

FLOOD HAZARD AREA CONTROL ACT RULES

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elevation, so as to eliminate or reduce potential flood damage to the building and its contents. There are two types of flood-proofing:

1. Wet flood-proofing, which are measures that allow floodwaters to enter a building, and thereby balance hydrostatic pressure on the structure during a flood. Wet flood-proofing generally includes using flood-resistant materials, protecting mechanical and utility equipment, and using openings or breakaway walls; and

2. Dry flood-proofing, which are measures that prevent floodwaters from entering a building. Dry flood-proofing generally includes making the building watertight through sealing openings, installing waterproof doors and windows, or sealing walls with waterproof coatings, impermeable membranes, and/or a supplementary layer of masonry or concrete.

“Floodway” means land, and the space above that land, which lies within the inner portion of the flood hazard area, and which is mathematically determined to be required to carry and discharge floodwaters resulting from the 100-year flood under certain conditions. The floodway always includes the channel and often includes 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 the floodway.

“Freshwater wetlands” means an area defined as such under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-1.4.

“General permit” means a flood hazard area permit to undertake a regulated activity for which the terms and conditions are established in rules promulgated under this chapter at N.J.A.C. 7:13-6 and 9, and for which a person must submit an application for authorization.

“General permit-by-certification” means a flood hazard area permit to undertake a regulated activity for which the terms and conditions are established in rules promulgated under this chapter at N.J.A.C. 7:13-6 and 8, and which may be conducted upon Department approval through the electronic permitting process set forth at N.J.A.C. 7:13-18.3.

“Grace period” means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

“Grading” means the movement of soil or other material on the surface of the ground by humans resulting in a change in topography.

“Habitable building” means a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial

building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

“Hazardous substance” means material defined as such in the Spill Compensation and Control Act, N.J.S.A. 58:10 23.11.

“Highlands Preservation Area” means that geographic portion of the State described in the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-7(b)1.

“Hydraulic capacity” means the ability of a channel, flood hazard area or structure to conduct water. Hydraulic capacity is a function of cross-sectional area, hydraulic friction, shape, skew, slope and the presence or absence of obstructions.

“Impervious surface” means a surface that is covered with a layer of material so that it is highly resistant to infiltration by water.

“Individual permit” means a flood hazard area permit to undertake a regulated activity issued by the Department after submittal of an application, and after the Department conducts a project-specific review under the applicable requirements at N.J.A.C. 7:13-10, 11, and 12.

“In-kind” or “in-kind replacement” means the reconstruction or replacement of all or a portion of a lawfully existing structure without altering the location, orientation, physical dimensions, and hydraulic capacity of the structure. For example, the in-kind replacement of a bridge or culvert is one in which the reconstructed or replaced structure is the same shape, cross-sectional area, width, height, and length as the existing structure, is constructed of materials hydraulically equivalent to the existing structure, and is situated in the same location, and at the same orientation and invert elevation, as the existing structure.

“Invasive plant species” means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

“Invert” means the lowest point in a given cross-section of a channel, as well as the lowest point on the inside of a pipe, culvert or any other structure with an opening such as a flood vent.

“Jacking” means the placement of an underground utility line beneath a channel by means of horizontally pushing, drilling or otherwise forcing through the earth below the channel in such a way that the channel is not disturbed.

“Land surveyor” means a professional land surveyor who is licensed to practice in New Jersey.

“Lawfully existing” means an existing fill, structure and/or use, which meets all Federal, State and local laws, and which is not in violation of this chapter because it was established:

1. Prior to January 31, 1980; or
2. On or after January 31, 1980, in accordance with the requirements of this chapter as it existed at the time the fill, structure and/or use was established.

“Low dam” means an artificial dike, levee or other barrier, which is constructed for the purpose of impounding water on a permanent or temporary basis, but which does not raise the water surface elevation enough to meet the definition of a dam.

“Low-flow aquatic passage” means the ability of aquatic species to travel upstream and downstream in a waterway without impediment during low-flow conditions in a channel. Natural channel beds often possess small rivulets that serve to provide aquatic passage in this way during low-flow conditions, which can occur during dry periods of the year. Bridges, culverts and other manmade structures may also be designed to provide low-flow aquatic passage by inclusion of a linear depression throughout the bottom of the structure in the direction of flow, which collects water during low-flow conditions and allows aquatic species to pass through the structure without impediment.

“Lowest floor” means the floor of the lowest enclosed area of a building, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access, or limited storage, which is constructed in compliance with this chapter.

“Method 1” or the “Department delineation method” means the method of determining the flood hazard area design flood elevation and floodway limit from State adopted delineations, as described at N.J.A.C. 7:13-3.3.

“Method 2” or the “FEMA tidal method” means the method of determining the tidal flood hazard area design flood elevation and floodway limit from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(d).

“Method 3” or the “FEMA fluvial method” means the method of determining the fluvial flood hazard area design flood elevation and floodway limit from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(e).

“Method 4” or the “FEMA hydraulic method” means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rate

data from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(f).

“Method 5” or the “approximation method” means the method of determining the flood hazard area design flood elevation from the charts in chapter Appendix 1, incorporated herein by reference, as described at N.J.A.C. 7:13-3.5.

“Method 6” or the “calculation method” means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rates provided by an applicant for a verification under this chapter, as described at N.J.A.C. 7:13-3.6.

“Mitigation bank” means an operation in which riparian zone vegetation is created, restored, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to riparian zone vegetation.

“Modification” means a document issued by the Department to revise a valid, previously issued verification, authorization under a general permit, or individual permit as described at N.J.A.C. 7:13-22.5 and 6.

“Multi-residence building” means any building intended to provide three or more units of temporary or permanent residence for humans. Examples of a multi-residence building include an apartment building, condominium complex, townhouse complex, hotel, motel, and any mixed-use building that contains three or more units of temporary or permanent residence. A single-family home, duplex, or critical building as defined in this section is not a multi-residence building.

“NGVD” means the national geodetic vertical datum of 1929, which is the reference datum for all surveying, topography and elevations described in this chapter.

“Non-trout water” means a water that is defined as such in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B. A non-trout water is a water that is not trout production, trout maintenance or trout stocked.

“NRCS” means the United States Department of Agriculture Natural Resource Conservation Service.

“Obstruction” means material placed and/or situated in a flood hazard area that can impede or change the direction of the flow of water, either by itself or by catching or collecting debris carried by such water.

“100-year flood” in fluvial areas means a flood that has a one percent probability of being equaled or exceeded within a one-year period for a given geographic location and/or watershed. In tidal areas, a “100-year flood” means a flood caused by a tidal surge in the Atlantic Ocean, which has a one percent probability of being equaled or exceeded within a one-year period.

Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

“Top of bank” means the upper limit of the bank of a regulated water, which is typically characterized by an observable change or break in the slope of the land. Where the top of bank is not discernible along the regulated water, the top of bank shall be considered:

1. The feature’s centerline, for a linear regulated water that has a drainage area of less than 150 acres;
2. The limits of the two-year flood, for a linear regulated water that has a drainage area of 150 acres or more;
3. The normal water surface limit, for:
 - i. A linear fluvial regulated water that contains water at all times and has a drainage area of 10 square miles or more; or
 - ii. A non-linear fluvial regulated water, such as a lake or pond;
4. The mean high water line, for a non-linear tidal regulated water, such as a bay or inlet; and
5. The feature’s centerline, for an amorphous or irregularly-shaped feature, such as a wetland complex through which a regulated water flows but lacks a discernible or coherent channel.

“Trout maintenance water” means a section of water designated as trout maintenance in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B.

“Trout production water” means a section of water identified as trout production in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B.

“Trout stocked water” means a section of water stocked with trout by the Department’s Division of Fish and Wildlife and listed in N.J.A.C. 7:25-6.

“Unsecured material” means the following:

1. A structure that is not secured to resist flotation, collapse, and displacement due to hydrostatic and hydrodynamic forces from floodwaters; and
2. Material placed on the surface of the ground, which would likely become buoyant, mobile, or lifted by water during a flood, or otherwise be transported offsite by floodwaters. Examples include building material, construction equipment, landscaping material, patio furniture, piles of soil, stone, or wood, trash, vegetation in planters or root balls, and vehicles.

“USDA” means the United States Department of Agriculture.

“USGS quad map” means a topographic quadrangle map issued by the United States Geological Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000.

“Utility line” means a pipe, cable, line or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a pole or tower required to support a utility line, but does not include a tower that only transmits or receives electromagnetic waves through the air, such as for radio, television or telephone transmission.

“Verification” means a document issued by the Department under N.J.A.C. 7:13-5.1, which establishes the flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or riparian zone limit on a site or any portion of a site.

“Water” means a collection of water on the surface of the ground, including, but not limited to, a bay, brook, creek, ditch, lake, pond, reservoir, river, or stream. A water also includes the path or depression through which the water flows or is confined. A water can be either naturally-occurring or resulting from human activity, in which case it is referred to as “manmade.” A naturally-occurring water that is piped, relocated, or otherwise modified remains a naturally-occurring water for the purposes of this chapter. An underground pipe or culvert that conveys stormwater runoff is not a water unless the pipe or culvert was constructed to enclose, replace, or divert a previously existing, naturally-occurring water. (Note: Not all waters are regulated.)

“Water control structure” means a structure within or adjacent to a water, which intentionally or coincidentally alters the hydraulic capacity, design flood elevation, flood hazard area limit and/or floodway limit of the water. Examples of a water control structure include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall and weir.

“Water surface elevation” means the elevation of the surface of a water, measured in feet NGVD, and determined either by special calculation or gauge. For the purposes of determining compliance with a requirement of this chapter, a water surface elevation is rounded to the nearest 0.1 feet.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Deleted definitions “Crawl space”, “Dry flood-proofing” and “FEMA flow rate”; in definition “FEMA flood insurance study”, inserted the first occurrence of “flood insurance” and the third sentence, and deleted “or flood profiles,” following “studies”; added definitions “FEMA 100-year flood elevation”, “Flood-proofing”, “Multi-residence building”, “100-year flow rate”, “Substantial damage” and “Substantial improvement”; rewrote definitions “Lowest floor”, “Reconstruct” and “Repair”; and in definition “Public building”, deleted former paragraph 8, recodified former paragraphs 9 and 10 as paragraphs 8 and 9 and in paragraph 9, substituted “8” for “9”.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

Amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote the section.

7:13-1.3 Forms, checklists, information, technical manual; Department address and website

(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (c) below, by telephone at (609) 984-0162, or through the Division's website at www.nj.gov/dep/landuse. Further information about the Department can be accessed at www.nj.gov/dep.

(b) The Division has prepared a Flood Hazard Area Technical Manual, which provides guidance concerning the basic engineering and environmental concepts that are the foundation of this chapter, as well as guidance and examples for performing calculations and analyses under this chapter. The manual is available from the Division's website listed at (a) above.

(c) Applications, fees, and other correspondence shall be submitted to the following addresses:

1. For regular mail:

New Jersey Department of Environmental Protection
Division of Land Use Regulation
Mail Code 501-02A, P.O. Box 420
Trenton, NJ 08625;

2. For hand delivery, courier service, and overnight delivery:

New Jersey Department of Environmental Protection
Division of Land Use Regulation
501 East State Street
5 Station Plaza, Second Floor
Trenton, NJ 08609; and

3. For submittal of an application for authorization under a general permit-by-certification, refer to the Department's website at www.nj.gov/dep/online.

(d) Questions regarding the requirements of this chapter or about the status of a particular application can be directed to the Division of Land Use Regulation Technical Support Center at (609) 777-0454, via e-mail at LURTechSupport@dep.nj.gov, or by using an online contact form at www.nj.gov/dep/landuse/contact.html.

(e) Applications or other materials sent or delivered to the Department at an address other than those listed in (c) above shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Types of permits and approvals".

7:13-1.4 Delegation of authority

(a) Except as specified in (e) below, the Department may delegate authority to take action under this chapter to a county governing body. A county governing body seeking to assume all or a portion of the Department's authority under this chapter shall do the following:

1. Retain employees with professional training and education capable of properly administering the permitting program established by this chapter; and

2. Submit to the Department a written request for delegation that includes the following:

i. A description of the aspects of the Department's authority that the county governing body seeks to assume;

ii. An agreement to uphold the requirements of this chapter;

iii. A written statement by the county governing body agreeing to apply for and accept delegation of authority, pursuant to N.J.S.A. 58:16A-55.6, and agreeing to adopt, in the event the request is approved, an ordinance or resolution enabling the body to carry out the delegation. A copy of the proposed ordinance or resolution shall also be provided; and

iv. A detailed description of the personnel, the physical resources and the source and amount of funding the county governing body shall use to fulfill the obligations it seeks to assume.

(b) Within 60 calendar days of receipt of a request by a county governing body in accordance with (a)2 above, the Department shall:

1. Delegate all or a portion of the authority sought by the county governing body. Such delegation may include conditions to ensure compliance with this chapter, and may be for a specified period of time, as the Department deems appropriate; or

2. Deny the request for delegation and provide the reasons why the Department has determined such delegation is not appropriate.

(c) A county governing body that has assumed delegation shall permanently retain, and make available for Department review, a copy of all documents, plans, maps, memoranda and notes necessary to document that it has discharged its delegated duties for each application it processes. The Department shall review these records at least biannually. The Department can at any time terminate delegation if it determines that the county governing body has failed to properly administer the authority delegated to it, or has failed to maintain the necessary documentation.

(b) An activity that meets the requirements of a general permit-by-certification may be conducted when the person proposing to conduct the activity receives the automatic authorization resulting from completion of the application submission through the Department's electronic permitting system in accordance with N.J.A.C. 7:13-18.3.

(c) An activity that meets the requirements of a general permit may be conducted when the person proposing to conduct the activity receives authorization from the Department in accordance with N.J.A.C. 7:13-21.

(d) A permit-by-rule or an authorization under a general permit-by-certification or general permit does not relieve the person conducting the authorized regulated activities from the obligation to obtain any other applicable permits or approvals required by law.

7:13-6.4 Use of more than one permit on a single site

(a) A person may undertake a regulated activity more than once on a single site. The activity may be authorized each time under a single permit-by-rule, general permit-by-certification, or general permit, provided the individual limits and conditions of the permit are not exceeded, either individually or cumulatively. For example, if a particular activity may be conducted under a permit-by-rule with a disturbance limit of 750 square feet and the same activity may be authorized under a general permit with a disturbance limit of 1,500 square feet, a person who has disturbed 750 square feet of riparian zone vegetation under a permit-by-rule may apply for a general permit to increase the area of disturbance but would only be allowed a maximum of an additional 750 square feet so as not to exceed the 1,500 square feet total disturbance limitation applicable to the general permit.

(b) A person may undertake more than one regulated activity on a single site. The activities may be authorized under one or more permit-by-rule, general permit-by-certification, and/or general permit, provided the individual limits and conditions of each permit are not exceeded.

(c) Once the limits and conditions of a permit-by-rule, general permit-by-certification, and/or general permit have been reached on a single site:

1. No further activities under that permit can be authorized on that site, regardless of how much time passes, or whether the site is subsequently subdivided or transferred to a new owner; and

2. A person seeking to undertake the regulated activity on that site must obtain an individual permit under this chapter authorizing the regulated activity.

(d) On a single site, one or more permits-by-rule, general permits-by-certification, and/or general permits may be used in combination with an individual permit, provided the individual limits and conditions of each permit are not exceeded, either individually or cumulatively.

7:13-6.5 Duration of an authorization under a general permit-by-certification

(a) An authorization under a general permit-by-certification is valid for five years from the date of issuance of the authorization.

(b) The five-year term of an authorization under a general permit-by-certification shall not be extended.

(c) All regulated activities being conducted pursuant to an authorization under a general permit-by-certification shall immediately cease if the authorization expires.

(d) If an authorization under a general permit-by-certification expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.

7:13-6.6 Duration of an authorization under a general permit

(a) Except as provided in (b) below, an authorization under a general permit is valid for five years from the date of issuance of the authorization.

(b) The five-year term of an authorization under a general permit may be extended one time for five years pursuant to N.J.A.C. 7:13-22.3.

(c) All regulated activities being conducted pursuant to an authorization under a general permit shall immediately cease if the authorization expires, including any extension thereof under N.J.A.C. 7:13-22.3.

(d) If an authorization under a general permit expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.

1. If no regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review.

2. If any regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design

consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on flooding or the environment.

7:13-6.7 Conditions applicable to a permit-by-rule or to an authorization pursuant to a general permit-by-certification or a general permit

(a) A person conducting regulated activities pursuant to a permit-by-rule, or pursuant to an authorization under a general permit-by-certification or general permit shall comply with:

1. The specific conditions set forth in the permit-by-rule, general permit-by-certification, or general permit itself, including the conditions incorporated by reference into each of those permits set forth at (b) below; and

2. The conditions that apply to conducting regulated activities under any authorization or permit, set forth at N.J.A.C. 7:13-22.2.

(b) The following conditions are incorporated by reference in each permit-by-rule, general permit-by-certification, or general permit:

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;

2. The regulated activity shall not adversely affect low-flow aquatic passage in any regulated water;

3. The regulated activity shall not expose unset or raw cement to flowing water within any channel or regulated water during construction;

4. The regulated activity shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species, and shall not jeopardize the continued existence of any local population of a threatened or endangered species;

5. Except for normal property maintenance conducted in accordance with permit-by-rule 1 at N.J.A.C. 7:13-7.1 and forest management activities under permit-by-rule 26 at N.J.A.C. 7:13-7.26, all riparian zone vegetation that is cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit. Portions of the riparian zone occupied by an authorized structure need not be replanted.

i. Except as provided in (b)5ii below, the vegetation replanted shall:

(1) Consist of vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed. For example, herbaceous vegetation may be replaced with the same type of vegetation or with trees, but the trees in forested areas must be replaced with trees of equal or greater density and ecological function and value; and

(2) Consist of native, non-invasive vegetation, except in an actively disturbed area. In an actively disturbed area, the vegetation may be replaced with the same type of vegetation that was cleared, cut, or removed, or with another kind of vegetation typical of an actively disturbed area. For example, lawn grass may be replaced with garden plants or agricultural crops.

ii. In cases where replanting in accordance with (b)5i above would interfere with continued access to or maintenance of a structure that is required by Federal, State, or local law, the vegetation replanted shall meet the requirements of (b)5i above to the extent feasible.

(c) The person undertaking a regulated activity under a permit-by-rule, or seeking authorization under a general permit-by-certification, is responsible for ensuring that each condition of the permit-by-rule or general permit-by-certification applicable under (a) above is met. The Department will not entertain a request to review engineering calculations, in the context of an applicability determination or otherwise, for the purpose of determining that a proposed activity will meet any condition of a permit-by-rule or general permit-by-certification.

(d) In addition to the conditions that apply to every authorization pursuant to a general permit under (a) above, the Department shall establish conditions in a specific authorization pursuant to a general permit, on a case-by-case basis, as required to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

SUBCHAPTER 7. PERMITS-BY-RULE

7:13-7.1 Permit-by-rule 1—normal property maintenance

(a) Permit-by-rule 1 authorizes clearing, cutting, and/or removal of riparian zone vegetation which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, easement, right-of-way, field, lawn, park, and/or garden. Normal property maintenance includes:

1. Pruning;

2. Selective tree cutting, such as removing a dead, fallen, or unsafe tree;

3. Planting native, non-invasive plant species;

4. Periodic clearing, cutting, and/or removal of vegetation within an actively disturbed area, such as mowing and clearing nuisance vegetation; and

5. Removing trash, debris, and dead vegetation by hand.

(b) This permit-by-rule does not authorize the following activities:

1. Burning or applying herbicide to riparian zone vegetation;

2. Grading and other changes in topography;

3. Construction of structures, or placement of fill or impervious surfaces; and

4. Removal of riparian zone vegetation not listed in (a) above, such as removal of vegetation to accommodate an ongoing or proposed regulated activity or to create new open or landscaped areas.

7:13-7.2 Permit-by-rule 2—repair of a lawfully existing structure

(a) Permit-by-rule 2 authorizes the repair of a lawfully existing structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;

2. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the structure, where such disturbance is necessary to facilitate its repair; and

3. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.3 Permit-by-rule 3—in-kind replacement of a lawfully existing structure

(a) Permit-by-rule 3 authorizes the in-kind replacement of a lawfully existing structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The structure is not located within a floodway;

2. The structure being replaced is not a retaining wall or bulkhead subject to the requirements of N.J.A.C. 7:13-12.13 or a habitable building;

3. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the structure, where such disturbance is necessary to facilitate its replacement; and

4. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.4 Permit-by-rule 4—removal of any lawfully existing fill or structures

(a) Permit-by-rule 4 authorizes the removal of any lawfully existing fill or structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The fill or structure is not located within a floodway;

2. The fill or structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements;

3. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the fill or structure, where such disturbance is necessary to facilitate its removal; and

4. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.5 Permit-by-rule 5—removal of accumulated sediment and debris from a regulated water by hand

(a) Permit-by-rule 5 authorizes the removal of accumulated sediment and debris by hand, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No machinery is used within the regulated water except for handheld equipment such as hoses and hydraulic pumps;

2. The material removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;

3. Where work is proposed along a trout production or maintenance water, the appropriate timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;

4. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;

5. No trees are cleared, cut, and/or removed in a riparian zone; and

6. All material removed from the regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

7:13-7.6 Permit-by-rule 6—removal of major obstructions from a regulated water with machinery

(a) Permit-by-rule 6 authorizes the use of machinery to remove one or more major obstructions from a regulated water that cannot be removed by hand, such as a fallen tree, abandoned vehicle, furniture, and other large debris, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All machinery is situated outside the regulated water, except for handheld equipment such as chainsaws. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven or otherwise placed in the regulated water;

2. No fill material or accumulated sediment is removed from the regulated water;

3. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized; and

4. All material removed from the regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local laws.

7:13-7.7 Permit-by-rule 7—placement of no more than five cubic yards of landscaping material

(a) Permit-by-rule 7 authorizes the placement of no more than five cubic yards of landscaping material, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The landscaping material is not placed within a floodway;

2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

3. The landscaping material does not constitute a structure. For example, five cubic yards of stone, topsoil, wood chips, or other landscaping material can be placed under this permit-by-rule but the construction of a building that displaces five cubic yards of flood storage volume cannot;

4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and

5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, or removed.

7:13-7.8 Permit-by-rule 8—construction at or below grade in a fluvial flood hazard area

(a) Permit-by-rule 8 authorizes construction at or below grade construction in a fluvial flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All construction is situated at or below grade and the existing ground elevation is not raised;

2. No habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;

3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;

5. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation; and

6. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.

7:13-7.9 Permit-by-rule 9—general construction activities in a tidal flood hazard area

(a) Permit-by-rule 9 authorizes general construction activities in a tidal flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The existing ground elevation is not raised in any floodway;

2. No aboveground structure is constructed in any floodway;

3. No habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;

4. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;

6. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation; and

7. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.

7:13-7.10 Permit-by-rule 10—general construction activities located outside a flood hazard area in a riparian zone

(a) Permit-by-rule 10 authorizes general construction activities located outside a flood hazard area in a riparian zone, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;

2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully

existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;

4. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation; and

5. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.

