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CHAPTER 13

FLOOD HAZARD AREA CONTROL

Authority

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

Source and Effective Date

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

Chapter Expiration Date

The expiration date of Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from June 30, 2002 to December 30, 2003. See: 34 N.J.R. 2802(c).

Chapter Historical Note

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

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

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

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

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

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

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

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149.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

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

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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

Subchapter Historical Note

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

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

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

7:13-1.1 Purpose and Scope

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

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

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

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

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

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

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

Case Notes

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

Term "floodway" as used in engineering report was not intended to express anything other than technical meaning which was, by definition, portion of flood plain. *Turner v. Spycy, 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. Spycy, 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. Spycy, 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.

1. No spoils shall be placed within 25 feet of the top of bank or within the area described in N.J.A.C. 7:13-1.3(a)3, except for watercourse cleaning projects approved by the Department. The natural characteristics of this 25 or 50 foot area shall be preserved to the greatest extent possible, with selective tree removal permitted only when absolutely necessary. Brush and trees that when measured 4.5 feet from the ground are less than four inches in diameter may be selectively and sparingly cleared to provide access to the watercourse or site.

2. Spoil material shall be stabilized within 48 hours of its placement according to the "Standards for Soil Erosion and Sediment Control," N.J.A.C. 2:90. Details of the methods of stabilization selected by the applicant shall be included on the plans submitted to the Department.

(c) In the case of projects performed by Mosquito Commissions for the sole purpose of mosquito control, the disposal of spoils will be reviewed pursuant to the requirements of N.J.A.C. 7:13-2.5(e).

7:13-2.8 Stormwater management

(a) Engineering standards for stormwater management are as follows:

1. If a regional stormwater management plan for the watershed containing the watercourse affected by the development has been developed, the applicant shall design the project and its management of stormwater to conform to that regional plan. If no regional stormwater management plan has been developed, any stormwater discharge within the jurisdiction of this chapter shall be controlled so that either:

i. The volume of stormwater discharged from the site and the rate of runoff from the two, 10 and 100 year storm events for the post-construction site conditions does not exceed the pre-construction volume and rate of runoff; or

ii. The post-construction peak runoff rate for the two year storm event is 50 percent of the pre-construction peak runoff rate and the post-development peak runoff rate for the 10 and 100 year storm events are 75 percent of the pre-project construction peak runoff rate.

2. The design storms used to achieve the required level of site runoff control described above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service, or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the Modified Rational Method. A 20 acre drainage area limit shall be used for the Modified Rational Method.

3. For the purposes of choosing runoff coefficients, all lands in the site shall be assumed, prior to development, to be "in good hydrologic condition" if the lands are pastures, lawns or parks, "with good cover" if the lands

are woods, or "with conservation treatment" if the land is cultivated, regardless of conditions existing at the time of computation. For land to be considered cultivated, it shall have been used for such purposes uninterruptedly for a period of at least 10 years prior to the time of computation. If such uninterrupted use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the redeveloped land condition. In computing pre-project construction runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

4. The applicant shall provide plans and calculations to the Department which show that the discharge attributable to the proposed project will not cause erosion along the flow path between the outfall and the receiving waterbody. All storm water discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 7:13-3.3.

5. An exemption from the discharge reduction requirements of this section will be allowed for Federal, State, county or municipal highway or road projects that cannot meet the requirement due to limited right-of-way, provided that the applicant demonstrates to the Department's satisfaction that:

i. There is a need for the project which cannot be accomplished by any other means; and

ii. The project has been designed so that stormwater runoff is minimized to the greatest extent possible.

(b) Environmental standards for stormwater management area as follows:

1. Stormwater systems whose discharges come under the jurisdiction of this chapter shall be designed to reduce, to the maximum extent possible, the total suspended solids (TSS) generated by the development for storm events up to the water quality design storm, and to retain as closely as possible the pre-project construction hydrologic conditions on the site.

2. The water quality design storm shall be defined as either 1.25 inches of rainfall falling uniformly in two hours or the one year 24 hour storm using the U.S. Soil Conservation Service type III rainfall distribution. Due to the relatively small amount of rainfall produced by the design storms, a separate and accurate determination of the runoff from the pervious and impervious areas of the site shall be provided to ensure curve numbers that produce an accurate calculation of peak rate of runoff.

3. Stormwater systems shall be designed so that there is no degradation of water quality in the receiving watercourse. The Department's Surface Water Quality Standards, N.J.A.C. 7:9B, shall be used as guidelines for this determination.

(c) Development within the jurisdiction of this chapter shall incorporate land uses and best available technology (such as cluster land development, minimum site distur-

bance, open space acquisition, use of sheet flow from streets and parking areas, protection of wetlands, steep slopes and vegetation) in their design in order to minimize the volume of stormwater and TSS generated, maintain on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters.

(d) The following list of stormwater management techniques and design conditions are some of the techniques available for meeting the requirements of (b) above. The methods are identified as either encouraged or discouraged based on their individual effectiveness. Otherwise, the order of the list does not imply that any one method is favored over another. These techniques may be used, depending on the site conditions and type of development, alone or in combination. Other stormwater management techniques may be used if it can be shown to the Department's satisfaction that they satisfy the requirements of (a) and (b) above.

1. The use of artificial wetlands is encouraged by the Department provided that:

i. Where feasible, the wetlands should be created around a standing pool of water at least 6 feet in depth;

ii. At least one-half of the perimeter of the water area is graded to form a 10 to 20 foot wide shallow bench for aquatic emergents;

iii. The surface area of the artificial wetlands is at least three percent of the total area contributing flow into the artificial wetland;

iv. Vegetation is commercial wetland plant stock, either live plants or dormant rhizomes, instead of transplants from existing wetlands areas or seeding;

v. At least two hardy and rapid colonizing indigenous primary wetlands species are planted over 30 percent of the total shallow water area. Each species shall be planted in three or four monospecific stands with individual plants spaced two to three feet apart. Up to three less aggressively colonizing secondary wetlands species shall be randomly distributed in clumps around the perimeter of the marsh; and

vi. At least 25 percent of the total surface area of a basin designed exclusively to act as a shallow marsh is open water with a depth of at least two feet in order to provide habitat for waterfowl and other marsh birds.

2. The use of wet ponds/retention basins is encouraged by the Department provided that:

i. Such basins are not located within the floodway of the watercourse unless they are constructed on-channel except in trout production, trout maintenance and anadromous fish watercourses where such construction is discouraged as it would harm or block the passage of indigenous fish populations;

ii. The volume of the permanent pool is at least three times the volume of the expected runoff from the water quality design storm, or the detention times listed in (a) above are met;

iii. The pool is shallow enough to avoid thermal stratification and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

iv. The flow from the contributory drainage area is sufficient in dry weather to maintain the permanent pool during the summer months and prevent stagnation;

v. The configuration of the permanent pool promotes maximum sedimentation and minimizes plug flow;

vi. Where feasible, native fish stock is used to control mosquitoes; and

vii. When discharging into a trout associated watercourse, there are no adverse effects to the fish resulting from differences in temperature between the discharge and the waters in the receiving watercourse.

3. The use of detention basins is encouraged by the Department provided that:

i. The basin is not located within the floodway of the watercourse;

ii. Beginning at the time of peak storage in the basin for the water quality design storm, no more than 90 percent of the total peak storage volume is released over an 18 hour period for residential developments or over a 36 hour period for commercial developments. The rate of release shall be as uniform as possible;

iii. The minimum outlet diameter, width or height is three inches. If this minimum outlet size does not allow for the detention times required in (d)3ii above, then alternative techniques for the removal of TSS prior to discharge into the basin shall be provided; and

iv. The species of native or non-intrusive exotic vegetation used in the basin is approved by the Department and the appropriate County Soil Conservation District.

4. If the Department determines that the techniques noted in (d)1, 2 and 3 above are not feasible or justified, then the use of stabilized, vegetated or biofilter swales is permissible provided that:

i. The water velocity does not exceed two feet per second (FPS) to allow for settlement of TSS during the water quality design storm. The slope shall not be less than 0.5 percent so that positive drainage is maintained. The swale shall be of sufficient length to allow for settlement of TSS taking into consideration the velocity, depth of flow and expected loading of TSS;

- ii. Where feasible, vegetation shall be used in the swale to filter out the TSS and to provide a secondary treatment by absorption of pollutants leached into the soil. Vegetation used in the swale shall be native or non-intrusive exotic species approved by the County Soil Conservation District;
- iii. If the swale is designed to provide infiltration, the soil texture shall be sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture and there shall be a minimum of three feet separation between the bottom of the swale and the seasonal high water table;
- iv. The swale shall be used internally within the stormwater collection system and in conjunction with other methods such as vegetated filter strips to increase their effectiveness; and
- v. Vegetated swales shall not be used to provide water quality treatment below the final discharge of the stormwater collection system, unless it is shown to the Department's satisfaction that there is no other feasible method of providing for water quality within the site. If the Department allows a vegetated swale below the final discharge, then the length of the swale shall be maximized to the extent possible under the site condition.
5. The use of infiltration basins is discouraged because of their high failure rate. However, if the Department determines that the techniques in (d)1, 2, and 3 above are not feasible or justified they will be permitted provided that:
- i. There is at least three feet or more vertical separation between the bottom of the basin and the seasonal high water table;
 - ii. The soil texture is sand, loamy sand or sandy loam as described by the U.S. Department of Agriculture;
 - iii. No topsoil is placed in the basin;
 - iv. The basin bottom is scarified after the basin is formed, after which no other construction within the basin may occur;
 - v. The entire volume of runoff generated by the water quality design storm is contained in the basin and recharged into the ground within 72 hours; and
 - vi. A backup drainage system is provided to handle the excess flows from the basin in the event of a basin failure.
6. The use of sediment traps and oil/grease separators is strongly discouraged because of their limited capacity and the high degree of maintenance required to keep them operational. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow them provided that the drainage areas served are less than one-tenth of an acre in size and the applicant's comprehensive maintenance plan is approved by the Department.
7. The use of porous asphalt pavement is discouraged due to problems with maintenance and continued functioning. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow its use provided that:
- i. The soil beneath the pavement is sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture;
 - ii. The porous pavement is buffered with vegetative screening to prevent the intrusion of aeolin sand and silt;
 - iii. The permittee undertakes a strict maintenance schedule including but not limited to vacuum sweeping on a weekly basis and high pressure water washing on a monthly basis;
 - iv. The porous pavement is used in light traffic areas subject to automobiles only and is marked by a sign restricting traffic to only passenger vehicles;
 - v. No asphalt sealer is used; and
 - vi. No sand is used during periods of snow and ice.
8. The use of underground basins and perforated pipes for the purpose of infiltration is strongly discouraged because of restricted access which discourages proper maintenance. However, if the Department determines that there are absolutely no other feasible alternatives, the Department will allow their use provided that:
- i. The soil in the area is sand, loamy sand or sandy loam as defined by the U.S. Department of Agriculture; and
 - ii. Runoff is filtered to remove TSS prior to discharge into the basin or pipe.
- (e) Maintenance shall be required as part of all stormwater management plans. Specific maintenance techniques and schedules shall be provided for each type of system used on the site. If maintenance of the system will be the responsibility of a person other than a State, county or municipal agency, then the maintenance plan approved by the Department shall be recorded upon the deed of record for the property.
1. The maintenance plan shall include the name, address and telephone number of the party or parties responsible for long term maintenance. Documentation of their assumption of this responsibility shall be submitted to the Department as part of the permit application. The transfer of maintenance responsibility to individual property owners in residential subdivisions is prohibited except through a homeowners association agreement.

2. Written maintenance and repair records for all stormwater management systems shall be maintained for at least five years by the person(s) identified in (e)1 above and shall be provided to the Department upon request.

3. Maintenance of artificial wetlands shall include, but not be limited to:

i. Documented visual inspection of all components of the system at least once every six months;

ii. Documented removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months or upon noticeable buildup; and

iii. Vegetation removal and replacement at least once a year.

4. Maintenance of detention basins shall include, but not be limited to:

i. Documented visual inspection of all components of the system at least once every six months;

ii. Documented removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months or upon noticeable buildup;

iii. Documented maintenance, including grass cutting, and necessary replacement of all landscape vegetation within the basin at least once a year; and

iv. Documented aeration of basin bottoms at least once a year and scraping and replanting at least once every five years to prevent the sealing of the basin bottom.

5. Maintenance of wet ponds/retention basins, located within or discharging to the waters listed in N.J.A.C. 7:13-1.3(a)3i, ii, iii and iv, shall include, but not be limited to, annual, documented monitoring of water quality, dissolved oxygen, vegetative growth, temperature and fish population, for a period of three years to ensure that the wet pond/retention basis is working as intended.

Case Notes

Stream encroachment permit application was complete when DEP received additional requested information from applicant; application, therefore, could be deemed to have been approved 90 days following date application was complete (citing N.J.A.C. 7:1C-1.7 and 1.8). *Klimar Realty, Inc. v. DEP*, 217 N.J.Super. 526, 526 A.2d 282 (App.Div. 1987).

7:13-2.9 Channel modification

(a) Channelization of an existing watercourse or watercourse relocation is prohibited except where necessary to control existing flooding and/or erosion which threatens life or property or in cases in which the Department determines that the effects of channelization are offset by the resulting restoration or improvement of the natural characteristics of the nearby environment.

(b) Engineering standards for channel modifications are as follows:

1. When change in the watercourse channel is proposed, the applicant shall submit plans reflecting the manner in which the channel shall be stabilized at the point of each change to ensure that no erosion occurs at either high or low flows. If a change in slope causes a hydraulic jump to occur just downstream of the constructed area, the applicant shall submit plans describing methods to protect the integrity of the downstream channel. The methods for stabilization shall be in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey" or the latest amendment thereto, N.J.A.C. 2:90.

2. If the channel modification results in a reduction of the water surface, the change in the volume of flood storage in the flood fringe shall be considered as fill for the purposes of this chapter.

(c) Environmental standards for channel modification are as follows:

1. Reconstruction of aquatic habitat damaged or destroyed during channelization is required (N.J.A.C. 7:13-3.4) whether or not the watercourse is trout-associated. This includes, but is not limited to, replication of aquatic characteristics such as percent meandering, bottom substrate type, pool/riffle ratio, stream width, depth and gradient, and the placement of habitat enhancement devices within the watercourse. Provision for Fish Passage (N.J.A.C. 7:13-3.6(c)) is required, as is vegetative bank stabilization to reestablish any near-watercourse habitats damaged or destroyed as a result of the construction of the project.

Case Notes

Homeowner seeking to add second story to residence not entitled to hardship waiver; regulation allowing expansion of pre-existing use could entitle him to build addition. *Kocsis v. Division of Coastal Resources*. 93 N.J.A.R.2d (EPE) 180.

Waiver allowing development within floodway of river had to be shown not to pose threat to public health, safety and welfare; personal financial difficulty not required to be demonstrated. *Laurjo Construction Co. v. Division of Coastal Resources*, 92 N.J.A.R.2d (EPE) 23.

7:13-2.10 Underground utilities in the flood plain

(a) Underground utilities include, but are not limited to, electric cables, telephone cables, sanitary sewer lines, water lines, gas mains, petroleum pipelines, and other pipes carrying various types of materials.

(b) Engineering standards for underground utilities in the flood plain are as follows:

1. The top of pipe or encasement shall be at least three feet below the invert of the watercourse. In special circumstances, such as hard rock bottoms, this may be reduced with the approval of the Department.