

CHAPTER 13

FLOOD HAZARD AREA CONTROL ACT RULES

Authority

N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

Source and Effective Date

Effective: October 6, 2014.
See: 46 N.J.R. 2149(a).

Chapter Expiration Date

Chapter 13, Flood Hazard Area Control Act Rules, expires on October 6, 2021.

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Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149.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: 26 N.J.R. 1009(a), 27 N.J.R. 1211(a).

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).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from June 30, 2002 to December 30, 2003. See: 34 N.J.R. 2802(c).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from December 30, 2003 to June 30, 2005. See: 36 N.J.R. 886(a).

Chapter 13, Flood Hazard Area Control, was readopted as R.2006 d.44, effective December 23, 2005. See: 37 N.J.R. 2759(a), 38 N.J.R. 947(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control Act Rules, was adopted as new rules by R.2007 d.340, effective November 5, 2007. See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Petition for Rulemaking. See: 42 N.J.R. 733(c), 1085(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13, Flood Hazard Area Control Act Rules, was scheduled to expire on November 5, 2014. See: 43 N.J.R. 1203(a).

Chapter 13, Flood Hazard Area Control Act Rules, was readopted, effective October 6, 2014. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:13-1.1 Purpose and scope
- 7:13-1.2 Definitions
- 7:13-1.3 Types of permits and approvals
- 7:13-1.4 Delegation of authority
- 7:13-1.5 Creation of a county water resources association
- 7:13-1.6 Liberal construction
- 7:13-1.7 Severability

SUBCHAPTER 2. EXTENT OF REGULATORY AUTHORITY

- 7:13-2.1 Permit requirement
- 7:13-2.2 Regulated waters
- 7:13-2.3 Regulated areas
- 7:13-2.4 Regulated activities

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
- 7:13-3.2 Selecting a method for determining the flood hazard area and floodway along a regulated water
- 7:13-3.3 Flood hazard area and floodway based on a Department delineation (Method 1)
- 7:13-3.4 Flood hazard area and floodway based on a FEMA flood insurance study (Methods 2 through 4)
- 7:13-3.5 Flood hazard area determined by approximation (Method 5)
- 7:13-3.6 Flood hazard area and floodway determined by calculation (Method 6)

SUBCHAPTER 4. DETERMINING THE RIPARIAN ZONE

- 7:13-4.1 The riparian zone

SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

- 7:13-5.1 General provisions for applicability determinations

SUBCHAPTER 6. VERIFICATIONS

- 7:13-6.1 General provisions for verifications

SUBCHAPTER 7. PERMITS-BY-RULE

- 7:13-7.1 General provisions for permits-by-rule
- 7:13-7.2 Permits-by-rule

SUBCHAPTER 8. GENERAL PERMITS

- 7:13-8.1 Standards applicable to all general permits
- 7:13-8.2 General permit conditions
- 7:13-8.3 General permit 1 for channel cleaning under the Stream Cleaning Act
- 7:13-8.4 General permits 2A through 2G for agricultural activities designed by the NRCS
- 7:13-8.5 General permit 3 for bridge or culvert scour protection by a public entity

- 7:13-8.6 General permit 4 for stormwater maintenance by a public entity
- 7:13-8.7 General permit 5 for the relocation of a building to reduce flood damage
- 7:13-8.8 General permit 6 for the reconstruction of a damaged or destroyed residence
- 7:13-8.9 General permit 7 for residential construction in a tidal flood hazard area
- 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
- 7:13-8.11 General permit 9 for a roadway or footbridge across a water with a drainage area of less than 50 acres
- 7:13-8.12 General permit 10 for a stormwater outfall along a water with a drainage area of less than 50 acres

SUBCHAPTER 9. INDIVIDUAL PERMITS

- 7:13-9.1 General provisions for individual permits
- 7:13-9.2 Application requirements for an individual permit
- 7:13-9.3 Application review procedures for a verification or individual permit
- 7:13-9.4 Duration of an individual permit
- 7:13-9.5 Individual permit conditions
- 7:13-9.6 Cases where a verification is required prior to obtaining an individual permit
- 7:13-9.7 Cases where an individual permit can be issued in an approximated flood hazard area
- 7:13-9.8 Hardship exception for an individual permit

SUBCHAPTER 10. INDIVIDUAL PERMIT REQUIREMENTS WITHIN VARIOUS REGULATED AREAS

- 7:13-10.1 Requirements for a regulated activity in a channel
- 7:13-10.2 Requirements for a regulated activity in a riparian zone
- 7:13-10.3 Requirements for a regulated activity in a floodway
- 7:13-10.4 Requirements for a regulated activity in a flood fringe
- 7:13-10.5 Requirements for a regulated activity in or along a water with fishery resources
- 7:13-10.6 Requirements for a regulated activity in a documented habitat for threatened or endangered species
- 7:13-10.7 Requirements for a regulated activity in an area with acid producing soils

SUBCHAPTER 11. INDIVIDUAL PERMIT REQUIREMENTS FOR VARIOUS REGULATED ACTIVITIES

- 7:13-11.1 Requirements that apply to all regulated activities
- 7:13-11.2 Requirements for stormwater management
- 7:13-11.3 Requirements for excavation, fill and grading activities
- 7:13-11.4 Requirements for a structure
- 7:13-11.5 Requirements for a building
- 7:13-11.6 Requirements for a railroad, roadway or parking area
- 7:13-11.7 Requirements for a bridge or culvert
- 7:13-11.8 Requirements for a footbridge
- 7:13-11.9 Requirements for a utility line
- 7:13-11.10 Requirements for a stormwater outfall structure
- 7:13-11.11 Requirements for a dam or a low dam
- 7:13-11.12 Requirements for a flood control project
- 7:13-11.13 Requirements for a retaining wall or bulkhead
- 7:13-11.14 Requirements for bank stabilization and channel restoration
- 7:13-11.15 Requirements for sediment and debris removal from a water
- 7:13-11.16 Requirements for the storage of unsecured material
- 7:13-11.17 Requirements for the placement, storage or processing of hazardous substances
- 7:13-11.18 Requirements for the placement, storage or processing of solid waste
- 7:13-11.19 Requirements for the removal of existing fill or an existing structure

SUBCHAPTER 12. EMERGENCY PERMITS

- 7:13-12.1 Requirements for issuing an emergency permit
- 7:13-12.2 Procedures after an emergency permit is issued

SUBCHAPTER 13. REVISION OF AN APPROVAL

- 7:13-13.1 Revision of a verification
- 7:13-13.2 Revision of a general permit
- 7:13-13.3 Revision of an individual permit
- 7:13-13.4 Revision of a Department delineation by application
- 7:13-13.5 Revision or suspension of a Department delineation by the Department

SUBCHAPTER 14. TRANSFER, SUSPENSION AND TERMINATION OF AN APPROVAL

- 7:13-14.1 Transfer of an approval
- 7:13-14.2 Suspension of an approval
- 7:13-14.3 Termination of an approval

SUBCHAPTER 15. APPLICATION REQUIREMENTS

- 7:13-15.1 General provisions
- 7:13-15.2 Pre-application conference
- 7:13-15.3 Application report
- 7:13-15.4 Engineering report
- 7:13-15.5 Environmental report

SUBCHAPTER 16. PUBLIC NOTICE OF APPLICATIONS

- 7:13-16.1 General requirements for public notice of applications
- 7:13-16.2 Public notice requirements for an application for a verification
- 7:13-16.3 Public notice requirements for an application for an individual permit
- 7:13-16.4 Documenting public notice of an application
- 7:13-16.5 Newspaper notice
- 7:13-16.6 Contents of public notice of an application

SUBCHAPTER 17. APPLICATION FEES

- 7:13-17.1 Application fees

SUBCHAPTER 18. REQUESTS FOR ADJUDICATORY HEARINGS

- 7:13-18.1 Requests for adjudicatory hearings

SUBCHAPTER 19. ENFORCEMENT

- 7:13-19.1 Penalties
- 7:13-19.2 Grace period applicability; procedures

APPENDIX 1

APPENDIX 2

SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and scope

(a) This chapter sets forth requirements governing human disturbance to the land and vegetation in the following areas:

1. The flood hazard area of a regulated water, as described at N.J.A.C. 7:13-3; and
2. The riparian zone of a regulated water, as described at N.J.A.C. 7:13-4.