7:13-7.11 Permit-by-rule 11—reconstruction, relocation, and/or elevation of a lawfully existing building

(a) Permit-by-rule 11 authorizes the reconstruction, relocation, and/or elevation of a lawfully existing building located outside a floodway at the time of reconstruction, relocation, and/or elevation, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The building is not expanded within or relocated into a floodway;

2. The footprint of the existing building does not increase by more than 400 square feet, cumulatively, since November 5, 2007;

3. The lowest floor of the building is reconstructed or elevated to at least one foot above the flood hazard area design flood elevation;

4. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);

5. Any existing enclosure below the lowest floor of the building, which does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;

6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

7. Any building being relocated is either moved outside a riparian zone or located within an actively disturbed area; and

8. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction, relocation, and/or elevation.

7:13-7.12 Permit-by-rule 12—construction of an addition(s) to a lawfully existing habitable building

(a) Permit-by-rule 12 authorizes the construction of one or more additions above or adjoining a lawfully existing habitable building located outside a floodway at the time of the construction, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The addition is not located within a floodway;

2. The footprint of the existing building does not increase by more than 400 square feet, cumulatively, since November 5, 2007;

3. The lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation, unless otherwise approved by the local construction official having jurisdiction over the project;

4. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building;

5. Any enclosure below the lowest floor of the addition is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);

6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate the construction of the addition.

7:13-7.13 Permit-by-rule 13—construction of a non-habitable building(s)

(a) Permit-by-rule 13 authorizes the construction of one or more non-habitable buildings, such as a shed, animal shelter, or storage area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The building is not located within a floodway;

2. The footprint of all buildings constructed under this permit-by-rule does not exceed 200 square feet, cumulatively, since November 5, 2007;

3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

4. No trees are cleared, cut, and/or removed in a riparian zone except within 10 feet of a proposed building, where such disturbance is necessary for its placement or construction.

7:13-7.14 Permit-by-rule 14—construction of a partially-open structure(s)

(a) Permit-by-rule 14 authorizes the construction of one or more partially-open structures with a roof, such as a car port, covered patio, or pole barn, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The structure is not located within a floodway;
2. The structure is not enclosed with walls on any side below the flood hazard area design flood elevation;
3. The roof is supported solely by poles or is cantilevered from an adjoining structure;
4. The footprint of all structures constructed under this permit-by-rule does not exceed 5,000 square feet, cumulatively, since November 5, 2007;
5. No fill is placed in the flood hazard area except for any poles necessary to support the roof;
6. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
7. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

7:13-7.15 Permit-by-rule 15—construction of barrier-free access to a building

(a) Permit-by-rule 15 authorizes the construction of barrier-free access to a building, such as stairs, ramps, or fire-escapes, provided the conditions at N.J.A.C. 7:13-6.7 are met and the access is:

1. Required by a public entity;
2. Constructed in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;
3. Constructed outside any channel; and
4. Constructed outside a floodway, unless location in the floodway is unavoidable. Where the access is unavoidably located in a floodway, it shall be oriented to minimize obstruction to flow and shall be constructed of material that will remain open to the passage of floodwaters, such as stairs and ramps that are open underneath and not placed on fill material.

7:13-7.16 Permit-by-rule 16—construction of a deck

(a) Permit-by-rule 16 authorizes the construction of a deck that is connected to a lawfully existing building, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The deck, if located in a flood hazard area, is not enclosed with walls either above or below its floor, except for protective or decorative fencing, banisters, or latticework that allow floodwaters to pass freely;

2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

3. The project will not result in a net loss of greater than 2,000 square feet of riparian zone vegetation.

7:13-7.17 Permit-by-rule 17—construction of a dock, pier, or boathouse

(a) Permit-by-rule 17 authorizes the construction of a fixed or floating dock, pier, or boathouse in tidal regulated waters and certain impounded fluvial regulated waters, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Where the dock, pier, or boathouse is situated along a fluvial regulated water, the following requirements are satisfied:

- i. The dock, pier, or boathouse is constructed within an impounded regulated water, such as a lake, pond or reservoir, which:

- (1) Has a surface area of one acre or more; or

- (2) Is situated along a regulated water that has a drainage area of less than one square mile;

- ii. The dock, pier, or boathouse covers no more than 2,000 square feet including all decking and pilings; and

- iii. The dock, pier, or boathouse does not extend more than 20 percent across the width of the regulated water;

2. Any fixed dock, pier, or boathouse is built on pilings and remains open underneath to allow floodwaters to pass freely;

3. Any stairs or other structures necessary for access to the dock, pier, or boathouse:

- i. Remain open underneath to allow floodwaters to pass freely;

- ii. Do not require the existing ground elevation to be raised in a fluvial flood hazard area; and

- iii. Are oriented to minimize obstruction to flow, such as by being set into the bank; and

4. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 10 feet of the dock, pier, or boathouse where such disturbance is necessary to facilitate its construction.

7:13-7.18 Permit-by-rule 18—construction of a boat launching ramp

(a) Permit-by-rule 18 authorizes the construction of a boat launching ramp, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

4. Construction and maintenance of a temporary forest road, provided:

i. The sole purpose of the road is to support or provide access for forestry activities;

ii. The road is no greater than 14 feet wide;

iii. No grading or changes in topography occur in a fluvial flood hazard area, except where unavoidable to accommodate the installation of a crossing of a regulated water. In such a case, grading and changes in topography shall be the minimum necessary to install the crossing;

iv. Any clearing, cutting, and/or removal of riparian zone vegetation and disturbance to channels is kept to the minimum necessary to successfully implement the project;

v. Temporary mats are used where feasible to minimize potential erosion and adverse impacts to riparian zone vegetation; and

vi. Any crossing of a regulated water is:

(1) Located as far downstream of the upstream property boundary of the site as feasible;

(2) Designed to not increase the frequency or depth of offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i); and

(3) Accomplished through the placement of a temporary span across the channel in a stable location, without disturbance to the channel. Where placement of a temporary span is not feasible, the placement of one or more pre-case culverts in channel, without permanent footings or abutments is acceptable. In such a case, stable material may be placed above the culvert to establish a level roadway surface, but the roadway shall not be paved; and

vii. The road is removed and all disturbed areas are restored to their pre-construction condition within six months of the construction of the roadway, or within 30 days of either of the following, whichever occurs first:

(1) The land use of the site being accessed by the road changes from forestry to another use; or

(2) The Department determines that the management activity at the site is not in compliance with the approved forest management plan.

(c) The removal of tree stumps is not authorized under this permit-by-rule.

(d) No clear-cutting of trees shall be undertaken in a riparian zone unless it is unavoidably necessary as part of a silviculture prescription for:

1. Atlantic white-cedar restoration. Information and guidance related to Atlantic white-cedar restoration are provided in the document entitled "Atlantic White-Cedar:

Ecology and Best Management Practices Manual," by K.A. Mylecraine and G.L. Zimmermann, dated 2000, which is available from the Department at: www.nj.gov/dep/parksandforests/forest/njfs_awc_bmps.html, unless the State Forester provides written approval authorizing modification of a practice in the manual where necessary to ensure the success of a given project;

2. Regeneration, where either of the following conditions creates the need for salvage and regrowth of trees and other vegetation, and the site would likely not naturally reestablish a healthy native ecosystem and therefore requires human intervention for proper and timely regeneration:

i. A forest stand is in decline or fragmenting; or

ii. Trees and other vegetation have been damaged by wildfire, storms, flooding, beaver activity, or other damage-causing factors; or

3. Sanitation, suppression, or salvage, where trees have experienced insect damage, disease outbreaks and/or death from drought or other conditions. This includes a situation where immediate suppression is necessary to remove the infested and/or infected host species, as well as the trees and vegetation in a surrounding buffer area, to prevent the adverse spread of the damage causing agent and reduce the corresponding potential future mortality in adjacent forest.

7:13-7.27 Permit-by-rule 27—repair, maintenance, and/or dredging of a manmade canal

(a) Permit-by-rule 27 authorizes the repair, maintenance, and/or dredging of the channel and/or embankments of a currently serviceable, manmade canal, which passes through a regulated area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. A public entity having jurisdiction over the canal determines that the proposed repair, maintenance, and/or dredging is necessary for proper operation of the canal;

2. No fill is placed in any floodway or fluvial flood hazard area, except where necessary to restore a failed embankment to its pre-failure condition;

3. No dredge material is placed in a flood hazard area; and

4. No trees are cleared, cut, and/or removed in a riparian zone outside the canal and its embankment.

7:13-7.28 Permit-by-rule 28—filling of an abandoned raceway

(a) Permit-by-rule 28 authorizes the filling of an abandoned raceway adjacent to a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. For the purposes of this permit-by-rule, a raceway is a conveyance structure that was created to divert water

from a channel for the purpose of providing hydrology or hydraulic power before returning the water to the channel;

2. The raceway is blocked at one or both ends so that water from the channel is not able to flow through the raceway under normal flow conditions;

3. The raceway does not supply hydrology to an otherwise isolated freshwater wetlands complex; and

4. The raceway is filled up to, but not above, the surrounding topography and the entire disturbed area is properly graded so as not to interfere with overland drainage.

7:13-7.29 Permit-by-rule 29—placement of one to three wind turbines

(a) Permit-by-rule 29 authorizes the placement of one to three wind turbines, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Each wind turbine is less than 200 feet tall, measured from the ground surface to the tip of the blade at its highest position;

2. The rotor swept area of each wind turbine does not exceed a cumulative area of 2,000 square feet. Rotor swept area means the area of the circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;

3. No wind turbine tower or site disturbance is located in a floodway;

4. No portion of any wind turbine, including blades, tower, and site disturbance, is located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)4i and ii below. Landscape Maps are available on the Department's interactive mapping website at www.nj.gov/dep/gis:

i. The wind turbine is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees, or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding, or mulching; or

ii. The wind turbine is located on a lawfully existing building or on lawfully existing impervious surface;

5. Where the wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower is a freestanding monopole;

6. No lighting is placed on or directed at the wind turbine except for lighting required by the Federal Aviation Administration. Shielded ground level security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

7. Development under this permit-by-rule does not result in construction of more than three wind turbines on a site, either solely or in conjunction with a previous wind turbine development;

8. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

9. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;

10. With the exception of guy wires on turbines 120 feet tall or less, all wires or cables that connect the wind turbine to an existing transmission line, are located underground; and

11. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.

7:13-7.30 Permit-by-rule 30—placement of solar panels and associated equipment

(a) Permit-by-rule 30 authorizes the placement of solar panels and associated equipment, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No panels and associated equipment are placed in a floodway;

2. The existing ground elevation is not raised in any floodway or fluvial flood hazard area;

3. Except for vertical support poles, all panels, cross-bracing, and other structural components, and all associated equipment are elevated to at least one foot above the flood hazard area design flood elevation. This permit-by-rule does not authorize the placement of solar panels that rely on ballast systems or concrete foundations for support;

4. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and

4. All material is removed from the site and all disturbed areas are restored to pre-storage topography within six months of the placement of the material.

7:13-7.49 Permit-by-rule 49—storage of unsecured material associated with a single-family home or duplex

(a) Permit-by-rule 49 authorizes the storage of unsecured material associated with the use or maintenance of a lawfully existing single-family home or duplex, such as lawn and garden equipment and materials, shelters for animals, trash receptacles, toys, vehicles, and wood piles, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored on the site;

2. The unsecured material is of an amount and nature typical for a single-family home or duplex;

3. No unsecured material is located within a floodway unless the material was lawfully situated there prior to November 5, 2007;

4. No unsecured material is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water and/or the material was lawfully situated there prior to November 5, 2007; and

5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.50 Permit-by-rule 50—storage of unsecured material associated with a habitable building or facility, other than a single family home or duplex

(a) Permit-by-rule 50 authorizes the storage of unsecured material associated with the use or maintenance of a lawfully existing habitable building or facility, such as dumpsters, vehicles, and equipment, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored unless:

i. The storage of hazardous substances is essential to the operation of the building or facility;

ii. The hazardous substances are isolated from potential contact with floodwaters; and

iii. The hazardous substances are stored in accordance with all Federal, State, and local requirements;

2. The unsecured material is of an amount and nature typical for the subject building or facility;

3. No unsecured material is located within a floodway unless the material was lawfully situated there prior to November 5, 2007;

4. No unsecured material is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water and/or the material was lawfully situated there prior to November 5, 2007; and

5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.51 Permit-by-rule 51—storage of unsecured material associated with a facility that stores and distributes material

(a) Permit-by-rule 51 authorizes the storage of unsecured material necessary for the operation of a lawfully existing facility, the primary function of which is to store and distribute material, such as a gravel pit, junk yard, landscaping business, lumber yard, vehicle dealership, rental facility, or impoundment area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored unless:

i. The storage of hazardous substances is essential to the operation of the facility;

ii. The hazardous substances are isolated from potential contact with floodwaters; and

iii. The hazardous substances are stored in accordance with all Federal, State, and local requirements;

2. The facility was established prior to November 5, 2007;

3. The facility has been in continuous operation since November 5, 2007;

4. The size of the facility and the peak volume of material stored in the flood hazard area have not increased since November 5, 2007;

5. The footprint of the material stored within the riparian zone is not increased; and

6. No trees are cleared, cut, and/or removed in a riparian zone.

7:13-7.52 Permit-by-rule 52—placement, storage, or processing of hazardous substances

(a) Permit-by-rule 52 authorizes the placement, storage, or processing of hazardous substances at a lawfully existing facility, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The facility was established prior to November 5, 2007;

2. The facility has been in continuous operation since November 5, 2007;

3. The facility is operating in compliance with all Federal, State, and local requirements;

4. The size of the facility and the peak volume of hazardous substances in the flood hazard area have not increased since November 5, 2007;

5. The footprint of the area in which the hazardous substances is stored within the riparian zone is not increased; and

6. No trees are cleared, cut, and/or removed in a riparian zone.

7:13-7.53 Permit-by-rule 53—placement, storage, or processing solid waste or recyclable materials at a lawfully existing facility

(a) Permit-by-rule 53 authorizes the placement, storage, or processing of solid waste or recyclable materials at a lawfully existing facility, such as a composting facility, landfill, or recycling center, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The facility was established prior to November 5, 2007;

2. The facility has been in continuous operation since November 5, 2007;

3. The facility is operating in compliance with all Federal, State, and local requirements;

4. The size of the facility and the peak volume of solid waste and/or recyclable materials in the flood hazard area have not increased since November 5, 2007;

5. The footprint of the area in which the solid waste and/or recyclable materials is stored within the riparian zone is not increased; and

6. No trees are cleared, cut, and/or removed in a riparian zone.

7:13-7.54 Permit-by-rule 54—continuation of lawfully existing agricultural activities

Permit-by-rule 54 authorizes the continuation of lawfully existing agricultural activities, such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture, and watering, on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and the activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area.

7:13-7.55 Permit-by-rule 55—commencement of new agricultural activities

(a) Permit-by-rule 55 authorizes the commencement of new agricultural activities, such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture, and watering, on land that is not actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The existing ground elevation is not raised in any floodway;

2. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area; and

3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.56 Permit-by-rule 56—continuation or commencement of natural resource conservation practices associated with agricultural activities

(a) Permit-by-rule 56 authorizes the continuation or commencement of natural resource conservation practices associated with agricultural activities, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are approved by the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;

2. The existing ground elevation is not raised in any floodway;

3. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area; and

4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.57 Permit-by-rule 57—construction of a non-habitable building for agricultural purposes

(a) Permit-by-rule 57 authorizes the construction of a non-habitable building for agricultural purposes, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footprint of the building is no more than 2,000 square feet;

2. The building is located outside any floodway;

3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.58 Permit-by-rule 58—filling or modification of a manmade regulated water for freshwater wetlands restoration

(a) Permit-by-rule 58 authorizes the filling or modification of a manmade regulated water for the purpose of freshwater wetlands restoration, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
2. The filling of the regulated water will not adversely affect overland drainage or flooding on adjoining properties; and
3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

7:13-7.59 Permit-by-rule 59—creation of a ford across a regulated water to manage livestock

(a) Permit-by-rule 59 authorizes the creation of a ford across a regulated water to manage livestock on actively farmed land, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
2. Livestock cross the regulated water on a regular basis prior to creation of the ford under this permit;
3. The creation of a stable ford will reduce ongoing damage to the regulated water caused by the existing access to the regulated water by livestock;
4. The ford is situated at or below the existing bed so that the ford will not obstruct flow;
5. The ford is designed to remain stable during the flood hazard area design flood;
6. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
7. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.60 Permit-by-rule 60—construction of a fence along and/or across a regulated water to manage livestock

(a) Permit-by-rule 60 authorizes the construction of a fence along and/or across a regulated water on actively farmed land, in order to limit or manage livestock access to a regulated water and/or to prevent livestock or other animals from accessing certain areas, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;

2. Any fence crossing or situated within a regulated water, or located in a floodway, has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement.

3. No trees are cleared, cut, and/or removed in a riparian zone, except where necessary to accommodate the placement of a fence across a regulated water;

4. Except in the immediate vicinity of any fence crossing a regulated water, the fence is placed generally parallel to the regulated water; and

5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.61 Permit-by-rule 61—construction of a pump and/or water intake structure in or along a regulated water for livestock

(a) Permit-by-rule 61 authorizes the construction of a pump and/or water intake structure in or along a regulated water on actively farmed land, in order to provide water for livestock outside the regulated water (and thereby limit livestock access to the regulated water), provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;

2. Fill within the flood hazard area is the minimum necessary to successfully implement the project;

3. The pump or structure will not impede bank-full flow in the regulated water; and

4. No more than 1,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

7:13-7.62 Permit-by-rule 62—construction of a manure management structure for livestock or horses

(a) Permit-by-rule 62 authorizes the construction of a manure management structure for livestock or horses, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;

2. The footprint of the structure is no more than 1,000 square feet;

3. The structure is situated as far from any regulated water as feasible;

4. Where it is not feasible to locate the structure outside a floodway, the structure is oriented to minimize obstruction to flow;

5. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

6. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

9. All material removed from a regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

**7:13-8.2 General permit-by-certification 2—
construction of an agricultural roadway
crossing**

(a) General permit-by-certification 2 authorizes the construction of a roadway across a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;

2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;

3. Disturbance within the regulated water is minimized;

4. Where the crossing is accomplished with a culvert, the culvert is stabilized with headwalls that have footings which extend at least three feet below grade, and which will prevent the culvert from displacement during the flood hazard area design flood;

5. Where the crossing is accomplished with a bridge, the bridge is constructed with abutments that have footings which extend at least three feet below grade, and which will prevent the bridge from displacement during the flood hazard area design flood;

6. The proposed roadway surface and all embankments are designed to remain stable during the flood hazard area design flood;

7. The applicant obtains an engineering certification confirming that the proposed roadway crossing will not increase flooding offsite;

8. The width of disturbance for the construction of the roadway through the riparian zone is no more than 25 feet; and

9. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-8.3 General permit-by-certification 3—
agricultural bank stabilization and/or bank
restoration activities**

(a) General permit-by-certification 3 authorizes bank stabilization and/or bank restoration activities along a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;

**SUBCHAPTER 8. GENERAL PERMITS-BY-
CERTIFICATION**

**7:13-8.1 General permit-by-certification 1—removal of
accumulated sediment and debris from a
regulated water for agricultural purposes**

(a) General permit-by-certification 1 authorizes the removal of accumulated sediment and debris from a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;

2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;

3. All machinery is situated outside the regulated water, except for handheld equipment such as hydraulic pumps. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven into or otherwise operated within in the regulated water;

4. The material to be removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;

5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;

6. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;

7. No trees are cleared, cut, and/or removed in a riparian zone;

8. The project is conducted from only one bank, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and

2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;

3. Where feasible, the project is accomplished by cutting back the bank to a stable slope and planting with native, non-invasive plant species suitable for stabilization. Generally a slope of no greater than 50 percent (a ratio of two horizontal to one vertical) is recommended to stabilize an eroded bank. Where vegetation alone cannot feasibly stabilize erosion, or would require greater than 2,000 square feet of trees to be cleared, cut, and/or removed, soil bioengineering shall be used to stabilize the erosion. In no case shall greater than 2,000 square feet of trees be cleared, cut, and/or removed;

4. The cross-sectional area of the regulated water is not significantly altered;

5. The applicant obtains an engineering certification confirming that the activity will not obstruct flow in the regulated water or floodway;

6. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project; and

7. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-8.4 General permit-by-certification 4—
enhancement of a riparian zone through the
planting of native, non-invasive plant species**

(a) General permit-by-certification 4 authorizes the enhancement of a riparian zone through the planting of native, non-invasive plant species, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The riparian zone to be enhanced consists of an actively disturbed area, an area of predominantly non-native vegetation, and/or an area of invasive plant species;

2. The applicant obtains an engineering certification confirming that the existing ground elevation is not being raised in any floodway or fluvial flood hazard area;

3. No activities are conducted in a channel;

4. No trees are cleared, cut, and/or removed within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

5. No trees are cleared, cut, and/or removed within the riparian zone of a Pinelands water, Category One water, or trout production water;

6. The plant community habitat type is not adversely altered. For example, invasive shrubs must be replaced with native shrubs or trees; and

7. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-8.5 General permit-by-certification 5—
reconstruction, relocation, expansion, and/or
elevation of a building outside a floodway**

(a) General permit-by-certification 5 authorizes the reconstruction, relocation, expansion, and/or elevation of a lawfully existing building located outside a floodway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The flood hazard area elevation for the site has been determined by a Department delineation or FEMA flood mapping, under Methods 1, 2, or 3 (at N.J.A.C. 7:13-3.3, 3.4(d), and 3.4(e), respectively);

2. The building is not located in a floodway;

3. The applicant obtains an engineering certification confirming that the building is not being expanded within or relocated into a floodway;

4. The footprint of the building has not increased by more than 750 square feet, cumulatively, since November 5, 2007;

5. The applicant obtains an engineering certification confirming that the lowest floor of the building is being reconstructed or elevated to at least one foot above the flood hazard area design flood elevation;

6. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);

7. Any existing enclosure below the lowest floor of the building, which does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;

8. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

9. Any building to be relocated is either moved outside a riparian zone or located within an actively disturbed area; and

10. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction, relocation, expansion, and/or elevation.

**7:13-8.6 General permit-by-certification 6—
construction of one single-family home or
duplex in a tidal flood hazard area**

(a) General permit-by-certification 6 authorizes the construction of one single-family home or duplex in a tidal flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant obtains an engineering certification confirming that no fill or structures are being placed within a floodway;
2. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development;
3. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;
4. The applicant obtains an engineering certification confirming that the lowest floor of the single-family home or duplex is being constructed at least one foot above the flood hazard area design flood elevation;
5. Any enclosure below the lowest floor of the single-family home or duplex is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
7. No more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed; and
8. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, the applicant obtains an engineering certification confirming that all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.

