

CHAPTER 13

FLOOD HAZARD AREA CONTROL

Authority

N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-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-5.1c, Chapter 13, Flood Hazard Area Control, expires on December 27, 2005. See: 37 N.J.R. 2759(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Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149.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).

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 TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and Scope

- 7:13-1.2 Definitions
- 7:13-1.3 Applicability
- 7:13-1.4 Construction
- 7:13-1.5 Program information
- 7:13-1.6 Other State statutes, rules and regulations
- 7:13-1.7 Severability

SUBCHAPTER 2. PROJECT STANDARDS

- 7:13-2.1 General
- 7:13-2.2 Prohibited uses
- 7:13-2.3 Regulatory flood
- 7:13-2.4 Establishment of flood plain limits and encroachment lines on non-delineated watercourses
- 7:13-2.5 Watercourse cleaning
- 7:13-2.6 Excavation
- 7:13-2.7 Disposal of spoils
- 7:13-2.8 Stormwater management
- 7:13-2.9 Channel modification
- 7:13-2.10 Underground utilities in the flood plain
- 7:13-2.11 Aboveground utilities in the flood plain
- 7:13-2.12 Dams
- 7:13-2.13 Requirements for structures
- 7:13-2.14 Standards for fill within the flood plain
- 7:13-2.15 Additional requirements for fill in the Central Passaic Basin
- 7:13-2.16 Bridges and culverts
- 7:13-2.17 Sewage disposal requirements in the flood fringe
- 7:13-2.18 Impacts to other properties

SUBCHAPTER 3. GENERAL ENVIRONMENTAL STANDARDS

- 7:13-3.1 General
- 7:13-3.2 Protection of near watercourse vegetation
- 7:13-3.3 Soil erosion and sediment control
- 7:13-3.4 Mitigation
- 7:13-3.5 Projects along trout associated watercourses
- 7:13-3.6 Projects affecting other fish resources
- 7:13-3.7 Projects exposing deposits of acid-producing soils
- 7:13-3.8 Freshwater wetlands
- 7:13-3.9 Threatened and endangered species

SUBCHAPTER 4. APPLICATION PROCEDURE FOR STREAM ENCROACHMENT PERMITS

- 7:13-4.1 Required information for all applications submitted to the Department
- 7:13-4.2 Notice
- 7:13-4.3 Pre-Application conference
- 7:13-4.4 Over-the-counter permit processing
- 7:13-4.5 Optional Soil Conservation District review
- 7:13-4.6 Emergency permit
- 7:13-4.7 Permit application review procedures
- 7:13-4.8 Hardship waivers
- 7:13-4.9 Permit modification procedures
- 7:13-4.10 Appeal procedure to the Department
- 7:13-4.11 Permit application review by delegated agencies

SUBCHAPTER 5. IMPLEMENTATION

- 7:13-5.1 Consistency with other requirements in permit review
- 7:13-5.2 Creation of a county water resources association
- 7:13-5.3 Delegation of power to counties
- 7:13-5.4 Penalties

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. DELINEATED FLOODWAYS

7:13-7.1 Delineated floodways

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. *Terner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

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

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

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

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

7:13-1.2 Definitions

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

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

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

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

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

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

"Bank" means the inclined sides of the channel.

"Bed" means the floor of the channel.

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