(b) This chapter implements the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; and, in addition, relevant aspects of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.; the Ninety-Day

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.

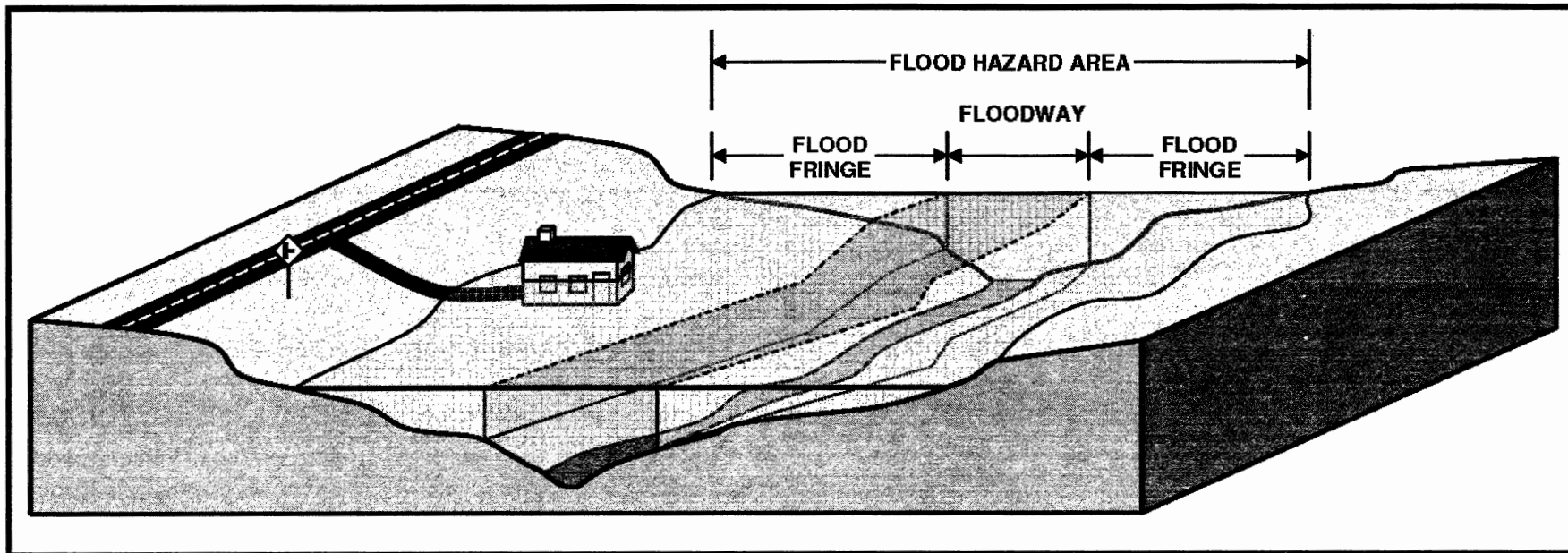


FIGURE A: THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE

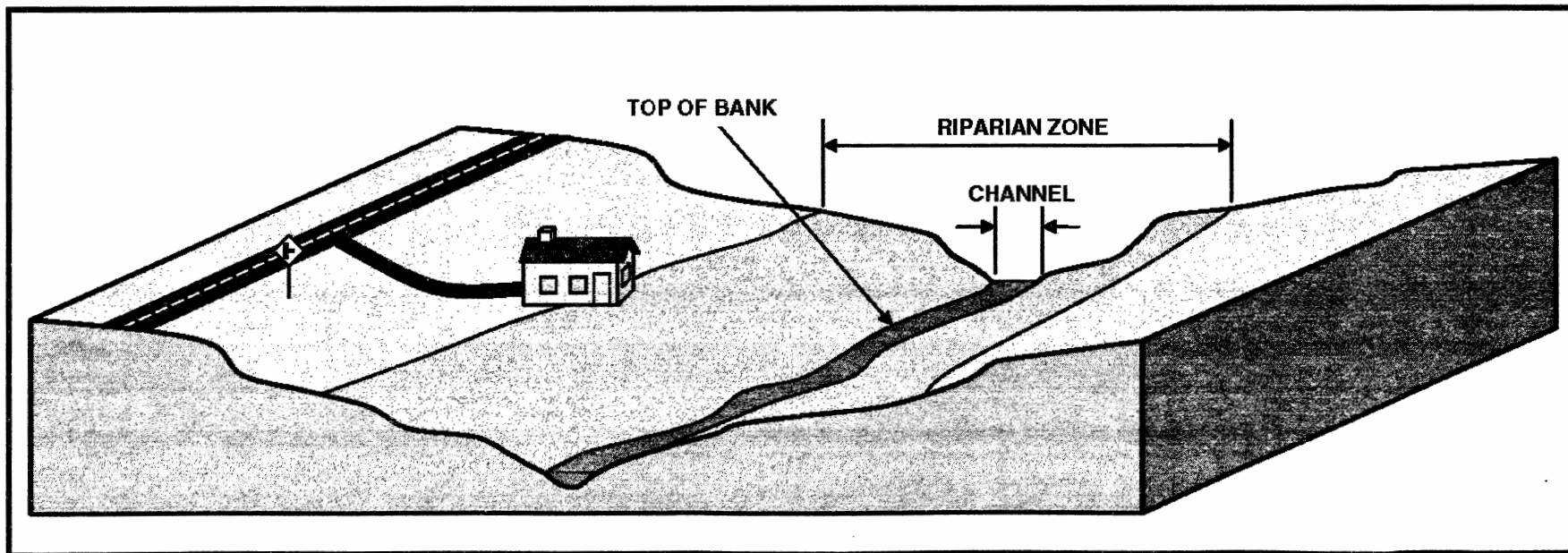


FIGURE B: THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150 OR 300 FEET OF THE CHANNEL

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) There are a number of factors that influence the selection of a method for determining the flood hazard area and floodway on a given site, as set forth in (b) through (e) below. These factors include the existence of a Department delineation or FEMA flood insurance study, whether the applicant prefers to calculate the flood hazard area and/or floodway limits 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.

(b) Where a Department delineation for a regulated water has been promulgated on or after January 24, 2013, an applicant shall determine the flood hazard area and floodway limits using this delineation in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3.

(c) Where a Department delineation for a regulated water has been promulgated prior to January 24, 2013, an applicant may:

1. Determine the flood hazard area and/or floodway in accordance with (c)i or ii below, whichever results in a higher flood hazard area design flood elevation and wider floodway limit:

- i. The Department delineation described in (c) above, in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3; or
- ii. FEMA mapping, in accordance with Method 2 in a tidal flood hazard area or Method 3 in a fluvial flood hazard area, as set forth at N.J.A.C. 7:13-3.4(d) and (e), respectively; or

2. Determine the flood hazard area and/or floodway by calculation, in accordance with Methods 4 or 6, as set forth at N.J.A.C. 7:13-3.4(f) and 3.6, respectively.

(d) Where no Department delineation exists for a regulated water, an applicant may:

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

2. Determine the approximate limit of the flood hazard area in accordance with Method 5, as set forth at N.J.A.C. 7:13-3.5, provided no FEMA mapping exists for the section of regulated water in question; or

3. Determine the flood hazard area and/or floodway by calculation, in accordance with Method 6, as set forth at N.J.A.C. 7:13-3.6.

(e) 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.

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

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

Rewrote the section.

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

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

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

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) Under Method 1:

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) The flood hazard design elevation and floodway limits for a regulated water depicted on a FEMA map that includes the Department's flood hazard area design flood elevation and that reflects FEMA's final determination of the 100-year flood elevation (base flood elevation) effective pursuant to 44 CFR 67.10 are incorporated into this chapter as the Department delineation of the regulated water.

1. The Department shall publish notice in the New Jersey Register of any flood hazard area design flood elevation and floodway limits so incorporated. The notice shall include any necessary administrative change to the list of delineated waters in Appendix 2.

(d) 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.

