

CHAPTER 13**FLOOD HAZARD AREA CONTROL****Authority**

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

Source and Effective Date

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

Chapter Expiration Date

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 Historical Note

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

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

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

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

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

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

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

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149.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

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

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

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

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).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and Scope

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

7:13-1.2 Definitions

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

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

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

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

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

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

"Bank" means the inclined sides of the channel.

"Bed" means the floor of the channel.

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

- As amended, R.1981 d.144, eff. June 7, 1981.
See: 12 N.J.R. 640(b), 13 N.J.R. 339(c).
(d): Tenakill Brook added.
As amended, R.1981 d.145, eff. June 4, 1981.
See: 12 N.J.R. 640(a), 13 N.J.R. 340(a).
(d): Third River added.
As amended, R.1982 d.154, eff. May 17, 1982.
See: 13 N.J.R. 805(a), 14 N.J.R. 472(b).
(c)17: "Burlington Township" to "Plumsted, Ocean County" added.
As amended, R.1982 d.155, eff. May 17, 1982.
See: 13 N.J.R. 921(a), 14 N.J.R. 473(a).
(b)9 added.
As amended, R.1982 d.156, eff. May 17, 1982.
See: 14 N.J.R. 19(a), 14 N.J.R. 473(b).
(d)47: "Old New Bridge Road" to "Ruccereto Avenue Bridge" added.
As amended, R.1982 d.157, eff. May 17, 1982.
See: 13 N.J.R. 920(a), 14 N.J.R. 473(c).
(d)39: "Woodbridge" to "Hearns Brook" added.
As amended, R.1982 d.209, eff. July 19, 1982.
See: 14 N.J.R. 367(b), 14 N.J.R. 755(c).
(b)5: Atsion Lake Dam to Jackson-Medford Road added.
As amended, R.1982 d.392, eff. November 1, 1982.
See: 14 N.J.R. 367(a), 14 N.J.R. 1211(b).
(d)31: North Branch (downstream) and Lamington River added.
As amended, R.1982 d.428, eff. December 6, 1982.
See: 14 N.J.R. 870(a), 14 N.J.R. 1356(c).
(d)42: Robinsons Branch from Lamberts Mill Road to "375 feet upstream" added.
As amended, R.1982 d.430, eff. December 6, 1982.
See: 14 N.J.R. 683(a), 14 N.J.R. 1365(a).
(b)6: Chamberlain Branch to Factory Branch added.
As amended, R.1982 d.431, eff. December 6, 1982.
See: 14 N.J.R. 505(a), 14 N.J.R. 1366(a).
(c)2: Route 295 in Deptford Township to Belmont Avenue in West Deptford and National Park added.
As amended, R.1982 d.432, eff. December 6, 1982.
See: 14 N.J.R. 506(a), 14 N.J.R. 1366(b).
(c)27 added.
As amended, R.1982 d.453, eff. December 20, 1982.
See: 14 N.J.R. 870(b), 14 N.J.R. 1451(a).
(d)48: Great Brook from I-287 to James Street added.
As amended, R.1982 d.478, eff. January 3, 1983.
See: 14 N.J.R. 1027(a), 15 N.J.R. 32(b).
(d)48: Foulerton Brook to Eisenhower Parkway added.
As amended, R.1983 d.109, eff. April 18, 1983.
See: 14 N.J.R. 1131(b), 15 N.J.R. 622(c).
(d)1: 1,650 feet of Stony Brook (downstream) added.
As amended, R.1983 d.135, eff. May 2, 1983.
See: 14 N.J.R. 1434(a), 15 N.J.R. 689(b).
