



State of New Jersey

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Division of Land Resource Protection
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

July 29, 2020

NJDOT
c/o Tina Shutz
1035 Parkway Avenue
Trenton, NJ 08625

RE: **Route 72 Manahawkin Bay Bridges Permit Modification**

DLRP File No. 1500-10-0002.1, WFD190001 (In-water Mod.) & CAF190001 (CAFRA Mod.)

Applicant: NJDOT

Project: Route 72 Manahawkin Bay Bridges Project & Marsha Drive

Township of Stafford and Borough of Ship Bottom, Ocean County

Dear Ms. Shutz:

The Division of Land Use Regulation (Division) issued a CAFRA Individual Permit, Waterfront Upland and In-water Individual Permits, a Coastal Wetland Permit, and a Freshwater Wetlands Individual Permit on October 26, 2012, which authorized certain expansion and improvement activities to the Route 72 bridges over Manahawkin Bay. The permit was subsequently modified by a Waterfront Development Modification (WFD140001) issued on August 20, 2014, a Waterfront Development and Freshwater Wetlands Modification (WFD150001 & FWW150001) issued on December 11, 2015, a Waterfront Development Modification (WFD160001) issued on July 29, 2016, and a CAFRA and Freshwater Wetlands Modification (CAF120001 & FWW120001) issued on November 23, 2018.

Additionally, the Waterfront Development In-water Individual Permit and Freshwater Wetlands Individual Permit were granted a 5-year extension until October 26, 2022. The Coastal Wetlands Individual Permit has expired and is not eligible for extension. NJDOT has applied for a new Coastal Wetlands Individual Permit (LUP190001), which is pending and will be issued under separate cover. The Waterfront Development Upland Permit and CAFRA Individual Permit are still valid because construction has been ongoing.

The currently proposed modifications to the CAFRA and WFD In-water Individual Permits, include the following:

- Modifications to the drainage system along 8th and 9th Streets in Ship Bottom, which will include the elimination of the previously approved pump station and the construction of two new outfalls

- Modifications to the Marsha Drive intersection, including the construction of a new storm drainage system, a detention basin, scour protection, and the relocation of utilities.
- Sidewalk connectivity extending from the southwest abutment of East Thorofare to 4th Street on Bonnet Island.

These modifications are hereby authorized, subject to the following conditions and as shown on the approved plans referenced below. All other conditions of the original permit and subsequent modifications remain in effect. This letter does not change the expiration date of the original permit.

Conditions

1. Any new, reconstructed, enlarged, or elevated structure within a flood hazard area shall be secured to resist flotation, collapse, and displacement due to hydrostatic and hydrodynamic forces from floodwaters.

RIPARIAN ZONE MITIGATION CONDITIONS

1. **At least 90 days prior to commencing regulated activities authorized by this permit**, the permittee shall submit a proposal to mitigate for the loss of **0.003 acres** of grassed riparian zone vegetation. The proposal shall be designed in accordance with the standards at N.J.A.C. 7:13-13. Activities authorized by this permit shall not begin until the permittee has obtained written approval of a mitigation plan from the Department (N.J.A.C. 7:13-13.2(b)).
 - Please note that the Department is in receipt of a mitigation proposal which includes addressing the additional mitigation requirements for this permit through existing, on-going mitigation areas approved for previous permits associated with the Route 72 Bridge reconstruction project. However, the existing mitigation areas have not been completed, are still undergoing monitoring, and have not shown clear signs of successful establishment of natural resources. Therefore, the Department cannot approve the applicant's proposal at this time. Please continue to consult with the Division's Mitigation Unit for an acceptable mitigation option for this permit.
2. **All mitigation shall be conducted prior to or concurrent with the regulated activity that causes the disturbance.** (N.J.A.C. 7:13-13.3(a)1). Concurrent means that at any given time, the mitigation must track at the same or greater percentage of completion as the project as a whole.
3. As of the date of this permit, there are no mitigation banks serving your project area. Additional banks may be approved at any time, so please contact the Mitigation Unit for the most up to date service area information if you would like additional options.
4. If the permittee is considering conducting a creation, restoration or enhancement project, the following conditions shall apply:

Prior to the initiation of regulated activities authorized by this permit, the permittee shall sign a Department approved conservation restriction to protect the mitigation area from future development that would remove the vegetation planted. (N.J.A.C. 7:13-13.2(g)). The conservation restriction shall conform to the format and content of the rules at N.J.A.C. 7:13-14 and the Riparian Zone Mitigation Area model located at <http://www.nj.gov/dep/landuse/forms/index.html>. The restriction shall be included on the deed and recorded in the office of the County Clerk (the Registrar of Deeds and Mortgages in some counties) in the county wherein the lands of the

mitigation project are located. A metes and bounds description shown on a map must be included within the recorded conservation restriction. Within 10 days of filing the conservation restriction, the permittee must send a copy of the conservation restriction to the attention of the Mitigation Unit Supervisor, NJDEP, Division of Land Resource Protection at Mail Code 501-02A, P.O. Box 420, Trenton, NJ 08625-0420.

5. For creation and restoration projects, the permittee shall obtain a secured bond or other financial surety acceptable to the Division from a firm licensed to provide such services in New Jersey. (N.J.A.C. 7:13-13.15)
6. The permittee shall monitor the riparian project for at least 5 years beginning the year after the riparian zone mitigation project has been completed (N.J.A.C. 7:13-13.12(c)). **The permittee shall submit monitoring reports to the Division of Land Resource Protection, no later than December 31st of each full monitoring year.**
 - a. All monitoring reports except the final one should include the requirements and goals of the mitigation proposal and a detailed explanation of the ways in which the mitigation has or has not achieved progress toward those goals. If mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented and a timeline for completion.
 - b. The final monitoring report must include documentation and data demonstrating that:
 - i. The goals of the riparian zone mitigation as stated in the approved riparian zone mitigation proposal and the permit conditions have been satisfied.
 - ii. At least 85 percent of the mitigation plantings have survived and that at least 85 percent of the mitigation area is established with native species similar to ones identified on the mitigation planting plan. All plant species in the mitigation area must be healthy and thriving. All trees must be at least 5 feet in height; and
 - iii. The site is less than 10 percent occupied by invasive or noxious species; and
 - iv. The conservation restriction for the mitigation site has been executed and recorded.
7. If the riparian mitigation project does not meet the success criteria established above the project shall be considered a failure and the permittee shall submit a revised riparian mitigation plan. The revised plan shall be submitted within 60 days of receipt of notification from the Division indicating the riparian mitigation project was a failure.
8. If the Division determines that the riparian zone mitigation project is not constructed in conformance with the approved plan, the permittee will be notified in writing by the Department and will have 60 days to submit a proposal to indicate how the project will be corrected.
9. For preservation projects, the application shall provide documentation showing that the proposed preservation area will fully compensate in accordance with N.J.A.C. 7:13-13.13 for the loss of functions and values caused by the disturbance.

COASTAL MITIGATION PERMIT CONDITIONS:

1. The permittee shall mitigate for the permanent loss of **0.103 acres** of emergent coastal wetlands through an on-site or off-site creation, restoration or enhancement project with the purchase of credits from a mitigation bank serving the appropriate watershed management area. The permittee shall also mitigate for the temporary disturbance to **0.126 acres** of emergent coastal wetlands through a Department approved temporary restoration plan. At this time, no detailed temporary restoration plan has been submitted to the Division.
 - Please note that the Department is in receipt of a mitigation proposal which includes addressing the additional mitigation requirements for this permit through existing, on-going mitigation areas approved for previous permits associated with the Route 72 Bridge reconstruction project. However, the existing mitigation areas have not been completed, are still undergoing monitoring, and have not shown clear signs of successful establishment of natural resources. Therefore, the Department cannot approve the applicant's proposal at this time. Please continue to consult with the Division's Mitigation Unit for an acceptable mitigation option for this permit.
2. **At least 90 days prior to the initiation of regulated activities authorized by this permit**, the permittee shall submit a mitigation proposal to the Division of Land Use Regulation (Division) for review and approval. Activities authorized by this permit shall not begin until the permittee has obtained written approval of a mitigation plan from the Department.
3. All mitigation shall be conducted prior to or concurrent with the construction of the approved project (**N.J.A.C. 7:7-17.3**). Concurrent means that at any given time, the mitigation must track at the same or greater percentage of completion as the project.
4. If the applicant is considering obtaining land to satisfy a mitigation requirement, the Department strongly recommends that the permittee obtain the Division's conceptual review and approval of any land being considered as a potential mitigation area.
5. As of the date of this permit, there are no mitigation banks serving your project area. Additional banks may be approved at any time, so please contact the Mitigation Unit for the most up to date service area information if you would like additional options.
6. If the permittee is considering conducting a creation, restoration or enhancement project, the following conditions shall apply:
 - a. **Prior to the initiation of regulated activities** authorized by this permit the permittee shall submit a final design of the mitigation project for approval and include all of the items listed on the checklist entitled [Checklist for Completeness: Creation, Restoration or Enhancement for a Coastal Wetland Mitigation Proposal](http://www.nj.gov/dep/landuse/forms/index.html) located at <http://www.nj.gov/dep/landuse/forms/index.html>.
 - b. **Prior to the completion of the mitigation project**, the permittee shall complete, sign and file with the County Clerk (the Registrar of Deeds and Mortgages in some counties), a conservation restriction that meets the requirements of N.J.A.C. 7:7-18. The conservation restriction shall include the wetland and required transition area and conform to the format and content of the Wetlands Mitigation Area model conservation restriction that is available at:

- <http://www.nj.gov/dep/landuse/forms/index.html>. The applicant is required to include a metes and bounds description shown on a map. Within 10 days of filing the conservation restriction, the permittee must send a copy of the conservation restriction to the Mitigation Unit, NJDEP Division of Land Use Regulation for verification (N.J.A.C. 7:17-18.2(b)).
- c. The permittee shall notify the Mitigation Unit at the Division of Land Use Regulation in writing **at least 30 days prior to the start of construction of the wetland mitigation project** to arrange an on-site pre-construction meeting among the permittee, the contractor, the consultant and the Division.
 - d. To ensure the intent of the mitigation design and its predicted wetland hydrology is realized in the landscape, the mitigation designer shall be present on-site during all critical stages of mitigation construction and during the restoration of any temporarily impacted areas. Critical stages of construction include but are not limited to herbicide applications, earthmoving activities, planting, and inspections.
 - e. The permittee shall be responsible for ensuring that best management practices are used throughout construction to control the spread and colonization of highly invasive plants. Specifically, all equipment, especially tracks and tires, must be thoroughly cleaned every time equipment or vehicles move from an area containing invasive plants or from off-site to the mitigation area. In addition, soil containing root fragments and above-ground vegetative material from invasive plants shall be carefully managed during earthmoving activities and disposed of at a suitable offsite location rather than mulched and reused or stockpiled elsewhere on the site. For information on the specific species that are considered to be invasive, please refer to the Invasive Plant Atlas at <http://www.invasiveplantatlas.org/index.html>.
 - f. If changes to the mitigation design are necessary to ensure success of the project as a result of on-site conditions, the mitigation designer shall immediately notify the Division in writing and submit an alternative plan which achieves the proposed wetland conditions. Any modifications to the plan that are reviewed and approved by the Division must be shown on a signed and sealed revised plan. The As-Built plans required as a part of the Construction Completion Report may serve as the signed and sealed revised plan required to be submitted as part of the construction modification process described above if time constraints warrant such action and have been approved by the Division in writing.
 - g. **Within 30 days of final grading of the mitigation site and prior to planting**, the permittee shall notify the Mitigation Unit at the Division of Land Use Regulation in writing to arrange a post-grading construction meeting among the permittee, contractor, consultant and the Division.
 - h. **Within 60 days following the completion of the mitigation project**, the permittee shall submit a Construction Completion Report to the Division detailing as-built conditions (N.J.A.C. 7:7-17.11(h)). The Construction Completion Report shall contain, at a minimum, the following information:
 - 1) A completed Wetland Mitigation Project Completion of Construction Form that certifies the mitigation project has been constructed as designed and that the proposed area of wetland creation, restoration or enhancement has been

accomplished. This form is located at on the Division's website at: www.nj.gov/dep/landuse in the Mitigation tab of Forms & Checklists.

- 2) An as-built plan of the completed mitigation area showing grading and any structures included in the approved mitigation proposal;
 - 3) Photographs, both pre and post construction, of the intertidal and subtidal shallows mitigation project including a photo location map as well as the GPS waypoints in NJ state plane coordinates NAD 1983; and
 - 4) Any changes to the approved mitigation plan that were made during construction and an explanation for the deviation(s).
- j. **Within 30 days following final planting of the mitigation project**, the permittee shall post the mitigation area with permanent signs which identify the site as a wetland mitigation project and that all-terrain vehicle use, motorbike use, mowing, dumping, draining, cutting and/or removal of plant materials is prohibited and that violators shall be prosecuted and fined to the fullest extent under the law. The signs must also state the name of the permittee, a contact name and phone number, and the Department's permit number.
- k. The permittee shall monitor the mitigation for 5 full growing seasons beginning the year after the mitigation project has been completed. The permittee shall submit monitoring reports to the Division of Land Use Regulation no later than December 31st of each full monitoring year (N.J.A.C. 7:7-17.13(e)). All monitoring reports must include the standard items identified in the checklists entitled [Wetland Mitigation Monitoring Project Checklist](#) and [Tidal Wetland Mitigation Monitoring Checklist](#). The [Wetland Mitigation Monitoring Project Checklist](#) and [Tidal Wetland Mitigation Monitoring Checklist](#) are located at <http://www.nj.gov/dep/landuse/forms/index.html>.
- l. Once the required monitoring period has expired and the permittee has submitted the final monitoring report, the Division will make the finding that the mitigation project is either a success or a failure. In accordance with N.J.A.C. 7:7-17.11(k), the mitigation project will be considered successful if the permittee demonstrates all of the following:
- 1) A completed Wetland Mitigation Project Completion of Construction Form that certifies the mitigation project has been constructed as designed and that the proposed area of wetland creation, restoration or enhancement has been accomplished. This form is located at on the Division's website at: www.nj.gov/dep/landuse in the Mitigation tab of Forms & Checklists.
 - 2) An as-built plan of the completed mitigation area showing grading and any structures included in the approved mitigation proposal;
 - 3) Photographs, both pre and post-construction, of the tidal wetland mitigation project including a photo location map as well as the GPS waypoints in NJ state plane coordinates NAD 1983; and
 - 4) For Tidal Wetland creation projects only:

- i. Documentation that the mitigation site meets the definition of a tidal wetland as defined at N.J.A.C. 7:7-9.27, including the results of monitoring over one or more successive lunar months (see N.J.A.C. 7:7-17.12(i)).
- m. The permittee is responsible for assuming all liability for any corrective work necessary to meet the success criteria established above (N.J.A.C. 7:7-17.13(h)). The Division will notify the permittee in writing if the mitigation project is considered to be a failure. Within 30 days of notification, the permittee shall submit a revised mitigation plan to meet the success criteria identified above for Division review and approval. The financial surety, if required, will not be released by the Division until such time that the permittee satisfies the success criteria as stipulated above.

INTERTIDAL AND SUBTIDAL SHALLOWS OR TIDAL WETLANDS MITIGATION CONDITIONS-
NON SINGLE FAMILY

1. Within **30 days of issuance of this permit**, the permittee shall submit a mitigation proposal to mitigate for the permanent loss of **0.043 acres** of intertidal and subtidal shallows to the Division of Land Use Regulation (Division) for review and approval. The permittee shall also submit to the Division a restoration plan relative to the temporary disturbance to **0.157 acres** of intertidal subtidal shallows. At this time, no restoration plan has been submitted to the Division.
 - Please note that the Department is in receipt of a mitigation proposal which includes addressing the additional mitigation requirements for this permit through existing, on-going mitigation areas approved for previous permits associated with the Route 72 Bridge reconstruction project. However, the existing mitigation areas have not been completed, are still undergoing monitoring, and have not shown clear signs of successful establishment of natural resources. Therefore, the Department cannot approve the applicant's proposal at this time. Please continue to consult with the Division's Mitigation Unit for an acceptable mitigation option for this permit.
2. All mitigation shall be conducted prior to or concurrent with the construction of the approved project (**N.J.A.C. 7:7-17.3**). Concurrent means that at any given time, the mitigation must track at the same or greater percentage of completion as the project as a whole.
3. The permittee shall mitigate for the loss of **0.043 acres** of intertidal and subtidal shallows through the creation of intertidal and subtidal shallows, at a creation to loss ratio of 1:1, on the site where the filling occurred.
4. If mitigation for the filling of intertidal and subtidal shallows is not feasible onsite then mitigation shall be performed offsite through the creation of intertidal and subtidal shallows at a ratio of 1:1 within the same estuary as the site of the filling or through the purchase of in-kind credits from a mitigation bank with a service area that includes the site of the filling.
5. If mitigation for the filling of intertidal and subtidal shallows is not feasible onsite or offsite, then mitigation shall be in the form of restoration, creation, or enhancement of a wetland within the same estuary as the site of the filling in accordance with N.J.A.C. 7:7-17.13 or through the purchase of out-of-kind wetland credits from a mitigation bank with a service area that includes the site of the filling.

6. As of the date of this permit, **there are no mitigation banks** serving your project area. Additional banks may be approved at any time, so please contact the Mitigation Unit for the most up to date service area information if you would like additional options.
7. If mitigation for the filling of intertidal and subtidal shallows is not feasible, then mitigation shall be in the form of one or both of the following, as determined in consultation with the Department:
 - a. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.9; or
 - b. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.
8. If mitigation for the filling of intertidal and subtidal shallows as described above is not feasible, then mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.19.
9. If the permittee is proposing to construct an on-site intertidal subtidal shallows creation project, (see N.J.A.C. 7:17.11(b)) one acre of creation must be performed for each acre disturbed. If the permittee is proposing to mitigate through off-site creation, restoration or enhancement project, or by purchasing credits from a mitigation bank serving the area an enhancement or creation project, the ratio of disturbance to mitigation required shall be in accordance with N.J.A.C. 7:7-17.11(c) through (g). If proposing onsite or offsite mitigation, provide the following:
 - a. Within 30 days of the issuance of this permit, submit for review and approval, a conceptual plan showing the location and proposed hydrology of the mitigation site; and
 - b. Within 30 days of receiving Division approval of the conceptual mitigation proposal, submit a final design of the mitigation project.
10. The following requirements will apply to an onsite or offsite intertidal subtidal shallows mitigation project:
 - a. Obtain a secured bond, or other financial surety acceptable to the Department, and in an amount consistent with the requirements at N.J.A.C. 7:7-17.
 - b. Complete, sign and file with the County Clerk (the Registrar of Deeds and Mortgages in some counties), a conservation restriction protecting the mitigation site that meets the requirements of N.J.A.C. 7:7-18.
 - c. Notify the Mitigation Unit at the Division of Land Use Regulation in writing at least 30 days prior to the start of construction of the wetland mitigation project to arrange an on-site pre-construction meeting among the permittee, the contractor, the consultant and the Division.
 - d. In accordance with N.J.A.C. 7:7-17.11(h), within 60 days following the completion of the mitigation project, submit a Construction Completion Report to the Division detailing as-built conditions (see below) and any changes to the approved mitigation plan that were made during construction (N.J.A.C. 7:7-17.11(h)). The Construction Completion Report shall contain, at a minimum, the following information:

- Please note that the Department is in receipt of a mitigation proposal which includes addressing the additional mitigation requirements for this permit through existing, on-going mitigation areas approved for previous permits associated with the Route 72 Bridge reconstruction project. However, the existing mitigation areas have not been completed, are still undergoing monitoring, and have not shown clear signs of successful establishment of natural resources. Therefore, the Department cannot approve the applicant's proposal at this time. Please continue to consult with the Division's Mitigation Unit for an acceptable mitigation option for this permit.
- 2. If any SAV plants are encountered within areas where permanent impacts are proposed, the SAV plants shall be transplanted to the maximum extent practicable, to areas that have been restored to the appropriate grades to reestablish SAV habitat.
- 3. In order to minimize impacts to submerged aquatic vegetation (SAV) habitat, all turbidity barriers shall be installed prior to any in-water work being performed between **July 1** and **December 31** of each year and maintained for the duration of construction activities.
- 4. Silt fencing and/or floating turbidity barriers must be installed prior to and be maintained for the duration of any dewatering discharging effluent.
- 5. Work must be performed within existing and proposed rights-of-way and/or temporary construction easements as shown on the approved plans. Excavators and other construction equipment used for construction purposes may not be staged or anchored in water areas outside of these boundaries.
- 6. A final SAV mitigation plan shall be provided to the Department for review and approval. In-kind mitigation for **0.147 acres** of permanent impacts to SAV habitat shall be provided at a 3:1 planting ratio. A combination of *Zostera marina* (eelgrass) and *Ruppia maritima* (widgeon grass) shall be planted. The plan shall provide details including, but not limited to, ratios of the species planted, monitoring and success criteria for planted SAV, monitoring and success criteria for areas of potentially permanent SAV impacts, areas proposed for planting, source SAV beds, and proposed monitoring reference sites. The plantings shall be monitored for a minimum of three years to ensure no net loss. Additional monitoring and replanting may be necessary to achieve a no net loss performance standard. The applicant shall develop this mitigation plan in coordination the NJDEP and the National Marine Fisheries Service.
- 7. *Prior to any mitigation plantings of transplant plant material from a donor bed*, in accordance with an approved mitigation plan, the applicant must obtain a Scientific Collecting Permit from the New Jersey Division of Fish and Wildlife.

Approved Plans

Six (6) sheets prepared by WSP, Inc., undated, last revised August 30, 2019, unless otherwise noted, entitled:

“NEW JERSEY DEPARTMENT OF TRANSPORTATION PERMIT PLANS SET #1 ROUTE 72 MANAHAWKIN BAY BRIDGES CONTRACT Nos. 025113850, 026118012, 026118013 & 026118014,” sheets PPI-1 through PPI-4 and PPI-11 of PPI-12, sheet PPI-11 unrevised, and,

“NEW JERSEY DEPARTMENT OF TRANSPORTATION SCOUR COUNTERMEASURES & PUBLIC ACCESS IMPROVEMENTS PERMIT PLANS SET #1 ROUTE 72 MANAHAWKIN BAY BRIDGES CONTRACT Nos. 025113850, 026118012, 026118013 & 026118014,” sheet PPI-12 of PPI-12.

A copy of this letter shall be attached to the original permit. If you have any questions, please do not hesitate to contact Becky Mazzei at Becky.Mazzei@dep.nj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Jones".

Christopher Jones, Manager
Bureau of Urban Growth and Redevelopment
Division of Land Use Regulation

Cc: Land Use Compliance & Enforcement, Toms River c/o Harry Nicol and Daniel Fischer
Township of Stafford Construction Official
Borough of Ship Bottom Construction Official