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CHAPTER 13

FLOOD HAZARD AREA CONTROL

Authority

N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq., and 13:1D-1 et seq.

Source and Effective Date

R.1995 d. 149, effective March 20, 1995.
See: 26 N.J.R. 1009(a), 27 N.J.R. 1211(a).

Chapter Expiration Date

The expiration date of Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from December 30, 2003 to June 30, 2005. See: 36 N.J.R. 886(a).

Chapter Historical Note

Chapter 13, Water Supply and Flood Plain Management, was adopted as new rules by R.1975 d.105, effective June 2, 1975. See: 6 N.J.R. 391(a), 7 N.J.R. 206(b).

Pursuant to Executive Order No. 66(1978), Chapter 13, Water Supply and Flood Plain Management, expired on July 19, 1983.

Subchapter 11, Delineated Floodways, was readopted as R.1983 d.321, effective July 21, 1983. See: 15 N.J.R. 839(a), 15 N.J.R. 1374(b).

Chapter 13, Flood Hazard Areas, was adopted as new rules by R.1984 d.201, effective May 21, 1984, and Subchapter 11, Delineated Floodways, was recodified as N.J.A.C. 7:13-7.1. See: 15 N.J.R. 2104(a), 16 N.J.R. 1201(a).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from May 4, 1989 to July 17, 1989. See: 21 N.J.R. 1481(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1989 d.415, effective July 14, 1989. See: 21 N.J.R. 371(a), 21 N.J.R. 2350(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1994 d.338, effective June 10, 1994. See: 26 N.J.R. 1036(a), 26 N.J.R. 2791(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149. See: Source and Effective Date.

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from March 20, 2000 to December 31, 2000. See: 32 N.J.R. 1253(b).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from December 31, 2000 to June 30, 2001. See: 33 N.J.R. 553(c).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from June 30, 2001 to June 30, 2002. See 33 N.J.R. 2641(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

Subchapter Historical Note

Pursuant to Executive Order No. 66(1978), the rules of this chapter, entitled Water Supply and Flood Plain Management, expired on July

19, 1983. These rules were originally adopted pursuant to authority of N.J.S.A. 58:16A-50 et seq. and were filed April 23, 1975 as R.1975 d.105 to become effective June 2, 1975. See: 6 N.J.R. 391(a), 7 N.J.R. 206(b). Amendments to N.J.A.C. 7:13-1.2, 1.4 and 2.1 were effective on April 21, 1977 as R.1977 d.142 and February 27, 1978 as R.1978 d.70. See: 8 N.J.R. 277(a), 9 N.J.R. 218(b); 9 N.J.R. 263(a), 10 N.J.R. 145(a). On July 21, 1983, R.1983 d.321 readopted N.J.A.C. 7:13-11, Delineated Floodways, to maintain continuity in flood hazard area protection. See: 15 N.J.R. 839(a), 15 N.J.R. 1374(b). On May 21, 1984 new rules concerning Flood Hazard Areas were adopted as R.1984 d.201, and N.J.A.C. 7:13-11 was recodified as N.J.A.C. 7:13-7.1. See: 15 N.J.R. 2104(a), 16 N.J.R. 1201(a). Amendments were adopted as R.1985 d.24, effective February 4, 1985. See: 17 N.J.R. 275(b). The Executive Order No. 66(1978) expiration date for Chapter 13 was extended by gubernatorial waiver from May 4, 1989 to July 17, 1989. See: 21 N.J.R. 1481(a). Pursuant to Executive Order No. 66 (1978), Chapter 13 was readopted as R.1989 d.415, effective July 14, 1989. See: 21 N.J.R. 371(a), 21 N.J.R. 2350(a). Administrative Change. See: 23 N.J.R. 3325(a).

Pursuant to Executive Order No. 66 (1978), Chapter 13 was readopted as R.1994 d.338, effective June 10, 1994. See: 26 N.J.R. 1036(a), 26 N.J.R. 2791(a). Chapter 13 was repealed and new Flood Hazard Area Control rules were adopted as R.1995 d.149. See: Source and Effective.

7:13-1.1 Purpose and Scope

(a) The general purpose of this chapter is to control development in areas within the jurisdiction of this chapter in order to avoid or mitigate the detrimental effects of development upon the environment and the safety, health and general welfare of the people of the State.

(b) Areas subject to inundation by flood waters are called flood plains. For the purpose of this chapter flood plains are divided into two classes, delineated and non-delineated.

1. Delineated flood plains have been established and officially adopted (“delineated”) by the State of New Jersey. Each flood plain has been divided into a floodway and a flood fringe area. The procedure for delineating flood plains is established by N.J.S.A. 58:16A-52.

2. Other flood plains, and the watercourses that create them, are referred to as non-delineated.

(c) The specific intent of this chapter is to minimize potential on and off site damage to public or private property caused by development which, at times of flood, subject structures to flooding and increase flood heights and/or velocities both upstream and downstream. These rules are also intended to safeguard the public from the dangers and damages caused by materials being swept onto nearby or downstream lands, to protect and enhance the public’s health and welfare by minimizing the degradation of water quality from point and non point pollution sources and to protect wildlife and fisheries by preserving and enhancing water quality and the environment associated with the flood plain and the watercourses that create them.

(d) Without proper controls, development in the flood plain and the watercourses that create them may adversely affect the flood carrying capacity of these areas, subject new facilities to flooding, reduce natural flood storage that the flood plain provides, increase the volume of storm water runoff, degrade the water quality of the receiving water body, and result in increased sedimentation, erosion or other environmental damage. Any development in areas regulated by this chapter must conform to criteria which, as outlined in this chapter, depend upon the characteristics of the area and the type of activity involved.

(e) The rules in this chapter govern minimum standards for development within areas within the jurisdiction of this chapter. The Department shall administer permits pursuant to this chapter, except as provided in N.J.A.C. 7:13-5.3.

Case Notes

There was insufficient factual legal basis for judgment in view of owner’s failure to pursue its administrative remedies. *Laurjo Const. Co. v. State*, 228 N.J.Super. 552, 550 A.2d 518 (A.D.1988).

Term “floodway” as used in engineering report was not intended to express anything other than technical meaning which was, by definition, portion of flood plain. *Terner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Township’s zoning ordinance’s adoption of most restrictive definition of 100-year flood plain, wherein no buildings or structures could be erected, did not permit site specific analysis. *Terner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Threat to safety resulting from construction within 100 year flood plain should weigh strongly against variances from municipality’s flood-related ordinance. *Terner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Validity of regulations affirmed. *Society for Environmental Economic Development v. Dept. of Environmental Protection*, 208 N.J.Super. 1, 504 A.2d 1180 (App.Div.1985).

Proper exercise of police power. *Usdin v. D.E.P.*, 173 N.J.Super. 311, 414 A.2d 280 (Law Div.1980), Affirmed, 179 N.J.Super. 113, 430 A.2d 949 (App.Div.1981).

7:13-1.2 Definitions

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

“Acts” means the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq.

“Alteration” means any manmade changes to lands located within the jurisdiction of this chapter.

“Anadromous fish” means fish which travel from salt water to fresh water or up waterways to spawn.

“Applicant” means a person who submits an application for a permit or other decision from the Department under this chapter.

“Application” means the completed Land Use Regulation Program (LURP) permit application form, as defined at N.J.A.C. 7:7-1.3, along with the appropriate fee, plans supporting calculations and reports as required by this chapter.

“Bank” means the inclined sides of the channel.

“Bed” means the floor of the channel.

“Cascades” means sections of beds consisting primarily of bedrock, with little rubble, gravel, or other such material present. The current is usually more swift than in riffles.