**7:13-8.7 General permit-by-certification 7—removal of
accumulated sediment and debris from an
engineered channel**

(a) General permit-by-certification 7 authorizes the use of machinery to remove accumulated sediment and debris from an engineered channel. For the purposes of this general permit-by-certification, an engineered channel is a channel that is fully lined with concrete or other armoring and/or which has been constructed, altered, or otherwise manipulated as part of a flood control project. The use of machinery to remove accumulated sediment and debris from an engineered channel is authorized provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Where work is proposed along a trout production or trout maintenance waters, the timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
2. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water and minimized;
3. No trees are cleared, cut, and/or removed in a riparian zone;
4. The material removed consists solely of accumulated sediment and/or debris; and
5. All material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local requirements.

**7:13-8.8 General permit-by-certification 8—
construction of an addition to a lawfully
existing building**

(a) General permit-by-certification 8 authorizes the construction of an addition to a lawfully existing building, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant obtains an engineering certification confirming that the addition is not being located within a floodway;
2. The footprint of the existing building has not increased by more than 750 square feet, cumulatively, since November 5, 2007;
3. The applicant obtains an engineering certification confirming that the lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation;
4. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building;
5. Any enclosure below the lowest floor of the addition is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate the construction of an addition.

**7:13-8.9 General permit-by-certification 9—sediment
and debris removal within and/or adjacent to a
bridge, culvert, or outfall by a public entity**

(a) General permit-by-certification 9 authorizes a public entity to use machinery to remove accumulated sediment and

debris from a regulated water, within and/or adjacent to a lawfully existing bridge, culvert, or stormwater discharge pipe, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All machinery is situated outside the regulated water, except for handheld equipment such as hydraulic pumps. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven or otherwise placed in the regulated water;

2. The sediment and debris removal is necessary to maintain positive flow through the structure and/or regulated water;

3. The material to be removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;

4. Work is limited to within 100 feet of the structure;

5. All work is performed by, or under the supervision of, a public entity;

6. All work is performed with the full consent of the owner of any property upon which the project is undertaken;

7. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;

8. No trees are cleared, cut, and/or removed in a riparian zone;

9. The project is conducted from only one bank, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;

10. Where work is proposed along a trout production or trout maintenance waters, the timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and

11. All material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

7:13-8.10 General permit-by-certification 10—in-kind replacement of a culvert

(a) General permit-by-certification 10 authorizes the in-kind replacement of a culvert along a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The culvert being replaced was not removed more than one year prior to replacement;

2. The channel is not scoured, incised, or otherwise situated such that the invert of the culvert being replaced lies more than six inches above the invert of the regulated water;

3. The applicant obtains an engineering certification confirming that:

i. The replacement culvert is made of the same material as the existing culvert, unless the width or diameter of the culvert is no more than two feet or the length of the culvert is no more than 20 feet;

ii. The replacement culvert has the same wingwall configuration as the existing culvert; and

iii. The elevation of the crown of the roadway profile above the culvert and the dimensions of any parapets are not being altered within the flood hazard area;

4. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the culvert, where such disturbance is necessary to facilitate its replacement; and

5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

7:13-8.11 General permit-by-certification 11—maintenance of existing manmade stormwater management structures and conveyances

(a) General permit-by-certification 11 authorizes the maintenance of one or more lawfully existing manmade stormwater management structures and conveyances, such as a pipe, culvert, ditch, channel, or basin, not including natural channels that were previously modified, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work occurs within and is necessary for the maintenance of the stormwater management structure or conveyance;

2. The existing stormwater management system is not expanded, enlarged, or otherwise modified to receive additional sources of stormwater runoff or include additional discharge points;

3. The activities are limited to one or more of the following:

i. The removal of accumulated sediment, debris, or nuisance vegetation;

ii. The stabilization of an eroded structure; or

iii. The repair and/or in-kind replacement of one or more of the following:

(1) A culvert along a manmade channel;

(2) A stormwater pipe, manhole, inlet, or catch basin;

(3) A headwall, discharge structure, or associated conduit outlet protection;

(4) A tidegate, levee, or pump station along a regulated water that is separated from tidal influence by these structures; or

(5) A stormwater management basin constructed for a purpose other than to satisfy a mitigation requirement under N.J.A.C. 7:7A;

4. The applicant obtains an engineering certification confirming that the activities will not increase the frequency or depth of flooding during any flood event up to and including the flood hazard area design flood, either upstream or downstream of the site;

5. No riparian zone vegetation is cleared, cut, and/or removed outside the structure or conveyance feature, unless such disturbance is unavoidable, necessary to gain access to the structure or conveyance feature and minimized; and

6. No trees are cleared, cut, and/or removed in a riparian zone outside the structure or conveyance feature.

7:13-8.12 General permit-by-certification 12—surveying and geotechnical and archeological investigation activities

(a) General permit-by-certification 12 authorizes surveying and geotechnical and archaeological investigation activities, such as creating survey lines, survey borings, or excavation for the purpose of obtaining information on subsurface conditions, determining the presence or extent of contamination in subsurface soils or groundwater, and/or obtaining seismic information, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No regulated activity is conducted within a regulated water;

2. No grading or changes in topography occur in a flood hazard area;

3. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to obtain the desired information and, where possible, is limited to actively disturbed areas; and

4. Where a pathway through riparian zone vegetation is necessary to accomplish the activities, it is limited to no greater than 10 feet in width.

7:13-8.13 General permit-by-certification 13—placement of solar panels

(a) General permit-by-certification 13 authorizes the placement of solar panels and associated equipment, including poles, support structures, inverter pads, and electrical apparatus, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant obtains an engineering certification confirming that:

i. No panels or associated equipment are being placed in a floodway;

ii. The existing ground elevation is not being raised in any floodway or fluvial flood hazard area; and

iii. The flood storage displacement limitations of N.J.A.C. 7:13-11.4 are met;

2. Any panels placed in a flood fringe are elevated to at least one foot above the flood hazard area design flood elevation. Associated equipment is permitted below this elevation, where it is demonstrated that elevating the equipment is not feasible;

3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

4. No trees are cleared, cut, and/or removed in a riparian zone, unless they are completely surrounded by actively disturbed areas and growing in a hedgerow or confined within landscape islands, or similar structures, within in a parking area; and

5. No more than one-quarter of an acre of riparian zone vegetation is cleared, cut, and/or removed.

7:13-8.14 General permit-by-certification 14—placement of water monitoring devices

(a) General permit-by-certification 14 authorizes the placement of water monitoring devices in a regulated area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The devices consist of one or more of the following:

i. Water level recording devices;

ii. Water quality monitoring and testing devices;

iii. Weirs, gauges, or flumes for recording water quantity or velocity; and

iv. Monitoring wells;

2. The devices will not significantly disrupt the movement of aquatic species native to the regulated water, or of species which normally migrate through the area;

3. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;

4. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to obtain the desired information and, where possible, is limited to actively disturbed areas;

5. Where a pathway through riparian zone vegetation is necessary to accomplish the activities, it is limited to:

i. No greater than five feet in width, if work is performed by hand; and

ii. No greater than 10 feet in width, if necessary to accommodate machinery in cases where the device cannot feasibly be constructed by hand;

6. The applicant obtains an engineering certification confirming that the device will not cause any of the following:

- i. Erosion in the regulated water;
- ii. A rise in the flood hazard area design flood elevation outside the regulated water; and
- iii. Increased flooding at any existing building, during any flood event described in N.J.A.C. 7:13-12.1(i); and

7. The applicant obtains an engineering certification confirming that any utility shelter that is necessary to house and protect the equipment associated with the water monitoring device is:

- i. Constructed outside the channel;
- ii. Constructed outside the floodway, where possible;
- iii. Oriented to minimize obstruction to flow; and
- iv. No larger than 100 square feet in area.

7:13-8.15 General permit-by-certification 15—in-kind replacement of public infrastructure

(a) General permit-by-certification 15 authorizes the in-kind replacement of public infrastructure, which has been damaged by flooding or other severe weather event that resulted in the Governor of New Jersey declaring a State of Emergency or FEMA declaring a major disaster in New Jersey and applies only to those counties and municipalities included in such a declaration. This general permit-by-certification authorizes the in-kind replacement of public infrastructure where a public entity has determined that immediate action is warranted to protect public health, safety, welfare, or the environment. For the purposes of this general permit-by-certification, public infrastructure means any roadway, railroad, bridge, culvert, storm sewer system, utility, and associated structure that are maintained by a public entity.

(b) In addition to satisfying the requirements applicable to all general permits-by-certification at N.J.A.C. 7:13-6.7, the applicant shall obtain an engineering certification confirming that any in-kind replacement of public infrastructure complies with all applicable design and construction standards of N.J.A.C. 7:13-10, 11, and 12, except for timing restrictions pursuant to N.J.A.C. 7:13-11.5(d).

(c) All regulated activities authorized under this general permit-by-certification shall:

1. Commence within 180 calendar days of the date the State of Emergency or FEMA disaster declaration was announced; and

2. Be completed within 180 calendar days of the date that the permittee submitted the required certifications resulting in authorization under general permit-by-certification 15.

(d) Within 30 calendar days of the completion of regulated activities authorized under this general permit-by-certification, the permittee shall provide to the Department a written statement that includes:

- 1. A detailed description of all regulated activities conducted;
- 2. An engineering certification confirming that the requirements of (a), (b), and (c) above have been met; and
- 3. Site plans, photographs, mapping, or other information necessary to demonstrate that the regulated activity complies with the requirements of this general permit-by-certification.

SUBCHAPTER 9. GENERAL PERMITS

7:13-9.1 General permit 1—channel cleaning under the Stream Cleaning Act

(a) General permit 1 authorizes a county, municipality, or a designated agency thereof to desnag a channel and/or remove accumulated sediment, debris, and garbage under the “Stream Cleaning Act” at N.J.S.A. 58:16A-67, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

- 1. The project’s sole purpose is to remove obstructions to flow or desnag a channel;
- 2. The project is necessary and in the public interest;
- 3. The project consists solely of either:
 - i. The removal of accumulated silt, sediment, debris, and/or garbage from a channel with a natural bed and does not alter the natural bed or banks of the channel; or
 - ii. The removal of any accumulated material from a channel previously lined with concrete or similar artificial material;
- 4. The project does not disturb the channel bank or result in any clearing, cutting, and/or removal of riparian zone vegetation, unless such disturbance is unavoidable, necessary to gain access to the channel, and minimized;
- 5. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;

6. The use of heavy equipment in the channel is avoided; and

7. If the project involves sediment removal from a channel with a natural bed, the following requirements are satisfied:

- i. The channel reach is less than 500 feet in length;
- ii. The average width of the channel bed does not exceed 15 feet;
- iii. The channel has a documented history of severe flooding that has resulted or can result in property damage, therefore necessitating the proposed cleaning, clearing, or desnagging;
- iv. The channel is not classified as a Pinelands water or Category One water; and
- v. The channel is not a present or documented habitat for threatened or endangered species.

(b) All materials, including dredged material, removed from a channel during activities authorized under this general permit shall be placed outside of any regulated area and also any freshwater wetlands, transition areas, and State open waters, as those terms are defined in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A-1.4, unless it is demonstrated that this would cause more environmental harm or flooding risk than the placement of the material in these areas. For example, if removal of dredged material requires construction of a long temporary roadway through a wetlands with a very high water table to enable trucks to transport the dredged material offsite, this may cause more environmental harm than spreading the dredged material thinly over a large area.

(c) This general permit does not authorize the straightening or realignment of a channel. Straightening or realignment constitutes channel modification and requires an individual permit pursuant to N.J.A.C. 7:13-11.1(c).

(d) An application for authorization under this general permit shall be submitted to the Department by mail at the address set forth at N.J.A.C. 7:13-1.3, and shall include the following (photocopies of maps and documents are acceptable):

1. A completed application form as described at N.J.A.C. 7:13-18.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
2. One set of site plans prepared by an engineer, which clearly depict the segments of channel to be cleaned;
3. The location of the affected portion of the channel or stream, including the county and municipality, and the block(s) and lot(s);
4. One copy of a USGS quad map showing the affected portion of the stream;

5. Color photographs and a brief narrative description of the affected portion of the channel or stream, including the access points where workers and equipment will be brought to the channel or stream;

6. The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, for the affected portion of the channel or stream;

7. A description of the nature of the project and the methods that will be used;

8. A description of the proposed methods that will be used to remove material from the channel or stream and the location where the dredged material will be placed; and

9. A certification, signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District, that lists each requirement in (a) above that applies to the project, and states how the requirement has been or will be satisfied.

(e) The application review procedures for authorization under this general permit are set forth at N.J.A.C. 7:13-21. No application fee or public notice of the application are required for an authorization under this general permit.

(f) Within 15 calendar days after the completion of a project under this general permit that involves the removal of sediment, the permittee shall submit to the Department:

1. A written notice that the project has been completed; and
2. A certification, signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District, that lists each requirement in (a) above that applies to the project, and states how the requirement has been satisfied.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "General provisions for individual permits".

7:13-9.2 General permit 2—mosquito control water management activities

(a) General permit 2 authorizes activities in flood hazard areas and riparian zones necessary for mosquito control water management activities conducted by a county mosquito control agency or a Federal agency on Federal land. Mosquito control water management activities authorized under this general permit include:

1. Removal of accumulated silt, sediment, and debris from any water;
2. Creation of ditches and channels where appropriate for mosquito control; and
3. Improvements to flow in manmade waters, such as the excavation of an existing manmade ditch or channel to provide positive drainage.

(b) Mosquito control water management activities described at (a) above are acceptable provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are necessary to control a documented mosquito problem, as determined by the State Office of Mosquito Control Coordination;
2. The material to be removed from the regulated water consists solely of accumulated silt, sediment, and debris and does not alter the natural bed and banks of the regulated water;
3. In order to minimize the downstream transport of sediment during dredging, all areas to be dredged must be isolated from flowing water, where possible, through:
 - i. Erecting temporary berms or sheet-piles around the areas to be dredged and pumping the flow within the regulated water around the work area; or
 - ii. If flow is low, by blocking off sections of the regulated water being dredged and allowing the sediment to settle;
4. All material removed from the regulated water is placed in accordance with the following:
 - i. Sediment removed can be placed in a regulated area provided the requirements at N.J.A.C. 7:13-12.15(f) are satisfied; and
 - ii. All trash and debris removed must be placed outside any flood hazard area or riparian zone and in accordance with all applicable Federal, State, and local requirements;
5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
6. The project does not disturb the channel bank or result in any clearing, cutting, and/or removal of riparian zone vegetation, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;
7. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;
8. The use of heavy equipment in the regulated water is avoided unless it is demonstrated that there is no feasible alternative that would result in less environmental damage; and
9. Access points to each regulated water are:
 - i. Identified; and
 - ii. Limited to actively disturbed areas, where possible.

(c) The Department shall not authorize activities under this general permit more frequently than once every five years for a particular site.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Application requirements for an individual permit".

7:13-9.3 General permit 3—scour protection activities at bridges and culverts

(a) General permit 3 authorizes scour protection activities at one or more existing bridges or culverts, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are necessary for the maintenance and/or protection of an existing bridge or culvert;
2. The activities are intended to remedy a scour problem within or adjacent to a bridge or culvert and not to remedy large sections of severely eroded or unstable channel;
3. The applicant provides an engineering certification confirming that:
 - i. The amount of stabilizing material to be placed in the channel is no greater than necessary to protect the structure from failure or collapse due to undermining of abutments or piers. In general, the channel velocity used to determine the necessary amount of stabilizing material shall be based on bank full flow, unless otherwise required by the U.S. Federal Highway Administration; and
 - ii. The stabilizing material does not obstruct flow in the channel or floodway or cause flooding outside the channel to increase;
4. The stabilizing material consists of native substrate, or is buried beneath at least two feet of native substrate, where placement of the native substrate is feasible and effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions;
5. The activities do not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel, and minimized. If access to the channel results in topographic changes to the bank, such as ruts from trucks or other machinery, the grade of the bank shall be restored to its pre-construction topography;
6. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and
7. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Application review procedures for a verification or individual permit".

7:13-9.4 General permit 4—creation, restoration, and enhancement of habitat and water quality values and functions

(a) General permit 4 authorizes regulated activities necessary to implement a plan for the creation, restoration, or enhancement of habitat and water quality functions and values in a regulated area. Activities authorized under this general permit include, but are not limited to:

1. Altering hydrology to create, restore, or enhance wetlands, such as by blocking, removing, or disabling a manmade drainage ditch or other drainage structure such as a tile, culvert, or pipe;

2. Breaching a structure such as a dike, berm, or low dam in order to allow water into an area. Breaching or removing a dam is not regulated under this chapter, pursuant to N.J.A.C. 7:13-12.11;

3. Placing habitat improvement structures such as:

- i. Nesting islands;
- ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and
- iii. Aquatic habitat enhancement devices or habitat improvement structures such as placed boulders, stream deflectors, or brush piles;

4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement; and

5. Removing, planting, cutting, burning, or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora.

(b) Creation, restoration, and enhancement activities are eligible for authorization under this general permit, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The plan is:

i. Approved by one of the following agencies:

(1) The Department's Division of Fish and Wildlife;

(2) The Department's Office of Natural Resource Restoration;

(3) The U.S. Fish and Wildlife Service;

(4) The USDA Natural Resources Conservation Service;

(5) A government resource protection agency such as a parks commission; or

(6) A charitable conservancy; or

ii. Required by or approved by a government agency, such as the Department and/or U.S. Army Corps of Engineers, under a mitigation plan.

(1) Pursuant to N.J.A.C. 7:13-13, a riparian zone mitigation plan submitted to the Department to satisfy the requirements and/or conditions of an individual permit does not require the submittal of a separate application for an authorization or permit;

2. The project has a reasonable likelihood of success;

3. The project will improve the values and functions of the ecosystem;

4. The use of heavy equipment in any channel is avoided to the maximum extent practicable;

5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;

6. The project does not involve relocating or significantly altering the cross-sectional area of a regulated water, or other activities addressed at N.J.A.C. 7:13-12.14(d);

7. Where regulated activities result in the placement of fill material in a flood hazard area, the applicant provides an engineering certification confirming that the flood storage displacement limitations of N.J.A.C. 7:13-11.4 are met; and

8. Where regulated activities are proposed within a channel or floodway, the applicant provides an engineering certification confirming that the project will not increase offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i).

(c) This general permit does not authorize any activity unless the sole purpose of the activity is habitat creation, restoration, or enhancement of habitat and water quality values and functions is a primary goal of the project. For example, this general permit does not authorize construction of a detention basin for stormwater management or a flood control project that may also incidentally result in water quality benefits or the creation, restoration, or enhancement of some wildlife habitat.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Duration of an individual permit".

7:13-9.5 General permit 5—reconstruction and/or elevation of a building in a floodway

(a) General permit 5 authorizes the reconstruction and/or elevation of a lawfully existing building in a floodway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The lowest floor of the building is reconstructed and/or elevated to at least one foot above the flood hazard area design flood elevation;

2. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);

3. Any existing enclosure below the lowest floor of the building that does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;

4. The location and footprint of the building is not altered;

5. The applicant provides an engineering certification confirming that:

i. The proposed reconstruction and/or elevation will not increase offsite flooding or flood damage potential;

ii. The proposed reconstruction and/or elevation will not result in any additional obstruction to the flow of floodwaters; and

iii. The building is modified wherever necessary to withstand hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation;

6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and

7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction and/or elevation.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Individual permit conditions".

7:13-9.6 General permit 6—construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water, in a fluvial flood hazard area

(a) General permit 6 authorizes the construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water, in a fluvial flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No fill or structures are located within a floodway;

2. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development;

3. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;

4. The lowest floor of the single-family home or duplex is constructed at least one foot above the flood hazard area design flood elevation;

5. Any enclosure below the lowest floor of the single-family home or duplex is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);

6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

7. No more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed;

8. The applicant provides an engineering certification confirming that the flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied;

9. The applicable requirements at N.J.A.C. 7:13-12.6(c) are satisfied for any proposed driveway; and

10. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Storm-water Management rules N.J.A.C. 7:8 are met.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Cases where a verification is required prior to obtaining an individual permit".

7:13-9.7 General permit 7—relocation of manmade roadside ditches to facilitate public roadway improvements

(a) General permit 7 authorizes the relocation of one or more manmade roadside ditches to facilitate public roadway improvements, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The public entity responsible for maintaining the roadway has determined that the relocation of a ditch is necessary for the continued safe use of the roadway;

2. The ditch is not being enclosed in a pipe, culvert, or bridge;

3. The relocated ditch possesses equivalent flood carrying capacity as the existing ditch; and

4. The project will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Cases where an individual permit can be issued in an approximated flood hazard area".

7:13-9.8 General permit 8—placement of storage tanks

(a) General permit 8 authorizes the placement of one or more storage tanks and associated support structures, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The tank cannot feasibly be located outside a regulated area;
2. The tank is not located in a floodway unless all the following apply:
 - i. The tank is intended to replace a lawfully existing tank associated with a currently occupied building or operating facility;
 - ii. The tank cannot feasibly be located outside the floodway; and
 - iii. The tank and any support structures are oriented to minimize obstruction to flow;
3. Any tank located in a flood hazard area is designed to remain watertight during a flood;
4. The bottom of the tank is situated above the flood hazard area design flood elevation, where feasible;
5. Where an aboveground tank is intended for the storage of hazardous substances and has a volume of greater than 2,000 gallons, the tank is isolated from floodwaters by berms, or is located in a specially designed containment area onsite, so that in the event of a flood, the hazardous substances will not be transported offsite by floodwaters;
6. The flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied for both the tank and any containment areas within the flood hazard area;
7. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
8. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;
9. No trees are cleared, cut, and/or removed in a riparian zone;
10. No more than 2,000 square feet of vegetation is cleared, cut, and/or removed in a riparian zone, per tank; and
11. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-9.8, Hardship exception for an individual permit, recodified to N.J.A.C. 7:13-15.1.

7:13-9.9 General permit 9—construction or reconstruction of a bridge or culvert across a regulated water with a drainage area of less than 50 acres

(a) General permit 9 authorizes the construction or reconstruction of one bridge or culvert that crosses a regulated water that has a drainage area of less than 50 acres, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The bridge or culvert is not located in the flood hazard area of an additional regulated water that has a drainage area of 50 acres or greater;
2. The bridge or culvert and any associated construction, such as embankments, abutments, footings, and travel surfaces, are designed to remain stable, scour resistant, and resistant to displacement and/or damage. At a minimum, a bridge shall have stable abutments, a culvert shall have stable headwalls, and any abutment and headwall shall have footings that extend no less than three feet below the invert of the channel;
3. The bridge or culvert, to the extent feasible, matches or exceeds the dimensions of the existing channel so that the size and shape of the natural channel is preserved through the structure in order to avoid potential adverse impacts to channel stability and aquatic, semi-aquatic, and terrestrial resources;
4. No armoring is placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate, where placing such substrate is feasible and effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions;
5. Any temporarily disturbed sections of the channel are restored to pre-construction conditions immediately after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate, and velocity and substrate type;
6. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project and is limited to actively disturbed areas where possible;
7. No more than 2,500 square feet of riparian zone vegetation is cleared, cut, and/or removed;
8. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
9. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-9.10 General permit 10—reconstruction of a bridge or culvert across a regulated water with a drainage area of 50 acres or more

(a) General permit 10 authorizes the reconstruction of one existing bridge or culvert that crosses a regulated water that has a drainage area of 50 acres or more, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant provides an engineering certification confirming that the proposed bridge or culvert is designed to not increase the frequency or depth of offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i);

2. In order to ensure that the hydraulic capacity of the reconstructed bridge or culvert is substantially equivalent to the hydraulic capacity of the existing bridge or culvert, all the following are met:

i. The cross-sectional area of the new structure is at least equal to, and not more than five percent greater than, the cross-sectional area of the existing structure;

ii. The width-to-height ratio of the new structure does not deviate by more than 10 percent from the width-to-height ratio of the existing structure;

iii. The length of the new structure does not deviate by more than 10 feet from the length of the existing structure or more than 10 percent of the length of the existing structure, whichever is greater;

iv. The orientation of any new abutments and headwalls is aligned as closely as feasible to the orientation of the existing abutments and headwalls; and

v. The elevation of the crown of the roadway profile above the bridge or culvert is not altered within the flood hazard area;

3. The bridge or culvert is designed to remain stable, scour resistant, and resistant to displacement and/or damage. At a minimum, each bridge shall have stable abutments, each culvert shall have stable headwalls, and each abutment and headwall shall have footings that extend no less than three feet below the invert of the channel;

4. The bridge or culvert is designed to avoid any adverse impacts to aquatic, semi-aquatic, and terrestrial resources. Where possible, a stable, natural, earthen channel with low-flow aquatic passage shall be preserved and/or provided within the bridge or culvert as well as any section of channel disturbed to accommodate its construction;

5. No armoring is placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate, where feasible;

6. Any temporarily disturbed sections of the channel are restored to pre-construction conditions immediately

after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate, and velocity and substrate type;

7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the bridge or culvert, where such disturbance is necessary to facilitate its reconstruction;

8. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and

9. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules N.J.A.C. 7:8 are met.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-9.11 General permit 11 for a stormwater outfall along a regulated water with a drainage area of less than 50 acres

(a) General permit 11 authorizes the construction of one stormwater outfall structure along a regulated water that has a drainage area of less than 50 acres, provided the conditions at N.J.A.C. 7:13-6.7 are met and the structure:

1. Is not located in the flood hazard area or riparian zone of any regulated water that has a drainage area of 50 acres or greater;

2. Is authorized under a valid freshwater wetlands general permit 11, pursuant to N.J.A.C. 7:7A-5.11;

3. Meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-11.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut, or removed in the riparian zone; and

4. Meets the requirements at N.J.A.C. 7:13-12.9 for the construction of a stormwater outfall structure.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-9.12 General permit 12—construction of footbridges

(a) General permit 12 authorizes the construction of one or more footbridges across a regulated water, or across another feature such as a manmade canal or roadway that lies within the flood hazard area or riparian zone of a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footbridge is used exclusively to carry pedestrians, livestock, and/or light vehicles such as bicycles, golf carts, or lawn tractors;

2. Where the footbridge crosses a regulated water, it is designed and constructed to be as nearly perpendicular to the channel as possible;

3. Where the footbridge is designed solely for pedestrian use, the width of the footbridge is no more than six feet, unless it is demonstrated that a wider width is necessary in order to comply with all applicable State and Federal barrier-free access requirements. In no case shall the width of the footbridge exceed 10 feet;

4. Where the footbridge is designed as part of a multiple-use path for bicycles, skate boards, rollerblades, and other methods of transport:

i. The width of the footbridge is no more than 10 feet; and

ii. Bollards or similar devices are installed to prevent automobiles and other large vehicles from utilizing the footbridge;

5. Where the footbridge provides access to a critical building, its travel surface is constructed at least one foot above the flood hazard area design flood elevation, or as close to that elevation as feasible;

6. All footings and abutments proposed within 10 feet of the top of bank extend at least three feet below the channel invert;

7. All footings and abutments proposed more than 10 feet beyond the top of bank extend at least three feet below grade;

8. All stairs, ramps, or other structures necessary for access to the footbridge:

i. Remain open underneath to allow floodwaters to pass freely;

ii. Do not require the existing ground elevation to be raised in a flood hazard area; and

iii. Are oriented to minimize obstruction to flow, such as by being set into the bank, where possible;

9. The footbridge is designed to pass floodwaters by either:

i. Setting the low chord of the footbridge above the flood hazard area design flood elevation; or

ii. Using handrails instead of a parapet, with sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, and setting the vertical distance between the low chord and the top of the footbridge deck, including any curbing, at no more than eight inches;

10. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and

11. The width of any clearing, cutting, and/or removal of riparian zone vegetation associated with the construction of the footbridge does not exceed 20 feet.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-9.13 General permit 13—construction of trails and boardwalks

(a) General permit 13 authorizes the construction of a trail and/or boardwalk, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The trail or boardwalk is used exclusively to carry pedestrians, livestock, and/or light vehicles such as bicycles, golf carts, or lawn tractors;

2. Where the trail or boardwalk is designed solely for pedestrian use, the width of the trail or boardwalk is no more than six feet, unless it is demonstrated that a wider width is necessary in order to comply with all applicable State and Federal barrier-free access requirements. In no case shall the width of the trail or boardwalk exceed 10 feet;

3. The existing ground elevation is not raised in any floodway or fluvial flood hazard area. A boardwalk constructed in a flood hazard area shall be constructed at or below the existing ground elevation or elevated so that the area underneath the boardwalk remains open to the passage of floodwaters;

4. The setbacks at (a)4i though iii below are met, except in the immediate vicinity of a footbridge or a dock or pier connected to the trail or boardwalk, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water:

i. No disturbance is located within 10 feet of any top of bank;

ii. No trees are cleared, cut, and/or removed within 25 feet of any top of bank; and

iii. Where disturbance within 25 feet of any top of bank is proposed, the applicant provides an engineering certification confirming that the location of the project is stable and suitable for the proposed activities, and not subject to erosion or undermining due to its proximity to the top of bank;

5. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project and is limited to actively disturbed areas, where possible;

6. No more than six square feet of trees is cleared, cut, and/or removed per linear foot of trail or boardwalk in a riparian zone, including the total area of canopy affected by activities under this general permit. For example, the

construction of a trail or boardwalk that is 1,000 feet long can impact no more than 6,000 square feet of canopy;

7. No more than one-half of an acre of riparian zone vegetation is cleared, cut, and/or removed; and

8. Any public trail or boardwalk incorporates features designed to educate the user on the importance of riparian zones, flood hazard areas, and stream corridors. Such features may include signs identifying plants and animals or explaining hydrology, ecology, or other significant environmental features.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

SUBCHAPTER 10. INDIVIDUAL PERMITS

7:13-10.1 Requirement to obtain an individual permit

(a) A person shall obtain an individual permit under this subchapter in order to undertake any activity that does not meet the requirements of a permit-by-rule pursuant to N.J.A.C. 7:13-7, an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:13-8, an authorization under a general permit pursuant to N.J.A.C. 7:13-9, or a coastal permit under the circumstances set forth at N.J.A.C. 7:13-2.1(b)6.

(b) A regulated activity or project subject to an individual permit shall meet:

1. The applicable area-specific requirements at N.J.A.C. 7:13-11; and

2. The applicable activity-specific requirements at N.J.A.C. 7:13-12.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-10.1, Requirements for a regulated activity in a channel, recodified to N.J.A.C. 7:13-11.1.

7:13-10.2 Duration of an individual permit

(a) An individual permit for any regulated activity other than those identified at (b) below is valid for five years from the date of issuance, and may be extended one time for five years pursuant to N.J.A.C. 7:13-22.3.

(b) An individual permit for a linear activity or project that is greater than 10 miles in length, a flood control project, or a quarry or mining operation is valid for 10 years from the date of issuance, and shall not be extended.

(c) All regulated activities authorized by an individual permit shall immediately cease if the permit expires, including any extension thereof under N.J.A.C. 7:13-22.3. If a person intends to commence or continue regulated activities that had been authorized under an individual permit that has

expired, the person shall obtain a new individual permit under this chapter authorizing the regulated activities.

1. If no regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review.

2. If any regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original individual permit, and whether continuing construction as approved under the original individual permit would have an adverse impact on flooding or the environment.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-10.2, Requirements for a regulated activity in a riparian zone, repealed.

7:13-10.3 Conditions applicable to an individual permit

(a) A person conducting regulated activities pursuant to an individual permit shall comply with:

1. The conditions set forth in the individual permit itself; and

2. The conditions that apply to all permits at N.J.A.C. 7:13-22.2.

(b) In addition to the conditions that apply to every individual permit under (a) above, the Department shall establish conditions in a specific individual permit, as required on a case-by-case basis, to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes. For example, in cases where a proposed regulated activity involves disturbance to a Category One water or its riparian zone, the Department may impose additional conditions to ensure that the water quality of the regulated water is protected.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-10.3, Requirements for a regulated activity in a floodway, recodified to N.J.A.C. 7:13-11.3.

7:13-10.4 (Reserved)

Recodified to N.J.A.C. 7:13-11.4 by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Requirements for a regulated activity in a flood fringe".

7:13-10.5 (Reserved)

Recodified to N.J.A.C. 7:13-11.5 by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Requirements for a regulated activity in or along a water with fishery resources".

7:13-10.6 (Reserved)

Recodified to N.J.A.C. 7:13-11.6 by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Requirements for a regulated activity in a documented habitat for threatened or endangered species".

7:13-10.7 (Reserved)

Repealed by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Requirements for a regulated activity in an area with acid producing soils".

SUBCHAPTER 11. AREA-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

7:13-11.1 Requirements for a regulated activity in a channel

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a channel.

(b) The Department shall issue an individual permit for a regulated activity in a channel only if the following requirements are satisfied:

1. The applicant describes in detail the regulated activities proposed within the channel, including the equipment proposed to be utilized, and demonstrates that the basic purpose of the project cannot be accomplished without the disturbance to the channel;

2. Disturbance to the channel is eliminated where possible; where not possible to eliminate, disturbance is minimized through methods including relocating the project and/or reducing the size or scope of the project;

3. All roadway, railroad, pedestrian, utility and other crossings are constructed as nearly perpendicular to the channel as possible;

4. All disturbed sections of the channel are properly stabilized, with special attention given to changes in slope, channel width and hydraulic capacity;

5. If stabilization measures such as rip-rap or scour holes are proposed in the channel, the applicant demonstrates that such measures are necessary to stabilize the channel and/or to withstand scour along a bridge or culvert, and cannot be avoided through alternative designs, such as construction of deeper abutment footings or a larger bridge opening. Any rip-rap shall be embedded in the channel bed in such a way as to provide low-flow aquatic passage and withstand velocities associated with bank-full flows;

6. No mining of the channel is proposed. This does not preclude the incidental use or sale of material removed as a result of lake dredging, channel cleaning or other regulated activities authorized by the Department and performed for purposes other than mining;

7. All temporarily disturbed sections of the channel are restored to pre-construction conditions immediately after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate and velocity, and substrate type;

8. Aquatic habitat is preserved where possible;

9. Aquatic habitat is enhanced where preservation is not possible, such as through the placement of habitat enhancement devices, replacement of vegetation removed during construction, creation of tree canopy along the channel where no canopy exists, and/or enhancement of existing tree canopy along the channel; and

10. The project does not expose unset or raw cement to flowing water within any channel or regulated water during construction;

(c) The Department shall issue an individual permit for a channel modification only if the applicant demonstrates that, in addition to meeting the requirements of (b) above, the channel modification meets at least one of the following requirements:

1. The channel modification is necessary to improve the ecological health of the regulated water and its riparian zone, or to control existing flooding or erosion which poses an immediate threat to life, property or a lawfully existing structure; or

2. The channel modification is necessary for the construction of a bridge or culvert, and the following requirements are satisfied:

i. The disturbance to the channel is the minimum necessary to successfully implement the project;

ii. A bridge is constructed rather than a culvert, where feasible;

iii. The length of channel covered by a bridge or enclosed in a culvert is the minimum feasible; and

iv. No more than 200 linear feet of channel (including the bridge or culvert) is disturbed unless the

applicant demonstrates that disturbance to a longer segment of channel cannot feasibly be avoided.

(d) The Department shall authorize the use of construction equipment to perform regulated activities in a channel (whether situated in a channel, reaching into a channel, or driven across a channel) only if, in addition to meeting the requirements of (b) above, the following requirements are satisfied:

1. There is no feasible alternative that will result in less environmental damage;
2. The bed is firm, the approaches are stable and the proposed construction activities will not cause or exacerbate bank erosion;
3. Contact with flowing water is minimized to the maximum extent practicable through the use of temporary bridges, culverts, coffer dams, and/or sediment control devices, which are removed from the channel as soon as possible after completion of the disturbance;
4. Forging the channel is avoided to the maximum extent practicable;
5. Where unavoidable, forging is made as nearly perpendicular to the channel as possible; and
6. Adequate precautions are taken to prevent sediment, petroleum products and other pollutants from entering the channel.

(e) A person shall not drive or operate a vehicle within a channel except in the following cases:

1. It is necessary to operate construction equipment in or across a channel as described in (d) above as part of a temporary construction activity;
2. An emergency vehicle must access a site that has no other feasible means of entry. This does not include repeated visits to the same site by delivery trucks; or
3. The vehicle is driven across a lawfully existing and stable ford that was either constructed prior to October 2, 2006, or which is constructed on agricultural lands and authorized under this chapter.

(f) No person shall dump or discard into a channel any material that could be carried away during a storm and/or obstruct the normal flow of water, such as trash, debris, construction material, leaf piles, lawn clippings, and landscaping material.

Recodified from N.J.A.C. 7:13-10.1 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote (b) through (e); and added (f). Former N.J.A.C. 7:13-11.1, Requirements that apply to all regulated activities, recodified to N.J.A.C. 7:13-12.1.

7:13-11.2 Requirements for a regulated activity in a riparian zone

(a) This section sets forth the design and construction standards under which the Department will issue an individual permit for any regulated activity proposed in a riparian zone.

(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:

1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;
2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:
 - i. Situating the regulated activity or project as far from any regulated water as feasible; and
 - ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:
 - (1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;
 - (2) Abandoned pavement that has partially revegetated;
 - (3) Areas of dirt and gravel that are primarily devoid of vegetation;
 - (4) Eroded embankments; and
 - (5) Landscape islands within a paved parking area;

3. The requirements for each specific regulated activity described in (g) through (y) below are satisfied, including mitigation in accordance with N.J.A.C. 7:13-13, as applicable;

4. All areas from which riparian zone vegetation is temporarily cleared, cut, or removed are replanted in accordance with (z) below; and

5. All additional requirements for each specific regulated activity described elsewhere in this chapter are satisfied.

(c) The Department shall issue an individual permit for a regulated activity that results in clearing, cutting, and/or removal of vegetation within 25 feet of any top of bank only in the following circumstances:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

2. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake riparian zone, freshwater wetlands, and/or habitat restoration and enhancement activities;

3. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake sediment removal activities in accordance with N.J.A.C. 7:13-12.15; or

4. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to construct, reconstruct, or improve a structure that crosses a regulated water or requires proximity to a regulated water.

i. For the purposes of this paragraph, examples of structures that cross a regulated water include new and reconstructed infrastructure projects such as roadways, railroads, utility lines, and footbridges.

ii. For the purposes of this paragraph, examples of structures that require proximity to a regulated water include stormwater discharges, bank stabilization projects, public trails and boardwalks, and improvements to existing infrastructure that are necessary to maintain public safety and which cannot feasibly be improved at a location greater than 25 feet from any top of bank.

iii. The construction of buildings, parking areas, stormwater management facilities, and all other non-water dependent activities, as well as clearing, cutting, and/or removal of vegetation to store vehicles and equipment, does not satisfy this paragraph, except for the reconstruction of a lawfully existing structure currently situated within 25 feet of the top of bank, which cannot feasibly be relocated further from the top of bank.

(d) The Department shall issue an individual permit for a regulated activity within a riparian zone only if all existing onsite impervious surfaces located within 25 feet of the top of bank are removed and the riparian zone is replanted with vegetation in accordance with (z) below, except in the following cases:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

2. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface would likely exacerbate flooding or erosion, expose hazardous substances or solid waste, or otherwise threaten public health, safety, welfare, and/or the environment. In such a case, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible and protective of public health, safety, and welfare, and the environment, be replanted with vegetation in accordance with (z) below; or

3. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this subsection would prevent reasonable use or access to the site and/or cause an unreasonable burden upon the applicant. For example, lawfully existing pavement around a building, which is located within 25 feet of a top of bank, may provide essential access to and around the building and the removal of such impervious surface would result in noncompliance with local building or fire codes and/or disrupt normal access to and throughout the facility. In such cases, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible, be replanted with vegetation in accordance with (z) below.

(e) Table 11.2 below establishes the maximum allowable area of riparian zone vegetation that can be temporarily or permanently cleared, cut, and/or removed associated with the regulated activities identified at (g) through (y) below without Department approval based upon additional justification as set forth in (g)1, (h)1, (i)2, (j)1, (k)1, (q)1, (t), (u)1, (v), or (w)1 below or Department approval of a hardship exception. Where the area of riparian zone vegetation being cleared, cut, and/or removed exceeds a limit in Table 11.2, or where vegetation is cleared, cut, and/or removed pursuant to (g)3, (h)3, (j)4, (r)2, (s)3, and/or (y) below, mitigation, in accordance with N.J.A.C. 7:13-13, is required. Activities within riparian zones that are not subject to the limits set forth in Table 11.2 are identified in (f) below.

1. Except as provided in (f) below, the total area of riparian zone vegetation cleared, cut, and/or removed for a given regulated activity is calculated by adding the following:

i. The area of any vegetation within the project's limit of disturbance shown on the site plans submitted by the applicant;

ii. The area under the canopy of any trees to be cleared, cut, or removed; and

iii. All other areas not included under (e)1i or ii above, from which vegetation is to be temporarily or permanently cleared, cut, and/or removed to conduct the regulated activity. Areas containing vegetation for a portion of the year, such as agricultural areas that are periodically plowed and cultivated, are considered vegetated for the purposes of this chapter;

2. A person may undertake more than one regulated activity subject to the individual permit requirements identified in Table 11.2 on a single site, provided the requirements in this section for each separate regulated activity are met.

3. Except for the construction of an addition to an existing single-family home or duplex or the construction of an accessory structure under (n) below, the limits listed in Table 11.2 apply to each individual occurrence of a proposed regulated activity on a site or as part of a project.

For example, Table 11.2 establishes limits on the amount of vegetation that can be cleared, cut, and/or removed for the construction of a stormwater outfall structure within a riparian zone. A person can obtain an individual permit for multiple stormwater outfall structures on a single site, provided the limits in Table 11.2 and all other requirements of this section are met for each individual outfall structure.

(f) The following regulated activities are not subject to the limits set forth in Table 11.2 below, and shall not be included when calculating the total area of vegetation to be cleared, cut, and/or removed under (e)1 above:

1. Any regulated activity that will not result in clearing, cutting, and/or removal of riparian zone vegetation, such as construction on a lawfully existing impervious surface, or within a lawfully existing gravel roadway or parking area;
2. Converting riparian zone vegetation within an actively disturbed area from one type to another, such as converting an actively farmed area into a lawn or garden, provided there is no net loss in the area of riparian zone vegetation;
3. Any temporary clearing, cutting, and/or removal of riparian zone vegetation within an actively disturbed area, provided all disturbed areas are adequately stabilized and replanted with vegetation in accordance with (z) below;
4. Relocating a lawfully existing structure, which is situated within a riparian zone, to an actively disturbed area on the same site, provided the area formerly occupied by the structure is stabilized and replanted with vegetation in accordance with (z) below;

5. Any disturbance to riparian zone vegetation that is completely submerged during normal flow conditions in a regulated water;
6. Any regulated activity along a lawfully existing public roadway, provided the activity is:
 - i. Located within an actively disturbed area;
 - ii. Located within an existing right-of-way or easement;
 - iii. Undertaken by a public entity;
 - iv. Necessary for the continued, safe use of the roadway; and
 - v. Situated on a lawfully existing roadway embankment, or within an area adjacent to a lawfully existing roadway, which was disturbed for the initial construction of the roadway; and
7. Any clearing, cutting, and/or removal of riparian zone vegetation within a truncated portion of a riparian zone. For the purposes of this paragraph, an area is considered to be a truncated portion of a riparian zone if:
 - i. The area is separated from a regulated water by a lawfully existing railroad or public roadway;
 - ii. The area does not slope toward the regulated water; and
 - iii. Stormwater runoff from the area does not drain into the regulated water.

Table 11.2

MAXIMUM ALLOWABLE AREA OF RIPARIAN ZONE VEGETATION THAT CAN BE TEMPORARILY OR PERMANENTLY CLEARED, CUT, AND/OR REMOVED WITHOUT ADDITIONAL JUSTIFICATION, MITIGATION, AND/OR A HARDSHIP EXCEPTION REQUEST, IN ACCORDANCE WITH (e) ABOVE

Proposed Regulated Activity		See Subsection Below for Additional Requirements	Allowable Disturbance Based on the Width of the Riparian Zone		
			50-foot Riparian Zone	150-foot Riparian Zone	300-foot Riparian Zone
• Railroad or public roadway					
New	Crossing a water	(g)	6,000 ft ²	18,000 ft ²	36,000 ft ²
	Not crossing a water		3,000 ft ²	9,000 ft ²	18,000 ft ²
Reconstructed	Crossing a water		3,000 ft ²	9,000 ft ²	18,000 ft ²
	Not crossing a water		1,500 ft ²	4,500 ft ²	9,000 ft ²
• Private driveway serving one single-family home or duplex					
New	Crossing a water	(h)	2,000 ft ²	6,000 ft ²	12,000 ft ²
	Not crossing a water		1,000 ft ²	3,000 ft ²	6,000 ft ²
Reconstructed	Crossing a water		1,000 ft ²	3,000 ft ²	6,000 ft ²
	Not crossing a water		500 ft ²	1,500 ft ²	3,000 ft ²

• All other roadways not listed above						
New	Crossing a water	(h)	4,000 ft ²	12,000 ft ²	24,000 ft ²	
	Not crossing a water		2,000 ft ²	6,000 ft ²	12,000 ft ²	
Reconstructed	Crossing a water		2,000 ft ²	6,000 ft ²	12,000 ft ²	
	Not crossing a water		1,000 ft ²	3,000 ft ²	6,000 ft ²	
• Bank stabilization and channel restoration						
Areas stabilized with vegetation and/or soil bioengineering			(i)	No limit if disturbance is justified		
Areas stabilized using other methods		10 ft ² per linear foot of armoring				
Access to the project		1,000 ft ²		3,000 ft ²	6,000 ft ²	
• Stormwater discharge						
Headwall and outlet protection		(j)	2,000 ft ²	2,000 ft ²	2,000 ft ²	
Stormwater pipe			1,000 ft ²	3,000 ft ²	6,000 ft ²	
• Utility line						
New		(k)	30 ft ² per linear foot of utility line			
Access to the project (per crossing)			1,000 ft ²	3,000 ft ²	6,000 ft ²	
Reconstruction, upgrade, expansion, or maintenance		(l)	No limit if disturbance is justified			
Access to the project (per crossing)			1,000 ft ²	3,000 ft ²	6,000 ft ²	
• Single-family home or duplex						
New		(m)	3,500 ft ²	7,000 ft ²	7,000 ft ²	
Reconstruction			2,000 ft ²	2,000 ft ²	2,000 ft ²	
Addition		(n)	2,000 ft ² for all additions, cumulatively since November 5, 2007			
Accessory structure			4,000 ft ² for all accessory structures, cumulatively since November 5, 2007			
• Tidal development						
Public access		(o)	No limit if disturbance is justified			
Water dependent development		(p)	No limit if disturbance is justified			
• Other projects						
Individual subsurface sewage disposal system		(q)	5,000 ft ²	5,000 ft ²	5,000 ft ²	
Hazardous substance remediation		(r)	No limit if disturbance is justified			
Solid waste facility closure		(s)	No limit if disturbance is justified			
Trail or boardwalk		(t)	10 ft ² per linear foot of trail or boardwalk, not to exceed one acre			
Footbridge		(u)	1,000 ft ²	1,000 ft ²	1,000 ft ²	
Flood control project		(v)	3,000 ft ²	9,000 ft ²	18,000 ft ²	
Removing sediment and/or debris from a regulated water		(w)	1,000 ft ² per access point			
Removing existing fill and/or an existing structure		(x)	Within 20 feet of the fill or structure, not to exceed one acre			
Any regulated activity not listed in this table above		(y)	1,000 ft ²	3,000 ft ²	6,000 ft ²	

(g) The Department shall issue an individual permit for the construction of a new railroad or public roadway, or the expansion, reconstruction, or improvement of a lawfully existing railroad or public roadway, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demon-

strates that compliance with all Federal, State, and local requirements governing railroads and public roadways cannot be achieved, and that public safety cannot be adequately ensured, without exceeding these limits;

2. For the construction of a new railroad or public roadway within a 50-foot or 150-foot riparian zone, and for the expansion, reconstruction, or improvement of a lawfully existing railroad or public roadway within any

riparian zone, which exceeds the limits set forth in Table 11.2, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

3. For the construction of a new railroad or public roadway within a 300-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed;

4. The width of disturbance associated with the construction, expansion, reconstruction, or improvement of the railroad or public roadway is minimized;

5. Any new crossing of a regulated water is designed and constructed to be as nearly perpendicular to the channel as possible; and

6. If the project impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is a compelling public need for the project, which cannot be satisfied without impacting the riparian zone. This demonstration shall include an analysis of alternate routes and other alternative projects that would avoid impacting the riparian zone.