(c)8: Evesham Twp. to Burr's Mill Brook added.
As amended, R.1983 d.136, eff. May 2, 1983.
See: 14 N.J.R. 1131(a), 15 N.J.R. 690(a).
(d)42: Green Brook from Jefferson Avenue to Peters Brook, Somerville added.
As amended, R.1983 d.168, eff. June 6, 1983.
See: 14 N.J.R. 1134(a), 15 N.J.R. 893(a).
(c)28 added.
As amended, R.1983 d.197, eff. June 6, 1983.
See: 14 N.J.R. 1189(a), 15 N.J.R. 894(a).
(b)10 added.
As amended, R.1983 d.405, eff. September 19, 1983.
See: 15 N.J.R. 989(a), 15 N.J.R. 1576(d).
(d)47: Paragon Drive floodway added.
As amended, R.1983 d.462, eff. October 17, 1983.
See: 14 N.J.R. 1132(a), 15 N.J.R. 1761(b).
(c)17: Ewing-Hopewell floodways added.
As amended, R.1983 d.463, eff. October 17, 1983.
See: 15 N.J.R. 659(a), 15 N.J.R. 1761(c).
(d)45: Crab Island floodway added.
As amended, R.1983 d.569, eff. December 5, 1983.
See: 15 N.J.R. 198(a), 15 N.J.R. 2039(a).
(b)11 added.
As amended, R.1984 d.108, eff. April 2, 1984.
See: 16 N.J.R. 5(a), 16 N.J.R. 711(a).
(d)11 and 12: added second delineation.
As amended, R.1984 d.131, eff. April 16, 1984.
See: 15 N.J.R. 1412(a), 16 N.J.R. 881(a).
(d)49 added.
As amended, R.1984 d.200, eff. May 21, 1984.
See: 15 N.J.R. 1541(a), 16 N.J.R. 1224(a).
(c)29 added.
As amended, R.1984 d.338, eff. August 6, 1984.
See: 15 N.J.R. 1540(a), 16 N.J.R. 2102(a).
(d)42: Green Brook from Reading RR, and Bound Brook to Lehigh Valley RR added.
As amended, R.1984 d.404, eff. September 17, 1984.
See: 16 N.J.R. 1865(a), 16 N.J.R. 2432(b).
(d)47: Bear Brook redelineated.
As amended, R.1984 d.438, eff. October 1, 1984.
See: 16 N.J.R. 1864(a), 16 N.J.R. 2543(a).
(d) revised for Green Brook.
As amended, R.1984 d.542, eff. December 3, 1984.
See: 16 N.J.R. 1863(a), 16 N.J.R. 3307(a).
(c)31 added.
Amended by R.1985 d.130, eff. March 18, 1985.
See: 16 N.J.R. 1865(b), 17 N.J.R. 687(b).
(d)50-52: added.
Amended by R.1985 d.217, eff. May 6, 1985.
See: 16 N.J.R. 2397(a), 17 N.J.R. 1080(b).
(c)30 added.
Amended by R.1985 d.218, eff. May 6, 1985.
See: 16 N.J.R. 1306(a), 17 N.J.R. 1080(a).
Pequest River added to (c)27.
Amended by R.1985 d.319, eff. June 17, 1985.
See: 17 N.J.R. 151(a), 17 N.J.R. 1550(a).
(c): Flood Hazard Area Delineation Map and corresponding flood profile plates have been amended.
Amended by R.1985 d.320, effective June 17, 1985.
See: 16 N.J.R. 2398(a), 17 N.J.R. 1551(a).
New (d)50.
Amended by R.1985 d.329, effective July 1, 1985.
See: 16 N.J.R. 1307(a), 17 N.J.R. 1648(b).
New (d)51.
Amended by R.1986 d.40, effective February 18, 1986.
See: 17 N.J.R. 1175(a), 18 N.J.R. 414(b).
(h) added.
Amended by R.1986 d.50, effective March 3, 1986.
See: 17 N.J.R. 2324(a), 18 N.J.R. 477(c).
(b): No change in text; a revision of the Long Brook and Manasquan River flood hazard delineation was required.
Amended by R.1986 d.51, effective March 3, 1986.
See: 17 N.J.R. 2492(a), 18 N.J.R. 477(d).
(d)53 added.
Amended by R.1986 d.120, effective April 7, 1986.
See: 17 N.J.R. 1176(a), 18 N.J.R. 650(a).
Added (i).
Amended by R.1986 d.122, effective April 7, 1986.
See: 17 N.J.R. 1965(a), 18 N.J.R. 651(a).
(d): Added text "Nomahegan Brook from ... and Clark Townships."
Amended by R.1986 d.123, effective April 7, 1986.
See: 17 N.J.R. 2324(b), 18 N.J.R. 652(a).
Added text in (d)14 "From the Hunterdon-Somerset ... of Ironia Road."
Amended by R.1986 d.125, effective April 7, 1986.
See: 17 N.J.R. 2074(a), 18 N.J.R. 652(b).
(d): Amended the redelineation of Pine Brook, specified in the Plate No. 21.
Amended by R.1986 d.346, effective August 18, 1986.
See: 17 N.J.R. 2186(a), 18 N.J.R. 1700(b).
Added text to (c)29 "Maurice River from ..."
Amended by R.1986 d.460, effective November 17, 1986.
See: 18 N.J.R. 1334(a), 18 N.J.R. 2327(a).
(d)54 added.
Amended by R.1987 d.138, effective March 16, 1987.
See: 18 N.J.R. 1239(a), 19 N.J.R. 449(a).

