit)
WQMP	Water Quality Management Plan