(h) The Department shall issue an individual permit for the construction of a new private roadway, or the expansion, reconstruction, or improvement of a lawfully existing private roadway, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that safe, adequate access into the site, which meets all Federal, State and local requirements governing roadways, cannot be provided without exceeding these limits;

2. For any construction within a 50-foot or 150-foot riparian zone that exceeds the limits set forth in Table 11.2, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

3. For any construction within a 300-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed;

4. The width of disturbance associated with the construction, expansion, reconstruction, or improvement of the roadway is minimized;

5. The applicant demonstrates that any proposed expansion, reconstruction, or improvement to the roadway is necessary for the continued safe access to the site;

6. For the construction of a new roadway that serves or accesses a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that:

i. None of the lots created in the subdivision are currently served or accessed by a roadway;

ii. None of the lots created in the subdivision possess a valid authorization from the Department to construct a new roadway in the riparian zone; and

iii. The area of riparian zone vegetation to be cleared, cut, and/or removed to construct the roadway does not exceed the area of riparian zone vegetation that would have been allowed by this chapter to be cleared, cut, and/or removed to construct a roadway to serve or access the original parcel prior to its subdivision;

7. For the construction of a new roadway that does not cross a regulated water, the applicant demonstrates that there is no other means of constructing a roadway to access the developable area onsite, which would reduce or eliminate the impact to the riparian zone; and

8. For the construction of a new roadway that crosses a regulated water, the applicant demonstrates that

i. There is developable land onsite that cannot feasibly be accessed without crossing the regulated water, including accessing the site through neighboring properties; and

ii. The crossing is designed and constructed to be as nearly perpendicular to the channel as possible.

(i) The Department shall issue an individual permit for the restoration to a stable condition of a bank or channel that has become eroded, unstable, ecologically degraded, and/or enclosed within a structure, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. For a project to stabilize and/or restore a bank and/or channel with vegetation in accordance with N.J.A.C. 7:13-12.14(c)1 and/or using soil bioengineering in accordance with N.J.A.C. 7:13-12.14(c)2, the applicant demonstrates that the area of vegetation cleared, cut, and/or removed within the riparian zone is the minimum necessary to successfully implement the project;

2. For a project to stabilize a bank and/or channel using revetments, retaining walls, or other armoring in accordance with N.J.A.C. 7:13-12.14(c)3, or for a project to line or pipe a channel in accordance with N.J.A.C. 7:13-12.14(c)4, the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that the bank or channel cannot feasibly be stabilized without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2; and

3. For a project to restore a regulated water that is enclosed by a structure to a natural condition in accordance with N.J.A.C. 7:13-12.14(d), only the limits set forth in Table 11.2 for access to the project shall apply.

(j) The Department shall issue an individual permit for the construction or reconstruction of a stormwater discharge, including the stormwater pipe leading to the discharge as well as any associated conduit outlet protection and/or conveyance swale, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the Soil Conservation District having jurisdiction over the site determines that exceeding these limits is necessary to meet the requirements of the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

2. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 50-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

3. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 150-foot riparian zone, the applicant:

i. Demonstrates that situating the stormwater discharge and associated disturbance outside the riparian zone is likely to result in greater erosion or other deleterious environmental impacts than situating the stormwater discharge and associated disturbance within the riparian zone; and

ii. Provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

4. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 300-foot riparian zone, the applicant:

i. Demonstrates that situating the stormwater discharge and its associated disturbance outside the riparian zone is likely to result in greater erosion or other deleterious environmental impacts than situating the stormwater discharge and associated disturbance within the riparian zone;

ii. Provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed within the riparian zone; and

iii. Where the stormwater discharge is associated with a major development, as defined at N.J.A.C. 7:8-1.2, demonstrates that all runoff from the water quality design storm, as defined at N.J.A.C. 7:8-5.5(a), is

infiltrated outside the riparian zone and/or discharged outside the riparian zone, to the maximum extent practicable.

(l) Where all runoff from the water quality design storm cannot practicably be infiltrated outside the riparian zone and/or discharged outside the riparian zone, all runoff from the water quality design storm that is discharged within the riparian zone shall be treated, in accordance with the methods set forth at N.J.A.C. 7:8-5.5, to reduce the post-construction load of total suspended solids by 95 percent of the anticipated load from the developed site, expressed as an annual average.

(k) The Department shall issue an individual permit to construct a new aboveground or underground utility line, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the utility line that cannot feasibly be accomplished without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

2. The applicant demonstrates, pursuant to N.J.A.C. 7:13-12.8(c)1 through 4, that clearing, cutting, and/or removal of riparian zone vegetation is unavoidable;

3. The area of riparian zone vegetation that is cleared, cut, and/or removed is the minimum necessary to meet the applicable requirements of the New Jersey Board of Public Utilities and all other State and Federal requirements governing the construction of the utility line;

4. Staging, storing, and stockpiling materials and equipment shall, to the maximum extent practicable, be accomplished outside the riparian zone. Where it is necessary to conduct these activities in the riparian zone, these activities, as well as access to the utility line during construction, shall, to the maximum extent practicable, be undertaken in actively disturbed areas;

5. To the maximum extent practicable, forested areas are not disturbed; and

6. No trees within 25 feet of any top of bank are cleared, cut or removed, unless the applicant demonstrates that such disturbance cannot feasibly be avoided to conduct the project.

(l) The Department shall issue an individual permit to reconstruct, replace, repair, or maintain an existing aboveground or underground utility line, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. Clearing, cutting, and/or removal of riparian zone vegetation is limited to the utility line's existing easement or right-of-way. Any disturbance to riparian zone vegetation proposed outside the existing easement or right-of-way of the utility line is subject to the requirements of (k) above;

2. Clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas, unless the applicant demonstrates that there is a compelling public need to reconstruct, replace, repair, or maintain the line that cannot feasibly be accomplished without clearing, cutting, and/or removal of riparian zone vegetation outside of these areas;

3. The area of riparian zone vegetation that is cleared, cut, and/or removed is the minimum necessary to meet the applicable requirements of the New Jersey Board of Public Utilities and all other State and Federal requirements governing the reconstruction, replacement, repair, or maintenance of the utility line, as appropriate;

4. Staging, storing, and stockpiling materials and equipment shall, to the maximum extent practicable, be accomplished outside the riparian zone. Where it is necessary to conduct these activities in the riparian zone, these activities, as well as access to the utility line during construction, shall, to the maximum extent practicable, be undertaken in actively disturbed areas;

5. To the maximum extent practicable, forested areas are not disturbed; and

6. No trees within 25 feet of any top of bank are cleared, cut, or removed, unless the applicant demonstrates that such disturbance cannot feasibly be avoided to conduct the project.

(m) The Department shall issue an individual permit for the construction of a new single-family home or duplex, or the reconstruction of a lawfully existing single-family home or duplex, including the creation of any lawn or landscaped area around the building, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above;

2. For the construction of a new single-family home or duplex on a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the riparian zone; and

3. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development.

(n) The Department shall issue an individual permit for the construction of an addition to a lawfully existing single-family home or duplex, or the construction of an accessory structure to an existing single-family home or duplex, such as a barn, deck, detached garage, fence, pool, or shed, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of riparian zone vegetation to be cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, cumulatively since November 5, 2007.

(o) The Department shall issue an individual permit for the construction of a public access area along a tidal water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The public access area is designed in accordance with the public access to the waterfront rule, N.J.A.C. 7:7-16.9; and

2. For any proposed public access parking area, the applicant demonstrates that there is no other feasible location onsite to construct the parking area that would reduce or eliminate the clearing, cutting, and/or removal of riparian zone vegetation.

(p) The Department shall issue an individual permit for the construction of a water dependent development, as defined in the Coastal Zone Management Rules at N.J.A.C. 7:7-1.5, along a tidal water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The water dependent development is designed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7; and

2. For any proposed water dependent development, the applicant demonstrates that there is no other feasible location onsite to construct the development that would reduce or eliminate the area of riparian zone vegetation to be cleared, cut, and/or removed.

(q) The Department shall issue an individual permit to construct an individual subsurface sewage disposal system that serves one new single-family home or duplex, or to repair or alter a lawfully existing, malfunctioning individual subsurface sewage disposal system that serves any building, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates all State and local requirements governing the construction, repair, or alteration of an individual subsurface sewage disposal system, as applicable, cannot feasibly be satisfied without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is

cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

2. The area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary to comply with the Department's Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A;

3. For the construction of a new individual subsurface sewage disposal system under N.J.A.C. 7:9A, the applicant demonstrates that:

i. The system serves one new single-family home or duplex;

ii. No disturbance is located within 50 feet of any top of bank; and

iii. If the new individual subsurface sewage disposal system is proposed to serve a single-family home or duplex being constructed on a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the riparian zone; and

4. For the repair or alteration of a malfunctioning individual subsurface sewage disposal system that serves any building, the applicant demonstrates that:

i. The need for repair or alteration is not directly or indirectly caused by an expansion of the building footprint or square footage of habitable space that the individual subsurface sewage disposal system serves;

ii. The repair or alteration is to a system that was authorized in accordance with N.J.A.C. 7:9A or the standards applicable at the time the system was constructed and the repair or alteration does not increase the estimated volume of sanitary sewage necessary for the structure the authorized system was originally designed to serve, calculated in accordance with N.J.A.C. 7:9A-7.4;

iii. The use of the building is not being changed, including a change from disuse or abandonment to any type of use; and

iv. No disturbance is located within 50 feet of any top of bank unless the malfunctioning system is located within this area. In such a case, the repaired or altered system shall be relocated, where feasible, so that it is located more than 50 feet from any top of bank and as far from the regulated water as possible.

(r) The Department shall issue an individual permit for the investigation, cleanup, or removal of hazardous substances as defined in the Department's Discharges of Petroleum and other Hazardous Substances rules, N.J.A.C. 7:1E, Appendix A, and/or pollutants, as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) Rules, N.J.A.C.

7:14A, which is conducted in accordance with the Department's rules governing the remediation of contaminated site at N.J.A.C. 7:26C, and which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The applicant demonstrates, or provides a certification from a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, that the area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary for compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C. This demonstration or certification shall include:

i. An exploration of all feasible alternative remediation methods acceptable under N.J.A.C. 7:26E and 7:26C; and

ii. The identification of any remediation methods that would result in less area of riparian zone vegetation to be cleared, cut, and/or removed, with an explanation for why these remediation methods were not chosen; and

2. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.

(s) The Department shall issue an individual permit for regulated activities authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department pursuant to N.J.A.C. 7:26-2A.8 or 2A.9, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The Department determines that clearing, cutting, and/or removal of riparian zone vegetation is necessary to undertake the solid waste landfill closure and post-closure plan or disruption approval and to properly maintain and monitor the site after closure;

2. The applicant demonstrates that the area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary to adequately close and/or maintain the landfill. This demonstration shall include:

i. An exploration of alternative methods acceptable under N.J.A.C. 7:26; and

ii. An identification of any methods that would result in less area of riparian zone vegetation to be cleared, cut, and/or removed, with an explanation for why these methods were not chosen; and

3. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.

(t) The Department shall issue an individual permit to construct a trail and/or boardwalk for use by pedestrians, bicycles, and other non-motorized methods of transport,

which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the trail or boardwalk that cannot feasibly be accomplished without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2.

(u) The Department shall issue an individual permit to construct a footbridge, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the footbridge that cannot feasibly be accomplished without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

2. The width of the area of riparian zone vegetation to be cleared, cut, and/or removed for the construction of the footbridge is minimized; and

3. The crossing of the regulated water is designed and constructed as perpendicular to the channel as possible.

(v) The Department shall issue an individual permit for the construction of a flood control project, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the flood control project that cannot feasibly be accomplished without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2.

(w) The Department shall issue an individual permit to remove sediment and/or debris from a regulated water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to remove sediment and/or debris from the regulated water that cannot feasibly be accomplished without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the

area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;

2. The number of proposed access points is the minimum necessary to conduct the project;

3. Where possible, the project is conducted within actively disturbed areas and from only one bank;

4. The use of heavy equipment in the regulated water is avoided unless the applicant demonstrates that there is no feasible alternative that would result in less environmental damage;

5. Vegetation and tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and

6. All proposed access points to the regulated water are described in writing and with color photographs.

(x) The Department shall issue an individual permit to remove existing fill or an existing structure, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above.

(y) The Department shall issue an individual permit for a regulated activity that is not listed in (g) through (x) above, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above;

2. No building is constructed within 25 feet of any top of bank or edge of water;

3. The applicant demonstrates the following:

- i. There is no other reasonable means of accomplishing the project that would reduce or eliminate the impact to the riparian zone;

- ii. There is no other feasible location onsite to undertake the project that would reduce or eliminate the impact to the riparian zone; and

- iii. All disturbance within the riparian zone is located as far from the regulated water as possible; and

4. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.

(z) All riparian zone vegetation that is cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit. Portions of

the riparian zone occupied by an authorized structure need not be replanted.

1. Except as provided in (z)2 below, the vegetation replanted shall:

i. Consist of vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed. For example, herbaceous vegetation may be replaced with the same type of vegetation or with trees, but the trees in forested areas must be replaced with trees of equal or greater density and ecological function and value; and

ii. Consist of native, non-invasive vegetation, except in an actively disturbed area. In an actively disturbed area, the vegetation may be replaced with the same type of vegetation that was cleared, cut, or removed, or with another kind of vegetation typical of an actively disturbed area. For example, lawn grass may be replaced with garden plants or agricultural crops.

2. In cases where replanting in accordance with (z)1 above would interfere with continued access to or maintenance of a structure that is required by Federal, State, or local law, the vegetation replanted shall meet the requirements of (z)1 above to the extent feasible.

New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-11.2, Requirements for stormwater management, recodified to N.J.A.C. 7:13-12.2.

7:13-11.3 Requirements for a regulated activity in a floodway

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a floodway.

(b) Except as provided in (c) below, the Department shall not issue an individual permit for the following activities:

1. The placement of any aboveground structure in or above a floodway;

2. Any regulated activity that would result in the placement of fill in a floodway;

3. Any regulated activity that would raise the ground elevation in a floodway; or

4. Any regulated activity that would obstruct the passage of floodwaters in a floodway.

(c) Notwithstanding (b) above, the Department shall issue an individual permit for the following regulated activities in a floodway, provided all other requirements of this chapter are satisfied for each activity:

1. The construction or conversion of a building on a pier in the Hudson River, provided the requirements of the Coastal Zone Management Rules at N.J.A.C. 7:7-9.46 are

satisfied, in accordance with N.J.A.C. 7:13-12.5(e) or (f), as appropriate;

2. The elevation or reconstruction of a lawfully existing building, in accordance with N.J.A.C. 7:13-12.5(g);

3. The construction of a horizontal and/or vertical addition to a lawfully existing building, in accordance with N.J.A.C. 7:13-12.5(h);

4. The construction of a water control structure, such as a bridge or culvert, low dam, dam, or flood control project, in accordance with N.J.A.C. 7:13-12.7, 12.10, 12.11, and 12.12, respectively;

5. The construction of a stormwater outfall structure, in accordance with N.J.A.C. 7:13-12.9;

6. The construction of a retaining wall or bulkhead, in accordance with N.J.A.C. 7:13-12.13;

7. The restoration and/or stabilization of a bank or channel, in accordance with N.J.A.C. 7:13-12.14, which requires the placement of fill in a floodway, provided the fill is necessary to:

i. Protect nearby structures or trees from undermining or failure; or

ii. Restore or improve the ecological health or habitat value of a regulated water, such as the restoration to a natural condition a regulated water that is enclosed by a structure, such as a pipe or culvert, or which has been previously straightened, channelized or lined with revetments;

8. The placement of dredged material adjacent to the water from which the material was removed, in accordance with N.J.A.C. 7:13-12.15(f);

9. The placement of fill in an isolated shallow depression or other area that does not contribute to the hydraulic capacity of the floodway; and

10. The placement of fill in a portion of a manmade impoundment of water, such as a pond or lake, provided:

i. An equal or greater amount of excavation is performed elsewhere in the same pond or lake at similar elevations as the proposed fill;

ii. The applicant demonstrates that the fill will not obstruct flood flows;

iii. The fill will extend no further than 20 percent of the width of the water, measured perpendicularly across the water from the shoreline along which the fill is being placed; and

iv. The applicant demonstrates that placing the fill will not cause adverse environmental impacts.

Recodified from N.J.A.C. 7:13-10.3 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote (c). Former N.J.A.C. 7:13-11.3, Requirements for excavation, fill and grading activities, recodified to N.J.A.C. 7:13-12.3.

1. A flood hazard area; and

2. An area that was previously situated in a flood hazard area, but which was filled, raised or otherwise removed from the flood hazard area after January 31, 1980, whether in accordance with or in violation of this chapter, except in the following cases:

i. A Department delineation is available for the site, and the Department approves a revision of its delineation that removes the area in question from the flood hazard area; or

ii. No Department delineation is available for the site, but FEMA issues a Letter of Map Amendment that removes the area in question from the 100-year flood plain.

(b) The Department shall issue an individual permit to construct, elevate, enlarge, or reconstruct a building of any kind, only if the following requirements are met:

1. The building is designed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation; and

2. All applicable requirements set forth in (c) through (t) below are satisfied.

(c) The Department shall issue an individual permit to construct, elevate, enlarge, or reconstruct a building only if the following setbacks are satisfied, unless the building lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water, in which case the following setbacks do not apply:

1. Any new building is located at least 25 feet from any top of bank;

2. If an existing building is to be enlarged, such as through the construction of an addition, the enlarged portion of the building is located at least 25 feet from the top of bank, unless the applicant meets the requirements of (d) below; and

3. If an existing building located less than 25 feet from the top of bank is to be elevated or reconstructed, the building shall be relocated so that it is situated at least 25 feet from the top of bank, unless the applicant meets the requirements of (d) below.

(d) In cases where an compliance with the requirements of (c)2 and/or 3 above is not feasible, the applicant shall:

1. Demonstrate in writing the reasons why compliance with (c)2 and/or 3 above, as appropriate, is not feasible; and

2. Provide an engineering certification confirming that the location of proposed construction is stable and suitable for the proposed building, and not subject to erosion or undermining due to its proximity to the top of bank.

(e) The Department shall issue an individual permit for the construction of a new building in a floodway, only if the following requirements are satisfied:

1. The building is located on a pier in the Hudson River;

2. The requirements of the Department's Coastal Zone Management Rules at N.J.A.C. 7:7-9.46 are met; and

3. The applicant provides an engineering certification confirming that the proposed building is designed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(f) The Department shall issue an individual permit to convert an existing building located in a floodway into a single-family home, duplex, multi-residence building, or critical building only if the requirements of (e)1, 2, and 3 above are satisfied.

(g) The Department shall issue an individual permit to elevate or reconstruct a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has been occupied within five years prior to the date of application to the Department to reconstruct;

2. All construction takes place within the same footprint as the original building, unless the applicant demonstrates that an expanded, reduced, or otherwise revised footprint will not result in any further obstruction to the flow of floodwaters; and

3. The applicant provides an engineering certification confirming that the elevated or reconstructed building is designed and constructed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(h) The Department shall issue an individual permit for the construction of a horizontal and/or vertical addition to a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has been occupied within five years prior to the date of application to the Department to construct the addition;

2. The applicant demonstrates that the addition does not result in any further obstruction to the flow of floodwaters; and

3. The applicant provides an engineering certification confirming that the existing building, in combination with the proposed addition, is modified to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(i) The Department shall issue an individual permit to construct a new habitable building only if the following requirements are satisfied:

1. The lowest floor of a single-family home or duplex is set at least one foot above the flood hazard area design flood elevation;

2. The lowest floor of a critical building is set at least one foot above the flood hazard area design flood elevation;

3. The lowest floor of a multi-residence building is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The building is used for both residential and non-residential purposes;

ii. The lowest floor of any residential portion of the building, including any common area, such as a lobby or other portion of the building that is used for both residential and non-residential purposes, is set at least one foot above the flood hazard area design flood elevation;

iii. The applicant demonstrates that it is not feasible to set the lowest floor of any or all of the non-residential portions of the building at least one foot above the flood hazard area design flood elevation;

iv. The lowest floor of the non-residential portions of the building identified in (i)3iii above is set as close as feasible to one foot above the flood hazard area design flood elevation. In no case shall the lowest floor of the building be set below grade along all adjoining exterior walls; and

v. An architect or engineer certifies that the non-residential portions of the building identified in (i)3iii above will be constructed in accordance with the flood-proofing requirements at (q) below; and

4. The lowest floor of any habitable building not identified in (i)1, 2, or 3 above, such as a commercial business, house of worship, office complex, or shopping center, is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The applicant demonstrates that it is not feasible to set the lowest floor of any or all portions of the building at least one foot above the flood hazard area design flood elevation;

ii. The lowest floor of the portions of the building identified in (i)4i above is set as close as feasible to one foot above the flood hazard area design flood elevation. In no case shall the lowest floor of the building be set below grade along all adjoining exterior walls; and

iii. An architect or engineer certifies that the portions of the building identified in (i)4i above will be

constructed in accordance with the flood-proofing requirements at (q) below.