(b), (d): Revisions to the flood hazard area delineation for the East Branch of the Stony Brook and Tributaries A and B of the South Branch of Rockaway Creek and of Whale Pond Brook.

Amended by R.1987 d.195, effective April 20, 1987.

See: 18 N.J.R. 2169(a), 19 N.J.R. 639(b).

(e): Revised delineated flood hazard areas.

Amended by R.1987 d.196, effective April 20, 1987.

See: 18 N.J.R. 1866(b), 19 N.J.R. 639(c).

(d): Revised delineated flood hazard areas.

Amended by R.1987 d.197, effective April 20, 1987.

See: 18 N.J.R. 1866(a), 19 N.J.R. 639(a).

(d): Maps and associated flood profiles showing the location of the revised delineated flood hazard areas.

Amended by R.1987 d.279, effective July 6, 1987.

See: 18 N.J.R. 2355(a), 19 N.J.R. 1190(c).

(d): Revised maps of flood hazard areas to portions of Wolf Creek, Bergen County.

Amended by R.1987 d.310, effective July 20, 1987.

See: 19 N.J.R. 169(a), 19 N.J.R. 1292(a).

(g)2 added.

Amended by R.1987 d.400, effective October 5, 1987.

See: 19 N.J.R. 1277(a), 19 N.J.R. 1797(a).

(d): Maps and associated flood profiles showing the location of the revised delineated flood hazard areas.

Amended by R.1987 d.487, effective November 16, 1987.

See: 19 N.J.R. 1384(a), 19 N.J.R. 2151(a).

(d): Maps and associated flood profiles showing the location of the unused delineated hazard areas.

Amended by R.1987 d.489, effective November 16, 1987.

See: 19 N.J.R. 489(a), 19 N.J.R. 2150(a).

(d)55 added.

Amended by R.1988 d.79, effective February 16, 1988.

See: 19 N.J.R. 167(b), 20 N.J.R. 391(a).

(d): Maps and associated flood profiles showing the location of the revised delineated flood hazard areas.

Amended by R.1988 d.135, effective March 21, 1988.

See: 19 N.J.R. 1933(a), 20 N.J.R. 644(b).

(d): Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, NJ and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, NJ. In addition, maps of the delineations have been sent to the East Windsor Township Clerk and to the Mercer County Planning Board.

Amended by R.1988 d.137, effective March 21, 1988.

See: 19 N.J.R. 1933(b), 20 N.J.R. 645(b).

(d): Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, NJ and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, NJ. In addition, maps of the delineations have been sent to the South Brunswick Township Clerk and to the Middlesex County Planning Board.

Amended by R.1988 d.134, effective March 21, 1988.

See: 19 N.J.R. 1934(a), 20 N.J.R. 645(a).

(d): Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, NJ and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, NJ. Delineations have been sent to the Township Clerks of East Brunswick, North Brunswick, South Brunswick and Princeton, the Clerk of the Borough of Milltown and to the Planning Boards of Mercer and Middlesex Counties.

Amended by R.1988 d.138, effective March 21, 1988.

See: 19 N.J.R. 1935(a), 20 N.J.R. 644(a).

(d): Redelineation of Hackensack River in Oradell.

Amended by R.1988 d.181, effective April 18, 1988.

See: 19 N.J.R. 2233(a), 20 N.J.R. 898(b).

(b): Redelineation of Jumping Brook.

Amended by R.1989 d.445, effective August 21, 1989.

See: 21 N.J.R. 605(a), 21 N.J.R. 2672(a).

(d): Redelineation of West Branch Rahway River in West Orange.

Amended by R.1989 d.446, effective August 21, 1989.

See: 21 N.J.R. 1046(b), 21 N.J.R. 2671(a).

(d): Redelineation of Ramapo River in Mahwah.

Amended by R.1989 d.501, effective September 18, 1989.

See: 20 N.J.R. 3051(b), 21 N.J.R. 2962(a).

(d): Redelineation of flood hazard area in Bound Brook.

Amended by R.1990 d.319, effective June 18, 1990.

See: 21 N.J.R. 3843(b), 22 N.J.R. 1937(a).

(c): Redelineated Pond Run in Hamilton Township, Mercer County.

Amended by R.1990 d.320, effective June 18, 1990.

See: 21 N.J.R. 3843 (a), 22 N.J.R. 1937(b).

(d): Redelineated Rowe Brook in Tewksbury Township, Hunterdon County.

Amended by R.1991 d.567, effective November 18, 1991.

See: 23 N.J.R. 647(b), 23 N.J.R. 3445(b).

(d): Redelineated South Branch Raritan River.

Amended by R.1991 d.568, effective November 18, 1991.

See: 23 N.J.R. 648(a), 23 N.J.R. 3446(a).

(i): Redelineated Passaic River.

Amended by R.1991 d.569, effective November 18, 1991.

See: 23 N.J.R. 649(a), 23 N.J.R. 3446(b).

(c): Redelineated Lawrence and Heathcote Brooks.

Petition for Rulemaking: Petition for amendment to delineation of floodway.

See: 24 N.J.R. 147(b), 24 N.J.R. 303(c), 24 N.J.R. 1642(b).

Amended by R.1992 d.146, effective April 6, 1992.

See: 23 N.J.R. 647(a), 24 N.J.R. 1333(b).

(h): No change in text; redelineation of Cole Brook.

Amended by R.1992 d.173, effective April 20, 1992.

See: 24 N.J.R. 203(a), 24 N.J.R. 1493(a).

(i): Delineated East Ditch.

Amended by R.1993 d.160, effective April 5, 1993.

See: 24 N.J.R. 4475(a), 25 N.J.R. 1556(a).

(d): Redelineated Green Brook.

Amended by R.2002 d.168, effective June 3, 2002.

See: 33 N.J.R. 1282(a), 34 N.J.R. 1906(a).

Redelineation Deepavall Brook.

Amended by R.2003 d.247, effective June 16, 2003.

See: 34 N.J.R. 2403(a), 35 N.J.R. 2664(a).

Redelineation of Peckman River.

Amended by R.2003 d.345, effective August 18, 2003.

See: 35 N.J.R. 1328(b), 35 N.J.R. 3839(a).

Redelineation of Bound Brook.

OFFICE OF ADMINISTRATIVE LAW NOTE: Maps concerning delineated floodways have been filed with the Office of Administrative Law as part of the adopted rules beginning with 1981 adoptions. These maps are not reproduced in the Code, but may be reviewed at the Office of Administrative Law, Filings Section, Quakerbridge Plaza, Building No. 9, Trenton, New Jersey 08625.