(e) 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 the flow rates and other hydraulic data that were used to determine the flood hazard area and floodway limits in the Department delineation. Such data is available from the Department at the address listed in (a) above.

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

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

Rewrote the introductory paragraph of (b); added new (c); recodified former (c) and (d) as (d) and (e); and rewrote (e).

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

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

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

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 FEMA flood maps can be viewed at <https://msc.fema.gov>. Requests for copies of the available FEMA flood insurance studies 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. A FEMA flood insurance study exists for the section of regulated water in question, which is dated January 31, 1980, or later, and includes the information needed for the Method that is being used. For example, Methods 2 and 3 below require that the FEMA flood insurance 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; and

2. The floodway limits and 100-year flow rate being used are the most recently released by FEMA for the municipality in which the site is located, including any advisory, proposed, or effective mapping.

(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.

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

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

In (a), deleted "where no Department delineation exists" following "study" and "or flood profiles" following "studies", and inserted the second sentence; deleted former (b)1; recodified former (b)2 as (b)1; rewrote (b)1; and added new (b)2.

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

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

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

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.

(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.

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

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

In (d), deleted the last sentence.

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

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

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

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.

(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.

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

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

In (a), deleted the last sentence.

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

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

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

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,

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;

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 Env'tl. 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 applica-

bility 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 determination 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

(b) A regulated activity shall be authorized under a general permit only if the Department determines that the following requirements are satisfied:

1. The regulated activity is not undertaken in the channel or riparian zone of a regulated water with fishery resources during a restricted time period as described at N.J.A.C. 7:13-10.5(d), unless otherwise approved by the Department's Division of Fish and Wildlife;

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

3. The regulated activity will not adversely affect a threatened or endangered species, or a documented habitat for a threatened or endangered species;

4. All structures are suitably anchored;

5. The regulated activity is performed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

6. Prior to undertaking the regulated activity, all necessary approvals are obtained from the local Soil Conservation District in cases where the district has jurisdiction over the project;

7. The regulated activity does not require review for compliance with the Stormwater Management rules at N.J.A.C. 7:8 because:

i. The overall project with which the general permit activity is associated is not a major development, as defined at N.J.A.C. 7:8-1.2; or

ii. The Department has already determined through the approval of a CAFRA, Waterfront Development or Freshwater Wetlands Protection Act permit that the overall project with which the general permit activity is associated complies with the Stormwater Management rules at N.J.A.C. 7:8;

8. If the regulated activity is proposed in a regulated area known or suspected to contain acid producing soils, a plan is established and implemented to minimize the adverse effects of exposing these soils as described at N.J.A.C. 7:13-10.7; and

9. The regulated activity complies with the specific requirements of the applicable general permit(s) set forth in this subchapter.

(c) Except for general permit 1, the application and review procedures for which are described at N.J.A.C. 7:13-8.3, an application for a general permit shall be submitted to the Department to the address listed in N.J.A.C. 7:13-1.1(f), and shall include the following:

1. One completed certification (available from the Department's website at www.nj.gov/dep/landuse), signed and sealed by an engineer, which lists each requirement of (b) above, as well as each requirement for the particular

general permit under which authorization is sought and explains how each requirement is met;

2. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which detail the proposed activities, including existing and proposed topography if fill or grading is proposed. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary. The limit of any riparian zone onsite shall also be shown, as well as any areas where riparian zone vegetation will be cleared, cut or removed;

3. Three copies of an application report, as described at N.J.A.C. 7:13-15.3; and

4. An application fee of \$500.00 in accordance with N.J.A.C. 7:13-17.1, except for general permit 6, which requires no application fee.

(d) Within 20 working days following the receipt of an application for an authorization under a general permit, the Department shall:

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

2. Determine that all necessary information required by this chapter for a complete general permit 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 (d)1 or 2 above within 20 working days, the general permit application shall automatically be deemed complete for review. In such a case, the Department may to request additional information, which is necessary to bring the application into compliance with the requirements of this chapter during the review of the application.

(e) Within 45 calendar days after receiving a complete application for an authorization under a general permit, the Department shall:

1. Determine that the application meets the requirements of this chapter and approve the general permit authorization in writing; or

2. Determine that the application does not meet the requirements of this chapter and deny the general permit authorization in writing.

(f) If the Department fails to take written action on an application in accordance with (e) above, the general permit application shall automatically be deemed to be approved. This default approval is subject to any applicable conditions set forth in this chapter for the activities covered by the application for general permit authorization. Furthermore, default approval under this section shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19 for any activity undertaken in violation of this chapter.

(g) An authorization to perform a regulated activity under a general permit is subject to the conditions listed at N.J.A.C. 7:13-8.2.

(h) Multiple or repeated activities proposed to be undertaken on a site that would individually qualify for authorization under a general permit shall require an individual permit if the cumulative impacts exceed any limit contained in the applicable general permit.

(i) Except as provided in (j) below, a general permit authorization is valid for five years from its issuance date and shall not be extended. However, a new general permit authorization to replace an expired one may be requested by submitting an application under this section. A general permit can also be transferred with the sale of a property to a new owner pursuant to N.J.A.C. 7:13-14.1.

(j) If the rule in this subchapter establishing a particular general permit is repealed, then any person with a valid authorization issued under such general permit shall immediately cease any authorized activities and apply for an individual permit in accordance with N.J.A.C. 7:13-9, 10 and 11. If the rule in this subchapter establishing a particular general permit is amended to put in place stricter standards or conditions, then any person with a valid authorization issued under the original general permit shall immediately cease any authorized activities under the authorization and either apply for authorization under the amended general permit in accordance with this subchapter or else apply for an individual permit in accordance with N.J.A.C. 7:13-9, 10 and 11.

(k) A verification of the flood hazard area design flood elevation, floodway limits and/or riparian zone limits, pursuant to N.J.A.C. 7:13-6, 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. However, pursuant to Table F at N.J.A.C. 7:13-17.1, the \$500.00 fee for a verification based on methods 1, 2, 3 and 5 (at N.J.A.C. 7:13-3.3, 3.4(d), 3.4(e) and 3.5, respectively) does not apply if the verification application is submitted concurrently with an application for any general permit authorization for which verification of the flood hazard area is required to determine compliance with the general permit.

7:13-8.2 General permit conditions

(a) The standard conditions that apply to all general permit authorizations are described in (b) below. Site-specific conditions are described in (c) through (e) below. If a permittee undertakes any regulated activity approved under a general permit authorization, such action shall constitute the permittee's acceptance of the general permit authorization in its entirety and the permittee's agreement to abide by the general permit authorization and all applicable conditions.

(b) The following conditions apply to all general permit authorizations issued under this chapter:

1. **Duty to comply:** The permittee, its contractors and subcontractors shall comply with all conditions of the permit authorization, supporting documents and approved drawings. Any noncompliance with a permit authorization constitutes a violation of this chapter, and is grounds for enforcement action pursuant to N.J.A.C. 7:13-19, as well as suspension and/or termination of the permit authorization.

2. **Duty to reapply:** If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit authorization, the permittee must apply for and obtain a new permit authorization.

3. **Duty to halt or reduce activity:** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit authorization.

4. **Duty to minimize environmental impacts:** The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit authorization.

5. **Proper operation and maintenance:** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the permit authorization. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The operation of back up or auxiliary facilities or similar systems is only required when necessary to achieve compliance with the permit authorization. The permittee must also properly execute any approved mitigation compensation and/or restoration proposal designed to mitigate losses caused by the permitted activity. The permittee shall maintain the authorized work areas in good condition and in accordance with the permit authorization.