(j) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing habitable building that has been subject to substantial damage as a result of fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of the entire building is constructed or modified where necessary to meet the requirements of (i) above to the extent feasible. In no case shall the lowest floor be set below the FEMA 100-year flood elevation, except as provided in (i)3 and 4 above; and

2. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (p) below.

(k) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been subject to substantial damage as a result of fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of any constructed, elevated, enlarged, or modified portion of the building meets the requirements of (i) above;

2. The lowest floor of the remainder of the building is modified where necessary to meet the requirements of (i) above to the extent feasible. In no case shall the lowest floor of this portion of the building be set below the FEMA 100-year flood elevation, except as provided in (i)3 and 4 above; and

3. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (p) below.

(l) The Department shall issue an individual permit to elevate, enlarge, or otherwise modify all or a portion of a lawfully existing building, which does not result in a substantial improvement, only if the following requirements are satisfied:

1. The lowest floor of the elevated, enlarged, or modified portion of the building meets the requirements of (i) above.

i. Where only a portion of a building is elevated, enlarged, or modified, the lowest floor of the remainder of the building is not required to be elevated or otherwise modified to meet the requirements of (i) above; and

2. Any enclosed area beneath the lowest floor of the elevated, enlarged, or modified portion of the building is modified as necessary to meet the requirements of (p) below.

(m) The Department shall issue an individual permit to reconstruct, elevate, enlarge, or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the requirements of (i) through (l) above, as applicable.

(n) The Department shall issue an individual permit to convert an existing building into a single-family home, duplex, multi-residence building, or critical building only if the lowest floor of the converted building is modified as necessary to meet the requirements of (i) above.

(o) The Department shall issue an individual permit to construct a critical building or multi-residence building, or to convert an existing building to one of these uses, only if the following requirements are satisfied:

1. If the building is located in a fluvial flood hazard area, the applicant demonstrates that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation; and

2. If the building is located in a tidal flood hazard area, the applicant demonstrates either that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, or that such access is not feasible.

(p) The Department shall issue an individual permit to construct an enclosure that lies below the lowest floor of a habitable building, or to construct an enclosure that lies below the flood hazard area design flood elevation that is either attached to or detached from a habitable building and is intended to be used as a garage or parking area, only if the following requirements are satisfied:

1. The enclosure is used solely for parking of vehicles, building access or storage;

2. The floor of the enclosure is situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area;

3. The enclosure is constructed with permanent flood openings that meet the requirements of the Uniform Construction Code at N.J.A.C. 5:23; and

4. Where the enclosure is greater than six feet in height, the following requirements are satisfied:

i. The deed for the lot on which the enclosure is constructed is modified to:

(1) Explain that the enclosure is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

(2) Disclose the depth of flooding that the enclosure would experience during the FEMA 100-

year flood, if available, and the flood hazard area design flood;

(3) Prohibit habitation of the enclosure; and

(4) Explain that converting the enclosure into a habitable area may subject the property owner to enforcement under this chapter; and

ii. The modified deed is recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the building is located, and proof that the modified deed has been recorded is provided to the Department prior to the sooner of either:

(1) The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or

(2) The date that is 90 calendar days after the issuance of the individual permit.

(q) Except for an enclosure that meets the requirements of (p) above, the Department shall issue an individual permit for a building that is flood-proofed only if one of the following requirements is satisfied:

1. The applicant dry flood-proofs the building in accordance with (r) below; or

2. The applicant demonstrates that it is not feasible to dry flood-proof the building in accordance with (r) below and instead wet flood-proofs the building in accordance with (s) below.

(r) The Department shall issue an individual permit to dry flood-proof a building under (q)1 above only if the building is designed and constructed with measures to prevent floodwaters from entering the building during a flood depth of at least one foot above the flood hazard area design flood elevation.

(s) The Department shall issue an individual permit to wet flood-proof a building under (q)2 above only if the building is designed and constructed to be flood-resistant during a flood depth of at least one foot above the flood hazard area design flood elevation, so that floodwaters can enter the building through permanent openings, while not damaging the structural integrity of the building.

(t) The Department shall not issue an individual permit under (q) above to flood-proof a single-family home, duplex, or critical building, or any residential portions of a multi-residence building.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).
See: 45 N.J.R. 360(a).

In (a) and (c)5, substituted "(t)" for "(q)"; in the introductory paragraph of (e), substituted "to elevate or reconstruct" for "for the reconstruction of"; rewrote (g) through (q); and added (r) through (t).

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

Recodified from N.J.A.C. 7:13-11.5 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote the section.

Case Notes

Determination by the Department of Environmental Protection (DEP) that a proposed major development in a Special Water Resource Protection Area (SWRPA) should not receive Stream Encroachment and Freshwater Wetland Permits was upheld. Although the property had previously been used as a landfill and thus had been developed and disturbed, the administrative law judge found that the proposed development would result in a loss of all four functional values of the SWRPA, including habitat, nonpoint source pollutant load reduction, temperature moderation, and channel integrity. Further the proposed project did not comply with stormwater runoff mitigation requirements, basement depth requirements, and post-construction runoff requirements. The DEP was not under an obligation to provide the developer with notice and an opportunity to amend the stormwater runoff defects. *JDME Acquisitions, LLC and Shamrock Creek, LLC v. New Jersey Dep't of Env'tl. Protection, Div. of Land Use Regulation, OAL Dkt. No. ELU-FH 13080-09, 2011 N.J. AGEN LEXIS 924, Initial Decision (September 12, 2011).*

7:13-12.6 Requirements for a railroad, roadway, and parking area

(a) This section sets forth specific design and construction standards that apply to any railroad, roadway or parking area proposed in a flood hazard area.

(b) The Department shall issue an individual permit to construct or reconstruct a railroad or public roadway only if one of the following requirements is satisfied:

1. The travel surface of the railroad or public roadway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant demonstrates that it is not feasible to construct the travel surface of the proposed railroad or public roadway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible.

(c) The Department shall issue an individual permit to construct or reconstruct a private roadway that serves as a driveway to one single-family home or duplex, including any associated parking area, only if the following requirements are satisfied:

1. For the construction of a new single-family home or duplex on a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the flood hazard area;

2. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development; and

3. Either the travel surface of the driveway and any associated parking area is constructed at least one foot above the flood hazard area design flood elevation or the following requirements are satisfied:

i. The applicant demonstrates that it is not feasible to construct the travel surface of the proposed driveway and any associated parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible;

ii. The deed for the lot on which the driveway is constructed is modified to:

(1) Explain that the driveway and any associated parking area is likely to be inundated by floodwaters, which may result in damage and/or inconvenience; and

(2) Disclose the depth of flooding that the driveway and any associated parking area would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood; and

iii. The modified deed is recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the single family home or duplex is located, and proof that the modified deed has been recorded is provided to the Department prior to the sooner of either:

(1) The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or

(2) The date that is 90 calendar days after the issuance of the individual permit.

(d) The Department shall issue an individual permit to construct or reconstruct a private roadway that serves a critical building or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the private roadway is constructed at least one foot above the flood hazard area design flood elevation;

2. For a new private roadway in a fluvial flood hazard area, the applicant demonstrates that the critical building or multi-residence building is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building, and instead constructs the travel surface of the roadway as close to this elevation as feasible; or

3. For a new private roadway in a tidal flood hazard area, or for any reconstructed private roadway that currently lies below the flood hazard area design flood elevation, the applicant demonstrates that it is not feasible to construct the travel surface of the roadway at least one foot

ii. Riparian zone creation in accordance with N.J.A.C. 7:13-13.9; and/or

iii. Riparian zone restoration in accordance with N.J.A.C. 7:13-13.10;

2. To the maximum extent practicable, all structures enclosing or lining the regulated water are removed;

3. To the maximum extent practicable, the regulated water is restored to its natural condition and configuration, including channel geometry, sinuosity, aquatic habitat, and benthic characteristics;

4. The channel is stabilized using vegetation in accordance with (c)1 above and/or soil bioengineering in accordance with (c)2 above; and

5. The project is designed to minimize adverse impacts to flooding offsite, such that the following requirements are satisfied for any flood event described in N.J.A.C. 7:13-12.1(i). For the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet:

i. The proposed construction does not subject any habitable building to increased depth or frequency of flooding;

ii. The proposed construction does not increase offsite flood depths within 500 feet upstream and downstream of the project by more than one foot; and

iii. The proposed construction does not increase offsite flood depths in areas located more than 500 feet upstream and downstream of the project by more than 0.2 feet.

Recodified from N.J.A.C. 7:13-11.14 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote (b) through (d).

7:13-12.15 Requirements for sediment and debris removal from a regulated water

(a) This section sets forth specific standards that apply to any proposed sediment and debris removal from a regulated water.

(b) The Department shall issue an individual permit for the removal of sediment and debris from a regulated water only if the following requirements are satisfied:

1. The applicant demonstrates that there is a documented history of flooding, a mosquito control problem, or other threat to public health, safety, or welfare that necessitates removal of sediment and/or debris from the regulated water;

2. Except for activities along an impounded regulated water, such as a lake, pond, or reservoir, the material to be removed from the regulated water consists solely of accumulated silt, sediment, and debris. Removal of

material beyond or below the natural limits of a linear regulated water constitutes a channel modification and is subject to the requirements at N.J.A.C. 7:13-11.1(c);

3. In order to minimize the downstream transport of sediment during dredging, all areas being dredged are isolated from flowing water where possible. Means of isolation include erecting temporary berms or sheet-piles around the areas being dredged and, for a linear regulated water such as a stream or river, pumping flow around the work area, or, if flow within the regulated water is low, by blocking off the areas being dredged and allowing the sediment to settle. For an impounded regulated water, sediment transport can be reduced by lowering the water level, plugging the downstream discharge of the water, and/or pumping the incoming water around the impoundment; and

4. The applicant properly disposes of all material removed from the regulated water. Removed sediment can be disposed of in a regulated area provided the requirements at (d) below are satisfied. All removed trash and debris shall be disposed of in accordance with all applicable Federal, State, and local requirements outside any flood hazard area or riparian zone.

(c) The Department shall issue an individual permit for the removal of sediment and debris from an impounded regulated water, such as a lake, pond, or reservoir, only if the requirements of (b) above and the following requirements are satisfied:

1. The applicant obtains a lake lowering permit from the Department's Division of Fish and Wildlife, where necessary;

2. The applicant obtains any necessary approvals the Department's Dam Safety Section; and

3. If dredging expands the area or depth of the impounded water beyond its original dimensions, the applicant demonstrates that such expansion will not adversely affect flooding, any structure or freshwater wetlands adjacent to the water, the seasonal high water table or any dam or low dam that may exist.

(d) The Department shall issue an individual permit to deposit sediment that has been removed from a regulated water, only if the following requirements are satisfied:

1. The applicant demonstrates that the transport of the sediment out of the regulated area is not economically or physically feasible, and/or would cause greater environmental damage than depositing the sediment within the regulated area;

2. The sediment is disposed of in accordance with all applicable Federal, State and local laws;

3. The sediment is deposited at least 25 feet from any top of bank;

4. The placement of the sediment does not interfere with the positive overland drainage of the receiving area; and

5. Sediment deposited in a floodway is placed no more than three inches deep.

(e) The Department shall issue an individual permit that allows an applicant to repeatedly remove sediment and debris from a regulated water during the term of the permit, only if the applicant does the following:

1. Demonstrates that there is no feasible means of preventing the accumulation of sediment and debris over time, which would therefore avoid the need for repeated cleanings;

2. Demonstrates that repeated cleanings are necessary to properly maintain existing bridges or culverts along the water, and/or to alleviate local flooding;

3. Demonstrates that repeated cleanings will not adversely impact fishery resources in the water; and

4. Agrees to notify the Department in writing prior to each proposed sediment removal activity, in accordance with the timeframe established in the individual permit.

(f) The Department may require testing of dredged material if there is reason to suspect that the material is contaminated.

Recodified from N.J.A.C. 7:13-11.15 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Section was "Requirements for sediment and debris removal from a water". Rewrote the section.

7:13-12.16 Requirements for the storage of unsecured material

(a) This section sets forth specific standards that apply to any proposed storage of unsecured material in any regulated area.

(b) This section governs the storage of unsecured material not addressed by the following:

1. Permits-by-rule 48 through 53 at N.J.A.C. 7:13-7.48 through 7.53, respectively, which cover the storage of unsecured materials for construction activities, and for certain ongoing residential and commercial uses; and

2. The requirements at N.J.A.C. 7:13-12.17 through 12.20, which cover the placement of hazardous substances and solid waste in a regulated area, whether secured or unsecured.

(c) The Department shall not issue an individual permit for the storage of unsecured material in a floodway.

(d) The Department shall issue an individual permit for the storage of unsecured material in a regulated area outside a floodway only if the following requirements are satisfied:

1. The unsecured material is stored as part of a business or facility, the primary function of which is to store and distribute material, such as a bus or truck depot, car dealership or rental facility, gravel pit, junk yard, landscaping business, lumber yard or vehicle impoundment area;

2. The applicant demonstrates that the unsecured material cannot feasibly be stored outside the flood hazard area and riparian zone onsite;

3. The unsecured material to be stored is isolated from floodwaters by berms, or will be situated in a specially designed containment area onsite, so that, in the event of a flood, the stored material will not be transported off the site by floodwaters;

4. The applicant discloses the maximum volume of unsecured material that will be stored in the flood fringe and includes this volume in calculating the maximum flood storage volume displacement on the site pursuant to N.J.A.C. 7:13-11.4; and

5. The Department determines that the storage of unsecured material in a flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

Recodified from N.J.A.C. 7:13-11.16 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote (b) and (d).

7:13-12.17 Requirements for the investigation, cleanup, or removal of hazardous substances

(a) This section sets forth the requirements for the investigation, cleanup, or removal of hazardous substances as defined in the Department's Discharges of Petroleum and other Hazardous Substances rules, N.J.A.C. 7:1E, Appendix A, and/or pollutants, as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) Rules, N.J.A.C. 7:14A, where proposed in any regulated area.

(b) The Department shall issue an individual permit for the investigation, cleanup, or removal of hazardous substances only if the Department determines, or a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, certifies, that:

1. The project complies with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C;

2. In order to minimize the potential that hazardous substances will be transported offsite by floodwaters during the conduct of site remediation activities, all material necessary to facilitate the investigation, cleanup, or removal of hazardous substances is stored and stockpiled as follows:

4. Any removed structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local laws.

Recodified from N.J.A.C. 7:13-11.19 and amended by R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).
Rewrote (b) and (c).

- 7. Methods for determining credits and debits;
- 8. Accounting procedures;
- 9. Performance standards for determining credit availability and bank success;
- 10. Reporting protocols and monitoring plan;
- 11. Contingency and corrective actions and responsibilities;
- 12. Financial assurances;
- 13. Compensation ratios; and
- 14. Provisions for long-term management and maintenance.

“Mitigation bank site” means the portion of a site, or piece of property upon which a mitigation bank is proposed or developed.

“Preservation” means the permanent protection of undeveloped land, in its natural state, from disturbance or development, through the execution of a conservation easement in accordance with N.J.A.C. 7:13-14.

“Restoration” means the reestablishment of the functions and values of a riparian zone or certain lands outside the riparian zone as described at N.J.A.C. 7:13-13.10, such as the removal of impervious surfaces and planting the area with native, non-invasive vegetation species or restoring a regulated water that has been previously straightened, channelized, or lined with revetments, retaining walls, or other armoring to a natural condition.

“Service area” means the geographic area within which impacts can be mitigated at a specific mitigation bank.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).
Section was “Revision of a verification”.

SUBCHAPTER 13. RIPARIAN ZONE MITIGATION

7:13-13.1 Definitions

In addition to the terms defined at N.J.A.C. 7:13-1.2, the following words and terms, when used in this subchapter, shall have the following meanings.

“Creation” means restoring to a natural condition a regulated water that is enclosed by a structure, such as a pipe or culvert.

“Credit purchase” means the purchase of credits from a mitigation bank, as that term is defined at N.J.A.C. 7:13-1.2, as a substitute for performance of creation, restoration, enhancement, or preservation by a permittee. Once a credit is applied to satisfy a mitigation obligation under this subchapter, it is exhausted and may not be sold or used again.

“Enhancement” means the improvement of the functions and values of a degraded riparian zone or certain lands outside the riparian zone as described at N.J.A.C. 7:13-13.10, such as the removal of invasive plant species or the planting of native, non-invasive vegetation.

“Fee simple” means absolute ownership in land, unencumbered by any other interest or estate.

“Mitigation” means activities carried out in accordance with this subchapter in order to compensate for the loss or disturbance of riparian zones.

“Mitigation area” means the portion of a site or piece of property upon which mitigation is proposed or performed.

“Mitigation banking instrument” means documentation of Department approval of the objectives and administration of the bank including, as applicable:

- 1. Bank goals and objectives;
- 2. Ownership of bank lands;
- 3. Bank size and type of riparian zone resources or channel type proposed for inclusion in the bank; including a site plan and specifications;
- 4. Description of baseline conditions at the bank site;
- 5. Geographic service area;
- 6. Riparian zone disturbance suitable for compensation;

7:13-13.2 General mitigation requirements

(a) Mitigation shall fully compensate for any ecological loss.

(b) Mitigation proposals may be submitted as part of an individual permit application for concurrent review in accordance with (c)1 below. However, the determination as to whether a permit application should be approved shall be independent of the analysis of proposed mitigation for compliance with this subchapter. Where a mitigation proposal is not submitted as part of an individual permit application for an otherwise approvable project and this chapter requires mitigation for riparian zone vegetation impacts proposed, the Department shall place a condition upon any permit issued requiring submission and Department approval of a mitigation proposal prior to the commencement of any regulated activities under the permit.

(c) When mitigation is required in order to compensate for riparian zone disturbance resulting from regulated activities, the Department shall authorize any regulated activities required to undertake and complete the mitigation through:

1. An individual permit;
2. Approval of a mitigation proposal submitted to comply with a condition of an individual permit;
3. An enforcement document specifying mitigation requirements; or
4. Approval of a mitigation proposal submitted to comply with the requirements of an enforcement document.

(d) Mitigation shall not commence until the Department has approved a mitigation proposal through one of the approvals listed at (c) above.

(e) Mitigation approved under this subchapter may also require additional State or Federal permits or approvals, such as a coastal permit or a permit issued pursuant to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, and Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., from the Department. Mitigation shall not commence until all necessary permits or approvals are obtained.

(f) If the Department requires mitigation as part of a remedy for a violation under this chapter, the Department shall determine the amount of mitigation necessary and the particular alternative required, in consideration of the extent (area) and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a remedy for a violation shall provide for mitigation that is at least as ecologically valuable as mitigation that would otherwise be required under this chapter under an individual permit. The Department may require a greater amount of mitigation than that required under an individual permit where necessary to provide at least equal ecological value due to the duration of time that the environment was impaired as a result of the particular regulated activities undertaken in violation of this chapter.

(g) A mitigation area shall be permanently protected from future development by a conservation restriction in accordance with N.J.A.C. 7:13-14.

(h) Mitigation may consist of one or more mitigation alternatives set forth under this subchapter.

(i) Mitigation for multiple disturbances by a single permittee may, upon Department approval, be aggregated into a single mitigation project. Such an aggregated mitigation project shall not be used as mitigation for disturbances by any person other than the permittee, unless the permittee obtains approval of the project as a mitigation bank under this subchapter.

(j) Mitigation provided to satisfy a mitigation requirement of a Federal or local law or another State law shall not

substitute for or otherwise satisfy any mitigation requirement under this chapter unless the mitigation project also meets the requirements of this subchapter. For example, a mitigation project proposed to meet a mitigation requirement of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A shall satisfy a mitigation requirement imposed under this chapter only if the proposed mitigation project meets the requirements of this subchapter.

(k) Specific requirements for each type of mitigation project are specified in the following sections of this subchapter:

1. Creation mitigation - N.J.A.C. 7:13-13.9;
2. Restoration mitigation - N.J.A.C. 7:13-13.10;
3. Enhancement mitigation - N.J.A.C. 7:13-13.10;
4. Preservation mitigation - N.J.A.C. 7:13-13.12; and/or
5. Purchase of credits from a mitigation bank - N.J.A.C. 7:13-13.13.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).
Section was "Revision of a general permit".

7:13-13.3 Timing of mitigation

(a) Mitigation shall be performed within the applicable time period below:

1. Except for restoration of a temporary disturbance under (a)2 below, mitigation required under an individual permit shall be performed prior to or concurrently with the regulated activity that causes the disturbance;
2. Mitigation for any temporary disturbance shall commence immediately upon completion of the regulated activity that caused the disturbance and shall continue until completion, which shall not exceed six months after the cessation of the regulated activities that caused the disturbance; and
3. Mitigation required as part of an enforcement action shall be performed in accordance with the schedule set forth in the enforcement document.

(b) In addition to the timing set forth in (a) above, all mitigation shall be continued until completion according to the schedule in the approved mitigation proposal.

Repeal and New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).
Section was "Revision of an individual permit".

7:13-13.4 Property suitable for mitigation

(a) Mitigation under this subchapter may be carried out on private or public property.

(b) Except as provided in (c) below, the Department shall approve mitigation only on property that is owned in fee simple and under legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of this chapter.

(c) The Department shall approve mitigation on public property only if:

1. The public entity agrees to record a conservation restriction on the area of the mitigation project, in accordance with N.J.A.C. 7:13-14, or can demonstrate that an existing conservation restriction will protect the mitigation project area in perpetuity; and

2. Where the land was acquired using Green Acres funding or is encumbered with Green Acres restrictions, as defined at N.J.A.C. 7:36-2.1, the use of the area for mitigation purposes is approved by the Green Acres Program.

(d) If the proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless the applicant demonstrates that the encumbrance will not prohibit compliance or otherwise interfere with the mitigation requirements of this chapter.

(e) The following shall not constitute mitigation under this subchapter:

1. The installation of, or improvement to, an existing public facility intended for human use, such as a ball field, nature trail, or boardwalk; or

2. A stormwater management facility, such as a basin.

(f) The Department shall not approve creation, restoration, or enhancement in an area that the Department has determined is currently of high ecological value, for example if the area contains a mature, dense, natural forested community and approving a mitigation project in that area will not result in increased riparian zone functionality.

(g) The Department shall not approve mitigation that would:

1. Destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; or

2. In any way jeopardize the continued existence of any local population of a threatened or endangered species.

(h) The Department shall not approve creation or restoration mitigation in an area where the proposed mitigation poses an ecological risk. For purposes of this section, ecological risk means that the mitigation may result in the reintroduction of contamination to ecological communities,

the exposure of humans to contamination, or the contamination of the mitigation site by subsequent exposure to new areas of contamination requiring remediation. The mitigator shall properly characterize and assess the mitigation area in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9 to determine ecological risk.

1. If the Department determines based on the characterization and assessment that the mitigation activities at the proposed site do not pose an ecological risk and that the proposed mitigation satisfies the requirements of this subchapter, the Department shall approve the mitigation and the mitigator shall proceed with the mitigation project.

2. If the Department determines based on the characterization and assessment that the proposed mitigation activities at the proposed site do pose an ecological risk, the mitigator shall not be permitted to use the site for mitigation unless the mitigator remediates the site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8, 5.1, and 5.2. The mitigator shall proceed with the mitigation project only after it demonstrates that the remediation and/or mitigation activities will fully address the ecological risk and that the proposed mitigation satisfies the requirements of this subchapter.

New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-13.4, Revision of a Department delineation by application, recodified to N.J.A.C. 7:13-3.7.

7:13-13.5 Conceptual review of a mitigation area

(a) This section sets forth the requirements for the conceptual review of potential mitigation areas except for mitigation bank sites. The requirements for conceptual review of a mitigation bank site are set forth at N.J.A.C. 7:13-13.20(a) and (b).

(b) The Department encourages applicants to obtain the conceptual review of any land being considered as a potential mitigation area, prior to purchase of land for mitigation purposes and/or prior to submittal of a mitigation proposal.

(c) To obtain the conceptual review of a mitigation area, the applicant shall submit a written request to the address set forth at N.J.A.C. 7:13-1.3, including:

1. A brief description of the area and the mitigation project being considered;

2. A map showing the location and extent of the prospective mitigation area, including topography if available; and

3. Consent from the owner of the prospective mitigation area allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

(d) The Department's guidance on a proposed mitigation area is not binding and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has or will authorize any mitigation activities at the proposed mitigation area or issue any other approval.

New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Former N.J.A.C. 7:13-13.5, Revision or suspension of a Department delineation by the Department, recodified to N.J.A.C. 7:13-3.8.

7:13-13.6 Basic requirements for mitigation proposals

(a) A mitigation proposal under this chapter shall be submitted at least 90 calendar days prior to the commencement of regulated activities authorized by a permit.

(b) A mitigation proposal to remedy a violation under this chapter shall be submitted by the deadline set forth in the Department's enforcement document.

(c) A mitigation proposal shall include all information necessary for the Department to determine if the requirements of this subchapter are met.

(d) The information required to be submitted in a mitigation proposal for the creation, restoration, enhancement, and/or preservation of riparian zones is set forth at (f) and (g) below and is summarized in the appropriate mitigation proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:13-1.3.

(e) A mitigation proposal for the purchase of bank credits shall consist of a description of the type and quantity of riparian zone disturbance for which mitigation is being proposed, a copy of the permit (if issued) authorizing the disturbance being mitigated, and identification of the mitigation bank from which appropriate credits will be purchased.

(f) The following information, which is reflected on the mitigation proposal checklists referenced in (d) above, shall be submitted to the Department as part of the request for approval of the mitigation proposal:

1. Basic information regarding the applicant, the disturbance for which the mitigation is intended to mitigate, and a copy of the permit (if issued) or enforcement document that is the source of the mitigation requirement;

2. The following material sufficient to explain and illustrate the existing and proposed conditions at the mitigation site, including:

- i. Visual materials such as maps, site plans, planting plans, surveys, topography diagrams, delineations, and/or photographs;

- ii. A narrative describing the existing conditions and proposed mitigation; and

- iii. A preventive maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented;

3. A specific breakdown of each resource for which mitigation is being proposed and the type and quantity of proposed mitigation for each resource;

4. Schedules describing in detail the sequence of mitigation activities and estimated dates for completion for each mitigation activity;

5. For creation and restoration projects, a preliminary characterization and assessment of the site in accordance with N.J.A.C. 7:13-13.4(h) to enable the Department to determine if contamination is present and if the proposed mitigation activities pose an ecological risk;

6. A description of post-construction activities, including schedules for monitoring, maintenance and reporting;

7. Contingency measures that will be followed if the mitigation project fails or shows indications of failing;

8. Information regarding the presence or absence of endangered and/or threatened species wildlife and plant species habitat;

9. Any letters, contracts, agreements, easements, conservation restrictions, or other draft or executed documents necessary to ensure compliance with this chapter;

10. A certification of truth and accuracy in accordance with N.J.A.C. 7:13-18.2(j); and

11. Consent from the owner of the proposed mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area.

(g) For restoration and creation mitigation projects, the following additional information shall be submitted as part of the request for approval of the mitigation proposal:

1. All calculations necessary to demonstrate that a mitigation proposal for riparian zone creation meets the requirements of this chapter;

2. Information regarding relevant features of other properties in the vicinity of the mitigation area, such as whether nearby properties are publicly owned or contain preserved open space, or significant natural resources; and

3. Cost estimates to perform the mitigation and maintain the mitigation area after construction and/or transfer is completed.

New Rule, R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.7 Department review and approval of a mitigation proposal

(a) The Department shall, within 30 calendar days of receipt of a mitigation proposal submitted to comply with a condition of an individual permit, review the proposal for completeness in accordance with N.J.A.C. 7:13-13.6, and:

1. Request any necessary additional information; or
2. Declare the mitigation proposal complete for further review.

(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.8 Riparian zone mitigation options and mitigation location

(a) This section governs the mitigation alternatives available to compensate for riparian zone vegetation disturbances and the location of the mitigation in relation to the area where disturbance to riparian zone vegetation is proposed to occur, or, in the case of a violation, has occurred.

(b) Mitigation for a riparian zone vegetation disturbance shall be provided in one or more of the following means, as determined in consultation with the Department:

1. Purchase of credits from a mitigation bank with a service area that includes the location of the disturbance;
2. Onsite creation, restoration, enhancement, or preservation; and/or
3. Offsite creation, restoration, enhancement, or preservation in the same watershed management area as the disturbance.

(c) If mitigation for riparian zone vegetation disturbance within the same watershed management area at (b)3 above is not feasible, mitigation may occur in another watershed management area, provided the mitigation is as close as possible to the watershed management area where the disturbance is to occur, as approved by the Department, and provided the mitigation fully compensates for the disturbance in accordance with N.J.A.C. 7:13-13.2.

(d) Mitigation to compensate for disturbance to vegetation within a 300-foot riparian zone, which is associated with a "major development" as defined in the Department's Stormwater Management rules at N.J.A.C. 7:8-1.2, shall be provided along either the same regulated water as the disturbance or an upstream tributary to that regulated water.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.9 Riparian zone creation

(a) This section sets forth specific requirements for riparian zone creation plans.

(b) If creation is the mitigation alternative, the Department shall require creation at a creation to loss ratio of 1:1 unless the applicant demonstrates in accordance with (b)1 below that creation at a ratio of less than 1:1 will provide equal ecological functions and values.

1. A mitigator may create riparian zones at a ratio of less than 1:1 if the mitigator demonstrates through the use of productivity models or other similar studies that creating a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a creation to loss ratio of less than 0.5:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the proposed type and density of vegetation, the sediment and pollution removal ability of the proposed riparian zone vegetation, all proposed bank stability and erosion protection measures, and any anticipated wildlife habitat conditions. The documentation shall detail how the mitigation proposal will fully replace the ecological values of the riparian zone lost or disturbed.

(c) The Department shall approve a riparian zone creation plan only if a regulated water, which is enclosed by a structure, such as a pipe or culvert, is restored to a natural condition such that:

1. All structures enclosing the regulated water are removed;
2. The regulated water is restored to a natural condition and configuration, including channel geometry, sinuosity, and benthic characteristics to the maximum extent practicable; and
3. The channel is stabilized and planted with native, non-invasive vegetation in accordance with N.J.A.C. 7:13-12.14(c)1 or using soil bioengineering in accordance with N.J.A.C. 7:13-12.14(c)2.

(d) The area of mitigation for which the mitigator receives credit under a riparian zone creation plan shall be calculated as the sum of:

1. The area of land that lies between the tops of bank of the restored regulated water; and
2. Any created riparian zone located outside of the tops of bank, provided the area is:
 - i. Restored to a natural condition, free from any gravel, impervious surface, or other structures and manmade materials, except for soil bioengineering or other structures necessary to support the proposed plan; and

ii. Planted with native, non-invasive vegetation of equivalent or superior density and ecological functions and values as the disturbed area for which mitigation is being provided.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.10 Riparian zone restoration and enhancement

(a) This section sets forth specific requirements for riparian zone restoration and enhancement plans.

(b) If restoration is the mitigation alternative, the Department shall require restoration at a restoration to loss ratio of 2:1, unless the applicant demonstrates in accordance with (b)1 below that restoration at a ratio of less than 2:1 will provide equal ecological functions and values.

1. A mitigator may restore riparian zones, or land adjacent to riparian zones in accordance with (d) below, at a ratio of less than 2:1 if the mitigator demonstrates through the use of studies that restoring a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a restoration ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the existing and proposed type and density of vegetation, the sediment and pollution removal ability of the existing and proposed riparian zone vegetation, all proposed bank stability and erosion protection measures, and any anticipated wildlife habitat conditions. The documentation shall also detail how the mitigation proposal will replace the ecological values of the riparian zone lost or disturbed.

(c) If enhancement is the mitigation alternative, the Department shall require enhancement at an enhancement to loss ratio of 3:1, unless the applicant demonstrates in accordance with (b)1 below that enhancement at a ratio of less than 3:1 will provide equal ecological functions and values.

1. A mitigator may enhance riparian zones, or land adjacent to riparian zones in accordance with (d) below, at a ratio of less than 3:1 if the mitigator demonstrates through the use of studies that enhancing a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the existing and proposed type and density of vegetation, the sediment and pollution removal ability of the existing and proposed riparian zone vegetation, all proposed bank stability and erosion protection, and any anticipated wildlife habitat

conditions. The documentation shall also detail how the mitigation proposal will replace the ecological values of the riparian zone lost or disturbed.

(d) The Department shall approve a riparian zone restoration or enhancement plan only if the land intended for restoration or enhancement is:

1. Restored to a natural condition, free from any gravel, impervious surface, or other structures and manmade materials, except for soil bioengineering or other structures necessary to support the proposed plan;
2. Planted with native, non-invasive vegetation of equivalent or superior density and ecological functions and values as the disturbed area for which mitigation is being provided;
3. Located within 100 feet from any top of bank along a regulated water possessing a 50-foot riparian zone;
4. Located within 300 feet from any top of bank along a regulated water possessing a 150-foot riparian zone;
5. Located within 300 feet from any top of bank along a regulated water possessing a 300-foot riparian zone; and
6. Not separated from the regulated water along which the mitigation is proposed by a roadway, railroad or other intervening structure.

(e) The Department shall approve a riparian zone restoration plan that consists of restoring to a natural condition a regulated water that has been previously straightened, channelized, or lined with revetments, retaining walls, or other armoring, only if:

1. All structures lining the regulated water are removed;
2. The regulated water is restored to a natural condition and configuration, including channel geometry, sinuosity, and benthic characteristics to the maximum extent practical; and
3. The channel is stabilized with native, non-invasive vegetation.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.11 Monitoring and reporting for riparian zone creation, restoration, and enhancement

(a) This section sets forth monitoring and reporting for approved plans for riparian zone creation, restoration, and enhancement.

(b) Within 60 calendar days after the construction of a creation, restoration, or enhancement project is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different timeframe for the submittal of the construction completion report if it determines doing so would better facilitate

assessing the progress and success of the mitigation. The construction completion report shall include:

1. An as-built plan of the completed mitigation area, showing the species and densities of plantings, and any grading necessary to accomplish the approved mitigation proposal;
2. Photographs of the completed mitigation; and
3. An explanation for any deviation from the approved mitigation proposal.

(c) In addition to the construction completion report required under (b) above, the mitigator shall submit a post-construction monitoring report to the Department each year for five years after completion of any creation, restoration, or enhancement project, unless a different timeframe for submittal is specified in the approved mitigation proposal. The Department may modify the frequency and/or duration of required reporting if it determines that such modification is necessary to ensure the success of the mitigation. Post-construction monitoring shall begin the first full growing season after the mitigation project is completed.

(d) The post-construction monitoring report required under (c) above shall be submitted to the Department by December 31 of each year and shall include:

1. An executive summary;
2. The requirements and goals set forth in the approved mitigation proposal;
3. 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 as determined pursuant to (e) below and a timeline for completion;
4. Information required by the riparian zone mitigation monitoring checklist available from the Department at the address set forth at N.J.A.C. 7:13-1.3. For a riparian zone mitigation project, the checklist requires the following information:
 - i. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;
 - ii. Photographs of the mitigation site, with a location map indicating the location and direction of each photograph; and
 - iii. An assessment of the planted vegetation and the species that are naturally colonizing the site including relevant data, photographs, and field observation notes collected throughout the monitoring period.

(e) The standards by which the mitigation project shall be determined to be successful are set forth at (e)1 through 4 below. The mitigator shall submit a post-construction

monitoring report as required at (d) above demonstrating that these standards have been met. The standards are:

1. The goals of the approved riparian zone mitigation proposal have been achieved;
2. The percent coverage of the planted vegetation as detailed in the approved mitigation plan has been achieved;
3. The mitigation provided meets all applicable requirements of this subchapter; and
4. The permittee has executed and recorded (or caused to be executed and recorded if the mitigation has occurred on public property) the conservation restriction for the mitigation area, which meets the requirements of N.J.A.C. 7:13-14.

(f) The Department shall determine, after consultation with the mitigator, the appropriate corrective action(s) that the mitigator must implement so that the standards at (e) above are met. Corrective actions may include regrading or replanting the mitigation site, relocation of the mitigation project to another, more suitable site and/or extending the monitoring period as necessary to ensure success of the mitigation.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.12 Riparian zone preservation

(a) This section sets forth specific requirements for riparian zone preservation plans.

(b) An applicant proposing to provide riparian zone mitigation under a preservation plan shall preserve undeveloped land such that future development is precluded within the preserved area.

(c) If preservation is the mitigation alternative, the area preserved shall be sufficient to ensure that the functions and values resulting from the preservation area will fully compensate for the loss of functions and values caused by the disturbance. At a minimum, the area preserved shall be:

1. Valuable for the protection of a riparian zone ecosystem;
2. Free of solid or hazardous waste, and water and soil pollution; and
3. Significantly larger than the area that would be required for any other mitigation alternative.

(d) Other factors the Department shall consider in determining whether an area is valuable for the protection of a riparian zone ecosystem include, but are not limited to:

1. The diversity of the ecological communities of the land to be preserved;
2. The relationship of the land to be preserved to existing and planned development; and

3. Whether the land to be preserved is adjacent to a riverine system that:

- i. Includes headwaters;
- ii. Is adjacent to public lands containing preserved lands, such as Federal wildlife refuges, State wildlife management areas, State parks or forests, or State, county, or local preservation areas; and
- iii. Has unique aspects or characteristics that contribute to its ecological value, such as an unusual or regionally rare type of ecosystem.

(e) The Department shall determine mitigation through preservation successful upon:

1. Demonstration that any required conservation restriction has been recorded in accordance with N.J.A.C. 7:13-14; and
2. Documentation that the property has been transferred in fee simple to a government agency or a Department approved charitable conservancy and that the transfer has been recorded with each county in which the preserved land is located.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.13 Requirements for credit purchase from an approved mitigation bank

(a) If the Department determines that a proposal to provide mitigation through the purchase of credits from a mitigation bank is an appropriate mitigation alternative, the Department shall evaluate the values and functions lost as a result of the disturbance and determine the number of credits required to ensure that the mitigation results in a riparian zone of equal functions and values to those lost.

(b) The mitigator shall prepare and execute all documents necessary to ensure that the credits have been purchased from a Department approved mitigation bank with available credits.

(c) The Department shall determine mitigation through credit purchase successful upon receipt of documentation from the permittee that the credit purchase was made as required. Documentation shall include a written certification from the mitigation bank operator, indicating the number of credits purchased and the Department permit number.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.14 Financial assurance for mitigation projects; general provisions

(a) Financial assurance in accordance with this section is required for mitigation projects involving creation, or restoration activities as mitigation for disturbance to riparian zones. Financial assurance is not required for a mitigation

proposal or mitigation bank proposal submitted by a government agency or an entity that is exempt from the requirement to provide financial assurance under Federal law.

(b) The person responsible for conducting mitigation identified at (b)1 or 2 below shall establish and maintain financial assurance in accordance with this section:

1. Where mitigation is required pursuant to a permit, the permittee or mitigation bank sponsor of a riparian zone mitigation project or riparian zone bank; or
2. Where mitigation is required as part of the remedy for a violation, the person designated to provide mitigation in the enforcement document.

(c) The person identified at (b) above shall establish and maintain financial assurance in the amount specified at (f) below, until the Department determines that the mitigation site or mitigation bank site has satisfied the applicable performance standards, permit conditions, enforcement document, or settlement agreement.

(d) Financial assurance shall comprise of one or more of the instruments identified at (d)1 through 5 below. A template for each of the types of financial assurance identified at (d)1 through 4 below is available from the Department at the address set forth at N.J.A.C. 7:13-1.3.

1. A fully funded trust fund, in accordance with N.J.A.C. 7:13-13.15;
2. A line of credit, in accordance with N.J.A.C. 7:13-13.16;
3. A letter of credit, in accordance with N.J.A.C. 7:13-13.17;
4. A surety bond, in accordance with N.J.A.C. 7:13-13.18; and/or
5. Other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the Department to meet the requirements of this section.

(e) Financial assurance that meets the requirements of this section shall be provided at least 30 calendar days prior to undertaking mitigation activities approved under a permit or mitigation banking instrument, or as required under an enforcement document or settlement.

(f) The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and approved by the Department and shall include the following:

1. Construction costs, equal to 115 percent of the estimated cost of completing the creation, or restoration; and
2. Maintenance costs, equal to 115 percent of the estimated cost of monitoring and maintaining the site, including the cost to replant the mitigation area.

(g) The Department shall review the financial assurance annually and adjust the amount as necessary to reflect any changes in the estimated construction or maintenance costs.

(h) The Department shall require additional financial assurance, in accordance with (f) above, if additional construction and/or monitoring is required to ensure success of the mitigation project.

(i) The portion of financial assurance required under (f)1 above shall be released upon the Department's determination that construction (including grading and planting) of the mitigation project or bank has been successfully completed in accordance with the approved mitigation proposal.

(j) The portion of financial assurance required under (f)2 above shall be released when the Department determines that the mitigation project or bank is successful pursuant to N.J.A.C. 7:13-13.11(e) (for a riparian zone project), or N.J.A.C. 7:13-13.19(j) (for a mitigation bank), as applicable.

(k) If the Department determines that the person responsible for conducting mitigation and providing financial assurance as specified at (b) above has failed to perform a mitigation project or bank as required by a permit, mitigation banking instrument, enforcement document, or settlement agreement, the Department shall:

1. Provide written notice of this determination to the person; and

2. Require that the mitigation project or bank be brought into conformance with the permit, mitigation banking instrument, enforcement document, or settlement agreement within 30 calendar days after receipt of the notice, unless the timeframe for compliance is extended in writing by the Department.

(l) No sooner than 30 days from the date the person required to establish the financial assurance receives the notice under (k) above, the Department may, at its discretion, perform the mitigation project or bank by drawing on the funds available in the financial assurance.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.15 Financial assurance; fully funded trust fund requirements

(a) A person who chooses to establish a fully funded trust fund as financial assurance pursuant to this subchapter shall submit to the Department the original fully funded trust fund agreement. The trust fund agreement shall:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;

2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;

3. Specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the Department;

4. Specify that the trustee may only disburse funds with the Department's written approval;

5. Specify that funds shall be utilized solely for the purposes of conducting the mitigation project as approved by the Department;

6. Specify that the Department may access the fully funded trust fund to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:13-13.14(l); and

7. Identify the Department as the sole beneficiary of the fully funded trust fund.

(b) Any person responsible for conducting a mitigation project or bank that uses a fully funded trust fund to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the trustee confirming the value of the trust in the amount that the Department has approved, and confirming that the trust shall continue for the next consecutive 12-month period.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.16 Financial assurance; line of credit requirements

(a) A person who chooses to establish a line of credit agreement as financial assurance pursuant to this subchapter shall submit to the Department the original line of credit. The line of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;

2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;

3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended thereafter for a period of at least one year;

4. Specify that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Specify that the lender shall disburse only those funds that the Department approves in writing;

6. Specify that the funds in the line of credit shall be utilized solely for the purposes of conducting the mitigation project or bank; and

7. Specify that the Department may access the line of credit to pay for the cost of the mitigation project or bank pursuant to N.J.A.C. 7:13-13.14(l).

(b) A person responsible for conducting a mitigation project or bank who uses a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.17 Financial assurance; letter of credit requirements

(a) A person who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds pursuant to this subchapter shall submit to the Department the original letter of credit. The letter of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;

2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;

3. Specify that the letter of credit is irrevocable and issued for a period of at least one year, and that it will be automatically extended thereafter for a period of at least one year;

4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and

5. Specify that the Department may access the letter of credit to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:13-13.14(l).

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.18 Financial assurance; surety bond requirements

(a) A person who chooses to provide a surety bond as a financial assurance to guarantee the availability of funds pursuant to this subchapter shall complete and submit to the Department the original surety bond. The surety bond shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or is listed as acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury;

2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;

3. Specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then current expiration date, the issuer shall notify the person using the surety bond and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and

4. Specify that the Department may access the surety bond to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:13-13.14(l).

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.19 Mitigation banks

(a) A mitigation bank requires approval by the Department prior to the sale or utilization of any mitigation credits. "Approval" for the purposes of this section means approval in accordance with N.J.A.C. 7:13-13.20.

(b) If the establishment of a mitigation bank involves regulated activities, as described at N.J.A.C. 7:13-2.4, the bank operator shall obtain all necessary approvals from the Department prior to undertaking the regulated activities.

(c) Once the Department has approved a mitigation bank, the bank operator shall carry out all requirements of the banking instrument approving the bank, even if the credits are not anticipated to be immediately sold or the mitigation bank is formed with the intent that credits will be used solely by the mitigation bank operator.

(d) The Department shall determine how many mitigation credits each mitigation bank operator may receive or sell, based on the increase in values and functions created as a result of the proposed mitigation bank, as well as how the increase in functions and values will interact with the regional aquatic and non-aquatic resources. The Department shall evaluate each mitigation bank to determine its functions and values considering the following:

1. The functions and values provided by the bank site at the time the mitigation bank proposal is submitted, such as existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat functions;

2. Whether the proposed mitigation activities will result in an increase in functions and values over the existing value of the mitigation bank site;

3. The likelihood of long-term success of the proposed mitigation activities in creating functions and values similar to undisturbed riparian zones;

4. The total area of the riparian zone located on the proposed bank site;

5. The potential for the completed mitigation site to be a valuable component of the stream ecosystem;

6. The area and type of mitigation proposed to be performed;

7. The types of resource losses that have occurred in the area;

8. The similarity or dissimilarity of the bank to other existing resources in the area;

9. Available scientific literature regarding credit ratios; and

10. The Department's and other government agencies' experience with mitigation and mitigation banks.

(e) The Department shall include in the banking instrument approving a mitigation bank, a schedule, as set forth in (e)1 through 7 below, under which a bank operator may sell credits. The Department shall adjust the amount of credits that can be released under (e)2 through 7 below to reflect the degree of progress the bank has shown toward meeting the goals and performance standards in the approved mitigation proposal:

1. Ten percent of the credits shall be released upon completion of both of the following:

i. Signing of the banking instrument approving the bank; and

ii. Compliance with all pre-release credit sale conditions in the banking instrument approving the bank, including securing all construction permits, posting adequate and effective financial assurance in accordance with N.J.A.C. 7:13-13.14 for a mitigation bank involving creation or restoration mitigation, and filing of the conservation restriction;

2. Up to 15 percent of the credits shall be released upon completion of planting as required in the banking instrument approving the bank;

3. Up to 10 percent of the credits shall be released when monitoring indicates that the performance standards

in the banking instrument approving the bank have been met for an entire one-year period;

4. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for a two-year period;

5. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for three consecutive years;

6. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for four consecutive years; and

7. The remaining credits shall be released when monitoring in accordance with the banking instrument approving the bank indicates that the performance standards in the banking instrument have been met for five consecutive years.

(f) Preservation credits may be released in their entirety when the conditions set forth at (e)1 above have been met.

(g) The mitigation bank operator shall execute and record a conservation restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction shall meet the requirements for protecting mitigation sites from future disturbance, set forth at N.J.A.C. 7:13-14.

(h) The mitigation bank operator shall monitor the mitigation bank site during and after construction until such time that the last credit is sold, the final inspection is conducted, or the bank is transferred to a governmental agency or charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator shall submit progress reports to the Department at least annually during and after construction, and more frequently if required by the banking instrument approving the bank.

(i) If the mitigation bank falls more than one year behind the schedule for completion specified in the banking instrument approving the bank, the Department may amend the banking instrument approving the bank, and may require corrective action to ensure the successful completion of the bank. The Department may reduce the number of credits that may be sold based on the approved corrective action, in order to reflect the change in values and functions that will result from the changes to the bank.

(j) Upon completion of all requirements in the banking instrument approving the bank, the Department shall determine the mitigation bank is successful, provided the mitigation bank operator:

1. Demonstrates that the bank is successful, as set forth within the banking instrument and the permit;

2. Transfers the mitigation bank site in fee simple to a government agency or Department-approved charitable conservancy;

3. Except for banks based solely upon preservation mitigation provides the government agency or charitable conservancy to which the mitigation bank site is transferred with a maintenance fund. The maintenance fund shall support maintenance activities such as trash removal, maintenance of natural features, monitoring of the site to ensure proper upkeep, maintenance of water control structures, fences, or safety features, and any other activities necessary to ensure that the site complies with this chapter and all applicable law. The amount of the maintenance fund shall be determined between the bank operator and the agency or conservancy to which the mitigation bank site is transferred; and

4. Ensures that the transfer, and the conservation restriction or easement required under (g) above, are recorded with the county or other appropriate agency.

(k) If the Department determines that the mitigation bank operator is in default of any provision of the mitigation banking instrument and the default results in a termination of the banking instrument, the Department shall determine whether the amount of mitigation completed at the bank site is commensurate with the number of credits already sold. If the Department determines that the amount of mitigation completed is less than the number of credits already sold, the Department shall assert its rights to the financial assurance provided under N.J.A.C. 7:13-13.14(k) and (l).

New Rule, R.2016 d.055, effective June 20, 2016.
See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

7:13-13.20 Application for a mitigation bank

(a) A prospective mitigation bank operator may obtain conceptual review of a proposed mitigation bank before buying land or preparing a detailed mitigation bank proposal. In a conceptual review, Department staff will discuss the apparent strengths and weaknesses of the proposed mitigation bank. Guidance provided through a conceptual review is not binding on the Department and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has or will authorize any mitigation activities at the proposed mitigation area or issue any other approval.

(b) To obtain conceptual review of a proposed mitigation bank, an applicant shall submit the following to the Department:

1. Information on the location, size, and environmental characteristics of the proposed mitigation bank site;

2. Information on previous uses of the site, including possible contamination;

3. The proposed mitigation alternatives being considered, such as creation, restoration, and/or enhancement;

4. Whether the credits generated by the bank will be used solely by the mitigation bank operator, or will be available for use by others;

5. Maps, photographs, diagrams, delineations, and/or other visual materials necessary for the Department to generally evaluate the proposed mitigation bank;

6. The names and addresses of all current owners of the mitigation bank site, and any prospective owners, as of the date the request for conceptual review is submitted; and

7. Consent from the owner of the proposed mitigation bank site, allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

(c) To obtain Department approval of a proposed mitigation bank, an applicant shall submit the information required by the riparian mitigation bank proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:13-1.3. The checklist shall require the following:

1. A functional assessment of the bank site prior to construction and proposed site conditions after construction;

2. The goals and objectives of the bank;

3. The ownership of the bank site including disclosure of any leases, easements or other encumbrances;

4. The size of the bank site, as well as type and amount of the riparian zone resources for which credits from the bank could serve as suitable compensation;

5. A description of baseline conditions on the bank site, including all relevant natural features and parameters, as well as pollutants, contamination, and other factors which could affect the bank's ability to provide mitigation credits;

6. A description of the mitigation bank service area within which the mitigation bank credits can be used to compensate for a disturbance. The service area shall be designated to give priority to mitigation for impacts in the same watershed management area as the bank site;

7. The method for determining credits and debits;

8. Accounting procedures;

9. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:13-13.19(e);

10. Performance standards to enable the Department to determine if and when the mitigation bank is successful;

11. Reporting protocols and a monitoring plan;

12. Contingency and corrective actions that will be taken by the mitigation bank operator in case the bank fails;

13. Financial assurance meeting the requirements of N.J.A.C. 7:13-13.14;

14. Provisions for long-term management and maintenance of the mitigation bank site;

15. Site plans, cost estimates, and schedules for construction, completion, and transfer of the mitigation bank;

16. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction, financial assurance, property transfer, and/or agreement with a charitable conservancy to maintain the site;

17. Identification of the persons who will construct, operate and maintain the mitigation bank and mitigation bank site; and

18. Documentation that public notice of the proposed mitigation bank was provided in accordance with N.J.A.C. 7:13-19.

(d) The Department's approval of a mitigation bank shall incorporate conditions necessary to ensure that the requirements of this subchapter are met.

SUBCHAPTER 14. CONSERVATION RESTRICTIONS

7:13-14.1 Conservation restriction form and recording requirements

(a) Any conservation restriction required under this chapter shall conform with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., and shall:

1. Run with the land and be binding, in perpetuity, upon the land owner and successors in interest to any interest in the land or any part of the land covered by the mitigation area;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq., in the chain of title for all properties affected by the restriction; and

3. Be in the form and include such terms as specified and approved by the Department. The applicant shall not alter the form except in consultation with the Department and only when the Department agrees that an alteration is necessary to address site-specific conditions. Form conservation restrictions are available from the Department's website at the address set forth at N.J.A.C. 7:13-1.3.

(b) The conservation restriction shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the regulated activity, project, project site, or mitigation area is located, and proof

that the conservation restriction has been recorded shall be provided to the Department as follows:

1. For a permit that authorizes the establishment of a mitigation bank, prior to the release of any credits; and

2. For any other permit for which a conservation restriction is required, prior to the sooner of either:

i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or

ii. The date that is 90 calendar days after the issuance of the permit or approval of the mitigation plan, if a mitigation plan is submitted pursuant to a condition of the permit in accordance with N.J.A.C. 7:13-13.2(c)2.

(c) Proof that the conservation restriction has been recorded under (b) above shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the Department within 180 calendar days of the issuance of the permit.

(d) The conservation restriction shall include a requirement that each owner of any interest in the land subject to the conservation restriction (that is, the mitigation area) shall:

1. Notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted; and

2. Insert notice of the conservation restriction into any subsequent deed or other legal instrument by which the owner divests either the fee simple title or any possessory interest in the land subject to the conservation restriction.

(e) Any conservation restriction shall be enforceable by the Department. The Department may also direct that the conservation restriction be made enforceable by a government agency or by a charitable conservancy whose trustees have no other ownership interest in the land.

7:13-14.2 Reservation of rights

(a) The property owner or grantor may request approval from the Department to undertake a de minimis modification of the area subject to a conservation restriction recorded in accordance with this subchapter. The Department shall approve the modification if it determines that the modification will result in an equivalent level of protection of the regulated resource; or the modification will result in an equivalent area of resource protection and will not compromise the original protected resource.

(b) The property owner or grantor may reserve the right to abandon the project. At any time prior to the start of any site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, the property owner or grantor may inform the Department in writing that it is abandoning the project and request that the Department void the permit. Upon confirmation that no site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, has occurred, the Department shall provide to the permittee or grantor an executed release of the conservation restriction, which the permittee or grantor may then record.

SUBCHAPTER 15. HARDSHIP EXCEPTION FOR AN INDIVIDUAL PERMIT

7:13-15.1 Hardship exception for an individual permit

(a) The Department shall issue an individual permit for a project or regulated activity that does not comply with one or more of the requirements at N.J.A.C. 7:13-11 and 12 only if:

1. One or more of the requirements at (b) below are satisfied; and
2. All of the requirements at (c) below are satisfied.

(b) A project or regulated activity is eligible for a hardship exception under this section only if one or more of the following apply:

1. The Department determines that there is no feasible and prudent alternative to the proposed project or regulated activity, including not pursuing the project or regulated activity, which would avoid or substantially reduce the anticipated adverse effects of the project or regulated activity, and that granting the hardship exception would not compromise the reasonable requirements of public health, safety, and welfare, or the environment;
2. The Department determines that the cost of compliance with the requirements of this chapter is unreasonably high in relation to the environmental benefits that would be achieved by compliance; or
3. The Department and applicant agree to one or more alternative requirements that, in the judgment of the Department, provide equal or better protection to public health, safety, and welfare and the environment.

(c) In addition to meeting at least one of the requirements in (b) above, a project or regulated activity is eligible for a hardship exception under this section only if the applicant demonstrates that:

1. Due to an extraordinary situation of the applicant or site condition, compliance with this chapter would result in an exceptional and/or undue hardship for the applicant

and/or would adversely impact public health, safety, and welfare;

2. The proposed project or regulated activities will not adversely affect the use of contiguous or nearby property; and

3. The proposed project or regulated activities will not pose a threat to the environment, or to public health, safety, and welfare.

(d) In determining whether to approve a hardship exception for an application satisfying the requirements of (b) and (c) above, the Department shall consider the extent to which the applicant, prior or current property owner(s), and/or their agents may have directly caused or contributed to the hardship.

(e) To obtain an individual permit based on a hardship exception, the applicant shall submit an application for an individual permit pursuant to N.J.A.C. 7:13-18 and shall include the following additional information as applicable:

1. A detailed narrative that:

- i. Explains how the project or regulated activity for which the applicant is seeking a hardship exception meets at least one of the requirements at (b) above as well as all of the requirements of (c) above; and

- ii. Demonstrates that the applicant has pursued alternate designs and/or locations for the project or regulated activity, as applicable, which have proven to be not feasible;

2. A description of any potential impacts of the proposed project or regulated activity upon the environment;

3. If the hardship exception request relates to the requirements for buildings at N.J.A.C. 7:13-12.5, all necessary structural, socio-economic, flood-proofing, and/or other information relevant to support the request;

4. If the hardship exception request relates to the access requirements of N.J.A.C. 7:13-12.6, proposed access routes to and from the property during a flood;

5. If the hardship exception request relates to any potential impacts from or to flooding, the projected height, velocity and duration of the floodwaters expected at the site during the flood hazard area design flood, as well as evidence that the project will not adversely affect the hydraulic capacity of any water so as to cause or increase flooding upstream and/or downstream of the proposed project;

6. If the hardship exception request is based on economic grounds, detailed financial documentation to support the request;

- 4. An authorization under a general permit pursuant to N.J.A.C. 7:13-6 and 9, except as provided in (b)4 below;
- 5. An individual permit pursuant to N.J.A.C. 7:13-10, 11, and 12;
- 6. An extension of a verification, authorization under a general permit, or individual permit, pursuant to N.J.A.C. 7:13-22.3; and
- 7. A modification of a verification, authorization under a general permit, or individual permit, pursuant to N.J.A.C. 7:13-22.5.

(b) There is no application fee for:

- 1. An applicability determination pursuant to N.J.A.C. 7:13-2.5;
- 2. A permit-by-rule pursuant to N.J.A.C. 7:13-6 and 7;
- 3. An authorization under the following general permits-by-certification:
 - i. General permit-by-certification 4 for enhancement of a riparian zone through the planting of native, non-invasive plant species, N.J.A.C. 7:13-8.4; and
 - ii. General permit-by-certification 5 for reconstruction, relocation, expansion, and/or elevation of a building outside a floodway, N.J.A.C. 7:13-8.5;

4. An authorization under the following general permits:

- i. General permit 1 for channel cleaning under the Stream Cleaning Act, N.J.A.C. 7:13-9.1;
- ii. General permit 4 for creation, restoration, and enhancement of habitat and water quality values and functions, N.J.A.C. 7:13-9.4; and
- iii. General permit 5 for the reconstruction and/or elevation of a building in a floodway, N.J.A.C. 7:13-9.5;
- 5. An emergency authorization, pursuant to N.J.A.C. 7:13-16;
- 6. A transfer of a verification, authorization under a general permit, individual permit, or emergency authorization, pursuant to N.J.A.C. 7:13-22.4; and
- 7. An administrative modification, pursuant to N.J.A.C. 7:13-22.5.

(c) All application fees shall be paid by money order, check (personal, bank, certified, or attorney) or government purchase order payable to the "Treasurer, State of New Jersey."

(d) Any fee required under this chapter that is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, shall be payable in installments in accordance with N.J.A.C. 7:1L.

(e) The fees for applications under this chapter are set forth in Table 20.1 below:

**Table 20.1
APPLICATION FEES**

Verification pursuant to N.J.A.C. 7:13-5	
	Fee
Method 1 (Department delineation method; see N.J.A.C. 7:13-3.3)	\$1,000 ¹
Method 2 (FEMA tidal method; see N.J.A.C. 7:13-3.4(d))	\$1,000 ¹
Method 3 (FEMA fluvial method; see N.J.A.C. 7:13-3.4(e))	\$1,000 ¹
Method 4 (FEMA hydraulic method; see N.J.A.C. 7:13-3.4(f))	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) ²
Method 5 (approximation method; see N.J.A.C. 7:13-3.5)	\$1,000 ¹
Method 6 (calculation method; see N.J.A.C. 7:13-3.6)	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) ²
Delineation of riparian zone only	\$1,000
Authorization under a general permit-by-certification pursuant to N.J.A.C. 7:13-6 and 8	
Type of General Permit-by-Certification	Fee
General permits-by-certification 4 and 5	No fee
Any other general permit-by-certification	\$1,000
Authorization under a general permit pursuant to N.J.A.C. 7:13-6 and 9	
	Fee
General permits 1, 4, and 5	No fee
Any other general permit	\$1,000
Individual permit pursuant to N.J.A.C. 7:13-10, 11, and 12	

		Fee
Individual permit for the construction of one single-family home or duplex, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or other accessory structure to a single-family home or duplex		\$2,000
Base fee for any other individual permit		\$3,000
Additional review fee per project element ¹		
Bank or channel stabilization, reestablishment, protection, or modification project	Review of hydrologic, hydraulic, and/or flood storage displacement (net-fill) calculations required	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) ²
	No review of calculations required	\$1,000 per project
Bridge, culvert, footbridge, low dam, or other water control structure	Review of hydrologic, hydraulic, and/or flood storage displacement (net-fill) calculations required	\$4,000 per structure
	No review of calculations required	\$1,000 per structure
Review of flood storage displacement (net-fill) calculations for any project not listed above		\$4,000
Review of a hardship exception request		\$4,000
Utility line		\$1,000 per crossing of a regulated water
Extension of a Verification, Authorization under a General Permit, or Individual Permit (N.J.A.C. 7:13-22.3)		
Type of Extension	Fee	
Extension of a verification based on Method 1, 2, 3, or 5	\$240.00	
Extension of a verification based on Method 4 or 6	Twenty-five percent of original application fee	
Extension of a verification of the riparian zone alone	\$240.00	
Extension of an authorization under a general permit	\$240.00	
Extension of an individual permit	Twenty-five percent of original application fee	
Modification of a verification, authorization under a general permit, or individual permit pursuant to N.J.A.C. 7:13-22.5		
		Fee
Administrative modification		No fee
Minor technical modification		\$500.00 per project element modified
Major technical modification		Thirty percent of the original permit application fee or \$500.00, whichever is greater
Revision of a Department delineation pursuant to N.J.A.C. 7:13-3.7		
		Fee
Each major revision	\$4,000 plus \$400.00 per each 100-foot segment of regulated water (or fraction thereof) to be re-delineated ²	
Each minor revision	\$500.00	
Additional application fee stormwater review if a project is a "major development" pursuant to Stormwater Management Rules (see N.J.A.C. 7:8-1.2)		
		Fee
Base fee for any major development		\$3,000
Additional fee for review of groundwater recharge calculations (see N.J.A.C. 7:8-5.4)		\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)		\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)		\$250.00 per acre of impervious surface subject to water quality review (or fraction thereof)

¹ This fee does not apply for any application associated with the construction of one single-family home or duplex, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or accessory structure to a single-family home or duplex.

² The length of the regulated water shall be measured along its centerline. The length of a regulated water in which no channel is discernible shall be determined by measuring along the approximate centerline of the regulated water.

Repeal and New Rule, R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Section was "Application fees".

Recodified from N.J.A.C. 7:13-17.1 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote the section.

7:13-20.2 Annual adjustment of fees

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and
2. Publish a notice of administrative change in the New Jersey Register that:
 - i. States that the Application Fee Adjustment Report is available on the Department's website at www.nj.gov/dep/landuse; and
 - ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following:
 - i. The number and type of Department staff required to perform each activity for which fees are charged and the projected total salaries of those staff for the upcoming State fiscal year;
 - ii. The total cost of fringe benefits for those Department staff, calculated as the projected total salaries of those staff multiplied by a percentage set by the New Jersey Department of the Treasury that reflects costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
 - iii. Indirect costs attributable to those Department staff, calculated as the total salaries and fringe benefits for those staff multiplied by a percentage known as the indirect cost rate. The indirect cost rate is negotiated annually with the U.S. Environmental Protection Agency and is the total of the Department's costs for management and administrative costs applicable to multiple cost objectives (including but not limited to, indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent, and the Depart-

ment's share of the Statewide Cost Allocation Plan) divided by total Department direct salaries plus applicable fringe benefits; and

iv. Projected operating costs attributable to those Department staff, including, but not limited to, costs for postage, telephone, travel, supplies, and data system management;

2. Project the total amount of revenue expected to be received from application fees in the upcoming State fiscal year. This projection shall consider the following:

- i. The number and type of applications received in previous State fiscal years;
- ii. Any trend toward increasing or decreasing construction activities in regulated areas and such trend's impact, if any, on the number and type of applications anticipated for the upcoming State fiscal year;
- iii. Other data concerning economic trends reasonably likely to influence the number and type of applications anticipated for the upcoming State fiscal year; and
- iv. The application fees in effect at the time such projection is made;

3. Project the total amount of money to be available from sources other than application fees, such as State appropriations or Federal grants, for the upcoming State fiscal year;

4. Subtract the amounts in (b)2 and 3 above from the amount in (b)1 above. The remainder is the projected fee revenue shortfall for the upcoming State fiscal year; and

5. Divide the projected fee revenue shortfall in (b)4 above by the total amount of revenue expected to be received from application fees in (b)2 above to determine the fee adjustment factor. The amounts of the adjusted application fees for the upcoming State fiscal year shall be obtained by increasing the existing fees by the fee adjustment factor.

New Rule, R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

Recodified from N.J.A.C. 7:13-17.2 by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

SUBCHAPTER 21. APPLICATION REVIEW

7:13-21.1 General application review provisions

(a) This subchapter sets forth the review procedures for applications for a verification, applications for authorization

under a general permit, and applications for an individual permit.

(b) The review procedures for the following are set forth elsewhere in this chapter:

1. For a request for an applicability determination, see N.J.A.C. 7:13-2.5;
2. For an application for a revision of a Department delineation, see N.J.A.C. 7:13-3.7;
3. For a mitigation proposal, see N.J.A.C. 7:13-13;
4. For a request for an emergency authorization, see N.J.A.C. 7:13-16; and
5. For a request to extend, transfer, or modify an approval, see N.J.A.C. 7:13-22.3, 22.4, or 22.5, respectively.

(c) Any application for an authorization under a general permit or for an individual permit reviewed in accordance with this subchapter, other than those identified at (d)1 and 2 below, is subject to the application review requirements of the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. This subchapter incorporates those requirements and is consistent with N.J.S.A. 13:1D-29 et seq.

1. An application for authorization under a general permit or an individual permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels is subject to all of the requirements of this subchapter except for the timeframes established for completeness review at N.J.A.C. 7:13-21.2 and for Department decision on an application that is complete for review at N.J.A.C. 7:13-21.3.

2. An application for authorization under general permit 1 for channel cleaning under the Stream Cleaning Act at N.J.A.C. 7:13-9.1 is subject only to the review requirements at N.J.A.C. 7:13-21.4.

(d) An applicant may submit a revised application at any time during the application review process. The applicant shall send a copy of the revised portions of the application to the municipal clerk of each municipality in which the site is located and shall provide notice explaining the revisions to any person listed at N.J.A.C. 7:13-19.3(b) whom the Department determines would likely be affected by the revised application. The applicant shall provide documentation in accordance with N.J.A.C. 7:13-19.5 that the notice was provided.

1. If an applicant submits a revised application less than 30 calendar days prior to the deadline for Department decision established pursuant to N.J.A.C. 7:13-21.3, the revised application shall state that the applicant consents to a 30-calendar-day extension of the decision deadline in accordance with N.J.A.C. 7:13-21.3(b).

(e) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review.

(f) Notwithstanding any other provision of this subchapter, an application for an authorization under a general permit or for an individual permit shall not be declared complete for review unless the applicant has obtained all tidelands instruments required for occupation of State-owned tidelands or has submitted a complete application for a tidelands instrument, available from the Department's website at <http://www.nj.gov/dep/landuse/tideland.html> or from the Bureau of Tidelands Management at P.O. Box 420, Mail Code 501-02B, Trenton, NJ 08625-0420. An application for a tidelands instrument requires the name and address of the applicant/title holder and any agent, site location and description, a property survey, and title or deed information.

(g) The Department shall publish notice in the DEP Bulletin of the receipt of each new application, the status of the application during review, and the Department's decision to approve or deny the application. Publication in the DEP Bulletin constitutes constructive notice to interested persons of Department actions on applications for a verification, applications for authorization under a general permit, or applications for an individual permit. Actual notice of the Department's decision to approve or deny an application will be provided, in accordance with N.J.A.C. 7:13-21.3, to the applicant and to persons who specifically request such notice.

7:13-21.2 Completeness review

(a) Within 20 working days after receiving an application for a verification, an application for authorization under a general permit, or an application for an individual permit, where day one of the 20-working-day period is the date the application is received, the Department shall take one of the following actions:

1. Determine the application is both administratively and technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the application;
2. Determine the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or
3. Determine the application is administratively incomplete and return the application.

(b) Within 15 calendar days after receiving the additional information submitted pursuant to (a)2 above for a technically incomplete application, the Department shall take one of the following actions: