(c) The purpose of this chapter is to minimize damage to life and property from flooding caused by development within fluvial and tidal flood hazard areas, to preserve the quality of surface waters, and to protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat.

1. Unless properly controlled, development within flood hazard areas increases the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. Damage also occurs from fallen structures, unsecured materials and other debris carried by floodwaters. Furthermore, improperly built structures are subject to flood damage and threaten the health, safety and welfare of those who use them. Increased flooding results in increased risk of loss of life and property damage.

2. Healthy vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation destabilizes the banks of channels and other surface waters, which leads to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and thus degrades the quality of these waters. Such impacts adversely affect the health and habitat of fish and wildlife that depend upon clean surface waters and therefore disrupt the ecological balance that is necessary for life. Humans are ultimately affected by this imbalance, since clean water is essential for all life.

(d) Except where authority has been delegated to a county governing body under N.J.A.C. 7:13-1.4, the Department shall be the agency that implements this chapter.

(e) Activities regulated under this chapter may also be subject to other Federal, State and/or local rules, plans and ordinances. Authorization to undertake a regulated activity under this chapter does not indicate that the activity also meets the requirements of any other rule, plan or ordinance. It is the applicant's responsibility to obtain all necessary approvals for a proposed project.

(f) Information and forms relating to this chapter can be obtained from:

Street address (for meetings and hand delivery of material):

State of New Jersey
Department of Environmental Protection
Division of Land Use Regulation
501 East State Street
Station Plaza 5, 2nd Floor
Trenton, New Jersey 08609

Postal address:

State of New Jersey
Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 439
Trenton, New Jersey 08625-0439
Telephone: (609) 292-0060
Fax: (609) 777-3656
Website: www.nj.gov/dep/landuse/

(g) USGS quad maps and Flood Hazard Area Technical Manuals can be obtained from the Department's Office of Maps and Publications at the address below. The Flood Hazard Area Technical Manual can also be downloaded from the website listed in (f) above.

State of New Jersey
Department of Environmental Protection
Office of Maps and Publications
428 East State Street
P.O. Box 438
Trenton, New Jersey 08625-0438
Telephone: (609) 777-1039
Fax: (609) 292-3285

7:13-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

"Acid producing soils" means soils that contain geologic deposits of iron sulfide minerals (pyrite or marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

"Actively farmed" means currently and continually in use for cultivation, grazing or other agricultural purposes, provided such activities are recognized as agricultural by the USDA. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be actively farmed. Farms that have been abandoned for more than five years are not actively farmed.

"Anadromous water" means a water that supports anadromous fish, as identified by the Department's Division of Fish and Wildlife. Anadromous fish travel between salt water and fresh water or upstream to spawn, and N.J.A.C. 7:13-10.5(b) indicates how to determine which waters support anadromous fishery resources.

"Applicability determination" is the Department's official statement of whether an activity requires permit under this chapter, as described at N.J.A.C. 7:13-5.1.

"Aquatic habitat enhancement device" means a device placed within and/or adjacent to a channel to enhance aquatic habitat, typically consisting of boulders, brush, deflectors, felled shoreline trees, low-flow channel structures, mud sills,

rubble reefs, spawning/nursery structures and/or tire structures.

"Architect" means a professional architect who is licensed to practice in New Jersey.

"Bank" means the inclined side of a channel, an excavated or impounded area or a topographic depression, which confines and/or conducts water.

"Bed" means the floor of a channel over which water flows continuously or intermittently. Bed also means the floor of an excavated or impounded area or of a topographic depression that confines and/or conducts water.

"Building" means a structure with walls and a roof, which is designed, constructed and/or intended for storage, shelter or occupation. A building that is intended for regular human occupation is considered a habitable building.

"Category One water" means a water designated as such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Central Passaic Basin" means the regulated area along the following waters:

1. Beaver Dam Brook, downstream of Jacksonville Road in Montville Township, Morris County;

2. Black Brook in Florham Park Borough, East Hanover Township and Hanover Township, Morris County;

3. Dead River, downstream of Liberty Corner Road in Bernards Township, Somerset County;

4. East Ditch, downstream of Jacksonville Road in Pequannock Township, Morris County;

5. Harrison Brook, downstream of Lake Road in Bernards Township, Somerset County;

6. Passaic River, between U.S. Route 202 in Bernards Township, Somerset County, and Harding Township, Morris County, and Beatties Dam in Little Falls Township, Passaic County;

7. Pequannock River, downstream of Paterson-Hamburg Turnpike in Riverdale Borough, Morris County, and Pompton Lakes Borough, Passaic County;

8. Pompton River;

9. Ramapo River, downstream of the Pompton Lake dam in Pompton Lakes Borough, Passaic County;

10. Rockaway River, downstream of the Boonton Reservoir dam in Boonton Town and Parsippany-Troy Hills Township, Morris County;

11. Wanaque River, downstream of Paterson-Hamburg Turnpike in Pompton Lakes Borough, Passaic County;

12. West Ditch, downstream of Jacksonville Road in Lincoln Park Borough, Morris County; and

13. Whippany River, downstream of State Route 10 in East Hanover and Hanover Townships, Morris County;

"Channel" means a linear topographic depression that continuously or intermittently confines and/or conducts surface water, not including transient erosional gullies and other ephemeral features that temporarily form after heavy rainfall. A channel can be naturally occurring or can be of human origin through excavation or construction. A channel includes both bed and banks.

"Channel modification" means the reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert. The removal of accumulated sediment and debris in accordance with N.J.A.C. 7:13-8.3, 8.4(c)2 or 11.15 is not a channel modification.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Crawl space" means an enclosed area beneath a building's lowest finished floor, in which the vertical distance between the floor of the enclosed area and the building's lowest finished floor is no more than six feet.

"Dam" means a structure defined as such in the Department's Dam Safety Standards at N.J.A.C. 7:20.

"Department" means the New Jersey Department of Environmental Protection.

"Department delineation" means the flood profiles, flood elevations and/or detailed mapping of the flood hazard area and/or floodway, promulgated by the Department. Appendix 2 of this chapter, incorporated herein by reference, lists the Department delineated waters of New Jersey.

"Documented habitat for threatened or endangered species" means an area for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting or feeding. Evidence of past use by a species can include, but is not limited to, sightings of the species or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and

2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

"Drainage area" means a geographic area within which water, sediments and dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

"Drawing" means a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering or other similar illustration, which is submitted to the Department to describe an existing or proposed activity or condition.

"Dry flood-proofing" means a modification to a building designed to eliminate or reduce potential flood damage to the building and its contents by preventing floodwaters from entering the building up to a certain elevation.

"Emergency permit" means an authorization to undertake a regulated activity, which is issued by the Department when certain conditions exist that warrant immediate action to protect the environment and/or public health, safety and welfare, as described at N.J.A.C. 7:13-12.

"Engineer" means a professional engineer who is licensed to practice in New Jersey.

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and/or gravity.

"Excavation" means removal or recovery of soil, minerals, mineral substances or organic substances other than vegetation, from the land surface or beneath the land surface, whether the land surface is exposed or submerged. Excavation does not include the movement of material due to erosion.

"FEMA" means the United States Federal Emergency Management Agency.

"FEMA flood insurance study" means a document providing various information regarding the potential for a water to flood, published by FEMA for certain waters in certain municipalities. A FEMA study can include flood profiles, floodway maps, flow rates and other information related to flooding along the water covered by the FEMA study. Requests for copies of the available FEMA flood insurance studies or flood profiles, as well as any questions regarding their use, derivation or modification, should be directed to FEMA at (800) 358-9616.

"FEMA flood profile" means a graphic depiction of the 100-year water surface elevation of a given water, published by FEMA as part of a FEMA flood insurance study. FEMA flood profiles are not included in all FEMA flood insurance studies.

"FEMA floodway map" means a map showing the limits of the floodway for a given water, published by FEMA as part of a FEMA flood insurance study. FEMA floodway maps are not included in all FEMA flood insurance studies.

"FEMA flow rate" means the calculated peak rate at which floodwaters would flow in a given water during a 100-year flood, published by FEMA as part of a FEMA flood insurance study. FEMA flow rates are not included in all FEMA flood insurance studies.

"Fill" means to deposit or place material on the surface of the ground and/or under water. "Fill" also means the material being deposited or placed. Fill includes, but is not limited to, concrete, earth, pavement, rock, sand, soil, structures or any stored material such as building material, construction equipment, landscaping material, piles of soil, stone or wood, trash, vegetation in planters and/or root balls, and vehicles. Fill does not include vegetation rooted in the ground, whether naturally occurring or planted.

"Flood control project" means a structural or topographic modification to a channel, flood hazard area and/or riparian zone, performed for the public benefit and undertaken by a public entity, which is designed primarily to reduce flood elevations, reduce the risk of damage from flooding and/or protect an area from flooding or flood damage.

"Flood fringe" means the portion of the flood hazard area that is outside the floodway.

"Flood hazard area" means land, and the space above that land, which lies below the flood hazard area design flood elevation. Structures, fill and vegetation that are situated on land that lies below the flood hazard area design flood elevation are described as being "in" or "within" the flood hazard area. The inner portion of the flood hazard area is called the floodway and the outer portion of the flood hazard area is called the flood fringe. Figures A and B at N.J.A.C. 7:13-2.3 illustrate these areas as well as the riparian zone along a typical water. The flood hazard area on a particular site is determined using the methods set forth at N.J.A.C. 7:13-3. There are two types of flood hazard areas:

1. Tidal flood hazard area, in which the flood hazard area design flood elevation is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to or influenced by stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources; and

2. Fluvial flood hazard area, in which the flood hazard area design flood elevation is governed by stormwater runoff. Flooding in a fluvial flood hazard area may be contributed to or influenced by elevated water levels generated by the tidal rise and fall of the Atlantic Ocean, but the depth of flooding generated by stormwater runoff is greater than flooding from the Atlantic Ocean.

"Flood hazard area design flood" means a flood equal to the 100-year flood plus an additional amount of water in fluvial areas to account for possible future increases in flows due to development or other factors. This additional amount of water also provides a factor of safety in cases when the 100-year flood is exceeded. N.J.A.C. 7:13-3 describes the various methods of determining the flood hazard area design

flood for a particular water as well as the additional amount of water to be added in various situations.

"Flood hazard area design flood elevation" means the peak water surface elevation that will occur in a water during the flood hazard area design flood.

"Flood Hazard Area Technical Manual" means the version of the Department publication entitled "Flood Hazard Area Technical Manual" in effect at the time an application is submitted. The manual can be obtained from the Department at the address listed at N.J.A.C. 7:13-1.1(g). The manual includes a copy of this chapter, various application checklists and other information helpful for understanding the requirements of this chapter and the application review process.

"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 a rule promulgated under this chapter at N.J.A.C. 7:13-8, and for which a person must submit an application for authorization.

"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. Examples of a habitable building include a private residence or public building as defined below; a commercial building such as a retail store, restaurant, office building or gymnasium; an appurtenant structure that is regularly occupied, such as a garage, barn or workshop; and any other building that is regularly occupied, such as a house of worship, community center or meeting hall. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit or an individual shelter for animals such as a doghouse.

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

"Hazardous waste facility" means a facility that is licensed by the State to receive, store and/or process hazardous substances, and which is operating in accordance with all applicable Federal, State and local laws.

"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. Examples of an impervious surface include asphalt, brick, buildings, concrete, metal and most structures. In some instances, the Department will also consider densely packed gravel or stone roadways and parking areas to be impervious for the purposes of this chapter.

"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. 7:13-9, 10 and 11.

"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 lowest floor of a building, including a basement or any other area that can be occupied by humans, except for a crawl space, garage or other enclosed area that meets the requirements at N.J.A.C. 7:13-11.5(m), (n) or (*o*), respectively.

"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 Insurance Studies, 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 Insurance Studies, 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 Insurance Studies, 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.

"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.

"Permit-by-rule" means a flood hazard area permit to undertake a regulated activity for which the terms and conditions are established in a rule promulgated under this chapter at N.J.A.C. 7:13-7 and that is effective without prior written approval from the Department, provided all requirements established for that activity in the applicable permit-by-rule are satisfied.

"Person" means an individual, corporation, corporate officer, partnership, association, the Federal government, the State, a municipality, a commission or political subdivision of the State or any interstate body.

"Private residence" means a one or two-family dwelling.

"Private roadway" means a roadway for use by vehicles, including a driveway or access road, which is not a public roadway as defined in this section.

"Public building" means a habitable building that serves as one or more of the following:

1. An assisted living facility or nursing home;
2. A day care center;
3. A dormitory;
4. A hospital or medical clinic;
5. A jail or detention facility;
6. A police station, fire station or emergency response center;
7. A public shelter;
8. A residential rental unit of three or more units, such as an apartment, hotel or motel;
9. A school or college; and
10. Any other building designed for a public use that is similar to 1 through 9 above.

"Public roadway" means a roadway for use by vehicles, including a driveway or access road, which is constructed for

public use and is maintained by the Federal, State, county or municipal government.

"Reconstruct" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which greater than 50 percent of the structure is replaced and/or the size, shape or location of the structure is altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the reconstruction to the replacement value of the building. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being reconstructed to the total area of the structure.

"Regulated activity" means an activity that is regulated under this chapter as described at N.J.A.C. 7:13-2.4. Some regulated activities, when performed in a certain manner or to a specified degree, are permitted-by-rule at N.J.A.C. 7:13-7. All regulated activities which are not permitted-by-rule require a general permit under N.J.A.C. 7:13-8, an individual permit under N.J.A.C. 7:13-9, 10 and 11, an emergency permit under N.J.A.C. 7:13-12, or a coastal permit under N.J.A.C. 7:7 and N.J.A.C. 7:7E, prior to commencement.

"Regulated area" means the flood hazard area and riparian zone along a regulated water, as described at N.J.A.C. 7:13-2.3.

"Regulated water" means a water subject to this chapter as described at N.J.A.C. 7:13-2.2.

"Repair" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which no more than 50 percent of the structure is replaced and the size, shape or location of the structure is not altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the repair to the replacement value of the building. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being reconstructed to the total area of the structure.

"Revision" means a document issued by the Department to revise a valid, previously issued verification, general permit authorization, individual permit or Department delineation as described at N.J.A.C. 7:13-13.

"Riparian zone" means the land and vegetation within and adjacent to a regulated water as described at N.J.A.C. 7:13-4.1 and illustrated at N.J.A.C. 7:13-2.3.

"Sediment" means solid material, mineral or organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

"Site" means the area within the legal boundary of the property, properties or right-of-way upon which any action under this chapter is requested, proposed, occurring or has occurred, plus any contiguous land owned or controlled by the same person(s). The legal boundary of a property is set forth in the deed(s) of the property. The legal boundary of a right-of-way is set forth in the document creating the right-of-way.

"Soil bioengineering" means the method of stabilizing eroded banks using vegetation, and sometimes in conjunction with other natural materials, as described at section 650.1601(d)(2) of Chapter 16 in the USDA Natural Resource Conservation Service Engineering Field Handbook, published December 1996, incorporated herein by reference. Copies of the Engineering Field Handbook can be obtained from local NRCS offices.

"Soil Conservation District" means a division of the New Jersey Department of Agriculture (NJDA), authorized under N.J.S.A. 4:24 1 et seq. Each Soil Conservation District administers NJDA programs for one or more counties. Soil Conservation Districts are overseen by the New Jersey State Soil Conservation Committee in the NJDA, which promulgates the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

"Solid waste" means any garbage, refuse, sludge or any other material defined as solid waste in the Solid Waste Rules at N.J.A.C. 7:26-1.6.

"Solid waste facility" means a facility that is licensed by the State to receive, store and/or process solid waste.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface or is captured by separate storm sewers or other sewage or drainage facilities.

"Stormwater management basin" means an impoundment created by constructing an embankment, excavating a pit and/or erecting or placing a structure, for the purpose of managing stormwater runoff. A stormwater management basin can be designed to be normally dry (as in a detention or infiltration basin), retain a permanent pool of water (as in a retention basin or wet pond), and/or be planted mainly with vegetation suitable for freshwater wetlands (as in most constructed stormwater wetlands).

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Structure" means any assemblage of material by humans, including, but not limited to, a berm, bridge, bulkhead, building, cable, causeway, culvert, dam, dike, embankment, fence, jetty, levee, pavement, piling, pipe, post, railroad, retaining wall, roadway, stormwater management basin, tower, utility pole or wire. Vegetation is not a structure. Soil bioengineering material that includes vegetation as well as other material is a structure.

"Suitably anchored" means secured to resist flotation, collapse and displacement due to floodwaters. A structure shall be considered to be suitably anchored if the structure is

erected in accordance with the requirements for flood-resistant construction in the International Building Code, incorporated herein by reference. Copies of the International Building Code can be obtained at the following address:

International Code Council, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60477
Telephone: (888) 422-7233

"Temporary" means a regulated activity that occupies, persists and/or occurs on a site for no more than six months. For example, a fill or structure is temporary if, within six months of its placement, the fill or structure is removed from the site, all disturbed regulated areas are restored to their original topography and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

"Threatened or endangered species" means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

"Tree" means a woody plant which is five inches or greater in diameter at a height of 4.5 feet above the ground.

"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 suitably anchored; 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 Geologic Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000, available from the Department at the address listed in N.J.A.C. 7:13-1.1(g).

"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. 7:13-6, which establishes the flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or riparian zone limit on 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 that is piped, relocated or otherwise modified remains a water. A storm sewer is not a water unless it was constructed to replace or divert a previously existing water.

"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.

7:13-1.3 Types of permits and approvals

(a) This chapter establishes procedures and requirements for the following permits and approvals:

1. An applicability determination, in accordance with N.J.A.C. 7:13-5;

2. A verification, in accordance with N.J.A.C. 7:13-6;

3. A permit-by-rule, in accordance with N.J.A.C. 7:13-7;

4. A general permit, in accordance with N.J.A.C. 7:13-8;

5. An individual permit, in accordance with N.J.A.C. 7:13-9, 10 and 11;

6. An emergency permit, in accordance with N.J.A.C. 7:13-12;

7. A revision of an verification, general permit authorization, individual permit or Department delineation, in accordance with N.J.A.C. 7:13-13; and

8. A transfer of an approval to another person, in accordance with N.J.A.C. 7:13-14.1.

(b) Only the following persons or entities may qualify to obtain or operate under the permits and approvals listed at (a) above:

1. The owner(s) of the site on which the regulated activity is proposed or conducted. If the regulated activity is proposed or conducted within a right-of-way or easement, the Department shall be provided written consent for the regulated activity from the owner(s) of the right-of-way or easement;

2. An agent that has been designated by the owner(s) of the site on which the regulated activity is proposed or conducted to obtain or operate under a permit or approval on behalf of the owner(s); or

3. A public entity that is proposing work within an existing or proposed right-of-way or easement, which is owned or controlled by that entity or which will be appropriated by that entity under the power of eminent domain.

(c) The Department shall review an application for a permit or approval listed in (a) above according to this chapter in effect on the day that a complete application is received by the Department. Any amendments to this chapter that are promulgated after the receipt of a complete application (as described by the application requirements for each type of permit or approval under this chapter) shall not affect the Department's review of that application, unless otherwise agreed to in writing by both the Department and the applicant.

(d) A person submitting an application under this chapter shall, to the extent that the person is aware, notify the Department of all facts relevant to the review of the application including, but not limited to, the presence of regulated areas and of threatened or endangered species onsite, history of flooding and previous flood damages onsite and the location of easements and other encumbrance on the property. Failure to provide all necessary information of which the applicant, its consultants, engineers, surveyors or agents is aware may result in the denial of an application or the suspension or termination of an approval, and may subject the applicant, its consultants, engineers, surveyors or agents to enforcement action pursuant to N.J.A.C. 7:13-19 for submittal of false information.

(e) No Department decision made under this chapter shall obligate the Department to approve or deny any future application under this or any other Department program or rule.

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.

(d) A county governing body that has assumed delegation shall not charge fees greater than those provided at N.J.A.C. 7:13-17.

(e) The Department shall not delegate authority to approve any of the following:

1. An application under this chapter by a State agency;

2. An application under this chapter by the county governing body itself; and

3. An application under this chapter for an individual permit that involves a hardship exception pursuant to N.J.A.C. 7:13-9.8.

7:13-1.5 Creation of a county water resources association

(a) A county governing body can create, by ordinance or resolution, a county water resources association, the purpose of which shall be to:

1. Establish county flood control and water management programs, and coordinate these with State and Federal programs;

2. Advise the county governing body on issues related to flood control and water management; and

3. Undertake other duties concerning flood control and water management that the county governing body delegates to the association by ordinance or resolution.

(b) The county governing body shall appoint the members of the county water resources association. Appointed members may include the chief administrative officer or executive of a county planning agency, office of the county engineer, county utility authority, county health department, county mosquito commission, local Soil Conservation District, county parks agency and any other person with relevant experience or training.

7:13-1.6 Liberal construction

This chapter shall be liberally construed to enable the Department to fulfill its statutory obligations. The Commissioner can amend, repeal or rescind this chapter or any part thereof in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:13-1.7 Severability

If any section, subsection, provision, clause or portion of these rules or the application thereof to any person or circumstance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules and their application to persons and circumstances other than those to which they have been held invalid shall not be affected thereby.

SUBCHAPTER 2. EXTENT OF REGULATORY AUTHORITY

7:13-2.1 Permit requirement

(a) No person shall engage in a regulated activity in a regulated area without a flood hazard area permit as required by this chapter, or a coastal permit as required by N.J.A.C. 7:7 and 7:7E, as set forth in (b) and (c) below. Initiation of a regulated activity in a regulated area without a flood hazard area or coastal permit as set forth at (b) below (except as provided in (c) below) shall be considered a violation of this chapter and shall subject the party or parties responsible for the regulated activity to enforcement action, as set forth at N.J.A.C. 7:13-19. Regulated areas are set forth at N.J.A.C. 7:13-2.3 and regulated activities are set forth at N.J.A.C. 7:13-2.4.

(b) Except as provided in (c) or (e) below, a person undertaking any regulated activity in a regulated area shall do so only in accordance with one of the following:

1. A permit-by-rule, pursuant to N.J.A.C. 7:13-7;

2. An authorization under a general permit, pursuant to N.J.A.C. 7:13-8;

3. An individual permit, pursuant to N.J.A.C. 7:13-9, 10 and 11;

4. An emergency permit, pursuant to N.J.A.C. 7:13-12; or

5. A CAFRA or waterfront development permit, pursuant to N.J.A.C. 7:7 and 7:7E, provided:

i. The CAFRA or waterfront development permit was declared by the Department as complete for final review on or after November 5, 2007; and

ii. If activities are proposed in a fluvial flood hazard area, the applicant meets one of the four conditions at N.J.A.C. 7:13-9.6(a) regarding the need for a verification of the flood hazard area and/or floodway onsite.

(c) Undertaking a regulated activity in a regulated area does not require an approval listed at (b) above in the cases listed in (c)1 through 4 below. For the purpose of this subsection, each distinct construction activity in a project, such as each building, road or utility crossing, is considered a distinct regulated activity.

1. The regulated activity is part of a project for which all elements that were subject to the Flood Hazard Area Control rules in effect prior to November 5, 2007 have been approved under a permit issued pursuant to those rules, provided:

i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of this chapter prior to November 5, 2007;

ii. The application for the permit was received by the Department and was complete for review prior to November 5, 2007; and

iii. The permit is valid when the regulated activity is undertaken;

2. The regulated activity is part of a project for which all elements in a tidal flood hazard area that were subject to N.J.A.C. 7:7 and 7:7E in effect prior to November 5, 2007

have been approved under a valid CAFRA or waterfront development permit, provided:

i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of N.J.A.C. 7:7 and 7:7E prior to November 5, 2007;

ii. The application for the permit was received by the Department and was declared complete for final review prior to November 5, 2007; and

iii. The permit is valid when the regulated activity is undertaken;

3. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7 and 7:7E, prior to November 5, 2007 and both of the following applies:

i. The regulated activity is located within the Hackensack Meadowlands District; and

ii. The regulated activity is authorized under a valid zoning certificate issued by the New Jersey Meadowlands Commission prior to November 5, 2007, pursuant to N.J.A.C. 19:4-4.2; or

4. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7 and N.J.A.C. 7:7E, prior to November 5, 2007 and one of the following applies:

i. The regulated activity is authorized under a valid municipal approval, issued prior to November 5, 2007, which enables commencement of construction of the regulated activity on a specific lot and/or easement; or

ii. The regulated activity does not require an approval identified in (c)4i above, and one or more of the following construction activities were completed onsite prior to November 5, 2007:

(1) The foundation for at least one building or structure;

(2) All of the subsurface improvements for a roadway; or

(3) The installation of all of the bedding materials for a utility line.

(d) If a regulated activity is approved under a qualifying approval listed at (c) above, and the regulated activity is subsequently revised by the issuing entity, the original approval continues to satisfy the requirements of (c) above provided the Department determines that the revision will not result in one or more of the following:

1. An increase in the area of vegetation disturbed in a riparian zone;

2. An increase in flood storage displacement in a flood hazard area;

3. For regulated activities under a qualifying approval under (c)1 or 2 above, additional regulated activities within a regulated area that have not been previously reviewed by the Department under N.J.A.C. 7:7, 7:7E and/or this chapter, as applicable; and/or

4. A change in land use and/or an alteration of the basic purpose and intent of the project, such as converting a residential development into a commercial development.

(e) If railroad activities proposed in a flood hazard area or riparian zone are exempt from State regulation under Federal law, no permit shall be required under this chapter for that activity. However, the railroad shall provide the Department with the application material normally required for the proposed activity at least 90 calendar days prior to the railroad commencing the activity. For emergency activities, the information described at N.J.A.C. 7:13-12.1(c) shall be provided to the Department via telephone and/or fax, as listed at N.J.A.C. 7:13-1.1(f), as soon as possible after the emergency is discovered, and in no event later than the day the activity is authorized or commences, whichever occurs first.

7:13-2.2 Regulated waters

(a) All waters in New Jersey are regulated under this chapter except for the following:

1. Any manmade canal;

2. In accordance with N.J.S.A. 58:16A-60, any coastal wetland regulated under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.); and

3. Any segment of water that has a drainage area of less than 50 acres, provided one or more of the following applies:

i. The water has no discernible channel;

ii. The water is confined within a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin (not including any water that historically possessed a naturally-occurring, discernible channel, which has been piped, culverted, ditched or similarly modified); and/or

iii. The water is not connected to a regulated water by a channel or pipe, such as an isolated pond or depression that has no outlet.

7:13-2.3 Regulated areas

(a) For each regulated water, as described at N.J.A.C. 7:13-2.2, the Department identifies and regulates the water and the area surrounding it in two different ways, resulting in the regulated areas described at (a)1 and 2 below:

1. A flood hazard area exists along every regulated water that has a drainage area of 50 acres or more. If a regulated water has a drainage area of less than 50 acres, the water does not have a flood hazard area that is

regulated under this chapter. The flood hazard area is comprised of a flood fringe and a floodway, except for the Atlantic Ocean and other non-linear tidal waters such as bays and inlets, which do not have a floodway. Therefore, the entire flood hazard area along these tidal waters is considered to be a flood fringe for the purposes of this chapter. The methods for determining the limits of the flood fringe and floodway are described at N.J.A.C. 7:13-3; and

2. A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula. The regulated water itself is also part of the riparian zone. The methods for determining the limits of the riparian zone are described at N.J.A.C. 7:13-4.1.

(b) The flood hazard area and riparian zone described at (a)1 and 2 above generally overlap. Figures A and B below (not drawn to scale) illustrate a typical water and each of these regulated areas. This chapter sets forth the specific requirements applicable to activities in each regulated area.

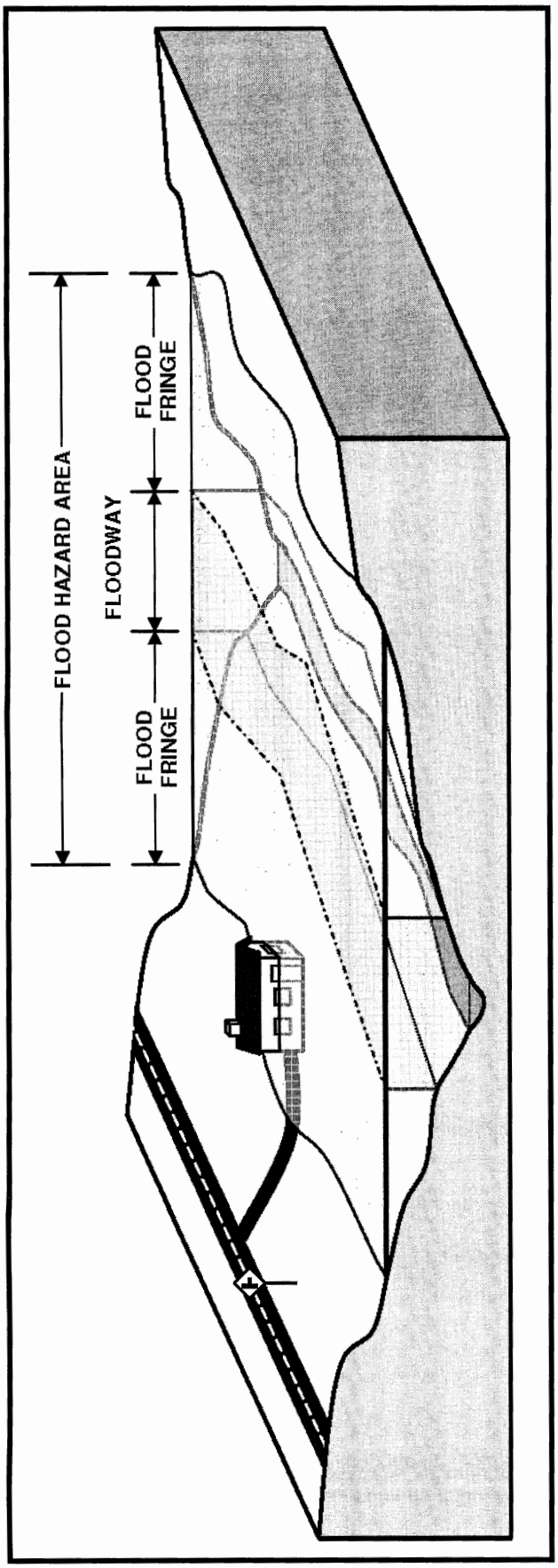


FIGURE A: THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE

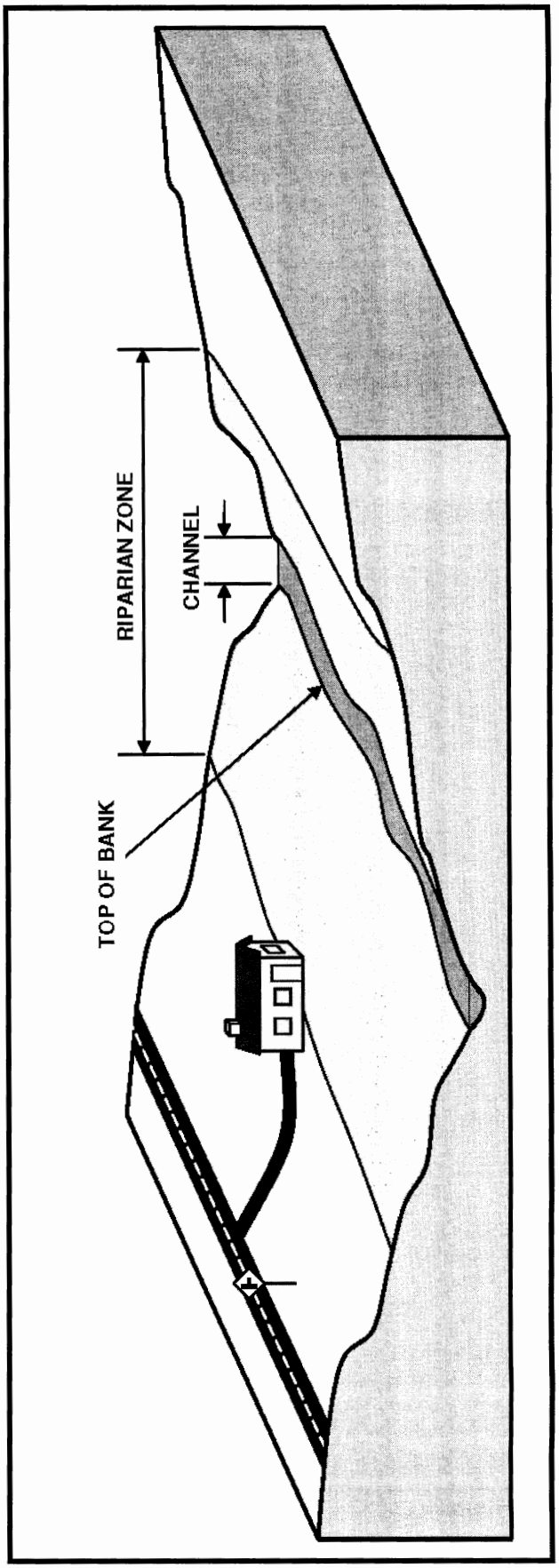


FIGURE B: THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150 OR 300 FEET OF THE CHANNEL

7:13-2.4 Regulated activities

(a) Any action that includes or results in one or more of the following constitutes a regulated activity under this chapter if undertaken in a regulated area, as described at N.J.A.C. 7:13-2.3:

1. The alteration of topography through excavation, grading and/or placement of fill;

2. The clearing, cutting and/or removal of vegetation in a riparian zone;

3. The creation of impervious surface;

4. The storage of unsecured material;

5. The construction, reconstruction and/or enlargement of a structure; and

6. The conversion of a building into a private residence or a public building.

SUBCHAPTER 3. DETERMINING THE FLOOD HAZARD AREA AND FLOODWAY

7:13-3.1 General provisions for determining the flood hazard area and floodway along a regulated water

(a) This subchapter provides six methods for determining the flood hazard area and floodway along a regulated water as follows:

1. Method 1 (Department delineation method) as described at N.J.A.C. 7:13-3.3;

2. Method 2 (FEMA tidal method) as described at N.J.A.C. 7:13-3.4(d);

3. Method 3 (FEMA fluvial method) as described at N.J.A.C. 7:13-3.4(e);

4. Method 4 (FEMA hydraulic method) as described at N.J.A.C. 7:13-3.4(f);

5. Method 5 (approximation method) as described at N.J.A.C. 7:13-3.5; and

6. Method 6 (calculation method) as described at N.J.A.C. 7:13-3.6.

(b) The flood hazard area is the land, and the space above that land, which lies below the flood hazard area design flood elevation, as defined at N.J.A.C. 7:13-1.2. The six methods described in (a) above provide the flood hazard area design flood elevation, from which the flood hazard area limit on a site is determined. In some cases, the limits of the floodway can also be determined using these methods.

(c) In most cases, the Department shall issue an individual permit under this chapter only if the applicant has determined the flood hazard area and floodway limits on the site, and has received a verification for these limits from the Department pursuant to N.J.A.C. 7:13-6.1. However, under certain conditions as set forth at N.J.A.C. 7:13-9.6, the flood hazard area and/or floodway limits need not be verified in order for the Department to be able to determine whether a regulated activity complies with this chapter. Furthermore, a verification is not required prior to obtaining a general permit authorization under this chapter, except for certain cases as noted under general permits 5, 6 and 7 at N.J.A.C. 7:13-8.7, 8.8 and 8.9, respectively.

(d) The flood hazard area and floodway described in this subchapter may differ from areas identified as a "flood hazard area," "flood zone," "floodplain" or "floodway" by another public entity such as FEMA or a local government. The methods listed at (a) above are specifically designed and intended for determining compliance with the construction standards and requirements of this chapter.

7:13-3.2 Selecting a method for determining the flood hazard area and floodway along a regulated water

(a) This section establishes the methods by which the flood hazard area and floodway shall be determined along a regulated water. The flowchart at the end of this section illustrates the correct use of this process. The Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), also provides further guidance on how to perform calculations for those methods that require calculations.

(b) There are a number of factors that influence the selection of a method for determining the flood hazard area and floodway. These factors include the existence of a Department delineation or FEMA flood insurance study, whether the applicant proposes a regulated activity in the flood hazard area and what type of project is proposed. Furthermore, each method has certain limitations on its usefulness and availability as described in this subchapter. Applicants are encouraged to carefully review the entire subchapter before selecting a method.

(c) The flood hazard area and floodway limits along a regulated water shall be determined as follows:

1. If a Department delineation exists for a regulated water, an applicant shall use Method 1 as described at N.J.A.C. 7:13-3.3. Appendix 2 of this chapter lists the Department delineated waters of New Jersey.

2. If no Department delineation exists for a regulated water, an applicant may:

i. Determine the flood hazard area and/or floodway from FEMA mapping, if such mapping exists for the section of regulated water in question, using Methods 2, 3 or 4 as described at N.J.A.C. 7:13-3.4(d), (e) and (f), respectively;

ii. Determine the approximate limit of the flood hazard area using Method 5 as described at N.J.A.C. 7:13-3.5 if no FEMA mapping is exists for the section of regulated water in question; or

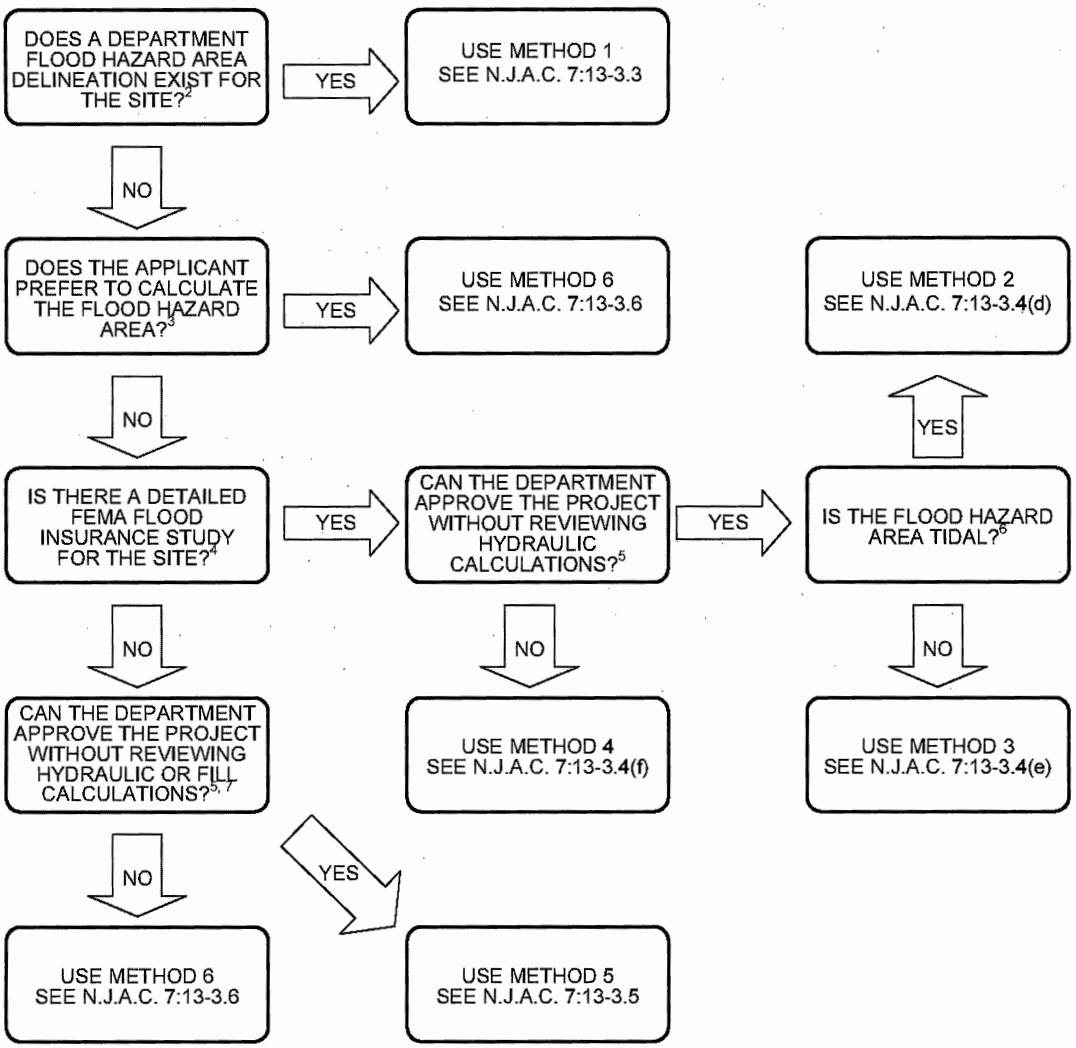
iii. Determine the flood hazard area and/or floodway by calculation using Method 6 as described at N.J.A.C. 7:13-3.6.

(d) The flood hazard area and floodway shall be determined using only one method for each regulated water on a site, except in the following cases:

1. If a Department delineation or FEMA flood insurance study terminates within a site, the flood hazard area on the remainder of the site may be delineated using another applicable method described in this subchapter; and

2. If Method 3 is used to delineate the flood hazard area but no FEMA floodway map exists for the section of regulated water in question, and determining the floodway is necessary to demonstrate compliance with the requirements of this chapter, the applicant shall use Method 4 to calculate the floodway.

FLOW CHART FOR DETERMINING THE FLOOD HAZARD AREA ON A SITE[1]



1. This chart is provided for information purposes only as an aid to applicants who are deciding which method is most appropriate for determining the flood hazard area and floodway on a site. This chart supplements, but does not supersede, the text at N.J.A.C. 7:13-3. If there is any discrepancy between this chart and N.J.A.C. 7:13-3, the rule text shall govern.

2. A complete list of Department delineated waters can be found in Appendix 2.

3. As noted at N.J.A.C. 7:13-3.2(c), an applicant may choose to submit hydrologic and hydraulic calculations to delineate the flood hazard area and floodway where no Department delineation exists.

4. N.J.A.C. 7:13-3.4 describes the requirements which a FEMA study must meet in order to be used to determine the flood hazard area and floodway on a site. Not all FEMA studies may be used.

5. As noted at N.J.A.C. 7:13-11.1(f) and (g), certain projects such as bridges and culverts alter the hydraulic capacity of a channel or flood hazard area. It therefore may be necessary to provide a hydraulic analysis for such projects to demonstrate that flood elevations will not be increased offsite.

6. Flood hazard areas are either tidal or fluvial. See the definitions at N.J.A.C. 7:13-1.2 for more detail.

7. Calculations are sometimes necessary to demonstrate compliance with fill restrictions at N.J.A.C. 7:13-10.4. Method 5 does not provide the information needed for such calculations. Therefore in absence of a State delineation or FEMA study, Method 6 must be used.

7:13-3.3 Flood hazard area and floodway based on a Department delineation (Method 1)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a Department delineation. Appendix 2 of this chapter lists the Department delineated waters of New Jersey. Requests for copies of a Department delineation, including flood profiles and maps, as well as any questions regarding the use, derivation or modification of these delineations, should be directed to the Department's Office of Floodplain Management at the following address:

State of New Jersey
Department of Environmental Protection
Bureau of Dam Safety and Flood Control
P.O. Box 419
Trenton, New Jersey 08625-0419
Telephone: (609) 984-0859

(b) The following apply if a Department delineation has been promulgated under this chapter for a regulated water:

1. The flood hazard area design flood elevation is that which is shown on the flood profile adopted as part of the Department delineation; and

2. The floodway limit is that which is shown on the flood maps adopted as part of the Department delineation.

(c) An applicant seeking to modify a Department delineation shall submit an application for a revision as provided at N.J.A.C. 7:13-13.4.

(d) If an applicant proposes construction in a Department delineated floodway, and must prepare hydraulic calculations to demonstrate that the construction meets the requirements of this chapter, the applicant shall base the calculations on the original data used by the Department to determine the delineation. Such data is available from the Department at the address listed in (a) above.

7:13-3.4 Flood hazard area and floodway based on a FEMA flood insurance study (Methods 2 through 4)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a FEMA flood insurance study where no Department delineation exists. Requests for copies of the available FEMA flood insurance studies or flood profiles, as well as any questions regarding their use, derivation or modification, should be directed to FEMA at (800) 358-9616.

(b) The methods set forth in this section for determining the flood hazard area and floodway along a regulated water may be used only if the following requirements are satisfied:

1. No Department delineation exists for the section of regulated water in question; and

2. A FEMA flood insurance study exists for the section of regulated water in question, which meets the following:

i. The FEMA flood insurance study includes the information needed for the Method that is being used. For example, Methods 2 and 3 below require that the FEMA study includes the regulated water's 100-year flood elevation, and Method 4 below requires that the FEMA study includes the regulated water's 100-year flow rate;

ii. The flood insurance study used is dated January 31, 1980, or later; and

iii. The flood insurance study used is the most recent study published by FEMA for that municipality.

(c) There are three methods by which a FEMA flood insurance study may be used to determine the flood hazard area and floodway limit along a regulated water as follows:

1. Method 2 (FEMA tidal method), set forth at (d) below, which applies to a tidal flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does not provide a 100-year flood elevation, it is not possible to use this method;

2. Method 3 (FEMA fluvial method), set forth at (e) below, which applies to a fluvial flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does not provide a 100-year flood elevation, it is not possible to use this method; and

3. Method 4 (FEMA hydraulic method), set forth at (f) below. This method may be used only if the following requirements are satisfied:

i. The FEMA flood insurance study provides a 100-year flow rate for the regulated water. In most tidal flood hazard areas a large area is inundated due to flooding from the Atlantic Ocean, and therefore FEMA does not provide a 100-year flow rate for the regulated water itself. In such a case, it is not possible to use this method; and

ii. The applicant proposes a regulated activity in the flood hazard area and applies for an individual permit under this chapter, for which the Department requires hydraulic calculations comparing pre-construction and post-construction water surface elevations within the regulated water, in order to demonstrate that the regulated activity complies with this chapter. Examples of activities that require such an analysis are detailed at N.J.A.C. 7:13-11.1(f), 11.1(g), 11.7(c) and 11.7(d).

(d) Under Method 2 (FEMA tidal method):

1. The flood hazard area design flood elevation shall be equal to the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the limits of the channel. The Atlantic Ocean and other non-linear tidal waters such as bays and inlets do not have a floodway.

(e) Under Method 3 (FEMA fluvial method):

1. The flood hazard area design flood elevation shall be equal to one foot above the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit cannot be determined using this method. The applicant shall instead calculate the floodway limit using Method 4 as described in (f) below. In such a case, applicants are encouraged to first contact the Department to discuss whether it is necessary to determine the floodway limit on a site for a given project.

(f) Under Method 4 (FEMA hydraulic method):

1. The flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

i. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate reported by FEMA for the regulated water (see (c)3i above);

ii. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate reported by FEMA for the regulated water; and

iii. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate reported by FEMA for the regulated water, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will more optimally calculate the floodway limits at a given location.

7:13-3.5 Flood hazard area determined by approximation (Method 5)

(a) This section sets forth the procedure for approximating a flood hazard area design flood elevation using the method described in chapter Appendix 1. This method does not provide a floodway limit. Therefore, the Department shall issue an individual permit for a regulated activity within an approximated flood hazard area only if the project meets the requirements at N.J.A.C. 7:13-9.7.

(b) The flood hazard area design flood elevation for a regulated water can be approximated under Method 5, provided the following requirements are satisfied:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. The drainage area of the water at the project site does not exceed 30 square miles.

(c) An applicant may elect to establish the approximate flood hazard area limit at an elevation higher than that which is provided by Method 5 in order to match an existing topographic feature onsite, such as the top of an embankment, or to run concurrent with a verified freshwater wetland or transition area line.

(d) Method 5 is intended to be conservative and may in some cases overestimate the actual limits of flooding onsite to ensure that public health, safety and welfare is adequately protected in absence of a Department delineation or FEMA flood insurance study. Note that an applicant may use Method 6 under N.J.A.C. 7:13-3.6 to determine the flood hazard area and floodway along any regulated water for which no Department delineation exists.

(e) If the Department determines that using Method 5 to approximate a flood hazard area will significantly underestimate the depth of flooding on a particular site due to an unusual hydrologic or hydraulic condition within the drainage area, or due to a unique feature on or near the site, the Department shall not approve a general permit authorization or an individual permit for any regulated activity in the approximated flood hazard area if such approval is determined to constitute a threat to public safety. Should the applicant choose to apply for a permit in such a case, the flood hazard area limit shall first be calculated according to Method 6, as described at N.J.A.C. 7:13-3.6.

7:13-3.6 Flood hazard area and floodway determined by calculation (Method 6)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit via hydrologic and hydraulic calculations. An applicant may use Method 6 to determine the flood hazard area and floodway along any regulated water for which no Department delineation exists. If a Department delineation does exist on a site, the applicant shall use Method 1 as set forth at N.J.A.C. 7:13-3.3.

(b) If the following conditions exist, Method 6 is the only method by which an applicant may determine the flood hazard area and floodway along a regulated water:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. Method 5 (approximation method) set forth at N.J.A.C. 7:13-3.5 cannot be used for one of the following reasons:

i. The requirements for using the approximate method at N.J.A.C. 7:13-3.5(b) are not satisfied;

ii. The Department determines that the approximate method will significantly underestimate the depth of flooding on the site in question, pursuant to N.J.A.C. 7:13-3.5(e); or

iii. The applicant is proposing a regulated activity for which the requirements at N.J.A.C. 7:13-9.7 are not satisfied.

(c) Under Method 6, the flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

1. A hydrologic analysis shall be performed to determine the peak flow rate for the 100-year flood for the regulated water. The hydrologic analysis shall assume existing development conditions in the drainage area, as of the date of the application to the Department;

2. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate determined under (c)1 above;

3. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate determined under (c)1 above; and

4. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate determined under (c)1 above, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will more optimally calculate the floodway limits at a given location.

SUBCHAPTER 4. DETERMINING THE RIPARIAN ZONE

7:13-4.1 The riparian zone

(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula.

(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;

2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;

3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and

4. Along an amorphously-shaped feature, such as a wetland complex, through which a regulated water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;

2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:

i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;

iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

iv. Any segment of a water flowing through an area that contains acid producing soils; and

3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or 2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 and the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 establish 300-foot Special Water Resource Protection Areas and buffers, respectively, along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 177) adopted, concluding that where (1) petitioner in 2003 applied to the local board of adjustment to construct a building with mixed residential and office use and parking near Pascack Brook, (2) the local board of adjustment in January 2004 issued a resolution that gave site plan approval for the development, but which was conditioned upon petitioner receiving approval from the county planning board and any other governmental agencies, if required, and complying with "any and all State and Federal laws and applicable regulations," (3) the Department of Environmental Protection in August 2004 upgraded Pascack Brook to a Category One water at a time when petitioner had not yet commenced construction, petitioner's argument that it was unfair to not grandfather the project was without merit; courts have upheld new Department requirements on development that had previously received site plan or subdivision approval, when necessary to promote public health and safety (decided under former rules). ANM Realty v. N.J. Dep't of Envtl. Prot., OAL Dkt. No. ESA 1029-06, 2007 N.J. AGEN LEXIS 918, Final Decision (August 3, 2007).

SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

7:13-5.1 General provisions for applicability determinations

(a) A flood hazard area applicability determination is the Department's statement of whether an activity is regulated and, therefore, requires a permit under this chapter.

(b) An applicability determination is optional. However, if it is unclear whether a particular activity is regulated, the Department encourages applicants to obtain an applicability determination prior to commencing work since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19.

(c) An application for an applicability determination shall contain the following:

1. One copy of an application report, as described at N.J.A.C. 7:13-15.3; and

2. One set of drawings, signed and sealed by a engineer, land surveyor or architect, as appropriate, detailing the proposed activities. If fill or grading is proposed, the drawing shall show existing and proposed topography unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary.

(d) After reviewing an application for an applicability determination, the Department shall:

1. Notify the applicant that the application did not include all the material required at (c) above and request the missing information. The Department may cancel the request for an applicability determination if the missing information is not provided within 60 calendar days. Otherwise, when the requested material is received, the Department shall take one of the actions in (d)2 below; or

2. Inform the applicant in writing that:

i. The Department is unable to determine whether this chapter applies to the proposed activities because the limit of the flood hazard area and/or riparian zone onsite cannot be determined without additional information. Therefore, the Department shall not issue an applicability determination until the applicant obtains a verification under N.J.A.C. 7:13-6;

ii. This chapter does not apply to the proposed activity and no permit is required pursuant to N.J.A.C. 7:13-2.1, provided the chapter is not amended to establish stricter standards or conditions; or

iii. This chapter does apply to the proposed activities and the regulated activities must be conducted in accordance with a permit pursuant to N.J.A.C. 7:13-2.1. The Department will also inform the applicant whether the proposed activities qualify for a permit-by-rule or whether an application for a general permit authorization or individual permit is necessary, provided the application contains sufficient detail regarding the proposed activities for the Department to make such a determination.

(e) Workload permitting, the Department shall make a final decision on an application for an applicability determi-

nation within 30 calendar days of receiving a complete application.

(f) Except as provided in (g) below, an applicability determination is valid for five years from its issuance date and shall not be extended. However, an applicant may request a new applicability determination to replace an expired one by submitting an application under (c) above. An applicability determination may also be transferred upon the sale of a property to which it applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(g) If the Department determines under (d)2ii above that this chapter does not apply to a proposed activity, and this chapter is subsequently amended to put in place stricter standards or conditions such that the proposed activity becomes regulated, or else the Department amends the flood hazard area or riparian zone onsite such that the proposed activity now lies within one of these regulated areas, the applicability determination shall become void and the applicant shall obtain a permit pursuant to N.J.A.C. 7:13-2.1 prior to commencing the regulated activities onsite.

SUBCHAPTER 6. VERIFICATIONS

7:13-6.1 General provisions for verifications

(a) A verification is a document containing the Department's approval of the flood hazard area design flood elevation on a site, includes either a flood hazard area limit or an indication that the entire site is in a flood hazard area, and may also include a floodway limit and/or a riparian zone limit, if applicable.

(b) The flood hazard area design flood elevation, flood hazard area and/or floodway limits on a site shall be determined in accordance with the procedures outlined in N.J.A.C. 7:13-3. The riparian zone limits on a site shall be determined in accordance with N.J.A.C. 7:13-4.

(c) An application for a verification shall include the following:

1. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. If a hydrologic and/or hydraulic model is submitted with the application, the photographs required in the application report shall depict any water control structures, as well as a representative sampling of the locations of any cross-sections, which are referenced by the models;

2. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, which includes all necessary supporting calculations, maps and other documentation and a description of which delineation method under N.J.A.C. 7:13-3 was used;

3. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

4. The appropriate application fee required at N.J.A.C. 7:13-17; and

5. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which include the following:

i. Topography that references NGVD, or includes the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

ii. The limit of the flood hazard area under existing conditions on the site. If the entire site is in a flood hazard area, the drawings shall include a note to this effect, as well as the elevation(s) of the flood hazard area design flood on the site;

iii. The limit of any floodway under existing conditions on the site, if the applicant seeks verification of the floodway limits. If the entire site is in a floodway, the drawings shall include a note to this effect;

iv. A metes and bounds description of any flood hazard area limit and floodway limit under existing conditions onsite. If the verification is submitted concurrently with a permit application that proposes to affect one or both of these limits, the drawings shall also include a metes and bounds description of the proposed flood hazard area and/or floodway limits;

v. The following statement: "NOTE: All or a portion of this site lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite.";

vi. A note indicating which method described at N.J.A.C. 7:13-3 was used to determine the limit of the flood hazard area and/or floodway;

vii. The limit of any riparian zone onsite as described at N.J.A.C. 7:13-4.1; and

viii. An indication of the location of any cross-section and water control structure referenced in the engineering report as well as a graphic depiction of each cross-section.

(d) The Department shall review an application for a verification according to the same procedure established for individual permit applications at N.J.A.C. 7:13-9.3.

(e) A verification is valid for five years from its issuance date, unless the verification is issued concurrently with a 10-year individual permit under N.J.A.C. 7:13-9.4(b), in which case the verification is valid for 10 years from its issuance

date. A verification shall not be extended. However, a verification can be reissued automatically with the issuance of a permit for a regulated activity at that site pursuant to (f) below and can be transferred at the time of sale of a property to which the verification applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(f) If the Department issues a verification for a site, and within five years issues a general permit authorization or an individual permit for a regulated activity that references or relies upon the verification at that site, the Department shall automatically reissue the verification upon approval of the permit or authorization so that the verification and permit or authorization have the same expiration date. This automatic reissuance shall occur only once per verification and there is

no fee for this reissuance. The reissued verification shall reflect any alterations to the flood hazard area design flood elevation, flood hazard area limit and/or floodway limit that will result from the regulated activities authorized under the individual permit or general permit authorization. All pre-construction and post-construction elevations and limits shall be demarcated on drawings approved under the verification.

(g) Within 90 calendar days after the Department issues a verification on a privately owned lot, or on a publicly owned lot other than a right-of-way, the applicant shall submit the following information to the clerk of each county in which the site is located, and shall send proof to the Department that this information is recorded on the deed of each lot referenced in the verification. Failure to have this information recorded in the deed of each lot and/or to submit proof of recording to the Department constitutes a violation of this chapter and may result in suspension or termination of the verification and/or subject the applicant to enforcement action pursuant to N.J.A.C. 7:13-19:

1. The Department file number for the verification;

2. The approval and expiration dates of the verification;

3. A metes and bounds description of any flood hazard area limit and/or floodway limit approved under the verification;

4. The flood hazard area design flood elevation, or range of elevations if variable, approved under the verification; and

5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite."

SUBCHAPTER 7. PERMITS-BY-RULE

7:13-7.1 General provisions for permits-by-rule

(a) This subchapter establishes permits-by-rule for certain regulated activities. Each permit-by-rule specifically describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area and riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, rescind or modify an existing permit-by-rule, or establish new ones. The flood hazard area permits-by-rule are set forth at N.J.A.C. 7:13-7.2, and are summarized, for informational purposes only, in Table A below.

(b) The following requirements apply to every permit-by-rule at N.J.A.C. 7:13-7.2:

1. Each limit or condition of a particular permit-by-rule shall be satisfied without requiring a review of detailed engineering calculations; and

2. All structures shall be suitably anchored.

(c) A regulated activity that meets the requirements of a permit-by-rule may be conducted without prior Department approval. However, if it is unclear whether a particular activity meets a permit-by-rule, the Department encourages applicants to obtain an applicability determination under N.J.A.C. 7:13-5.1 prior to commencing work, since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19. Furthermore, a person may wish to obtain an applicability determination in order to demonstrate to a local government that a proposed activity meets a permit-by-rule.

(d) A person intending to undertake a regulated activity under any of the eight permits-by-rule at N.J.A.C. 7:13-7.2(a) shall, at least 14 days prior to initiating the activity, provide written notification to the Department (via letter, electronic mail, fax or in person) as follows:

1. The notification shall include:

i. The property owner's name and contact information;

ii. The contractor's name (if applicable) and contact information;

iii. The street address and lot, block, municipality and county for the site at which the regulated activity will be conducted;

iv. Which permit-by-rule applies to the activity;

v. The proposed start and end date for the activity; and

vi. A brief description of the activity.

2. The notification shall be submitted to:

Attn: Permit-By-Rule Notification
New Jersey Department of Environmental Protection
Bureau of Coastal and Land Use Compliance and Enforcement
P.O. Box 422
401 East State Street
Trenton, New Jersey 08625-0422
Fax: (609) 633-6798
Electronic mail: floodhazard-pbrnotice@dep.state.nj.us
Website: http://nj.gov/dep/enforcement/lu.html

(e) Prior to undertaking a regulated activity that fails to comply with any limit, condition or requirement of a permit-

by-rule in this subchapter, the applicant must first obtain a general permit authorization (pursuant to N.J.A.C. 7:13-8), an individual permit (pursuant to N.J.A.C. 7:13-9, 10 and 11), an emergency permit (pursuant to N.J.A.C. 7:13-12) or a CAFRA or waterfront development permit (pursuant to N.J.A.C. 7:7 and 7:7E) for the regulated activity. Furthermore, a person may undertake a regulated activity under a permit-by-rule only up to any given limit specified by the permit-by-rule. For example, the placement of no more than five cubic yards of fill under the permit-by-rule at N.J.A.C. 7:13-7.2(b)3 means either the one-time placement of five cubic yards of fill or multiple placements of fill over time that cumulatively do not exceed five cubic yards. A person may also concurrently undertake activities under two or more permits-by-rule provided all activities meet the requirements of this subchapter. For example, a person could elevate a building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)3, construct an addition to the building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)4, and build a fence around the building under the permit-by-rule at N.J.A.C. 7:13-7.2(b)5, without requiring another approval under this chapter, provided each activity meets the descriptions of each applicable permit-by-rule.

Table A

SUMMARY OF PERMITS-BY-RULE

This Table is for informational purposes only. See N.J.A.C. 7:13-7.2(a) through (f) for specific applicable limits and requirements for each permit-by-rule

(a) Activities that require 14-day prior notice to the Department
1. Reconstructing a lawfully existing structure outside a floodway
2. Constructing in a disturbed riparian zone or at or below grade in a flood hazard area
3. Elevating a building above the flood hazard area design flood elevation
4. Constructing an addition to a building of no more than 300 square feet outside a floodway
5. Removing a major obstruction from a regulated water with machinery
6. Constructing a boat launching ramp of no more than 1,000 square feet
7. Constructing an aquatic habitat enhancement device
8. Constructing a USGS-approved flow gauge or weir

(b) General construction and maintenance activities
1. Conducting normal property maintenance in a riparian zone
2. Removing a lawfully existing structure outside a floodway
3. Placing no more than five cubic yards of fill material outside a floodway
4. Repairing a lawfully existing structure
5. Constructing a fence
6. Construction in a tidal flood fringe that does not need a coastal permit
7. Constructing an addition above a building outside a floodway
8. Constructing a non-habitable building of no more than 150 square feet outside a floodway
9. Constructing an open structure with a roof outside a floodway (for example, car port, patio, pole barn)
10. Constructing an aboveground recreational structure (for example, bleacher, picnic table, backstop)
11. Constructing an aboveground swimming pool outside a floodway
12. Constructing an in-ground swimming pool
13. Constructing an open deck attached to a building
14. Constructing an open dock of no more than 1,000 square feet on an impounded water
15. Placing an aboveground fuel tank of no more than 2,000 gallons outside a floodway
16. Placing an underground fuel tank
17. Filling an abandoned raceway
18. Maintaining a manmade canal that passes through a regulated area
19. Constructing a wind turbine development consisting of one to three wind turbines.

(c) Activities associated with utilities
1. Placing a utility pole
2. Placing an open-frame utility tower outside a floodway
3. Jacking an underground utility line beneath a water
4. Placing an underground utility line beneath existing pavement
5. Attaching a utility line to the downstream face of a roadway that crosses a water
6. Placing an underground utility line in a flood hazard area outside a riparian zone

(d) Activities associated with roadways and parking areas
1. Repaving a roadway or parking area outside a floodway

2. Placing an open guardrail along a public roadway
3. Removing sediment by hand adjacent to a bridge, culvert or outfall along a public roadway
4. Reconstructing a bridge superstructure above a flood hazard area

(e) Activities associated with the storage of unsecured material
1. Temporary storage of construction material outside a floodway
2. Incidental storage of material associated with a residence
3. Incidental storage of material associated with a non-residence
4. Operating an existing business that stores and distributes material
5. Operating an existing hazardous waste facility
6. Operating an existing solid waste facility

(f) Agricultural activities
1. Continuing ongoing agricultural activities that result in no fill
2. Commencing new agricultural activities that result in no fill
3. Undertaking soil conservation practices outside a floodway
4. Constructing an agricultural building of no more than 1,000 square feet outside a floodway

Public Notice.
See: 41 N.J.R. 2728(a), 3851(a), 4127(b).
Amended by R.2010 d.193, effective September 7, 2010.
See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).
In Table A, added (b)19.
Public Notice.
See: 43 N.J.R. 1605(a), 3470(a).

7:13-7.2 Permits-by-rule

(a) The permits-by-rule at (a)1 through 8 below apply to the specified construction and maintenance activities listed therein. Pursuant to N.J.A.C. 7:13-7.1(d), prior written notice to the Department is required for each of these permits-by-rule.

1. The reconstruction of a lawfully existing structure outside a floodway, provided:

i. The structure is not a habitable building;

ii. The structure is not a retaining wall that extends four feet or more above the ground;

iii. The reconstructed structure lies within the footprint of the existing structure and is not enlarged;

iv. The reconstruction is not a major development, as defined at N.J.A.C. 7:8-1.2, and is, therefore, not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

v. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the structure if such disturbance is necessary to facilitate its reconstruction; and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. Any construction activity, provided:

i. If the activity is located in a flood hazard area, all construction is situated at or below grade and the existing ground elevation is not raised (such as for the construction of a bicycle path, driveway, fishing or hunting area, garden, lawn, nature preserve, outdoor recreation area, park, parking area, picnic ground, playground, playing field, roadway, sidewalk or trail);

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The elevation of a lawfully existing building outside a floodway, in order to reduce flood damage potential, provided:

i. The building to be elevated is not relocated;

ii. The lowest finished floor of the building is raised to at least one foot above the flood hazard area design flood elevation;

iii. The area below the lowest finished floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(*l*);

iv. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the building if such disturbance is necessary to facilitate its elevation; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

4. The construction of an addition that is connected to a lawfully existing building outside a floodway, provided:

i. The addition has a footprint of no more than 300 square feet;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No part of the addition extends into a floodway;

iv. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the addition if such disturbance is necessary to facilitate its construction; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

5. The use of machinery to remove a major obstruction from a regulated water that cannot be removed by hand, such as a fallen tree, abandoned vehicle, furniture and other large debris, provided:

i. No trees are disturbed in the riparian zone to provide access to the channel and/or obstruction;

ii. The machinery is situated outside the regulated water where possible;

iii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed; and

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

6. The construction of a boat launching ramp, provided:

i. The ramp has a footprint of no more than 2,000 square feet;

ii. The ramp is constructed at or below grade;

iii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;

iv. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

7. The construction of an aquatic habitat enhancement device provided:

i. The device is approved by the Department's Division of Fish and Wildlife, Bureau of Freshwater Fisheries;

ii. The device will not cause erosion in the regulated water;

iii. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;

iv. The device will not cause any existing building to be subject to increased flooding during any flood event up to and including the flood hazard area design flood;

v. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;

vi. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and

vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

8. The construction of a gauge, weir or other device to measure the depth, velocity and/or rate of flow in a regulated water provided:

i. The device is approved by the United States Geological Survey;

ii. The device will not cause erosion in the regulated water;

iii. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;

iv. The device will not cause any existing building to be subject to increased flooding during any flood event up to and including the flood hazard area design flood;

v. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;

vi. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and

vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity.

(b) The permits-by-rule at (b)1 through 19 below apply to the specified construction and maintenance activities listed therein.

1. The disturbance of vegetation in a riparian zone for normal property maintenance.

i. Normal property maintenance means an activity necessary to maintain a lawfully existing structure, lawn and/or garden and includes:

(1) Pruning;

(2) Selective tree cutting;

(3) Planting indigenous, non-invasive vegetation;

(4) Maintaining a field, lawn, park and/or easement that was lawfully established prior to October 2, 2006 and that has been maintained (such as through periodic mowing) since that date;

(5) The removal of trash, debris and dead vegetation by hand; and

(6) Maintaining a garden that was lawfully established prior to October 2, 2006.

ii. Normal property maintenance does not include any activity that would result in any clearing, cutting or removal of vegetation not described in (b)1i above, such as:

(1) Mowing an area that was not lawfully mowed prior to October 2, 2006 or which was lawfully mowed prior to this date but has since been allowed to revert to its natural vegetative state;

(2) Removing vegetation to create a new lawn, garden, field or park;

(3) Burning vegetation;

(4) Applying herbicide;

(5) Grading and other changes in topography; and

(6) Constructing structures, or placing fill or impervious surfaces;

2. The removal of any lawfully existing structure outside a floodway, provided:

i. The structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local laws;

ii. All disturbed regulated areas are properly stabilized;

iii. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the structure if such disturbance is necessary to facilitate its removal; and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity, except where the removed material is to be replaced by new fill or a structure. (Note that any replacement fill or structure is subject to the requirements of this chapter and may require a permit.);

3. The placement of no more than five cubic yards of fill outside a floodway, provided:

i. No fill is placed within 25 feet of any top of bank or edge of water;

ii. The fill is not 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;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

4. The repair of a lawfully existing structure, provided:

i. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed if the structure is located in a regulated water;

ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

5. The construction of a fence, provided:

i. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

iv. One of the following conditions is satisfied:

(1) The fence is located outside a floodway; or

(2) The fence is located in a floodway and 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;

6. Any construction activity in a tidal flood hazard area that is not regulated under N.J.A.C. 7:7 and 7:7E, provided:

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

ii. No aboveground structure is placed in a floodway;

iii. No habitable building is constructed;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

vi. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

7. The construction of an addition above a lawfully existing building outside a floodway, provided:

i. The addition is completely supported by the existing building;

ii. The lowest finished floor of the addition is constructed at least one foot above the flood hazard area design flood elevation;

iii. No part of the addition extends into a floodway;

iv. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the building if such disturbance is necessary to facilitate the construction of the addition; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

8. The construction of a non-habitable building outside a floodway, such as a shed, animal shelter or storage area, provided:

i. The building has a footprint of no more than 150 square feet;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

9. The construction of an open structure with a roof outside a floodway, such as a car port, covered patio or pole barn, provided:

i. The structure is not enclosed with walls on any side below the flood hazard area design flood elevation;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. The roof is supported solely by poles or is cantilevered from an adjoining structure;

iv. No fill is placed in the flood hazard area except for any poles necessary to support the roof;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

10. The construction of an aboveground recreational structure (such as a backstop, bleacher, picnic table or playground equipment), provided:

i. The structure is not a building;

ii. No obstruction to flow is placed in a floodway;

iii. The existing ground elevation is not raised;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

11. The construction of an aboveground swimming pool outside a floodway associated with residential use, provided:

i. The swimming pool does not displace more than 100 cubic yards of flood storage volume (see N.J.A.C. 7:13-10.4);

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

12. The construction of an in-ground swimming pool associated with residential use, provided:

i. The pool lies completely at or below existing grade;

ii. If the pool is located in a floodway, and the construction of a safety fence around the pool is required by local ordinances, the size and height of the fence is minimized and the fence is as open as possible to allow the passage of floodwaters;

iii. Any material excavated to construct the pool is removed from the flood hazard area;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

13. The construction of a deck that is connected to a lawfully existing building, provided:

i. The deck 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;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

14. The construction of a dock along an impounded water, such as a lake, pond or reservoir, provided:

i. The dock is built on pilings and remains open underneath to allow floodwaters to pass freely;

ii. The dock covers no more than 1,000 square feet including all decking and pilings;

iii. The impounded water has a surface area of one acre or more;

iv. The dock does not extend more than 20 percent across the width of the impounded water;

v. No more than 1,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

15. The construction of an aboveground fuel tank of no more than 2,000 gallons outside a floodway, within or adjacent to the building it serves, provided:

i. The tank is designed to remain watertight during a flood;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

16. The construction of an underground fuel tank within or adjacent to the building it serves, provided:

i. The tank is designed to remain watertight during a flood;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

17. The filling of an abandoned raceway adjacent to a regulated water, provided:

i. The raceway is a manmade 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;

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

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

iv. 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; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

18. The repair, maintenance or dredging of the channel and/or embankments of a manmade canal, which passes through a regulated area, provided:

i. A public entity having jurisdiction over the canal determines that the proposed regulated activity is necessary for the proper operation of the canal;

ii. No fill or dredged spoils are placed in the flood hazard area;

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

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

19. The placement of one to three wind turbines provided:

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

ii. The rotor swept area of the wind turbine(s) shall 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;

iii. No wind turbine tower(s) or site disturbance shall be located in floodways;

iv. No portion of any wind turbine(s), 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 (b)19iv(1) and (2) below. Landscape Maps are available on the Department's interactive mapping website at http://www.nj.gov/dep/gis;

(1) 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

(2) The wind turbine is located on lawfully existing building or on lawfully existing impervious cover;

v. If a 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 shall be a freestanding monopole(s);

vi. No lighting is placed on or directed at any 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;

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

viii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

ix. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

x. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

xi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

xii. 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.

(c) The permits-by-rule at (c)1 through 6 below apply to the specified activities associated with utility lines listed therein.

1. The placement of one or more utility poles (which are not open-frame towers as described in (c)2 below) for utility lines, provided:

i. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

ii. All wires or cables connected to the utility poles are situated at least one foot above the flood hazard area design flood elevation;

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

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. The placement of one or more open-frame towers outside a floodway to support a utility line, provided:

i. Each tower's footing is constructed at or below grade;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. All wires or cables connected to the towers are situated at least one foot above the flood hazard area design flood elevation;

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

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The placement of an underground utility line beneath a regulated water through directional drilling or "jacking," provided:

i. The regulated water is not disturbed in any way;

ii. No trees are cleared, cut or removed in a riparian zone;

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

iv. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

v. If the line is jacked or drilled beneath a bridge or culvert, all work is accomplished without displacing or damaging the bridge or culvert;

vi. If the line is jacked or drilled beneath an open channel, the top of the line is placed at least four feet below the channel invert and remains nominally horizontal at this depth at least 10 feet beyond the top of each bank;

vii. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

viii. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

ix. The top of any manhole in a floodway is flush with the ground;

x. The top of any manhole in a flood fringe is flush with the ground where possible; and

xi. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area;

4. The placement of an underground utility line beneath existing pavement within a regulated area (such as under an existing parking lot in the flood hazard area or under an existing roadway that crosses a regulated water), provided:

i. The regulated water is not disturbed in any way;

ii. No vegetation is cleared, cut or removed in a riparian zone;

iii. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

iv. If the line is placed under a roadway, either above or below a culvert or within a bridge, all work is accomplished without displacing or damaging the bridge or culvert;

v. If the line is placed under a roadway, either above or below a culvert, the line is encased within a larger steel pipe, or is placed with at least one foot vertical clearance above or below the culvert;

vi. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

vii. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

viii. The top of any manhole in a floodway is flush with the ground;

ix. The top of any manhole in a flood fringe is flush with the ground where possible; and

x. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area;

5. The attachment of a utility line to a lawfully existing roadway that crosses a regulated water, provided:

i. The regulated water is not disturbed in any way;

ii. No more than 1,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone, and all such vegetation lies within an existing right-of-way that is periodically mowed and/or cleared:

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

iv. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

v. The line is firmly attached to the roadway's bridge or culvert so that no part of the line, its encasement or any attachment device extends above the roadway profile or across the bridge or culvert opening;

vi. Where possible, the line is situated at least one foot above the flood hazard area design flood elevation;

vii. If a predominant direction of flow in the regulated water is discernible, the line is attached to the downstream face of the roadway crossing;

viii. All work is accomplished without displacing or damaging any bridge or culvert in any way;

ix. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

x. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

xi. The top of any manhole in a floodway is flush with the ground;

xii. The top of any manhole in a flood fringe is flush with the ground where possible; and

xiii. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area; and

6. The placement of an underground utility line in a flood hazard area outside a riparian zone, provided:

i. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

ii. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

iii. The top of any manhole in a floodway is flush with the ground;

iv. The top of any manhole in a flood fringe is flush with the ground where possible; and

v. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area.

(d) The permits-by-rule at (d)1 through 4 below apply to the specified activities associated with roadways and parking areas listed therein.

1. The repaving and/or resurfacing of a lawfully existing paved roadway or paved parking area outside a floodway, provided:

i. The surface of the existing roadway or parking area is raised by no more than three inches. Multiple repaving and/or resurfacing is permissible provided the cumulative impact of the activity does not result in raising the pavement by more than three inches;

ii. The existing roadway is not expanded; and

iii. No vegetation is cleared, cut or removed in a riparian zone;

2. The construction of a guardrail along a public roadway approved by a public entity, provided:

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

ii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The removal of accumulated sediment and/or debris from a regulated water, within and/or immediately adjacent to a lawfully existing bridge, culvert or stormwater discharge pipe along a public roadway and/or on public property, provided:

i. All work is performed by hand, such as by shovels, hoses, hydraulic pumps and other similar equipment. No backhoes or other heavy machinery shall be used in the regulated water;

ii. The sediment and debris removal is necessary to maintain positive flow through the structure;

iii. The sediment and debris removal is limited to within 100 feet of the structure;

iv. All work is performed under the supervision of the public entity that is responsible for maintaining the roadway and/or public property;

v. Vegetation outside the regulated water is not disturbed;

vi. No trees are cleared, cut or removed in a riparian zone;

vii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;

viii. Excavation consists solely of accumulated sediment and does not alter the natural bed and banks of the channel; and

ix. The material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local laws; and

4. The reconstruction of all or part of a lawfully existing bridge superstructure over a regulated water, provided the reconstructed portion lies above the flood hazard area design flood elevation. The reconstruction need not be in-kind.

(e) The permits-by-rule at (e)1 through 6 below apply to the specified activities associated with the storage of secured and/or unsecured material listed therein.

1. The temporary storage of unsecured material outside a floodway, which is necessary for a lawful construction activity, provided:

i. No hazardous substances are stored;

ii. No storage is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. The storage in a regulated area of unsecured material incidental to the use or maintenance of a lawfully existing private residence (such as lawn and garden equipment and materials, shelters for animals, trash receptacles, toys, vehicles and wood piles), provided:

i. No hazardous substances are stored;

ii. The unsecured material is of an amount and nature typical for a residence. For example, this permit-by-rule does not authorize the storage of construction debris, roll-off containers, an inordinate number of vehicles or machinery or large piles of refuse;

iii. No unsecured material is located within a floodway unless the material was lawfully situated there prior to October 2, 2006;

iv. No unsecured material is located within 25 feet of any top of bank or edge of water unless the material was lawfully situated there prior to October 2, 2006; and

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

3. The storage in a regulated area of unsecured material incidental to the use or maintenance of a lawfully existing business or other non-residential facility (such as dumpsters, vehicles and equipment), provided:

i. No hazardous substances are stored unless:

(1) The storage of hazardous substances is essential to the operation of the business or facility;

(2) The hazardous substances are isolated from potential contact with floodwaters; and

(3) The hazardous substances are stored in accordance with all Federal, State and local laws;

ii. The unsecured material is of an amount and nature typical for the subject business or non-residential facility. For example, this permit-by-rule does not authorize the storage of construction debris, roll-off containers, an inordinate number of vehicles or machinery or large piles of refuse;

iii. No unsecured material is located within a floodway unless the material was lawfully situated there prior to October 2, 2006;

iv. No unsecured material is located within 25 feet of any top of bank or edge of water unless the material was lawfully situated there prior to October 2, 2006; and

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

4. The storage in a regulated area of unsecured material that is necessary for the operation of a lawfully existing business or other non-residential facility, the primary function of which is to store and distribute material (such as a gravel pit, junk yard, landscaping business, lumber yard or vehicle dealership, rental facility or impoundment area), provided:

i. No hazardous substances are stored unless;

(1) The storage of hazardous substances is essential to the operation of the business or facility;

(2) The hazardous substances are isolated from potential contact with floodwaters; and

(3) The hazardous substances are stored in accordance with all Federal, State and local laws;

ii. The business or facility was established prior to October 2, 2006;

iii. The business or facility has been in continuous operation since October 2, 2006; and

iv. The size of the business or facility and the peak volume of material stored in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.16;

5. The placement, storage or processing of hazardous waste at a lawfully existing hazardous waste facility located in a regulated area, provided:

i. The facility was established prior to October 2, 2006;

ii. The facility has been in continuous operation since October 2, 2006;

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

iv. The size of the facility and the peak volume of hazardous waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.17; and

6. The placement, storage or processing of solid waste at a lawfully existing solid waste facility (such as a composting facility, landfill or recycling center), located in a regulated area, provided:

i. The facility was established prior to October 2, 2006;

ii. The facility has been in continuous operation since October 2, 2006;

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

iv. The size of the facility and the peak volume of solid waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires an individual permit pursuant to N.J.A.C. 7:13-11.18.

(f) The permits-by-rule at (f)1 through 4 below apply to the specified agricultural activities listed therein.

1. The continuation of lawfully existing agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting), provided:

i. The activities are undertaken on land that has been actively farmed since October 2, 2006; and

ii. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure;

2. The commencement of new agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting) on land that is not actively farmed provided:

i. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure; and

ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

3. The continuation or commencement of soil conservation practices outside a floodway, such as terracing, subsurface tile drainage or construction of a diversion, a grassed swale or an excavated pond, provided:

i. The activities are undertaken on land that has been actively farmed since October 2, 2006;

ii. The activities are approved in writing by the local Soil Conservation District or the USDA Natural Resource Conservation Service, as appropriate;

iii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

4. The construction of a building with no foundation outside a floodway, provided:

i. The building is located on land that has been actively farmed since October 2, 2006;

ii. The building has a footprint of no more than 1,000 square feet;

iii. The building is designed for agricultural use. Examples of such buildings include a plastic covered greenhouse, a roadside farm stand and a tool shed placed on an existing farm field;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity.

Amended by R.2010 d.193, effective September 7, 2010.
See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).
In the introductory paragraph of (b), substituted "19" for "18"; in (b)17v, deleted "and" from the end; in (b)18iv, substituted "; and" for a period at the end; and added (b)19.

SUBCHAPTER 8. GENERAL PERMITS

7:13-8.1 Standards applicable to all general permits

(a) This subchapter establishes general permits for certain regulated activities. Each general permit describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area or riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rescind or modify an existing general permit or establish new ones. The flood hazard general permits established in this subchapter are set forth as follows:

Table B

SUMMARY OF GENERAL PERMITS

This Table is for informational purposes only. See N.J.A.C. 7:13-8.3 through 8.12 for specific applicable limits and requirements for each general permit

Permit	Description	Citation (N.J.A.C. 7:13-)
1	Channel cleaning by a public entity under the Stream Cleaning Act	8.3
2A	Agricultural: Soil erosion control, bank stabilization or bank restoration	8.4(c)1
2B	Agricultural: Channel cleaning	8.4(c)2
2C	Agricultural: Constructing a roadway across a water	8.4(c)3
2D	Agricultural: Filling a manmade water for freshwater wetlands restoration	8.4(c)4
2E	Agricultural: Creating a ford across a water to manage livestock	8.4(c)5
2F	Agricultural: Constructing a fence across or along a water to manage livestock	8.4(c)6
2G	Agricultural: Constructing a pump or water intake along a water for livestock	8.4(c)7
3	Bridge or culvert scour protection by a public entity	8.5
4	Stormwater maintenance by a public entity	8.6
5	Relocating a building to reduce flood damage	8.7
6	Reconstructing a damaged or destroyed residence	8.8
7	Residential construction in a tidal flood hazard area	8.9
8	Utility line across or along a water draining less than 50 acres	8.10
9	Roadway or footbridge across a water draining less than 50 acres	8.11
10	Stormwater outfall along a water draining less than 50 acres	8.12

i. No trees are cleared, cut or removed in a riparian zone;

ii. The fence is placed parallel to the channel where possible;

iii. If the fence crosses a channel and/or is located in a floodway, it 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, is not permitted across a channel or in a floodway; and

iv. The fence will not impede bank-full flow in the channel; and

7. General permit 2G: The construction of a pump and/or water intake structure in or along a regulated water, in order to provide water for livestock outside the channel (and thereby limit livestock access to the channel), provided:

i. No trees are cleared, cut or removed in a riparian zone;

ii. Fill within the flood hazard area is minimized; and

iii. The pump or structure will not impede bank-full flow in the channel.

7:13-8.5 General permit 3 for bridge or culvert scour protection by a public entity

(a) This section sets forth a general permit that authorizes a public entity to place rip-rap and other stabilization material within or along one or more regulated waters to replace material that has eroded away, in order to prevent the scouring of an existing bridge or culvert along a public roadway. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a scour protection activity is eligible for authorization under general permit 3 only if:

1. It is approved by and performed under the supervision of a public entity;

2. It is necessary for the maintenance and/or protection of an existing bridge or culvert along a public roadway;

3. The stabilizing material placed in the channel is in the same location as the material that has eroded away since the bridge or culvert was originally constructed. This stabilizing material can be placed within any open void area that has been created by previous scour in the channel, and/or can replace any unconsolidated material in the channel, such as silt or sediment, which has subsequently been deposited in any such void area;

4. The amount of stabilizing material placed in the channel is no greater than necessary to replace the material that has eroded away (and which may have subsequently been replaced by unconsolidated material) since the bridge or culvert was originally constructed;

5. The stabilizing material consists of, or is covered by, indigenous substrate where possible;

6. The stabilizing material does not obstruct flow in the channel or floodway;

7. The project does 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 where possible;

8. All cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation, except where the removed vegetation has been replaced by the stabilizing material;

9. Every effort is made to perform the activity from only one bank; and

10. Vegetation and canopy on the more southerly or westerly bank is preserved for shading of the water where possible.

7:13-8.6 General permit 4 for stormwater maintenance by a public entity

(a) This section sets forth a general permit that authorizes the maintenance, repair and replacement of lawfully existing stormwater management structures and conveyance features by a public entity, in cases where such activities are regulated under this chapter. This general permit does not authorize any new stormwater discharges or the expansion of an existing stormwater management or collection system. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a maintenance and repair activity is eligible for authorization under general permit 4 only if:

1. It is approved by and performed under the supervision of a public entity;

2. It occurs within and is necessary for the maintenance of a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin, not including natural channels that were previously modified;

3. It involves one or more of the following:

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

ii. The stabilization of an eroded structure; and/or

iii. The reconstruction, repair and/or in-kind replacement of any:

(1) Culvert along a manmade channel;

(2) Stormwater pipe, manhole, inlet, catch basin;

(3) Headwall, discharge structure or associated conduit outlet protection; and/or

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

4. Disturbance to vegetation in the riparian zone is minimized; and

5. All temporarily cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation.

7:13-8.7 General permit 5 for the relocation of a building to reduce flood damage

(a) This section sets forth a general permit that authorizes the relocation of a lawfully existing building to another location on the same site in order to reduce flood damage potential. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the relocation of a lawfully existing building is eligible for authorization under general permit 5 only if:

1. Where possible, the building is moved further from the regulated water and to higher ground on the same site;

2. The building is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);

3. The building is not located in a floodway (either before or after relocation);

4. The lowest finished floor of the building is raised to at least one foot above the flood hazard area design flood elevation;

5. The area below the lowest finished floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(*l*);

6. The proposed location of the building is situated outside the riparian zone if a suitable location exists on the same site. Otherwise, the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

7. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed building if such disturbance is necessary to facilitate its relocation. In such a case, all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project, including the area where the relocated building originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit authorization. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

7:13-8.8 General permit 6 for the reconstruction of a damaged or destroyed residence

(a) This section sets forth a general permit that authorizes the reconstruction of a lawfully existing private residence that has been damaged or destroyed by fire, flood or other natural disaster. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the reconstruction of a lawfully existing private residence is eligible for authorization under general permit 6 only if:

1. The residence has been damaged or destroyed by fire, flood or other natural disaster within one year prior to application to the Department under this general permit authorization;

2. The new residence is constructed within the footprint of the residence that was damaged or destroyed or is moved further from the regulated water to higher ground onsite;

3. The residence is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);

4. The residence is not located in a floodway (either before or after reconstruction);

5. The lowest finished floor of the new residence is constructed at least one foot above the flood hazard area design flood elevation;

6. The area below the lowest finished floor of the residence is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(*l*);

7. If the residence is to be moved, it is situated outside the riparian zone if a suitable location exists on the same site. Otherwise the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

8. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed residence if such disturbance is necessary to facilitate its reconstruction. In such a case all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project including, if the residence is relocated, the area where the residence originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

7:13-8.9 General permit 7 for residential construction in a tidal flood hazard area

(a) This section sets forth a general permit to construct the following residential buildings in a tidal flood hazard area:

1. One new private residence, which is not being constructed as part of a larger residential subdivision;

2. An addition to a private residence; and/or

3. A building appurtenant to a private residence, such as a garage, barn or shed.

(b) The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e). The construction of certain types of residential additions and appurtenant structures may occur pursuant to a permit-by-rule in accordance with N.J.A.C. 7:13-7.2(a) and (b). Activities covered by a permit-by-rule do not require a general permit authorization under this section.

(c) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a private residence, addition or appurtenant structure is eligible for authorization under general permit 7 only if:

1. It is located in a tidal flood hazard area;

2. It does not require a CAFRA or waterfront development permit under N.J.A.C. 7:7 and 7:7E;

3. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, 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. It meets the applicable requirements for a building at N.J.A.C. 7:13-11.5.

(d) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

7:13-8.10 General permit 8 for a utility line across or along a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a utility line across or along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a utility crossing is eligible for authorization under general permit 8 only if:

1. It is located across or along a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 2 or 21, pursuant to N.J.A.C. 7:7A-5.2 or 5.21, respectively;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, 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

5. It meets the requirements at N.J.A.C. 7:13-11.9 for the construction of a utility line.

7:13-8.11 General permit 9 for a roadway or footbridge across a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a roadway or footbridge across a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a roadway or footbridge is eligible for authorization under general permit 9 only if:

1. It crosses a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 10A or 10B, pursuant to N.J.A.C. 7:7A-5.10A or 5.10B, respectively;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, 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

5. It meets the requirements at N.J.A.C. 7:13-11.7(e) through (*l*) for the protection of aquatic habitat and the maintenance of low-flow aquatic passage.

7:13-8.12 General permit 10 for a stormwater outfall along a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a stormwater outfall structure along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a stormwater outfall structure is eligible for authorization under general permit 10 only if:

1. It is located along a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

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

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, 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

5. It meets the requirements at N.J.A.C. 7:13-11.10 for the construction of a stormwater outfall structure.

SUBCHAPTER 9. INDIVIDUAL PERMITS

7:13-9.1 General provisions for individual permits

(a) This subchapter sets forth application and review procedures for an individual permit. Design and construction standards for activities that require an individual permit are set forth in this chapter as follows:

1. Standards associated with the location of a project in a particular regulated area, such as a channel or floodway, or the location of the project in relation to certain natural resources, are set forth at N.J.A.C. 7:13-10; and

2. Standards associated with a particular regulated activity, such as the construction of a building or roadway, are set forth at N.J.A.C. 7:13-11.

(b) A regulated activity that requires an individual permit is typically subject to multiple requirements that are set forth throughout N.J.A.C. 7:13-10 and 11 as described in (a) above. The applicant shall evaluate each regulated activity according to its location, nature and potential impacts in order to determine which design and construction standards will apply to the applicant's particular project.

7:13-9.2 Application requirements for an individual permit

(a) An application for an individual permit shall include information on all planned activities that are reasonably related to the proposed project. In general, the level of detail and documentation required for an application shall correspond to the size and likely impact of the proposed project, its proximity to a channel and/or riparian zone, and its potential to adversely affect flooding and the environment. The Department shall, upon request, provide an applicant with guidance regarding the appropriate level of detail for a particular application.

(b) An application for an individual permit shall include the following:

1. One copy of the appropriate checklist for the proposed activities, completed as directed by its instructions. Checklists summarize the requirements of this chapter and ask various questions about the project in order to guide the applicant through the permitting process and ensure that the correct material is submitted with each application. For example, checklists ask how the applicant determined the flood hazard area and floodway limits onsite, whether construction is proposed in a floodway or flood fringe, and

how much impervious surface is proposed, all in order to alert the applicant as to whether hydrologic, hydraulic, flood storage and/or stormwater management calculations are required as part of the permit application. Checklists also ask the applicant to identify all regulated activities proposed onsite to ensure that public notice is provided where necessary and to help the applicant determine the correct application review fee. Checklists do not set forth application requirements in addition to those listed in this chapter. Checklists are provided at www.nj.gov/dep/landuse or can be obtained from the Department at the address listed in N.J.A.C. 7:13-1.1(f);

2. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. The photographs required in the application report shall show any sections of channel or riparian zone that will be disturbed by the project;

3. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, if the Department must review detailed engineering calculations in order to determine whether the proposed activity complies with this chapter;

4. Three copies of an environmental report, as described at N.J.A.C. 7:13-15.5, except that no environmental report is required if a project consists solely of the following activities:

i. The construction of one private residence, which is not being constructed as part of a larger residential subdivision; and/or

ii. The construction of a building appurtenant to a private residence, such as a garage, barn or shed;

5. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

6. The application fee required under N.J.A.C. 7:13-17; and

7. Six sets of drawings, signed and sealed by a engineer, land surveyor or architect, as appropriate, which contain the following information:

i. All proposed regulated activities (including the size, location and all construction details for each regulated activity);

ii. The limit of any riparian zone onsite;

iii. Existing and proposed topography if fill or grading is proposed, unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

iv. The limit of the flood hazard area and floodway onsite if present. If proposed fill, construction and/or grading will affect these limits, then both existing and proposed flood hazard area and floodway limits shall be included on all drawings;

v. Details of proposed soil erosion and sediment control measures;

vi. If construction is proposed in a regulated water, the drawings shall also include the following:

(1) A thorough explanation of the proposed method of construction;

(2) A timetable for the construction; and

(3) All proposed trenching, diversionary channels and temporary piping of the regulated water; and

vii. If construction is proposed in a riparian zone, the drawings shall also include the following:

(1) All locations where vegetation will be cleared, cut or removed; and

(2) Details of any replanting pursuant to N.J.A.C. 7:13-10.2.

(c) An application that proposes activities in a regulated area known or suspected to contain acid producing soils shall include the following:

1. A comprehensive evaluation of the potential environmental risks caused by exposure of the acid producing soils; and

2. A plan to minimize any such risks.

(d) An application that proposes the use of fill credits to balance fill on a site in the Central Passaic Basin, as described at N.J.A.C. 7:13-10.4(s) and (t), shall include documentation that the fill credits have been purchased by the applicant prior to the submittal of the application.

(e) An application that proposes to construct a dry flood-proofed building shall include the following material, signed and sealed by an architect or engineer:

1. Drawings that clearly show the proposed dry flood-proofing measures;

2. Calculations that demonstrate that the structure meets the requirements for flood resistance at N.J.A.C. 7:13-11.4(b); and

3. A dry flood-proofing certification, listing each applicable dry flood-proofing requirement at N.J.A.C. 7:13-11.5(q), and stating how the building meets each requirement.

(f) An application proposing an activity that adversely impacts a property not owned by the applicant, as described at N.J.A.C. 7:13-11.1(f), shall include documentation demonstrating that one or more of the following applies to each adversely impacted property:

1. The applicant is a public entity that intends to appropriate the adversely impacted property through its power of eminent domain;

2. The applicant has entered into a contract to purchase the adversely impacted property;

3. The applicant has obtained an easement that encompasses the entire area that will be adversely impacted by the proposed activity, which specifically allows the applicant to undertake the proposed activity; and/or

4. The applicant has obtained written permission from the owners of the adversely impacted property. Written permission shall include the following:

i. An explanation of the nature and purpose of the project;

ii. An estimate of the length of time regulated activities will occur;

iii. An estimate of the extent to which the adversely impacted property will be affected by flooding or stormwater discharges and the frequency at which these impacts are expected to occur; and

iv. The notarized signature of all owners of the adversely impacted property.

(g) The Department shall accept for review an application for an individual permit for an activity subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15 only if the activity is consistent with N.J.A.C. 7:15 and the applicable Water Quality Management Plan adopted under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq.

(h) The Department shall accept for review an application for an individual permit for an activity located in an area under the jurisdiction of the Pinelands Commission, as defined at N.J.S.A. 13:18A-11, only if the applicant has first received a Certificate of Filing, a Notice of Filing, a Certificate of Compliance or a Resolution of Approval from the Pinelands Commission for the proposed activity, as appropriate. For more information, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

7:13-9.3 Application review procedures for a verification or individual permit

(a) This section sets forth the Department's application review process for verifications and individual permits with the following exceptions:

1. Pursuant to the Construction Permits Law at N.J.S.A. 13:1D-29 et seq., the default approval provisions at (e) through (h) below do not apply to an application for 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; and

2. Pursuant to the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-1 et seq., this section does not apply to a regulated activity associated with a Major Highlands Development, the application requirements and review procedures for which are found in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38.

(b) Within 20 working days following the receipt of an application for a verification or individual permit, the Department shall:

1. Determine that all necessary information required by this chapter for a complete application has been provided, and declare the application complete for review;

2. Determine that all necessary information required by this chapter for a complete application has not been provided, or that one or more submitted items are deficient, and request in writing that the applicant submit the missing material and/or address any deficiencies within a reasonable time period. The Department may cancel the application if the requested information is not provided within 60 calendar days. The Department shall subsequently declare the application complete for review within 20 working days of receiving the requested information; or

3. If the Department does not take action under (b)1 or 2 above within 20 working days, the application shall be deemed complete for review. In such a case, the Department may request additional information, which is necessary to bring the application into compliance with the requirements of this chapter during the review of the application.

(c) Upon written request of the applicant, the Department shall cancel an application and fully refund the submitted application fee provided:

1. The request to cancel the application is received within 20 working days of the submittal of the application and the Department has not already approved or denied the application; or

2. The request to cancel the application is received within 60 calendar days of the submittal of an application that remains incomplete under (b)2 above.

(d) If the Department determines during the review of a complete application under (b) above that the application does not meet the requirements of this chapter, the Department can request additional information and/or changes to the project in order to bring the project into compliance, provided such changes are possible within the remaining application review period described in (e) below.

(e) Within 90 calendar days following the receipt of a complete application under (b) above, the Department shall:

(v) In cases where an applicant proposes to redevelop a site within 25 feet of any top of bank or edge of water, all existing impervious surface within 25 feet of the top of bank or edge of water shall be removed and the riparian zone in this area shall be adequately stabilized and replanted with indigenous, non-invasive vegetation, except in the following cases:

1. The applicant demonstrates that removing the existing impervious surface and/or preventing the replacement of the existing impervious surface within 25 feet of the top of bank or edge of water would likely threaten public safety, exacerbate flooding or erosion and/or cause an undue economic hardship upon the applicant. In such a case, the riparian zone within 25 feet of the top of bank or edge of water shall be restored, stabilized and/or replanted to the extent feasible; and/or

2. The applicant proposes to construct a public walkway within 25 feet of the top of bank or edge of water, provided the walkway is constructed of permeable material where feasible, and provided the remainder of the area within 25 feet of the top of bank or edge of water is restored, stabilized and replanted with indigenous, non-invasive vegetation.

7:13-10.3 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 of a building on a pier in the Hudson River, provided the requirements of the Coastal Zone Management rules at N.J.A.C. 7:7E-3.48 are satisfied;

2. The reconstruction of a lawfully existing building, in accordance with N.J.A.C. 7:13-11.5(e);

3. The construction of an addition to a lawfully existing building, in accordance with N.J.A.C. 7:13-11.5(f);

4. The construction of a water control structure, such as a bridge, culvert, footbridge, dam or flood control project, in accordance with N.J.A.C. 7:13-11.7, 11.8, 11.11 and 11.12, respectively;

5. The construction of a stormwater outfall structure, in accordance with N.J.A.C. 7:13-11.10;

6. The restoration and/or stabilization of a bank or channel, in accordance with N.J.A.C. 7:13-11.14, which requires the placement of fill, provided:

i. The placement of the fill is necessary to protect nearby structures or trees from undermining or failure, or to restore or improve the ecological health or habitat value of a regulated water, and not simply to reclaim land that has been lost due to erosion; and

ii. The cross-sectional area of the channel open to flow will not be reduced to less than the pre-eroded condition of the channel;

7. The placement of dredged material adjacent to the water from which the material was removed, in accordance with N.J.A.C. 7:13-11.15(f);

8. The placement of fill in an isolated shallow depression or other area that does not contribute to the hydraulic capacity of the floodway; and

9. 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.

7:13-10.4 Requirements for a regulated activity in a flood fringe

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

(b) This section provides standards for the volume of material that may be placed aboveground in a flood fringe as well as other activities that would reduce the flood storage volume on a site. When material is placed aboveground in a flood fringe, it will occupy a space that would otherwise be filled with floodwaters during a flood, and, thus, will reduce

the flood storage volume on the site. Construction also reduces the flood storage volume by preventing floodwaters from entering a space that it would otherwise occupy, such as the space inside a building or stormwater management basin, or behind an embankment. For example, although the space within a building may be empty, the building's walls might prevent floodwaters from entering that space. Since the entire space within the walls has been rendered inaccessible to floodwaters, the entire space, though empty, displaces flood storage volume. The Department also recognizes that some structures, such as garages, sheds and other buildings that are not dry flood-proofed are not likely to prevent the entry of floodwaters, and, therefore, the space within the walls of such a structure may not actually displace flood storage volume.

(c) The Department shall issue an individual permit for a regulated activity (or combination of regulated activities) in a flood fringe only if one of the following is satisfied:

1. The regulated activity is not subject to the flood storage volume displacement limits of this section, in accordance with (d) below;

2. The regulated activity will displace no flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, in accordance with (e) below; or

3. The regulated activity will displace no more than 20 percent of the flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, and all flood storage displacement onsite will be compensated offsite as follows:

i. If the regulated activity is located within the Central Passaic Basin, the requirements at (g) below shall be met;

ii. If the regulated activity is a Major Highlands Development, as defined at N.J.A.C. 7:38-1.4, the requirements at (h) below shall be met; or

iii. If the regulated activity is not located within the Central Passaic Basin and is not a Major Highlands Development, the requirements at (i) below shall be met.

(d) The following regulated activities (or combination of regulated activities) are not subject to the flood storage volume displacement limits of this section, provided the activity is not associated with a Major Highlands Development:

1. Any activity located in a tidal flood hazard area;

2. Any activity that displaces no more than five cubic yards of flood storage volume;

3. The reconstruction of a lawfully existing railroad or public roadway, including any improvement or enlargement, provided flood storage volume displacement is minimized;

4. The construction or improvement of a driveway across a regulated water provided:

i. The driveway serves only one private residence, which is not being constructed as part of a larger residential subdivision;

ii. In the case of the construction of a new driveway, the applicant demonstrates that there is developable land onsite that cannot feasibly be accessed without crossing the water, including accessing the site through neighboring properties; and

iii. Any flood storage volume displacement resulting from the driveway is minimized;

5. The construction of one private residence provided:

i. The residence is not being constructed as part of a larger residential subdivision;

ii. Any enclosed area beneath the flood hazard area design flood elevation meets the requirements of N.J.A.C. 7:13-11.5(*l*); and

iii. Except for the construction of a driveway across a regulated water, which meets the requirements of (d)4 above, the site is not graded to accommodate the construction of the residence in such a way that flood storage volume would be displaced;

6. The construction of a flood control project, provided flood storage volume displacement is minimized; and

7. The depositing of sediment removed from a channel, which meets the requirements of N.J.A.C. 7:13-11.15(f).

(e) The following shall apply to any regulated activity that is designed to displace no flood storage volume in accordance with (c)2 above:

1. The existing flood storage volume onsite (V_E) is the volume of floodwater that is able to occupy the flood fringe onsite before the proposed regulated activity is undertaken. To determine the existing flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the ground surface as it exists on the date of application to the Department, and subtract the volume occupied by any structures that lawfully exist as of that date.

2. The proposed flood storage volume onsite (V_P) is the volume of floodwater that will be able to occupy the flood fringe onsite once all proposed construction, excavation, filling and grading is completed. To determine the proposed flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the proposed ground surface, and subtract the volume occupied by any structures that will lawfully exist once all proposed construction is completed.

3. The proposed flood storage volume onsite (V_P) shall be greater than or equal to the existing flood storage

(w) If the Department issues or has issued an individual permit for a regulated activity that displaces flood storage volume on a site, and that activity was subject to a flood storage displacement limit at the time the permit was issued, subsequent subdivision of that site shall not increase the total amount of flood storage volume that can be displaced on the site under future applications. Instead, the following shall apply:

1. Flood storage volume can be displaced within a portion of the subdivided site only to the extent that the total flood storage volume displaced within the entire subdivided site does not exceed the flood storage displacement limits of this section;

2. If the subdivided site involves multiple lots owned (or to be owned) by different persons, any remaining allowable flood storage volume shall be divided equally among all lots in the flood fringe, unless the owners of all lots in the flood fringe otherwise agree in writing; and

3. The volume of flood storage displacement permissible on each lot shall be described in any individual permit issued for the site as well as in the deed of record for each affected property. The modified deed shall be filed with the applicable county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

7:13-10.5 Requirements for a regulated activity in or along a water with fishery resources

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in the channel and/or riparian zone of a regulated water containing fishery resources. Further standards for the construction of a bridge or culvert in or along waters with fishery resources are described at N.J.A.C. 7:13-11.7.

(b) The waters identified by the Department as containing fishery resources are listed in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B, and are further supplemented by the following reports as updated, which are included here by reference. Copies of these reports are included in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g):

1. "Classification of New Jersey Waters as Related to Their Suitability for Trout";

2. "List of Waters Stocked with Trout by the New Jersey Division of Fish and Wildlife"; and

3. "Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey's Freshwaters Including Known Migratory Impediments and Fish Ladders."

(c) The Department shall issue an individual permit for a regulated activity in the channel and/or riparian zone of a regulated water containing fishery resources only if the following requirements are satisfied:

1. Except as provided in (e) below, the activity meets the timing restrictions of (d) below;

2. Unset or raw cement is not allowed to come into contact with water in the channel during construction;

3. No logs or boulders that provide fish habitat are removed from the channel, unless the Department determines that such removal is necessary to accomplish the project; and

4. Low-flow aquatic passage is maintained in the channel throughout the entire area of disturbance during and after the performance of the regulated activity. In order to provide low-flow aquatic passage, the depth of flow in the modified channel during low-flow conditions must be equal to or greater than pre-project conditions. Where feasible, the applicant shall also provide low-flow aquatic passage in areas that do not currently contain low-flow aquatic passage.

(d) Except as provided at (e) below, certain activities are prohibited during times when fish are breeding or are especially sensitive to disturbance. The following activities are prohibited during the restricted periods listed in Table E below:

1. Any construction, excavation, filling or grading in the channel; and

2. Any construction, excavation, filling or grading in the riparian zone, unless the applicant demonstrates that appropriate soil erosion and sediment control measures are in place which will prevent sediment from reaching the channel. All proposed measures shall meet the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

Table E

RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

Water and classification	Time period (inclusive) during which activities are prohibited
1. Trout Waters	
• All trout production waters except rainbow trout	September 15 through March 15
• Rainbow trout production waters	February 1 through April 30
• Trout stocked waters • Trout maintenance waters • Any water located within one mile upstream of a trout stocked or a trout maintenance water	March 15 through June 15
2. Non-Trout Waters	
• Waters that support general game fish	May 1 through June 30
• Waters that support pickerel	Ice out through April 30
• Waters that support walleye	March 1 through May 30
3. Anadromous Waters	
• All unimpeded tidal waters open to the Atlantic Ocean or any coastal bay • All waters identified as anadromous migratory pathways	April 1 through June 30
• Delaware River upstream of U.S. Route 202	April 1 through June 30 and September 1 through November 30
• Delaware River between U.S. Route 202 and Interstate 276 (Pennsylvania Turnpike Bridge)	March 1 through June 30
• Delaware River between Interstate 276 (Pennsylvania Turnpike Bridge) and Interstate 295 (Delaware Memorial Bridge) • Tidal portions of Raccoon, Rancocas Creek, Crosswicks Creeks and Cooper River	March 1 through June 30 and September 1 through November 30
• All unimpeded tidal waters open to the Delaware River downstream of Interstate 295 (Delaware Memorial Bridge) • Tidal portions of the Maurice River, Cohansey River and Salem River	March 1 through June 30 and October 1 through November 30

(e) An applicant may request that the Department reduce, extend or otherwise modify a timing restriction listed in Table E. The Department shall grant such a request if one or more of the following requirements is satisfied:

1. The applicant demonstrates that the adverse impacts to fishery resources will be less if a regulated activity occurs during the restricted time period rather than during an unrestricted time period;

2. A regulated activity is subject to more than one restricted time period, the combined effect of which would limit the regulated activity to fewer than 183 calendar days per year. In such a case, the Department shall allow the regulated activity to occur for up to 183 calendar days, provided the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to a level acceptable to the Department. Note that the 183-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three months in the fall best protects fishery resources in a particular case;

3. The Department determines that observance of a timing restriction for the reconstruction of a public road crossing would cause increased risks or excessive delays to school buses or vans, and the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to an acceptable level; or

4. The Department determines that, due to the nature of the project or an unusual circumstance onsite, the timing restriction must be modified in order to prevent a substantial adverse impact to the fishery resource or to the environment.

(f) The Delaware River Basin Commission (DRBC) may impose timing restrictions in addition to those listed in Table E above on certain activities in waters under DRBC jurisdiction. Contact the U.S. Fish and Wildlife Service's River Basin Coordinator through the DRBC at (609) 883-9500 for information on these additional timing restrictions.

2. A stormwater discharge is directed overland onto property that is not owned by the applicant and the Department determines that the discharge will significantly increase overland flow on the property not owned by the applicant;

3. The regulated activity will cause a building situated on property not owned by the applicant to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood;

4. The applicant owns (or has development rights on) both sides of a regulated water, and the regulated activity will cause the flood hazard area design flood elevation to increase by more than 0.2 feet on any property not owned by the applicant; and/or

5. The applicant owns (or has development rights) on only one side of a regulated water, and the regulated activity will cause the flood hazard area design flood elevation to increase by more than 0.1 feet on any property not owned by the applicant.

(g) If a project results in a significant change in the cross-sectional area and/or hydraulic capacity of a channel or floodway, the Department shall presume that the project has the potential to adversely impact a property not owned by the applicant, as described at (f) above. In such a case, the Department shall require the applicant to provide hydrologic and/or hydraulic calculations that identify the properties that would be adversely impacted, or which demonstrate that such impacts will not in fact occur. Examples of projects that may require such an analysis include a channel modification, flood control project, the construction or removal of a water control structure and the placement of a significant volume of fill in a floodway.

7:13-11.2 Requirements for stormwater management

(a) This section sets forth stormwater management requirements and specific design and construction standards that apply to any major development, as defined at N.J.A.C. 7:8-1.2, which requires an individual permit under this chapter.

(b) The Department shall issue an individual permit for a regulated activity associated with a major development only if the requirements of the Stormwater Management rules at N.J.A.C. 7:8 are satisfied.

(c) The Department shall issue an individual permit for a stormwater management basin located within or discharging within a flood hazard area only if the following requirements are satisfied:

1. The basin is designed and constructed to function properly during both flood and non-flood conditions;

2. The effects of flooding and tailwater conditions on any proposed discharge are accounted for in the stormwater management calculations for the proposed basin. Tailwater conditions refer to situations where the discharge pipe will be submerged during a flood in such a way that floodwaters prevent the basin from draining properly. The effects of flooding and tailwater conditions are of particular concern in the following cases:

i. The basin will be overtopped and flooded during the flood hazard area design flood, because it is not feasible to construct the emergency spillway in accordance with (c)3 below;

ii. The drainage area of the basin is similar in size to the drainage area of the water receiving the proposed discharge;

iii. The basin reaches its maximum storage volume during or near the time flooding peaks within the water receiving the proposed discharge; and/or

iv. The elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation;

3. If a basin is proposed within the flood hazard area, the emergency spillway shall be constructed above the flood hazard area design flood elevation where feasible, in order to prevent floodwaters from overtopping the berm and flooding the basin; and

4. If the elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation, the discharge pipe shall be equipped with mechanical devices where appropriate to prevent floodwater from backing up the pipe into the basin.

7:13-11.3 Requirements for excavation, fill and grading activities

(a) This section sets forth specific design and construction standards that apply to any excavation, fill and/or grading proposed in any regulated area.

(b) The Department shall issue an individual permit for excavation, fill and/or grading only if the following requirements are satisfied:

1. The overland flow of stormwater is not impeded and floodwaters can freely enter and exit the disturbed area, unless the area is graded to impound water for a stormwater management structure that meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

2. Any slope of greater than 50 percent (a ratio of two horizontal to one vertical) is stabilized using soil bioengineering, retaining walls, rip-rap or other appropriate slope protection;

3. The excavation, fill and/or grading does not endanger the integrity of any existing structure; and

4. All excavated material is disposed of lawfully.

7:13-11.4 Requirements for a structure

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

(b) The Department shall issue an individual permit to construct or reconstruct a structure only if the entire structure is designed and constructed to be suitably anchored in order to:

1. Resist impact from water and debris during the flood hazard area design flood;

2. Resist uplift, flotation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from the flood hazard area design flood;

3. Resist overturning and sliding pressure, as well as pressure from the freeze/thaw cycle of the soil; and

4. If the structure is located in or adjacent to a channel, resist undermining caused by channel erosion.

7:13-11.5 Requirements for a building

(a) This section sets forth specific design and construction standards that apply to any building proposed in the areas listed in (b) below. Subsection (c) below establishes standards that apply to all buildings, and subsections (d) through (q) below provide additional standards for various types of buildings.

(b) The requirements in this section apply to a building that is constructed or reconstructed in the following areas:

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.

(c) The Department shall issue an individual permit to construct or reconstruct a building of any kind only if the following requirements are satisfied:

1. Any new building is located at least 25 feet from any top of bank or edge of water;

2. If an existing building located near any top of bank or edge of water is to be expanded, the expanded portion is located at least 25 feet from the top of bank or edge of water, where possible;

3. If an existing building located near any top of bank or edge of water is to be reconstructed, the new building shall be relocated at least 25 feet from the top of bank or edge of water, where possible;

4. Any exterior wall being constructed or reconstructed is designed to resist hydrostatic and hydrodynamic pressure caused by flooding up to the flood hazard area design flood elevation; and

5. All applicable requirements contained in (d) through (q) below are satisfied.

(d) The Department shall not issue an individual permit for the construction of a new building in a floodway, except for the construction of a building on a pier in the Hudson River satisfying the requirements of N.J.A.C. 7:7E-3.48.

(e) The Department shall issue an individual permit for the reconstruction of a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has not been unoccupied for more than five years prior to the date of application to the Department to reconstruct;

2. The reconstruction shall not convert a non-residential use to a residential use; and

3. All construction takes place within the same footprint as the original building.

(f) The Department shall issue an individual permit for the construction of an addition to a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has not been unoccupied for more than five years prior to the date of application to the Department to construct the addition;

2. The addition does not result in any further obstruction to the flow of floodwaters; and

3. The existing building, in combination with the addition, is modified to withstand the hydrodynamic and hydrostatic forces due to flooding up to the flood hazard area design flood elevation.

(g) The Department shall issue an individual permit to construct or reconstruct a private residence only if the lowest floor of the building meets the elevation requirements at (k) below.

(h) The Department shall issue an individual permit to construct or reconstruct a public building only if the following requirements are satisfied:

1. The lowest floor of the building meets the elevation requirements at (k) below;

2. For a new building in a fluvial flood hazard area, the applicant demonstrates that the building is served by at least one roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation; and

3. For a new building in a tidal flood hazard area, or for any reconstructed building, the applicant demonstrates that the building is served by at least one roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, where feasible.

(i) The Department shall issue an individual permit to construct or reconstruct a habitable building that is neither a private residence nor a public building, only if one of the following requirements is satisfied:

1. The lowest floor of the building meets the elevation requirements at (k) below; or

2. The applicant does the following:

i. Demonstrates that it is not feasible to meet the elevation requirements at (k) below;

ii. Constructs the lowest floor of the building as close to one foot above the flood hazard area design flood elevation as feasible; and

iii. Certifies that the building will be constructed in accordance with the dry flood-proofing requirements at (q) below.

(j) The Department shall issue an individual permit for the conversion of a building into a private residence or public building only if the following requirements are satisfied:

1. The lowest floor of the building meets the elevation requirements at (k) below; and

2. For a public building, the applicant demonstrates that the building is served by at least one roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, where feasible.

(k) The elevation requirements for a building listed at (g) through (j) above are as follows:

1. For a new building, the lowest floor shall be constructed at least one foot above the flood hazard area design flood elevation;

2. For the reconstruction of a building that has been damaged by fire, flooding or other natural disaster, the lowest floor shall be constructed at least one foot above the flood hazard area design flood elevation, unless the applicant demonstrates that it is not feasible to do so. In such a case, the lowest floor shall be constructed as close to this elevation as feasible;

3. For the reconstruction of a building not covered in (k)2 above, such as the voluntary razing a building and constructing a new one in its place, the lowest floor shall be constructed at least one foot above the flood hazard area design flood elevation; and

4. For the enlargement of a building, such as the construction of an addition, the lowest floor of the new portion of the building shall be constructed at least one foot above the flood hazard area design flood elevation. The original building does not need to be elevated unless the original building was constructed in violation of this chapter. The Department shall not issue a permit to enlarge a building that was constructed in violation of this chapter unless the applicant first does the following:

i. Receives a permit under this chapter to legalize the existing building; and

ii. Performs any modifications to the existing building that the Department determines are necessary to bring the building into compliance with the requirements of this chapter.

(*l*) The Department shall issue an individual permit for a habitable building with an enclosed area beneath the flood hazard area design flood elevation only if the enclosed area meets one of the following requirements:

1. The enclosed area is a crawl space that meets the requirements of (m) below;

2. The enclosed area is a garage that meets the requirements of (n) below; or

3. The enclosed area is open to floodwaters as described at (*o*) below.

(m) The Department shall issue an individual permit for a habitable building with a crawl space below the flood hazard area design flood elevation as described at (*l*)1 above only if the Department determines that the crawl space meets the following requirements:

1. The floor elevation of the crawl space is at or above the adjoining exterior grade along at least one entire exterior wall;

2. In order to prevent habitation of the crawl space, the vertical distance from the crawl space floor to the finished elevation of the first floor of the building is six feet or less. If this distance is greater than six feet, the area beneath the finished first floor is not considered a crawl space;

3. Two or more permanent flood vents that meet the requirements of (p) below are constructed in the outer walls of the crawl space; and

4. The deed of the property is modified to state that habitation of the crawl space is prohibited. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

(n) The Department shall issue an individual permit for a garage with a floor below the flood hazard area design flood elevation as described at (*l*)2 above, whether attached to or below a private residence or freestanding, only if the garage meets the following requirements:

1. The floor elevation of the garage is at or above the adjoining exterior grade along at least one entire exterior wall;

2. The garage serves only one private residence, which is not being constructed as part of a larger residential subdivision;

3. The garage has a footprint of no more than 625 square feet;

4. Two or more permanent flood vents that meet the requirements of (p) below are constructed in the outer walls of the garage; and

5. The deed of the property is modified to disclose (h)5i through iv below. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit:

i. That habitation of the garage is prohibited;

ii. That the garage and driveway are likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

iii. The minimum frequency storm at which the garage and driveway will be inundated; and

iv. The depth of flooding during the flood hazard area design flood.

(*o*) The Department shall issue an individual permit for a habitable building with an enclosed area below the flood hazard area design flood elevation, which is not a crawl space or garage as described at (m) and (n) above, respectively, only if the enclosed area meets the following requirements:

1. The floor elevation of the enclosed area is at or above the adjoining exterior grade along at least one entire exterior wall;

2. At least 25 percent of the surface area of the outer wall of the enclosed area is left permanently open so that floodwaters can freely enter the building to balance hydrostatic pressure during a flood;

3. At least one permanent opening in the outer wall extends down to the floor elevation of the enclosed area; and

4. The deed of the property is modified to state that habitation of the enclosed area is prohibited. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

(p) A flood vent constructed in the outer wall of a building shall meet the following requirements (unless otherwise required under the New Jersey Uniform Construction Code at N.J.A.C. 5:23):

1. The invert of each flood vent shall be no more than 12 inches above the adjoining exterior grade;

2. The invert of at least half of the flood vents shall be no more than 12 inches above the floor of the building;

3. The combined effective open area of the flood vents shall be at least one square inch per square foot of the area of the footprint of the building, unless a smaller FEMA-approved device with an equivalent effective area is utilized; and

4. The flood vents shall not be blocked at any time, but shall permanently remain open so that floodwaters can freely enter the building to balance hydrostatic pressure during a flood.

(q) A building that is to be dry flood-proofed to meet a requirement of this chapter shall be designed and constructed to be waterproof up to the flood hazard area design flood elevation so that floodwaters cannot enter the structure during a flood. Specifically, the building's foundation, floor slab and walls shall be designed to resist hydrostatic pressure up to the flood hazard area design flood elevation. In addition, any exterior wall opening below the flood hazard area design flood elevation, such as a door or window, shall be equipped with waterproof seals and/or panels and shall also be designed to resist hydrostatic pressure up to the flood hazard area design flood elevation. An application for an individual permit for a dry flood-proofed building shall include the information listed at N.J.A.C. 7:13-9.2(e).

7:13-11.6 Requirements for a railroad, roadway or 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 driveway that only serves one

private residence, which is not being constructed as part of a larger residential subdivision, only if one of the following requirements is satisfied:

1. The travel surface of the driveway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant does the following:

i. Demonstrates that it is not feasible to construct the travel surface of the proposed driveway 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; and

ii. Modifies the deed of the property to disclose (c)2ii(1) through (3) below. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

(1) That the driveway is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

(2) The minimum frequency storm at which the driveway will be inundated; and

(3) The depth of flooding during the flood hazard area design flood.

(d) The Department shall issue an individual permit to construct or reconstruct a private roadway that serves a public 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 public 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 public 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 above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the roadway as close to this elevation as feasible.

(e) The Department shall issue an individual permit to construct or reconstruct a parking area that serves a public building only if one of the following requirements is satisfied:

1. The travel surface of the parking area 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 parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the parking area as close to this elevation as feasible.

(f) The Department shall issue an individual permit to construct or reconstruct a private roadway and/or parking area that serves a building, or group of buildings, not covered by (c), (d) or (e) above, such as a commercial business, house of worship, office complex, shopping center or residential subdivision of two or more private residences, only if one of the following requirements is satisfied:

1. The travel surface of each proposed private roadway and parking area that serve the building or group of buildings is constructed at least one foot above the flood hazard area design flood elevation;

2. The applicant demonstrates the following:

i. Each building or group of buildings 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 or group of buildings;

ii. The travel surface of each proposed roadway is constructed as close to one foot above the flood hazard area design flood elevation as feasible; and

iii. The travel surface of each proposed parking area is constructed at least one foot above the flood hazard area design flood elevation; or

3. The applicant demonstrates the following:

i. It is not feasible to construct the travel surface of each private roadway and parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below;

ii. The travel surface of each private roadway and parking area is constructed as close to one foot above the flood hazard area design flood elevation as feasible;

iii. Every effort has been taken to provide some parking areas or sections of roadway in the overall development that are situated at least one foot above the flood hazard area design flood elevation so that vehicles can be moved to higher ground during a flood;

iv. No extraordinary risk is posed to any person using each private roadway or parking area that is constructed at an elevation less than one foot above the flood hazard area design flood elevation; and

v. An adequate number of permanent signs are posted in prominent locations indicating which private roadways and parking areas are subject to flooding in the following cases:

(1) The roadway and/or parking area serves a residential subdivision of two or more private residences; or

(2) The parking area has 10 spaces or more.

(g) An applicant seeking to demonstrate that it is not feasible to construct the travel surface of a railroad, roadway or parking area at least one foot above the flood hazard area design flood elevation, as is required for various activities in this section, shall prove that strict compliance with this requirement would result in one or more of the following:

1. Prohibitively high construction costs;

2. Construction costs that are disproportionately high compared with any benefit that would be obtained by strict compliance;

3. A design that necessitates excessive volumes of fill that exceed the flood storage displacement limits at N.J.A.C. 7:13-10.4, for which flood storage cannot feasibly be created in compensation either onsite or offsite; and/or

4. A design that causes unavoidable and adverse impacts to the environment (such as to the channel, riparian zone or fishery resources), or which would cause unavoidable and significant increases in the flood hazard area design flood elevation.

7:13-11.7 Requirements for a bridge or culvert

(a) This section sets forth specific design and construction standards that apply to any bridge or culvert proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert only if the following requirements are satisfied:

1. The bridge or culvert, and all embankments, are designed to remain stable, scour resistant and resistant to displacement and/or damage during any flood event up to and including the flood hazard area design flood. 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; and

2. The bridge or culvert, and its associated roadway, are designed to minimize flooding and adverse impacts to channel stability and fishery resources. To help achieve this goal, the bridge or culvert opening shall match or exceed the dimensions of the existing channel where feasible, so that the size and shape of the natural channel is preserved through the structure. If additional flood conveyance is required, parallel culverts can be placed alongside the primary structure to carry flows that exceed the banks. Examples of acceptable designs are provided in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g).

(c) The Department shall issue an individual permit to construct a new bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The new structure does not cause any offsite building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood; and

2. The new structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite.

(d) The Department shall issue an individual permit to reconstruct an existing bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The reconstructed structure does not cause any offsite building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood;

2. The reconstructed structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite within 500 feet of the structure; and

3. The reconstructed structure does not cause any increase in the flood hazard area design flood elevation offsite more than 500 feet from the structure.

(e) Subsections (f) through (m) below set forth standards for the protection of aquatic habitat and the maintenance of low-flow aquatic passage associated with the construction of a bridge or culvert. Examples of various designs described in this section are depicted in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g). For the purposes of this section, regulated waters are divided into three classes as follows:

1. Class A waters, which include the following:

i. Category One waters;

ii. Trout production waters;

iii. Trout maintenance waters;

iv. Trout stocked waters;

v. Anadromous waters;

vi. Waters supporting cool and warmwater gamefish; and

APPENDIX 2

LIST OF DEPARTMENT DELINEATED WATERS

The following table lists the waters for which the Department has adopted a delineation of the flood hazard area. This list is organized by county and municipality. In most cases the delineation includes both the flood hazard area design flood elevation and the floodway limit. To determine which mapping is available for a particular water, or to obtain copies of maps or other information regarding the use or revision of these studies, contact the Department as described at N.J.A.C. 7:13-3.3.

Atlantic County

Municipality	Name of Studied Water	Section Studied
Absecon City	None	N/A
Atlantic City	None	N/A
Brigantine City	None	N/A
Buena Borough	None	N/A
Buena Vista Township	None	N/A
Corbin City	Tuckahoe River	Entire reach
Egg Harbor City	Landing Creek	Upstream of confluence with Union Creek
	Mullica River	Entire reach
	Union Creek	Upstream of confluence with Landing Creek
	Union Creek Tributary	Entire reach
Egg Harbor Township	None	N/A
Estell Manor City	None	N/A
Folsom Borough	Great Egg Harbor River	Upstream of State Highway 54
	Great Egg Harbor River Tributary	Entire reach
	Hospitality Brook	Upstream of State Highway 54
Galloway Township	None	N/A
Hamilton Township	None	N/A
Hammonton Township	Cedar Brook	Between Wharton State Forest and Liberty Street
Linwood City	None	N/A
Longport Borough	None	N/A
Margate City	None	N/A
Mullica Township	Mullica River	Downstream of County Route 542
Northfield City	None	N/A
Pleasantville City	None	N/A
Port Republic City	None	N/A
Somers Point City	None	N/A
Ventnor City	None	N/A
Weymouth Township	None	N/A

Bergen County

Municipality	Name of Studied Water	Section Studied
Allendale Borough	None	N/A
Alpine Borough	None	N/A
Bergenfield Borough	Hirschfield Brook	Entire reach

	Hirschfield Brook Tributary	Entire reach
Bogota Borough	Hackensack River	Entire reach
Carlstadt Borough	None	N/A
Cliffside Park Borough	None	N/A
Closter Borough	Dwars Kill	Downstream of Piermont Road
	Kips Brook	Entire reach
	Oradell Reservoir	Entire reach
	Steinals Ditch	Entire reach
	Tenakill Brook	Entire reach
Cresskill Borough	Cresskill Brook	Entire reach
	Demarest Brook	Entire reach
	Tenakill Brook	Entire reach
Demarest Borough	Cresskill Brook	Downstream of County Road
	Demarest Brook	Downstream of County Road
	Tenakill Brook	Entire reach
Dumont Borough	Hirschfield Brook	Entire reach
	Hirschfield Brook Tributary	Downstream of Rucereto Avenue
Elmwood Park Borough	Passaic River	Entire reach
East Rutherford Borough	Passaic River	Entire reach
Edgewater Borough	None	N/A
Emerson Borough	Haunsmans Ditch	Downstream of Orchard Avenue
	Musquapsink Brook	Entire reach
	Oradell Reservoir	Entire reach
	Pascack Brook	Entire reach
Englewood City	Flat Rock Brook	Downstream of Flatbrook Nature Center
	Metzlers Creek	Entire reach
	Overpeck Creek	Entire reach
	Overpeck Creek Tributary 1	Downstream of a point located 350 feet downstream of Forest Avenue
Englewood Cliffs Borough	None	N/A
Fair Lawn Borough	Beaverdam Brook	Downstream of a point located 1,050 feet upstream of Morlot Avenue
	Diamond Brook	Entire reach
	Henderson Brook	Downstream of New Jersey Transit Railroad
	Jordan Brook	Downstream of Berdan Avenue
	Passaic River	Entire reach
	Saddle River	Entire reach
Fairview Borough	Wolf Creek	Downstream of a point located 1,250 feet upstream of South Broad Avenue
Fort Lee Borough	None	N/A
Franklin Lakes Borough	Hohokus Brook	Downstream of a point located 400 feet upstream of Old Mill Drive
	Pond Brook	Downstream of Franklin Lake
Garfield City	Passaic River	Entire reach

East Newark Borough	Passaic River	Entire reach
Guttenberg Town	None	N/A
Harrison Town	Passaic River	Entire reach
Hoboken City	None	N/A
Jersey City	Hackensack River	Downstream of Newark Avenue
	Passaic River	Entire reach
Kearny Town	Hackensack River	Downstream of Newark Avenue
	Passaic River	Entire reach
North Bergen Township	Bellmans Creek	Between Susquehanna Western Railroad and confluence with Wolf Creek
Secaucus Town	None	N/A
Union City	None	N/A
Weehawken Township	None	N/A
West New York Town	None	N/A

Hunterdon County

Municipality	Name of Studied Water	Section Studied
Alexandria Township	Delaware River	Entire reach
	Harihokake Creek	Downstream of a point located 3,170 feet upstream of County Route 519
Bethlehem Township	Musconetcong River	Entire reach
	Spruce Run	Entire reach
Bloomsbury Borough	Musconetcong River	Entire reach
Califon Borough	South Branch Raritan River	Entire reach
Clinton Town	South Branch Raritan River	Entire reach
Clinton Township	Beaver Brook	Downstream of a point located 2,700 feet upstream of Interstate Highway 78 exit ramp
	South Branch Raritan River	Entire reach
	South Branch Rockaway Creek	Entire reach
Delaware Township	Alexauken Creek	Entire reach
	Brookville Creek	Upstream 3,752 feet from the Delaware River
	Delaware River	Entire reach
	Third Neshanic River	Downstream of County Route 523
	Wickecheoke Creek	Downstream of County Route 604
East Amwell Township	Back Brook	Downstream of State Highway 179
	Neshanic River	Entire reach
	Neshanic River Tributary A	Downstream of a point located 50 feet upstream of Manners Road
	South Fork Third Neshanic River	Downstream of the intersection of Dunkard Church Road and Haines Road
	Stony Brook	Downstream of a point located 50 feet upstream of Linvale Road
Flemington Borough	None	N/A
Franklin Township	Cakepoulin Creek	Between a point located 3,650 feet downstream of Quakertown Road and a point located 2,700 feet upstream of Quakertown Road

	South Branch Raritan River	Entire reach
	South Branch Raritan River Tributary A	Entire reach
Frenchtown Borough	Delaware River	Entire reach
	Little Nishisakawick Creek	Entire reach
	Nishisakawick Creek	Entire reach
Glen Gardner Borough	Spruce Run	Entire reach
Hampton Borough	Musconetcong River	Entire reach
High Bridge Borough	South Branch Raritan River	Entire reach
	Willoughby Brook	Entire reach
Holland Township	Delaware River	Entire reach to confluence with Musconetcong River
	Delaware River Tributary 1	Downstream of Phillips Road
	Milford Creek	Downstream of Spring Garden Road
	Milford Creek Tributary 1	Downstream of Spring Garden Road
	Musconetcong River	Entire reach
Kingwood Township	Delaware River	Entire reach
	Lockatong Creek	Downstream of a point located 5,908 feet upstream of State Highway 12
	Lockatong Creek Tributary 1	Downstream of County Route 519
	Lockatong Creek Tributary 2	Downstream of a point located 150 feet upstream of Oak Grove Road
	Muddy Run	Downstream of Fitzer Road
Lambertville City	Alexauken Creek	Entire reach
	Delaware River	Entire reach
	Swan Creek	Entire reach
	Swan Creek Tributary 1	Entire reach
Lebanon Borough	South Branch Rockaway Creek	Entire reach
	South Branch Rockaway Creek Tributary A	Downstream of U.S. Highway 22
	South Branch Rockaway Creek Tributary B	Downstream of a point located 150 feet upstream of Interstate Highway 78
Lebanon Township	Musconetcong River	Entire reach
	Rocky Run	Upstream 6,185 feet from Spruce Run
	South Branch Raritan River	Entire reach
	Spruce Run	Downstream of Glen Gardner Borough, Hunterdon County
	Willoughby Brook	Downstream of Buffalo Hollow Road
Milford Borough	Delaware River	Entire reach
	Milford Creek	Entire reach
	Milford Creek Tributary 1	Entire reach
	Quequacommisacong Creek	Entire reach

Raritan Township	Neshanic River	Downstream of the Third Neshanic River
	Third Neshanic River	Entire reach
	South Branch Raritan River	Entire reach
Readington Township	Chambers Brook	Downstream of a point located 400 feet downstream of Pulaski Road
	Holland Brook	Downstream of County Route 523
	Lamington River	Entire reach
	Pleasant Run	Downstream of U.S. Highway 202
	Rockaway Creek	Entire reach
	South Branch Raritan River	Entire reach
	South Branch Raritan River Tributary A	Downstream of a point located 100 feet upstream of Barley Sheaf Road
	South Branch Rockaway Creek	Entire reach
Stockton Borough	Brookville Creek	Entire reach
	Delaware River	Entire reach
	Wickecheoke Creek	Entire reach
Tewksbury Township	Lamington River	Entire reach
	Lamington River Tributary A	Downstream of a point located 650 feet upstream of Homestead Road
	Rockaway Creek	Downstream of County Route 512
	Rockaway Creek Tributary B	Downstream of a point located 1,400 feet upstream of Guinea Hollow Road
	South Branch Raritan River	Entire reach
Union Township	Mulhockaway Creek	Downstream of a point located 420 feet upstream of Gravel Hill Road
	South Branch Raritan River Tributary A	Downstream of Conrail Railroad (7,960 feet upstream of Race Street)
	Spruce Run	Entire reach
	Mulhockaway Creek Tributary B	Entire reach
	Mulhockaway Creek Tributary C	Entire reach
	Mulhockaway Creek Tributary D	Downstream of Interstate Highway 78
	Mulhockaway Creek Tributary E	Downstream of Interstate Highway 78
	Mulhockaway Creek Tributary F	Downstream of a point located 200 feet upstream of Baptist Church Road
	Spruce Run	Entire reach
West Amwell Township	Alexauken Creek	Downstream of State Highway 179
	Delaware River	Entire reach

Mercer County

Municipality	Name of Studied Water	Section Studied
East Windsor Township	Bear Creek	Downstream of a point located 3,800 feet upstream of Dutch Neck Road
	Big Bear Brook	Downstream of State Highway 33
	Millstone River	Entire reach
	Rocky Brook	Entire reach
Ewing Township	Delaware River	Entire reach

	Ewing Creek	Downstream of Scotch Road
	Jacobs Creek	Entire reach
	Shabakunk Creek	Entire reach
	West Branch Shabakunk Creek	Downstream of a point located 2,000 feet upstream of Carlton Avenue
Hamilton Township	Assunpink Creek	Entire reach
	Miry Run	Entire reach
	North Branch Pond Run	Downstream of a point located 100 feet upstream of County Route 533
	Pond Run	Downstream of a point located 1,150 feet upstream of White Horse-Hamilton Square Road
Hightstown Borough	Rocky Brook	Entire reach
Hopewell Borough	Bedens Brook	Downstream of a point located 200 feet downstream of County Route 518
Hopewell Township	Bedens Brook	Entire reach
	Delaware River	Entire reach
	Ewing Creek	Downstream of Scotch Road
	Jacobs Creek	Downstream of confluence with Ewing Creek
	Stony Brook	Entire reach
Lawrence Township	Assunpink Creek	Entire reach
	Little Shabakunk Creek	Downstream of a point located 200 feet upstream of driveway within Rider University
	Sand Run	Downstream of a point located 6,000 feet upstream of Interstate Highway 295
	Shabakunk Creek	Entire reach
	Shipetaukin Creek	Downstream of Cold Soil Road
	Stony Brook	Entire reach
	West Branch Shabakunk Creek	Entire reach
Pennington Borough	Stony Brook	Entire reach
Princeton Borough	None	
Princeton Township	Cherry Run	Downstream of Cherry Hill Road
	Harrys Brook	Downstream of a point located 50 feet upstream of Snowden Lane
	Harrys Brook Branch 1	Downstream of a point located 100 feet upstream of Bertrand Drive
	Harrys Brook Branch 2	Downstream of Harrison Street
	Harrys Brook Branch 2-1	Downstream of Van Dyke Road
	Harrys Brook Branch 2-2	Downstream of a point located 850 feet upstream of Grover Avenue
	Millstone River	Entire reach
	Mountain Brook	Downstream of a point located 1,000 feet upstream of Stuart Road
	Mountain Brook Branch 2	Downstream of a point located 80 feet downstream of Red Hill Road

	Pequest River	Entire reach
Hamburg Borough	None	N/A
Hampton Township	Paulins Kill	Entire reach
Hardyston Township	None	N/A
Hopatcong Borough	Lubbers Run	Downstream of a point located 3,500 feet upstream of County Route 605
Lafayette Township	Lafayette Township Tributary	Downstream of a point located 700 feet upstream of Little Road
	Paulins Kill	Entire reach
	Sparta Junction Tributary	Entire reach
Montague Township	None	N/A
Newton Town	Moores Brook	Downstream of a point located 1,350 feet upstream of Lake Avenue
	Paulins Kill	Upstream 100 feet from the municipal boundary with Hampton Township and Andover Township, Sussex County
Ogdensburg Borough	None	N/A
Sandyston Township	None	N/A
Sparta Township	Sparta Junction Tributary	Downstream of Layton Road
Stanhope Borough	Musconetcong River	Entire reach
Stillwater Township	Paulins Kill	Upstream of County Route 614
Sussex Borough	None	N/A
Vernon Township	None	N/A
Walpack Township	None	N/A
Wantage Township	None	N/A

Union County

Municipality	Name of Studied Water	Section Studied
Berkeley Heights Township	Blue Brook	Along municipal boundary with Scotch Plains Township
	Green Brook	Downstream of a point located 1,660 feet upstream of Apple Tree Road
	Passaic River	Entire reach
Clark Township	Pumpkin Patch Brook	Entire reach
	Rahway River	Entire reach
	Robinsons Brook	Entire reach
Cranford Township	College Branch	Downstream of Springfield Avenue
	Gallows Hill Road Brook	Downstream of the Brookside Detention Basin
	Orchard Street Branch	Entire reach
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Adjacent to dike along Rahway River
Elizabeth City	None	N/A
Fanwood Borough	None	N/A
Garwood Borough	None	N/A

Hillside Township	Elizabeth River	Entire reach
Kenilworth Borough	Black Brook	Between the Rahway River drainage ditch and a point located 750 feet upstream of Springfield Road
	Branch 10-24	Downstream of South 31st Street
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Between Rahway River and Black Brook
	Stream 10-30	Between the Rahway River drainage ditch and a point located 30 feet upstream of Wilshire Drive
	Stream 10-30-1	Between the Rahway River drainage ditch and 14th Street
	West Brook	Entire reach
Linden City	Rahway River	Along municipal boundary with Woodbridge Township, Middlesex County
Mountainside Borough	Nomahegan Brook	Downstream of U.S. Highway 22
New Providence Borough	Passaic River	Entire reach
	Salt Brook	Downstream of a railroad located 1,200 feet upstream of Maple Street
	West Branch Salt Brook	Downstream of a point located 300 feet upstream of Morris Avenue
Plainfield City	Green Brook	Entire reach
	Cedar Brook	Downstream of Stelle Avenue
Rahway City	Orchard Creek	Entire reach
	Rahway River	Entire reach
	Robinsons Branch	Entire reach
	South Branch Rahway River	Entire reach
Roselle Borough	West Brook	Upstream of Raritan Road
Roselle Park Borough	None	N/A
Scotch Plains Township	Ash Brook Swamp	Entire reach
	Blue Brook	Entire reach
	Branch 22	Downstream of a point located 1,500 feet upstream of Sleepy Hollow Lane
	Green Brook	Entire reach
	Robinsons Branch	Entire reach
	Winding Brook	Downstream of Elizabeth Avenue
Springfield Township	Bryant Brook	Between Van Winkles Brook and Bryant Brook Branch at Interstate Highway 78
	Bryant Brook Branch	Between Van Winkles Brook and Bryant Brook at Interstate Highway 78
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Adjacent to dike along Rahway River
	Van Winkles Brook	Entire reach
Summit City	Passaic River	Entire reach
Union Township	Black Brook	Entire reach
	East Branch Rahway River	Entire reach

	Elizabeth River	Entire reach
	Rahway River	Entire reach
Westfield Town	Nomahegan Brook	Entire reach
	Rahway River Tributary	Downstream of a point located 720 feet upstream of Gallows Hill Road
	Robinsons Branch 15	Downstream of a point located 180 feet downstream of Shackamaxon Drive
	Robinsons Branch 15-1	Downstream of a point located 130 feet downstream of Rahway Avenue
	Robinsons Branch 15-2	Downstream of a point located 500 feet downstream of Grove Street
Winfield Township	Rahway River	Entire reach

Warren County

Municipality	Name of Studied Water	Section Studied
Allamuchy Township	Musconetcong River	Entire reach
	Pequest River	Entire reach
Alpha Borough	None	N/A
Belvidere Town	Pequest River	Entire reach
Blairstown Township	Paulins Kill	Entire reach
Franklin Township	Mill Brook	Downstream of a point located 2,050 feet upstream of State Highway 57
	Montana Brook	Downstream of a point located 100 feet upstream of State Highway 57
	Musconetcong River	Entire reach
	Musconetcong River Tributary A	Downstream of a point located 1,400 feet upstream of Asbury Road
	Pohatcong Creek	Entire reach
	Sigler Brook	Downstream of Bloomsbury Road
Frelinghuysen Township	None	N/A
Greenwich Township	Lopatcong Creek	Entire reach
	Merrill Creek (Including Left Channel)	Entire reach
	Musconetcong River	Entire reach
	Pohatcong Creek	Entire reach
Hackettstown Town	Hackettstown Brook	Downstream of a private road located 400 feet upstream of Franklin Street
	Musconetcong River	Entire reach
	Trout Brook	Entire reach
Hardwick Township	None	N/A
Harmony Township	Buckhorn Creek	Entire reach
	Buckhorn Creek Tributary 1	Downstream of a point located 1,700 feet upstream of County Route 519
	Delaware River	Entire reach
	Lopatcong Creek	Downstream of a point located 250 feet upstream of Allen Mills Road

Hope Township	Beaver Brook	Downstream of Interstate Highway 80
	Honey Run	Downstream of a point located Swayze Mill Road
Independence Township	Pequest River	Upstream of a point located 100 feet downstream of U.S. Highway 46
Knowlton Township	None	N/A
Liberty Township	None	N/A
Lopatcong Township	Delaware River	Entire reach
	Dry Run	Downstream of a point located 650 feet upstream of Powder Horn Road
	Lopatcong Creek	Entire reach
Mansfield Township	Hances Brook	Downstream of Highland Avenue
	Musconetcong River	Entire reach
	Pohatcong Creek	Downstream of Janes Chapel Road
	Trout Brook	Entire reach
Oxford Township	None	N/A
Pahaquarry Township	None	N/A
Phillipsburg Town	Delaware River	Entire reach
	Lopatcong Creek	Entire reach
Pohatcong Township	Delaware River	Entire reach
	Lopatcong Creek	Entire reach
	Musconetcong River	Entire reach
	Pohatcong Creek	Entire reach
	Pohatcong Creek Tributary 1	Downstream of a point located 800 feet upstream of Conrail Railroad
Washington Borough	Shabbecong Creek	Entire reach
Washington Township	Musconetcong River	Entire reach
	Musconetcong River Tributary B	Downstream of State Highway 57
	Pohatcong Creek	Entire reach
	Shabbecong Creek	Downstream of Washington Borough, Warren County
White Township	Beaver Brook	Entire reach
	Pequest River	Entire reach