6. **Proper oversight:** The permittee shall ensure that all approved activities are undertaken using the best management practices available under the supervision and direc-

3. The lowest floor of a multi-residence building is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

- i. The building is used for both residential and non-residential purposes;
- ii. The lowest floor of any residential portion of the building, including any common area, such as a lobby or other portion of the building that is used for both residential and non-residential purposes, is set at least one foot above the flood hazard area design flood elevation;
- iii. The applicant demonstrates that it is not feasible to set the lowest floor of any or all of the non-residential portions of the building at least one foot above the flood hazard area design flood elevation;
- iv. The lowest floor of the non-residential portions of the building identified in (g)3iii above is set as close as feasible to one foot above the flood hazard area design flood elevation; and
- v. An architect or engineer certifies that the non-residential portions of the building identified in (g)3iii above will be constructed in accordance with the flood-proofing requirements at (q) below; and

4. The lowest floor of any habitable building not identified in (g)1, 2, or 3 above, such as a commercial business, house of worship, office complex, or shopping center, is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

- i. The applicant demonstrates that it is not feasible to construct the lowest floor of any or all portions of the building at least one foot above the flood hazard area design flood elevation;
- ii. The lowest floor of the portions of the building identified in (g)4i above is constructed as close as feasible to one foot above the flood hazard area design flood elevation; and
- iii. An architect or engineer certifies that the portions of the building identified in (g)4i above will be constructed in accordance with the flood-proofing requirements at (q) below.

(h) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing habitable building that has been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of the entire building is constructed or modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

2. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(i) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of any constructed, elevated, enlarged, or modified portion of the building meets the requirements of (g) above;

2. The lowest floor of the remainder of the building is modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor of this portion of the building be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

3. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(j) The Department shall issue an individual permit to elevate, enlarge, or otherwise modify all or a portion of a lawfully existing building, which does not result in a substantial improvement, only if the following requirements are satisfied:

1. The lowest floor of the elevated, enlarged, or modified portion of the building meets the requirements of (g) above.

i. Where only a portion of a building is elevated, enlarged, or modified, the lowest floor of the remainder of the building is not required to be elevated or otherwise modified to meet the requirements of (g) above; and

2. Any enclosed area beneath the lowest floor of the elevated, enlarged, or modified portion of the building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(k) The Department shall issue an individual permit to reconstruct, elevate, enlarge, or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the requirements of (g) through (j) above, as applicable.

(l) The Department shall issue an individual permit to convert an existing building from a non-residential use to a residential use only if the lowest floor of the converted building is modified as necessary to meet the requirements of (g) above.

(m) The Department shall issue an individual permit to construct a public building or multi-residence building, or to convert an existing building to one of these uses, only if the following requirements are met:

1. If the building is located in a fluvial flood hazard area, the applicant demonstrates that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation; and

2. If the building is located in a tidal flood hazard area, the applicant demonstrates either that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, or that such access is not feasible.

(n) The Department shall issue an individual permit to enclose an area that lies below the lowest floor of a habitable building only if the following requirements are satisfied:

1. The enclosure is used solely for parking of vehicles, building access or storage;

2. The floor of the enclosure is situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area; and

3. The enclosure is constructed with permanent flood openings that meet the requirements of the Uniform Construction Code at N.J.A.C. 5:23.

(o) The Department shall issue an individual permit for an enclosure that lies below the flood hazard area design flood elevation and that is intended to be used as a garage for one private residence, whether the enclosure is attached to or below a private residence or is freestanding, only if the following requirements are satisfied:

1. The garage meets the requirements for an enclosure under (n)1, 2, and 3 above;

2. The garage is not being constructed as part of a residential subdivision or multi-unit development; and

3. The lot on which the garage is being constructed did not receive preliminary or final subdivision approval after November 5, 2007.

(p) The Department shall issue an individual permit for an enclosure under (n) above that is greater than six feet in height, or for a garage under (o) above, only if:

1. The deed for the lot on which the enclosure or garage is constructed is modified to:

i. Explain that the enclosure or garage is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

ii. Disclose the depth of flooding that the enclosure or garage would experience during the FEMA 100-year flood and flood hazard area design flood, if either elevation is known;

iii. Prohibit habitation of the enclosure or garage; and

iv. Explain that converting the enclosure or garage into a habitable area may subject the property owner to enforcement under this chapter; and

2. Within 90 calendar days of the issuance of the individual permit for the enclosure or garage, a copy of the modified deed as filed with the local county clerk is provided to the Department at the address set forth at N.J.A.C. 7:13-1.1(f).

(q) The Department shall issue an individual permit for a building that is flood-proofed only if one of the following requirements is satisfied:

1. The applicant dry flood-proofs the building in accordance with (r) below; or

2. The applicant demonstrates that it is not feasible to dry flood-proof the building in accordance with (r) below and instead wet flood-proofs the building in accordance with (s) below.

(r) The Department shall issue an individual permit to dry flood-proof a building only if the building is designed and constructed with measures to prevent floodwaters from entering the building during a flood depth of at least one foot above the flood hazard area design flood elevation.

(s) The Department shall issue an individual permit to wet flood-proof a building only if the building is designed and constructed to be flood-resistant during a flood depth of at least one foot above the flood hazard area design flood elevation, so that floodwaters can enter the building through permanent openings, while not damaging the structural integrity of the building.

(t) The Department shall not issue an individual permit to flood-proof a new private residence, a new public building, or any residential portions of a new multi-residence building.

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

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

In (a) and (c)5, substituted "(t)" for "(q)"; in the introductory paragraph of (e), substituted "to elevate or reconstruct" for "for the reconstruction of"; rewrote (g) through (q); and added (r) through (t). Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

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

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

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 or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the private roadway is constructed at least one foot above the flood hazard area design flood elevation;

2. For a new private roadway in a fluvial flood hazard area, the applicant demonstrates that the public building or multi-residence building is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building, and instead constructs the travel surface of the roadway as close to this elevation as feasible; or

3. For a new private roadway in a tidal flood hazard area, or for any reconstructed private roadway that currently lies below the flood hazard area design flood elevation, the applicant demonstrates that it is not feasible to construct the travel surface of the roadway at least one foot 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 or multi-residence 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.

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

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

In the introductory paragraph of (d), (d)2, and the introductory paragraph of (e), inserted "or multi-residence building"; and in (d)2, deleted "public" preceding "building."

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

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

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

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 off-site 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

(h) After reviewing an application for a major delineation revision, the Department shall:

1. Notify the applicant that the application did not include all the material required at (g) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (h)2 or 3 below;

2. Notify the applicant that the application does not meet the requirements of this section, deny the application, and provide the technical reasons for this decision; or

3. Determine that the revision is accurate and necessary and proceed with the revision according to (i) below.

(i) If the Department determines that a major delineation revision is accurate and necessary, the Department shall proceed with the revision as follows:

1. The Department shall publish notice of its intent to revise the delineation in the New Jersey Register, as well as in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) and in one newspaper of regional circulation (relative to the location of the project). This notice shall include:

- i. The location of the delineation to be revised;
- ii. The reason the Department intends to revise the delineation;
- iii. An invitation for interested parties to submit written comments and to attend a public hearing to be held in one or more of the affected municipalities; and
- iv. The mailing address and telephone number of a contact person within the Department who is able to discuss the proposed revision.

2. During the public hearing, the Department shall:

- i. Explain the proposed revision, including any impacts the Department expects from revising the delineation; and
- ii. Collect public comments.

3. Upon consideration of the available information and public comments, if the Department concludes that revising the delineation is in the best interest of public health, safety and welfare, the Department shall:

- i. Revise the delineation as the Department deems necessary;
- ii. Publish a description of the revision in the New Jersey Register, including a response to any public comments;

- iii. Publish a public notice describing the revision in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) as well as in one newspaper of regional circulation (relative to the location of the project); and

- iv. Provide the applicant and affected municipalities with a copy of the revised flood hazard area and/or floodway map (except in cases where the Department initiates the revision pursuant to N.J.A.C. 7:13-13.5).

(j) Workload permitting, the Department shall make a final decision on an application for a major delineation revision within 180 calendar days of receiving a complete application.

7:13-13.5 Revision or suspension of a Department delineation by the Department

(a) If the Department determines, independent of an application pursuant to N.J.A.C. 7:13-13.4, that an existing Department delineation as listed in chapter Appendix 2 underestimates the extent of the floodway and/or flood hazard area, and that it is in the best interest of public health, safety and welfare to revise a delineation, the Department shall do one of the following:

1. If the Department has sufficient topographic, hydrologic and hydraulic data to adequately revise the delineation, the Department shall initiate a revision as follows:

- i. For a minor delineation revision as described at N.J.A.C. 7:13-13.4(b)1, the Department shall revise the delineation as necessary; or
- ii. For a major delineation revision as described at N.J.A.C. 7:13-13.4(b)2, the Department shall follow the procedure described at N.J.A.C. 7:13-13.4(i); or

2. If the Department does not have sufficient topographic, hydrologic and hydraulic data to adequately revise the delineation, or if the Department determines that a serious threat to public health, safety and welfare will exist if an existing delineation is allowed to remain in place, the Department shall initiate an emergency suspension of the delineation for a one-year period pursuant to (b) below. The purpose of this suspension is to allow the Department adequate time to acquire data necessary to accurately revise the delineation.

(b) To initiate an emergency one-year suspension of a delineation as described in (a)2 above, the Department shall:

1. Publish notice of its intent to suspend the delineation in the New Jersey Register, as well as in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) and in one newspaper of regional

circulation (relative to the location of the project). This notice shall include:

- i. The location of the delineation to be suspended;
- ii. The reason the Department is suspending the delineation;
- iii. An invitation for interested parties to submit written comments regarding the suspension and subsequent need for amendment of the suspended delineation; and
- iv. The mailing address and telephone number of a contact person within the Department who is able to discuss the suspension.

2. The Department shall consider the portion of the delineation described in the notice to be suspended for a one-year period beginning with the publication date of the notice in the New Jersey Register.

3. The Department shall, within one year of the suspension date:

- i. Revise the delineation in accordance with (a)1 above;
- ii. Reinstate the delineation without revision, and explain why the delineation was found to be acceptable after suspension; or
- iii. Take no action, in which case the delineation shall be automatically reinstated.

(c) During the suspended period described in (b)2 above, any application made under this chapter shall not reference the flood hazard area and/or floodway of the suspended delineation. Applicants must instead rely on another delineation method to determine the extent of the flood hazard area and/or floodway as provided at N.J.A.C. 7:13-3. Furthermore, the Department shall review all valid verifications, general permits and individual permits issued for the flood hazard area of the suspended delineation and will suspend or terminate such approvals where necessary to protect public safety, in accordance with N.J.A.C. 7:13-14.

(d) The Department shall issue a revision of a delineation only for a section of water already promulgated by the Department. The Department shall add or remove a section of delineated water from Appendix 2 only through an amendment to this chapter.

(e) If the Department approves an individual permit under this chapter for an activity which alters the flood hazard area design flood elevation, flood hazard area limit and/or floodway limit along a Department delineated water, such as the construction of a flood control project, or the construction, modification or removal of a bridge or culvert, the Department shall automatically revise the delineation as necessary after the construction is completed. No public notice or hearing is necessary to revise a Department delineation in such a case.

SUBCHAPTER 14. TRANSFER, SUSPENSION AND TERMINATION OF AN APPROVAL

7:13-14.1 Transfer of an approval

(a) An approval authorized under this chapter (see N.J.A.C. 7:13-1.3) can be transferred to another person, provided:

1. The approval is valid;
2. The approval is not an emergency permit or an individual permit based on a hardship exception;
3. The approval is transferred to a person who currently owns the site or who is under contract to purchase the site that is the subject of the approval. A transfer to a contract purchaser shall become valid only upon the actual transfer of the site to the new owner; and
4. The Department determines that the transfer will not alter a basic condition upon which the original approval was granted or otherwise circumvent a requirement of this chapter as described in (b) below.

(b) The Department shall not transfer an approval if doing so would alter a basic condition or premise upon which the original approval was granted or would otherwise circumvent a requirement of this chapter. For example, an existing lot may be shaped in such a way that the owner must construct a road across a channel in order to access the rear portion of the lot in order to construct a house. In some cases, the Department would, during the review of an individual permit application, consider whether there is another means of accessing the site that would reduce the amount of disturbance to the channel, or which would avoid crossing the channel altogether, such as crossing through a neighboring property. If the owner of a lot demonstrates that there is no feasible means of accessing the rear portion of the lot without crossing the channel, the Department would authorize a road crossing provided all other requirements of this chapter are met. However, if the owner of the lot first obtains an individual permit for such a road crossing, and then sells the lot to an adjacent land owner who already has a roadway across the channel, the basic premise upon which the individual permit was granted no longer exists. Therefore, the Department would not approve the transfer of the approval to the new owner in such a case.

(c) If the Department approves a regulated activity under a general permit authorization or an individual permit that is not based on a hardship exception, and the subject property is subsequently sold to a new owner, the new owner must obtain a transfer of said approval before commencing or continuing any work authorized under the approval. Should the new owner engage in a regulated activity without the prior transfer of the approval, the approval shall be void and the new owner shall be in violation of this chapter and subject to enforcement action pursuant to N.J.A.C. 7:13-19.

(d) An applicant seeking to transfer an approval to a new owner (or contract purchaser) shall submit the following to the Department:

1. The application fee for a transfer as described at N.J.A.C. 7:13-17; and
2. A written request to transfer the approval, which includes the following:
 - i. The notarized signature of each original owner of the site, or any legal designee thereof;
 - ii. The name and address of each new owner (or contract purchaser) of the site;
 - iii. A list of any adjacent property already owned by the new owner(s); and
 - iv. The date the property will be or has been transferred to the new owner(s).

(e) Workload permitting, the Department shall make a final decision on an application to transfer an approval within 30 calendar days of receiving a complete application.

(f) A person receiving a transferred approval shall comply with all conditions of the transferred approval.

7:13-14.2 Suspension of an approval

(a) The following are causes for the Department to suspend an approval authorized under this chapter:

1. The permittee has not complied with a condition of the approval;
2. The permittee has undertaken activities onsite that are in violation of this chapter;
3. The permittee has misrepresented or failed to fully disclose all relevant facts pertaining to the approval;
4. The approval was based on false or inaccurate information; or
5. The approval has caused significant flooding or unanticipated adverse environmental impacts which have become apparent during the performance of the regulated activities. Examples of unanticipated adverse environmental impacts include excessive erosion, destabilization or undue migration of the channel, and destruction of biota, habitat or vegetation not authorized by the permit.

(b) If the Department determines that cause exists to suspend an approval for a reason listed at (a) above, the Department shall provide written notice of suspension by certified mail to the permittee. This notice shall:

1. State the reasons the Department is suspending the approval;
2. Order the permittee to immediately cease all regulated activities onsite; and

3. Notify the permittee of the right to make a request, within 10 calendar days of receipt of the notice, for a meeting with the Department.

(c) Within 30 calendar days after receipt of a notice of suspension under (b) above, the permittee shall submit a plan to the Department proposing to remedy the reasons for the suspension as stated in the notice. Such a plan shall be implemented immediately upon approval by the Department and shall propose to remedy all noncompliance and unanticipated impacts within 60 calendar days of approval.

(d) Within 15 calendar days after the Department receives a complete remediation plan under (c) above, the Department shall:

1. Approve the remediation plan with conditions where necessary, and reinstate the approval with revisions where necessary to achieve compliance with this chapter; or
2. Determine that the remediation plan is inadequate to achieve compliance and notify the applicant of intent to terminate the approval pursuant to N.J.A.C. 7:13-14.3(b).

(e) Nothing in this section shall prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19.

7:13-14.3 Termination of an approval

(a) The following are causes for the Department to terminate an approval which has been suspended under N.J.A.C. 7:13-14.2:

1. The permittee has not ceased all regulated activities pursuant to N.J.A.C. 7:13-14.2(b)2;
2. The permittee has not submitted a remediation plan pursuant to N.J.A.C. 7:13-14.2(c);
3. The Department has determined that the remediation plan submitted pursuant to N.J.A.C. 7:13-14.2(c) is inadequate to achieve compliance; or
4. The permittee fails to remedy non-compliance with a condition of the approval.

(b) If the Department determines that cause exists to terminate an approval for a reason listed at (a) above, the Department shall provide written notice of intent to terminate the approval by certified mail to the permittee. The permittee shall cease all regulated activities immediately upon receiving the notice. Within 10 calendar days after receiving the notice, the permittee shall:

1. Submit a plan to the Department proposing to remedy the causes for the termination as stated in the notice; or
2. Request an adjudicatory hearing under N.J.A.C. 7:13-18.

(c) If the permittee has not taken one of the actions required at (b) above within 10 calendar days after receiving

the Department's notice, the approval shall automatically terminate and the permittee shall remedy any violations of this chapter and/or unanticipated adverse impacts to flooding or the environment caused by the project, and shall restore the site to its pre activity condition where feasible. Once the impacts or violations are remedied, the Department may reinstate the permit or require the applicant to apply for a new permit.

(d) Nothing in this section shall prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19.

SUBCHAPTER 15. APPLICATION REQUIREMENTS

7:13-15.1 General provisions

(a) For each approval being sought under this chapter, the applicant shall provide all information necessary for the Department to determine if the requirements of this chapter are satisfied. The application requirements for each type of approval are detailed in the sections pertaining to each approval under this chapter. However, the Department also provides application checklists, which include guidance and detail in order to assist applicants through the review and approval process. For example, the application checklist may recommend that the document to be folded or prepared in a certain manner to facilitate processing. To minimize application processing time, an applicant should carefully review the application checklist and verify that the application includes all required information. 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).

(b) If a proposed project requires more than one approval from the Division of Land Use Regulation, the Department encourages, but does not require, the applicant to submit one consolidated application for all the approvals. For example, an applicant wishing to construct a private residence can use one application to simultaneously apply for both an individual permit under this chapter and a freshwater wetlands permit under N.J.A.C. 7:7A. If an application requests more than one approval, the combined application shall comply with the application requirements of each permit program. A reduction in fees is also applied to joint applications as described at N.J.A.C. 7:13-17.1(e).

(c) An applicant is encouraged to keep copies of the data used to complete an application, the information submitted to the Department during the application review process, and all permits, approvals and Department-approved drawings for at least 10 years after the Department issues a decision.

(d) All calculations submitted under this chapter shall be performed at the applicant's expense and shall be signed and sealed by an engineer. The Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), provides examples and guidance for

performing the calculations that are included in this chapter. For example, while the calculations required for determining the volume of flood storage that a project displaces are found at N.J.A.C. 7:13-10.4, the Flood Hazard Area Technical Manual provides samples of the different formats in which these calculations are often performed, as well as recommendations and guidance designed to facilitate their execution.

(e) All drawings submitted under this chapter shall be signed and sealed by an engineering, surveyor or architect as appropriate, unless the following apply, in which case the applicant can prepare his or her own drawings:

1. The applicant solely proposes one or more of the following activities on his or her own property:

- i. The construction of a 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; and

2. No topography or calculations are necessary to demonstrate compliance with the requirements of this chapter.

(f) All LURP application forms submitted under this chapter shall be completed as directed by the form for the type of application being requested. The LURP form requires basic information regarding the applicant and the proposed activities, such as the name and address of the applicant and any designated agents, the specific location of the project, the types of applications being requested and a brief description of the activities being proposed. Where signatures are required on the form, original signatures shall be provided. The form also requires State plane coordinates for the approximate center of the site, except as provided at (f)1 and 2 below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the State plane coordinates for a site contact the Department's Geographic Information (GIS) Office at (609) 777-0672.

1. State plane coordinates are not required if a project consists solely of the following activities:

- i. The construction of a 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.

2. State plane coordinates shall be provided for linear projects such as railroads, roadways and utility lines as follows:

- i. For a linear project of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the project and the

coordinates for points located at 1,000 foot intervals along the entire length of the project; and

ii. For a linear project of less than one-half mile in length, the State plane coordinates shall include the coordinates for the end points of the project.

7:13-15.2 Pre-application conference

(a) A pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project. An applicant may request a pre-application conference for any project. A pre-application conference is highly recommended for large and/or complicated projects as it enables the Department to inform an applicant of the application procedures and standards that will apply to the project. There is no fee for a pre-application conference.

(b) A pre-application conference can be requested by telephone, electronic mail or by writing to the address listed at N.J.A.C. 7:13-1.1(f). Such a request shall be directed to the engineering supervisor or review engineer responsible for the county wherein the project is located and shall include a description of the project.

(c) Prior to scheduling a pre-application conference, the Department shall require the applicant to submit a set of drawings depicting the proposed development and an application report, as described at N.J.A.C. 7:13-15.3, if the Department determines that such information is necessary to properly advise the applicant regarding the proposed project and application procedures. The information contained in an application report enables the Department to be better prepared for a pre-application conference, which often saves the applicant and the Department both time and effort.

(d) At a pre-application conference, Department staff will discuss various requirements of this chapter as they relate to a project and may offer guidance to assist the applicant. However, no discussion or guidance offered at a pre-application conference shall compel the Department to approve or deny an application.

(e) If a project requires approvals from multiple Department programs, the applicant is advised to contact the Office of Pollution Prevention and Right to Know at (609) 292-3600 before filing an application under this chapter. The Office of Pollution Prevention and Permit Coordination can help the applicant coordinate the various applications.

(f) If an applicant has reason to believe that construction is proposed in freshwater wetlands or transition areas, the Department encourages the applicant to obtain a freshwater wetlands letter of interpretation under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-8 prior to the pre-application conference.

(g) Workload permitting, the Department shall hold a pre-application conference within three weeks of receiving a request that complies with this section. The Department is not

obligated to hold a pre-application conference with a prospective applicant if the Department determines that the questions raised can be adequately addressed by telephone.

7:13-15.3 Application report

(a) An application report required under this chapter shall include the following (photocopies of maps and documents are acceptable, except for the LURP application form, which must include original signatures):

1. A complete written description of the project and all proposed activities;
2. One original LURP application form, completed as described at N.J.A.C. 7:13-15.1(f);
3. One copy of a USGS quad map with the site clearly outlined to scale;
4. One copy of a municipal tax map with the site clearly outlined to scale;
5. One copy of a Department flood hazard area map or FEMA flood insurance rate map with the site clearly outlined to scale, if such mapping exists;
6. One copy of each previous approval received from the Department concerning the site, if such approvals exist; and
7. One set of color photographs depicting the entire project area, mounted on 8½-inch by 11-inch paper and accompanied by a map showing the location and direction from which each photograph was taken. Copies of photographs are acceptable provided they are color copies. Black and white copies of photographs are not acceptable.

7:13-15.4 Engineering report

(a) An engineering report required under this chapter shall include the following, as applicable:

1. The signature and seal of an engineer;
2. The name, mailing address and telephone number of the engineer, as well as any other person designated by the engineer to answer questions about the report;
3. All supporting hydrologic, hydraulic, flood storage volume, stormwater and structural calculations, which are necessary to demonstrate that the proposed application meets the requirements of this chapter;
4. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used;
5. All maps, references and other supporting materials that were used to prepare the submitted calculations;
6. In the case of a verification application, all flood maps, drainage area maps and other material used to determine the flood hazard area and/or floodway limits;

7. In the case of an individual permit application, the total area of impervious surface proposed and the total land area that will be disturbed; and

8. In the case of an individual permit application for which stormwater management is required pursuant to N.J.A.C. 7:13-11.2, the following information where applicable:

- i. An explanation of how nonstructural stormwater management strategies have been maximized on site, as required at N.J.A.C. 7:8-5.3;
- ii. A demonstration of how the project meets the groundwater recharge standards at N.J.A.C. 7:8-5.4(a)2;
- iii. A table which compares existing and proposed stormwater discharges for the two-year, 10-year and 100-year storm in order to demonstrate compliance with the runoff quantity standards at N.J.A.C. 7:8-5.4(a)3; and
- iv. An explanation of how the project meets the water quality standards at N.J.A.C. 7:8-5.5.

7:13-15.5 Environmental report

(a) An environmental report required under this chapter shall include the following, as applicable:

1. A narrative that describes the proposed design and the construction techniques that will be used;
2. Maps (such as freshwater wetlands maps and USDA soil surveys) which provide an environmental inventory of the site; and
3. An analysis of any potential adverse impacts to the following resources and a detailed description of how potential adverse impacts shall be minimized. This analysis shall include all temporary and permanent adverse impacts of each proposed activity, whether onsite or offsite, as follows:
 - i. Channels: compliance with the requirements of N.J.A.C. 7:13-10.1, as well as any anticipated effects on the size, shape and characteristics of existing channels, including low-flow aquatic passage, shall be addressed;
 - ii. Riparian zones: compliance with the requirements of N.J.A.C. 7:13-10.2 shall be addressed;
 - iii. Fishery resources: compliance with the requirements of N.J.A.C. 7:13-10.5 shall be addressed.
 - iv. Threatened or endangered species: if a survey for threatened or endangered species is required under N.J.A.C. 7:13-10.6(e), it shall meet the requirements of (c) below; and
 - v. Regulated waters: the effects on water quality due to stormwater runoff, exposure of acid producing

soils, and potential for erosion and turbidity shall be addressed.

(b) If it is determined that a proposed project is likely to cause an adverse impact to any resource listed in (a)3 above, the environmental report shall include the following material, in addition to the information required at (a) above:

1. A justification for the project, including an explanation of why the proposed structures and their locations are the most appropriate for the site and how the proposed design minimizes environmental damage;
2. An analysis of alternatives to the proposed activity, including the no-build alternative;
3. A description of all measures to be taken to reduce temporary and permanent detrimental impacts to each resource listed at (a)3 above, whether onsite or offsite; and
4. A plan to mitigate the effects of all unavoidable adverse impacts.

(c) If the Department requires a survey for threatened or endangered species under N.J.A.C. 7:13-10.6(e), the survey shall be performed by a person with education and experience in wildlife biology, zoology and/or botany, as appropriate, and shall include the following:

1. The name, mailing address and qualifications of all persons participating in the survey;
2. The acreage of the surveyed area;
3. A USGS quad map with the surveyed area for each habitat outlined;
4. A description of each habitat and cover type onsite including vegetation, hydrology, soils and natural communities. These habitats shall be assessed for suitability and compatibility to the life history of the species being investigated. If no threatened or endangered species are observed, a discussion of the site's suitability for such species shall be provided;
5. The date and time of the investigation (including total number of hours spent by each individual for species observation);
6. The number of observers present on the site at any one time, including their location on the site relative to one another;
7. Site conditions during the survey, such as precipitation, temperature, wind speed and direction, artificial or natural noise, and nearest onsite or offsite human activity or development; and
8. If the survey reveals the presence or evidence of a threatened or endangered species, detailed information regarding each sighting, including:

iii. For a joint verification and individual permit application, the letter set forth at (e) below; and

3. If an application includes a request for a hardship exception under N.J.A.C. 7:13-9.8, the letter required under (a)2 above shall also include the following:

- i. A statement that a hardship exception is being requested;
- ii. The nature of the hardship; and
- iii. The citation and subject matter of each requirement in this chapter for which the hardship exception is being requested.

(b) Where public notice is required under this subchapter to be sent to a municipal or county clerk, the applicant shall send three copies of the public notice, accompanied by a letter requesting that the clerk keep one copy for public inspection, and distribute one copy of the public notice to the planning board and one copy to the environmental commission if any.

(c) The letter required in (a)2 above for an application for a verification shall state:

This letter is to notify you that an application for a flood hazard area verification will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the site described on the attached application form. The Department regulates construction within flood hazard areas and riparian zones adjacent to certain waters. This application is a request for the Department to verify the extent of these areas on the subject property. A flood hazard area verification does not approve any construction. A separate application must be made to the Department if regulated activities are proposed within these areas. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form.

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)
State of New Jersey Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 439
Trenton, New Jersey 08625-0439

Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: www.nj.gov/dep/landuse.

(d) The letter required in (a)2 above for an application for an individual permit shall state:

This letter is to notify you that an application for a flood hazard area permit will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the project described on the attached application form. A flood hazard area permit is required for this project because some or all of the work is proposed in a flood hazard area or in a riparian zone. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form:

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)
State of New Jersey Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 439
Trenton, New Jersey 08625-0439

Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: www.nj.gov/dep/landuse.

(e) The letter required in (a)2 above for a joint verification and individual permit application shall state:

This letter is to notify you that an application for a flood hazard area verification will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the property described on the attached application form. The Department regulates construction within flood hazard areas and riparian zones adjacent to certain waters. This application is a request for the Department to verify the extent of these areas on the subject property. In addition, an application for a flood hazard area permit will also be submitted to the Department for the project described on the attached application form. A flood hazard area permit is required for this project because some or all of the work is proposed in a flood hazard area or in a riparian zone. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form:

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)
State of New Jersey Department of Environmental Protection

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Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: www.nj.gov/dep/landuse.

SUBCHAPTER 17. APPLICATION FEES

7:13-17.1 Application fees

(a) At Table F below, this subchapter sets forth the fees for an application for the following:

1. A verification, pursuant to N.J.A.C. 7:13-6;
2. An authorization under a general permit, pursuant to N.J.A.C. 7:13-8, except for general permits 1 and 6, which have no application fee;
3. An individual permit, pursuant to N.J.A.C. 7:13-9, 10 and 11;
4. A revision of an approval, pursuant to N.J.A.C. 7:13-13; and
5. A transfer of an approval, pursuant to N.J.A.C. 7:13-14.

(b) There is no application fee for the following:

1. An applicability determination, pursuant to N.J.A.C. 7:13-5;
2. A permit-by-rule, pursuant to N.J.A.C. 7:13-7;
3. An authorization under general permit 1, pursuant to N.J.A.C. 7:13-8.3
4. An authorization under general permit 6, pursuant to N.J.A.C. 7:13-8.8; and
5. An emergency permit, pursuant to N.J.A.C. 7:13-12.

(c) The total application fee for a given project is calculated by summing the following:

1. The appropriate fee for each project element to be covered by any individual permit;
2. The appropriate fee for any verification; and
3. The appropriate fee for any general permit authorization, revision or transfer for which an application is submitted.

(d) All application fees shall be paid by money order, check (personal, bank, certified or attorney) or government purchase order. Fees shall be made payable to the "Treasurer, State of New Jersey".

(e) If a project requires approval under this chapter, and also requires any CAFRA, waterfront development, coastal wetlands and/or freshwater wetlands approvals issued under the respective rules for these regulatory programs, the application fee for the project shall be calculated as follows:

1. The total application fee for each regulatory program's approvals shall be calculated separately. For example, if a project requires a flood hazard area permit, a flood hazard area verification and three freshwater wetlands approvals, the total fee for all flood hazard area approvals shall be computed separately from the total fee for all freshwater wetlands approvals; and

2. The application fee for the project shall be the sum of the following, provided all applications are submitted to the Department simultaneously:

- i. The highest total application fee among the regulatory programs calculated under (e)1 above; and
- ii. Seventy-five percent of the total application fee for each additional regulatory program calculated under (e)1 above.

(f) Any fee required under this chapter that is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, shall be payable in installments in accordance with N.J.A.C. 7:1L.

(g) For the purpose of determining the application fee for the review of a linear project, such as a verification of a flood hazard area limit or an individual permit for a bank stabilization project where a review of calculations is necessary, the length of the feature shall be measured along the centerline of the channel. Along regulated waters where no channel is discernible, the length of the channel (for calculating fees under this section) shall be determined by measuring the approximate centerline of the regulated water.

Table F
APPLICATION FEES

Verification (N.J.A.C. 7:13-6)

Type of Verification	Fee
Method 1 (Department delineation method)	\$500.00

Method 2 (FEMA tidal method)	\$500.00
Method 3 (FEMA fluvial method)	\$500.00
Method 4 (FEMA hydraulic method)	\$3,000 plus \$300.00 per each 100 linear feet of channel (or portion thereof)
Method 5 (Approximate method)	\$500.00
Method 6 (Calculation method)	\$3,000 plus \$300.00 per each 100 linear feet of channel (or portion thereof)

Note: The \$500.00 fee for methods 1, 2, 3 and 5 above does not apply if the verification application is submitted concurrently with either of the following:

1. An application for any general permit authorization for which verification of the flood hazard area is required to determine compliance with the general permit; or
2. An individual permit application solely for the construction of one private residence (which is not being constructed as part of a larger residential subdivision), the construction of a residential addition and/or the construction of a building appurtenant to a private residence, such as a garage, barn or shed.

General Permit Authorization (N.J.A.C. 7:13-8)

Type of General Permit	Fee
General permits 1 and 6	No fee
General permits 2A, 2B, 2C, 2D, 2E, 2F, 2G, 3, 4, 5, 7, 8, 9 and 10	\$500.00

Individual permit (N.J.A.C. 7:13-9 through 11)

Project Element	Qualifier	Fee
Bank stabilization, reestablishment, or protection	Review of hydrologic and/or hydraulic calculations necessary	\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof)
	Review of hydrologic and/or hydraulic calculations not necessary	\$1,000
Bridge, culvert, footbridge, low dam or other water control structure (including up to 200 feet of channel modification if necessary for the placement of the water control structure)	Review of hydrologic and/or hydraulic calculations necessary (except as noted below)	\$4,000
	Review of hydrologic and/or hydraulic calculations necessary for a bridge or culvert that provides access to one private residence (which is not being constructed as part of a larger residential subdivision)	\$2,000
	Review of hydrologic and/or hydraulic calculations not necessary	\$1,000
Channel modification	Review of hydrologic and/or hydraulic calculations necessary	\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof)
	Review of hydrologic and/or hydraulic calculations not necessary	\$1,000
Excavation, fill and/or grading	Review of net fill calculations necessary (except as noted below)	\$4,000
	Review of net fill calculations not necessary and project consists solely of excavation, fill and/or grading	\$1,000

	Review of net fill calculations necessary and project consists solely of one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)	No fee
	Review of net fill calculations necessary for a bridge or culvert where review of hydrologic and/or hydraulic calculations is also necessary	No fee
Hardship exception	Request associated with one private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)	No fee
	All other requests	\$4,000
Private residence	One private residence that is not being constructed as part of a larger residential subdivision (including any appurtenant structure such as a garage, barn or shed)	\$1,000
	Addition and/or new appurtenant structure to an existing private residence, such as a garage, barn or shed	\$1,000
Retaining wall	Extending four feet or more above ground	\$4,000
	Extending less than four feet above ground	\$1,000
Sediment removal from a channel	Each sediment removal project	\$1,000 plus \$100.00 per each 100-foot segment of channel (or portion thereof) not to exceed \$4,000
Stormwater discharge structure	Each stormwater discharge structure (including any conduit outlet protection and/or conveyance channel)	\$1,000
Utility line	Each crossing	\$1,000
Any other activity	Each project element	\$1,000

Additional Fee if permit is for a Major Development pursuant to N.J.A.C. 7:8-1.2

Qualifier	Area of Impact	Fee
Base fee for any major development	Any size project	\$2,000
Additional fee for the review of groundwater recharge calculations (pursuant to N.J.A.C. 7:8-5.4(a)2) per area of land disturbed by the project	Up to three acres	\$500.00
	More than three acres and up to 10 acres	\$1,000
	More than 10 acres and up to 100 acres	\$2,000
	More than 100 acres	\$4,000
Additional Fee for the review of runoff quantity calculations (pursuant to N.J.A.C. 7:8-5.4(a)3) per area of land disturbed by the project	Up to three acres	\$500.00
	More than three acres and up to 10 acres	\$1,000
	More than 10 acres and up to 100 acres	\$2,000
	More than 100 acres	\$4,000
Additional fee for the review of water quality calculations (pursuant to N.J.A.C. 7:8-5.5) per area of impervious surface under review	Up to three acres	\$500.00
	More than three acres and up to 10 acres	\$1,000
	More than 10 acres and up to 100 acres	\$2,000
	More than 100 acres	\$4,000

Additional fee if any vegetation is removed within a Special Water Resource Protection Area (pursuant to N.J.A.C. 7:8-5.5(h))	Any size project	\$2,000
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Revision of a verification, general permit authorization or individual permit (N.J.A.C. 7:13-13.1 through 13.3)

Qualifier	Fee
Each major revision	Fifty percent of the original permit application fee for each project element to be revised
Each minor revision	\$200.00 per element to be revised

Revision of a Department delineation
(N.J.A.C. 7:13-13.4)

Qualifier	Fee
Each major revision	\$3,000 plus \$300.00 per each 100-foot segment of channel (or portion thereof) to be re-delineated
Each minor revision	\$200.00

Transfer an approval (N.J.A.C. 7:13-14.1)

Qualifier	Fee
Transfer of an applicability determination or permit-by-rule	No fee
Transfer of any other approval	\$200.00

(h) The Department shall annually adjust the fees in this subchapter. The Department shall calculate a fee adjustment factor annually, and multiply each fee by that fee adjustment factor. The Department shall calculate the fee adjustment factor by taking the following steps:

1. Project the total amount of money required to fund the program in the coming year. This projection shall be based upon the following data:

- i. The number and type of Department staff required to perform each activity for which fees are charged;
- ii. The total salaries of those staff members;
- iii. The cost of fringe benefits for those staff members, calculated as a percentage of salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
- iv. Indirect costs attributable to those staff members. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specif-

ically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

v. Operating expenses (including, without limitation, expenses for postage, telephone, travel, supplies and data system management) attributable to those staff members; and

vi. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the program.

2. Project the total amount to be available from sources other than fees, such as State appropriations or Federal grants;

3. Subtract the amount in (h)2 above from the amount in (h)1 above. The remainder is the fee revenue necessary for the coming year;

4. Divide the fee revenue necessary for the coming year by the fee revenue which was necessary for the current year;

5. Divide the volume of applications the Department received in the current year by the volume it expects to

receive in the coming year. In projecting the expected volume of applications, the Department shall consider the following factors:

- i. The volume of applications received in previous years;
- ii. Based on (h)5i above, any trends toward an increasing or decreasing volume of applications;
- iii. Information indicating a trend toward increasing or decreasing construction activity in various areas of the State; and
- iv. Other data concerning economic trends reasonably likely to influence the volume of applications; and

6. Multiply the number provided in (h)5 above by the number provided in (h)4 above. This result is the fee adjustment factor.

(i) Each year, the Department shall prepare an Annual Flood Hazard Area Control Act Fee Schedule Report. Promptly after completing the report, the Department shall publish in the New Jersey Register a notice of opportunity for public input setting forth the adjusted fees. The notice shall state that the report is available and direct interested persons to contact the Department for a copy of the report and to provide comments within 45 calendar days of the notice date. The Department shall promptly provide a copy to each person requesting a copy. The Department will evaluate the comments submitted and publish in the New Jersey Register its findings and the final adjusted fees with their operative dates in a notice of administrative change.

(j) The Department will not make the adjustment of fees provided in (h) above or prepare the report described in (i) above for any one-year period ending June 30, if in that period the Department proposes or promulgates amendments to any fees for applications under this chapter.

SUBCHAPTER 18. REQUESTS FOR ADJUDICATORY HEARINGS

7:13-18.1 Requests for adjudicatory hearings

(a) Subject to the limitations of (j) below, a person may request an adjudicatory hearing to contest a decision on any of the following actions:

1. An application for a verification;
2. An application for authorization to act under a general permit; or
3. An application for an individual permit.

(b) To contest a decision listed at (a) above, a person shall submit a hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin. If a

person submits the hearing request after this time, the Department shall deny the request.

(c) A request for an adjudicatory hearing shall:

1. Be in writing on a hearing request form available from the Department at the address in N.J.A.C. 7:13-1.1(f) and shall set forth:

- i. The name, address and daytime telephone number of the person requesting the hearing;
- ii. When the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant;
- iii. A copy of the Department notice or decision for which a hearing is being requested;
- iv. The Department file number or project number on the notice or decision;
- v. A statement requesting a hearing;
- vi. A specific admission, denial or explanation of each fact appearing in the Department notice or decision or a statement that the person is without knowledge thereof; and
- vii. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and

2. Be submitted to the Department as follows:

- i. Submit the original request to:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection
P.O. Box 402
401 East State Street
Trenton, New Jersey 08625-0402

- ii. Submit a copy of the request to:

Division of Land Use Regulation
Attention: Director
Department of Environmental Protection
P.O. Box 439
501 East State Street
Trenton, New Jersey 08625-0439

(d) As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter for which the adjudicatory hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the requester of its determination. If the Department determines the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation.