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**N.J.A.C. 7:13  
FLOOD HAZARD AREA CONTROL ACT RULES**

**Statutory authority:**

N.J.S.A. 12:5-3; 13:1D-1 et seq.; 13:1D-29 et seq., specifically 13:1D-33; 13:9A-1 et seq.; 13:19-1 et seq.; 13:20-1 et seq.; 58:10A-1 et seq.; 58:11A-1 et seq.; and 58:16A-50 et seq.

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## CHAPTER 13

### FLOOD HAZARD AREA CONTROL ACT RULES

#### 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 Construction Permits Law, N.J.S.A. 13:1D-29 et seq.; and N.J.S.A. 13:1D-1 et seq.

(c) The purpose of this chapter is to minimize damage to life and property from flooding caused

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by development within flood hazard areas, to preserve the quality of surface waters, and to protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat.

1. Flooding presents a significant risk to the public health, safety, and welfare due to loss of life, injury, and property damage. Unless properly controlled, development within flood hazard areas obstructs and displaces floodwaters, which exacerbates the frequency, intensity, duration, and extent of flooding. Loss of life, injury, and property damage also result from collapsed structures, unsecured materials, and other debris carried by floodwaters. Furthermore, improperly built structures are subject to severe and repetitive flood damage, resulting in the displacement of residents and prolonged economic disruption or loss.
2. Vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation destabilizes the channels and banks of surface waters, which leads to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and subjects surface waters to increased sun exposure, which causes water temperatures to rise and dissolved oxygen content to fall. Such impacts adversely affect the health and habitat of fish and wildlife that depend upon clean surface waters and therefore disrupt the ecological balance that is necessary for life. Humans are ultimately affected by this imbalance, since clean water is essential for all life.

(d) Except where authority has been delegated to a county governing body under N.J.A.C. 7:13-1.4, the Department shall be the agency that implements this chapter.

### **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. Additional definitions specifically applicable to N.J.A.C. 7:13-13, Mitigation, are set forth at N.J.A.C. 7:13-13.1.

“Actively disturbed area” means any expanse of land within a riparian zone in which vegetation has been permanently or periodically cleared, cut, removed, or otherwise altered by humans to accommodate an ongoing, lawfully existing land use. Forested areas and areas of non-ornamental woody vegetation are not part of an actively disturbed area. Examples of an actively disturbed area include:

1. Any area occupied by lawfully existing impervious surface;
2. Any actively farmed area; and
3. Any portion of an easement, right-of-way, field, lawn, park, or garden, which is periodically maintained, such as through seasonal mowing or cultivation.

"Actively farmed" means currently and continually in use for cultivation, grazing or other agricultural purposes, provided such activities are recognized as agricultural by the USDA. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be actively farmed. Farms that have been abandoned for more than five years are

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not actively farmed.

"Administratively complete" means that every item required on the application checklist for a verification, an authorization under a general permit, or an individual permit is included in the application.

"Anadromous water" means a regulated water that supports anadromous fish, as identified by the Department's Division of Fish and Wildlife. Anadromous fish travel between salt water and fresh water or upstream to spawn, and N.J.A.C. 7:13-11.5(b) indicates how to determine which waters support anadromous fishery resources.

"Applicability determination" means the Department's official written statement of the applicability of this chapter to a water, proposed activity, and/or project described at N.J.A.C. 7:13-2.5.

"Aquatic habitat enhancement device" means a device placed within and/or adjacent to a channel to enhance aquatic habitat, typically consisting of boulders, brush, deflectors, felled shoreline trees, low-flow channel structures, mud sills, rubble reefs, spawning/nursery structures and/or tire structures.

"Architect" means a professional architect who is licensed to practice in New Jersey.

"Bank" means the inclined side of a channel, an excavated or impounded area or a topographic depression, which confines and/or conducts water.

"Barrier island complex" means the landforms surrounded by both bay and ocean, including barrier islands, spits, and peninsulas, which are situated along New Jersey's Atlantic coastline, and which extend from the northern tip of Sandy Hook, in Monmouth County, to the southern tip of Cape May County. The barrier island complex includes the barrier island corridor, as defined in the Department's Coastal Zone Management Rules at N.J.A.C. 7:7-9.20, as well as any associated wetland complex adjacent to the corridor. A barrier island is a long, narrow island that generally lies parallel to the mainland and serves to protect the coast from erosion. A spit is a long, narrow depositional landform projecting outward from the shoreline associated with a barrier island corridor. A peninsula is a narrow expanse of land surrounded by both bay and ocean waters, which is connected to the mainland. The barrier island complex does not include the entire Cape May peninsula, but the Cape May peninsula does include barrier islands, spits and peninsulas along its Atlantic coastline. The barrier island complex does not include bay islands, which are islands or filled areas surrounded by tidal waters, wetlands, beaches, or dunes, lying between the mainland and barrier islands, but which may be connected to the mainland or barrier islands by elevated or fill-supported roads.

"Bed" means the floor of a channel over which water flows continuously or intermittently. Bed also means the floor of an excavated or impounded area or of a topographic depression that confines and/or conducts water.

"Building" means a structure enclosed with exterior walls or fire walls, erected and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or a permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

"Category One water" means a water designated as such in the Department's Surface Water



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Quality Standards at N.J.A.C. 7:9B.

"Central Passaic Basin" means the regulated area along the following waters:

1. Beaver Dam Brook, downstream of Jacksonville Road in Montville Township, Morris County;
2. Black Brook in Florham Park Borough, East Hanover Township and Hanover Township, Morris County;
3. Dead River, downstream of Liberty Corner Road in Bernards Township, Somerset County;
4. East Ditch, downstream of Jacksonville Road in Pequannock Township, Morris County;
5. Harrison Brook, downstream of Lake Road in Bernards Township, Somerset County;
6. Passaic River, between U.S. Route 202 in Bernards Township, Somerset County, and Harding Township, Morris County, and Beatties Dam in Little Falls Township, Passaic County;
7. Pequannock River, downstream of Paterson-Hamburg Turnpike in Riverdale Borough, Morris County, and Pompton Lakes Borough, Passaic County;
8. Pompton River;
9. Ramapo River, downstream of the Pompton Lake dam in Pompton Lakes Borough, Passaic County;
10. Rockaway River, downstream of the Boonton Reservoir dam in Boonton Town and Parsippany-Troy Hills Township, Morris County;
11. Wanaque River, downstream of Paterson-Hamburg Turnpike in Pompton Lakes Borough, Passaic County;
12. West Ditch, downstream of Jacksonville Road in Lincoln Park Borough, Morris County; and
13. Whippany River, downstream of State Route 10 in East Hanover and Hanover Townships, Morris County;

"Channel" means a linear topographic depression that continuously or intermittently confines and/or conducts surface water, not including transient erosional gullies and other ephemeral features that temporarily form after heavy rainfall. A channel can be naturally occurring or can be of human origin through excavation or construction, in which case it is referred to as "manmade." A channel includes both bed and banks.

"Channel modification" means the reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining, or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert. The removal of accumulated sediment and debris in accordance with a stream cleaning approval under this chapter is not a channel modification.

"Charitable conservancy" means a corporation or trust that meets the definition of a

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charitable conservancy at N.J.S.A. 13:8B-2. (Note: Effective as of June 20, 2016, the definition of charitable conservancy at N.J.S.A. 13:8B-2 is a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.)

“Coastal permit” means a permit or an authorization issued under the Coastal Zone Management Rules, N.J.A.C. 7:7, pursuant to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or the Waterfront Development Law, N.J.S.A. 12:5-3.

“Commissioner” means the Commissioner of the Department, or his or her designated representative.

“Complete for review” means that an application for a verification, an authorization under a general permit, or an individual permit is both administratively and technically complete and is ready to be evaluated by the Department for compliance with the applicable requirements of this chapter.

“Conservation restriction” means a restriction, easement, covenant, or condition, in any deed, will, or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or for public access to tidal waterways and their shores, or as suitable habitat for fish or wildlife, to forbid or limit any or all of the following:

1. Construction or placing of buildings, roads, signs, billboards, or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or fish and wildlife habitat preservation; and/or
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

"Critical building" means a building that:

1. Is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or

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2. Serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day care center, assisted living facility, or nursing home.

"Dam" means a structure defined as such in the Department's Dam Safety Standards at N.J.A.C. 7:20.

"Department" means the New Jersey Department of Environmental Protection.

"Department delineation" means the flood profiles, flood elevations and/or detailed mapping of the flood hazard area and/or floodway, promulgated by the Department. Appendix 2 of this chapter, incorporated herein by reference, lists the Department delineated waters of New Jersey.

"Documented habitat for threatened or endangered species" means an area for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting or feeding. Evidence of past use by a species can include, but is not limited to, sightings of the species or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and
2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

"Drainage area" means a geographic area within which water, sediments and dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

"Duplex" means a residential structure of two attached units in which the interior living space of one unit directly abuts the interior living space of the other unit, either in a side-by-side arrangement sharing a common wall or in a lower unit-upper unit arrangement.

"Emergency authorization" means an authorization to undertake a regulated activity, which is issued by the Department when certain conditions exist that warrant immediate action to protect the environment and/or public health, safety, and welfare, as described at N.J.A.C. 7:13-16.

"Engineer" means a professional engineer who is licensed to practice in New Jersey.

"Engineering certification" means a document, signed and sealed by a New Jersey licensed professional engineer, which confirms that one or more requirements of this chapter are met, and which is accompanied by all supporting documentation, calculations, and other information upon which the certification is based. Upon clear and compelling evidence of a threat to public health, safety, welfare, and the environment, a New Jersey licensed professional engineer employed by the Department can reject an engineering certification submitted under this chapter.

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and/or gravity.

"Excavation" means removal or recovery of soil, minerals, mineral substances or organic substances other than vegetation, from the land surface or beneath the land surface, whether the land surface is exposed or submerged. Excavation does not include the movement of material

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due to erosion.

"FEMA" means the United States Federal Emergency Management Agency.

"FEMA 100-year flood elevation" means the 100-year water surface elevation at a given location, most recently released as an effective FEMA base flood elevation, or any more recent advisory or proposed (preliminary) flood elevation, if either elevation is higher than the effective base flood elevation.

"FEMA flood mapping" means information published or publicly released by FEMA regarding the frequency, location, and/or extent of flooding in a community, such as flood elevations, flood profiles, flow rates, and floodway limits, and including FEMA 100-year flood elevation as defined above. For the purposes of this chapter, such information shall include only that information adopted as part of the most recent effective FEMA Flood Insurance Study, dated on or after January 31, 1980, or any more recent advisory or proposed (preliminary) flood mapping, if the more recent advisory or proposed (preliminary) mapping results in higher flood elevations, wider floodway limits, or greater flow rates than depicted in the most recent effective FEMA Flood Insurance Study, or indicates a change from an A zone to a V zone or coastal A zone. Effective and proposed (preliminary) FEMA flood mapping can be viewed at <https://msc.fema.gov> and advisory flood mapping for coastal areas, where available, can be viewed at <http://www.region2coastal.com>. Questions regarding the availability, use, derivation, or modification of FEMA flood mapping should be directed to FEMA at (800) 358-9616.

"Fill" means to deposit or place material on the surface of the ground and/or under water. "Fill" also means the material being deposited or placed. Fill includes, but is not limited to, concrete, earth, pavement, rock, sand, soil, structures or any stored material such as building material, construction equipment, landscaping material, piles of soil, stone or wood, trash, vegetation in planters and/or root balls, and vehicles. Fill does not include vegetation rooted in the ground, whether naturally occurring or planted.

"Flood control project" means a structural or topographic modification to a channel, flood hazard area and/or riparian zone, performed for the public benefit and undertaken by a public entity, which is designed primarily to reduce flood elevations, reduce the risk of damage from flooding and/or protect an area from flooding or flood damage.

"Flood fringe" means the portion of the flood hazard area that is outside the floodway.

"Flood hazard area" means land, and the space above that land, which lies below the flood hazard area design flood elevation. Structures, fill and vegetation that are situated on land that lies below the flood hazard area design flood elevation are described as being "in" or "within" the flood hazard area. The inner portion of the flood hazard area is called the floodway and the outer portion of the flood hazard area is called the flood fringe. Figures A and B at N.J.A.C. 7:13-2.3 illustrate these areas as well as the riparian zone along a typical water. The flood hazard area on a particular site is determined using the methods set forth at N.J.A.C. 7:13-3. There are two types of flood hazard areas:

1. Tidal flood hazard area, in which the flood hazard area design flood elevation is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to or influenced by stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources; and

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2. Fluvial flood hazard area, in which the flood hazard area design flood elevation is governed by stormwater runoff. Flooding in a fluvial flood hazard area may be contributed to or influenced by elevated water levels generated by the tidal rise and fall of the Atlantic Ocean, but the depth of flooding generated by stormwater runoff is greater than flooding from the Atlantic Ocean.

"Flood hazard area design flood" means a flood equal to the 100-year flood plus an additional amount of water in fluvial areas to account for possible future increases in flows due to development or other factors. This additional amount of water also provides a factor of safety in cases when the 100-year flood is exceeded. N.J.A.C. 7:13-3 describes the various methods of determining the flood hazard area design flood for a particular water as well as the additional amount of water to be added in various situations.

"Flood hazard area design flood elevation" means the peak water surface elevation that will occur in a water during the flood hazard area design flood.

"Flood hazard area permit" or "permit" means a permit or an authorization issued under this chapter pursuant to the Flood Hazard Area Control Act.

"Flood-proofing" means measures applied to a building that are intended to prevent or provide resistance to displacement, buoyancy and damage from flooding up to a certain elevation, so as to eliminate or reduce potential flood damage to the building and its contents. There are two types of flood-proofing:

1. Wet flood-proofing, which are measures that allow floodwaters to enter a building, and thereby balance hydrostatic pressure on the structure during a flood. Wet flood-proofing generally includes using flood-resistant materials, protecting mechanical and utility equipment, and using openings or breakaway walls; and
2. Dry flood-proofing, which are measures that prevent floodwaters from entering a building. Dry flood-proofing generally includes making the building watertight through sealing openings, installing waterproof doors and windows, or sealing walls with waterproof coatings, impermeable membranes and/or a supplementary layer of masonry or concrete.

"Floodway" means land, and the space above that land, which lies within the inner portion of the flood hazard area, and which is mathematically determined to be required to carry and discharge floodwaters resulting from the 100-year flood under certain conditions. The floodway always includes the channel and often includes land adjacent to the channel. The floodway is normally characterized by faster and deeper flows than the flood fringe, which is the portion of the flood hazard area outside the floodway.

"Freshwater wetlands" means an area defined as such under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-1.4.

"Grace period" means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

"Grading" means the movement of soil or other material on the surface of the ground by humans resulting in a change in topography.

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"Habitable building" means a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

"Hazardous substance" means material defined as such in the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.

"Highlands Preservation Area" means that geographic portion of the State described in the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-7(b)1.

"Hydraulic capacity" means the ability of a channel, flood hazard area or structure to conduct water. Hydraulic capacity is a function of cross-sectional area, hydraulic friction, shape, skew, slope and the presence or absence of obstructions.

"Impervious surface" means a surface that is covered with a layer of material so that it is highly resistant to infiltration by water.

"In-kind" or "in-kind replacement" means the reconstruction or replacement of all or a portion of a lawfully existing structure without altering the location, orientation, physical dimensions, and hydraulic capacity of the structure. For example, the in-kind replacement of a bridge or culvert is one in which the reconstructed or replaced structure is the same shape, cross-sectional area, width, height, and length as the existing structure, is constructed of materials hydraulically equivalent to the existing structure, and is situated in the same location, and at the same orientation and invert elevation, as the existing structure.

"Invasive plant species" means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

"Invert" means the lowest point in a given cross-section of a channel, as well as the lowest point on the inside of a pipe, culvert or any other structure with an opening such as a flood vent.

"Jacking" means the placement of an underground utility line beneath a channel by means of horizontally pushing, drilling or otherwise forcing through the earth below the channel in such a way that the channel is not disturbed.

"Land surveyor" means a professional land surveyor who is licensed to practice in New Jersey.

"Lawfully existing" means an existing fill, structure and/or use, which meets all Federal, State and local laws, and which is not in violation of this chapter because it was established:

1. Prior to January 31, 1980; or
2. On or after January 31, 1980, in accordance with the requirements of this chapter as

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it existed at the time the fill, structure and/or use was established.

"Low dam" means an artificial dike, levee or other barrier, which is constructed for the purpose of impounding water on a permanent or temporary basis, but which does not raise the water surface elevation enough to meet the definition of a dam.

"Low-flow aquatic passage" means the ability of aquatic species to travel upstream and downstream in a waterway without impediment during low-flow conditions in a channel. Natural channel beds often possess small rivulets that serve to provide aquatic passage in this way during low-flow conditions, which can occur during dry periods of the year. Bridges, culverts and other manmade structures may also be designed to provide low-flow aquatic passage by inclusion of a linear depression throughout the bottom of the structure in the direction of flow, which collects water during low-flow conditions and allows aquatic species to pass through the structure without impediment.

"Lowest floor" means:

1. The bottom of the lowest supporting horizontal structural member of a building, where any portion of the building is located within a V zone or a coastal A zone, as delineated or otherwise defined by FEMA; and
2. The top surface of the floor of the lowest enclosed area of any building not located within a V zone or coastal A zone, excluding any unfinished or flood-resistant enclosure that is usable solely for vehicle parking, building access, or limited storage, and is constructed in compliance with this chapter.

"Method 1" or the "Department delineation method" means the method of determining the flood hazard area design flood elevation and floodway limit from State adopted delineations, as described at N.J.A.C. 7:13-3.3.

"Method 2" or the "FEMA tidal method" means the method of determining the tidal flood hazard area design flood elevation and floodway limit from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(d).

"Method 3" or the "FEMA fluvial method" means the method of determining the fluvial flood hazard area design flood elevation and floodway limit from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(e).

"Method 4" or the "FEMA hydraulic method" means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rate data from FEMA flood mapping, as described at N.J.A.C. 7:13-3.4(f).

"Method 5" or the "approximation method" means the method of determining the flood hazard area design flood elevation from the charts in chapter Appendix 1, incorporated herein by reference, as described at N.J.A.C. 7:13-3.5.

"Method 6" or the "calculation method" means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rates provided by an applicant for a verification under this chapter, as described at N.J.A.C. 7:13-3.6.

"Mitigation bank" means an operation in which riparian zone vegetation is created, restored, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to riparian zone vegetation.

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"Modification" means a document issued by the Department to revise a valid, previously issued verification, authorization under a general permit, or individual permit as described at N.J.A.C. 7:13-22.5 and 6.

"Multi-residence building" means any building intended to provide three or more units of temporary or permanent residence for humans. Examples of a multi-residence building include an apartment building, condominium complex, townhouse complex, hotel, motel, and any mixed-use building that contains three or more units of temporary or permanent residence. A single-family home, duplex, or critical building as defined in this section is not a multi-residence building.

"NGVD" means the national geodetic vertical datum of 1929, which is the reference datum for all surveying, topography and elevations described in this chapter.

"Non-trout water" means a water that is defined as such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B. A non-trout water is a water that is not trout production, trout maintenance or trout stocked.

"NRCS" means the United States Department of Agriculture Natural Resource Conservation Service.

"Obstruction" means material placed and/or situated in a flood hazard area that can impede or change the direction of the flow of water, either by itself or by catching or collecting debris carried by such water.

"100-year flood" in fluvial areas means a flood that has a one percent probability of being equaled or exceeded within a one-year period for a given geographic location and/or watershed. In tidal areas, a "100-year flood" means a flood caused by a tidal surge in the Atlantic Ocean, which has a one percent probability of being equaled or exceeded within a one-year period.

"100-year flow rate" means the peak rate at which floodwaters would flow in a given water during a 100-year flood.

"Person" means an individual, corporation, corporate officer, partnership, association, the Federal government, the State, a municipality, a commission or political subdivision of the State or any interstate body.

"Pinelands water" means a water designated as such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Private roadway" means a roadway for use by vehicles, including a driveway or access road, which is not a public roadway as defined in this section.

"Project" means all regulated activities occurring and proposed on a site, whether undertaken concurrently or in phases.

"Public roadway" means a roadway for use by vehicles, including a driveway or access road, which is intended for public use and is constructed by or on behalf of the Federal, State, county, or municipal government. A public roadway does not include a roadway constructed as part of a private development, regardless of whether the roadway is ultimately to be dedicated to and/or maintained by a governmental entity.

"Reconstruct" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which 50 percent or



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greater of the structure is replaced and/or the size, shape or location of the structure is altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the reconstruction to the market value of the building as determined before the start of construction; where the percentage of replacement is 50 percent or greater, such reconstruction shall also constitute a substantial improvement as defined in this section. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being reconstructed to the total area of the structure.

"Regulated activity" or "activity" means an activity that is regulated under this chapter as described at N.J.A.C. 7:13-2.4. Some regulated activities, when performed in a certain manner or to a specified degree, are permitted-by-rule at N.J.A.C. 7:13-6 and 7. All regulated activities that are not permitted-by-rule require a general permit-by-certification under N.J.A.C. 7:13-6 and 8, a general permit under N.J.A.C. 7:13-6 and 9, an individual permit under N.J.A.C. 7:13-10, 11, and 12, an emergency authorization under N.J.A.C. 7:13-16, or a coastal permit under N.J.A.C. 7:7, prior to commencement.

"Regulated area" means the flood hazard area and riparian zone along a regulated water, as described at N.J.A.C. 7:13-2.3.

"Regulated water" means a water subject to this chapter as described at N.J.A.C. 7:13-2.2.

"Repair" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which less than 50 percent of the structure is replaced and the size, shape or location of the structure is not altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the repair to the market value of the building as determined before the start of construction; where the percentage of replacement is less than 50 percent, such repair shall not constitute a substantial improvement as defined in this section. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being repaired to the total area of the structure.

"Revision" means a document issued by the Department to revise a Department delineation as described at N.J.A.C. 7:13-3.7 and 3.8.

"Riparian zone" means the land and vegetation within and adjacent to a regulated water as described at N.J.A.C. 7:13-4.1 and illustrated at N.J.A.C. 7:13-2.3.

"Sediment" means solid material, mineral or organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

"Site" means the area within the legal boundary of the property, properties or right-of-way upon which any action under this chapter is requested, proposed, occurring or has occurred, plus any contiguous land owned or controlled by the same person(s). The legal boundary of a property is set forth in the deed(s) of the property. The legal boundary of a right-of-way is set forth in the document creating the right-of-way.

"Site plan" means a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering, or other similar illustration, which is submitted to the Department to describe an existing or proposed activity or condition.

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"Soil bioengineering" means the method of stabilizing eroded banks using vegetation, and sometimes in conjunction with other natural materials, as described at section 650.1601(d)(2) of Chapter 16 in the USDA Natural Resource Conservation Service Engineering Field Handbook, published December 1996, incorporated herein by reference. Copies of the Engineering Field Handbook can be obtained from local NRCS offices.

"Soil Conservation District" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with N.J.S.A. 4:24-1 et seq. Each Soil Conservation District administers New Jersey Department of Agriculture programs for one or more counties. Soil Conservation Districts are overseen by the New Jersey State Soil Conservation Committee in the New Jersey Department of Agriculture, which promulgates the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90. For the purposes of this chapter only, the term "Soil Conservation District" shall include any exempt municipality authorized to enforce the Standards for Soil Erosion and Sediment Control by ordinance pursuant to N.J.S.A. 4:24-48.

"Solid waste" means any garbage, refuse, sludge or any other material defined as solid waste in the Solid Waste Rules at N.J.A.C. 7:26-1.6.

"Species of special concern" means a species that warrants special attention because of inherent vulnerability to environmental deterioration or habitat modification that would result in its becoming threatened if conditions surrounding the species begin or continue to deteriorate. Factors that can lead to classification as special concern include, but are not limited to, species rarity in the State, highly specialized food and/or habitat requirements, low reproductive rate, isolated populations of the species within the State, and/or other characteristics that make the species particularly susceptible to environmental or habitat changes. This category includes a species that meets the foregoing criteria and for which there is little understanding of its current population status in the State.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface or is captured by separate storm sewers or other sewage or drainage facilities.

"Stormwater management basin" means an impoundment created by constructing an embankment, excavating a pit and/or erecting or placing a structure, for the purpose of managing stormwater runoff. A stormwater management basin can be designed to be normally dry (as in a detention or infiltration basin), retain a permanent pool of water (as in a retention basin or wet pond), and/or be planted mainly with vegetation suitable for freshwater wetlands (as in most constructed stormwater wetlands).

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Structure" means any assemblage of material by humans, including, but not limited to, a berm, bridge, bulkhead, building, cable, causeway, culvert, dam, dike, embankment, fence, guiderail, jetty, levee, pavement, piling, pipe, post, railroad, retaining wall, roadway, stormwater management basin or facility, tower, utility pole, or wire. Vegetation is not a structure. Soil bioengineering material that includes vegetation as well as other material is a structure.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the

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market value of the structure before the damage occurred. Restoration of a substantially damaged structure shall constitute a substantial improvement as defined in this section.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure as determined before the start of construction of the improvement. This term includes structures that have sustained substantial damage regardless of the actual repair work performed. Substantial improvement does not include:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a building designated by the State as an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

“Technically complete” means that each item included in an application for a verification, an authorization under a general permit, or an individual permit provides sufficient information for the Department to declare the application complete for review.

"Temporary" means a regulated activity that occupies, persists, and/or occurs on a site for no more than six months. For example, a fill or structure is temporary if, within six months of its placement, the fill or structure is removed from the site, all disturbed regulated areas are restored to their original topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition. Where a disturbance associated with certain regulated activities, such as hazardous substance remediation or solid waste facility closure, is intended to be temporary but will exceed six months in duration because of the nature of the activity, the Department will consider the disturbance to be temporary for purposes of this chapter provided the disturbed areas are restored to their original topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

"Threatened or endangered species" means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. § § 1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

“Top of bank” means the upper limit of the bank of a regulated water, which is typically characterized by an observable change or break in the slope of the land. Where the top of bank is not discernible along the regulated water, the top of bank shall be considered:

1. The feature's centerline, for a linear regulated water that has a drainage area of less than 150 acres;
2. The limits of the two-year flood, for a linear regulated water that has a drainage area of 150 acres or more;
3. The normal water surface limit, for:
  - i. A linear fluvial regulated water that contains water at all times and has a drainage

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area of 10 square miles or more; or

- ii. A non-linear fluvial regulated water, such as a lake or pond;
4. The mean high water line, for a non-linear tidal regulated water, such as a bay or inlet; and
5. The feature's centerline, for an amorphous or irregularly-shaped feature, such as a wetland complex through which a regulated water flows but lacks a discernible or coherent channel.

"Trout maintenance water" means a section of water designated as trout maintenance in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout production water" means a section of water identified as trout production in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout stocked water" means a section of water stocked with trout by the Department's Division of Fish and Wildlife and listed in N.J.A.C. 7:25-6.

"Unsecured material" means the following:

1. A structure that is not secured to resist flotation, collapse, and displacement due to hydrostatic and hydrodynamic forces from floodwaters; and
2. Material placed on the surface of the ground, which would likely become buoyant, mobile, or lifted by water during a flood, or otherwise be transported offsite by floodwaters. Examples include building material, construction equipment, landscaping material, patio furniture, piles of soil, stone, or wood, trash, vegetation in planters or root balls, and vehicles.

"USDA" means the United States Department of Agriculture.

"USGS quad map" means a topographic quadrangle map issued by the United States Geological Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000.

"Utility line" means a pipe, cable, line or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a pole or tower required to support a utility line, but does not include a tower that only transmits or receives electromagnetic waves through the air, such as for radio, television or telephone transmission.

"Verification" means a document issued by the Department under N.J.A.C. 7:13-5.1, which establishes the flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or riparian zone limit on a site or any portion of a site.

"Water" means a collection of water on the surface of the ground, including, but not limited to, a bay, brook, creek, ditch, lake, pond, reservoir, river, or stream. A water also includes the path or depression through which the water flows or is confined. A water can be either naturally-occurring or resulting from human activity, in which case it is referred to as "manmade." A naturally-occurring water that is piped, relocated, or otherwise modified remains a naturally-occurring water for the purposes of this chapter. An underground pipe or culvert that conveys stormwater runoff is not a water unless the pipe or culvert was constructed to enclose, replace, or divert a previously existing, naturally-occurring water. (Note: Not all waters are regulated.)

"Water control structure" means a structure within or adjacent to a water, which

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intentionally or coincidentally alters the hydraulic capacity, design flood elevation, flood hazard area limit and/or floodway limit of the water. Examples of a water control structure include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall and weir.

"Water surface elevation" means the elevation of the surface of a water, measured in feet NGVD, and determined either by special calculation or gauge. For the purposes of determining compliance with a requirement of this chapter, a water surface elevation is rounded to the nearest 0.1 feet.

### **7:13-1.3 Forms, checklists, information, technical manual; Department address and website**

(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (c) below, by telephone at (609) 984-0162, or through the Division's website at <https://www.nj.gov/dep/landuse>. Further information about the Department can be accessed at <https://www.nj.gov/dep>.

(b) The Division has prepared a Flood Hazard Area Technical Manual, which provides guidance concerning the basic engineering and environmental concepts that are the foundation of this chapter, as well as guidance and examples for performing calculations and analyses under this chapter. The manual is available from the Division's website listed at (a) above.

(c) Applications and other correspondence shall be submitted to the following addresses:

1. For submittal of an application for authorization under a general permit-by-certification or general permit, for an individual permit, or for a verification in accordance with N.J.A.C. 7:13-18.5(a), the Department's website at <https://www.nj.gov/dep/online>; and
2. For correspondence or the submittal of an application for an applicability determination, a revision of a Department delineation, a verification in accordance with N.J.A.C. 7:13-18.5(b), or an extension, transfer, or modification of a permit:
  - i. For regular mail:

New Jersey Department of Environmental Protection  
Division of Land Use Regulation  
Mail Code 501-02A, PO Box 420  
Trenton, NJ 08625; and
  - ii. For hand delivery, courier service, and overnight delivery:

New Jersey Department of Environmental Protection  
Division of Land Use Regulation  
501 East State Street  
5 Station Plaza, Second Floor  
Trenton, NJ 08609.

(d) Questions regarding the requirements of this chapter or about the status of a particular application can be directed to the Division of Land Use Regulation Technical Support Center at

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(609) 777-0454, via email at [LURTechSupport@dep.nj.gov](mailto:LURTechSupport@dep.nj.gov), or by using an online contact form at <https://www.nj.gov/dep/landuse/contact.html>.

(e) Applications for authorization under a general permit-by-certification or general permit, an individual permit, or a verification in accordance with N.J.A.C. 7:13-18.5(a) sent or delivered to the Department by mail, hand delivery, or courier service shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

(f) Applications identified at (c)2 above sent or delivered to the Department at an address other than those listed at (c)2i and ii above shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

### **7:13-1.4 Delegation of authority**

(a) Except as specified in (e) below, the Department may delegate authority to take action under this chapter to a county governing body. A county governing body seeking to assume all or a portion of the Department's authority under this chapter shall do the following:

1. Retain employees with professional training and education capable of properly administering the permitting program established by this chapter; and
2. Submit to the Department a written request for delegation that includes the following:
  - i. A description of the aspects of the Department's authority that the county governing body seeks to assume;
  - ii. An agreement to uphold the requirements of this chapter;
  - iii. A written statement by the county governing body agreeing to apply for and accept delegation of authority, pursuant to N.J.S.A. 58:16A-55.6, and agreeing to adopt, in the event the request is approved, an ordinance or resolution enabling the body to carry out the delegation. A copy of the proposed ordinance or resolution shall also be provided; and
  - iv. A detailed description of the personnel, the physical resources and the source and amount of funding the county governing body shall use to fulfill the obligations it seeks to assume.

(b) Within 60 calendar days of receipt of a request by a county governing body in accordance with (a)2 above, the Department shall:

1. Delegate all or a portion of the authority sought by the county governing body. Such delegation may include conditions to ensure compliance with this chapter, and may be for a specified period of time, as the Department deems appropriate; or
2. Deny the request for delegation and provide the reasons why the Department has determined such delegation is not appropriate.

(c) A county governing body that has assumed delegation shall permanently retain, and make available for Department review, a copy of all documents, plans, maps, memoranda and notes necessary to document that it has discharged its delegated duties for each application it processes. The Department shall review these records at least biannually. The Department can at

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any time terminate delegation if it determines that the county governing body has failed to properly administer the authority delegated to it, or has failed to maintain the necessary documentation.

(d) A county governing body that has assumed delegation shall not charge fees greater than those provided at N.J.A.C. 7:13-20.

(e) The Department shall not delegate authority to approve any of the following:

1. An application under this chapter by a State agency;
2. An application under this chapter by the county governing body itself; and
3. An application under this chapter for an individual permit that involves a hardship exception pursuant to N.J.A.C. 7:13-15.

### **7:13-1.5 Creation of a county water resources association**

(a) A county governing body can create, by ordinance or resolution, a county water resources association, the purpose of which shall be to:

1. Establish county flood control and water management programs, and coordinate these with State and Federal programs;
2. Advise the county governing body on issues related to flood control and water management; and
3. Undertake other duties concerning flood control and water management that the county governing body delegates to the association by ordinance or resolution.

(b) The county governing body shall appoint the members of the county water resources association. Appointed members may include the chief administrative officer or executive of a county planning agency, office of the county engineer, county utility authority, county health department, county mosquito commission, local Soil Conservation District, county parks agency and any other person with relevant experience or training.

### **7:13-1.6 Liberal construction**

This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.

### **7:13-1.7 Severability**

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

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## **SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT OR AUTHORIZATION IS REQUIRED**

### **7:13-2.1 When a permit is required**

(a) No person shall engage in a regulated activity in a regulated area without a flood hazard area permit as required by this chapter, or a coastal permit as required by N.J.A.C. 7:7, as set forth at (b) and (c) below. Initiation of a regulated activity in a regulated area without a flood hazard area permit or a coastal permit as set forth at (b) below (except as provided at (c) below) shall be considered a violation of this chapter and shall subject the party or parties responsible for the regulated activity to enforcement action, as set forth at N.J.A.C. 7:13-24. Regulated areas are set forth at N.J.A.C. 7:13-2.3 and regulated activities are set forth at N.J.A.C. 7:13-2.4.

(b) Except as provided in (c) or (e) below, a person undertaking any regulated activity in a regulated area shall do so only in accordance with one of the following:

1. A permit-by-rule, pursuant to N.J.A.C. 7:13-6 and 7;
2. An authorization under a general permit-by-certification, pursuant to N.J.A.C. 7:13-6 and 8;
3. An authorization under a general permit, pursuant to N.J.A.C. 7:13-6 and 9;
4. An individual permit, pursuant to N.J.A.C. 7:13-10, 11, and 12;
5. An emergency authorization, pursuant to N.J.A.C. 7:13-16; or
6. A coastal permit, pursuant to N.J.A.C. 7:7, provided:
  - i. The application for the coastal permit was declared by the Department as complete for final review on or after November 5, 2007; and
  - ii. If activities are proposed in a fluvial flood hazard area, the applicant meets one of the four conditions at N.J.A.C. 7:13-5.5(a) regarding the need for a verification of the flood hazard area and/or floodway onsite.

(c) Undertaking a regulated activity in a regulated area does not require an approval listed at (b) above in the cases listed in (c)1 through 4 below. For the purpose of this subsection, each distinct construction activity in a project, such as each building, road, or utility crossing, is considered a distinct regulated activity.

1. The regulated activity is part of a project for which all elements that were subject to the Flood Hazard Area Control rules in effect prior to November 5, 2007, have been approved under a permit issued pursuant to those rules, provided:
  - i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of this chapter prior to November 5, 2007;
  - ii. The application for the permit was received by the Department and was complete for review prior to November 5, 2007; and
  - iii. The permit is valid when the regulated activity is undertaken;



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2. The regulated activity is part of a project for which all elements in a tidal flood hazard area that were subject to N.J.A.C. 7:7 in effect prior to November 5, 2007, have been approved under a valid CAFRA or waterfront development permit, provided:
    - i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of N.J.A.C. 7:7 prior to November 5, 2007;
    - ii. The application for the permit was received by the Department and was declared complete for final review prior to November 5, 2007; and
  3. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7, prior to November 5, 2007, and both of the following apply:
    - i. The regulated activity is located within the Meadowlands District; and
    - ii. The regulated activity is authorized under a valid zoning certificate issued by the New Jersey Meadowlands Commission (predecessor to the New Jersey Sports and Exposition Authority) prior to November 5, 2007, pursuant to N.J.A.C. 19:4-4.2; or
  4. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7, prior to November 5, 2007, and one of the following applies:
    - i. The regulated activity is authorized under one or more of the following approvals pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), prior to November 5, 2007:
      - (1) Preliminary or final site plan approval;
      - (2) Final municipal building or construction permit;
      - (3) Minor subdivision approval where no subsequent site plan approval is required;
      - (4) Final subdivision approval where no subsequent site plan approval is required; or
      - (5) Preliminary subdivision approval where no subsequent site plan approval is required; or
    - ii. The regulated activity does not require an approval identified in (c)4i above, and one or more of the following construction activities were completed onsite prior to November 5, 2007:
      - (1) The foundation for at least one building or structure;
      - (2) All of the subsurface improvements for a roadway; or
      - (3) The installation of all of the bedding materials for a utility line.
- (d) If a regulated activity is approved under a qualifying approval listed at (c) above, and the regulated activity is subsequently revised, the original 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:

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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 and/or this chapter, as applicable; 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. 7:13-16.2(a) shall be provided to the Department via telephone and/or fax 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. Contact information for the Department is set forth at N.J.A.C. 7:13-1.3.

#### **7:13-2.2 Regulated waters**

(a) All waters in New Jersey are regulated under this chapter except those described at (a)1 through 4 below. Every regulated water possesses a flood hazard area and/or a riparian zone as set forth at N.J.A.C. 7:13-2.3:

1. Any manmade canal;
2. In accordance with N.J.S.A. 58:16A-60, any coastal wetlands regulated under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.);
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; and
4. Any water-filled depression created in dry land incidental to construction or remediation activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of "waters of the United States" in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-1.4.

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### **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 (b) and (c) below.

(b) A flood hazard area exists along every regulated water that has a drainage area of 50 acres or greater. If a regulated water has a drainage area of less than 50 acres, the water does not possess a flood hazard area that is regulated under this chapter.

1. 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.
2. The methods for determining the limits of the flood fringe and floodway are described at N.J.A.C. 7:13-3.

(c) A riparian zone exists along both sides of every regulated water and includes the regulated water itself, except as provided in (c)1 below.

1. There is no riparian zone within or along the following:
  - i. The Atlantic Ocean;
  - ii. New Jersey's barrier island complex;
  - iii. Any lawfully existing manmade lagoon;
  - iv. Any lawfully existing stormwater management basin or wastewater treatment pond;
  - v. Any segment of a regulated water enclosed within a lawfully existing pipe, culvert, or bridge; and
  - vi. Any lawfully existing, manmade open channel that was created to convey stormwater, provided the channel is fully lined with manmade impervious material, such as a concrete low-flow channel within a stormwater basin or a ditch completely lined with concrete or asphalt.
2. The extent of a riparian zone is determined in accordance with N.J.A.C. 7:13-4.

(d) The flood hazard area and riparian zone described at (b) and (c) above generally overlap. Figures 2.3A and 2.3B below (not drawn to scale) illustrate a typical regulated water, flood hazard area, and riparian zone. This chapter sets forth the specific requirements applicable to activities in each of these regulated areas.

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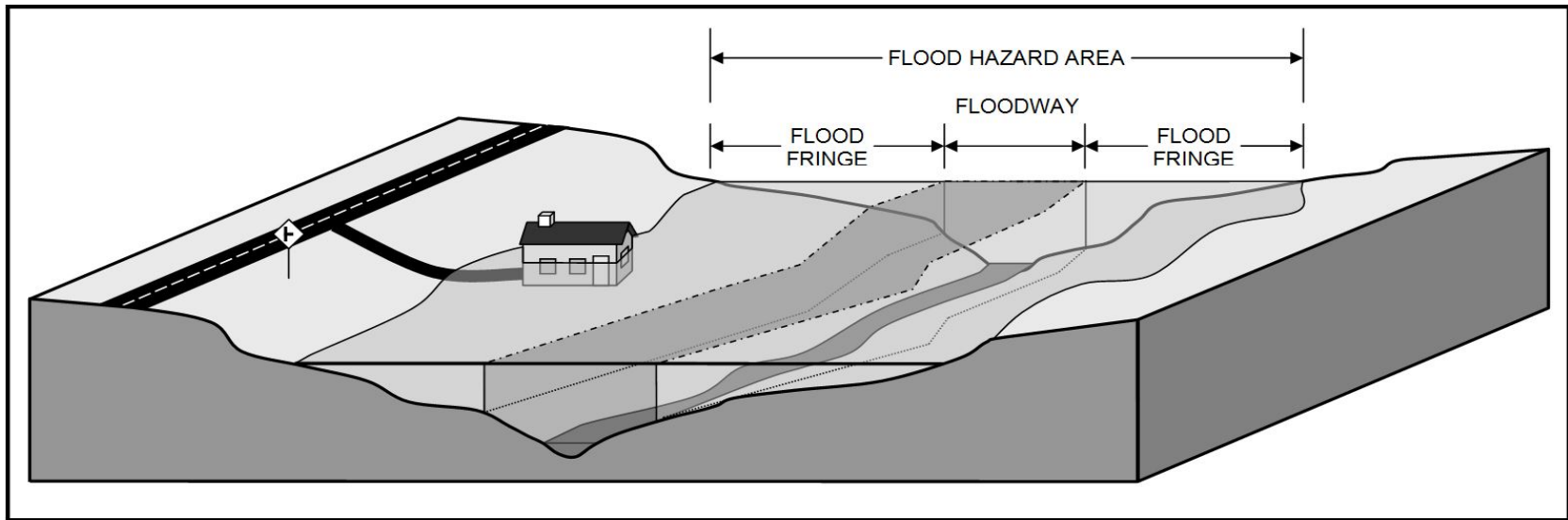


FIGURE 2.3A: THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE

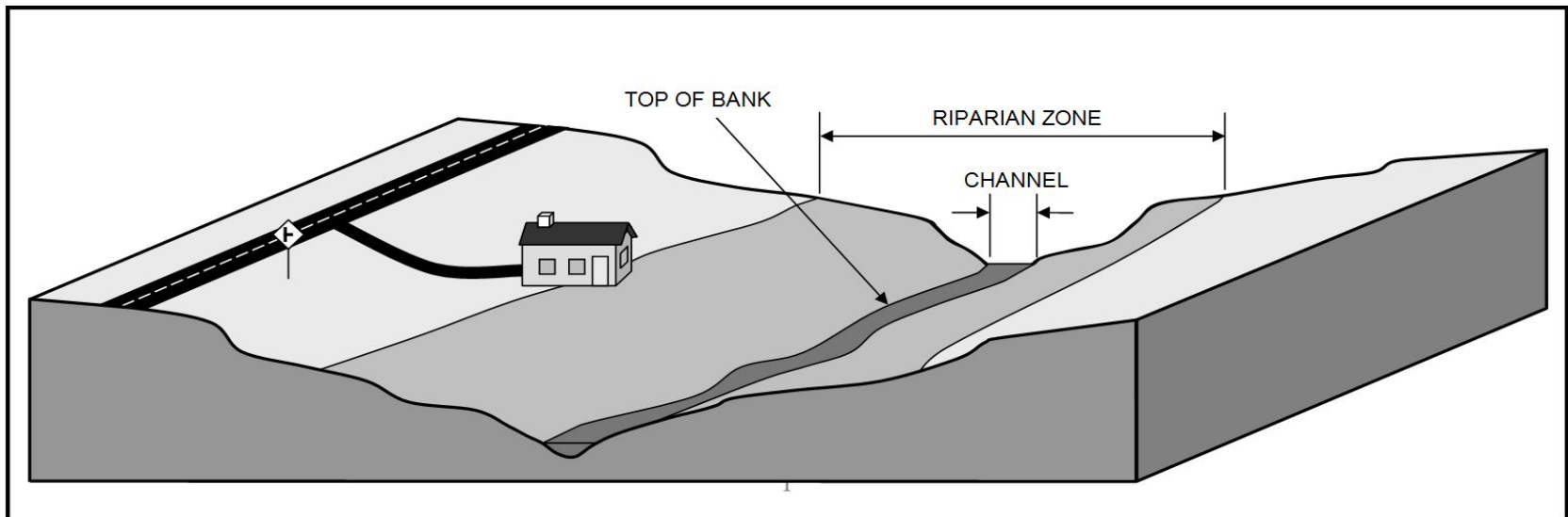


FIGURE 2.3B: THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150, OR 300 FEET OF THE CHANNEL

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**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. Areas containing vegetation for a portion of the year, such as agricultural areas that are periodically plowed and cultivated, are considered vegetated for the purposes of this chapter;
3. The creation of impervious surface;
4. The storage of unsecured material;
5. The construction, reconstruction, repair, alteration, enlargement, elevation, or removal of a structure; and
6. The conversion of a building into a single-family home or duplex, multi-residence building, or critical building.

(b) An activity not listed in (a) above does not require an approval under this chapter, even if the activity is undertaken within a flood hazard area or riparian zone. An activity regulated under this chapter may also be subject to other Federal, State, and/or local rules, plans, and ordinances. It is the applicant's responsibility to obtain all necessary approvals for a proposed project.

**7:13-2.5 Applicability determination**

(a) A person may request an applicability determination from the Department to determine the applicability of this chapter to a segment of water or to one or more proposed activities, subject to the limitations in (b) below. An applicability determination is optional, but the Department encourages persons to request one if there is uncertainty about whether a particular water or activity is regulated, since conducting unauthorized activities may result in enforcement action.

(b) The Department will not undertake a site inspection or review engineering calculations in the context of an applicability determination.

(c) A person requesting an applicability determination shall submit to the Department, at the address set forth at N.J.A.C. 7:13-1.3, the following:

1. A completed application form as described at N.J.A.C. 7:13-22.3(c)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
2. A copy of a USGS quad map with the segment of water in question indicated and/or the site in question clearly outlined to scale; and
3. A copy of any available Department delineation and FEMA flood mapping, with the segment of water in question indicated and/or the site in question clearly outlined to scale.

(d) In addition to the information listed at (c) above, a request for an applicability determination to determine if a water is regulated shall include a copy of the best available topographic mapping for the drainage area of the water in question, with the limits of the drainage area depicted.

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(e) In addition to the information listed at (c) above, a request for an applicability determination to determine if one or more proposed activities is regulated shall include the following:

1. A written description of the site and the proposed activities, including the location, dimension, number, and uses of any proposed structures;
2. Color photographs of the location of the proposed activities; and
3. Site plans, signed and sealed by an engineer, land surveyor, or architect, detailing the proposed activities. If fill or grading is proposed, the site plans shall depict both existing and proposed topography unless the Department determines that topography is not necessary to determine applicability. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the person requesting the applicability determination demonstrates that such reference is not necessary.

(f) After reviewing a request for an applicability determination, the Department shall:

1. Notify the person requesting the applicability determination that the request did not include all applicable material required at (c), (d), and/or (e) above and request the missing material. Upon receipt of the requested material, the Department shall take one of the actions set forth at (f)2 below. The Department may cancel the request for an applicability determination if the missing material is not provided within 60 calendar days of the date of the Department's request; or
2. Issue an applicability determination in writing, stating that, as of the date of issuance:
  - i. The Department has determined that this chapter does not apply to the water in question and/or the proposed activities and no flood hazard area permit is required;
  - ii. The Department has determined that this chapter applies to the water in question and/or proposed activities, and the recipient of the applicability determination is advised to submit an application for a permit unless the proposed activities meet the requirements of a permit-by-rule; or
  - iii. The Department is not able to determine whether this chapter applies to the water in question and/or the proposed activities without reviewing calculations or inspecting the site, and the recipient of the applicability determination is advised to submit an application for a verification.

(g) The applicability determination issued under (f)2 above shall be based on the rules in effect and the information provided in the application regarding the site conditions and the proposed activities as of the date of issuance. The recipient of the applicability determination is on notice that subsequent amendments to this chapter, changes in site conditions, changes to the limits of the flood hazard area, floodway, or riparian zone, and/or changes to proposed activities may result in the water in question or proposed activities becoming regulated. The recipient remains solely responsible for determining whether any such changes have occurred and remains liable for any violation of this chapter resulting from activities conducted in reliance on the applicability determination where such changes have occurred and the determination is no longer accurate.

### **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) 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 mapping, 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)1i or ii below,

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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 flood 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 either of the following, as appropriate:
- i. Method 4, as set forth at N.J.A.C. 7:13-3.4(f), provided the flow rate used to determine the flood hazard area design flood elevation and floodway limit is no less than the flow rate used to determine the flood hazard area design flood elevation and floodway limit under the Department delineation described in (c)1 above, in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3; or
  - ii. Method 6, as set forth at N.J.A.C. 7:13-3.6.
- (d) Where no Department delineation exists for a regulated water, an applicant may:
1. Determine the flood hazard area and/or floodway using FEMA flood 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 flood 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. Where a Department delineation or FEMA flood mapping 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. Where Method 3 is used to delineate the flood hazard area but FEMA flood mapping does not provide a floodway limit for the section of regulated water in question, and determining the floodway limit is necessary to demonstrate compliance with the requirements of this chapter, the applicant shall use Method 4 to calculate the floodway limit.

### **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



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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 FEMA flood mapping 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. 7:13-3.7.

(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 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.

**7:13-3.4 Flood hazard area and floodway based on FEMA flood mapping (Methods 2 through 4)**

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from FEMA flood mapping.

(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 FEMA flood mapping exists for the section of regulated water in question, which includes the information needed for the Method that is being used. For example, Methods 2 and 3 below require that the FEMA flood mapping includes the

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regulated water's 100-year flood elevation, and Method 4 below requires that the FEMA flood mapping includes the regulated water's 100-year flow rate.

(c) There are three methods by which FEMA flood mapping 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 flood profile exists for the section of regulated water in question. If FEMA flood mapping 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 flood profile exists for the section of regulated water in question. If FEMA flood mapping 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. FEMA flood mapping 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. 7:13-12.1(f), 12.1(g), and 12.7.

(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. Where FEMA flood mapping provides a floodway limit for the section of regulated water in question, the floodway limit shall be equal to the floodway limit depicted by FEMA; or
  - ii. Where FEMA flood mapping does not provide a floodway limit for the section of regulated water in question, the floodway limit shall be equal to the top of bank along the regulated water or 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. Where FEMA flood mapping provides a floodway limit for the section of regulated

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water in question, the floodway limit shall be equal to the floodway limit depicted by FEMA; or

- ii. Where FEMA flood mapping does not provide a floodway limit 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. For a regulated water in a fluvial flood hazard area:
  - i. A hydraulic analysis, such as a standard step backwater 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 flood mapping for the regulated water (see (c)3i above); and
  - ii. A hydraulic analysis, such as a standard step backwater analysis, shall be performed to determine the floodway limit using the 100-year flow rate reported by FEMA flood mapping for the regulated water, assuming a maximum rise of 0.2 feet in the 100-year flood elevation as follows:
    - (1) 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; and
    - (2) In cases where floodway calculations indicate a decrease in water surface elevations, the entire flood hazard area in the area of the calculated decrease shall be considered to be a floodway;
2. For a regulated water in a tidal flood hazard area:
  - i. A hydraulic analysis, such as a standard step backwater analysis, shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate reported by FEMA flood mapping for the regulated water (see (c)3i above); and
  - ii. The floodway limits along a linear tidal water shall be calculated in accordance with (f)1ii above. Non-linear tidal waters do not possess a floodway, pursuant to N.J.A.C. 7:13-2.3(b)1;
3. In cases where both fluvial and tidal flooding occurs, such as along a linear regulated water which is inundated by tidal backwater during the 100-year flood but is fluvial for more frequent flood events, compliance with the offsite impact limitations of N.J.A.C. 7:13-12.1(f), 12.1(g), and/or 12.7 may necessitate undertaking a fluvial analysis under (f)1 above in addition to relying upon and/or recalculating tidal flood elevations under (f)2 above; and

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4. Demonstrating compliance with the flood storage displacement limitations of N.J.A.C. 7:13-11.4 and/or the offsite impact limitations at N.J.A.C. 7:13-12.1(f), 12.1(g), and/or 12.7 may require the computation of additional peak flow rates for more frequent flood events. In such a case, the same methodologies detailed in this subsection shall be used, as appropriate for the site conditions, to determine the flow rates and water surface elevations for the desired flood events.

#### **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 authorization under a general permit or an individual permit for a regulated activity within an approximated flood hazard area only if the project meets the requirements at (f) below.

(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 mapping 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 mapping.

(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.

(f) The Department shall issue an authorization under a general permit or an individual permit for a regulated activity in a flood hazard area approximated under Method 5 only if the flood hazard area is verified under N.J.A.C. 7:13-5 and the Department determines, based on a visual inspection of submitted site plans and without a review of calculations, that one of the following

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requirements is satisfied:

1. No fill or aboveground structure is proposed within a flood hazard area; or
2. Both of the following are true:
  - i. Any proposed fill and/or aboveground structure is located outside a floodway; and
  - ii. The flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied.

**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 mapping 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. 7:13-5.4 are not satisfied.

(c) Under Method 6:

1. For a regulated water in a fluvial flood hazard area:
  - i. Except as provided in (c)1ii below, the flood hazard area design flood elevation shall be 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 land use coverage in the drainage area, as of the date of the verification application to the Department; and
    - (2) A hydraulic analysis, such as a standard step backwater 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)1i(1) above;
  - ii. The use of calculations not described in (c)1i above to determine the flood hazard

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area design flood elevation is conditionally acceptable provided:

- (1) The Department determines that the use of the proposed calculations will more accurately model the hydrologic and hydraulic conditions on the site being analyzed; and
  - (2) The flood hazard area design flood elevation is determined using a flood that is no less than 125 percent of the peak flow and volume of a 100-year flood; and
- iii. A hydraulic analysis, such as a standard step backwater analysis, shall be performed to determine the floodway limit using the 100-year flow rate determined under (c)1i(1) above, assuming a maximum rise of 0.2 feet in the 100-year flood elevation as follows:
- (1) 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; and
  - (2) In cases where floodway calculations indicate a decrease in water surface elevations, the entire flood hazard area in the area of the calculated decrease shall be considered to be a floodway;
2. For a regulated water in a tidal flood hazard area:
- i. A flood hazard area analysis shall be developed, which is based on the data and methodologies utilized by FEMA to determine its most recent 100-year flood elevation, but which includes new topographic or other relevant data for the region and/or site being analyzed, in order to determine the flood hazard area design flood elevation; and
  - ii. The floodway limits along a linear tidal water shall be determined as set forth in (c)1iii above. Non-linear tidal waters do not possess a floodway, pursuant to N.J.A.C. 7:13-2.3(b)1;
3. In cases where both fluvial and tidal flooding occurs, such as along a linear regulated water which is inundated by tidal backwater during the 100-year flood but is fluvial for more frequent flood events, compliance with the offsite impact limitations of N.J.A.C. 7:13-12.1(f), 12.1(g), and/or 12.7 may necessitate undertaking a fluvial analysis under (c)1 above in addition to relying upon and/or recalculating FEMA tidal flood elevations under (c)2 above; and
4. Demonstrating compliance with the flood storage displacement limitations of N.J.A.C. 7:13-11.4 and/or the offsite impact limitations at N.J.A.C. 7:13-12.1(f), 12.1(g), and/or 12.7 may require the computation of additional peak flow rates for more frequent flood events. In such a case, the same methodologies detailed in this subsection shall be used, as appropriate for the site conditions, to determine the flow rates and water surface elevations for the desired flood events.

**7:13-3.7 Revision of a Department delineation by application**

(a) This section applies to the revision of a flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or other related feature on a flood hazard area delineation that has been promulgated by the Department, in response to an application made to the Department by any person. Appendix 2 of this chapter lists the Department delineated waters of New Jersey.

(b) There are two types of delineation revisions, as follows:

1. A minor revision of a delineation is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature, which does not require the Department to review detailed engineering calculations in order to determine that the revision is accurate. Examples of a minor revision include the following, provided no review of calculations is required:
  - i. Correcting a drafting error;
  - ii. Improving topographical data;
  - iii. Deletion or addition of structures that were previously unmapped or mapped in error (unless said structure would alter the original hydraulic modeling); and
  - iv. Adding notes, labels or other clarifying information required by the Department or another governing body; and
2. A major revision of a delineation is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature, which requires the Department to review detailed engineering calculations in order to determine that the revision is accurate. Examples of a major revision include:
  - i. Correcting the floodway limit;
  - ii. Improving the hydrologic modeling upon which the delineation is based, resulting in a new peak flow rate; and
  - iii. Improving the hydraulic modeling upon which the delineation is based, such as adding cross-sections, revising, improving or correcting topography, or altering data for a water control structure, resulting in a new water surface profile.

(c) The Department shall issue a revision of a delineation only for a section of water already promulgated by the Department. The Department shall not add or remove a section of delineated water from Appendix 2 under this section.

(d) An application for a minor revision of a Department delineation shall include the following:

1. The application fee required under N.J.A.C. 7:13-20;
2. A completed application form as described at N.J.A.C. 7:13-22.3(c)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
3. One copy of the Department delineation that is the subject of the revision application;
4. A detailed written description of the proposed revisions to the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature; and

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5. Three copies of revised site plans, signed and sealed by an engineer or land surveyor, as appropriate, depicting the existing and the revised flood hazard area design flood elevations, flood hazard area limits, floodway limits, and/or other related features. These site plans shall be of the same scale as the Department delineation that is the subject of the revision, unless otherwise requested by the Department.
- (e) After reviewing an application for a minor delineation revision, the Department shall:
1. Notify the applicant that the application did not include all the material required at (d) 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 (e)2 or 3 below;
  2. Notify the applicant in writing that the application does not meet the requirements of this chapter, deny the application, and provide the technical reasons for this decision; or
  3. Determine that the revision is accurate and necessary, in which case the Department shall revise the delineation as necessary and provide the applicant and the affected municipalities with a copy of the revised flood hazard area and/or floodway maps.
- (f) Workload permitting, the Department shall make a final decision on an application for a minor delineation revision within 60 calendar days of receiving a complete application.
- (g) An application for a major revision of a Department delineation shall include the following:
1. All material listed in (d) above;
  2. All supporting hydrologic and hydraulic calculations, which are necessary to demonstrate that the proposed revision meets the requirements of this chapter;
  3. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used; and
  4. All maps, references and other supporting materials that were used to prepare the submitted calculations.
- (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:



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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. 7:13-3.8).
- (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.

### **7:13-3.8 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. 7:13-3.7, 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:

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- i. For a minor delineation revision as described at N.J.A.C. 7:13-3.7(b)1, the Department shall revise the delineation as necessary; or
    - ii. For a major delineation revision as described at N.J.A.C. 7:13-3.7(b)2, the Department shall follow the procedure described at N.J.A.C. 7:13-3.7(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. 7:13-22.7 and 22.8.
- (d) The Department shall issue a revision of a delineation only for a section of water already

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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 4. DETERMINING THE RIPARIAN ZONE**

##### **7:13-4.1 The riparian zone**

(a) A riparian zone is the land and vegetation within and adjacent to a regulated water. Riparian zones exist along both sides of every regulated water and include the regulated water itself, except as provided at N.J.A.C. 7:13-2.3(c)1. The extent of a riparian zone is determined in accordance with (b) through (h) below.

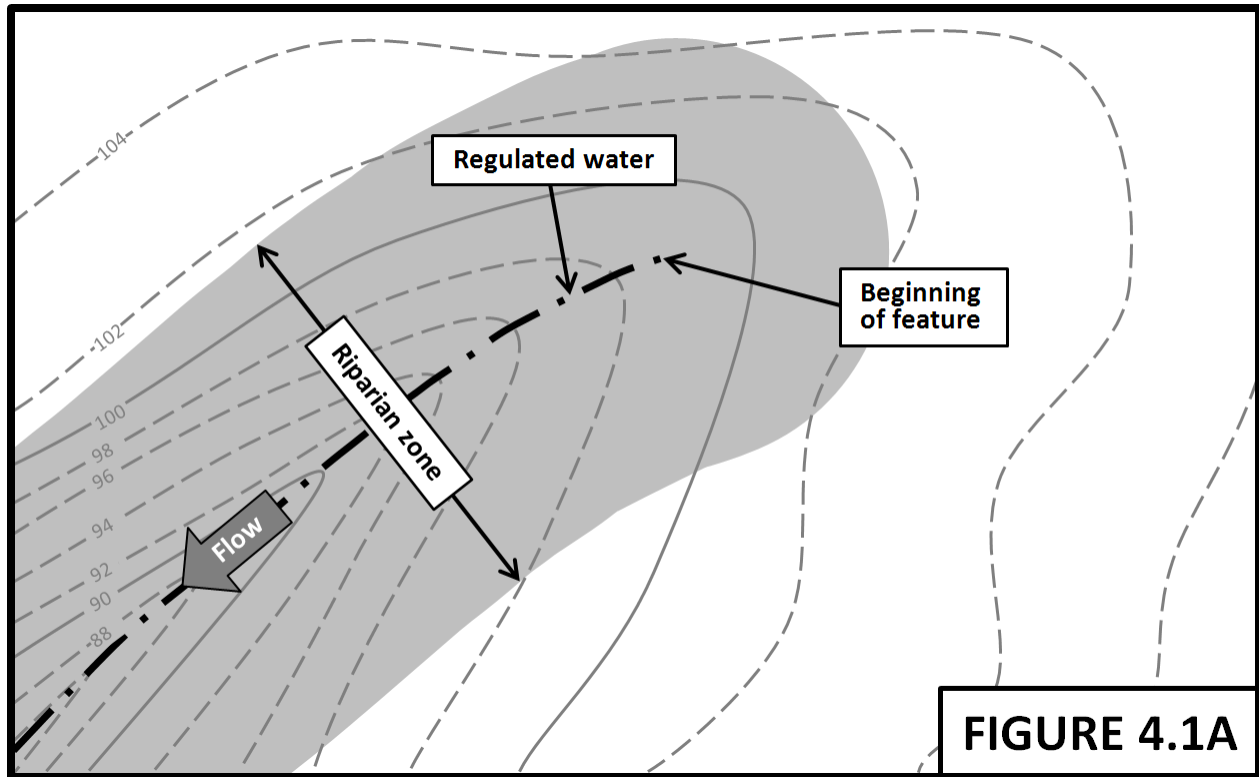
(b) The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank.

(c) The width of the riparian zone is as follows:

1. The width of the riparian zone along any regulated water designated as a Category One water, and all upstream tributaries situated within the same HUC-14 watershed, is 300 feet;
2. Except for the regulated waters listed at (c)1 above, the width of the riparian zone along the following regulated waters is 150 feet:
  - i. Any trout production water and all upstream waters (including tributaries);
  - ii. Any trout maintenance water and all upstream waters (including tributaries) located within one mile of a trout maintenance water (measured along the length of the regulated water); and
  - iii. Any segment of a water flowing through an area that contains a threatened or endangered species, and/or present or documented habitat for those species, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water). A list of critically dependent species is available from the Department at the website set forth at N.J.A.C. 7:13-1.3; and
3. For all other regulated waters not identified in (c)1 or 2 above, the width of the riparian zone is 50 feet.

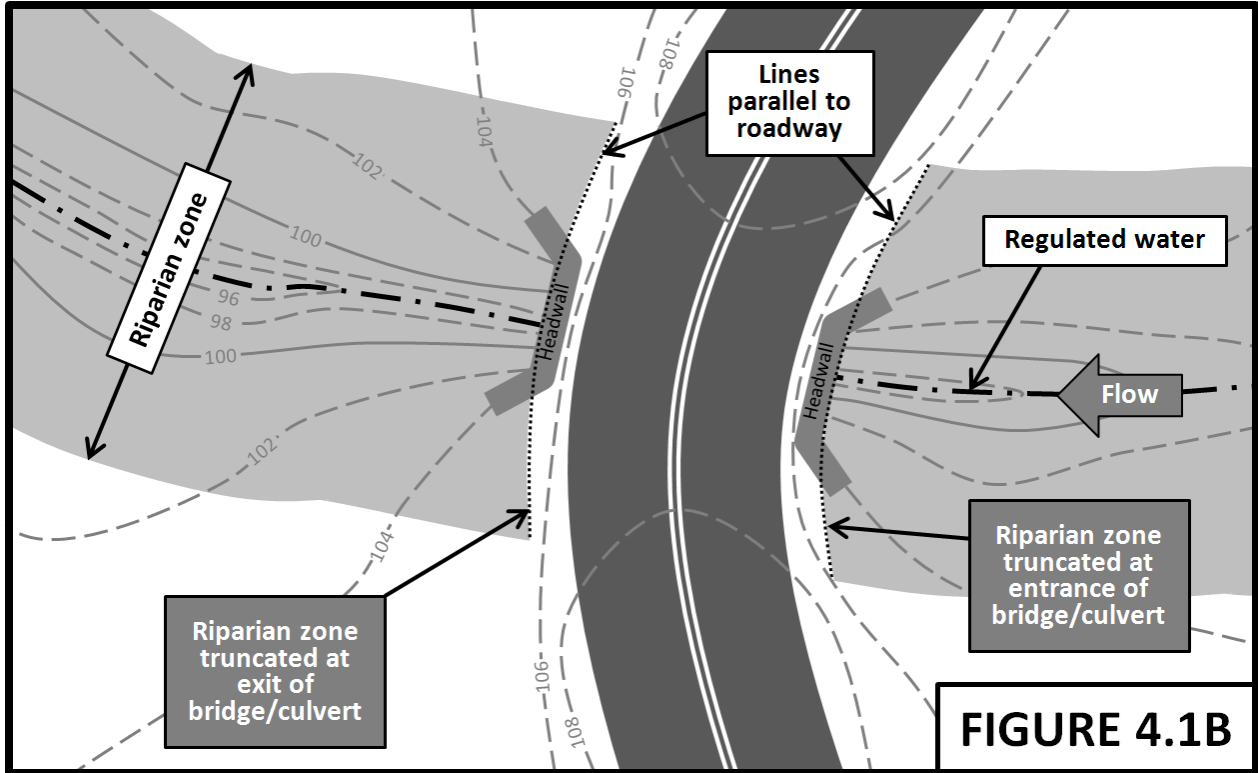
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(d) Where a regulated water naturally forms, begins, or ends within a site, the riparian zone arcs around the end of the feature. (See Figure 4.1A below)



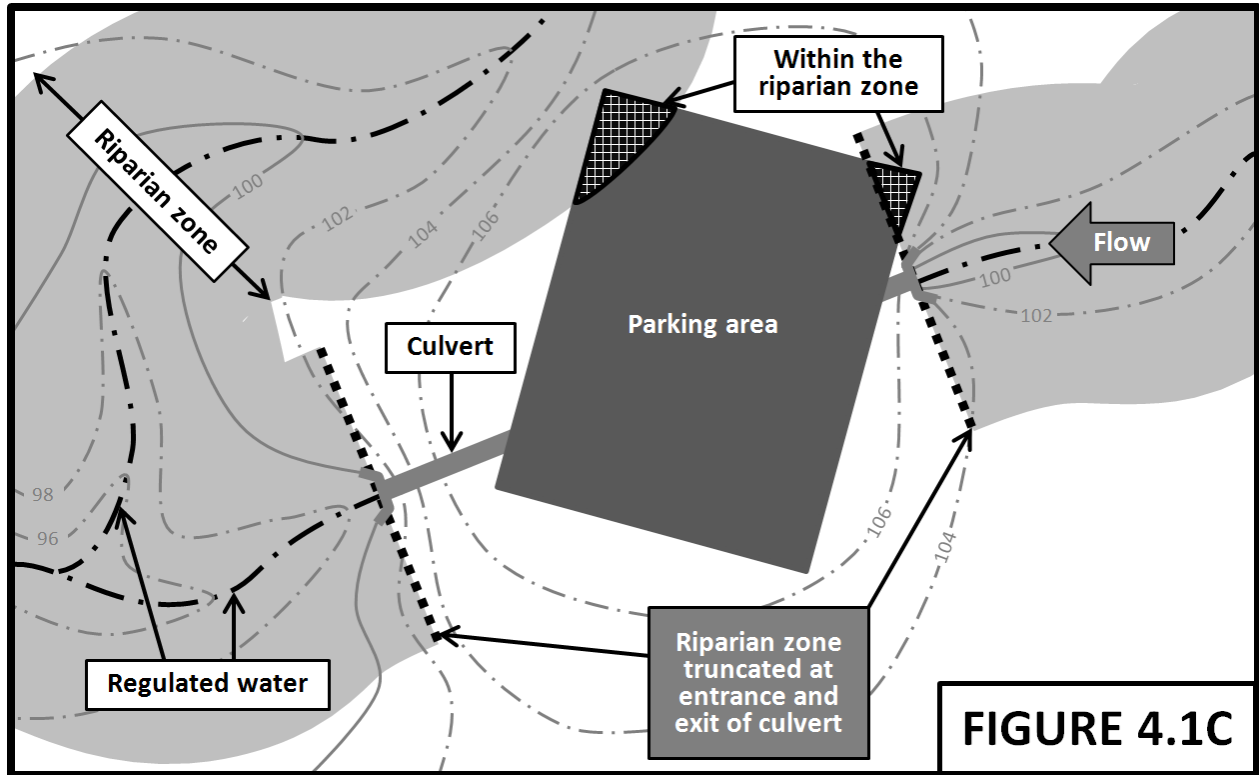
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(e) Where a roadway or railroad crosses over a lawfully existing pipe, culvert, or bridge, the riparian zone is truncated at the entrance and exit of the structure. The lines of truncation run parallel to the direction of traffic, and curve with the roadway, such that the roadway is not located within a riparian zone. (See Figure 4.1B below)



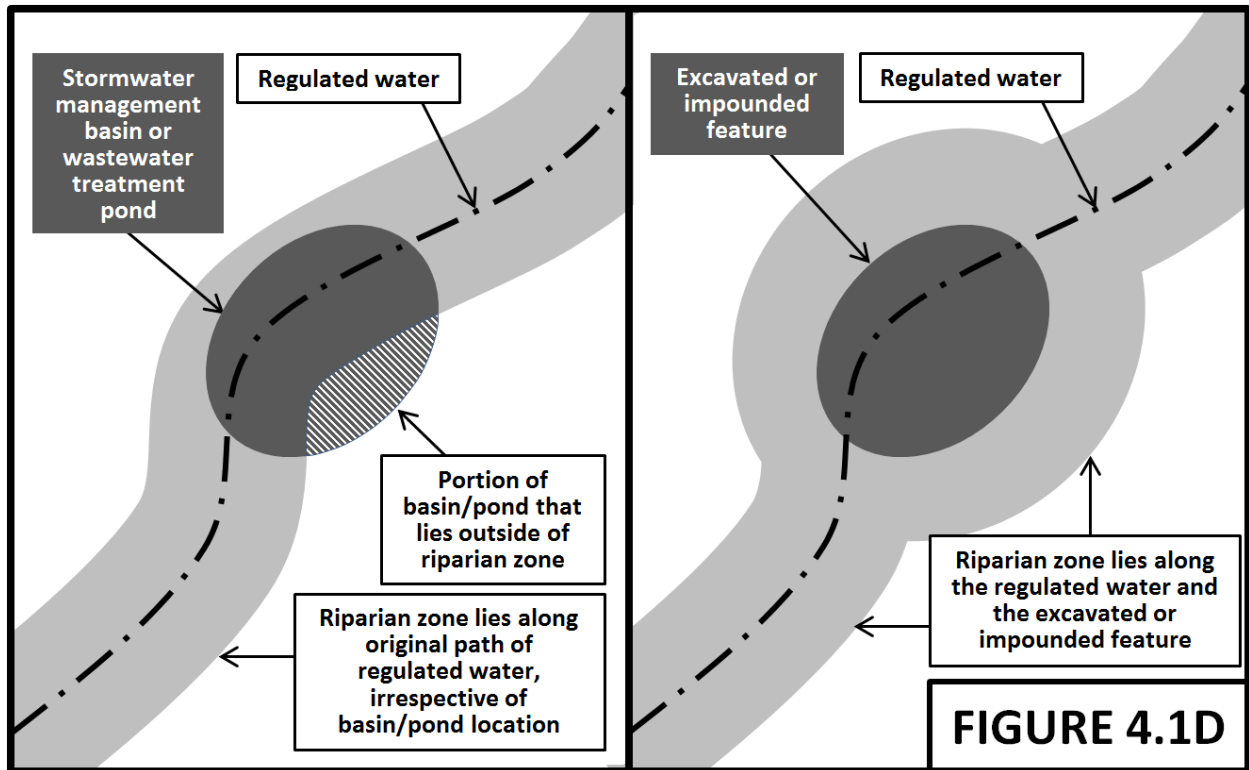
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(f) Where a regulated water enters or exits a lawfully existing pipe, culvert, or bridge, which is not part of a roadway or railroad as described in (e) above, the riparian zone is truncated at the entrance and exit of the structure, at a straight line that runs perpendicular to the predominant direction of flow in the regulated water. (See Figure 4.1C below)



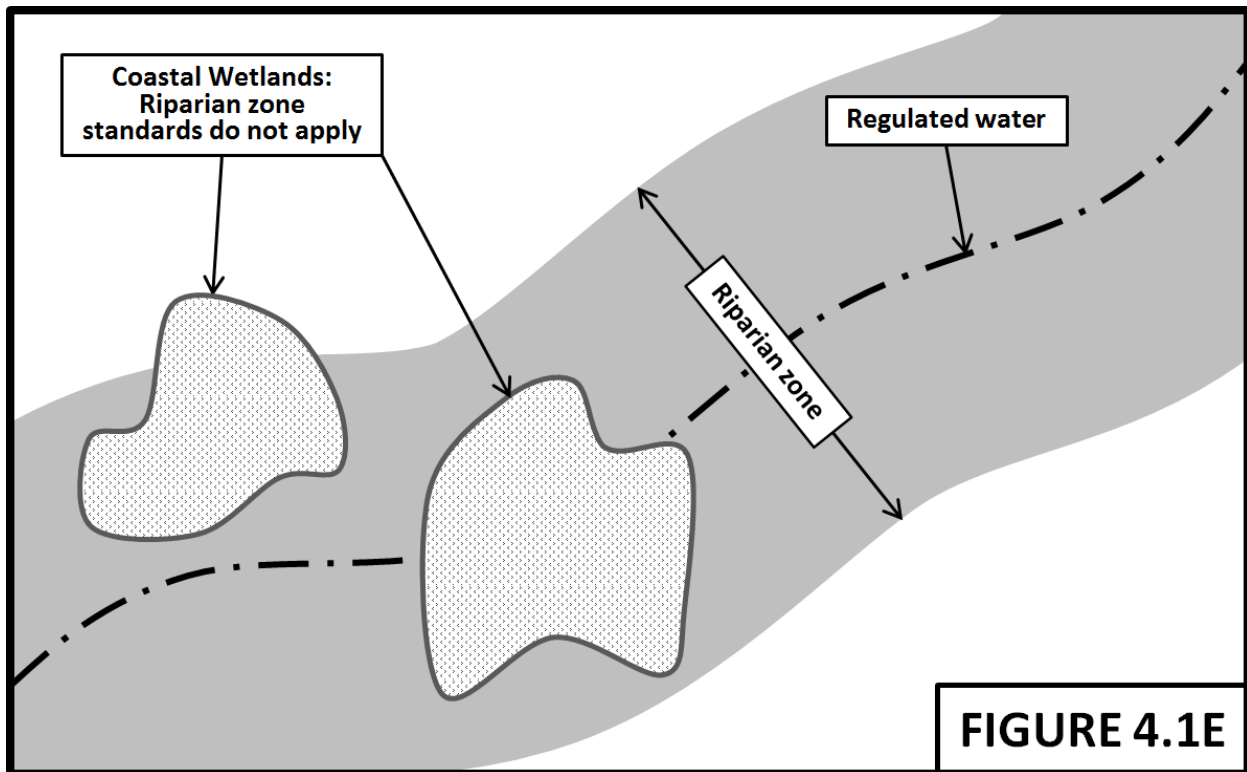
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(g) Where a lawfully existing excavated area or impoundment filled with water lies along a regulated water, the riparian zone shall be measured outward from the top of bank of the excavated or impounded feature, with the exception of stormwater management basins and wastewater treatment ponds, since such features do not possess a riparian zone pursuant to N.J.A.C. 7:13-2.3(c)1. (See Figure 4.1D below)



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(h) Where a coastal wetland regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., lies within a riparian zone, the riparian zone standards of this chapter do not apply within the wetland. (See Figure 4.1E below)



(i) 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 Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38 establish 300-foot buffers 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 of any other Federal, State, or local statute, regulation, or ordinance.

#### 7:13-4.2 Determining if a riparian zone is forested or unforested

(a) This section specifies the process for determining if an area is classified as forested or unforested. Once an area is determined to be forested in accordance with (b) or (c) below, the limit of the forested area is determined pursuant to (d) below.

(b) To determine if a riparian zone or portion of a riparian zone is forested:

1. The limit of the forest shall be identified using aerial photographs obtained from the Department at <https://www.nj.gov/dep/gis>; and
2. If the aerial photograph contains areas of sporadic coverage that have not been



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identified as forest by the applicant, the applicant shall overlay a one-half acre grid system provided by the Department on its website at <https://www.nj.gov/dep/landuse/guidance.html>. For any grid block containing 33 percent or greater forest cover, the limit of the forested area shall be determined pursuant to (d) below, unless the applicant demonstrates in accordance with (c) below that the size and density of the trees in the area are not sufficient for the area to be considered forest.

(c) If the Department identifies forest areas within a riparian zone that have not been so identified by the applicant, or the applicant disputes the identification of an area as forested area in accordance with (b)2 above, the applicant shall measure the trees and determine the density of the trees on the lot using the following method:

1. Select two 25-foot by 25-foot plots in each acre of the site as follows:
  - i. The plots shall be located in the portion of each acre with the highest density of trees, based on a visual inspection;
  - ii. If the tree size and density are uniform over some or all of the site, one 25-foot by 25-foot plot may be selected within the area of uniformity. Where only one plot is measured, the point total from the one plot shall be doubled to determine the total point value for the sampled acre under (b)5 below;
2. In each plot, measure the diameter of each tree at four and one-half feet above ground;
3. Score each tree as follows:

<u>Diameter of Tree</u>	<u>Points</u>
One to three inches	2
>Three to seven inches	4
>Seven to 12 inches	6
>12 inches	8

4. Add together the scores for all of the trees in each of the plots;
5. If the total score for both plots is equal to or greater than 16, the sampled acre is considered to be forested, with the limit of the forested area to be determined pursuant to (d) below. For example, if the two 25-foot by 25-foot plots contain a total of three trees which are two inches in diameter, two trees which are six inches in diameter, and one tree which is 15 inches in diameter, the score for the sampled acre would be:  $(3 \times 2) + (2 \times 4) + (1 \times 8) = 22$ , and the sampled acre is considered forested;
6. If a sampled acre is forested, an area totaling one-half acre (21,780 square feet) surrounding the sampled acre shall also be considered to be forested with the limit of the forested area to be determined pursuant to (d) below, except for the surrounding areas that are sampled by the applicant and score under 16 utilizing the analysis specified in (c)1 through 5 above. In that case, a sufficient number of plots shall be sampled to delineate the forested portion of the surrounding area; and

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7. If a plot is unforested, an area totaling one-half acre (21,780 square feet) surrounding the plot shall also be considered unforested, unless a site visit, photographs, or other information indicates that it contains forested areas.

(d) The limit of the forested area shall be the outermost edge of the canopy of the forest within the areas identified in (b) and (c) above, including the portion of the canopy of the forest that extends outside of the area analyzed pursuant to (b)2 or (c) above.

## **SUBCHAPTER 5. VERIFICATIONS**

### **7:13-5.1 Purpose and scope**

This subchapter sets forth the general provisions relating to a verification; the duration of a verification; the reissuance of a verification; when a verification is required for issuance of an authorization under a general permit or an individual permit; and the conditions that apply to a verification.

### **7:13-5.2 General provisions**

(a) A verification provides the Department's official determination of one or more of the following and can be issued for either an entire site or portion of a site:

1. The flood hazard area design flood elevation;
2. The flood hazard area limits, or a determination that the entire verified area lies within a flood hazard area;
3. The floodway limits, or a determination that the entire verified area lies within a floodway; and/or
4. The riparian zone limits, or a determination that the entire verified area lies within a riparian zone.

(b) A verification is required prior to, or concurrent with, an authorization under a general permit or an individual permit as set forth at N.J.A.C. 7:13-5.5.

(c) The flood hazard area design flood elevation, flood hazard area, and floodway limits on a site shall be determined in accordance with N.J.A.C. 7:13-3. The riparian zone limits on a site shall be determined in accordance with N.J.A.C. 7:13-4.

### **7:13-5.3 Duration of a verification**

(a) Except as provided at (b) below, a verification is valid for five years from the date of issuance.

(b) A verification is valid for 10 years from the date of issuance where the verification is issued concurrently with an individual permit that is valid for 10 years, pursuant to N.J.A.C. 7:13-10.2(b).

(c) A verification can be automatically reissued one time with the issuance of a permit for a

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regulated activity that relies on the verification, pursuant to N.J.A.C. 7:13-5.4.

(d) A verification can be extended one time for five years pursuant to N.J.A.C. 7:13-22.3(c), provided that it was not previously reissued under N.J.A.C. 7:13-5.4 or issued concurrently with a 10-year individual permit as described in (b) above.

(e) A person who is issued a verification pursuant to this subchapter shall be entitled to rely on the determination of the Department, concerning the presence, absence, or extent of flood hazard areas, riparian zones, or floodways for the term specified at (a) through (d) above, unless the Department determines that the verification is based on inaccurate or incomplete information, in which case the Department may void the original verification and issue a new verification reflecting the actual conditions on the site. For example, the verification may be revised to reflect additional flood hazard areas or riparian zones identified after verification issuance; or if a threatened or endangered species habitat is disclosed or discovered after the verification was issued, the Department may correct the width of the riparian zone.

**7:13-5.4 Reissuance of a verification**

(a) If the Department issues a verification that is valid for five years and subsequently approves an authorization under a general permit or an individual permit for a regulated activity that references or relies upon the verification, the Department shall automatically reissue the verification upon approval of the authorization or permit to align the expiration date of the verification with the expiration date of the authorization or permit, provided:

1. The Department has not previously extended or reissued the verification;
2. The reissued verification reflects any alterations to the flood hazard area design flood elevation, flood hazard area limit, and/or floodway limit that will result from the authorization or permit; and
3. All pre- and post-construction flood hazard area elevations, floodway limits, and riparian zone limits, as applicable, are delineated on site plans approved under the reissued verification.

(b) A verification that is reissued pursuant to (a) above shall not be extended.

**7:13-5.5 When a verification is required for issuance of an authorization under a general permit or an individual permit**

(a) Except as provided at (b) and (c) below, the flood hazard area design flood elevation, and floodway limit, where present, must be known and verified within the project area pursuant to N.J.A.C. 7:13-5.2 in order for the Department to determine compliance with the requirements of this chapter and issue an authorization under a general permit or an individual permit. An applicant for an authorization under a general permit or an individual permit shall therefore demonstrate that:

1. The applicant possesses a valid verification of the flood hazard area design flood elevation, and also the floodway limit, if present, for the project area;
2. The applicant has applied for a verification of the flood hazard area design flood

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elevation, and also the floodway limit, where present, for the project area, and the Department subsequently approves the verification either prior to or concurrent with the issuance of the authorization under a general permit or individual permit;

3. The project meets the conditions of (b)1, 2, or 3 below, in which case no verification is required in order to obtain an authorization under a general permit or an individual permit; or
4. The project meets the conditions of (c) below, in which case a verification of only the flood hazard area design flood elevation is required either prior to or concurrent with the issuance of an authorization under a general permit or an individual permit.

(b) Obtaining a verification is not required prior to the issuance of an authorization under a general permit or an individual permit, provided the Department determines, based on a visual inspection of submitted site plans and without a review of calculations, that one or more of the following requirements is satisfied:

1. No fill or aboveground structure is proposed within a flood hazard area;
2. The project consists solely of the construction, replacement, enlargement, repair, or removal of a bridge or culvert along a railroad or public roadway; or
3. All of the following are true:
  - i. No habitable building, railroad, roadway, or parking area is proposed, which requires knowledge of the flood hazard area design flood elevation to determine compliance with this chapter;
  - ii. Any proposed fill and/or aboveground structure is located outside a floodway; and
  - iii. The flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied.

(c) Obtaining a verification of only the flood hazard area design flood elevation and not the floodway limit is required prior to the issuance of an authorization under a general permit or an individual permit, provided the Department determines, based on a visual inspection of submitted site plans and without a review of calculations, that the following requirements are satisfied:

1. No fill or aboveground structure is proposed within a floodway; and
2. Compliance with the flood storage displacement requirements of N.J.A.C. 7:13-11.4 does not require knowledge of the location of the floodway.

#### **7:13-5.6 Conditions that apply to an issued or reissued verification**

(a) Within 90 calendar days after the Department issues or reissues a verification on a privately owned lot, or on a publicly owned lot other than a right-of-way, the recipient of the verification shall submit the following information to the Office of the County Clerk or the registrar of deeds and mortgages in which the site is located, and shall send proof to the Department in accordance with (b) below, that this information is recorded on the deed of each lot referenced in the verification:

1. The Department file number for the verification;

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2. The approval and expiration dates of the verification;
3. A metes and bounds description of any flood hazard area limit and/or floodway limit approved under the verification;
4. The flood hazard area design flood elevation, or range of elevations if variable, approved under the verification;
5. The width and location of the any riparian zone approved under the verification; and
6. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a flood hazard area and/or riparian zone. Certain activities in flood hazard areas and riparian zones are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a flood hazard area permit. Contact the Division of Land Use Regulation at (609) 292-0060 or <https://www.nj.gov/dep/landuse> for more information prior to any construction onsite."

(b) Proof that the information at (a) above has been recorded on the deed of each lot referenced in the verification shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the Department within 180 calendar days of the issuance or reissuance of the verification.

## **SUBCHAPTER 6. GENERAL PROVISIONS FOR PERMITS-BY-RULE, GENERAL PERMITS-BY-CERTIFICATION, AND GENERAL PERMITS**

### **7:13-6.1 Purpose and scope**

This subchapter sets forth the standards for the Department to issue, by rulemaking, permits-by-rule, general permits-by-certification, and general permits; the use of these permits to conduct authorized activities; the standards governing the use of more than one of these permits on a single site; the duration of authorizations under these permits; and the conditions that apply to these permits.

### **7:13-6.2 Standards for issuance, by rulemaking, of permits-by-rule, general permits-by-certification, and general permits**

(a) The Department will, in accordance with the rulemaking provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., promulgate each permit-by-rule, general permit-by-certification, or general permit after publication of a notice of rule proposal in the New Jersey Register and consideration of public comment.

(b) The Department will promulgate a permit-by-rule, general permit-by-certification, or general permit only if:

1. The Department determines that the regulated activity will cause only minimal adverse impacts on flooding and the environment when performed separately, and will have

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only minimal cumulative adverse impacts on flooding and the environment; and

2. The Department has provided public notice and an opportunity for public comment with respect to the proposed permit-by-rule, general permit-by-certification, or general permit. After a general permit-by-certification or general permit has been promulgated pursuant to this subchapter, the Department will not hold public hearings on individual applications for authorization under a general permit-by-certification or general permit.

(c) Each permit-by-rule, general permit-by-certification, or general permit shall contain a specific description of the type(s) of regulated activity(s) which are authorized, including limitations for any single operation, to ensure that the conditions of (b)1 above are satisfied. At a minimum, these limitations shall include:

1. The size and type of regulated activity that may be undertaken; and
2. A precise description of the geographic area to which the permit-by-rule, general permit-by-certification, or general permit applies.

(d) The Department will include in each permit-by-rule, general permit-by-certification, or general permit promulgated pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the permit-by-rule, general permit-by-certification, or general permit.

(e) The Department may, by undertaking rulemaking in accordance with (a) above, repeal a permit-by-rule, general permit-by-certification, or general permit, and thereafter require individual permits for development previously covered by the permit-by-rule, general permit-by-certification, or general permit, if it finds that the permit-by-rule, general permit-by-certification, or general permit no longer meets the conditions of (b)1 above.

### **7:13-6.3 Use of a permit-by-rule, or an authorization pursuant to a general permit-by-certification or a general permit to conduct regulated activities**

(a) An activity that meets the requirements of a permit-by-rule may be conducted without prior Department approval.

(b) An activity that meets the requirements of a general permit-by-certification may be conducted when the person proposing to conduct the activity receives the automatic authorization resulting from completion of the application submission through the Department's electronic system in accordance with N.J.A.C. 7:13-18.3.

(c) An activity that meets the requirements of a general permit may be conducted when the person proposing to conduct the activity receives authorization from the Department in accordance with N.J.A.C. 7:13-21.

(d) A permit-by-rule or an authorization under a general permit-by-certification or general permit does not relieve the person conducting the authorized regulated activities from the obligation to obtain any other applicable permits or approvals required by law.

**7:13-6.4 Use of more than one permit on a single site**

(a) A person may undertake a regulated activity more than once on a single site. The activity may be authorized each time under a single permit-by-rule, general permit-by-certification, or general permit, provided the individual limits and conditions of the permit are not exceeded, either individually or cumulatively. For example, if a particular activity may be conducted under a permit-by-rule with a disturbance limit of 750 square feet and the same activity may be authorized under a general permit with a disturbance limit of 1,500 square feet, a person who has disturbed 750 square feet of riparian zone vegetation under a permit-by-rule may apply for a general permit to increase the area of disturbance but would only be allowed a maximum of an additional 750 square feet so as not to exceed the 1,500 square feet total disturbance limitation applicable to the general permit.

(b) A person may undertake more than one regulated activity on a single site. The activities may be authorized under one or more permit-by-rule, general permit-by-certification, and/or general permit, provided the individual limits and conditions of each permit are not exceeded.

(c) Once the limits and conditions of a permit-by-rule, general permit-by-certification, and/or general permit have been reached on a single site:

1. No further activities under that permit can be authorized on that site, regardless of how much time passes, or whether the site is subsequently subdivided or transferred to a new owner; and
2. A person seeking to undertake the regulated activity on that site must obtain an individual permit under this chapter authorizing the regulated activity.

(d) On a single site, one or more permits-by-rule, general permits-by-certification, and/or general permits may be used in combination with an individual permit, provided the individual limits and conditions of each permit are not exceeded, either individually or cumulatively.

**7:13-6.5 Duration of an authorization under a general permit-by-certification**

(a) An authorization under a general permit-by-certification is valid for five years from the date of issuance of the authorization.

(b) The five-year term of an authorization under a general permit-by-certification shall not be extended.

(c) All regulated activities being conducted pursuant to an authorization under a general permit-by-certification shall immediately cease if the authorization expires.

(d) If an authorization under a general permit-by-certification expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.

**7:13-6.6 Duration of an authorization under a general permit**

(a) Except as provided in (b) below, an authorization under a general permit is valid for five years from the date of issuance of the authorization.

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- (b) The five-year term of an authorization under a general permit may be extended one time for five years pursuant to N.J.A.C. 7:13-22.3.
- (c) All regulated activities being conducted pursuant to an authorization under a general permit shall immediately cease if the authorization expires, including any extension thereof under N.J.A.C. 7:13-22.3.
- (d) If an authorization under a general permit expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.
  - 1. If no regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review.
  - 2. If any regulated activities have occurred prior to the expiration of the authorization, the Department shall issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new authorization is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on flooding or the environment.

**7:13-6.7 Conditions applicable to a permit-by-rule or to an authorization pursuant to a general permit-by-certification or a general permit**

- (a) A person conducting regulated activities pursuant to a permit-by-rule, or pursuant to an authorization under a general permit-by-certification or general permit shall comply with:
  - 1. The specific conditions set forth in the permit-by-rule, general permit-by-certification, or general permit itself, including the conditions incorporated by reference into each of those permits set forth at (b) below; and
  - 2. The conditions that apply to all permits at N.J.A.C. 7:13-22.2.
- (b) The following conditions are incorporated by reference in each permit-by-rule, general permit-by-certification, or general permit:
  - 1. Any new, reconstructed, enlarged, or elevated structure within a flood hazard area shall be secured to resist flotation, collapse, and displacement due to hydrostatic and hydrodynamic forces from floodwaters;
  - 2. The regulated activity shall not adversely affect low-flow aquatic passage in any regulated water;
  - 3. The regulated activity shall not expose unset or raw cement to flowing water within any channel or regulated water during construction;



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4. The regulated activity shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species, and shall not jeopardize the continued existence of any local population of a threatened or endangered species;
  5. Except for normal property maintenance conducted in accordance with permit-by-rule 1 at N.J.A.C. 7:13-7.1 and forest management activities under permit-by-rule 26 at N.J.A.C. 7:13-7.26, all riparian zone vegetation that is cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit. Portions of the riparian zone occupied by an authorized structure need not be replanted.
    - i. Except as provided in (b)5ii below, the vegetation replanted shall:
      - (1) Consist of vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed. For example, herbaceous vegetation may be replaced with the same type of vegetation or with trees, but the trees in forested areas must be replaced with trees of equal or greater density and ecological function and value; and
      - (2) Consist of native, non-invasive vegetation, except in an actively disturbed area. In an actively disturbed area, the vegetation may be replaced with the same type of vegetation that was cleared, cut, or removed, or with another kind of vegetation typical of an actively disturbed area. For example, lawn grass may be replaced with garden plants or agricultural crops.
    - ii. In cases where replanting in accordance with (b)5i above would interfere with continued access to or maintenance of a structure that is required by Federal, State, or local law, the vegetation replanted shall meet the requirements of (b)5i above to the extent feasible.
- (c) Except for normal property maintenance under permit-by-rule 1 at N.J.A.C. 7:13-7.1 and forest management activities under permit-by-rule 26 at N.J.A.C. 7:13-7.26, regulated activities authorized under a permit-by-rule, a general permit-by-certification, or a general permit, in combination with all proposed activities, shall not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.
- (d) The person undertaking a regulated activity under a permit-by-rule, or seeking authorization under a general permit-by-certification, is responsible for ensuring that each condition of the permit-by-rule or general permit-by-certification applicable under (a) above is met. The Department will not entertain a request to review engineering calculations, in the context of an applicability determination or otherwise, for the purpose of determining that a proposed activity will meet any condition of a permit-by-rule or general permit-by-certification.
- (e) In addition to the conditions that apply to every authorization pursuant to a general permit under (a) above, the Department shall establish conditions in a specific authorization pursuant to a general permit, on a case-by-case basis, as required to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

## **SUBCHAPTER 7. PERMITS-BY-RULE**

### **7:13-7.1 Permit-by-rule 1 – normal property maintenance**

(a) Permit-by-rule 1 authorizes clearing, cutting, and/or removal of riparian zone vegetation which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, easement, right-of-way, field, lawn, park, and/or garden. Normal property maintenance includes:

1. Pruning;
2. Selective tree cutting, such as removing a dead, fallen, or unsafe tree;
3. Planting native, non-invasive plant species;
4. Periodic clearing, cutting, and/or removal of vegetation within an actively disturbed area, such as mowing and clearing nuisance vegetation; and
5. Removing trash, debris, and dead vegetation by hand.

(b) This permit-by-rule does not authorize the following activities:

1. Burning or applying herbicide to riparian zone vegetation;
2. Grading and other changes in topography;
3. Construction of structures, or placement of fill or impervious surfaces; and
4. Removal of riparian zone vegetation not listed in (a) above, such as removal of vegetation to accommodate an ongoing or proposed regulated activity or to create new open or landscaped areas.

### **7:13-7.2 Permit-by-rule 2 – repair of a lawfully existing structure**

(a) Permit-by-rule 2 authorizes the repair of a lawfully existing structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
2. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the structure, where such disturbance is necessary to facilitate its repair; and
3. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

### **7:13-7.3 Permit-by-rule 3 – in-kind replacement of a lawfully existing structure**

(a) Permit-by-rule 3 authorizes the in-kind replacement of a lawfully existing structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The structure is not located within a floodway;

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2. The structure being replaced is not a retaining wall or bulkhead subject to the requirements of N.J.A.C. 7:13-12.13 or a habitable building;
3. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the structure, where such disturbance is necessary to facilitate its replacement; and
4. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.4 Permit-by-rule 4 – removal of any lawfully existing fill or structures**

(a) Permit-by-rule 4 authorizes the removal of any lawfully existing fill or structure, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The fill or structure is not located within a floodway;
2. The fill or structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements;
3. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the fill or structure, where such disturbance is necessary to facilitate its removal; and
4. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.5 Permit-by-rule 5 – removal of accumulated sediment and debris from a regulated water by hand**

(a) Permit-by-rule 5 authorizes the removal of accumulated sediment and debris by hand, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No machinery is used within the regulated water except for handheld equipment such as hoses and hydraulic pumps;
2. The material removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;
3. Where work is proposed along a trout production or maintenance water, the appropriate timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
4. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;
5. No trees are cleared, cut, and/or removed in a riparian zone; and
6. All material removed from the regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

**7:13-7.6 Permit-by-rule 6 – removal of major obstructions from a regulated water with**

**machinery**

(a) Permit-by-rule 6 authorizes the use of machinery to remove one or more major obstructions from a regulated water that cannot be removed by hand, such as a fallen tree, abandoned vehicle, furniture, and other large debris, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All machinery is situated outside the regulated water, except for handheld equipment such as chainsaws. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven or otherwise placed in the regulated water;
2. No fill material or accumulated sediment is removed from the regulated water;
3. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized; and
4. All material removed from the regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local laws.

**7:13-7.7 Permit-by-rule 7 – placement of no more than five cubic yards of landscaping material**

(a) Permit-by-rule 7 authorizes the placement of no more than five cubic yards of landscaping material, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The landscaping material is not placed within a floodway;
2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
3. The landscaping material does not constitute a structure. For example, five cubic yards of stone, topsoil, wood chips, or other landscaping material can be placed under this permit-by-rule but the construction of a building that displaces five cubic yards of flood storage volume cannot;
4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, or removed.

**7:13-7.8 Permit-by-rule 8 – construction at or below grade in a fluvial flood hazard area**

(a) Permit-by-rule 8 authorizes construction at or below grade construction in a fluvial flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All construction is situated at or below grade and the existing ground elevation is not raised;
2. No habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;

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3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
5. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

**7:13-7.9 Permit-by-rule 9 – general construction activities in a tidal flood hazard area**

(a) Permit-by-rule 9 authorizes general construction activities in a tidal flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The existing ground elevation is not raised in any floodway;
2. No aboveground structure is constructed in any floodway;
3. No habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;
4. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
6. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

**7:13-7.10 Permit-by-rule 10 – general construction activities located outside a flood hazard area in a riparian zone**

(a) Permit-by-rule 10 authorizes general construction activities located outside a flood hazard area in a riparian zone, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;
2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
4. The project, in combination with all activities onsite since November 5, 2007, will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

**7:13-7.11 Permit-by-rule 11 – reconstruction, relocation, and/or elevation of a lawfully**

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**existing building**

(a) Permit-by-rule 11 authorizes the reconstruction, relocation, and/or elevation of a lawfully existing building located outside a floodway at the time of reconstruction, relocation, and/or elevation, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The building is not expanded within or relocated into a floodway;
2. The footprint of the existing building does not increase by more than 400 square feet, cumulatively, since November 5, 2007;
3. The lowest floor of the building is reconstructed or elevated to at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
4. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
5. Any existing enclosure below the lowest floor of the building, which does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
7. Any building being relocated is either moved outside a riparian zone or located within an actively disturbed area; and
8. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction, relocation, and/or elevation.

**7:13-7.12 Permit-by-rule 12 – construction of an addition(s) to a lawfully existing habitable building**

(a) Permit-by-rule 12 authorizes the construction of one or more additions above or adjoining a lawfully existing habitable building located outside a floodway at the time of the construction, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The addition is not located within a floodway;
2. The footprint of the existing building does not increase by more than 400 square feet, cumulatively, since November 5, 2007;
3. The lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation, and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
4. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building;

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5. Any enclosure below the lowest floor of the addition is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate the construction of the addition.

**7:13-7.13 Permit-by-rule 13 – construction of a non-habitable building(s)**

(a) Permit-by-rule 13 authorizes the construction of one or more non-habitable buildings, such as a shed, animal shelter, or storage area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The building is not located within a floodway;
2. The footprint of all buildings constructed under this permit-by-rule does not exceed 200 square feet, cumulatively, since November 5, 2007;
3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
4. No trees are cleared, cut, and/or removed in a riparian zone except within 10 feet of a proposed building, where such disturbance is necessary for its placement or construction.

**7:13-7.14 Permit-by-rule 14 – construction of a partially-open structure(s)**

(a) Permit-by-rule 14 authorizes the construction of one or more partially-open structures with a roof, such as a car port, covered patio, or pole barn, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The structure is not located within a floodway;
2. The structure is not enclosed with walls on any side below the flood hazard area design flood elevation;
3. The roof is supported solely by poles or is cantilevered from an adjoining structure;
4. The footprint of all structures constructed under this permit-by-rule does not exceed 5,000 square feet, cumulatively, since November 5, 2007;
5. No fill is placed in the flood hazard area except for any poles necessary to support the roof;
6. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and

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7. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

**7:13-7.15 Permit-by-rule 15 – construction of barrier-free access to a building**

(a) Permit-by-rule 15 authorizes the construction of barrier-free access to a building, such as stairs, ramps, or fire-escapes, provided the conditions at N.J.A.C. 7:13-6.7 are met and the access is:

1. Required by a public entity;
2. Constructed in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;
3. Constructed outside any channel; and
4. Constructed outside a floodway, unless location in the floodway is unavoidable. Where the access is unavoidably located in a floodway, it shall be oriented to minimize obstruction to flow and shall be constructed of material that will remain open to the passage of floodwaters, such as stairs and ramps that are open underneath and not placed on fill material.

**7:13-7.16 Permit-by-rule 16 – construction of a deck**

(a) Permit-by-rule 16 authorizes the construction of a deck that is connected to a lawfully existing building, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The deck, if located in a flood hazard area, is not enclosed with walls either above or below its floor, except for protective or decorative fencing, banisters, or latticework that allow floodwaters to pass freely;
2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
3. The project will not result in a net loss of greater than 2,000 square feet of riparian zone vegetation.

**7:13-7.17 Permit-by-rule 17 – construction of a dock, pier, or boathouse**

(a) Permit-by-rule 17 authorizes the construction of a fixed or floating dock, pier, or boathouse in tidal regulated waters and certain impounded fluvial regulated waters, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Where the dock, pier, or boathouse is situated along a fluvial regulated water, the following requirements are satisfied:
  - i. The dock, pier, or boathouse is constructed within an impounded regulated water, such as a lake, pond or reservoir, which:



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- (1) Has a surface area of one acre or more; or
- (2) Is situated along a regulated water that has a drainage area of less than one square mile;
  - ii. The dock, pier, or boathouse covers no more than 2,000 square feet including all decking and pilings; and
  - iii. The dock, pier, or boathouse does not extend more than 20 percent across the width of the regulated water;
2. Any fixed dock, pier, or boathouse is built on pilings and remains open underneath to allow floodwaters to pass freely;
3. Any stairs or other structures necessary for access to the dock, pier, or boathouse:
  - i. Remain open underneath to allow floodwaters to pass freely;
  - ii. Do not require the existing ground elevation to be raised in a fluvial flood hazard area; and
  - iii. Are oriented to minimize obstruction to flow, such as by being set into the bank; and
4. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 10 feet of the dock, pier, or boathouse where such disturbance is necessary to facilitate its construction.

**7:13-7.18 Permit-by-rule 18 – construction of a boat launching ramp**

(a) Permit-by-rule 18 authorizes the construction of a boat launching ramp, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The ramp is constructed at or below grade;
2. The ramp has a footprint of no more than 2,000 square feet;
3. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
4. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 10 feet of the ramp, where such disturbance is necessary to facilitate its construction.

**7:13-7.19 Permit-by-rule 19 – replacement, renovation, or reconstruction of certain water dependent structures**

(a) Permit-by-rule 19 authorizes the replacement, renovation, or reconstruction of one or more of the following water dependent structures, provided the conditions at N.J.A.C. 7:13-6.7 are met, the timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed, and the structure is not a habitable building:

1. Any dock, wharf, pier, or bulkhead that meets the requirements of N.J.A.C. 7:7-2.4(d)6; and

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2. Any floating dock, mooring raft, or similar temporary or seasonal improvement or structure that meets the requirements of N.J.A.C. 7:7-2.4(d)7.

**7:13-7.20 Permit-by-rule 20 – construction of a fence**

(a) Permit-by-rule 20 authorizes the construction of a fence, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No disturbance is located within 25 feet of any top of bank, unless the fence lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
2. No trees are cleared, cut, and/or removed in a riparian zone; and
3. Any fence located in a floodway has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement.

**7:13-7.21 Permit-by-rule 21 – construction of a swimming pool associated with residential use**

(a) Permit-by-rule 21 authorizes the construction of a swimming pool associated with residential use, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The existing ground elevation is not raised in a floodway;
2. No aboveground pool is constructed in a floodway;
3. For a pool within a fluvial flood hazard area:
  - i. Any aboveground pool does not displace more than 100 cubic yards of flood storage volume (see N.J.A.C. 7:13-11.4);
  - ii. Any in-ground pool lies at or below existing grade, except for incidental grading necessary for installation and portions of the pool structure itself that lie aboveground, such as railings and diving boards; and
  - iii. Any material excavated to construct the pool is removed from the flood hazard area;
4. No disturbance is located within 25 feet of any top of bank, unless the pool lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
6. The activity will not result in a net loss of greater than 5,000 square feet of riparian zone vegetation.

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**7:13-7.22 Permit-by-rule 22 – construction of a trail and/or boardwalk**

(a) Permit-by-rule 22 authorizes the creation of a trail and/or boardwalk, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The trail or boardwalk is no more than six feet wide;
2. The existing ground elevation is not raised in any floodway or fluvial flood hazard area. Boardwalk planks may be elevated above the ground, provided that the area underneath remains open to the passage of floodwaters, if constructed in a flood hazard area;
3. No disturbance is located within 25 feet of any top of bank, except:
  - i. Where necessary to access a footbridge, dock, or pier connected to the trail and/or boardwalk; or
  - ii. When the trail and/or boardwalk is located adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
4. No trees are cleared, cut, and/or removed in a riparian zone; and
5. The trail and/or boardwalk will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

**7:13-7.23 Permit-by-rule 23 – construction of a footbridge**

(a) Permit-by-rule 23 authorizes the construction of a footbridge across a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footbridge is no more than eight feet wide and six inches thick;
2. Any pinning or anchoring of the footbridge is accomplished without construction in the channel;
3. The area above and below the footbridge remain open to the passage of floodwaters;
4. The existing ground elevation is not raised to accommodate or provide access to the footbridge; and
5. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.24 Permit-by-rule 24 – construction of a tank**

(a) Permit-by-rule 24 authorizes the construction of a tank, either above or below ground, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Any tank located in a flood hazard area is designed to remain watertight during a flood;
2. For any tank situated aboveground:
  - i. The tank is not located within a floodway;
  - ii. The tank is located within or adjacent to a lawfully existing building; and
  - iii. The capacity of the tank does not exceed 2,000 gallons;

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3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
5. The cumulative footprint of all tanks, which have been constructed under any permit under this chapter, does not exceed 5,000 square feet since November 5, 2007.

**7:13-7.25 Permit-by-rule 25 – construction of an aboveground athletic and/or recreational structure**

(a) Permit-by-rule 25 authorizes the construction of one or more aboveground athletic and/or recreational structures, such as a backstop, bleacher, picnic table, or playground equipment, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No buildings are constructed in a flood hazard area;
2. Any structure placed in a floodway is constructed of material that will remain open to the passage of floodwaters;
3. The existing ground elevation is not raised in any floodway or fluvial flood hazard area;
4. The cumulative footprint of all structures described at (a) above, which have been erected under any permit under this chapter, does not exceed one-quarter acre since November 5, 2007;
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

**7:13-7.26 Permit-by-rule 26 – forest management activities**

(a) Permit-by-rule 26 authorizes the forest management activities identified at (b) below, provided they are conducted in accordance with a forest management plan that has been approved by the New Jersey State Forester or designee before the activities are undertaken. Information and guidance related to forest management activities in flood hazard areas and riparian zones are provided in the document entitled, "New Jersey Forestry and Wetlands Best Management Practices Manual," dated October 1995, which is available at [https://www.nj.gov/dep/parksandforests/forest/nj\\_bmp\\_manual1995.pdf](https://www.nj.gov/dep/parksandforests/forest/nj_bmp_manual1995.pdf).

(b) This permit-by-rule authorizes the following forest management activities, provided the conditions at N.J.A.C. 7:13-6.7 are met:

1. Silvicultural prescriptions, including planting trees and other vegetation, provided no grading or changes in topography occur in a fluvial flood hazard area;
2. Harvest of trees and other vegetation cultivated as forest products, provided:

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- i. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to the area specified in the forest management plan; and
  - ii. Regeneration of the harvested area with vegetation, which is determined by the State Forester to be of equal or greater ecological function and value as the vegetation that was cleared, cut, and/or removed, is accomplished through replanting, natural regeneration, or a combination thereof;
3. Construction and maintenance of a fence to exclude deer and/or control other unwanted intrusions, provided:
  - i. The fence is not constructed within any channel; and
  - ii. Any fence located in a floodway has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement; and
4. Construction and maintenance of a temporary forest road, provided:
  - i. The sole purpose of the road is to support or provide access for forestry activities;
  - ii. The road is no greater than 14 feet wide;
  - iii. No grading or changes in topography occur in a fluvial flood hazard area, except where unavoidable to accommodate the installation of a crossing of a regulated water. In such a case, grading and changes in topography shall be the minimum necessary to install the crossing;
  - iv. Any clearing, cutting, and/or removal of riparian zone vegetation and disturbance to channels is kept to the minimum necessary to successfully implement the project;
  - v. Temporary mats are used where feasible to minimize potential erosion and adverse impacts to riparian zone vegetation; and
  - vi. Any crossing of a regulated water is:
    - (1) Located as far downstream of the upstream property boundary of the site as feasible;
    - (2) Designed to not increase the frequency or depth of offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i); and
    - (3) Accomplished through the placement of a temporary span across the channel in a stable location, without disturbance to the channel. Where placement of a temporary span is not feasible, the placement of one or more pre-case culverts in channel, without permanent footings or abutments is acceptable. In such a case, stable material may be placed above the culvert to establish a level roadway surface, but the roadway shall not be paved; and
  - vii. The road is removed and all disturbed areas are restored to their pre-construction condition within six months of the construction of the roadway, or within 30 days of either of the following, whichever occurs first:

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- (1) The land use of the site being accessed by the road changes from forestry to another use; or
  - (2) The Department determines that the management activity at the site is not in compliance with the approved forest management plan.
- (c) The removal of tree stumps is not authorized under this permit-by-rule.
- (d) No clear-cutting of trees shall be undertaken in a riparian zone unless it is unavoidably necessary as part of a silviculture prescription for:
1. Atlantic white-cedar restoration. Information and guidance related to Atlantic white-cedar restoration are provided in the document entitled "Atlantic White-Cedar: Ecology and Best Management Practices Manual," by K. A. Mylecraine and G. L. Zimmermann, dated 2000, which is available from the Department at: [https://www.nj.gov/dep/parksandforests/forest/njfs\\_awc\\_bmps.html](https://www.nj.gov/dep/parksandforests/forest/njfs_awc_bmps.html), unless the State Forester provides written approval authorizing modification of a practice in the manual where necessary to ensure the success of a given project;
  2. Regeneration, where either of the following conditions creates the need for salvage and regrowth of trees and other vegetation, and the site would likely not naturally reestablish a healthy native ecosystem and therefore requires human intervention for proper and timely regeneration:
    - i. A forest stand is in decline or fragmenting; or
    - ii. Trees and other vegetation have been damaged by wildfire, storms, flooding, beaver activity, or other damage-causing factors; or
  3. Sanitation, suppression, or salvage, where trees have experienced insect damage, disease outbreaks and/or death from drought or other conditions. This includes a situation where immediate suppression is necessary to remove the infested and/or infected host species, as well as the trees and vegetation in a surrounding buffer area, to prevent the adverse spread of the damage causing agent and reduce the corresponding potential future mortality in adjacent forest.

**7:13-7.27 Permit-by-rule 27 – repair, maintenance, and/or dredging of a manmade canal**

- (a) Permit-by-rule 27 authorizes the repair, maintenance, and/or dredging of the channel and/or embankments of a currently serviceable, manmade canal, which passes through a regulated area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:
1. A public entity having jurisdiction over the canal determines that the proposed repair, maintenance, and/or dredging is necessary for proper operation of the canal;
  2. No fill is placed in any floodway or fluvial flood hazard area, except where necessary to restore a failed embankment to its pre-failure condition;
  3. No dredge material is placed in a flood hazard area; and
  4. No trees are cleared, cut, and/or removed in a riparian zone outside the canal and its embankment.

**7:13-7.28 Permit-by-rule 28 – filling of an abandoned raceway**

(a) Permit-by-rule 28 authorizes the filling of an abandoned raceway adjacent to a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. For the purposes of this permit-by-rule, a raceway is a conveyance structure that was created to divert water from a channel for the purpose of providing hydrology or hydraulic power before returning the water to the channel;
2. The raceway is blocked at one or both ends so that water from the channel is not able to flow through the raceway under normal flow conditions;
3. The raceway does not supply hydrology to an otherwise isolated freshwater wetlands complex; and
4. The raceway is filled up to, but not above, the surrounding topography and the entire disturbed area is properly graded so as not to interfere with overland drainage.

**7:13-7.29 Permit-by-rule 29 – placement of one to three wind turbines**

(a) Permit-by-rule 29 authorizes the placement of one to three wind turbines, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Each wind turbine is less than 200 feet tall, measured from the ground surface to the tip of the blade at its highest position;
2. The rotor swept area of each wind turbine does not exceed a cumulative area of 2,000 square feet. Rotor swept area means the area of the circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;
3. No wind turbine tower or site disturbance is located in a floodway;
4. No portion of any wind turbine, including blades, tower, and site disturbance, is located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)4i and ii below. Landscape Maps are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at <https://www.nj.gov/dep/fgw/ensp/landscape/index.htm>:
  - i. The wind turbine is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees, or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding, or mulching; or
  - ii. The wind turbine is located on a lawfully existing building or on lawfully existing impervious surface;

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5. Where the wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower is a freestanding monopole;
6. No lighting is placed on or directed at the wind turbine except for lighting required by the Federal Aviation Administration. Shielded ground level security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;
7. Development under this permit-by-rule does not result in construction of more than three wind turbines on a site, either solely or in conjunction with a previous wind turbine development;
8. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
9. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
10. With the exception of guy wires on turbines 120 feet tall or less, all wires or cables that connect the wind turbine to an existing transmission line, are located underground.

**7:13-7.30 Permit-by-rule 30 – placement of solar panels and associated equipment**

(a) Permit-by-rule 30 authorizes the placement of solar panels and associated equipment, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No panels and associated equipment are placed in a floodway;
2. The existing ground elevation is not raised in any floodway or fluvial flood hazard area;
3. Except for vertical support poles, all panels, cross-bracing, and other structural components, and all associated equipment are elevated to at least one foot above the flood hazard area design flood elevation. This permit-by-rule does not authorize the placement of solar panels that rely on ballast systems or concrete foundations for support;
4. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.31 Permit-by-rule 31 – placement of a floating aerator**

Permit-by-rule 31 authorizes the placement of a floating aerator in an impounded water or naturally occurring lake, pond, or reservoir, provided the conditions at N.J.A.C. 7:13-6.7 are met and no trees are cleared, cut, and/or removed in a riparian zone.



**7:13-7.32 Permit-by-rule 32 – construction of an aquatic habitat enhancement device**

(a) Permit-by-rule 32 authorizes the construction of an aquatic habitat enhancement device, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The device is approved by the U.S. Fish and Wildlife Service and/or the Department's Division of Fish and Wildlife;
2. The device will not cause erosion in the regulated water;
3. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;
4. The device will not cause any existing building to be subject to increased flooding during any flood event described in N.J.A.C. 7:13-12.1(i);
5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed; and
6. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-7.33 Permit-by-rule 33 – placement of one or more utility poles**

(a) Permit-by-rule 33 authorizes the placement of one or more utility poles for utility lines, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No disturbance is located within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
2. All wires and cables supported by the utility poles are situated at least one foot above the flood hazard area design flood elevation; and
3. No trees are cleared, cut, and/or removed in a riparian zone.

(b) This permit-by-rule does not authorize the placement of monopole towers or open-frame towers.

**7:13-7.34 Permit-by-rule 34 – placement of one or more utility open-frame towers**

(a) Permit-by-rule 34 authorizes the placement of one or more open-frame towers to provide cellular telephone service or to support a utility line, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No tower and associated equipment is located within a floodway;
2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
3. The footing of each tower within a fluvial flood hazard area is constructed primarily at or below grade, such that the top of the footing lies no more than 12 inches aboveground;

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4. All wires and cables supported by the towers are situated at least one foot above the flood hazard area design flood elevation; and
5. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.35 Permit-by-rule 35 – placement of one or more utility monopole towers**

(a) Permit-by-rule 35 authorizes the placement of one or more monopole towers to provide cellular service or to support a utility line, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No tower and associated equipment is located within a floodway;
2. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
3. The diameter of each monopole tower within a fluvial flood hazard area is no greater than five feet;
4. All wires and cables supported by the towers are situated at least one foot above the flood hazard area design flood elevation; and
5. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.36 Permit-by-rule 36 – placement of an underground utility line using directional drilling or jacking**

(a) Permit-by-rule 36 authorizes the placement of an underground utility line beneath a regulated water through directional drilling or jacking, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The regulated water is not disturbed in any way except for temporary disturbance associated with soil borings necessary to ensure that the project is viable;
2. No trees are cleared, cut, and/or removed in a riparian zone;
3. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;
4. Where the utility line is drilled or jacked beneath a bridge or culvert, all work is accomplished without displacing or damaging the bridge or culvert;
5. Where the utility line is drilled or jacked beneath an open channel, the top of the line is placed at least four feet below the channel invert and remains nominally horizontal at this depth at least 10 feet beyond the top of each bank;
6. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area;
7. No manhole is constructed within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

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8. The top of any manhole in a floodway is flush with the ground;
9. The top of any manhole in a flood fringe is flush with the ground, where feasible; and
10. Any manhole in a flood hazard area has a watertight cover.

**7:13-7.37 Permit-by-rule 37 – placement of an underground utility line beneath existing pavement**

(a) Permit-by-rule 37 authorizes the placement of an underground utility line beneath existing pavement within a regulated area, such as under an existing parking lot in the flood hazard area or under an existing roadway that crosses a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The regulated water is not disturbed;
2. No riparian zone vegetation is cleared, cut, and/or removed;
3. All disturbed areas in the flood hazard area are restored to pre-construction topography upon completion of the regulated activity;
4. Where the utility line is placed under a roadway, either above or below a culvert or within a bridge, all work is accomplished without displacing or damaging the bridge or culvert;
5. Where the utility line is placed under a roadway, either above or below a culvert, the line is encased within a larger steel pipe, or is placed with at least one foot vertical clearance above or below the culvert;
6. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area;
7. No manhole is constructed within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
8. Where the utility line runs parallel to a regulated water, the line is not constructed within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
9. The top of any manhole in a floodway is flush with the ground;
10. The top of any manhole in a flood fringe is flush with the ground, where feasible; and
11. Any manhole in the flood hazard area has a watertight cover.

**7:13-7.38 Permit-by-rule 38 – attachment of a utility line to a lawfully existing roadway or railroad that crosses a regulated water**

(a) Permit-by-rule 38 authorizes the attachment of a utility line to a lawfully existing roadway or railroad that crosses a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The regulated water is not disturbed;

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2. No more than 1,000 square feet of riparian zone vegetation is cleared, cut, and/or removed, and all such vegetation lies within an existing right-of-way that is periodically mowed and/or cleared;
3. All disturbed areas in the flood hazard area are restored to pre-construction topography upon completion of the regulated activity;
4. No part of the utility line, its encasement, or any attachment device extends above the profile of the roadway or railroad or across the opening of any bridge or culvert;
5. The portion of the utility line attached to the roadway or railroad is situated at least one foot above the flood hazard area design flood elevation;
6. Where a predominant direction of flow in the regulated water is discernible, the utility line is attached to the downstream face of the roadway or railroad crossing;
7. All work is accomplished without displacing or damaging any bridge or culvert under the roadway or railroad;
8. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area;
9. No manhole is constructed within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
10. The top of any manhole in a floodway is flush with the ground;
11. The top of any manhole in a flood fringe is flush with the ground, where feasible; and
12. Any manhole in a flood hazard area has a watertight cover.

**7:13-7.39 Permit-by-rule 39 – placement of an underground utility line that does not cross a regulated water**

(a) Permit-by-rule 39 authorizes the placement of an underground utility line that does not cross a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All disturbed areas in the flood hazard area are restored to pre-construction topography upon completion of the regulated activity;
2. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area;
3. The top of any manhole in a floodway is flush with the ground;
4. The top of any manhole in a flood fringe is flush with the ground, where feasible;
5. Any manhole has a watertight cover in the flood hazard area;
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
7. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.40 Permit-by-rule 40 – milling, repaving, and/or resurfacing of a lawfully existing pavement**

(a) Permit-by-rule 40 authorizes the milling, repaving, and/or resurfacing of a lawfully existing pavement, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The elevation of the surface of the pavement is not raised in a floodway;
2. The elevation of the surface of the pavement is raised by no more than three inches in any area mapped as a fluvial flood fringe on a Department delineation or within any area mapped by FEMA as a fluvial 100-year floodplain. Multiple milling, repaving, and/or resurfacing is permissible provided the cumulative impact of the activity does not result in raising the pavement by a total of more than three inches;
3. The area of pavement is not expanded; and
4. No riparian zone vegetation is cleared, cut, and/or removed, except for actively disturbed areas within 20 feet of the pavement, where such disturbance is necessary to facilitate milling, repaving, and/or resurfacing.

**7:13-7.41 Permit-by-rule 41 – placement of a guiderail along a lawfully existing public roadway**

(a) Permit-by-rule 41 authorizes the placement of a guiderail adjacent to a lawfully existing public roadway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The installation of the guiderail is required and overseen by the public entity having jurisdiction over the roadway;
2. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within four feet of the guiderail, where such disturbance is necessary to comply with all State or Federal laws, requirements, or guidelines governing the placement, maintenance, and functionality of guiderails; and
3. No trees are cleared, cut, and/or removed in a riparian zone within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

**7:13-7.42 Permit-by-rule 42 – reconstruction of all or part of a lawfully existing bridge superstructure**

(a) Permit-by-rule 42 authorizes the reconstruction of all or part of a lawfully existing bridge superstructure over a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Any portion of the superstructure to be reconstructed that lies below the flood hazard area design flood elevation is replaced in-kind; and
2. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the structure, where such disturbance is necessary to facilitate its reconstruction.

**7:13-7.43 Permit-by-rule 43 – placement of traffic safety structures on poles**

(a) Permit-by-rule 43 authorizes the placement of one or more traffic safety structures on poles, such as overhead signs, variable message signs, streetlights, traffic signal equipment, and other similar structures intended to facilitate travel safety along a public roadway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Any footing necessary to support the structure within a fluvial flood hazard area is constructed primarily at or below grade, such that the top of the footing lies no more than 12 inches above ground;
2. No disturbance is located within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
3. No riparian zone vegetation is cleared, cut, and/or removed, except for:
  - i. Vegetation within 10 feet of the structure, where such disturbance is necessary to facilitate the placement and continued operation of the structure; and
  - ii. Disturbance necessary to provide proper line of sight to the structure from the roadway it serves, provided no more than 2,000 square feet riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.44 Permit-by-rule 44 – surveying activities**

(a) Permit-by-rule 44 authorizes surveying activities, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is accomplished using hand-held equipment;
2. No trees are cleared, cut, and/or removed in a riparian zone, except for cutting branches or clearing damaged, dying, or dead trees, where such disturbance is necessary to provide an adequate site line; and
3. The width of clearing, cutting, and/or removal of riparian zone vegetation is no more than five feet.

**7:13-7.45 Permit-by-rule 45 – geotechnical and archeological investigation activities**

(a) Permit-by-rule 45 authorizes geotechnical and archeological investigation activities, such as conducting survey borings or excavation for the purpose of obtaining information on subsurface conditions, determining the presence or extent of contamination in subsurface soils or groundwater, and/or obtaining seismic information, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No regulated activity is conducted within a regulated water or within 25 feet of any top of bank;
2. No grading or changes in topography occur in a flood hazard area;

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3. Each excavated area is no more than three feet in diameter; and
4. No trees are cleared, cut, and/or removed in a riparian zone, except for cutting branches or clearing damaged, dying, or dead trees, where such disturbance is necessary to provide access.

**7:13-7.46 Permit-by-rule 46 – installation of one or more monitoring wells**

(a) Permit-by-rule 46 authorizes the installation of one or more monitoring wells, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No grading or changes in topography occur in a flood hazard area;
2. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within five feet of the well, where such disturbance is necessary to facilitate its installation; and
3. No trees are cleared, cut, and/or removed in a riparian zone, except for cutting branches or clearing damaged, dying, or dead trees, where such disturbance is necessary to provide access.

**7:13-7.47 Permit-by-rule 47 – construction of a gauge, weir, or similar device**

(a) Permit-by-rule 47 authorizes the construction of a gauge, weir, or other similar device to measure the depth, velocity, and/or rate of flow in a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The device is approved by the United States Geological Survey, New Jersey Water Supply Authority, and/or New Jersey Geological Survey;
2. The device will not cause erosion in the regulated water;
3. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;
4. The device will not cause any existing building to be subject to increased flooding during any flood event described in N.J.A.C. 7:13-12.1(i);
5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed; and
6. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-7.48 Permit-by-rule 48 – temporary storage of unsecured construction material outside a floodway**

(a) Permit-by-rule 48 authorizes the temporary storage of unsecured construction material outside a floodway, which is necessary to facilitate a lawful construction activity, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored on the site;

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2. No storage area is located within 25 feet of any top of bank, unless the area lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; and
4. All material is removed from the site and all disturbed areas are restored to pre-storage topography within six months of the placement of the material.

**7:13-7.49 Permit-by-rule 49 –storage of unsecured material associated with a single-family home or duplex**

(a) Permit-by-rule 49 authorizes the storage of unsecured material associated with the use or maintenance of a lawfully existing single-family home or duplex, such as lawn and garden equipment and materials, shelters for animals, trash receptacles, toys, vehicles, and wood piles, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored on the site;
2. The unsecured material is of an amount and nature typical for a single-family home or duplex;
3. No unsecured material is located within a floodway unless the material was lawfully situated there prior to November 5, 2007;
4. No unsecured material is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water and/or the material was lawfully situated there prior to November 5, 2007; and
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.50 Permit-by-rule 50 –storage of unsecured material associated with a habitable building or facility, other than a single family home or duplex**

(a) Permit-by-rule 50 authorizes the storage of unsecured material associated with the use or maintenance of a lawfully existing habitable building or facility, such as dumpsters, vehicles, and equipment, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored unless:
  - i. The storage of hazardous substances is essential to the operation of the building or facility;
  - ii. The hazardous substances are isolated from potential contact with floodwaters; and
  - iii. The hazardous substances are stored in accordance with all Federal, State, and local requirements;



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2. The unsecured material is of an amount and nature typical for the subject building or facility;
3. No unsecured material is located within a floodway unless the material was lawfully situated there prior to November 5, 2007;
4. No unsecured material is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water and/or the material was lawfully situated there prior to November 5, 2007; and
5. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.51 Permit-by-rule 51 – storage of unsecured material associated with a facility that stores and distributes material**

(a) Permit-by-rule 51 authorizes the storage of unsecured material necessary for the operation of a lawfully existing facility, the primary function of which is to store and distribute material, such as a gravel pit, junk yard, landscaping business, lumber yard, vehicle dealership, rental facility, or impoundment area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No hazardous substances are stored unless:
  - i. The storage of hazardous substances is essential to the operation of the facility;
  - ii. The hazardous substances are isolated from potential contact with floodwaters; and
  - iii. The hazardous substances are stored in accordance with all Federal, State, and local requirements;
2. The facility was established prior to November 5, 2007;
3. The facility has been in continuous operation since November 5, 2007;
4. The size of the facility and the peak volume of material stored in the flood hazard area have not increased since November 5, 2007;
5. The footprint of the material stored within the riparian zone is not increased; and
6. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.52 Permit-by-rule 52 – placement, storage, or processing of hazardous substances**

(a) Permit-by-rule 52 authorizes the placement, storage, or processing of hazardous substances at a lawfully existing facility, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The facility was established prior to November 5, 2007;
2. The facility has been in continuous operation since November 5, 2007;
3. The facility is operating in compliance with all Federal, State, and local requirements;
4. The size of the facility and the peak volume of hazardous substances in the flood hazard area have not increased since November 5, 2007;

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5. The footprint of the area in which the hazardous substances is stored within the riparian zone is not increased; and
6. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.53 Permit-by-rule 53 – placement, storage, or processing solid waste or recyclable materials at a lawfully existing facility**

(a) Permit-by-rule 53 authorizes the placement, storage, or processing of solid waste or recyclable materials at a lawfully existing facility, such as a composting facility, landfill, or recycling center, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The facility was established prior to November 5, 2007;
2. The facility has been in continuous operation since November 5, 2007;
3. The facility is operating in compliance with all Federal, State, and local requirements;
4. The size of the facility and the peak volume of solid waste and/or recyclable materials in the flood hazard area have not increased since November 5, 2007;
5. The footprint of the area in which the solid waste and/or recyclable materials is stored within the riparian zone is not increased; and
6. No trees are cleared, cut, and/or removed in a riparian zone.

**7:13-7.54 Permit-by-rule 54 – continuation of lawfully existing agricultural activities**

Permit-by-rule 54 authorizes the continuation of lawfully existing agricultural activities, such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture, and watering, on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and the activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area.

**7:13-7.55 Permit-by-rule 55 – commencement of new agricultural activities**

(a) Permit-by-rule 55 authorizes the commencement of new agricultural activities, such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture, and watering, on land that is not actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The existing ground elevation is not raised in any floodway;
2. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area; and
3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

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**7:13-7.56 Permit-by-rule 56 – continuation or commencement of natural resource conservation practices associated with agricultural activities**

(a) Permit-by-rule 56 authorizes the continuation or commencement of natural resource conservation practices associated with agricultural activities, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are approved by the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
2. The existing ground elevation is not raised in any floodway;
3. The activities do not result in the displacement of flood storage volume or the construction of an aboveground structure within a flood hazard area; and
4. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed outside of an actively disturbed area.

**7:13-7.57 Permit-by-rule 57 – construction of a non-habitable building for agricultural purposes**

(a) Permit-by-rule 57 authorizes the construction of a non-habitable building for agricultural purposes, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footprint of the building is no more than 2,000 square feet;
2. The building is located outside any floodway;
3. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.58 Permit-by-rule 58 – filling or modification of a manmade regulated water for freshwater wetlands restoration**

(a) Permit-by-rule 58 authorizes the filling or modification of a manmade regulated water for the purpose of freshwater wetlands restoration, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service, the U.S. Fish and Wildlife Service, and/or the local Soil Conservation District, as appropriate;
2. The filling of the regulated water will not adversely affect overland drainage or flooding on adjoining properties; and
3. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed outside of an actively disturbed area.

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**7:13-7.59 Permit-by-rule 59 – creation of a ford across a regulated water to manage livestock**

(a) Permit-by-rule 59 authorizes the creation of a ford across a regulated water to manage livestock on actively farmed land, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
2. Livestock cross the regulated water on a regular basis prior to creation of the ford under this permit;
3. The creation of a stable ford will reduce ongoing damage to the regulated water caused by the existing access to the regulated water by livestock;
4. The ford is situated at or below the existing bed so that the ford will not obstruct flow;
5. The ford is designed to remain stable during the flood hazard area design flood;
6. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
7. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.60 Permit-by-rule 60 – construction of a fence along and/or across a regulated water to manage livestock**

(a) Permit-by-rule 60 authorizes the construction of a fence along and/or across a regulated water on actively farmed land, in order to limit or manage livestock access to a regulated water and/or to prevent livestock or other animals from accessing certain areas, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;
2. Any fence crossing or situated within a regulated water, or located in a floodway, has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement.
3. No trees are cleared, cut, and/or removed in a riparian zone, except where necessary to accommodate the placement of a fence across a regulated water;
4. Except in the immediate vicinity of any fence crossing a regulated water, the fence is placed generally parallel to the regulated water; and
5. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.61 Permit-by-rule 61 – construction of a pump and/or water intake structure in or along a regulated water for livestock**

(a) Permit-by-rule 61 authorizes the construction of a pump and/or water intake structure in or along a regulated water on actively farmed land, in order to provide water for livestock outside the regulated water (and thereby limit livestock access to the regulated water), provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
2. Fill within the flood hazard area is the minimum necessary to successfully implement the project;
3. The pump or structure will not impede bank-full flow in the regulated water; and
4. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-7.62 Permit-by-rule 62 – construction of a manure management structure for livestock or horses**

(a) Permit-by-rule 62 authorizes the construction of a manure management structure for livestock or horses, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work is approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;
2. The footprint of the structure is no more than 1,000 square feet;
3. The structure is situated as far from any regulated water as feasible;
4. Where it is not feasible to locate the structure outside a floodway, the structure is oriented to minimize obstruction to flow;
5. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
6. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.

**7:13-7.63 Permit-by-rule 63 – application of herbicide within riparian zones to control invasive plant species**

(a) Permit-by-rule 63 authorizes the application of herbicide within riparian zones to control invasive plant species, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The area to which the herbicide is applied shall not exceed a total area of one-quarter acre or less on a site; and
2. The activities are conducted pursuant to an aquatic pesticide permit issued by the Department's Bureau of Licensing and Pesticide Operations; and
3. No herbicide is applied within a 300-foot riparian zone.

## **SUBCHAPTER 8. GENERAL PERMITS-BY-CERTIFICATION**

### **7:13-8.1 General permit-by-certification 1 - removal of accumulated sediment and debris from a regulated water for agricultural purposes**

(a) General permit-by-certification 1 authorizes the removal of accumulated sediment and debris from a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;
2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District;
3. All machinery is situated outside the regulated water, except for handheld equipment such as hydraulic pumps. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven into or otherwise operated within in the regulated water;
4. The material to be removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;
5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
6. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;
7. No trees are cleared, cut, and/or removed in a riparian zone;
8. The project is conducted from only one bank, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and
9. All material removed from a regulated water is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

### **7:13-8.2 General permit-by-certification 2 – construction of an agricultural roadway crossing**

(a) General permit-by-certification 2 authorizes the construction of a roadway across a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;
2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
3. Disturbance within the regulated water is minimized;
4. Where the crossing is accomplished with a culvert, the culvert is stabilized with headwalls that have footings which extend at least three feet below grade, and which will prevent the culvert from displacement during the flood hazard area design flood;

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5. Where the crossing is accomplished with a bridge, the bridge is constructed with abutments that have footings which extend at least three feet below grade, and which will prevent the bridge from displacement during the flood hazard area design flood;
6. The proposed roadway surface and all embankments are designed to remain stable during the flood hazard area design flood;
7. The applicant obtains an engineering certification confirming that the proposed roadway crossing will not increase flooding offsite;
8. The width of disturbance for the construction of the roadway through the riparian zone is no more than 25 feet; and
9. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-8.3 General permit-by-certification 3 - agricultural bank stabilization and/or bank restoration activities**

(a) General permit-by-certification 3 authorizes bank stabilization and/or bank restoration activities along a regulated water on land that is actively farmed, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are intended solely for agricultural purposes;
2. The activities are approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local Soil Conservation District, as appropriate;
3. Where feasible, the project is accomplished by cutting back the bank to a stable slope and planting with native, non-invasive plant species suitable for stabilization. Generally a slope of no greater than 50 percent (a ratio of two horizontal to one vertical) is recommended to stabilize an eroded bank. Where vegetation alone cannot feasibly stabilize erosion, or would require greater than 2,000 square feet of trees to be cleared, cut, and/or removed, soil bioengineering shall be used to stabilize the erosion. In no case shall greater than 2,000 square feet of trees be cleared, cut, and/or removed;
4. The cross-sectional area of the regulated water is not significantly altered;
5. The applicant obtains an engineering certification confirming that the activity will not obstruct flow in the regulated water or floodway;
6. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project; and
7. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-8.4 General permit-by-certification 4 - enhancement of a riparian zone through the planting of native, non-invasive plant species**

(a) General permit-by-certification 4 authorizes the enhancement of a riparian zone through the planting of native, non-invasive plant species, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

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1. The riparian zone to be enhanced consists of an actively disturbed area, an area of predominantly non-native vegetation, and/or an area of invasive plant species;
2. The applicant obtains an engineering certification confirming that the existing ground elevation is not being raised in any floodway or fluvial flood hazard area;
3. No activities are conducted in a channel;
4. No trees are cleared, cut, and/or removed within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
5. No trees are cleared, cut, and/or removed within the riparian zone of a Pinelands water, Category One water, or trout production water;
6. The plant community habitat type is not adversely altered. For example, invasive shrubs must be replaced with native shrubs or trees; and
7. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-8.5 General permit-by-certification 5 - reconstruction, relocation, expansion, and/or elevation of a building outside a floodway**

(a) General permit-by-certification 5 authorizes the reconstruction, relocation, expansion, and/or elevation of a lawfully existing building located outside a floodway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The flood hazard area elevation for the site has been determined by a Department delineation or FEMA flood mapping, under Methods 1, 2, or 3 (at N.J.A.C. 7:13-3.3, 3.4(d), and 3.4(e), respectively);
2. The building is not located in a floodway;
3. The applicant obtains an engineering certification confirming that the building is not being expanded within or relocated into a floodway;
4. The footprint of the building has not increased by more than 750 square feet, cumulatively, since November 5, 2007;
5. The applicant obtains an engineering certification confirming that the lowest floor of the building is being reconstructed or elevated to at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
6. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
7. Any existing enclosure below the lowest floor of the building, which does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;



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8. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
9. Any building to be relocated is either moved outside a riparian zone or located within an actively disturbed area; and
10. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction, relocation, expansion, and/or elevation.

**7:13-8.6 General permit-by-certification 6 - construction of one single-family home or duplex in a tidal flood hazard area**

(a) General permit-by-certification 6 authorizes the construction of one single-family home or duplex in a tidal flood hazard area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant has obtained a verification of any flood hazard area design flood elevation, floodway limits, and riparian zone limits onsite, pursuant to N.J.A.C. 7:13-5;
2. The applicant obtains an engineering certification confirming that no fill or structures are being placed within a floodway;
3. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development;
4. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;
5. The applicant obtains an engineering certification confirming that the lowest floor of the single-family home or duplex is being constructed at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
6. Any enclosure below the lowest floor of the single-family home or duplex is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
7. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed, and no disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
8. Within a 150-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed, and no disturbance is located within 75 feet of any top of bank; and
9. Within a 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed, and no disturbance is located within 150 feet of any top of bank.

**7:13-8.7 General permit-by-certification 7 - removal of accumulated sediment and debris from an engineered channel**

(a) General permit-by-certification 7 authorizes the use of machinery to remove accumulated sediment and debris from an engineered channel. For the purposes of this general permit-by-certification, an engineered channel is a channel that is fully lined with concrete or other armoring and/or which has been constructed, altered, or otherwise manipulated as part of a flood control project. The use of machinery to remove accumulated sediment and debris from an engineered channel is authorized provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. Where work is proposed along a trout production or trout maintenance waters, the timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
2. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water and minimized;
3. No trees are cleared, cut, and/or removed in a riparian zone;
4. The material removed consists solely of accumulated sediment and/or debris; and
5. All material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local requirements.

**7:13-8.8 General permit-by-certification 8 - construction of an addition to a lawfully existing building**

(a) General permit-by-certification 8 authorizes the construction of an addition to a lawfully existing building, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant obtains an engineering certification confirming that the addition is not being located within a floodway;
2. The footprint of the existing building has not increased by more than 750 square feet, cumulatively, since November 5, 2007;
3. The applicant obtains an engineering certification confirming that the lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
4. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building;
5. Any enclosure below the lowest floor of the addition is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the

building and facilitate the construction of an addition.

**7:13-8.9 General permit-by-certification 9 - sediment and debris removal within and/or adjacent to a bridge, culvert, or outfall by a public entity**

(a) General permit-by-certification 9 authorizes a public entity to use machinery to remove accumulated sediment and debris from a regulated water, within and/or adjacent to a lawfully existing bridge, culvert, or stormwater discharge pipe, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All machinery is situated outside the regulated water, except for handheld equipment such as hydraulic pumps. Heavy machinery such as backhoes may be used to reach into the regulated water to remove material, but cannot be driven or otherwise placed in the regulated water;
2. The sediment and debris removal is necessary to maintain positive flow through the structure and/or regulated water;
3. The material to be removed consists solely of accumulated sediment and debris and does not alter the natural bed and banks of the regulated water;
4. Work is limited to within 100 feet of the structure;
5. All work is performed by, or under the supervision of, a public entity;
6. All work is performed with the full consent of the owner of any property upon which the project is undertaken;
7. No riparian zone vegetation is cleared, cut, and/or removed, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;
8. No trees are cleared, cut, and/or removed in a riparian zone;
9. The project is conducted from only one bank, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;
10. Where work is proposed along a trout production or trout maintenance waters, the timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
11. All material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local requirements.

**7:13-8.10 General permit-by-certification 10 - in-kind replacement of a culvert**

(a) General permit-by-certification 10 authorizes the in-kind replacement of a culvert along a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The culvert being replaced was not removed more than one year prior to replacement;
2. The channel is not scoured, incised, or otherwise situated such that the invert of the culvert being replaced lies more than six inches above the invert of the regulated water;
3. The applicant obtains an engineering certification confirming that:

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- i. The replacement culvert is made of the same material as the existing culvert, unless the width or diameter of the culvert is no more than two feet or the length of the culvert is no more than 20 feet;
  - ii. The replacement culvert has the same wingwall configuration as the existing culvert; and
  - iii. The elevation of the crown of the roadway profile above the culvert and the dimensions of any parapets are not being altered within the flood hazard area;
4. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the culvert, where such disturbance is necessary to facilitate its replacement; and
5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-8.11 General permit-by-certification 11 – maintenance of existing manmade stormwater management structures and conveyances**

(a) General permit-by-certification 11 authorizes the maintenance of one or more lawfully existing manmade stormwater management structures and conveyances, such as a pipe, culvert, ditch, channel, or basin, not including natural channels that were previously modified, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. All work occurs within and is necessary for the maintenance of the stormwater management structure or conveyance;
2. The existing stormwater management system is not expanded, enlarged, or otherwise modified to receive additional sources of stormwater runoff or include additional discharge points;
3. The activities are limited to one or more of the following:
  - i. The removal of accumulated sediment, debris, or nuisance vegetation;
  - ii. The stabilization of an eroded structure; or
  - iii. The repair and/or in-kind replacement of one or more of the following:
    - (1) A culvert along a manmade channel;
    - (2) A stormwater pipe, manhole, inlet, or catch basin;
    - (3) A headwall, discharge structure, or associated conduit outlet protection;
    - (4) A tidegate, levee, or pump station along a regulated water that is separated from tidal influence by these structures; or
    - (5) A stormwater management basin constructed for a purpose other than to satisfy a mitigation requirement under N.J.A.C. 7:7A;
4. The applicant obtains an engineering certification confirming that the activities will not increase the frequency or depth of flooding during any flood event up to and including the flood hazard area design flood, either upstream or downstream of the site;
5. No riparian zone vegetation is cleared, cut, and/or removed outside the structure or

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conveyance feature, unless such disturbance is unavoidable, necessary to gain access to the structure or conveyance feature and minimized; and

6. No trees are cleared, cut, and/or removed in a riparian zone outside the structure or conveyance feature.

**7:13-8.12 General permit-by-certification 12 - surveying and geotechnical and archeological investigation activities**

(a) General permit-by-certification 12 authorizes surveying and geotechnical and archaeological investigation activities, such as creating survey lines, survey borings, or excavation for the purpose of obtaining information on subsurface conditions, determining the presence or extent of contamination in subsurface soils or groundwater, and/or obtaining seismic information, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No regulated activity is conducted within a regulated water;
2. No grading or changes in topography occur in a flood hazard area;
3. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to obtain the desired information and, where possible, is limited to actively disturbed areas; and
4. Where a pathway through riparian zone vegetation is necessary to accomplish the activities, it is limited to no greater than 10 feet in width.

**7:13-8.13 General permit-by-certification 13 - placement of solar panels**

(a) General permit-by-certification 13 authorizes the placement of solar panels and associated equipment, including poles, support structures, inverter pads, and electrical apparatus, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant obtains an engineering certification confirming that:
  - i. No panels or associated equipment are being placed in a floodway;
  - ii. The existing ground elevation is not being raised in any floodway or fluvial flood hazard area; and
  - iii. The flood storage displacement limitations of N.J.A.C. 7:13-11.4 are met;
2. Any panels placed in a flood fringe are elevated to at least one foot above the flood hazard area design flood elevation. Associated equipment is permitted below this elevation, where it is demonstrated that elevating the equipment is not feasible;
3. The applicant has obtained a verification of any flood hazard area design flood elevation, floodway limits, and riparian zone limits onsite, pursuant to N.J.A.C. 7:13-5;
4. Within a 50-foot riparian zone, no disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
5. Within a 150-foot riparian zone, no disturbance is located within 75 feet of any top of

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bank;

6. Within a 300-foot riparian zone, no disturbance is located within 150 feet of any top of bank;
7. No trees are cleared, cut, and/or removed in a riparian zone, unless they are completely surrounded by actively disturbed areas and growing in a hedgerow or confined within landscape islands, or similar structures, within in a parking area; and
8. No more than one-quarter of an acre of riparian zone vegetation is cleared, cut, and/or removed.

**7:13-8.14 General permit-by-certification 14 - placement of water monitoring devices**

(a) General permit-by-certification 14 authorizes the placement of water monitoring devices in a regulated area, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The devices consist of one or more of the following:
  - i. Water level recording devices;
  - ii. Water quality monitoring and testing devices;
  - iii. Weirs, gauges, or flumes for recording water quantity or velocity; and
  - iv. Monitoring wells;
2. The devices will not significantly disrupt the movement of aquatic species native to the regulated water, or of species which normally migrate through the area;
3. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
4. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to obtain the desired information and, where possible, is limited to actively disturbed areas;
5. Where a pathway through riparian zone vegetation is necessary to accomplish the activities, it is limited to:
  - i. No greater than five feet in width, if work is performed by hand; and
  - ii. No greater than 10 feet in width, if necessary to accommodate machinery in cases where the device cannot feasibly be constructed by hand;
6. The applicant obtains an engineering certification confirming that the device will not cause any of the following:
  - i. Erosion in the regulated water;
  - ii. A rise in the flood hazard area design flood elevation outside the regulated water; and
  - iii. Increased flooding at any existing building, during any flood event described in N.J.A.C. 7:13-12.1(i); and
7. The applicant obtains an engineering certification confirming that any utility shelter that is necessary to house and protect the equipment associated with the water monitoring

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device is:

- i. Constructed outside the channel;
- ii. Constructed outside the floodway, where possible;
- iii. Oriented to minimize obstruction to flow; and
- iv. No larger than 100 square feet in area.

**7:13-8.15 General permit-by-certification 15 - in-kind replacement of public infrastructure**

(a) General permit-by-certification 15 authorizes the in-kind replacement of public infrastructure, which has been damaged by flooding or other severe weather event that resulted in the Governor of New Jersey declaring a State of Emergency or FEMA declaring a major disaster in New Jersey and applies only to those counties and municipalities included in such a declaration. This general permit-by-certification authorizes the in-kind replacement of public infrastructure where a public entity has determined that immediate action is warranted to protect public health, safety, welfare, or the environment. For the purposes of this general permit-by-certification, public infrastructure means any roadway, railroad, bridge, culvert, storm sewer system, utility, and associated structure that are maintained by a public entity.

(b) In addition to satisfying the requirements applicable to all general permits-by-certification at N.J.A.C. 7:13-6.7, the applicant shall obtain an engineering certification confirming that any in-kind replacement of public infrastructure complies with all applicable design and construction standards of N.J.A.C. 7:13-10, 11, and 12, except for timing restrictions pursuant to N.J.A.C. 7:13-11.5(d).

(c) All regulated activities authorized under this general permit-by-certification shall:

1. Commence within 180 calendar days of the date the State of Emergency or FEMA disaster declaration was announced; and
2. Be completed within 180 calendar days of the date that the permittee submitted the required certifications resulting in authorization under general permit-by-certification 15.

(d) Within 30 calendar days of the completion of regulated activities authorized under this general permit-by-certification, the permittee shall provide to the Department a written statement that includes:

1. A detailed description of all regulated activities conducted;
2. An engineering certification confirming that the requirements of (a), (b), and (c) above have been met; and
3. Site plans, photographs, mapping, or other information necessary to demonstrate that the regulated activity complies with the requirements of this general permit-by-certification.

**7:13-8.16 General permit-by-certification 16—construction of a footbridge**

(a) General permit-by-certification 16 authorizes the construction of a footbridge for use by pedestrians only, across a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footbridge is no more than four feet wide;
2. The footbridge is no more than 14 inches thick, as measured from the top of the deck to the bottom of the stringer;
3. In order to ensure that the footbridge will not increase flooding offsite, the topographic elevation at any property boundaries located within 500 feet upstream of the footbridge and within 500 feet on either side of the footbridge is equal to or higher than the elevation of the top of the deck plus the thickness of the footbridge under (a)2 above. For example, if the elevation of the top of the deck is 100 feet NGVD and the thickness of the footbridge is 12 inches, then the topographic elevation at the adjacent property boundaries must be at least 101 feet NGVD;
4. Any pinning or anchoring of the footbridge is accomplished without construction in the channel;
5. The areas above and below the footbridge remain open to the passage of floodwaters. Handrails shall have large openings, so as not to catch debris during a flood and thereby obstruct floodwaters;
6. The existing ground elevation is not raised to accommodate or provide access to the footbridge, except for the construction of an earthen access ramp of no more than three feet in length; and
7. No trees are cleared, cut, and/or removed in a riparian zone.

**SUBCHAPTER 9. GENERAL PERMITS**

**7:13-9.1 General permit 1 - channel cleaning under the Stream Cleaning Act**

(a) General permit 1 authorizes a county, municipality, or a designated agency thereof to desnag a channel and/or remove accumulated sediment, debris, and garbage under the “Stream Cleaning Act” at N.J.S.A. 58:16A-67, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The project's sole purpose is to remove obstructions to flow or desnag a channel;
2. The project is necessary and in the public interest;
3. The project consists solely of either:
  - i. The removal of accumulated silt, sediment, debris, and/or garbage from a channel with a natural bed and does not alter the natural bed or banks of the channel; or
  - ii. The removal of any accumulated material from a channel previously lined with concrete or similar artificial material;
4. The project does not disturb the channel bank or result in any clearing, cutting, and/or removal of riparian zone vegetation, unless such disturbance is unavoidable, necessary to gain access to the channel, and minimized;



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5. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;
  6. The use of heavy equipment in the channel is avoided; and
  7. If the project involves sediment removal from a channel with a natural bed, the following requirements are satisfied:
    - i. If the project is undertaken by a municipality, or a designated agency thereof, it is located wholly within that municipality;
    - ii. If the project is undertaken by a county, or designated agency thereof, the project is located wholly within one municipality or, if located within more than one municipality, the channel reach is less than 500 feet in length;
    - iii. The average width of the channel bed does not exceed 30 feet;
    - iv. The channel is not classified as a Pinelands water or Category One water;
    - v. The channel is not a present or documented habitat for threatened or endangered species; and
    - vi. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.
- (b) All materials, including dredged material, removed from a channel during activities authorized under this general permit shall be placed outside of any regulated area and also any freshwater wetlands, transition areas, and State open waters, as those terms are defined in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A-1.4, unless it is demonstrated that this would cause more environmental harm or flooding risk than the placement of the material in these areas. For example, if removal of dredged material requires construction of a long temporary roadway through a wetlands with a very high water table to enable trucks to transport the dredged material offsite, this may cause more environmental harm than spreading the dredged material thinly over a large area.
- (c) This general permit does not authorize the straightening or realignment of a channel. Straightening or realignment constitutes channel modification and requires an individual permit pursuant to N.J.A.C. 7:13-11.1(c).
- (d) An application for authorization under this general permit is not subject to the application requirements at N.J.A.C. 7:13-18, except for those at N.J.A.C. 7:13-18.2. An application for authorization under general permit 1 shall be submitted to the Department electronically through the Department's online system at <https://nj.gov/dep/online>, and shall include the following:
1. All of the information listed at N.J.A.C. 7:13-18.4(b);
  2. The following digital documents, which must be uploaded to the online service in the format specified in the application checklist:
    - i. A completed Property Owner Certification form(s) signed by the applicant and all individuals required to certify to the application in accordance with N.J.A.C. 7:13-18.2(d). The Property Owner Certification form is available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
    - ii. Site plans prepared by an engineer, which clearly depict the segments of the

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- channel or stream to be cleaned;
  - iii. The location of the affected portion of the channel or stream, including the county and municipality, and the block(s) and lot(s);
  - iv. A USGS quad map showing the affected portion of the channel or stream;
  - v. Color photographs and a brief narrative description of the affected portion of the channel or stream, including the access points where workers and equipment will be brought to the channel or stream;
  - vi. A compliance statement that includes the following:
    - (1) The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, for the affected portion of the channel or stream;
    - (2) A description of the nature of the project;
    - (3) A description of the proposed methods that will be used to remove material from the channel or stream and the location where the dredged material will be placed; and
    - (4) A certification, signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District, that lists each requirement at (a) above that applies to the project, and states how the requirement has been or will be satisfied; and
  - vii. A copy of all conservation restrictions that impact any portion of the site that is the subject of the application.
- (e) The application review procedures for authorization under this general permit are set forth at N.J.A.C. 7:13-21. No application fee or public notice of the application are required for an authorization under this general permit.
- (f) Within 15 calendar days after the completion of a project under this general permit that involves the removal of sediment, the permittee shall submit to the Department:
- 1. A written notice that the project has been completed; and
  - 2. A certification, signed by the county or municipal engineer, or an engineer employed by the local Soil Conservation District, that lists each requirement in (a) above that applies to the project, and states how the requirement has been satisfied.

**7:13-9.2 General permit 2 - mosquito control water management activities**

- (a) General permit 2 authorizes activities in flood hazard areas and riparian zones necessary for mosquito control water management activities conducted by a county mosquito control agency or a Federal agency on Federal land. Mosquito control water management activities authorized under this general permit include:
- 1. Removal of accumulated silt, sediment, and debris from any water;
  - 2. Creation of ditches and channels where appropriate for mosquito control; and
  - 3. Improvements to flow in manmade waters, such as the excavation of an existing

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manmade ditch or channel to provide positive drainage.

(b) Mosquito control water management activities described at (a) above are acceptable provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The activities are necessary to control a documented mosquito problem, as determined by the State Office of Mosquito Control Coordination;
2. The material to be removed from the regulated water consists solely of accumulated silt, sediment, and debris and does not alter the natural bed and banks of the regulated water;
3. In order to minimize the downstream transport of sediment during dredging, all areas to be dredged must be isolated from flowing water, where possible, through:
  - i. Erecting temporary berms or sheet-piles around the areas to be dredged and pumping the flow within the regulated water around the work area; or
  - ii. If flow is low, by blocking off sections of the regulated water being dredged and allowing the sediment to settle;
4. All material removed from the regulated water is placed in accordance with the following:
  - i. Sediment removed can be placed in a regulated area provided the requirements at N.J.A.C. 7:13-12.15(f) are satisfied; and
  - ii. All trash and debris removed must be placed outside any flood hazard area or riparian zone and in accordance with all applicable Federal, State, and local requirements;
5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
6. The project does not disturb the channel bank or result in any clearing, cutting, and/or removal of riparian zone vegetation, unless such disturbance is unavoidable, necessary to gain access to the regulated water, and minimized;
7. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water;
8. The use of heavy equipment in the regulated water is avoided unless it is demonstrated that there is no feasible alternative that would result in less environmental damage; and
9. Access points to each regulated water are:
  - i. Identified; and
  - ii. Limited to actively disturbed areas, where possible.

(c) The Department shall not authorize activities under this general permit more frequently than once every five years for a particular site.

### **7:13-9.3 General permit 3 - scour protection activities at bridges and culverts**

(a) General permit 3 authorizes scour protection activities at one or more existing bridges or culverts, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

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1. The activities are necessary for the maintenance and/or protection of an existing bridge or culvert;
2. The activities are intended to remedy a scour problem within or adjacent to a bridge or culvert and not to remedy large sections of severely eroded or unstable channel;
3. The applicant provides an engineering certification confirming that:
  - i. The amount of stabilizing material to be placed in the channel is no greater than necessary to protect the structure from failure or collapse due to undermining of abutments or piers. In general, the channel velocity used to determine the necessary amount of stabilizing material shall be based on bank full flow, unless otherwise required by the U.S. Federal Highway Administration; and
  - ii. The stabilizing material does not obstruct flow in the channel or floodway or cause flooding outside the channel to increase;
4. The stabilizing material consists of native substrate, or is buried beneath at least two feet of native substrate, where placement of the native substrate is feasible and effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions;
5. The activities do not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel, and minimized. If access to the channel results in topographic changes to the bank, such as ruts from trucks or other machinery, the grade of the bank shall be restored to its pre-construction topography;
6. The project is conducted from only one bank, where possible, and the existing tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and
7. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-9.4 General permit 4 - creation, restoration, and enhancement of habitat and water quality values and functions**

(a) General permit 4 authorizes regulated activities necessary to implement a plan for the creation, restoration, or enhancement of habitat and water quality functions and values in a regulated area. Activities authorized under this general permit include, but are not limited to:

1. Altering hydrology to create, restore, or enhance wetlands, such as by blocking, removing, or disabling a manmade drainage ditch or other drainage structure such as a tile, culvert, or pipe;
2. Breaching a structure such as a dike, berm, or low dam in order to allow water into an area. Breaching or removing a dam is not regulated under this chapter, pursuant to N.J.A.C. 7:13-12.11;
3. Placing habitat improvement structures such as:
  - i. Nesting islands;

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- ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and
- iii. Aquatic habitat enhancement devices or habitat improvement structures such as placed boulders, stream deflectors, or brush piles;
- 4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement; and
- 5. Removing, planting, cutting, burning, or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora.

(b) Creation, restoration, and enhancement activities are eligible for authorization under this general permit, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

- 1. The plan is:
  - i. Approved by one of the following agencies:
    - (1) The Department's Division of Fish and Wildlife;
    - (2) The Department's Office of Natural Resource Restoration;
    - (3) The U.S. Fish and Wildlife Service;
    - (4) The USDA Natural Resources Conservation Service;
    - (5) A government resource protection agency such as a parks commission; or
    - (6) A charitable conservancy; or
  - ii. Required by or approved by a government agency, such as the Department and/or U.S. Army Corps of Engineers, under a mitigation plan.
    - (1) Pursuant to N.J.A.C. 7:13-13, a riparian zone mitigation plan submitted to the Department to satisfy the requirements and/or conditions of an individual permit does not require the submittal of a separate application for an authorization or permit;
- 2. The project has a reasonable likelihood of success;
- 3. The project will improve the values and functions of the ecosystem;
- 4. The use of heavy equipment in any channel is avoided to the maximum extent practicable;
- 5. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed;
- 6. The project does not involve relocating or significantly altering the cross-sectional area of a regulated water, or other activities addressed at N.J.A.C. 7:13-12.14(d);
- 7. Where regulated activities result in the placement of fill material in a flood hazard area, the applicant provides an engineering certification confirming that the flood storage displacement limitations of N.J.A.C. 7:13-11.4 are met; and
- 8. Where regulated activities are proposed within a channel or floodway, the applicant provides an engineering certification confirming that the project will not increase offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i).

(c) This general permit does not authorize any activity unless the sole purpose of the activity is

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habitat creation, restoration, or enhancement of habitat and water quality values and functions is a primary goal of the project. For example, this general permit does not authorize construction of a detention basin for stormwater management or a flood control project that may also incidentally result in water quality benefits or the creation, restoration, or enhancement of some wildlife habitat.

**7:13-9.5 General permit 5 - reconstruction and/or elevation of a building in a floodway**

(a) General permit 5 authorizes the reconstruction and/or elevation of a lawfully existing building in a floodway, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The lowest floor of the building is reconstructed and/or elevated to at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
2. Any new enclosure below the lowest floor of the building is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
3. Any existing enclosure below the lowest floor of the building that does not conform to the requirements of N.J.A.C. 7:13-12.5(p), such as a basement having a floor that is below grade along all adjoining exterior walls, is abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13-12.5;
4. The location and footprint of the building is not altered;
5. The applicant provides an engineering certification confirming that:
  - i. The proposed reconstruction and/or elevation will not increase offsite flooding or flood damage potential;
  - ii. The proposed reconstruction and/or elevation will not result in any additional obstruction to the flow of floodwaters; and
  - iii. The building is modified wherever necessary to withstand hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation;
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; and
7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the building, where such disturbance is necessary to access the building and facilitate its reconstruction and/or elevation.

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**7:13-9.6 General permit 6 - construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water**

(a) General permit 6 authorizes the construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. No fill or structures are located within a floodway;
2. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development;
3. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;
4. The lowest floor of the single-family home or duplex is constructed at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
5. Any enclosure below the lowest floor of the single-family home or duplex is not used for habitation, remains open to floodwaters, and is constructed in accordance with N.J.A.C. 7:13-12.5(p);
6. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
7. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed;
8. Within a 150-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed, and disturbance within 75 feet of any top of bank is avoided to the maximum extent practicable;
9. Within a 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed, and disturbance within 150 feet of any top of bank is avoided to the maximum extent practicable;
10. Where development is proposed within a fluvial flood hazard area, the applicant provides an engineering certification confirming that the flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied; and
11. The applicable requirements at N.J.A.C. 7:13-12.6(c) are satisfied for any proposed driveway.

**7:13-9.7 General permit 7 - relocation of manmade roadside ditches to facilitate public roadway improvements**

(a) General permit 7 authorizes the relocation of one or more manmade roadside ditches to facilitate public roadway improvements, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

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1. The public entity responsible for maintaining the roadway has determined that the relocation of a ditch is necessary for the continued safe use of the roadway;
2. The ditch is not being enclosed in a pipe, culvert, or bridge;
3. The relocated ditch possesses equivalent flood carrying capacity as the existing ditch; and
4. The project will not result in a net loss of greater than one-quarter acre of riparian zone vegetation.

#### **7:13-9.8 General permit 8 - placement of storage tanks**

(a) General permit 8 authorizes the placement of one or more storage tanks and associated support structures, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The tank cannot feasibly be located outside a regulated area;
2. The tank is not located in a floodway unless all the following apply:
  - i. The tank is intended to replace a lawfully existing tank associated with a currently occupied building or operating facility;
  - ii. The tank cannot feasibly be located outside the floodway; and
  - iii. The tank and any support structures are oriented to minimize obstruction to flow;
3. Any tank located in a flood hazard area is designed to remain watertight during a flood;
4. The bottom of the tank is situated above the flood hazard area design flood elevation, where feasible;
5. Where an aboveground tank is intended for the storage of hazardous substances and has a volume of greater than 2,000 gallons, the tank is isolated from floodwaters by berms, or is located in a specially designed containment area onsite, so that in the event of a flood, the hazardous substances will not be transported offsite by floodwaters;
6. The flood storage displacement requirements of N.J.A.C. 7:13-11.4 are satisfied for both the tank and any containment areas within the flood hazard area;
7. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
8. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas;
9. No trees are cleared, cut, and/or removed in a riparian zone; and
10. No more than 2,000 square feet of vegetation is cleared, cut, and/or removed in a riparian zone, per tank.

#### **7:13-9.9 General permit 9 - construction or reconstruction of a bridge or culvert across a**



**regulated water with a drainage area of less than 50 acres**

(a) General permit 9 authorizes the construction or reconstruction of one bridge or culvert that crosses a regulated water that has a drainage area of less than 50 acres, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The bridge or culvert is not located in the flood hazard area of an additional regulated water that has a drainage area of 50 acres or greater;
2. The bridge or culvert and any associated construction, such as embankments, abutments, footings, and travel surfaces, are designed to remain stable, scour resistant, and resistant to displacement and/or damage. At a minimum, a bridge shall have stable abutments, a culvert shall have stable headwalls, and any abutment and headwall shall have footings that extend no less than three feet below the invert of the channel;
3. The bridge or culvert, to the extent feasible, matches or exceeds the dimensions of the existing channel so that the size and shape of the natural channel is preserved through the structure in order to avoid potential adverse impacts to channel stability and aquatic, semi-aquatic, and terrestrial resources;
4. No armoring is placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate, where placing such substrate is feasible and effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions;
5. Any temporarily disturbed sections of the channel are restored to pre-construction conditions immediately after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate, and velocity and substrate type;
6. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project and is limited to actively disturbed areas where possible;
7. Any new bridge or culvert, and any new railroad or roadway it conveys, are not located within a 300-foot riparian zone;
8. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 at N.J.A.C. 7:13-11.2;
9. Where the bridge or culvert conveys a railroad or public roadway, the requirements of N.J.A.C. 7:13-11.2(g)2, 3, and 4 are met;
10. Where the bridge or culvert conveys a private roadway, the requirements of N.J.A.C. 7:13-11.2(h)2, 3, 4, and 6 are met; and
11. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-9.10 General permit 10 - reconstruction of a bridge or culvert across a regulated water with a drainage area of 50 acres or more**

(a) General permit 10 authorizes the reconstruction of one existing bridge or culvert that crosses

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a regulated water that has a drainage area of 50 acres or more, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The applicant provides an engineering certification confirming that the proposed bridge or culvert is designed to not increase the frequency or depth of offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i);
2. In order to ensure that the hydraulic capacity of the reconstructed bridge or culvert is substantially equivalent to the hydraulic capacity of the existing bridge or culvert, all the following are met:
  - i. The cross-sectional area of the new structure is at least equal to, and not more than five percent greater than, the cross-sectional area of the existing structure;
  - ii. The width-to-height ratio of the new structure does not deviate by more than 10 percent from the width-to-height ratio of the existing structure;
  - iii. The length of the new structure does not deviate by more than 10 feet from the length of the existing structure or more than 10 percent of the length of the existing structure, whichever is greater;
  - iv. The orientation of any new abutments and headwalls is aligned as closely as feasible to the orientation of the existing abutments and headwalls; and
  - v. The elevation of the crown of the roadway profile above the bridge or culvert is not altered within the flood hazard area;
3. The bridge or culvert is designed to remain stable, scour resistant, and resistant to displacement and/or damage. 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;
4. The bridge or culvert is designed to avoid any adverse impacts to aquatic, semi-aquatic, and terrestrial resources. Where possible, a stable, natural, earthen channel with low-flow aquatic passage shall be preserved and/or provided within the bridge or culvert as well as any section of channel disturbed to accommodate its construction;
5. No armoring is placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate, where feasible;
6. Any temporarily disturbed sections of the channel are restored to pre-construction conditions immediately after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate, and velocity and substrate type;
7. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the bridge or culvert, where such disturbance is necessary to facilitate its reconstruction; and
8. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed.

**7:13-9.11 General permit 11 for a stormwater outfall along a regulated water with a**

**drainage area of less than 50 acres**

(a) General permit 11 authorizes the construction of one stormwater outfall structure along a regulated water that has a drainage area of less than 50 acres, provided the conditions at N.J.A.C. 7:13-6.7 are met and the structure:

1. Is not located in the flood hazard area or riparian zone of any regulated water that has a drainage area of 50 acres or greater;
2. Is authorized under a valid freshwater wetlands general permit 11, pursuant to N.J.A.C. 7:7A-5.11;
3. Meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-11.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut, or removed in the riparian zone; and
4. Meets the requirements at N.J.A.C. 7:13-12.9 for the construction of a stormwater outfall structure.

**7:13-9.12 General permit 12 – construction of footbridges**

(a) General permit 12 authorizes the construction of one or more footbridges across a regulated water, or across another feature such as a manmade canal or roadway that lies within the flood hazard area or riparian zone of a regulated water, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The footbridge is used exclusively to carry pedestrians, livestock, and/or light vehicles such as bicycles, golf carts, or lawn tractors;
2. Where the footbridge crosses a regulated water, it is designed and constructed to be as nearly perpendicular to the channel as possible;
3. Where the footbridge is designed for pedestrian use, the width of the footbridge is no more than six feet, unless it is demonstrated that a wider width is necessary in order to comply with all applicable State and Federal barrier-free access requirements. In no case shall the width of the footbridge exceed 10 feet;
4. Where the footbridge is designed as part of a multiple-use path for bicycles, skate boards, rollerblades, and other methods of transport:
  - i. The width of the footbridge is no more than 10 feet; and
  - ii. Bollards or similar devices are installed to prevent automobiles and other large vehicles from utilizing the footbridge;
5. Where the footbridge provides access to a critical building, its travel surface is constructed at least one foot above the flood hazard area design flood elevation, or as close to that elevation as feasible;
6. All footings and abutments proposed within 10 feet of the top of bank extend at least three feet below the channel invert;
7. All footings and abutments proposed more than 10 feet beyond the top of bank extend at least three feet below grade;

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8. All stairs, ramps, or other structures necessary for access to the footbridge:
  - i. Remain open underneath to allow floodwaters to pass freely;
  - ii. Do not require the existing ground elevation to be raised in a flood hazard area; and
  - iii. Are oriented to minimize obstruction to flow, such as by being set into the bank, where possible;
9. The footbridge is designed to pass floodwaters by either:
  - i. Setting the low chord of the footbridge above the flood hazard area design flood elevation; or
  - ii. Using handrails instead of a parapet, with sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, and setting the vertical distance between the low chord and the top of the footbridge deck, including any curbing, at no more than eight inches;
10. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed; and
11. The width of any clearing, cutting, and/or removal of riparian zone vegetation associated with the construction of the footbridge does not exceed 20 feet.

### **7:13-9.13 General permit 13 - construction of trails and boardwalks**

(a) General permit 13 authorizes the construction of a trail and/or boardwalk, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The trail or boardwalk is used exclusively to carry pedestrians, livestock, and/or light vehicles such as bicycles, golf carts, or lawn tractors;
2. Where the trail or boardwalk is designed solely for pedestrian use, the width of the trail or boardwalk is no more than six feet, unless it is demonstrated that a wider width is necessary in order to comply with all applicable State and Federal barrier free access requirements. In no case shall the width of the trail or boardwalk exceed 10 feet;
3. The existing ground elevation is not raised in any floodway or fluvial flood hazard area. A boardwalk constructed in a flood hazard area shall be constructed at or below the existing ground elevation or elevated so that the area underneath the boardwalk remains open to the passage of floodwaters;
4. The setbacks at (a)4i through iii below are met, except in the immediate vicinity of a footbridge or a dock or pier connected to the trail or boardwalk, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water:
  - i. No disturbance is located within 10 feet of any top of bank;
  - ii. No trees are cleared, cut, and/or removed within 25 feet of any top of bank; and
  - iii. Where disturbance within 25 feet of any top of bank is proposed, the applicant provides an engineering certification confirming that the location of the project is stable and suitable for the proposed activities, and not subject to erosion or

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undermining due to its proximity to the top of bank;

5. Clearing, cutting, and/or removal of riparian zone vegetation is the minimum necessary to successfully implement the project and is limited to actively disturbed areas, where possible;
6. No more than six square feet of trees is cleared, cut, and/or removed per linear foot of trail or boardwalk in a riparian zone, including the total area of canopy affected by activities under this general permit. For example, the construction of a trail or boardwalk that is 1,000 feet long can impact no more than 6,000 square feet of canopy;
7. No more than one-half of an acre of riparian zone vegetation is cleared, cut, and/or removed; and
8. Any public trail or boardwalk incorporates features designed to educate the user on the importance of riparian zones, flood hazard areas, and stream corridors. Such features may include signs identifying plants and animals or explaining hydrology, ecology, or other significant environmental features.

**7:13-9.14 General permit 14 – application of herbicide within riparian zones to control invasive plant species**

(a) General permit 14 authorizes the application of herbicide within a riparian zone to control invasive plant species, provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. The area to which the herbicide is applied shall not exceed a total area of one acre on a site;
2. The activities are conducted pursuant to an aquatic use permit issued by the Department's Bureau of Licensing and Pesticide Operations; and
3. No herbicide is applied within a 300-foot riparian zone.

**SUBCHAPTER 10. INDIVIDUAL PERMITS**

**7:13-10.1 Requirement to obtain an individual permit**

(a) A person shall obtain an individual permit under this subchapter in order to undertake any activity that does not meet the requirements of a permit-by-rule pursuant to N.J.A.C. 7:13-7, an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:13-8, an authorization under a general permit pursuant to N.J.A.C. 7:13-9, or a coastal permit under the circumstances set forth at N.J.A.C. 7:13-2.1(b)6.

(b) A regulated activity or project subject to an individual permit shall meet:

1. The applicable area-specific requirements at N.J.A.C. 7:13-11; and
2. The applicable activity-specific requirements at N.J.A.C. 7:13-12.

**7:13-10.2 Duration of an individual permit**

(a) An individual permit for any regulated activity other than those identified at (b) below is

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valid for five years from the date of issuance, and may be extended one time for five years pursuant to N.J.A.C. 7:13-22.3.

(b) An individual permit for a linear activity or project that is greater than 10 miles in length, a flood control project, or a quarry or mining operation is valid for 10 years from the date of issuance, and shall not be extended.

(c) All regulated activities authorized by an individual permit shall immediately cease if the permit expires, including any extension thereof under N.J.A.C. 7:13-22.3. If a person intends to commence or continue regulated activities that had been authorized under an individual permit that has expired, the person shall obtain a new individual permit under this chapter authorizing the regulated activities.

1. If no regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review.
2. If any regulated activities have occurred prior to the expiration of the individual permit, the Department shall issue a new individual permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new individual permit is declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete for review, the Department shall consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original individual permit, and whether continuing construction as approved under the original individual permit would have an adverse impact on flooding or the environment.

**7:13-10.3 Conditions applicable to an individual permit**

(a) A person conducting regulated activities pursuant to an individual permit shall comply with:

1. The conditions set forth in the individual permit itself; and
2. The conditions that apply to all permits at N.J.A.C. 7:13-22.2.

(b) In addition to the conditions that apply to every individual permit under (a) above, the Department shall establish conditions in a specific individual permit, as required on a case-by-case basis, to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes. For example, in cases where a proposed regulated activity involves disturbance to a Category One water or its riparian zone, the Department may impose additional conditions to ensure that the water quality of the regulated water is protected.

**SUBCHAPTER 11. AREA-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS**

**7:13-11.1 Requirements for a regulated activity in a channel**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a channel.

(b) The Department shall issue an individual permit for a regulated activity in a channel only if the following requirements are satisfied:

1. The applicant describes in detail the regulated activities proposed within the channel, including the equipment proposed to be utilized, and demonstrates that the basic purpose of the project cannot be accomplished without the disturbance to the channel;
2. Disturbance to the channel is eliminated where possible; where not possible to eliminate, disturbance is minimized through methods including relocating the project and/or reducing the size or scope of the project;
3. All roadway, railroad, pedestrian, utility and other crossings are constructed as nearly perpendicular to the channel as possible;
4. All disturbed sections of the channel are properly stabilized, with special attention given to changes in slope, channel width and hydraulic capacity;
5. If stabilization measures such as rip-rap or scour holes are proposed in the channel, the applicant demonstrates that such measures are necessary to stabilize the channel and/or to withstand scour along a bridge or culvert, and cannot be avoided through alternative designs, such as construction of deeper abutment footings or a larger bridge opening. Any rip-rap shall be embedded in the channel bed in such a way as to provide low-flow aquatic passage and withstand velocities associated with bank-full flows;
6. No mining of the channel is proposed. This does not preclude the incidental use or sale of material removed as a result of lake dredging, channel cleaning or other regulated activities authorized by the Department and performed for purposes other than mining;
7. All temporarily disturbed sections of the channel are restored to pre-construction conditions immediately after completion of the disturbance. Characteristics that shall be replicated include channel shape, width, and meandering, ratio of shallow areas to deep areas, anticipated flow rate and velocity, and substrate type;
8. Aquatic habitat is preserved where possible;
9. Aquatic habitat is enhanced where preservation is not possible, such as through the placement of habitat enhancement devices, replacement of vegetation removed during construction, creation of tree canopy along the channel where no canopy exists, and/or enhancement of existing tree canopy along the channel; and
10. The project does not expose unset or raw cement to flowing water within any channel or regulated water during construction;

(c) The Department shall issue an individual permit for a channel modification only if the applicant demonstrates that, in addition to meeting the requirements of (b) above, the channel modification meets at least one of the following requirements:

1. The channel modification is necessary to improve the ecological health of the regulated water and its riparian zone, or to control existing flooding or erosion which poses an

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immediate threat to life, property or a lawfully existing structure; or

2. The channel modification is necessary for the construction of a bridge or culvert, and the following requirements are satisfied:
  - i. The disturbance to the channel is the minimum necessary to successfully implement the project;
  - ii. A bridge is constructed rather than a culvert, where feasible;
  - iii. The length of channel covered by a bridge or enclosed in a culvert is the minimum feasible; and
  - iv. No more than 200 linear feet of channel (including the bridge or culvert) is disturbed unless the applicant demonstrates that disturbance to a longer segment of channel cannot feasibly be avoided.

(d) The Department shall authorize the use of construction equipment to perform regulated activities in a channel (whether situated in a channel, reaching into a channel, or driven across a channel) only if, in addition to meeting the requirements of (b) above, the following requirements are satisfied:

1. There is no feasible alternative that will result in less environmental damage;
2. The bed is firm, the approaches are stable and the proposed construction activities will not cause or exacerbate bank erosion;
3. Contact with flowing water is minimized to the maximum extent practicable through the use of temporary bridges, culverts, coffer dams, and/or sediment control devices, which are removed from the channel as soon as possible after completion of the disturbance;
4. Fording the channel is avoided to the maximum extent practicable;
5. Where unavoidable, fording is made as nearly perpendicular to the channel as possible; and
6. Adequate precautions are taken to prevent sediment, petroleum products and other pollutants from entering the channel.

(e) A person shall not drive or operate a vehicle within a channel except in the following cases:

1. It is necessary to operate construction equipment in or across a channel as described in (d) above as part of a temporary construction activity;
2. An emergency vehicle must access a site that has no other feasible means of entry. This does not include repeated visits to the same site by delivery trucks; or
3. The vehicle is driven across a lawfully existing and stable ford that was either constructed prior to October 2, 2006, or which is constructed on agricultural lands and authorized under this chapter.

(f) No person shall dump or discard into a channel any material that could be carried away during a storm and/or obstruct the normal flow of water, such as trash, debris, construction material, leaf piles, lawn clippings, and landscaping material.



**7:13-11.2 Requirements for a regulated activity in a riparian zone**

(a) This section sets forth the design and construction standards under which the Department will issue an individual permit for any regulated activity proposed in a riparian zone.

(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:

1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;
2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:
  - i. Situating the regulated activity or project as far from any regulated water as feasible; and
  - ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:
    - (1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;
    - (2) Abandoned pavement that has partially revegetated;
    - (3) Areas of dirt and gravel that are primarily devoid of vegetation;
    - (4) Eroded embankments; and
    - (5) Landscape islands within a paved parking area;
3. All existing onsite impervious surface located within 25 feet of the top of bank is removed and the riparian zone is replanted with vegetation in accordance with (z) below, except in the following cases:
  - i. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
  - ii. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this paragraph would likely exacerbate flooding or erosion, expose hazardous substances or solid waste, or otherwise threaten public health, safety, welfare, and/or the environment. In such a case, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible and protective of public health, safety, and welfare, and the environment, be replanted with vegetation in accordance with (z) below; or
  - iii. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this paragraph would prevent reasonable use or access to the site and/or cause an unreasonable burden upon the applicant. For example, lawfully existing pavement around a building, which is located within 25

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feet of a top of bank, may provide essential access to and around the building and the removal of such impervious surface would result in noncompliance with local building or fire codes and/or disrupt normal access to and throughout the facility. In such a case, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible, be replanted with vegetation in accordance with (z) below;

4. The requirements for each specific regulated activity described in (g) through (y) below are satisfied, including mitigation in accordance with N.J.A.C. 7:13-13, as applicable;
5. All areas from which riparian zone vegetation is temporarily cleared, cut, or removed are replanted in accordance with (z) below; and
6. All additional requirements for each specific regulated activity described elsewhere in this chapter are satisfied.

(c) The Department shall issue an individual permit for a regulated activity that results in clearing, cutting, and/or removal of vegetation within 25 feet of any top of bank only in the following circumstances:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;
2. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake riparian zone, freshwater wetlands, and/or habitat restoration and enhancement activities;
3. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake sediment removal activities in accordance with N.J.A.C. 7:13-12.15; or
4. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to construct, reconstruct, or improve a structure that crosses a regulated water or requires proximity to a regulated water.
  - i. For the purposes of this paragraph, examples of structures that cross a regulated water include new and reconstructed infrastructure projects such as roadways, railroads, utility lines, and footbridges.
  - ii. For the purposes of this paragraph, examples of structures that require proximity to a regulated water include stormwater discharges, bank stabilization projects, public trails and boardwalks, and improvements to existing infrastructure that are necessary to maintain public safety and which cannot feasibly be improved at a location greater than 25 feet from any top of bank.
  - iii. The construction of buildings, parking areas, stormwater management facilities, and all other non-water dependent activities, as well as clearing, cutting, and/or removal of vegetation to store vehicles and equipment, does not satisfy this paragraph, except for the reconstruction of a lawfully existing structure currently situated within 25 feet of the top of bank, which cannot feasibly be relocated further from the top of bank.

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(d) The Department shall issue an individual permit for a regulated activity that results in clearing, cutting, and/or removal of vegetation within 150 feet of the top of bank along a regulated water with a 300-foot riparian zone, only if the applicant demonstrates that:

1. There is no practicable alternative to the regulated activity that would have less adverse impacts on regulated areas and which would not significantly compromise other environmental resources;
2. The regulated activity results in the minimum feasible alteration or impairment of the riparian or aquatic ecosystem; and
3. The regulated activity is in the public interest, as determined by the Department in consideration of the following:
  - i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;
  - ii. The extent of the public and private need for the proposed regulated activity;
  - iii. The practicability of using reasonable alternative locations and methods to accomplish the purpose of the proposed regulated activity;
  - iv. The extent and permanence of the beneficial or detrimental effects that the proposed regulated activity may have on the public and private uses for which the property is suited;
  - v. The functions and values provided by the riparian zone proposed to be impacted; and
  - vi. The probable individual and cumulative impacts of the regulated activity on public health, safety, and welfare, and the environment.

(e) Table 11.2 below establishes the maximum allowable area of riparian zone vegetation that can be temporarily or permanently cleared, cut, and/or removed associated with the regulated activities identified at (g) through (y) below without Department approval based upon additional justification as set forth in (g)1, (h)1, (i)2, (j)1, (k)1, (q)1, (t), (u)1, (v), or (w)1 below or Department approval of a hardship exception. Where the regulated activity located within a 300-foot riparian zone, is an activity identified at (r), (s), or (y) below, or the total amount of clearing, cutting, and/or removal of riparian zone vegetation exceeds the limits in Table 11.2, mitigation is required in accordance with N.J.A.C. 7:13-13.4. Activities within riparian zones that are not subject to the limits set forth in Table 11.2 are identified in (f) below.

1. Except as provided in (f) below, the total area of riparian zone vegetation cleared, cut, and/or removed for a given regulated activity is calculated by adding the following:
  - i. The area of any vegetation within the project's limit of disturbance shown on the site plans submitted by the applicant;
  - ii. The area under the canopy of any trees to be cleared, cut, or removed; and
  - iii. All other areas not included under (e)1i or ii above, from which vegetation is to be temporarily or permanently cleared, cut, and/or removed to conduct the regulated activity. Areas containing vegetation for a portion of the year, such as agricultural areas that are periodically plowed and cultivated, are considered vegetated for the

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purposes of this chapter;

2. A person may undertake more than one regulated activity subject to the individual permit requirements identified in Table 11.2 on a single site, provided the requirements in this section for each separate regulated activity are met.
3. Except for the construction of an addition to an existing single-family home or duplex or the construction of an accessory structure under (n) below, the limits listed in Table 11.2 apply to each individual occurrence of a proposed regulated activity on a site or as part of a project. For example, Table 11.2 establishes limits on the amount of vegetation that can be cleared, cut, and/or removed for the construction of a stormwater outfall structure within a riparian zone. A person can obtain an individual permit for multiple stormwater outfall structures on a single site, provided the limits in Table 11.2 and all other requirements of this section are met for each individual outfall structure.

(f) The following regulated activities are not subject to the limits set forth in Table 11.2 below, and shall not be included when calculating the total area of vegetation to be cleared, cut, and/or removed under (e)1 above:

1. Any regulated activity that will not result in clearing, cutting, and/or removal of riparian zone vegetation, such as construction on a lawfully existing impervious surface, or within a lawfully existing gravel roadway or parking area;
2. Converting riparian zone vegetation within an actively disturbed area from one type to another, such as converting an actively farmed area into a lawn or garden, provided there is no net loss in the area of riparian zone vegetation;
3. Any temporary clearing, cutting, and/or removal of riparian zone vegetation within an actively disturbed area, provided all disturbed areas are adequately stabilized and replanted with vegetation in accordance with (z) below;
4. Relocating a lawfully existing structure, which is situated within a riparian zone, to an actively disturbed area on the same site, provided the area formerly occupied by the structure is stabilized and replanted with vegetation in accordance with (z) below;
5. Any disturbance to riparian zone vegetation that is completely submerged during normal flow conditions in a regulated water;
6. Any regulated activity along a lawfully existing public roadway that results in a net loss of less than one acre of riparian zone vegetation, provided the activity is:
  - i. Located within an actively disturbed area;
  - ii. Located within an existing right-of-way or easement;
  - iii. Undertaken by a public entity;
  - iv. Necessary for the continued, safe use of the roadway; and
  - v. Situated on a lawfully existing roadway embankment, or within an area adjacent to a lawfully existing roadway, which was disturbed for the initial construction of the roadway; and
7. Any clearing, cutting, and/or removal of riparian zone vegetation within a truncated portion of a riparian zone. For the purposes of this paragraph, an area is considered to

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be a truncated portion of a riparian zone if:

- i. The area is separated from a regulated water by a lawfully existing railroad or public roadway;
- ii. The area does not slope toward the regulated water; and
- iii. Stormwater runoff from the area does not drain into the regulated water.

Table 11.2

MAXIMUM ALLOWABLE AREA OF RIPARIAN ZONE VEGETATION THAT CAN BE TEMPORARILY OR PERMANENTLY CLEARED, CUT, AND/OR REMOVED WITHOUT ADDITIONAL JUSTIFICATION AND/OR A HARDSHIP EXCEPTION REQUEST, IN ACCORDANCE WITH (e) ABOVE

Proposed Regulated Activity		See Subsection Below for Additional Requirements	Allowable Disturbance Based on the Width of the Riparian Zone		
			50-foot Riparian Zone	150-foot Riparian Zone	300-foot Riparian Zone
<b>• Railroad or public roadway</b>					
New	Crossing a water	(g)	6,000 ft <sup>2</sup>	18,000 ft <sup>2</sup>	36,000 ft <sup>2</sup>
	Not crossing a water		3,000 ft <sup>2</sup>	9,000 ft <sup>2</sup>	18,000 ft <sup>2</sup>
Reconstructed	Crossing a water		3,000 ft <sup>2</sup>	9,000 ft <sup>2</sup>	18,000 ft <sup>2</sup>
	Not crossing a water		1,500 ft <sup>2</sup>	4,500 ft <sup>2</sup>	9,000 ft <sup>2</sup>
<b>• Private driveway serving one single-family home or duplex</b>					
New	Crossing a water	(h)	2,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>	12,000 ft <sup>2</sup>
	Not crossing a water		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
Reconstructed	Crossing a water		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
	Not crossing a water		500 ft <sup>2</sup>	1,500 ft <sup>2</sup>	3,000 ft <sup>2</sup>
<b>• All other roadways not listed above</b>					
New	Crossing a water	(h)	4,000 ft <sup>2</sup>	12,000 ft <sup>2</sup>	24,000 ft <sup>2</sup>
	Not crossing a water		2,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>	12,000 ft <sup>2</sup>
Reconstructed	Crossing a water		2,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>	12,000 ft <sup>2</sup>
	Not crossing a water		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
<b>• Bank stabilization and channel restoration</b>					
Areas stabilized with vegetation and/or soil bioengineering		(i)	No limit if disturbance is justified		
Areas stabilized using other methods			10 ft <sup>2</sup> per linear foot of armoring		
Access to the project			1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
<b>• Stormwater discharge</b>					
Headwall and outlet protection		(j)	2,000 ft <sup>2</sup>	2,000 ft <sup>2</sup>	2,000 ft <sup>2</sup>
Stormwater pipe			1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>

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• Utility line				
New	(k)	30 ft <sup>2</sup> per linear foot of utility line		
Access to the project (per crossing)		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
Reconstruction, upgrade, expansion, or maintenance	(l)	No limit if disturbance is justified		
Access to the project (per crossing)		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	6,000 ft <sup>2</sup>
• Single-family home or duplex				
New	(m)	3,500 ft <sup>2</sup>	7,000 ft <sup>2</sup>	7,000 ft <sup>2</sup>
Reconstruction		2,000 ft <sup>2</sup>	2,000 ft <sup>2</sup>	2,000 ft <sup>2</sup>
Addition	(n)	2,000 ft <sup>2</sup> for all additions, cumulatively since November 5, 2007		
Accessory structure		4,000 ft <sup>2</sup> for all accessory structures, cumulatively since November 5, 2007		
• Tidal development				
Public access	(o)	No limit if disturbance is justified		
Water dependent development	(p)	No limit if disturbance is justified		
• Other projects				
Individual subsurface sewage disposal system	(q)	5,000 ft <sup>2</sup>	5,000 ft <sup>2</sup>	5,000 ft <sup>2</sup>
Hazardous substance remediation	(r)	No limit if disturbance is justified		
Solid waste facility closure	(s)	No limit if disturbance is justified		
Trail or boardwalk	(t)	10 ft <sup>2</sup> per linear foot of trail or boardwalk, not to exceed one acre		
Footbridge	(u)	1,000 ft <sup>2</sup>	1,000 ft <sup>2</sup>	1,000 ft <sup>2</sup>
Flood control project	(v)	3,000 ft <sup>2</sup>	9,000 ft <sup>2</sup>	18,000 ft <sup>2</sup>
Removing sediment and/or debris from a regulated water	(w)	1,000 ft <sup>2</sup> per access point		
Removing existing fill and/or an existing structure	(x)	Within 20 feet of the fill or structure, not to exceed one acre		
Any regulated activity not listed in this table above				
Total area of disturbance permitted	(y)	One-quarter of an acre		6,000 ft <sup>2</sup>

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Maximum portion of the total area of disturbance permitted above, which can be located within a riparian zone that is not an actively disturbed area		1,000 ft <sup>2</sup>	3,000 ft <sup>2</sup>	3,000 ft <sup>2</sup> (must be located more than 150 feet from the top of bank.)
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(g) The Department shall issue an individual permit for the construction of a new railroad or public roadway, or the expansion, reconstruction, or improvement of a lawfully existing railroad or public roadway, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that compliance with all Federal, State, and local requirements governing railroads and public roadways cannot be achieved, and that public safety cannot be adequately ensured, without exceeding these limits;
2. The width of disturbance associated with the construction, expansion, reconstruction, or improvement of the railroad or public roadway is minimized;
3. Any new crossing of a regulated water is designed and constructed to be as nearly perpendicular to the channel as possible; and
4. If the project impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is a compelling public need for the project, which cannot be satisfied without impacting the riparian zone. This demonstration shall include an analysis of alternate routes and other alternative projects that would avoid impacting the riparian zone.

(h) The Department shall issue an individual permit for the construction of a new private roadway, or the expansion, reconstruction, or improvement of a lawfully existing private roadway, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that safe, adequate access into the site, which meets all Federal, State and local requirements governing roadways, cannot be provided without exceeding these limits;
2. The width of disturbance associated with the construction, expansion, reconstruction, or improvement of the roadway is minimized;
3. The applicant demonstrates that any proposed expansion, reconstruction, or improvement to the roadway is necessary for the continued safe access to the site;
4. For the construction of a new roadway that serves or accesses a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that:
  - i. None of the lots created in the subdivision are currently served or accessed by a

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roadway;

- ii. None of the lots created in the subdivision possess a valid authorization from the Department to construct a new roadway in the riparian zone; and
  - iii. The area of riparian zone vegetation to be cleared, cut, and/or removed to construct the roadway does not exceed the area of riparian zone vegetation that would have been allowed by this chapter to be cleared, cut, and/or removed to construct a roadway to serve or access the original parcel prior to its subdivision;
5. For the construction of a new roadway that does not cross a regulated water, the applicant demonstrates that there is no other means of constructing a roadway to access the developable area onsite, which would reduce or eliminate the impact to the riparian zone; and
  6. For the construction of a new roadway that crosses a regulated water, the applicant demonstrates that
    - i. There is developable land onsite that cannot feasibly be accessed without crossing the regulated water, including accessing the site through neighboring properties; and
    - ii. The crossing is designed and constructed to be as nearly perpendicular to the channel as possible.
- (i) The Department shall issue an individual permit for the restoration to a stable condition of a bank or channel that has become eroded, unstable, ecologically degraded, and/or enclosed within a structure, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:
1. For a project to stabilize and/or restore a bank and/or channel with vegetation in accordance with N.J.A.C. 7:13-12.14(c)1 and/or using soil bioengineering in accordance with N.J.A.C. 7:13-12.14(c)2, the applicant demonstrates that the area of vegetation cleared, cut, and/or removed within the riparian zone is the minimum necessary to successfully implement the project;
  2. For a project to stabilize a bank and/or channel using revetments, retaining walls, or other armoring in accordance with N.J.A.C. 7:13-12.14(c)3, the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that the bank or channel cannot feasibly be stabilized without exceeding these limits; and
  3. For a project to restore a regulated water that is enclosed by a structure to a natural condition in accordance with N.J.A.C. 7:13-12.14(d), only the limits set forth in Table 11.2 for access to the project shall apply.
- (j) The Department shall issue an individual permit for the construction or reconstruction of a stormwater discharge, including the stormwater pipe leading to the discharge as well as any associated conduit outlet protection and/or conveyance swale, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:
1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the Soil Conservation District having jurisdiction over the site determines that exceeding these limits is necessary to



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meet the requirements of the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

2. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 150-foot or 300-foot riparian zone, the applicant demonstrates that situating the stormwater discharge and associated disturbance outside the riparian zone is likely to result in greater erosion or other deleterious environmental impacts than situating the stormwater discharge and associated disturbance within the riparian zone; and
3. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 300-foot riparian zone, and the stormwater discharge is associated with a major development, as defined at N.J.A.C. 7:8-1.2, the applicant demonstrates that all runoff from the water quality design storm, as defined at N.J.A.C. 7:8-5.5(a), is infiltrated outside the riparian zone and/or discharged outside the riparian zone, to the maximum extent practicable.
  - i. Where all runoff from the water quality design storm cannot practicably be infiltrated outside the riparian zone and/or discharged outside the riparian zone, all runoff from the water quality design storm that is discharged within the riparian zone shall be treated, in accordance with the methods set forth at N.J.A.C. 7:8-5.5, to reduce the post-construction load of total suspended solids by 95 percent of the anticipated load from the developed site, expressed as an annual average.

(k) The Department shall issue an individual permit to construct a new aboveground or underground utility line, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the utility line that cannot feasibly be accomplished without exceeding these limits;
2. The applicant demonstrates, pursuant to N.J.A.C. 7:13-12.8(c)1 through 4, that clearing, cutting, and/or removal of riparian zone vegetation is unavoidable;
3. The area of riparian zone vegetation that is cleared, cut, and/or removed is the minimum necessary to meet the applicable requirements of the New Jersey Board of Public Utilities and all other State and Federal requirements governing the construction of the utility line;
4. Staging, storing, and stockpiling materials and equipment shall, to the maximum extent practicable, be accomplished outside the riparian zone. Where it is necessary to conduct these activities in the riparian zone, these activities, as well as access to the utility line during construction, shall, to the maximum extent practicable, be undertaken in actively disturbed areas;
5. To the maximum extent practicable, forested areas are not disturbed; and
6. No trees within 25 feet of any top of bank are cleared, cut or removed, unless the applicant demonstrates that such disturbance cannot feasibly be avoided to conduct the project.

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(l) The Department shall issue an individual permit to reconstruct, replace, repair, or maintain an existing aboveground or underground utility line, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. Clearing, cutting, and/or removal of riparian zone vegetation is limited to the utility line's existing easement or right-of-way. Any disturbance to riparian zone vegetation proposed outside the existing easement or right-of-way of the utility line is subject to the requirements of (k) above;
2. Clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas, unless the applicant demonstrates that there is a compelling public need to reconstruct, replace, repair, or maintain the line that cannot feasibly be accomplished without clearing, cutting, and/or removal of riparian zone vegetation outside of these areas;
3. The area of riparian zone vegetation that is cleared, cut, and/or removed is the minimum necessary to meet the applicable requirements of the New Jersey Board of Public Utilities and all other State and Federal requirements governing the reconstruction, replacement, repair, or maintenance of the utility line, as appropriate;
4. Staging, storing, and stockpiling materials and equipment shall, to the maximum extent practicable, be accomplished outside the riparian zone. Where it is necessary to conduct these activities in the riparian zone, these activities, as well as access to the utility line during construction, shall, to the maximum extent practicable, be undertaken in actively disturbed areas;
5. To the maximum extent practicable, forested areas are not disturbed; and
6. No trees within 25 feet of any top of bank are cleared, cut, or removed, unless the applicant demonstrates that such disturbance cannot feasibly be avoided to conduct the project.

(m) The Department shall issue an individual permit for the construction of a new single-family home or duplex, or the reconstruction of a lawfully existing single-family home or duplex, including the creation of any lawn or landscaped area around the building, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of riparian zone vegetation to be cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above;
2. For the construction of a new single-family home or duplex on a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the riparian zone; and
3. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development.

(n) The Department shall issue an individual permit for the construction of an addition to a lawfully existing single-family home or duplex, or the construction of an accessory structure to an existing single-family home or duplex, such as a barn, deck, detached garage, fence, pool, or shed, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the

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total area of riparian zone vegetation to be cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, cumulatively since November 5, 2007.

(o) The Department shall issue an individual permit for the construction of a public access area along a tidal water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The public access area is designed in accordance with the public access to the waterfront rule, N.J.A.C. 7:7-16.9; and
2. For any proposed public access parking area, the applicant demonstrates that there is no other feasible location onsite to construct the parking area that would reduce or eliminate the clearing, cutting, and/or removal of riparian zone vegetation.

(p) The Department shall issue an individual permit for the construction of a water dependent development, as defined in the Coastal Zone Management Rules at N.J.A.C. 7:7-1.5, along a tidal water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The water dependent development is designed in accordance with the Coastal Zone Management Rules, N.J.A.C. 7:7; and
2. For any proposed water dependent development, the applicant demonstrates that there is no other feasible location onsite to construct the development that would reduce or eliminate the area of riparian zone vegetation to be cleared, cut, and/or removed.

(q) The Department shall issue an individual permit to construct an individual subsurface sewage disposal system that serves one new single-family home or duplex, or to repair or alter a lawfully existing, malfunctioning individual subsurface sewage disposal system that serves any building, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates all State and local requirements governing the construction, repair, or alteration of an individual subsurface sewage disposal system, as applicable, cannot feasibly be satisfied without exceeding these limits;
2. The area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary to comply with the Department's Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A;
3. For the construction of a new individual subsurface sewage disposal system under N.J.A.C. 7:9A, the applicant demonstrates that:
  - i. The system serves one new single-family home or duplex;
  - ii. No disturbance is located within 50 feet of any top of bank; and
  - iii. If the new individual subsurface sewage disposal system is proposed to serve a single-family home or duplex being constructed on a lot that was created or subdivided after November 5, 2007, the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the riparian zone; and

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4. For the repair or alteration of a malfunctioning individual subsurface sewage disposal system that serves any building, the applicant demonstrates that:
  - i. The need for repair or alteration is not directly or indirectly caused by an expansion of the building footprint or square footage of habitable space that the individual subsurface sewage disposal system serves;
  - ii. The repair or alteration is to a system that was authorized in accordance with N.J.A.C. 7:9A or the standards applicable at the time the system was constructed and the repair or alteration does not increase the estimated volume of sanitary sewage necessary for the structure the authorized system was originally designed to serve, calculated in accordance with N.J.A.C. 7:9A-7.4;
  - iii. The use of the building is not being changed, including a change from disuse or abandonment to any type of use; and
  - iv. No disturbance is located within 50 feet of any top of bank unless the malfunctioning system is located within this area. In such a case, the repaired or altered system shall be relocated, where feasible, so that it is located more than 50 feet from any top of bank and as far from the regulated water as possible.

(r) The Department shall issue an individual permit for the investigation, cleanup, or removal of hazardous substances as defined in the Department's Discharges of Petroleum and other Hazardous Substances rules, N.J.A.C. 7:1E, Appendix A, and/or pollutants, as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) Rules, N.J.A.C. 7:14A, which is conducted in accordance with the Department's rules governing the remediation of contaminated site at N.J.A.C. 7:26C, and which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The applicant demonstrates, or provides a certification from a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, that the area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary for compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.
2. The demonstration or certification under (r)1 above shall include:
  - i. An exploration of all feasible alternative remediation methods acceptable under N.J.A.C. 7:26E and 7:26C; and
  - ii. The identification of any remediation methods that would result in less area of riparian zone vegetation to be cleared, cut, and/or removed, with an explanation for why these remediation methods were not chosen.

(s) The Department shall issue an individual permit for regulated activities authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department pursuant to N.J.A.C. 7:26-2A.8 or 2A.9, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The Department determines that clearing, cutting, and/or removal of riparian zone vegetation is necessary to undertake the solid waste landfill closure and post-closure

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plan or disruption approval and to properly maintain and monitor the site after closure;

2. The applicant demonstrates that the area of riparian zone vegetation to be cleared, cut, and/or removed is the minimum necessary to adequately close and/or maintain the landfill.
3. The demonstration under (s)2 above shall include:
  - i. An exploration of alternative methods acceptable under N.J.A.C. 7:26; and
  - ii. An identification of any methods that would result in less area of riparian zone vegetation to be cleared, cut, and/or removed, with an explanation for why these methods were not chosen.

(t) The Department shall issue an individual permit to construct a trail and/or boardwalk for use by pedestrians, bicycles, and other non-motorized methods of transport, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the trail or boardwalk that cannot feasibly be accomplished without exceeding these limits.

(u) The Department shall issue an individual permit to construct a footbridge, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the footbridge that cannot feasibly be accomplished without exceeding these limits;
2. The width of the area of riparian zone vegetation to be cleared, cut, and/or removed for the construction of the footbridge is minimized; and
3. The crossing of the regulated water is designed and constructed as perpendicular to the channel as possible.

(v) The Department shall issue an individual permit for the construction of a flood control project, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to construct the flood control project that cannot feasibly be accomplished without exceeding these limits.

(w) The Department shall issue an individual permit to remove sediment and/or debris from a regulated water, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that there is a compelling public need to remove sediment and/or debris from the regulated water that cannot feasibly be accomplished without exceeding these limits;
2. The number of proposed access points is the minimum necessary to conduct the project;
3. Where possible, the project is conducted within actively disturbed areas and from only

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one bank;

4. The use of heavy equipment in the regulated water is avoided unless the applicant demonstrates that there is no feasible alternative that would result in less environmental damage;
5. Vegetation and tree canopy on the more southerly or westerly bank is preserved in order to shade the regulated water; and
6. All proposed access points to the regulated water are described in writing and with color photographs.

(x) The Department shall issue an individual permit to remove existing fill or an existing structure, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above.

(y) The Department shall issue an individual permit for a regulated activity that is not listed in (g) through (x) above, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. The total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above;
2. Where clearing, cutting, and/or removal of riparian zone vegetation is located within an actively disturbed area, the applicant demonstrates the following:
  - i. There is no other reasonable means of accomplishing the project that would reduce or eliminate the impact to the riparian zone; and
  - ii. There is no other feasible location onsite to undertake the project that would reduce or eliminate the impact to the riparian zone; and
3. Where clearing, cutting, and/or removal of riparian zone vegetation is located outside of an actively disturbed area, the applicant demonstrates that there is no other feasible use of the site that would reduce or eliminate the area of riparian zone vegetation to be cleared, cut, and/or removed, such as constructing a different type of project onsite, reducing the size or scope of the project, or relocating the project to a different portion of the site.

(z) All riparian zone vegetation that is cleared, cut, and/or removed to conduct a regulated activity, access an area where regulated activities will be conducted, or otherwise accommodate a regulated activity shall be replanted immediately after completion of the regulated activity, unless prevented by seasonal weather, in which case the vegetation shall be replanted as soon as conditions permit. Portions of the riparian zone occupied by an authorized structure need not be replanted.

1. Except as provided in (z)2 below, the vegetation replanted shall:
  - i. Consist of vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed. For example, herbaceous vegetation may be replaced with the same type of vegetation or with trees, but the trees in forested areas must be replaced with trees of equal or greater density and ecological function and value; and

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- ii. Consist of native, non-invasive vegetation, except in an actively disturbed area. In an actively disturbed area, the vegetation may be replaced with the same type of vegetation that was cleared, cut, or removed, or with another kind of vegetation typical of an actively disturbed area. For example, lawn grass may be replaced with garden plants or agricultural crops.
2. In cases where replanting in accordance with (z)1 above would interfere with continued access to or maintenance of a structure that is required by Federal, State, or local law, the vegetation replanted shall meet the requirements of (z)1 above to the extent feasible.

### **7:13-11.3 Requirements for a regulated activity in a floodway**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a floodway.

(b) Except as provided in (c) below, the Department shall not issue an individual permit for the following activities:

1. The placement of any aboveground structure in or above a floodway;
2. Any regulated activity that would result in the placement of fill in a floodway;
3. Any regulated activity that would raise the ground elevation in a floodway; or
4. Any regulated activity that would obstruct the passage of floodwaters in a floodway.

(c) Notwithstanding (b) above, the Department shall issue an individual permit for the following regulated activities in a floodway, provided all other requirements of this chapter are satisfied for each activity:

1. The construction or conversion of a building on a pier in the Hudson River, provided the requirements of the Coastal Zone Management Rules at N.J.A.C. 7:7-9.46 are satisfied, in accordance with N.J.A.C. 7:13-12.5(e) or (f), as appropriate;
2. The elevation or reconstruction of a lawfully existing building, in accordance with N.J.A.C. 7:13-12.5(g);
3. The construction of a horizontal and/or vertical addition to a lawfully existing building, in accordance with N.J.A.C. 7:13-12.5(h);
4. The construction of a water control structure, such as a bridge or culvert, low dam, dam, or flood control project, in accordance with N.J.A.C. 7:13-12.7, 12.10, 12.11, and 12.12, respectively;
5. The construction of a stormwater outfall structure, in accordance with N.J.A.C. 7:13-12.9;
6. The construction of a retaining wall or bulkhead, in accordance with N.J.A.C. 7:13-12.13;
7. The restoration and/or stabilization of a bank or channel, in accordance with N.J.A.C. 7:13-12.14, which requires the placement of fill in a floodway, provided the fill is necessary to:

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- i. Protect nearby structures or trees from undermining or failure; or
  - ii. Restore or improve the ecological health or habitat value of a regulated water, such as the restoration to a natural condition a regulated water that is enclosed by a structure, such as a pipe or culvert, or which has been previously straightened, channelized or lined with revetments;
8. The placement of dredged material adjacent to the water from which the material was removed, in accordance with N.J.A.C. 7:13-12.15(f);
  9. The placement of fill in an isolated shallow depression or other area that does not contribute to the hydraulic capacity of the floodway; and
  10. The placement of fill in a portion of a manmade impoundment of water, such as a pond or lake, provided:
    - i. An equal or greater amount of excavation is performed elsewhere in the same pond or lake at similar elevations as the proposed fill;
    - ii. The applicant demonstrates that the fill will not obstruct flood flows;
    - iii. The fill will extend no further than 20 percent of the width of the water, measured perpendicularly across the water from the shoreline along which the fill is being placed; and
    - iv. The applicant demonstrates that placing the fill will not cause adverse environmental impacts.

#### **7:13-11.4 Requirements for a regulated activity in a flood fringe**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a flood fringe.

(b) This section provides standards for the volume of material that may be placed aboveground in a flood fringe as well as other activities that would reduce the flood storage volume on a site. When material is placed aboveground in a flood fringe, it will occupy a space that would otherwise be filled with floodwaters during a flood, and, thus, will reduce the flood storage volume on the site. Construction also reduces the flood storage volume by preventing floodwaters from entering a space that it would otherwise occupy, such as the space inside a building or stormwater management basin, or behind an embankment. For example, although the space within a building may be empty, the building's walls might prevent floodwaters from entering that space. Since the entire space within the walls has been rendered inaccessible to floodwaters, the entire space, though empty, displaces flood storage volume. The Department also recognizes that some structures, such as garages, sheds and other buildings that are not dry flood-proofed are not likely to prevent the entry of floodwaters, and, therefore, the space within the walls of such a structure may not actually displace flood storage volume.

(c) The Department shall issue an individual permit for a regulated activity (or combination of regulated activities) in a flood fringe only if one of the following is satisfied:

1. The regulated activity is not subject to the flood storage volume displacement limits of this section, in accordance with (d) below;



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2. The regulated activity will displace no flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, in accordance with (e) below; or
3. The regulated activity will displace no more than 20 percent of the flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, and all flood storage displacement onsite will be compensated offsite as follows:
  - i. If the regulated activity is located within the Central Passaic Basin, the requirements at (g) below shall be met;
  - ii. If the regulated activity is a major Highlands development, as defined at N.J.A.C. 7:38-1.4, the requirements at (h) below shall be met; or
  - iii. If the regulated activity is not located within the Central Passaic Basin and is not a major Highlands development, the requirements at (i) below shall be met.

(d) The following regulated activities (or combination of regulated activities) are not subject to the flood storage volume displacement limits of this section, provided the activity is not associated with a major Highlands development:

1. Any activity located in a tidal flood hazard area;
2. Any activity that displaces no more than five cubic yards of flood storage volume;
3. The reconstruction, enlargement, or other improvement of a lawfully existing railroad, public roadway, or driveway that serves only one single-family home or duplex, provided flood storage volume displacement is minimized;
4. The construction of a new driveway across a regulated water provided:
  - i. The driveway serves only one single-family home or duplex, which is not being constructed as part of a larger residential subdivision or multi-unit development;
  - ii. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;
  - iii. The applicant demonstrates that there is developable land onsite that cannot feasibly be accessed without crossing the water, including accessing the site through neighboring properties; and
  - iv. Any flood storage volume displacement resulting from the driveway is minimized;
5. The construction, reconstruction, relocation, elevation, or enlargement of one single-family home or duplex provided:
  - i. The single-family home or duplex is not being constructed as part of a residential subdivision or multi-unit development;
  - ii. The lot on which the single-family home or duplex is being constructed was not created or subdivided after November 5, 2007;
  - iii. Any enclosed area beneath the flood hazard area design flood elevation meets the requirements of N.J.A.C. 7:13-12.5(p); and

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- iv. Except for the construction of a driveway across a regulated water, which meets the requirements of (d)4 above, the site is not graded to accommodate the construction of the single-family home or duplex in such a way that flood storage volume would be displaced;
6. The construction or maintenance of a flood control project, which meets the requirements of N.J.A.C. 7:13-12.12, provided flood storage volume displacement is minimized;
7. The restoration of a regulated water to a natural condition that meets the requirements of N.J.A.C. 7:13-12.14(d), provided lost or displaced flood storage volume is minimized;
8. The depositing of sediment removed from a channel, which meets the requirements of N.J.A.C. 7:13-12.15(f);
9. The repair, modification, or reconstruction of a malfunctioning individual subsurface sewage disposal system, provided:
  - i. The need for repair or modification is not directly or indirectly caused by an expansion of the facility the individual subsurface sewage disposal system serves, or by a change in its use, including a change from disuse or abandonment to any type of use;
  - ii. Any repair or modification of the system is limited to serve only those volumes of sanitary sewage, estimated in accordance with N.J.A.C. 7:9A-7.4, that were approved prior to the malfunction;
  - iii. The applicant demonstrates that the volume of flood storage displacement is the minimum necessary to comply with the Department's Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A;
  - iv. All flood storage displacement is compensated for, either onsite or offsite, to the maximum extent practicable and in accordance with the methods set forth in this section; and
  - v. After all feasible flood storage compensation is provided, the project does not displace more than 20 percent of the flood storage volume existing at the time of application;
10. Investigation, cleanup, or removal of hazardous substances, provided:
  - i. The applicant demonstrates that the volume of flood storage displacement is the minimum necessary to comply with the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C;
  - ii. All flood storage displacement is compensated for, either onsite or offsite, to the maximum extent practicable, and in accordance with the methods set forth in this section; and
  - iii. After all feasible flood storage compensation is provided, the project does not displace more than 20 percent of the flood storage volume existing at the time of application; and

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11. Landfill closure activities authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department pursuant to N.J.A.C. 7:26-2A.8 or 2A.9, provided:
    - i. The applicant demonstrates that the volume of flood storage displacement is the minimum necessary to properly close the landfill and to properly maintain and monitor it after closure;
    - ii. All flood storage displacement is compensated for, either onsite or offsite, to the maximum extent practicable, and in accordance with the methods set forth in this section; and
    - iii. After all feasible flood storage compensation is provided, the project does not displace more than 20 percent of the flood storage volume existing at the time of application.
- (e) The following shall apply to any regulated activity that is designed to displace no flood storage volume in accordance with (c)2 above:
1. The existing flood storage volume onsite ( $V_E$ ) is the volume of floodwater that is able to occupy the flood fringe onsite before the proposed regulated activity is undertaken. To determine the existing flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the ground surface as it exists on the date of application to the Department, and subtract the volume occupied by any structures that lawfully exist as of that date.
  2. The proposed flood storage volume onsite ( $V_P$ ) is the volume of floodwater that will be able to occupy the flood fringe onsite once all proposed construction, excavation, filling and grading is completed. To determine the proposed flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the proposed ground surface, and subtract the volume occupied by any structures that will lawfully exist once all proposed construction is completed.
  3. The proposed flood storage volume onsite ( $V_P$ ) shall be greater than or equal to the existing flood storage volume onsite ( $V_E$ ), for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground. Certain considerations should be made in calculating both ( $V_P$ ) and ( $V_E$ ), as set forth in (j) below. Additional flood storage volume can also be created onsite to compensate for proposed flood storage displacement in accordance with (m) below.
- (f) Table 11.4 below sets forth the percentage of flood storage volume that a regulated activity (or combination of activities) can lawfully displace in various geographic areas of New Jersey. As described in further detail in this section below, a project cannot displace more than 20 percent of the flood storage volume that originally existed onsite, and all proposed displacement onsite must ultimately be compensated offsite. Table 11.4 indicates the dates from which the original and proposed flood storage volumes should be calculated for different geographic areas. Flood storage calculations shall be performed for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, as described at (j) below, to show that the 20-percent and zero-percent limitations are met for both of these areas.

**Table 11.4**

**ALLOWABLE PERCENTAGES OF FLOOD STORAGE VOLUME DISPLACEMENT**

**(Which shall be met for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground)**

<b>Geographic Area</b>	<b>Maximum onsite percentage of flood storage volume that a project can lawfully displace (P<sub>ONSITE</sub>)</b>	<b>Maximum total percentage of flood storage volume that a project can lawfully displace including all offsite credits (P<sub>TOTAL</sub>)</b>
Central Passaic Basin	20 percent of flood storage that existed onsite on March 25, 1977	0 percent of flood storage that existed onsite on March 25, 1977
Highlands Preservation Area*	20 percent of flood storage that existed onsite on January 31, 1980	0 percent of flood storage that existed onsite on August 10, 2004
Remainder of State	20 percent of flood storage that existed onsite on January 31, 1980	0 percent of flood storage that existed onsite on November 5, 2007

\*If associated with major Highlands development, as defined at N.J.A.C. 7:38-1.4.

(g) The following shall apply to any project located within the Central Passaic Basin that does not meet the requirements of (d) or (e) above:

1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:
  - i. Calculate the base flood storage volume onsite on March 25, 1977, (V<sub>1977</sub>) according to (j) and (k) below;
  - ii. Calculate the proposed flood storage volume onsite (V<sub>P</sub>) according to (j) and (l) below; and
  - iii. Calculate the percentage of flood storage volume displaced onsite (P<sub>ONSITE</sub>) as follows:

$$P_{\text{ONSITE}} = (V_{1977} - V_P) / V_{1977}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:
  - i. Calculate any offsite compensation (V<sub>C</sub>) according to (o) below; and
  - ii. Calculate the total percentage of flood storage volume displaced (P<sub>TOTAL</sub>) as follows:

$$P_{\text{TOTAL}} = (V_{1977} - V_P - V_C) / V_{1977}$$

(h) The following shall apply to any major Highlands development within the Highlands Preservation Area that does not meet the requirements of (d) or (e) above:

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1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:
  - i. Calculate the base flood storage volume onsite on January 31, 1980, ( $V_{1980}$ ) according to (j) and (k) below;
  - ii. Calculate the proposed flood storage volume onsite ( $V_P$ ) according to (j) and (l) below; and
  - iii. Calculate the percentage of flood storage volume displaced onsite ( $P_{\text{ONSITE}}$ ) as follows:

$$P_{\text{ONSITE}} = (V_{1980} - V_P) / V_{1980}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:
  - i. Calculate the base flood storage volume onsite on August 10, 2004, ( $V_{2004}$ ) according to (j) and (k) below;
  - ii. Calculate any offsite compensation ( $V_C$ ) according to (o) below; and
  - iii. Calculate the total percentage of flood storage volume displaced ( $P_{\text{TOTAL}}$ ) as follows:

$$P_{\text{TOTAL}} = (V_{2004} - V_P - V_C) / V_{2004}$$

(i) The following shall apply to any project located outside the Central Passaic Basin (except for major Highlands development as described at (h) above) that does not meet the requirements of (d) or (e) above:

1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:
  - i. Calculate the base flood storage volume onsite on January 31, 1980, ( $V_{1980}$ ) according to (j) and (k) below;
  - ii. Calculate the proposed flood storage volume onsite ( $V_P$ ) according to (j) and (l) below; and
  - iii. Calculate the percentage of flood storage volume displaced onsite ( $P_{\text{ONSITE}}$ ) as follows:

$$P_{\text{ONSITE}} = (V_{1980} - V_P) / V_{1980}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:
  - i. Calculate the base flood storage volume onsite on November 5, 2007, ( $V_{2007}$ ) according to (j) and (k) below;
  - ii. Calculate any offsite compensation ( $V_C$ ) according to (o) below; and
  - iii. Calculate the total percentage of flood storage volume displaced ( $P_{\text{TOTAL}}$ ) as follows:

$$P_{\text{TOTAL}} = (V_{2007} - V_P - V_C) / V_{2007}$$

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(j) The following factors shall be considered when calculating flood storage volumes under this section:

1. A flood fringe is a dynamic system in which floodwaters flow into and out of a given area during the course of a flood event. Therefore, in order to effectively compensate for flood storage displacement caused by construction activities, compensatory flood storage created under this section must be designed to remain open to flow, such that floodwaters can freely enter and exit the area during the entire flood event. Examples of ineffective flood storage include:
  - i. The creation of belowground pipes or chambers connected to the flood hazard area by pipes, which fill with floodwaters at the onset of flooding and generally remain full until the flood recedes; and
  - ii. The creation of isolated depressions or other similar aboveground areas on the edge of a flood fringe, unless the area is connected to the flood hazard area with open channels or pipes of sufficient hydraulic capacity to allow floodwaters to freely enter and exit the area, and to rise and fall at the same elevation as the flood event.
2. The flood storage displacement limits in this section apply to both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground. As such, applicants must demonstrate that a proposed project meets these limits for both floods unless the entire project lies above the 10-year flood elevation.
3. Except as provided in (j)4 below, flood storage displacement proposed above the 10-year flood elevation onsite must be compensated for by the creation of flood storage above the 10-year flood elevation. Similarly, flood storage displacement proposed below the 10-year flood elevation onsite must be compensated for by the creation of flood storage below the 10-year flood elevation. This applies whether the compensation occurs onsite, as described at (m) below, or offsite, as described at (o) below.
4. In cases where a site lies predominately below the 10-year flood elevation and it is demonstrated that it is not possible to compensate onsite for all flood storage displacement proposed above the 10-year flood elevation, the applicant shall pursue the following options in the order listed below:
  - i. The applicant shall create onsite flood storage volume above the 10-year flood elevation, in accordance with (m) below, to the maximum extent practicable;
  - ii. If the applicant cannot fully compensate onsite for all flood storage displacement under (j)4i above, offsite flood storage volume shall be created above the 10-year flood elevation in accordance with (o) below to the maximum extent practicable; and
  - iii. If the applicant cannot fully compensate for flood storage displacement under either (j)4i and ii above, flood storage volume shall be created below the 10-year flood elevation, either onsite or offsite, for all flood storage displacement that is unable to be created in accordance with (j)4i and ii above.
5. In cases where the 10-year flood elevation is not provided on State or Federal flood maps, calculations can instead be performed using a flood depth halfway between the

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flood hazard area design flood elevation and the lowest ground elevation within the flood fringe onsite. For example, at a given cross-section through a site, if the flood hazard area design flood elevation is 90.0 feet NGVD and the lowest ground elevation within the flood fringe is 80.0 feet NGVD, flood storage calculations can be performed at that cross-section using a flood elevation of 85.0 feet NGVD at that location, if the 10-year flood elevation is unknown. Furthermore, this halfway depth must be determined separately for each cross-section in the flood fringe, and at close intervals throughout the site in order to provide an accurate estimate of the upper and lower flood storage volumes.

6. The volume inside a stormwater management basin or other impoundment is considered displaced flood storage volume. For instance, when calculating the flood storage volume onsite during the 10-year flood, the volume below the 10-year water surface elevation in the basin is considered displaced flood storage volume.
  7. The volume behind a dike, levy or similar barrier that prevents the free flow of water is considered displaced flood storage volume.
  8. The volume inside a building is considered displaced flood storage volume except for the space inside an enclosure below the lowest floor of a building that conforms to the requirements at N.J.A.C. 7:13-12.5(p).
  9. The construction of a channel modification, or the reconstruction of a water control structure such as a bridge or culvert, can result in lower flood elevations at some point along the water. In such a case, the volume in the flood fringe between the existing and proposed flood elevations is considered displaced flood storage volume.
- (k) The base flood storage volume onsite ( $V_{1977}$ ,  $V_{1980}$ ,  $V_{2004}$ , and/or  $V_{2007}$ ) is the volume of floodwater that was able to occupy the flood fringe onsite on the appropriate date shown in Table 11.4 depending on the geographic location of the project. To determine the base flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the ground surface as it existed on the appropriate date in Table 11.4, and subtract the volume occupied by any structures that lawfully existed on that date.
- (l) The proposed flood storage volume onsite ( $V_p$ ) is the volume of floodwater that will be able to occupy the flood fringe onsite once all proposed construction, excavation, filling and grading is completed. To determine the proposed flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the proposed ground surface, and subtract the volume occupied by any structures that will lawfully exist once all proposed construction is completed.
- (m) Additional flood storage volume may be created onsite to compensate for proposed flood storage displacement only on land that meets the requirements of (n) below and in one or both of the following ways:
1. Removing material that has been previously lawfully placed within the flood fringe, such as fill or structures, and properly disposing the material outside a flood hazard area, as described in (q) below; or
  2. Excavating material from below the surface of the ground and properly disposing the material outside a flood hazard area, as described in (r) below.

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(n) Flood storage volume may be created onsite to compensate for regulated activities that displace flood storage as described in (m) above provided the onsite compensation:

1. Is created within or adjacent to the flood hazard area of the same water as the proposed flood storage displacement, or a tributary to the same water as the proposed flood storage displacement, provided the tributary lies upstream of the site or the flood hazard area of both waters connect onsite;
2. Is not created in a floodway;
3. Is not created within either of the following areas, unless the area where the compensation will be created has been subject to previous, lawful disturbance:
  - i. Within a riparian zone, pursuant to N.J.A.C. 7:13-4.1 and 11.2; or
  - ii. Within 300 feet of a Highlands open water, if the project is a major Highlands development as defined in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-1.4; and
4. Would not have other significant adverse environmental consequences; the proposed compensation shall not merely substitute the adverse effects of the proposed activities with adverse impacts upon threatened or endangered species, aquatic biota, fishery resources or Highlands resource areas.

(o) Offsite compensation (V<sub>c</sub>) is additional flood storage volume created offsite to compensate for proposed flood storage displacement onsite. Offsite compensation can be created only on land that meets the requirements of (p) below and only in one or more of the following ways:

1. Removing material that has been previously lawfully placed within the flood fringe, such as fill or structures, and properly disposing the material outside a flood hazard area, as described in (q) below;
2. Excavating material from below the surface of the ground and properly disposing the material outside a flood hazard area, as described in (r) below; or
3. Purchasing fill credits, where available, if the project is located in the Central Passaic Basin, as described in (s) and (t) below.

(p) Flood storage volume can be created offsite to compensate for regulated activities that displace flood storage as described in (o) above provided the offsite compensation:

1. Is created within or adjacent to the flood hazard area of the same water as the proposed flood storage displacement, or a tributary to the same water as the proposed flood storage displacement, provided the tributary lies upstream of the site or the flood hazard area of both waters connect onsite;
2. Is not separated from the proposed flood storage displacement by a water control structure, such as a bridge, culvert or dam, unless the applicant demonstrates that the water control structure causes no significant change in the flood hazard area design flood elevation;
3. Is situated within the same HUC-14 watershed as the proposed flood storage displacement;
4. Is not created in a floodway;



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5. Is not created within either of the following areas, unless the area where the compensation will be created has been subject to previous, lawful disturbance:
    - i. Within a riparian zone, pursuant to N.J.A.C. 7:13-4.1 and 11.2; or
    - ii. Within 300 feet of a Highlands open water, if the project is a major Highlands development as defined in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-1.4;
  6. Would not have other significant adverse environmental consequences; the proposed compensation shall not merely substitute the adverse effects of the proposed activities with adverse impacts upon threatened or endangered species, aquatic biota, fishery resources or Highlands resource areas;
  7. Is agreed to in writing by the owners of the land on which the offsite compensation is proposed; and
  8. Is proposed on land which, subsequent to the creation of the offsite compensation, is deed restricted against future flood storage volume displacement. 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.
- (q) For the purposes of (m)1 and (o)1 above, flood storage volume can be created by removing material previously placed within the flood fringe, such as fill or structures, provided:
1. The material to be removed was not placed in violation of this chapter;
  2. The material to be removed is not associated with an activity permitted-by-rule under N.J.A.C. 7:13-6;
  3. The area disturbed by the removal of the material is properly graded so that floodwaters can freely enter and exit;
  4. The material to be removed is properly disposed of outside of any regulated area; and
  5. The removal of the material is approved under an individual permit and is completed concurrent with or prior to the commencement of the activities for which the compensation is intended.
- (r) For the purposes of (m)2 and (o)2 above, flood storage volume can be created by excavating material from below the surface of the ground, provided:
1. The excavation is located in a flood fringe, or is located adjacent and connected to a flood hazard area so that floodwaters can enter the excavated area;
  2. The excavation is located below the flood hazard area design flood elevation;
  3. The excavation is located above the seasonal high water table;
  4. The excavation is located above the normal water surface elevation of the nearest regulated water;
  5. The area disturbed by the excavation is properly graded so that floodwaters can freely enter and exit;
  6. The excavated material is properly disposed of outside of any regulated area; and

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7. The excavation is approved under an individual permit and is completed concurrent with or prior to the commencement of the activities for which the compensation is intended.

(s) For the purposes of (o)3 above, offsite compensation in the Central Passaic Basin can be accomplished in certain cases described in (t) below through the purchase of fill credits. A fill credit is a unit of flood storage volume that has been created in the Central Passaic Basin by excavation and/or removal of fill, and which can be sold to a permittee to compensate for proposed fill elsewhere in the Central Passaic Basin. The Department has previously permitted several facilities to create fill credits. However, no person or facility shall create new or additional fill credits in this manner. A person or facility shall furthermore buy or sell a fill credit only if it has been lawfully created under a permit previously approved by the Department as noted above. Once all previously approved fill credits have been purchased, offsite compensation in the Central Passaic Basin will no longer be possible through fill credits.

(t) For the purposes of (o)3 above, offsite compensation in the Central Passaic Basin can be made through the purchase of fill credits, as described in (s) above, provided the following requirements are satisfied:

1. The fill credits are purchased from a person or facility that has been authorized by the Department to create and sell fill credits in accordance with (s) above;
2. The flood storage volume on which the fill credits are based was created prior to the submittal of the application for the activities for which compensation is required;
3. The Department approves the use of the particular fill credits for the particular activity; and
4. The applicant provides the Department with adequate documentation of the purchase of the fill credits.

(u) If the percentage of flood storage volume displacement on a site already exceeds a limit at Table 11.4 above due to activities that were previously undertaken in accordance with this chapter, the Department shall issue an individual permit for a new regulated activity on the site only if an equal amount of flood storage volume is created to compensate onsite for any displaced flood storage volume that would result from the new regulated activity, in accordance with (e) above. Compensatory flood storage volume shall not be created offsite in such a case, and shall only be created onsite, as described in (m) above. The volume of fill in excess of the limits in Table 11.4 does not need to be removed from the site.

(v) If the percentage of flood storage volume displacement on a site already exceeds a limit at Table 11.4 above due to activities that were previously undertaken in violation of this chapter, the Department shall issue an individual permit for a new regulated activity on the site only if the following requirements are satisfied:

1. The applicant either obtains an individual permit for the activities undertaken in violation of this chapter, or else removes from the flood hazard area any fill or structure that was placed in violation of this chapter;
2. All displaced flood storage volume in excess of the limit in Table 11.4 is restored onsite; and

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3. An equal amount of flood storage volume is created to compensate onsite for any displaced flood storage volume that would result from the new regulated activity, in accordance with (e) above. Compensatory flood storage volume shall not be created offsite in such a case, and shall only be created onsite, as described in (m) above.

(w) If the Department issues or has issued an individual permit for a regulated activity that displaces flood storage volume on a site, and that activity was subject to a flood storage displacement limit at the time the permit was issued, subsequent subdivision of that site shall not increase the total amount of flood storage volume that can be displaced on the site under future applications. Instead, the following shall apply:

1. Flood storage volume can be displaced within a portion of the subdivided site only to the extent that the total flood storage volume displaced within the entire subdivided site does not exceed the flood storage displacement limits of this section;
2. If the subdivided site involves multiple lots owned (or to be owned) by different persons, any remaining allowable flood storage volume shall be divided equally among all lots in the flood fringe, unless the owners of all lots in the flood fringe otherwise agree in writing; and
3. The volume of flood storage displacement permissible on each lot shall be described in any individual permit issued for the site as well as in the deed of record for each affected property. The modified deed shall be filed with the applicable county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

### **7:13-11.5 Requirements for a regulated activity in or along a regulated water with fishery resources**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in the channel and/or riparian zone of a regulated water containing fishery resources. Further standards for the construction of a bridge or culvert in or along waters with fishery resources are described at N.J.A.C. 7:13-12.7.

(b) The waters identified by the Department as containing fishery resources are listed in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B, and are further supplemented by the following reports as updated, which are included here by reference. Copies of these reports are available from the Department at the website set forth at N.J.A.C. 7:13-1.4:

1. "Classification of New Jersey Waters as Related to Their Suitability for Trout";
2. "List of Waters Stocked with Trout by the New Jersey Division of Fish and Wildlife"; and
3. "Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey's Freshwaters Including Known Migratory Impediments and Fish Ladders."

(c) The Department shall issue an individual permit for a regulated activity in the channel and/or riparian zone of a regulated water containing fishery resources only if the following requirements are satisfied:

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1. Except as provided in (e) below, the activity meets the timing restrictions of (d) below;
2. No logs or boulders that provide fish habitat are removed from the channel, unless the Department determines that such removal is necessary to accomplish the project; and
3. Low-flow aquatic passage is maintained in the channel throughout the entire area of disturbance during and after the performance of the regulated activity. In order to provide low-flow aquatic passage, the depth of flow in the modified channel during low-flow conditions must be equal to or greater than pre-project conditions. Where feasible, the applicant shall also provide low-flow aquatic passage in areas that do not currently contain low-flow aquatic passage.

(d) Except as provided at (e) below, certain activities are prohibited during times when fish are breeding or are especially sensitive to disturbance. The following activities are prohibited during the restricted periods listed in Table 11.5 below:

1. Any construction, excavation, filling or grading in the channel; and
2. Any construction, excavation, filling, or grading in the riparian zone, unless the applicant demonstrates that appropriate soil erosion and sediment control measures, as determined by the local Soil Conservation District having jurisdiction over the site, are in place to prevent sediment from reaching the channel.

**Table 11.5**  
**RESTRICTED TIME PERIODS FOR REGULATED WATERS WITH FISHERY RESOURCES**

Water and classification	Time period (inclusive) during which activities are prohibited
<b>1. Trout Waters</b>	
• All trout production waters except rainbow trout	September 15 through March 15
• Rainbow trout production waters	February 1 through April 30
• Trout stocked waters • Trout maintenance waters • All regulated waters located within one mile upstream of a trout stocked or a trout maintenance water	March 15 through June 15
<b>2. Non-Trout Waters</b>	
• Regulated waters that support general game fish located north of Interstate 195	May 1 through July 31
• Regulated waters that support general game fish located south of Interstate 195	May 1 through June 30

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<ul style="list-style-type: none"> <li>Regulated waters that support pickerel</li> </ul>	Ice out through April 30
<ul style="list-style-type: none"> <li>Regulated waters that support walleye</li> </ul>	March 1 through May 30
<b>3. Anadromous Waters</b>	
<ul style="list-style-type: none"> <li>All unimpeded tidal regulated waters open to the Atlantic Ocean or any coastal bay</li> <li>All regulated waters identified as anadromous migratory pathways</li> </ul>	April 1 through June 30
<ul style="list-style-type: none"> <li>Delaware River upstream of U.S. Route 1</li> </ul>	April 1 through June 30 and September 1 through November 30
<ul style="list-style-type: none"> <li>Delaware River between U.S. Route 1 and Interstate 295 (Delaware Memorial Bridge)</li> <li>Tidal portions of Raccoon Creek, Rancocas Creek, Crosswicks Creek, and Cooper River</li> </ul>	March 1 through June 30 and September 1 through November 30
<ul style="list-style-type: none"> <li>All unimpeded tidal regulated waters open to the Delaware River downstream of Interstate 295 (Delaware Memorial Bridge)</li> <li>Tidal portions of the Maurice River, Cohansey River, and Salem River</li> </ul>	March 1 through June 30 and October 1 through November 30

(e) The Department shall reduce, extend, or otherwise modify a timing restriction listed in Table 11.5 if it determines that one or more of the following requirements is satisfied:

1. Potential adverse impacts to fishery resources are likely to be reduced if a regulated activity occurs during a restricted time period rather than during an unrestricted time period;
2. A regulated activity is subject to more than one restricted time period, the combined effect of which would limit the regulated activity to fewer than 183 calendar days per year. In such a case, the Department shall allow the regulated activity to occur for up to 183 calendar days, provided the applicant demonstrates that additional measures shall be taken to reduce potential adverse impacts to fishery resources to a level acceptable to the Department. Note that the 183-calendar-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three months in the fall best protects fishery resources in a particular case;
3. The observance of a timing restriction would adversely impact public health, safety, and/or welfare, and the applicant demonstrates that additional measures are taken where necessary to reduce adverse impacts to fishery resources to an acceptable level; or
4. Due to the nature of the project or an unusual circumstance onsite, the timing restriction must be modified in order to prevent a substantial adverse impact to the fishery resource or to the environment.

(f) The Delaware River Basin Commission (DRBC) may impose timing restrictions in addition to those listed in Table 11.5 above on certain activities in waters under DRBC jurisdiction.

Information related to the DRBC and its requirements can be obtained at <https://www.nj.gov/drbc> or by calling (609) 883-9500.

**7:13-11.6 Requirements for a regulated activity in or affecting a present or documented habitat for threatened or endangered species**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in or affecting a present or documented habitat for a threatened or endangered species.

(b) For the purposes of this chapter, the Department identifies present and documented habitat for most threatened or endangered wildlife species using the Landscape Project method, which focuses on habitat areas required to support local populations of threatened and endangered wildlife species. The report entitled New Jersey's Landscape Project, which is updated periodically, provides additional information on mapping methodology and is available at <https://www.nj.gov/dep/fgw/ensp/landscape/index.htm>. Interested parties may also obtain information by writing to the Division of Fish and Wildlife, Endangered and Nongame Species Program at:

The Landscape Project  
State of New Jersey Department of Environmental Protection  
Division of Fish and Wildlife Endangered and Nongame Species Program  
Mail Code 501-03  
P.O. Box 420  
Trenton, NJ 08625-0420.

(c) For endangered or threatened plant species and for those wildlife species for which a landscape model in the Landscape Project has not been developed, the Department shall rely on the New Jersey Natural Heritage Database for site-specific information. To determine which animal species are not included in the Landscape Project, see the latest version of the New Jersey Landscape Mapping Project at the website listed in (b) above.

(d) The Department shall issue an individual permit for a regulated activity only if the activity will not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species, and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

(e) The Department shall require a survey and/or a habitat assessment for threatened or endangered species as part of an environmental report, as described at N.J.A.C. 7:13-18.8(b), for an individual permit for any regulated activity which is likely to do either of the following:

1. Disturb an area known to contain a threatened or endangered species; or
2. Disturb any habitat that could support a threatened or endangered species.

(f) Persons seeking information pertaining to threatened or endangered species sightings on or near a particular site can contact:

State of New Jersey  
Department of Environmental Protection

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The New Jersey Natural Heritage Program

Mail Code 501-04

P.O. Box 420

Trenton, NJ 08625-0420

Telephone: (609) 984-1339

Website: <https://www.nj.gov/dep/parksandforests/natural/heritage>

(g) The Department shall restrict a regulated activity during times of year when a threatened or endangered species is especially sensitive to disturbance, such as during mating or migratory periods. The Department shall not limit the regulated activity to fewer than 183 calendar days per year under this section. Note that the 183-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three months in the fall best protects a threatened or endangered species in a particular case.

## **SUBCHAPTER 12. ACTIVITY-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS**

### **7:13-12.1 Requirements that apply to all regulated activities**

- (a) This section sets forth design and construction standards that apply to any regulated activity proposed in any regulated area.
- (b) The Department shall issue an individual permit for a regulated activity only if it determines that the regulated activity is not likely to cause significant and adverse effects on the following:
1. Water quality;
  2. Aquatic biota;
  3. Water supply;
  4. Flooding;
  5. Drainage;
  6. Channel stability;
  7. Threatened and endangered species or their current or documented historic habitats;
  8. Navigation;
  9. Energy production; and
  10. Fishery resources.
- (c) A permittee shall obtain all necessary approvals from the local Soil Conservation District prior to commencing any activity approved in an individual permit issued under this chapter.

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(d) A permittee shall obtain all necessary approvals from the USDA Natural Resource Conservation Service prior to commencing any activity designed or overseen by the NRCS, which is approved in an individual permit issued under this chapter.

(e) If neither the Soil Conservation District nor the USDA Natural Resource Conservation Service has jurisdiction over an activity approved in an individual permit issued under this chapter, the permittee shall commence the activity only if the following requirements are met:

1. Sediment control measures shall be installed around the proposed construction sufficient to prevent sediment from entering any riparian zone or channel outside the construction area;
2. If construction is proposed in a channel, sediment control measures, such as coffer dams, shall be installed around the activity sufficient to prevent flowing water from coming in contact with construction for the duration of the project where feasible;
3. All slopes shall be graded and stabilized to prevent post-construction erosion; and
4. Permanent, native, non-invasive plant species shall be established on all exposed soils immediately following construction. The applicant shall monitor and maintain all such vegetation for at least three growing seasons to ensure proper establishment and survival.

(f) The Department shall issue an individual permit for a regulated activity that adversely impacts a property not owned by an applicant as set forth in (g) below, only if the applicant demonstrates that one or more of the following requirements are satisfied for each adversely impacted property:

1. The applicant is a public entity that intends to appropriate the adversely impacted property through its power of eminent domain;
2. The applicant has entered into a contract to purchase the adversely impacted property;
3. The applicant has obtained an easement that encompasses the entire area that will be adversely impacted by the proposed activity, which specifically allows the applicant to undertake the proposed activity; or
4. The applicant has obtained written permission from the owners of the adversely impacted property. Written permission shall include the following:
  - i. An explanation of the nature and purpose of the project;
  - ii. An estimate of the length of time regulated activities will occur;
  - iii. An estimate of the extent to which the adversely impacted property will be affected by flooding or stormwater discharges and the frequency at which these impacts are expected to occur; and
  - iv. The notarized signature of all owners of the adversely impacted property.

(g) The Department shall consider a regulated activity to adversely impact a property not owned by an applicant if the activity meets one or more of the following. For the purpose of determining compliance with (g)4 and 5 below, calculations shall be rounded to the nearest 0.1 feet:



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1. The regulated activity is situated, in whole or in part, on property that is not owned by the applicant;
2. A stormwater discharge is directed overland onto property that is not owned by the applicant and the Department determines that the discharge will significantly increase or concentrate overland flow and/or cause erosion or increased flooding on the property not owned by the applicant;
3. The applicant relocates a regulated water or otherwise alters its top of bank such that the limit of the riparian zone encroaches further onto an offsite property;
4. The applicant proposes to undertake one or more of the following regulated activities:
  - i. The construction of a new bridge or culvert, which does not meet the offsite flood requirements of N.J.A.C. 7:13-12.7(d)1;
  - ii. The reconstruction of an existing bridge or culvert, which does not meet the offsite flood requirements of N.J.A.C. 7:13-12.7(e)1; or
  - iii. The restoration of a regulated water to a natural condition, which does not meet the offsite flood requirements of N.J.A.C. 7:13-12.14(d);
5. The applicant proposes to undertake a regulated activity not listed in (g)4 above, and the regulated activity will result in one or more of the following offsite impacts during any flood event described in (i) below:
  - i. The regulated activity subjects any offsite habitable building, railroad, roadway, or parking area to increased depth or frequency of flooding;
  - ii. The regulated activity increases offsite flood depths by more than 0.2 feet, in cases where the applicant owns or has development rights on both sides of a regulated water; or
  - iii. The regulated activity increases offsite flood depths by more than 0.1 feet, in cases where the applicant owns or has development rights on only one side of a regulated water.

(h) If a project results in a significant change in the cross-sectional area and/or hydraulic capacity of a channel or floodway, the Department shall presume that the project has the potential to adversely impact a property not owned by the applicant, as described at (g) above. In such a case, the Department shall require the applicant to provide hydrologic and/or hydraulic calculations that identify the properties that would be adversely impacted, or which demonstrate that such impacts will not in fact occur. Examples of projects that may require such an analysis include a channel modification, flood control project, the construction or removal of a water control structure, and the placement of a significant volume of fill in a floodway.

(i) Where this chapter requires consideration of potential offsite flooding impacts, the following flood events shall be analyzed:

1. The flood hazard area design flood;
2. The 100-year flood;
3. The 50-year flood;

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4. The 25-year flood;
5. The 10-year flood; and
6. The two-year flood.

### **7:13-12.2 Requirements for stormwater management**

(a) This section sets forth stormwater management requirements and specific design and construction standards that apply to any regulated activity associated with a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.

(b) The Department shall issue an individual permit for a regulated activity associated with a major development only if the requirements of the Stormwater Management rules at N.J.A.C. 7:8 are satisfied.

(c) The Department shall issue an individual permit for a stormwater management basin located within or discharging within a flood hazard area only if the following requirements are satisfied:

1. The basin is designed and constructed to function properly during both flood and non-flood conditions;
2. The effects of flooding and tailwater conditions on any proposed discharge are accounted for in the stormwater management calculations for the proposed basin. Tailwater conditions refer to situations where the discharge pipe will be submerged during a flood in such a way that floodwaters prevent the basin from draining properly. The effects of flooding and tailwater conditions are of particular concern in one or more of the following cases:
  - i. The basin will be overtopped and flooded during the flood hazard area design flood, because it is not feasible to construct the emergency spillway in accordance with (c)3 below;
  - ii. The drainage area of the basin is similar in size to the drainage area of the water receiving the proposed discharge;
  - iii. The basin reaches its maximum storage volume during or near the time flooding peaks within the water receiving the proposed discharge; or
  - iv. The elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation;
3. If a basin is proposed within the flood hazard area, the emergency spillway shall be constructed above the flood hazard area design flood elevation where feasible, in order to prevent floodwaters from overtopping the berm and flooding the basin; and
4. If the elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation, the discharge pipe shall be equipped with mechanical devices where appropriate to prevent floodwater from backing up the pipe into the basin.

**7:13-12.3 Requirements for excavation, fill and grading activities**

- (a) This section sets forth specific design and construction standards that apply to any excavation, fill and/or grading proposed in any regulated area.
- (b) The Department shall issue an individual permit for excavation, fill and/or grading only if the following requirements are satisfied:
  - 1. The overland flow of stormwater is not impeded and floodwaters can freely enter and exit the disturbed area, unless the area is graded to impound water for a stormwater management structure that meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8;
  - 2. Any slope of greater than 50 percent (a ratio of two horizontal to one vertical) is stabilized using soil bioengineering, retaining walls, rip-rap or other appropriate slope protection;
  - 3. The excavation, fill and/or grading does not endanger the integrity of any existing structure; and
  - 4. All excavated material is disposed of lawfully.

**7:13-12.4 Requirements for a structure**

- (a) This section sets forth specific design and construction standards that apply to any structure proposed in any regulated area.
- (b) The Department shall issue an individual permit to construct or reconstruct a structure only if the entire structure is designed and constructed to:
  - 1. Resist impact from water and debris during the flood hazard area design flood;
  - 2. Resist uplift, flotation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from the flood hazard area design flood;
  - 3. Resist overturning and sliding pressure, as well as pressure from the freeze/thaw cycle of the soil; and
  - 4. If the structure is located in or adjacent to a channel, resist undermining caused by channel erosion.

**7:13-12.5 Requirements for a building**

- (a) This section sets forth specific design and construction standards that apply to any building proposed within:
  - 1. A flood hazard area; and
  - 2. An area that was previously situated in a flood hazard area, but which was filled, raised or otherwise removed from the flood hazard area after January 31, 1980, whether in accordance with or in violation of this chapter, except in the following cases:
    - i. A Department delineation is available for the site, and the Department approves a revision of its delineation that removes the area in question from the flood hazard

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area; or

- ii. No Department delineation is available for the site, but FEMA issues a Letter of Map Amendment that removes the area in question from the 100-year flood plain.

(b) The Department shall issue an individual permit to construct, elevate, enlarge, or reconstruct a building of any kind, only if the following requirements are met:

1. The building is designed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation; and
2. All applicable requirements set forth in (c) through (t) below are satisfied.

(c) The Department shall issue an individual permit to construct, elevate, enlarge, or reconstruct a building only if the following setbacks are satisfied, unless the building lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water, in which case the following setbacks do not apply:

1. Any new building is located at least 25 feet from any top of bank;
2. If an existing building is to be enlarged, such as through the construction of an addition, the enlarged portion of the building is located at least 25 feet from the top of bank, unless the applicant meets the requirements of (d) below; and
3. If an existing building located less than 25 feet from the top of bank is to be elevated or reconstructed, the building shall be relocated so that it is situated at least 25 feet from the top of bank, unless the applicant meets the requirements of (d) below.

(d) In cases where an compliance with the requirements of (c)2 and/or 3 above is not feasible, the applicant shall:

1. Demonstrate in writing the reasons why compliance with (c)2 and/or 3 above, as appropriate, is not feasible; and
2. Provide an engineering certification confirming that the location of proposed construction is stable and suitable for the proposed building, and not subject to erosion or undermining due to its proximity to the top of bank.

(e) The Department shall issue an individual permit for the construction of a new building in a floodway, only if the following requirements are satisfied:

1. The building is located on a pier in the Hudson River;
2. The requirements of the Department's Coastal Zone Management Rules at N.J.A.C. 7:7-9.46 are met; and
3. The applicant provides an engineering certification confirming that the proposed building is designed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(f) The Department shall issue an individual permit to convert an existing building located in a floodway into a single-family home, duplex, multi-residence building, or critical building only if the requirements of (e)1, 2, and 3 above are satisfied.

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(g) The Department shall issue an individual permit to elevate or reconstruct a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has been occupied within five years prior to the date of application to the Department to reconstruct;
2. All construction takes place within the same footprint as the original building, unless the applicant demonstrates that an expanded, reduced, or otherwise revised footprint will not result in any further obstruction to the flow of floodwaters; and
3. The applicant provides an engineering certification confirming that the elevated or reconstructed building is designed and constructed to resist hydrostatic and hydrodynamic loads and effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(h) The Department shall issue an individual permit for the construction of a horizontal and/or vertical addition to a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has been occupied within five years prior to the date of application to the Department to construct the addition;
2. The applicant demonstrates that the addition does not result in any further obstruction to the flow of floodwaters; and
3. The applicant provides an engineering certification confirming that the existing building, in combination with the proposed addition, is modified to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to at least one foot above the flood hazard area design flood elevation.

(i) The Department shall issue an individual permit to construct a new habitable building only if the following requirements regarding the lowest floor of the building are satisfied:

1. The lowest floor of a single-family home or duplex is set at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
2. The lowest floor of a critical building is set at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;
3. The lowest floor of a multi-residence building is set at least one foot above the flood hazard area design flood elevation and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23, 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

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- hazard area design flood elevation;
- iv. The lowest floor of the non-residential portions of the building identified in (i)3iii above is set as close as feasible to one foot above the flood hazard area design flood elevation. In no case shall the lowest floor of the building be set below grade along all adjoining exterior walls;
  - v. An architect or engineer certifies that the non-residential portions of the building identified in (i)3iii above will be constructed in accordance with the flood-proofing requirements at (q) below;
  - vi. No portion of the building is located within a V zone; and
  - vii. No portion of the building is located within a coastal A zone, unless an architect or engineer certifies that the building's foundation is designed in accordance with the Uniform Construction Code, N.J.A.C. 5:23; and
4. The lowest floor of any habitable building not identified in (i)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 and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23, unless all of the following are satisfied:
- i. The applicant demonstrates that it is not feasible to set 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 (i)4i above is set as close as feasible to one foot above the flood hazard area design flood elevation. In no case shall the lowest floor of the building be set below grade along all adjoining exterior walls;
  - iii. An architect or engineer certifies that the portions of the building identified in (i)4i above will be constructed in accordance with the flood-proofing requirements at (q) below;
  - iv. No portion of the building is located within a V zone; and
  - v. No portion of the building is located within a coastal A zone, unless an architect or engineer certifies that the building's foundation is designed in accordance with the Uniform Construction Code, N.J.A.C. 5:23.
- (j) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing habitable building that has been subject to substantial damage as a result of 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 (i) 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 (i)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 (p) below.

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(k) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been subject to substantial damage as a result of 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 (i) above;
2. The lowest floor of the remainder of the building is modified where necessary to meet the requirements of (i) 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 (i)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 (p) below.

(l) 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 (i) 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 (i) 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 (p) below.

(m) 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 (i) through (l) above, as applicable.

(n) The Department shall issue an individual permit to convert an existing building into a single-family home, duplex, multi-residence building, or critical building only if the lowest floor of the converted building is modified as necessary to meet the requirements of (i) above.

(o) The Department shall issue an individual permit to construct a critical building or multi-residence building, or to convert an existing building to one of these uses, only if 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, which is of adequate size and capacity to serve the building, unless:

1. The building is located in a tidal flood hazard area or is a multi-residence building that is part of a redevelopment project; and
2. The applicant demonstrates that such access is not feasible in accordance with N.J.A.C. 7:13-12.6(e).

(p) The Department shall issue an individual permit to construct an enclosure that lies below the lowest floor of a habitable building, or to construct an enclosure that lies below the flood hazard area design flood elevation that is either attached to or detached from a habitable building and is intended to be used as a garage or parking area, only if the following requirements are satisfied:

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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;
  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;
  4. No portion of the building is located within a V zone;
  5. No portion of the building is located within a coastal A zone, unless an architect or engineer certifies that the building's foundation is designed in accordance with the Uniform Construction Code, N.J.A.C. 5:23; and
  6. Where the enclosure is greater than six feet in height, the following requirements are satisfied:
    - i. The deed for the lot on which the enclosure is constructed is modified to:
      - (1) Explain that the enclosure is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;
      - (2) Disclose the depth of flooding that the enclosure would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood;
      - (3) Prohibit habitation of the enclosure; and
      - (4) Explain that converting the enclosure into a habitable area may subject the property owner to enforcement under this chapter; and
    - ii. The modified deed is recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the building is located, and proof that the modified deed has been recorded is provided to the Department prior to the sooner of either:
      - (1) The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or
      - (2) The date that is 90 calendar days after the issuance of the individual permit.
- (q) The Department shall issue an individual permit for the construction of a new single-family home or duplex within a fluvial flood hazard area on a lot that was created or subdivided after November 5, 2007, only if the applicant demonstrates that none of the lots created in the subdivision contain a habitable building or possess a valid authorization from the Department to construct a habitable building in the flood hazard area.
- (r) Except for an enclosure that meets the requirements of (p) above, 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 (s) below; or
  2. The applicant demonstrates that it is not feasible to dry flood-proof the building in accordance with (s) below and instead wet flood-proofs the building in accordance with (t) below.



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(s) The Department shall issue an individual permit to dry flood-proof a building under (r)1 above only if the building is designed and constructed to meet the dry flood-proofing requirements of the Uniform Construction Code, N.J.A.C. 5:23, so as to prevent floodwaters from entering the building up to a flood depth of at least one foot above the flood hazard area design flood elevation.

(t) The Department shall issue an individual permit to wet flood-proof a building under (r)2 above only if the building is designed and constructed to meet the wet flood-proofing requirements of the Uniform Construction Code, N.J.A.C. 5:23 and be flood-resistant up to 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.

(u) The Department shall not issue an individual permit under (r) above to flood-proof a single-family home, duplex, or critical building, or any residential portions of a multi-residence building.

**7:13-12.6 Requirements for a railroad, roadway, and 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 (e) 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 private roadway or parking area in a fluvial flood hazard area, which serves a critical building or serves a multi-residence building that is not part of a redevelopment project, only if one of the following requirements is satisfied:

1. The travel surface of each private roadway and parking area is constructed at least one foot above the flood hazard area design flood elevation;
2. The applicant demonstrates that the critical building or multi-residence building is already served by one or more roadways and/or parking areas 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 each additional private roadway and parking area as close to this elevation as feasible.

(d) The Department shall issue an individual permit to construct or reconstruct a private roadway or parking area not covered by (c) above, only if one of the following requirements is satisfied:

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

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2. The applicant demonstrates that each building or group of buildings is already served by one or more roadways and/or parking areas 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, or that it is not feasible to construct the travel surface of each private roadway or parking area at least one foot above the flood hazard area design flood elevation pursuant to (e) below, and instead constructs the travel surface of each private roadway and parking area as close to this elevation as feasible.

(e) 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:

1. Demonstrate that strict compliance with the elevation requirements of this section would result in one or more of the following:
  - i. Prohibitively high construction costs;
  - ii. Construction costs that are disproportionately high compared with any benefit that would be obtained by strict compliance;
  - iii. A design that necessitates excessive volumes of fill that exceed the flood storage displacement limits at N.J.A.C. 7:13-11.4, for which flood storage cannot feasibly be created in compensation either onsite or offsite; or
  - iv. 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 flooding;
2. Demonstrate that every reasonable effort has been taken to situate portions of each proposed railroad, roadway or parking area at least one foot above the flood hazard area design flood elevation so that vehicles can move to higher ground during a flood;
3. Demonstrate that no extraordinary risk is posed to any person using each proposed railroad, roadway or parking area that is constructed at an elevation less than one foot above the flood hazard area design flood elevation. This demonstration shall include:
  - i. An analysis of the depth and frequency of floodwaters that will inundate the railroad, roadway, or parking area. In no case shall the travel surface of a private roadway or parking area that serves a multi-residence building in a fluvial flood hazard area be situated greater than 12 inches below the flood hazard area design flood elevation;
  - ii. The number of people that will be adversely impacted when the railroad, roadway, or parking area is inundated; and
  - iii. Measures being proposed to ameliorate the anticipated adverse impacts described in (e)3i and ii above, such as the establishment of evacuation plans for individuals that would be trapped during a flood, provisions for emergency electrical service during an outage, and flood-proofing measures; and
4. Provide an adequate number of permanent signs are posted in prominent locations indicating which proposed roadways and parking areas are subject to flooding in the following cases:
  - i. The roadway and/or parking area serves a critical building, a multi-residence

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building or a residential subdivision of two or more single-family home or duplexes; or

- ii. The parking area has 10 spaces or more.

(f) Where a private roadway or parking area is proposed to be constructed less than one foot above the flood hazard area design flood elevation pursuant to (c), (d), or (e) above, the following requirements shall apply:

1. The deed for each lot on which the private roadway or parking area is constructed, as well as any lot served by the private roadway or parking area, and each lease or rental agreement for a unit within a multi-residence building served by a private roadway or parking area that lies below the flood hazard area design flood elevation, shall be modified to:

- i. Explain that the private roadway or parking area is likely to be inundated by floodwaters, which may result in damage and/or inconvenience; and
- ii. Disclose the depth of flooding that the private roadway or parking area would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood; and

2. Each deed modified in accordance with (f)1 above shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which each lot served by the private roadway or parking area is located, and proof that the modified deed has been recorded shall be provided to the Department prior to the sooner of either:

- i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or
- ii. The date that is 90 calendar days after the issuance of the individual permit.

### **7:13-12.7 Requirements for a bridge or culvert**

(a) This section sets forth the design and construction standards under which the Department will issue an individual permit for the construction or reconstruction of a bridge or culvert in any regulated area. A footbridge that does not meet the requirements of permit-by-rule 23 at N.J.A.C. 7:13-7.23 or general permit 12 at N.J.A.C. 7:13-9.12 is subject to the requirements of this section.

(b) To demonstrate compliance with this section, all calculations and analyses used in the design of a bridge or culvert shall be submitted to the Department. Applicants are encouraged to discuss prospective bridge and culvert projects with Division staff prior to undertaking detailed calculations and analyses under this section. The Department can offer assistance regarding the types of calculations and analyses most appropriate for a given site and project, and in some cases, may be able to determine that the requirements of this section are satisfied without review of detailed calculations or analyses.

- 1. For the purpose of determining compliance with this section, all calculations shall be rounded to the nearest 0.1 feet.

(c) The Department shall issue an individual permit to construct a new bridge or culvert or to reconstruct an existing bridge or culvert only if the bridge or culvert and any associated

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construction, such as embankments, abutments, footings, and travel surfaces, are designed to remain stable, scour resistant, and resistant to displacement and/or damage during the flood hazard area design flood. At a minimum, a bridge shall have stable abutments, a culvert shall have stable headwalls, and any abutment and headwall shall have footings that extend no less than three feet below the invert of the channel.

(d) In addition to meeting the requirements at (c) above, the Department shall issue an individual permit to construct a new bridge or culvert only if the following requirements are met:

1. The anticipated impacts to offsite flooding associated with the construction of the bridge or culvert comply with (d)1i and ii below for each flood event described at N.J.A.C. 7:13-12.1(i):
  - i. The proposed construction does not subject any offsite habitable building, railroad, roadway, or parking area to increased depth or frequency of flooding; and
  - ii. For all areas not identified in (d)1i above, the proposed construction does not increase offsite flood depths by more than 0.2 feet at any location;
2. It is demonstrated, through one or more of the following hydrologic and hydraulic analyses comparing existing and proposed conditions, that the bridge or culvert complies with (d)1 above, unless it is demonstrated that alternate methods would more accurately model the existing and/or proposed conditions:
  - i. A standard step backwater analysis, which is generally capable of modeling both existing and proposed conditions, provided the area upstream of the project is not a permanent impoundment of water or would become a level pool during the flood being analyzed;
  - ii. A hydrologic routing, which is generally capable of modeling only proposed conditions; and
  - iii. An inlet/outlet control analysis, which is generally capable of modeling only proposed conditions; and
3. Where a new bridge or culvert and/or the railroad or roadway it serves would cause fragmentation of habitat for terrestrial threatened or endangered species and/or any terrestrial species of special concern, the bridge or culvert incorporates a preserved or restored natural bank of sufficient width to allow the species to pass through the structure. Where a natural bank is not present or feasible to preserve or restore, the applicant shall create an artificial bank or shelf of sufficient width to allow the species to pass through the structure. The applicant shall additionally adopt appropriate measures where necessary to encourage the species to pass through the structure.

(e) In addition to meeting the requirements at (c) above, the Department shall issue an individual permit to reconstruct an existing bridge or culvert only if the following requirements are met:

1. The anticipated impacts to offsite flooding associated with the reconstruction of the bridge or culvert comply with (e)1i through iii below for each flood event described at N.J.A.C. 7:13-12.1(i):
  - i. The proposed construction does not subject any offsite habitable building, railroad, roadway, or parking area to increased depth or frequency of flooding;

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- ii. The proposed construction does not increase offsite flood depths within 500 feet upstream and downstream of the project by more than 0.2 feet, unless compliance with (e)3 below necessarily results in greater increases. In no case shall the project increase offsite flood depths by more than one foot within 500 feet upstream and downstream of the project; and
    - iii. The proposed construction does not increase offsite flood depths in areas located more than 500 feet upstream and downstream of the project.
  2. It is demonstrated through one or more of the following hydrologic and hydraulic analyses comparing existing and proposed conditions, that the bridge or culvert complies with (e)1 above, unless it is demonstrated that alternate methods would more accurately model existing and/or proposed conditions:
    - i. A standard step backwater analysis, which is generally capable of modeling both existing and proposed conditions, provided:
      - (1) The area upstream of the project is not a permanent impoundment of water, or would become a level pool during the flood being analyzed. In such a case a hydrologic routing is generally more effective; and
      - (2) The analysis takes into account any potential downstream effect of a decrease in water surface elevations upstream of the bridge or culvert, as described in (e)2ii below;
    - ii. A hydrologic routing, provided the analysis takes into account any potential downstream effect of a decrease in water surface elevations upstream of the bridge or culvert under proposed conditions. A significant loss of upstream flood storage can occur in such cases, which can result in increased flow rates downstream of the bridge or culvert. Generally, such impacts can be effectively analyzed by performing a hydrologic routing of existing and proposed structures to determine downstream flow rates, modeling these flow rates in a standard step backwater analysis, and then comparing the water surface profile under existing and proposed conditions; and
    - iii. An inlet/outlet control analysis, provided the analysis does not indicate a decrease in water surface elevations upstream of the bridge or culvert during any flood event described at N.J.A.C. 7:13-12.1(i).
  3. Where the existing bridge or culvert and/or the railroad or roadway it serves currently causes fragmentation of habitat for terrestrial threatened or endangered species and/or any terrestrial species of special concern, the bridge or culvert incorporates a preserved or restored natural bank of sufficient width to allow the species to pass through the structure. Where a natural bank is not present or feasible to preserve or restore, the applicant shall create an artificial bank or shelf of sufficient width to allow the species to pass through the structure. The applicant shall additionally adopt appropriate measures where necessary to encourage the species to pass through the structure.

(f) The Department shall issue an individual permit to construct a new bridge or culvert or to reconstruct an existing bridge or culvert only if the new or reconstructed structure is a bridge, arch culvert, or three-sided culvert that meets the requirements of (f)1 through 4 below, unless

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the applicant demonstrates that a circular, elliptical, or box culvert is acceptable under (g) and (h) below.

1. The bridge or culvert completely spans the regulated water and, to the extent feasible, matches or exceeds the dimensions of the existing channel so that the size and shape of the natural channel is preserved through the structure;
2. The bridge or culvert is adequately sized to convey the flood hazard area design flood without a significant increase in the velocity of water in the channel;
3. Any existing stable, natural, earthen channel with low-flow aquatic passage is preserved, to the maximum extent practicable, and stable, earthen low-flow aquatic passage is provided within the bridge or culvert as well as any section of channel disturbed to accommodate its construction; and
4. No armoring is placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate, where placement of the native substrate is feasible and effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions.

(g) The construction or reconstruction of a circular, elliptical, or box culvert is conditionally acceptable where one or more of the conditions listed at (g)1 through 6 below exist and the culvert meets the construction standards at (h) below.

1. The regulated water does not possess a discernible channel;
2. The channel does not contain fishery resources;
3. The channel is manmade (not including any water that historically possessed a naturally-occurring, discernible channel, which has been modified by humans);
4. The channel is fully lined with manmade impervious material such as cement or concrete;
5. The channel is less than 10 feet in width as measured between the top of bank of each side of the channel; or
6. Spanning the channel under (f) above would not be practicable due to one or more of the following physical constraints:
  - i. Unstable substrate, which would likely undermine any proposed footing within or adjacent to the channel;
  - ii. Irregular channel configuration;
  - iii. Anticipated adverse hydraulic impact to the channel; or
  - iv. Anticipated adverse impacts to offsite flooding, the environment, or public safety.

(h) Where a circular, elliptical, or box culvert is found acceptable under (g) above, the culvert shall be constructed as follows:

1. The invert of the culvert shall be installed at least two feet below the invert of the natural channel. In order to create a contiguous flow-path through the culvert that meets and matches the bottom inverts, cross-sections, and profile of the channel beyond the

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culvert, the culvert shall be filled with native substrate up to the invert of the natural channel; or

2. Where it is demonstrated that the culvert cannot be constructed as described at (h)1 above due to unstable substrate or other physical constraints, the floor of the culvert shall be constructed to incorporate an artificial low-flow treatment, such as a V-notch or key-notch, baffles to hold substrate in place, or a concave floor. For example, an artificial low-flow treatment can be used where the placement of two feet of substrate within the culvert would not be feasible or effective in stabilizing the channel and protecting aquatic habitat under expected flood conditions.

### **7:13-12.8 Requirements for a utility line**

(a) This section sets forth specific design and construction standards that apply to any utility line proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a utility line in a regulated area only if the following requirements are satisfied:

1. All disturbed areas in the flood hazard area are restored to pre-construction topography;
2. The applicant provides an engineering certification confirming that any utility line that conveys a gas or liquid is sealed to ensure that there will be no leakage or discharge in a regulated area; and
3. Except in the immediate vicinity of a crossing of a regulated water, the utility line shall not be constructed within 10 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water.

(c) The Department shall issue an individual permit to construct or reconstruct a utility line across or under a channel or water only if the following requirements are satisfied, as applicable:

1. The applicant demonstrates that it is not feasible to directionally drill or "jack" the proposed utility line under the channel or water under permit-by-rule 36 at N.J.A.C. 7:13-7.36;
2. The applicant demonstrates that it is not feasible to construct the utility line within a roadway that already crosses the channel or water under permit-by-rule 37 at N.J.A.C. 7:13-7.37;
3. The applicant demonstrates that it is not feasible to attach the utility line to a bridge that already crosses the channel or water under permit-by-rule 38 at N.J.A.C. 7:13-7.38;
4. The excavation of an open trench across a channel or water resulting in contact with flowing water is avoided. If the excavation of an open trench is unavoidable, the following requirements shall be met;
  - i. Any trench in a channel, water or riparian zone, is no more than 20 feet wide, unless the applicant demonstrates that such a width is not feasible and a wider trench is necessary for safe construction;
  - ii. The normal flow of the channel or water is piped or diverted around the open trench during construction where possible so that sediment cannot enter the

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- regulated water; and
- iii. The trench is backfilled to the pre-excavation ground elevation using native substrate upon completion of the crossing;
5. A utility line that conveys a gas or liquid is protected in one of the following ways:
- i. It is covered by at least four feet of stable material consisting of native substrate in the channel or water;
  - ii. It is encased in six inches of concrete and covered by at least three feet of stable material consisting of native substrate in the channel or water;
  - iii. It is encased within a steel sleeve, or protected above by a 0.25-inch thick stainless steel plate, and covered by at least three feet of stable material consisting of native substrate in the channel or water; or
  - iv. If the applicant demonstrates that it is not feasible to provide at least three feet of coverage beneath the channel or water, and that there is no feasible alternative location for crossing the channel or water where at least three feet of coverage is provided, the utility line is either:
    - (1) Covered by as much stable material consisting of native substrate in the channel or water as feasible, and encased within a steel sleeve; or
    - (2) Covered by as much stable material consisting of native substrate in the channel or water as feasible, protected above by a 0.25-inch thick stainless steel plate, and encased with six inches of concrete around the sides and bottom;
6. A utility line that does not convey a gas or liquid is covered by at least three feet of stable material consisting of native substrate in the channel or water, where feasible; and
7. The following requirements are satisfied for each utility line that crosses a channel or water, unless the applicant demonstrates that one or more of these requirements is not feasible or that another configuration would pose less risk to life, property and the environment:
- i. Each utility line is placed nominally horizontal under the entire channel or water, and remains so beyond each bank for a distance equal to twice the height of the bank, or 10 feet, whichever is greater. If there is no discernible bank, the utility line shall remain nominally horizontal for at least 10 feet beyond the normal edge of water;
  - ii. The inclined portion of each utility line approaching the channel or water has a slope no greater than 50 percent (a ratio of two horizontal to one vertical); and
  - iii. Encasement extends under the entire channel or water and 10 feet beyond each top of bank. If there is no discernible bank, the utility line shall be encased for at least 10 feet beyond the normal edge of water.



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(d) The Department shall issue an individual permit to construct or reconstruct a utility line above a channel or floodway, which is not attached to a roadway or railroad crossing, or which is attached to such a crossing but does not meet permit-by-rule 38 at N.J.A.C. 7:13-7.38, only if the following requirements are satisfied:

1. The applicant demonstrates that it is not feasible to attach the utility line to a bridge that already crosses the channel or water under permit-by-rule 38;
2. The utility line does not create any obstruction to the flow of floodwaters;
3. The utility line is protected from damage by impact from floating debris;
4. The utility line is placed at least one foot above the flood hazard area design flood elevation.

(e) The Department shall issue an individual permit to construct or reconstruct a manhole associated with a utility line in a regulated area only if the following requirements are satisfied:

1. The manhole is constructed at least 10 feet from any top of bank;
2. Any manhole in a flood hazard area has a watertight cover;
3. The top of a manhole in a floodway is flush with the ground; and
4. The top of a manhole in a flood fringe is flush with the ground, where possible.

(f) The Department shall issue an individual permit for the placement of a cable directly on the bed of a channel or water only if the following requirements are satisfied:

1. The channel or water is large enough in both width and depth that the cable will not interfere with navigation and/or the normal flow of the channel or water; and
2. The cable is laid with enough slack so that it can be easily moved.

(g) The Department shall issue an individual permit that allows, over the five-year term of the permit, the necessary and periodic maintenance, repair, or replacement of any section of a lawfully existing above or below ground utility line in a regulated area only if the following requirements are satisfied:

1. The applicant submits an application for an individual permit which, in addition to the normal application requirements, includes the following:
  - i. The exact location of the utility line network that is the subject of the application, identified on USGS quad maps; and
  - ii. A detailed description of the types of maintenance, repair, and/or replacement activities that can be expected to occur during the duration of the individual permit, such as construction details of typical, anticipated activities and associated construction sequences;
2. The applicant agrees to provide public notice pursuant to N.J.A.C. 7:13-19 at least five working days before performing any repair or replacement;
3. The applicant agrees to replant all disturbed areas in the riparian zone with native, non-invasive plant species after each repair or replacement;

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4. The applicant agrees to restore all disturbed areas in the flood hazard area to pre-construction topography after each repair or replacement; and
5. The applicant agrees to submit a report to the Department each January which includes the following:
  - i. A description of each repair or replacement that occurred during the previous calendar year;
  - ii. Color photographs of each regulated area before and after each repair or replacement; and
  - iii. The fee for each repair or replacement, as provided at N.J.A.C. 7:13-20.

#### **7:13-12.9 Requirements for a stormwater outfall structure**

(a) This section sets forth specific design and construction standards that apply to any stormwater outfall structure proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a stormwater outfall structure only if the following requirements are satisfied:

1. The structure is built with a concrete headwall or flared-end section with footings that extend no less than three feet below grade;
2. The structure does not obstruct flow in a channel or floodway;
3. The structure includes adequate conduit outlet protection where required by the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90, as determined by the local Soil Conservation District having jurisdiction over the site;
4. If the structure includes a rip-rap apron, a three feet deep by three feet wide rip-rap toe wall is constructed at the end of the apron; and
5. The structure does not interfere with the normal flow of the channel or threaten to change the dimensions or location of the channel. For example, a large discharge of stormwater into a small channel, or a discharge situated at a significant angle to the normal flow in a channel, may cause the channel to move over time, interfere with the direction of flow and/or cause increased erosion or deposition of sediment within the channel.

#### **7:13-12.10 Requirements for a low dam**

(a) This section sets forth specific design and construction standards that apply to the construction, replacement, repair, or removal of a low dam in any regulated area. Regulated activities associated with the construction, replacement, repair, or removal of a low dam, such as channel modification, the excavation of a stormwater management basin, or the creation of a stormwater collection and discharge system, shall be reviewed in accordance with the appropriate requirements for those activities under this chapter. This section applies only to the low dam itself.

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(b) The Department shall issue an individual permit to construct a new low dam only if all proposed disturbance is located at least 25 feet from any top of bank unless the applicant demonstrates that:

1. There is a compelling need to construct the low dam, which cannot be met without disturbance within 25 feet of any top of bank; and
2. All disturbance is located outside any channel with fishery resources, as set forth at N.J.A.C. 7:13-11.5, except where:
  - i. The disturbance is unavoidable; and
  - ii. The low dam is modified where necessary to include a fish ladder or other similar mechanism that permits fish to pass the structure in either direction.

(c) The Department shall issue an individual permit to reconstruct, replace, repair, or remove a low dam only if all proposed disturbance located within 25 feet of any top of bank is the minimum necessary to meet the applicable Federal and State requirements.

#### **7:13-12.11 Requirements for a dam**

(a) This section sets forth specific design and construction standards for the construction, replacement, repair, or removal of a dam that serves as a component of a stormwater management basin within any regulated area. Regulated activities associated with the construction, replacement, or repair of a dam, such as channel modification, the excavation of a stormwater management basin, or the creation of a stormwater collection and discharge system, shall be reviewed in accordance with the appropriate requirements for those activities under this chapter. This section applies only to the dam itself.

(b) The activities at (b)1 and 2 below do not require a flood hazard area approval under this chapter, provided all applicable requirements of the Dam Safety Standards at N.J.A.C. 7:20 are met. Dams and certain associated activities are subject to the Department's Dam Safety Standards at N.J.A.C. 7:20, administered by the Department's Bureau of Dam Safety and Flood Control. For additional information concerning the regulation of dams see <https://www.nj.gov/dep/damsafety>.

1. The construction, replacement, repair, or removal of any dam that does not serve as a component of a stormwater management basin; and
2. Any regulated activity performed in association with the removal of a dam that does not serve as a component of a stormwater management basin.

(c) The Department shall issue an individual permit to construct a new dam only if all proposed disturbance is located at least 25 feet from any top of bank, unless the applicant demonstrates that:

1. There is a compelling need to construct the dam, which cannot be met without disturbance within 25 feet of any top of bank; and
2. All disturbance is located outside any channel with fishery resources, as set forth at N.J.A.C. 7:13-11.5, except where:
  - i. The disturbance is unavoidable; and

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- ii. The dam is modified, as necessary, to include a fish ladder or other similar mechanism that permits fish to pass the structure in either direction.

(d) The Department shall issue an individual permit to reconstruct, replace, or repair a dam only if all proposed disturbance located within 25 feet of any top of bank is the minimum necessary to meet the applicable Federal and State requirements.

**7:13-12.12 Requirements for a flood control project**

(a) This section sets forth specific design and construction standards that apply to any flood control project proposed in any regulated area.

(b) The Department shall issue an individual permit for a flood control project only if the applicant is a public entity, and the applicant provides a detailed analysis of the existing flooding problem that is to be mitigated. At minimum, this analysis shall include the following:

1. The frequency and intensity of flooding;
2. The number of homes, businesses and other facilities historically affected by flooding;
3. A cost-benefit analysis for the proposed flood control project, which includes a comparison of any adverse environmental impacts that may be caused by the project with the benefits for flood relief for each investigated alternative;
4. A discussion regarding which storms the flood control project is designed to mitigate and why these storms were selected;
5. If the flood control project is not designed to alleviate flooding for the 100-year flood and/or the flood hazard area design flood, a demonstration as to why this is not feasible and/or possible; and
6. All hydrologic and hydraulic calculations necessary to demonstrate the need for and viability of the project.

(c) The Department shall issue an individual permit for a flood control project that results in disturbance to a channel and/or riparian zone only if the requirements of (b) above are satisfied and provided the applicant demonstrates that there is no feasible alternative project located outside the channel and riparian zone that would satisfactorily reduce flooding. At minimum, this analysis shall include the following:

1. A demonstration that the flooding problem cannot feasibly be solved through any of the following:
  - i. Raising, relocating and/or removing the flood prone structures;
  - ii. Replacing, removing or altering existing water control structures that are contributing to the flooding, such as dams or inadequately-sized bridges or culverts; and
  - iii. Improving the hydraulic capacity of existing water control structures, such as removing accumulated sediment and debris from bridges and culverts, or eliminating bends, inlets and blockages in culverts;
2. A demonstration that the flooding problem cannot feasibly be solved by reducing the

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volume and/or flow rate of floodwaters in the channel through either of the following:

- i. Constructing regional stormwater management basins upstream of the flooding; and
- ii. Redirecting excess flows into pipes or artificial channels to bypass the affected areas; and

3. A demonstration that local stormwater ordinances have been analyzed and modified, to the extent necessary and appropriate, to help ameliorate future flooding within the watershed.

(d) The Department shall issue an individual permit for the lining or piping of a channel as part of a flood control project only if the project meets the requirements at (b) and (c) above, and provided the applicant demonstrates the following:

1. There is no feasible alternative project that would satisfactorily reduce the flooding, which would avoid lining or piping the channel;
2. Lining or piping the channel is necessary to protect public health, safety and welfare; and
3. Adequate mitigation for all lost vegetation and aquatic habitat will occur.

#### **7:13-12.13 Requirements for a retaining wall or bulkhead**

(a) Except as provided in (b) below, this section sets forth specific design and construction standards that apply to any retaining wall or bulkhead which is located within a regulated water, a floodway, or within 25 feet of any top of bank.

(b) This section does not apply to any retaining wall or bulkhead in a tidal flood hazard area that is authorized under a valid coastal permit, or is exempt from requiring a coastal permit under N.J.A.C. 7:7-2.4(d)6.

(c) The Department shall issue an individual permit to construct or reconstruct a retaining wall or bulkhead subject to this section only if the following requirements are satisfied:

1. The retaining wall or bulkhead is designed with stable footings. In general, footings shall extend at least three feet below grade, unless such footings are not possible to construct or necessary for stability;
2. The retaining wall or bulkhead is designed to withstand displacement, overturning, and failure due to undermining and/or pressure from soil, water, and frost; and
3. If located within a regulated water or within 25 feet of any top of bank, the retaining wall or bulkhead is designed to be resistant to erosion as well as the possibility of a shifting bed and/or bank over time.

(d) The Department shall issue an individual permit to construct or reconstruct a retaining wall or bulkhead subject to this section, which is four feet in height or greater, only if the applicant provides an engineering certification confirming that the requirements of (c) above are satisfied.

**7:13-12.14 Requirements for bank stabilization and channel restoration**

- (a) This section sets forth specific design and construction standards that apply to any bank stabilization or channel restoration project proposed in any regulated area.
- (b) The Department shall issue an individual permit under this section only if the following requirements are satisfied:
1. The applicant provides:
    - i. A complete written description of the existing erosion, instability, or ecological degradation including:
      - (1) A history of the site and the watershed;
      - (2) An explanation of any previous attempts to stabilize or restore the bank or channel; and
      - (3) The likely causes of any erosion, instability, or ecological degradation proposed to be remedied;
    - ii. A demonstration of why the selected stabilization or restoration methods (as described at (c) below) are the most suitable for the site. At a minimum, this demonstration should include and discuss the following:
      - (1) The location of any headcut in the channel if present. A headcut is a sudden change in elevation in the stream bed, which usually occurs at the leading edge of a forming gully, and is indicative of erosive forces that are likely to continue to wash away the natural channel;
      - (2) Any upstream or downstream stressors that may have contributed to and/or exacerbated any erosion, instability or ecological degradation, which should be addressed as part of the project;
      - (3) How future development in the watershed could impact the bank and/or channel and the proposed stabilization and/or restoration;
      - (4) The anticipated lifetime of the proposed stabilization or restoration; and
    - iii. A maintenance and monitoring plan to ensure the success of the proposed stabilization or restoration, which includes:
      - (1) An action plan in case of future failure of the project; and
      - (2) A plan to reduce the likelihood of future erosion, instability and ecological degradation onsite;
  2. The project is designed by an individual with experience in fluvial geomorphology (and soil bioengineering if used on site), as evidenced by documentation supplied with the individual permit application; and
  3. In cases where nuisance flooding is a related issue, flood capacity outside the regulated water is increased by terracing the overbank areas where appropriate, so that the channel is not forced to convey excessive flows.
- (c) The Department shall issue an individual permit to restore to a stable condition a bank or

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channel, which has become eroded, unstable, and/or ecologically degraded, only if the project is accomplished as follows:

1. Where feasible, a localized eroded bank or destabilized channel is restored solely by cutting back the bank to a stable slope and planting with native, non-invasive plant species suitable for stabilization. Generally a slope of no greater than 50 percent (a ratio of two horizontal to one vertical) is recommended to stabilize an eroded bank;
2. Where the applicant demonstrates that cutting the bank and planting vegetation as described in (c)1 above cannot adequately restore the channel and/or fully prevent erosion due to excessive channel velocity, soil bioengineering shall be used to stabilize the eroded bank and/or restore the channel. In designing soil bioengineering installations, the existing soil characteristics, the bank and/or channel's physical structure, and the hydrologic conditions on site shall be considered; and
3. Where the applicant demonstrates that, given the velocity and configuration of the adjacent channel and/or other conditions of the site, vegetation and/or soil bioengineering alone are not adequate to stabilize the bank and/or restore the channel, the use of revetments, retaining walls, or other armoring to stabilize the bank or channel is conditionally acceptable.

(d) The Department shall issue an individual permit to restore to a natural condition a regulated water that is significantly ecologically degraded, such as a channel enclosed by a pipe or culvert, a channel that has been previously straightened, channelized, or lined with revetments, retaining walls, or other armoring, or a channel that has relocated or become significantly eroded or incised through natural processes, only if the following requirements are satisfied:

1. The project will result in:
  - i. Ecological enhancement, including habitat creation, restoration, or enhancement;
  - ii. Riparian zone creation in accordance with N.J.A.C. 7:13-13.10; and/or
  - iii. Riparian zone restoration in accordance with N.J.A.C. 7:13-13.11;
2. To the maximum extent practicable, all structures enclosing or lining the regulated water are removed;
3. To the maximum extent practicable, the regulated water is restored to its natural condition and configuration, including channel geometry, sinuosity, aquatic habitat, and benthic characteristics;
4. The channel is stabilized using vegetation in accordance with (c)1 above and/or soil bioengineering in accordance with (c)2 above; and
5. The project is designed to minimize adverse impacts to flooding offsite, such that the following requirements are satisfied for any flood event described in N.J.A.C. 7:13-12.1(i). For the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet:
  - i. The proposed construction does not subject any habitable building to increased depth or frequency of flooding;
  - ii. The proposed construction does not increase offsite flood depths within 500 feet

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upstream and downstream of the project by more than one foot; and

- iii. The proposed construction does not increase offsite flood depths in areas located more than 500 feet upstream and downstream of the project by more than 0.2 feet.

**7:13-12.15 Requirements for sediment and debris removal from a regulated water**

(a) This section sets forth specific standards that apply to any proposed sediment and debris removal from a regulated water.

(b) The Department shall issue an individual permit for the removal of sediment and debris from a regulated water only if the following requirements are satisfied:

1. The applicant demonstrates that there is a documented history of flooding, a mosquito control problem, or other threat to public health, safety, or welfare that necessitates removal of sediment and/or debris from the regulated water;
2. Except for activities along an impounded regulated water, such as a lake, pond, or reservoir, the material to be removed from the regulated water consists solely of accumulated silt, sediment, and debris. Removal of material beyond or below the natural limits of a linear regulated water constitutes a channel modification and is subject to the requirements at N.J.A.C. 7:13-11.1(c);
3. In order to minimize the downstream transport of sediment during dredging, all areas being dredged are isolated from flowing water where possible. Means of isolation include erecting temporary berms or sheet-piles around the areas being dredged and, for a linear regulated water such as a stream or river, pumping flow around the work area, or, if flow within the regulated water is low, by blocking off the areas being dredged and allowing the sediment to settle. For an impounded regulated water, sediment transport can be reduced by lowering the water level, plugging the downstream discharge of the water, and/or pumping the incoming water around the impoundment; and
4. The applicant properly disposes of all material removed from the regulated water. Removed sediment can be disposed of in a regulated area provided the requirements at (d) below are satisfied. All removed trash and debris shall be disposed of in accordance with all applicable Federal, State, and local requirements outside any flood hazard area or riparian zone.

(c) The Department shall issue an individual permit for the removal of sediment and debris from an impounded regulated water, such as a lake, pond, or reservoir, only if the requirements of (b) above and the following requirements are satisfied:

1. The applicant obtains a lake lowering permit from the Department's Division of Fish and Wildlife, where necessary;
2. The applicant obtains any necessary approvals the Department's Dam Safety Section; and
3. If dredging expands the area or depth of the impounded water beyond its original dimensions, the applicant demonstrates that such expansion will not adversely affect



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flooding, any structure or freshwater wetlands adjacent to the water, the seasonal high water table or any dam or low dam that may exist.

(d) The Department shall issue an individual permit to deposit sediment that has been removed from a regulated water, only if the following requirements are satisfied:

1. The applicant demonstrates that the transport of the sediment out of the regulated area is not economically or physically feasible, and/or would cause greater environmental damage than depositing the sediment within the regulated area;
2. The sediment is disposed of in accordance with all applicable Federal, State and local laws;
3. The sediment is deposited at least 25 feet from any top of bank;
4. The placement of the sediment does not interfere with the positive overland drainage of the receiving area; and
5. Sediment deposited in a floodway is placed no more than three inches deep.

(e) The Department shall issue an individual permit that allows an applicant to repeatedly remove sediment and debris from a regulated water during the term of the permit, only if the applicant does the following:

1. Demonstrates that there is no feasible means of preventing the accumulation of sediment and debris over time, which would therefore avoid the need for repeated cleanings;
2. Demonstrates that repeated cleanings are necessary to properly maintain existing bridges or culverts along the water, and/or to alleviate local flooding;
3. Demonstrates that repeated cleanings will not adversely impact fishery resources in the water; and
4. Agrees to notify the Department in writing prior to each proposed sediment removal activity, in accordance with the timeframe established in the individual permit.

(f) The Department may require testing of dredged material if there is reason to suspect that the material is contaminated.

#### **7:13-12.16 Requirements for the storage of unsecured material**

(a) This section sets forth specific standards that apply to any proposed storage of unsecured material in any regulated area.

(b) This section governs the storage of unsecured material not addressed by the following:

1. Permits-by-rule 48 through 53 at N.J.A.C. 7:13-7.48 through 7.53, respectively, which cover the storage of unsecured materials for construction activities, and for certain ongoing residential and commercial uses; and
2. The requirements at N.J.A.C. 7:13-12.17 through 12.20, which cover the placement of hazardous substances and solid waste in a regulated area, whether secured or unsecured.

(c) The Department shall not issue an individual permit for the storage of unsecured material in

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a floodway.

(d) The Department shall issue an individual permit for the storage of unsecured material in a regulated area outside a floodway only if the following requirements are satisfied:

1. The unsecured material is stored as part of a business or facility, the primary function of which is to store and distribute material, such as a bus or truck depot, car dealership or rental facility, gravel pit, junk yard, landscaping business, lumber yard or vehicle impoundment area;
2. The applicant demonstrates that the unsecured material cannot feasibly be stored outside the flood hazard area and riparian zone onsite;
3. The unsecured material to be stored is isolated from floodwaters by berms, or will be situated in a specially designed containment area onsite, so that, in the event of a flood, the stored material will not be transported off the site by floodwaters;
4. The applicant discloses the maximum volume of unsecured material that will be stored in the flood fringe and includes this volume in calculating the maximum flood storage volume displacement on the site pursuant to N.J.A.C. 7:13-11.4; and
5. The Department determines that the storage of unsecured material in a flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

**7:13-12.17 Requirements for the investigation, cleanup, or removal of hazardous substances**

(a) This section sets forth the requirements for the investigation, cleanup, or removal of hazardous substances as defined in the Department's Discharges of Petroleum and other Hazardous Substances rules, N.J.A.C. 7:1E, Appendix A, and/or pollutants, as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) Rules, N.J.A.C. 7:14A, where proposed in any regulated area.

(b) The Department shall issue an individual permit for the investigation, cleanup, or removal of hazardous substances only if the Department determines, or a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, certifies, that:

1. The project complies with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C;
2. In order to minimize the potential that hazardous substances will be transported offsite by floodwaters during the conduct of site remediation activities, all material necessary to facilitate the investigation, cleanup, or removal of hazardous substances is stored and stockpiled as follows:
  - i. Outside any floodway;
  - ii. As far as practicable from any regulated water;
  - iii. Where practicable, within flood-resistant containment areas; and
  - iv. Where such material does not meet the Residential Direct Contact Soil

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Remediation Standards at N.J.A.C. 7:26D, above the 10-year flood elevation;

3. In order to minimize the potential that hazardous substances will be transported offsite by floodwaters after the completion of site remediation activities, the following requirements are satisfied:
  - i. To the maximum extent practicable, all material permanently placed within a flood hazard area meets the Residential Direct Contact Soil Remediation Standards at N.J.A.C. 7:26D;
  - ii. To the maximum extent practicable, the permanent placement of any material that does not meet the Residential Direct Contact Soil Remediation Standards at N.J.A.C. 7:26D is limited to areas situated outside any floodway and above the 10-year flood elevation; and
  - iii. Any material that does not meet the Residential Direct Contact Soil Remediation Standards at N.J.A.C. 7:26D is stabilized and/or covered with suitable material such that the material will not be eroded, displaced, or transported offsite during the flood hazard area design flood.

#### **7:13-12.18 Requirements for the placement, storage, or processing of hazardous substances**

(a) This section sets forth specific requirements that apply to the proposed placement, storage, or processing of hazardous substances in any regulated area, which is not associated with the investigation, cleanup, or removal of hazardous substances pursuant to N.J.A.C. 7:13-12.17.

(b) A lawfully existing facility established on or before November 5, 2007, may be eligible to place, store, or process hazardous substances under permit-by-rule 52 for the placement, storage, or processing of hazardous substances at N.J.A.C. 7:13-7.52, provided the size or capacity of the facility is not increased. In addition, the placement of a fuel or storage tank may be authorized in certain circumstances under permit-by-rule 22 for the construction of a fuel tank at N.J.A.C. 7:13-7.22 or general permit 8 for the placement of storage tanks at N.J.A.C. 7:13-9.8. All other placement, storage, or processing of hazardous substances in a regulated area is subject to this section.

(c) The Department shall issue an individual permit for the placement, storage, or processing of hazardous substances in a regulated area only if the following requirements are satisfied:

1. Hazardous substances are not placed, stored, or processed in a floodway;
2. The placement, storage, or processing of hazardous substances is necessary for the normal conduct of a facility, which is operating in compliance with all Federal, State, and local requirements. The individual permit application shall include copies of all relevant State permits, licenses, and authorizations in order to demonstrate that the facility is operating lawfully;
3. The applicant demonstrates that the hazardous substances cannot feasibly be placed, stored or processed outside the flood hazard area and riparian zone onsite;
4. The hazardous substances to be placed, stored, or processed onsite are isolated from floodwaters by constructing flood-resistant berms around the substances, or by situating the substances within a flood-resistant containment area, so that in the event of a flood,

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the hazardous substances will not be transported offsite by floodwaters;

5. The applicant discloses the maximum volume of hazardous substances to be placed, stored, or processed in the flood fringe and includes this volume in calculating the maximum flood storage displacement volume on site pursuant to N.J.A.C. 7:13-11.4; and
6. The Department determines that the placement, storage or processing of hazardous substances in the flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

#### **7:13-12.19 Requirements for solid waste landfill closure**

(a) This section sets forth the requirements for activities authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department under N.J.A.C. 7:26-2A.8 and 2A.9, when the activities are proposed in any regulated area.

(b) The Department shall issue an individual permit for regulated activities under (a) above only if the applicant demonstrates that:

1. The project complies with the Department's Solid Waste Regulations, N.J.A.C. 7:26;
2. In order to minimize the potential that solid waste will be transported offsite by floodwaters during the conduct of activities under this section, all material necessary to facilitate the regulated activities is stored and stockpiled as follows:
  - i. Outside any floodway;
  - ii. As far as practicable from any regulated water; and
  - iii. Where practicable, within flood-resistant containment areas;
3. In order to minimize the potential that solid waste will be transported offsite by floodwaters after the completion of the landfill closure or disruption activities, all material permanently placed within a regulated area is stabilized and/or covered with suitable material such that the material will not be eroded, displaced, or transported offsite during the flood hazard area design flood.

#### **7:13-12.20 Requirements for the placement, storage, or processing of solid waste or recyclable materials**

(a) This section sets forth the requirements that apply to the proposed placement, storage, or processing of:

1. Solid waste in any regulated area, which is not associated with a solid waste landfill closure and post-closure plan or disruption approval that is addressed under N.J.A.C. 7:13-12.19; and
2. The placement of recyclable materials in any regulated area, pursuant to N.J.A.C. 7:26A.

(b) A lawfully existing facility established on or before November 5, 2007, may be eligible to

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continue to place, store, or process solid waste or recyclable materials under permit-by-rule 53 for the placement storage or processing of solid waste at N.J.A.C. 7:13-7.53, provided the size or capacity of the facility is not increased. All other placement storage or processing of solid waste or recyclable materials in a regulated area is subject to this section.

(c) The Department shall issue an individual permit for the placement, storage, or processing of solid waste or recyclable materials in a regulated area only if the following requirements are satisfied:

1. The solid waste and recyclable materials are not placed, stored, or processed in a floodway;
2. The placement, storage, or processing of solid waste is necessary for the normal conduct of a facility, which is operating in compliance with all Federal, State, and local requirements. The individual permit application shall include copies of all relevant State permits, licenses, and authorizations in order to demonstrate that the facility is operating lawfully;
3. The applicant demonstrates that the solid waste or recyclable materials cannot feasibly be placed, stored, or processed outside the flood hazard area and riparian zone onsite;
4. The solid waste or recyclable materials to be placed, stored, or processed onsite are isolated from floodwaters by constructing flood-resistant berms around the materials, or by situating the materials within a flood-resistant containment area onsite, so that in the event of a flood, the solid waste or recyclable materials will not be transported offsite by floodwaters;
5. The applicant discloses the maximum volume of solid waste or recyclable materials to be placed, stored, or processed in the flood fringe for the purpose of calculating the maximum flood storage displacement on the site pursuant to N.J.A.C. 7:13-11.4; and
6. The Department determines that the placement, storage, or processing of solid waste or recyclable materials in the flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety, or welfare.

**7:13-12.21 Requirements for the removal of existing fill or an existing structure**

(a) This section sets forth specific standards that apply to any proposed removal of existing fill or an existing structure in any regulated area.

(b) The removal of existing fill or an existing structure is subject to the requirements of this section only as follows:

1. The fill or structure to be removed lies in a floodway; or
2. The fill or structure to be removed lies in a regulated area outside a floodway, but does not qualify for permit-by-rule 4 at N.J.A.C. 7:13-7.4.

(c) The Department shall issue an individual permit for the removal of existing fill or an existing structure as described in (b) above only if the following requirements are satisfied:

1. All disturbed regulated areas are properly stabilized;

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2. If the fill or structure to be removed lies in a floodway, the applicant demonstrates through a hydraulic analysis that the removal will not adversely impact a property not owned by the applicant, pursuant to N.J.A.C. 7:13-12.1(f) and (g), unless the Department determines, based on a visual inspection of submitted site plans and without a review of calculations, that the proposed removal poses no threat to offsite properties;
3. Any removed fill is disposed of in accordance with all applicable Federal, State, and local laws; and
4. Any removed structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State, and local laws.

## **SUBCHAPTER 13. RIPARIAN ZONE MITIGATION**

### **7:13-13.1 Definitions**

In addition to the terms defined at N.J.A.C. 7:13-1.2, the following words and terms, when used in this subchapter, shall have the following meanings.

“Creation” means restoring to a natural condition a regulated water that is enclosed by a structure, such as a pipe or culvert.

“Credit purchase” means the purchase of credits from a mitigation bank, as that term is defined at N.J.A.C. 7:13-1.2, as a substitute for performance of creation, restoration, enhancement, or preservation by a permittee. Once a credit is applied to satisfy a mitigation obligation under this subchapter, it is exhausted and may not be sold or used again.

“Enhancement” means the improvement of the functions and values of a degraded riparian zone or certain lands outside the riparian zone as described at N.J.A.C. 7:13-13.11, such as the removal of invasive plant species or the planting of native, non-invasive vegetation.

“Fee simple” means absolute ownership in land, unencumbered by any other interest or estate.

“Mitigation” means activities carried out in accordance with this subchapter in order to compensate for the loss or disturbance of riparian zones.

“Mitigation area” means the portion of a site or piece of property upon which mitigation is proposed or performed.

“Mitigation banking instrument” means documentation of Department approval of the objectives and administration of the bank including, as applicable:

1. Bank goals and objectives;
2. Ownership of bank lands;
3. Bank size and type of riparian zone resources or channel type proposed for inclusion in the bank; including a site plan and specifications;
4. Description of baseline conditions at the bank site;
5. Geographic service area;

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6. Riparian zone disturbance suitable for compensation;
7. Methods for determining credits and debits;
8. Accounting procedures;
9. Performance standards for determining credit availability and bank success;
10. Reporting protocols and monitoring plan;
11. Contingency and corrective actions and responsibilities;
12. Financial assurances;
13. Compensation ratios; and
14. Provisions for long-term management and maintenance.

“Mitigation bank site” means the portion of a site, or piece of property upon which a mitigation bank is proposed or developed.

“Preservation” means the permanent protection of undeveloped land, in its natural state, from disturbance or development, through the execution of a conservation easement in accordance with N.J.A.C 7:13-14.

“Restoration” means the reestablishment of the functions and values of a riparian zone or certain lands outside the riparian zone as described at N.J.A.C. 7:13-13.11, such as the removal of impervious surfaces and planting the area with native, non-invasive vegetation species or restoring a regulated water that has been previously straightened, channelized, or lined with revetments, retaining walls, or other armoring to a natural condition.

“Service area” means the geographic area within which impacts can be mitigated at a specific mitigation bank.

### **7:13-13.2 General mitigation requirements**

- (a) Mitigation shall fully compensate for any ecological loss.
- (b) Mitigation proposals may be submitted as part of an individual permit application for concurrent review in accordance with (c)1 below. However, the determination as to whether a permit application should be approved shall be independent of the analysis of proposed mitigation for compliance with this subchapter. Where a mitigation proposal is not submitted as part of an individual permit application for an otherwise approvable project and this chapter requires mitigation for riparian zone vegetation impacts proposed, the Department shall place a condition upon any permit issued requiring submission and Department approval of a mitigation proposal prior to the commencement of any regulated activities under the permit.
- (c) When mitigation is required in order to compensate for riparian zone disturbance resulting from regulated activities, the Department shall authorize any regulated activities required to undertake and complete the mitigation through:
  1. An individual permit;
  2. Approval of a mitigation proposal submitted to comply with a condition of an individual permit;

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3. An enforcement document specifying mitigation requirements; or
4. Approval of a mitigation proposal submitted to comply with the requirements of an enforcement document.

(d) Mitigation shall not commence until the Department has approved a mitigation proposal through one of the approvals listed at (c) above.

(e) Mitigation approved under this subchapter may also require additional State or Federal permits or approvals, such as a coastal permit or a permit issued pursuant to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, and Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., from the Department. Mitigation shall not commence until all necessary permits or approvals are obtained.

(f) If the Department requires mitigation as part of a remedy for a violation under this chapter, the Department shall determine the amount of mitigation necessary and the particular alternative required, in consideration of the extent (area) and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a remedy for a violation shall provide for mitigation that is at least as ecologically valuable as mitigation that would otherwise be required under this chapter under an individual permit. The Department may require a greater amount of mitigation than that required under an individual permit where necessary to provide at least equal ecological value due to the duration of time that the environment was impaired as a result of the particular regulated activities undertaken in violation of this chapter.

(g) A mitigation area shall be permanently protected from future development by a conservation restriction in accordance with N.J.A.C. 7:13-14.

(h) Mitigation may consist of one or more mitigation alternatives set forth under this subchapter.

(i) Mitigation for multiple disturbances by a single permittee may, upon Department approval, be aggregated into a single mitigation project. Such an aggregated mitigation project shall not be used as mitigation for disturbances by any person other than the permittee, unless the permittee obtains approval of the project as a mitigation bank under this subchapter.

(j) Mitigation provided to satisfy a mitigation requirement of a Federal or local law or another State law shall not substitute for or otherwise satisfy any mitigation requirement under this chapter unless the mitigation project also meets the requirements of this subchapter. For example, a mitigation project proposed to meet a mitigation requirement of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A shall satisfy a mitigation requirement imposed under this chapter only if the proposed mitigation project meets the requirements of this subchapter.

(k) Specific requirements for each type of mitigation project are specified in the following sections of this subchapter:

1. Creation mitigation - N.J.A.C. 7:13-13.10;
2. Restoration mitigation - N.J.A.C. 7:13-13.11;
3. Enhancement mitigation - N.J.A.C. 7:13-13.12;
4. Preservation mitigation - N.J.A.C. 7:13-13.13; and/or



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5. Purchase of credits from a mitigation bank - N.J.A.C. 7:13-13.14.

### **7:13-13.3 Timing of mitigation**

(a) Mitigation shall be performed within the applicable time period below:

1. Except for restoration of a temporary disturbance under (a)2 below, mitigation required under an individual permit shall be performed prior to or concurrently with the regulated activity that causes the disturbance;
2. Mitigation for any temporary disturbance shall commence immediately upon completion of the regulated activity that caused the disturbance and shall continue until completion, which shall not exceed six months after the cessation of the regulated activities that caused the disturbance; and
3. Mitigation required as part of an enforcement action shall be performed in accordance with the schedule set forth in the enforcement document.

(b) In addition to the timing set forth in (a) above, all mitigation shall be continued until completion according to the schedule in the approved mitigation proposal.

### **7:13-13.4 Amount of mitigation required**

(a) This section governs the amount of mitigation required for a regulated activity within a riparian zone under an individual permit, depending upon the area of riparian zone vegetation cleared, cut, and/or removed, the width of the riparian zone, and the type of regulated activity.

(b) Where a regulated activity is located within a 300-foot riparian zone, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed, except for the following regulated activities provided the limits set forth in Table 11.2 are not exceeded:

1. The construction of a new aboveground or underground utility line that meets the requirements of N.J.A.C. 7:13-11.2(k);
2. The reconstruction, replacement, repair, or maintenance of an existing aboveground or underground utility line that meets the requirements of N.J.A.C. 7:13-11.2(l);
3. Construction associated with a single-family home or duplex that meets the requirements of N.J.A.C. 7:13-11.2(m) or (n); or
4. The construction of a trail or boardwalk that meets the requirements of N.J.A.C. 7:13-11.2(t).

(c) Where a regulated activity is located within a 50- or 150-foot riparian zone, mitigation is required as follows:

1. For the investigation, cleanup, or removal of hazardous substances under N.J.A.C. 7:13-11.2(r), or a solid waste landfill closure and post-closure plan or disruption approval under N.J.A.C. 7:13-11.2(s), mitigation is required for the total area of vegetation that is cleared, cut, and/or removed;

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2. For a regulated activity subject to N.J.A.C. 7:13-11.2(y), which results in the clearing, cutting, and/or removal of greater than 2,000 square feet of riparian zone vegetation, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed; and
3. For a regulated activity other than those listed at (c)1 and 2 above, mitigation is required for the area of any riparian zone vegetation that is cleared, cut, and/or removed in excess of any limit set forth in Table 11.2.

### **7:13-13.5 Property suitable for mitigation**

- (a) Mitigation under this subchapter may be carried out on private or public property.
- (b) Except as provided in (c) below, the Department shall approve mitigation only on property that is owned in fee simple and under legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of this chapter.
- (c) The Department shall approve mitigation on public property only if:
  1. The public entity agrees to record a conservation restriction on the area of the mitigation project, in accordance with N.J.A.C. 7:13-14, or can demonstrate that an existing conservation restriction will protect the mitigation project area in perpetuity; and
  2. Where the land was acquired using Green Acres funding or is encumbered with Green Acres restrictions, as defined at N.J.A.C. 7:36-2.1, the use of the area for mitigation purposes is approved by the Green Acres Program.
- (d) If the proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless the applicant demonstrates that the encumbrance will not prohibit compliance or otherwise interfere with the mitigation requirements of this chapter.
- (e) The following shall not constitute mitigation under this subchapter:
  1. The installation of, or improvement to, an existing public facility intended for human use, such as a ball field, nature trail, or boardwalk; or
  2. A stormwater management facility, such as a basin.
- (f) The Department shall not approve creation, restoration, or enhancement in an area that the Department has determined is currently of high ecological value, for example if the area contains a mature, dense, natural forested community and approving a mitigation project in that area will not result in increased riparian zone functionality.
- (g) The Department shall not approve mitigation that would:
  1. Destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; or
  2. In any way jeopardize the continued existence of any local population of a threatened or endangered species.

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(h) The Department shall not approve creation or restoration mitigation in an area where the proposed mitigation poses an ecological risk. For purposes of this section, ecological risk means that the mitigation may result in the reintroduction of contamination to ecological communities, the exposure of humans to contamination, or the contamination of the mitigation site by subsequent exposure to new areas of contamination requiring remediation. The mitigator shall properly characterize and assess the mitigation area in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9 to determine ecological risk.

1. If the Department determines based on the characterization and assessment that the mitigation activities at the proposed site do not pose an ecological risk and that the proposed mitigation satisfies the requirements of this subchapter, the Department shall approve the mitigation and the mitigator shall proceed with the mitigation project.
2. If the Department determines based on the characterization and assessment that the proposed mitigation activities at the proposed site do pose an ecological risk, the mitigator shall not be permitted to use the site for mitigation unless the mitigator remediates the site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8, 5.1, and 5.2. The mitigator shall proceed with the mitigation project only after it demonstrates that the remediation and/or mitigation activities will fully address the ecological risk and that the proposed mitigation satisfies the requirements of this subchapter.

**7:13-13.6 Conceptual review of a mitigation area**

(a) This section sets forth the requirements for the conceptual review of potential mitigation areas except for mitigation bank sites. The requirements for conceptual review of a mitigation bank site are set forth at N.J.A.C. 7:13-13.21(a) and (b).

(b) The Department encourages applicants to obtain the conceptual review of any land being considered as a potential mitigation area, prior to purchase of land for mitigation purposes and/or prior to submittal of a mitigation proposal.

(c) To obtain the conceptual review of a mitigation area, the applicant shall submit a written request to the address set forth at N.J.A.C. 7:13-1.3, including:

1. A brief description of the area and the mitigation project being considered;
2. A map showing the location and extent of the prospective mitigation area, including topography if available; and
3. Consent from the owner of the prospective mitigation area allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

(d) The Department's guidance on a proposed mitigation area is not binding and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has or will authorize any mitigation activities at the proposed mitigation area or issue any other approval.

**7:13-13.7 Basic requirements for mitigation proposals**

(a) A mitigation proposal under this chapter shall be submitted at least 90 calendar days prior to the commencement of regulated activities authorized by a permit.

(b) A mitigation proposal to remedy a violation under this chapter shall be submitted by the deadline set forth in the Department's enforcement document.

(c) A mitigation proposal shall include all information necessary for the Department to determine if the requirements of this subchapter are met.

(d) The information required to be submitted in a mitigation proposal for the creation, restoration, enhancement, and/or preservation of riparian zones is set forth at (f) and (g) below and is summarized in the appropriate mitigation proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:13-1.3.

(e) A mitigation proposal for the purchase of bank credits shall consist of a description of the type and quantity of riparian zone disturbance for which mitigation is being proposed, a copy of the permit (if issued) authorizing the disturbance being mitigated, and identification of the mitigation bank from which appropriate credits will be purchased.

(f) The following information, which is reflected on the mitigation proposal checklists referenced in (d) above, shall be submitted to the Department as part of the request for approval of the mitigation proposal:

1. Basic information regarding the applicant, the disturbance for which the mitigation is intended to mitigate, and a copy of the permit (if issued) or enforcement document that is the source of the mitigation requirement;
2. The following material sufficient to explain and illustrate the existing and proposed conditions at the mitigation site, including:
  - i. Visual materials such as maps, site plans, planting plans, surveys, topography diagrams, delineations, and/or photographs;
  - ii. A narrative describing the existing conditions and proposed mitigation; and
  - iii. A preventive maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented;
3. A specific breakdown of each resource for which mitigation is being proposed and the type and quantity of proposed mitigation for each resource;
4. Schedules describing in detail the sequence of mitigation activities and estimated dates for completion for each mitigation activity;
5. For creation and restoration projects, a preliminary characterization and assessment of the site in accordance with N.J.A.C. 7:13-13.5(h) to enable the Department to determine if contamination is present and if the proposed mitigation activities pose an ecological risk;
6. A description of post-construction activities, including schedules for monitoring, maintenance and reporting;

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7. Contingency measures that will be followed if the mitigation project fails or shows indications of failing;
8. Information regarding the presence or absence of endangered and/or threatened species wildlife and plant species habitat;
9. Any letters, contracts, agreements, easements, conservation restrictions, or other draft or executed documents necessary to ensure compliance with this chapter;
10. A certification of truth and accuracy in accordance with N.J.A.C. 7:13-18.2(j); and
11. Consent from the owner of the proposed mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area.

(g) For restoration and creation mitigation projects, the following additional information shall be submitted as part of the request for approval of the mitigation proposal:

1. All calculations necessary to demonstrate that a mitigation proposal for riparian zone creation meets the requirements of this chapter;
2. Information regarding relevant features of other properties in the vicinity of the mitigation area, such as whether nearby properties are publicly owned or contain preserved open space, or significant natural resources; and
3. Cost estimates to perform the mitigation and maintain the mitigation area after construction and/or transfer is completed.

#### **7:13-13.8 Department review and approval of a mitigation proposal**

(a) The Department shall, within 30 calendar days of receipt of a mitigation proposal submitted to comply with a condition of an individual permit, review the proposal for completeness in accordance with N.J.A.C. 7:13-13.7, and:

1. Request any necessary additional information; or
2. Declare the mitigation proposal complete for further review.

(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

#### **7:13-13.9 Riparian zone mitigation hierarchy**

(a) This section governs the mitigation alternatives available to compensate for riparian zone vegetation disturbances and the location of the mitigation in relation to the area where disturbance to riparian zone vegetation is proposed to occur, or, in the case of a violation, has occurred.

(b) Mitigation for a riparian zone vegetation disturbance shall be performed through creation, enhancement, restoration, or preservation of riparian zones onsite. If onsite mitigation is not feasible, then mitigation shall be provided offsite in accordance with the following:

1. For disturbance to vegetation within a 300-foot riparian zone that is associated with a

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“major development,” as defined in the Department’s Stormwater Management rules at N.J.A.C. 7:8-1.2, mitigation shall be provided along either the same regulated water as the disturbance or an upstream tributary to that regulated water; and

2. For all other disturbance to riparian zone vegetation, mitigation shall be provided offsite in the same watershed management area as the impacts or through the purchase of credits from a mitigation bank with a service area that includes the area of impacts. In determining the feasibility of onsite or offsite mitigation or credit purchase, the Department shall consider the following factors regarding the proposed mitigation area:
  - i. Size. Generally, the larger a mitigation area is, the greater is its potential environmental benefit. A mitigation area that is associated with a large existing riparian zone complex is more likely to be environmentally beneficial;
  - ii. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;
  - iii. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial; and
  - iv. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream.

(c) If offsite mitigation for riparian zone vegetation disturbance within the same watershed management area at (b)2 above is not feasible, mitigation may occur in another watershed management area, provided the mitigation is as close as possible to the watershed management area where the disturbance is to occur, as approved by the Department, and provided the mitigation fully compensates for the disturbance in accordance with N.J.A.C. 7:13-13.2.

### **7:13-13.10 Riparian zone creation**

(a) This section sets forth specific requirements for riparian zone creation plans.

(b) If creation is the mitigation alternative, the Department shall require creation at a creation to loss ratio of 1:1 unless the applicant demonstrates in accordance with (b)1 below that creation at a ratio of less than 1:1 will provide equal ecological functions and values.

1. A mitigator may create riparian zones at a ratio of less than 1:1 if the mitigator demonstrates through the use of productivity models or other similar studies that creating a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a creation to loss ratio of less than 0.5:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the proposed type and density of vegetation, the sediment and pollution removal ability of the proposed riparian zone vegetation, all proposed bank stability and

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erosion protection measures, and any anticipated wildlife habitat conditions. The documentation shall detail how the mitigation proposal will fully replace the ecological values of the riparian zone lost or disturbed.

(c) The Department shall approve a riparian zone creation plan only if a regulated water, which is enclosed by a structure, such as a pipe or culvert, is restored to a natural condition such that:

1. All structures enclosing the regulated water are removed;
2. The regulated water is restored to a natural condition and configuration, including channel geometry, sinuosity, and benthic characteristics to the maximum extent practicable; and
3. The channel is stabilized and planted with native, non-invasive vegetation in accordance with N.J.A.C. 7:13-12.14(c)1 or using soil bioengineering in accordance with N.J.A.C. 7:13-12.14(c)2.

(d) The area of mitigation for which the mitigator receives credit under a riparian zone creation plan shall be calculated as the sum of:

1. The area of land that lies between the tops of bank of the restored regulated water; and
2. Any created riparian zone located outside of the tops of bank, provided the area is:
  - i. Restored to a natural condition, free from any gravel, impervious surface, or other structures and manmade materials, except for soil bioengineering or other structures necessary to support the proposed plan; and
  - ii. Planted with native, non-invasive vegetation of equivalent or superior density and ecological functions and values as the disturbed area for which mitigation is being provided.

### **7:13-13.11 Riparian zone restoration and enhancement**

(a) This section sets forth specific requirements for riparian zone restoration and enhancement plans.

(b) If restoration is the mitigation alternative, the Department shall require restoration at a restoration to loss ratio of 2:1, unless the applicant demonstrates in accordance with (b)1 below that restoration at a ratio of less than 2:1 will provide equal ecological functions and values.

1. A mitigator may restore riparian zones, or land adjacent to riparian zones in accordance with (d) below, at a ratio of less than 2:1 if the mitigator demonstrates through the use of studies that restoring a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a restoration ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the existing and proposed type and density of vegetation, the sediment and pollution removal ability of the existing and proposed riparian zone vegetation, all proposed bank stability and erosion protection measures, and any anticipated wildlife

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habitat conditions. The documentation shall also detail how the mitigation proposal will replace the ecological values of the riparian zone lost or disturbed.

(c) If enhancement is the mitigation alternative, the Department shall require enhancement at an enhancement to loss ratio of 3:1, unless the applicant demonstrates in accordance with (b)1 below that enhancement at a ratio of less than 3:1 will provide equal ecological functions and values.

1. A mitigator may enhance riparian zones, or land adjacent to riparian zones in accordance with (d) below, at a ratio of less than 3:1 if the mitigator demonstrates through the use of studies that enhancing a smaller area of riparian zone will result in replacement riparian zones of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey the conditions on the site of disturbance and on the proposed mitigation area and provide written documentation regarding the existing and proposed type and density of vegetation, the sediment and pollution removal ability of the existing and proposed riparian zone vegetation, all proposed bank stability and erosion protection, and any anticipated wildlife habitat conditions. The documentation shall also detail how the mitigation proposal will replace the ecological values of the riparian zone lost or disturbed.

(d) The Department shall approve a riparian zone restoration or enhancement plan only if the land intended for restoration or enhancement is:

1. Restored to a natural condition, free from any gravel, impervious surface, or other structures and manmade materials, except for soil bioengineering or other structures necessary to support the proposed plan;
2. Planted with native, non-invasive vegetation of equivalent or superior density and ecological functions and values as the disturbed area for which mitigation is being provided;
3. Located within 100 feet from any top of bank along a regulated water possessing a 50-foot riparian zone;
4. Located within 300 feet from any top of bank along a regulated water possessing a 150-foot riparian zone;
5. Located within 300 feet from any top of bank along a regulated water possessing a 300-foot riparian zone; and
6. Not separated from the regulated water along which the mitigation is proposed by a roadway, railroad or other intervening structure.

(e) The Department shall approve a riparian zone restoration plan that consists of restoring to a natural condition a regulated water that has been previously straightened, channelized, or lined with revetments, retaining walls, or other armoring, only if:

1. All structures lining the regulated water are removed;
2. The regulated water is restored to a natural condition and configuration, including channel geometry, sinuosity, and benthic characteristics to the maximum extent practical; and



3. The channel is stabilized with native, non-invasive vegetation.

**7:13-13.12 Monitoring and reporting for riparian zone creation, restoration, and enhancement**

(a) This section sets forth monitoring and reporting for approved plans for riparian zone creation, restoration, and enhancement.

(b) Within 60 calendar days after the construction of a creation, restoration, or enhancement project is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different timeframe for the submittal of the construction completion report if it determines doing so would better facilitate assessing the progress and success of the mitigation. The construction completion report shall include:

1. An as-built plan of the completed mitigation area, showing the species and densities of plantings, and any grading necessary to accomplish the approved mitigation proposal;
2. Photographs of the completed mitigation; and
3. An explanation for any deviation from the approved mitigation proposal.

(c) In addition to the construction completion report required under (b) above, the mitigator shall submit a post-construction monitoring report to the Department each year for five years after completion of any creation, restoration, or enhancement project, unless a different timeframe for submittal is specified in the approved mitigation proposal. The Department may modify the frequency and/or duration of required reporting if it determines that such modification is necessary to ensure the success of the mitigation. Post-construction monitoring shall begin the first full growing season after the mitigation project is completed.

(d) The post-construction monitoring report required under (c) above shall be submitted to the Department by December 31 of each year and shall include:

1. An executive summary;
2. The requirements and goals set forth in the approved mitigation proposal;
3. A detailed explanation of the ways in which the mitigation has or has not achieved progress toward those goals. If mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented as determined pursuant to (e) below and a timeline for completion;
4. Information required by the riparian zone mitigation monitoring checklist available from the Department at the address set forth at N.J.A.C. 7:13-1.3. For a riparian zone mitigation project, the checklist requires the following information:
  - i. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;
  - ii. Photographs of the mitigation site, with a location map indicating the location and direction of each photograph; and

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iii. An assessment of the planted vegetation and the species that are naturally colonizing the site including relevant data, photographs, and field observation notes collected throughout the monitoring period.

(e) The standards by which the mitigation project shall be determined to be successful are set forth at (e) 1 through 4 below. The mitigator shall submit a post-construction monitoring report as required at (d) above demonstrating that these standards have been met. The standards are:

1. The goals of the approved riparian zone mitigation proposal have been achieved;
2. The percent coverage of the planted vegetation as detailed in the approved mitigation plan has been achieved;
3. The mitigation provided meets all applicable requirements of this subchapter; and
4. The permittee has executed and recorded (or caused to be executed and recorded if the mitigation has occurred on public property) the conservation restriction for the mitigation area, which meets the requirements of N.J.A.C. 7:13-14.

(f) The Department shall determine, after consultation with the mitigator, the appropriate corrective action(s) that the mitigator must implement so that the standards at (e) above are met. Corrective actions may include regrading or replanting the mitigation site, relocation of the mitigation project to another, more suitable site and/or extending the monitoring period as necessary to ensure success of the mitigation.

#### **7:13-13.13 Riparian zone preservation**

(a) This section sets forth specific requirements for riparian zone preservation plans.

(b) An applicant proposing to provide riparian zone mitigation under a preservation plan shall preserve undeveloped land such that future development is precluded within the preserved area.

(c) If preservation is the mitigation alternative, the area preserved shall be sufficient to ensure that the functions and values resulting from the preservation area will fully compensate for the loss of functions and values caused by the disturbance. At a minimum, the area preserved shall be:

1. Valuable for the protection of a riparian zone ecosystem;
2. Free of solid or hazardous waste, and water and soil pollution; and
3. Significantly larger than the area that would be required for any other mitigation alternative.

(d) Other factors the Department shall consider in determining whether an area is valuable for the protection of a riparian zone ecosystem include, but are not limited to:

1. The diversity of the ecological communities of the land to be preserved;
2. The relationship of the land to be preserved to existing and planned development; and
3. Whether the land to be preserved is adjacent to a riverine system that:
  - i. Includes headwaters;

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- ii. Is adjacent to public lands containing preserved lands, such as Federal wildlife refuges, State wildlife management areas, State parks or forests, or State, county, or local preservation areas; and
- iii. Has unique aspects or characteristics that contribute to its ecological value, such as an unusual or regionally rare type of ecosystem.

(e) The Department shall determine mitigation through preservation successful upon demonstration that any required conservation restriction has been recorded in accordance with N.J.A.C. 7:13-14.

#### **7:13-13.14 Requirements for credit purchase from an approved mitigation bank**

(a) If the Department determines that a proposal to provide mitigation through the purchase of credits from a mitigation bank is an appropriate mitigation alternative, the Department shall evaluate the values and functions lost as a result of the disturbance and determine the number of credits required to ensure that the mitigation results in a riparian zone of equal functions and values to those lost.

(b) The mitigator shall prepare and execute all documents necessary to ensure that the credits have been purchased from a Department approved mitigation bank with available credits.

(c) The Department shall determine mitigation through credit purchase successful upon receipt of documentation from the permittee that the credit purchase was made as required. Documentation shall include a written certification from the mitigation bank operator, indicating the number of credits purchased and the Department permit number.

#### **7:13-13.15 Financial assurance for mitigation projects; general provisions**

(a) Financial assurance in accordance with this section is required for mitigation projects involving creation, or restoration activities as mitigation for disturbance to riparian zones. Financial assurance is not required for a mitigation proposal or mitigation bank proposal submitted by a government agency or an entity that is exempt from the requirement to provide financial assurance under Federal law.

(b) The person responsible for conducting mitigation identified at (b)1 or 2 below shall establish and maintain financial assurance in accordance with this section:

1. Where mitigation is required pursuant to a permit, the permittee or mitigation bank sponsor of a riparian zone mitigation project or riparian zone bank; or
2. Where mitigation is required as part of the remedy for a violation, the person designated to provide mitigation in the enforcement document.

(c) The person identified at (b) above shall establish and maintain financial assurance in the amount specified at (f) below, until the Department determines that the mitigation site or mitigation bank site has satisfied the applicable performance standards, permit conditions, enforcement document, or settlement agreement.

(d) Financial assurance shall comprise of one or more of the instruments identified at (d)1 through 5 below. A template for each of the types of financial assurance identified at (d)1

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through 4 below is available from the Department at the address set forth at N.J.A.C. 7:13-1.3.

1. A fully funded trust fund, in accordance with N.J.A.C. 7:13-13.16;
2. A line of credit, in accordance with N.J.A.C. 7:13-13.17;
3. A letter of credit, in accordance with N.J.A.C. 7:13-13.18;
4. A surety bond, in accordance with N.J.A.C. 7:13-13.19; and/or
5. Other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the Department to meet the requirements of this section.

(e) Financial assurance that meets the requirements of this section shall be provided at least 30 calendar days prior to undertaking mitigation activities approved under a permit or mitigation banking instrument, or as required under an enforcement document or settlement.

(f) The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and approved by the Department and shall include the following:

1. Construction costs, equal to 115 percent of the estimated cost of completing the creation, or restoration; and
2. Maintenance costs, equal to 115 percent of the estimated cost of monitoring and maintaining the site, including the cost to replant the mitigation area.

(g) The Department shall review the financial assurance annually and adjust the amount as necessary to reflect any changes in the estimated construction or maintenance costs.

(h) The Department shall require additional financial assurance, in accordance with (f) above, if additional construction and/or monitoring is required to ensure success of the mitigation project.

(i) The portion of financial assurance required under (f)1 above shall be released upon the Department's determination that construction (including grading and planting) of the mitigation project or bank has been successfully completed in accordance with the approved mitigation proposal.

(j) The portion of financial assurance required under (f)2 above shall be released when the Department determines that the mitigation project or bank is successful pursuant to N.J.A.C. 7:13-13.12(e) (for a riparian zone project) or N.J.A.C. 7:13-13.20(j) (for a mitigation bank), as applicable.

(k) If the Department determines that the person responsible for conducting mitigation and providing financial assurance as specified at (b) above has failed to perform a mitigation project or bank as required by a permit, mitigation banking instrument, enforcement document, or settlement agreement, the Department shall:

1. Provide written notice of this determination to the person; and
2. Require that the mitigation project or bank be brought into conformance with the permit, mitigation banking instrument, enforcement document, or settlement agreement within 30 calendar days after receipt of the notice, unless the timeframe for compliance is extended in writing by the Department.

(l) No sooner than 30 days from the date the person required to establish the financial assurance receives the notice under (k) above, the Department may, at its discretion, perform the mitigation

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project or bank by drawing on the funds available in the financial assurance.

**7:13-13.16 Financial assurance; fully funded trust fund requirements**

(a) A person who chooses to establish a fully funded trust fund as financial assurance pursuant to this subchapter shall submit to the Department the original fully funded trust fund agreement.

The trust fund agreement shall:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;
2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;
3. Specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the Department;
4. Specify that the trustee may only disburse funds with the Department's written approval;
5. Specify that funds shall be utilized solely for the purposes of conducting the mitigation project as approved by the Department;
6. Specify that the Department may access the fully funded trust fund to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:13-13.15(1); and
7. Identify the Department as the sole beneficiary of the fully funded trust fund.

(b) Any person responsible for conducting a mitigation project or bank that uses a fully funded trust fund to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the trustee confirming the value of the trust in the amount that the Department has approved, and confirming that the trust shall continue for the next consecutive 12-month period.

**7:13-13.17 Financial assurance; line of credit requirements**

(a) A person who chooses to establish a line of credit agreement as financial assurance pursuant to this subchapter shall submit to the Department the original line of credit. The line of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;
2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;
3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended thereafter for a period of at least one year;

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4. Specify that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt;
5. Specify that the lender shall disburse only those funds that the Department approves in writing;
6. Specify that the funds in the line of credit shall be utilized solely for the purposes of conducting the mitigation project or bank; and
7. Specify that the Department may access the line of credit to pay for the cost of the mitigation project or bank pursuant to N.J.A.C. 7:13-13.15(l).

(b) A person responsible for conducting a mitigation project or bank who uses a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

#### **7:13-13.18 Financial assurance; letter of credit requirements**

(a) A person who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds pursuant to this subchapter shall submit to the Department the original letter of credit. The letter of credit shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;
2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;
3. Specify that the letter of credit is irrevocable and issued for a period of at least one year, and that it will be automatically extended thereafter for a period of at least one year;
4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
5. Specify that the Department may access the letter of credit to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:13-13.15(l).

#### **7:13-13.19 Financial assurance; surety bond requirements**

(a) A person who chooses to provide a surety bond as a financial assurance to guarantee the availability of funds pursuant to this subchapter shall complete and submit to the Department the

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original surety bond. The surety bond shall:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or is listed as acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury;
2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;
3. Specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then current expiration date, the issuer shall notify the person using the surety bond and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
4. Specify that the Department may access the surety bond to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:13-13.15(l).

**7:13-13.20 Mitigation banks**

(a) A mitigation bank requires approval by the Department prior to the sale or utilization of any mitigation credits. "Approval" for the purposes of this section means approval in accordance with N.J.A.C. 7:13-13.21.

(b) If the establishment of a mitigation bank involves regulated activities, as described at N.J.A.C. 7:13-2.4, the bank operator shall obtain all necessary approvals from the Department prior to undertaking the regulated activities.

(c) Once the Department has approved a mitigation bank, the bank operator shall carry out all requirements of the banking instrument approving the bank, even if the credits are not anticipated to be immediately sold or the mitigation bank is formed with the intent that credits will be used solely by the mitigation bank operator.

(d) The Department shall determine how many mitigation credits each mitigation bank operator may receive or sell, based on the increase in values and functions created as a result of the proposed mitigation bank, as well as how the increase in functions and values will interact with the regional aquatic and non-aquatic resources. The Department shall evaluate each mitigation bank to determine its functions and values considering the following:

1. The functions and values provided by the bank site at the time the mitigation bank proposal is submitted, such as existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat functions;
2. Whether the proposed mitigation activities will result in an increase in functions and values over the existing value of the mitigation bank site;
3. The likelihood of long-term success of the proposed mitigation activities in creating functions and values similar to undisturbed riparian zones;
4. The total area of the riparian zone located on the proposed bank site;

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5. The potential for the completed mitigation site to be a valuable component of the stream ecosystem;
6. The area and type of mitigation proposed to be performed;
7. The types of resource losses that have occurred in the area;
8. The similarity or dissimilarity of the bank to other existing resources in the area;
9. Available scientific literature regarding credit ratios; and
10. The Department's and other government agencies' experience with mitigation and mitigation banks.

(e) The Department shall include in the banking instrument approving a mitigation bank, a schedule, as set forth in (e)1 through 7 below, under which a bank operator may sell credits. The Department shall adjust the amount of credits that can be released under (e)2 through 7 below to reflect the degree of progress the bank has shown toward meeting the goals and performance standards in the approved mitigation proposal:

1. Ten percent of the credits shall be released upon completion of both of the following:
  - i. Signing of the banking instrument approving the bank; and
  - ii. Compliance with all pre-release credit sale conditions in the banking instrument approving the bank, including securing all construction permits, posting adequate and effective financial assurance in accordance with N.J.A.C. 7:13-13.15 for a mitigation bank involving creation or restoration mitigation, and filing of the conservation restriction;
2. Up to 15 percent of the credits shall be released upon completion of planting as required in the banking instrument approving the bank;
3. Up to 10 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for an entire one-year period;
4. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for a two-year period;
5. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for three consecutive years;
6. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for four consecutive years; and
7. The remaining credits shall be released when monitoring in accordance with the banking instrument approving the bank indicates that the performance standards in the banking instrument have been met for five consecutive years.

(f) Preservation credits may be released in their entirety when the conditions set forth at (e)1 above have been met.



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(g) The mitigation bank operator shall execute and record a conservation restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction shall meet the requirements for protecting mitigation sites from future disturbance, set forth at N.J.A.C. 7:13-14.

(h) The mitigation bank operator shall monitor the mitigation bank site during and after construction until such time that the last credit is sold, the final inspection is conducted, or the bank is transferred to a governmental agency or charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator shall submit progress reports to the Department at least annually during and after construction, and more frequently if required by the banking instrument approving the bank.

(i) If the mitigation bank falls more than one year behind the schedule for completion specified in the banking instrument approving the bank, the Department may amend the banking instrument approving the bank, and may require corrective action to ensure the successful completion of the bank. The Department may reduce the number of credits that may be sold based on the approved corrective action, in order to reflect the change in values and functions that will result from the changes to the bank.

(j) Upon completion of all requirements in the banking instrument approving the bank, the Department shall determine the mitigation bank is successful, provided the mitigation bank operator:

1. Demonstrates that the bank is successful, as set forth within the banking instrument and the permit;
2. Transfers the mitigation bank site in fee simple to a government agency or Department-approved charitable conservancy;
3. Except for banks based solely upon preservation mitigation provides the government agency or charitable conservancy to which the mitigation bank site is transferred with a maintenance fund. The maintenance fund shall support maintenance activities such as trash removal, maintenance of natural features, monitoring of the site to ensure proper upkeep, maintenance of water control structures, fences, or safety features, and any other activities necessary to ensure that the site complies with this chapter and all applicable law. The amount of the maintenance fund shall be determined between the bank operator and the agency or conservancy to which the mitigation bank site is transferred; and
4. Ensures that the transfer, and the conservation restriction or easement required under (g) above, are recorded with the county or other appropriate agency.

(k) If the Department determines that the mitigation bank operator is in default of any provision of the mitigation banking instrument and the default results in a termination of the banking instrument, the Department shall determine whether the amount of mitigation completed at the bank site is commensurate with the number of credits already sold. If the Department determines that the amount of mitigation completed is less than the number of credits already sold, the Department shall assert its rights to the financial assurance provided under N.J.A.C 7:13-13.15(k) and (l).

**7:13-13.21 Application for a mitigation bank**

(a) A prospective mitigation bank operator may obtain conceptual review of a proposed mitigation bank before buying land or preparing a detailed mitigation bank proposal. In a conceptual review, Department staff will discuss the apparent strengths and weaknesses of the proposed mitigation bank. Guidance provided through a conceptual review is not binding on the Department and shall not be relied upon by the applicant in purchasing a proposed mitigation area. A conceptual review does not grant any property or other rights or in any way imply that the Department has or will authorize any mitigation activities at the proposed mitigation area or issue any other approval.

(b) To obtain conceptual review of a proposed mitigation bank, an applicant shall submit the following to the Department:

1. Information on the location, size, and environmental characteristics of the proposed mitigation bank site;
2. Information on previous uses of the site, including possible contamination;
3. The proposed mitigation alternatives being considered, such as creation, restoration, and/or enhancement;
4. Whether the credits generated by the bank will be used solely by the mitigation bank operator, or will be available for use by others;
5. Maps, photographs, diagrams, delineations, and/or other visual materials necessary for the Department to generally evaluate the proposed mitigation bank;
6. The names and addresses of all current owners of the mitigation bank site, and any prospective owners, as of the date the request for conceptual review is submitted; and
7. Consent from the owner of the proposed mitigation bank site, allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

(c) To obtain Department approval of a proposed mitigation bank, an applicant shall submit the information required by the riparian mitigation bank proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:13-1.3. The checklist shall require the following:

1. A functional assessment of the bank site prior to construction and proposed site conditions after construction;
2. The goals and objectives of the bank;
3. The ownership of the bank site including disclosure of any leases, easements or other encumbrances;
4. The size of the bank site, as well as type and amount of the riparian zone resources for which credits from the bank could serve as suitable compensation;

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5. A description of baseline conditions on the bank site, including all relevant natural features and parameters, as well as pollutants, contamination, and other factors which could affect the bank's ability to provide mitigation credits;
6. A description of the mitigation bank service area within which the mitigation bank credits can be used to compensate for a disturbance. The service area shall be designated to give priority to mitigation for impacts in the same watershed management area as the bank site;
7. The method for determining credits and debits;
8. Accounting procedures;
9. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:13-13.20(e);
10. Performance standards to enable the Department to determine if and when the mitigation bank is successful;
11. Reporting protocols and a monitoring plan;
12. Contingency and corrective actions that will be taken by the mitigation bank operator in case the bank fails;
13. Financial assurance meeting the requirements of N.J.A.C. 7:13-13.15;
14. Provisions for long-term management and maintenance of the mitigation bank site;
15. Site plans, cost estimates, and schedules for construction, completion, and transfer of the mitigation bank;
16. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction, financial assurance, property transfer, and/or agreement with a charitable conservancy to maintain the site;
17. Identification of the persons who will construct, operate and maintain the mitigation bank and mitigation bank site; and
18. Documentation that public notice of the proposed mitigation bank was provided in accordance with N.J.A.C. 7:13-19.

(d) The Department's approval of a mitigation bank shall incorporate conditions necessary to ensure that the requirements of this subchapter are met.

## **SUBCHAPTER 14. CONSERVATION RESTRICTIONS**

### **7:13-14.1 Conservation restriction form and recording requirements**

(a) Any conservation restriction required under this chapter shall conform with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., and shall:

1. Run with the land and be binding, in perpetuity, upon the land owner and successors in interest to any interest in the land or any part of the land covered by the mitigation area;

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2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq., in the chain of title for all properties affected by the restriction; and
3. Be in the form and include such terms as specified and approved by the Department. The applicant shall not alter the form except in consultation with the Department and only when the Department agrees that an alteration is necessary to address site-specific conditions. Form conservation restrictions are available from the Department's website at the address set forth at N.J.A.C. 7:13-1.3.

(b) The conservation restriction shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the regulated activity, project, project site, or mitigation area is located, and proof that the conservation restriction has been recorded shall be provided to the Department as follows:

1. For a permit that authorizes the establishment of a mitigation bank, prior to the release of any credits; and
2. For any other permit for which a conservation restriction is required, prior to the sooner of either:
  - i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or
  - ii. The date that is 90 calendar days after the issuance of the permit or approval of the mitigation plan, if a mitigation plan is submitted pursuant to a condition of the permit in accordance with N.J.A.C. 7:13-13.2(c)2.

(c) Proof that the conservation restriction has been recorded under (b) above shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the complete recorded document shall be provided to the Department within 180 calendar days of the issuance of the permit.

(d) The conservation restriction shall include a requirement that each owner of any interest in the land subject to the conservation restriction (that is, the mitigation area) shall:

1. Notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted; and
2. Insert notice of the conservation restriction into any subsequent deed or other legal instrument by which the owner divests either the fee simple title or any possessory interest in the land subject to the conservation restriction.

(e) Any conservation restriction shall be enforceable by the Department. The Department may also direct that the conservation restriction be made enforceable by a government agency or by a charitable conservancy whose trustees have no other ownership interest in the land.

### **7:13-14.2 Reservation of rights**

(a) The property owner or grantor may request approval from the Department to undertake a de minimis modification of the area subject to a conservation restriction recorded in accordance with this subchapter. The Department shall approve the modification if it determines that the modification will result in an equivalent level of protection of the regulated resource; or the modification will result in an equivalent area of resource protection and will not compromise the original protected resource.

(b) The property owner or grantor may reserve the right to abandon the project. At any time prior to the start of any site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, the property owner or grantor may inform the Department in writing that it is abandoning the project and request that the Department void the permit. Upon confirmation that no site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, has occurred, the Department shall provide to the permittee or grantor an executed release of the conservation restriction, which the permittee or grantor may then record.

## **SUBCHAPTER 15. HARDSHIP EXCEPTION FOR AN INDIVIDUAL PERMIT**

### **7:13-15.1 Hardship exception for an individual permit**

(a) The Department shall issue an individual permit for a project or regulated activity that does not comply with one or more of the requirements at N.J.A.C. 7:13-11 and 12 only if:

1. One or more of the requirements at (b) below are satisfied; and
2. All of the requirements at (c) below are satisfied.

(b) A project or regulated activity is eligible for a hardship exception under this section only if one or more of the following apply:

1. The Department determines that there is no feasible and prudent alternative to the proposed project or regulated activity, including not pursuing the project or regulated activity, which would avoid or substantially reduce the anticipated adverse effects of the project or regulated activity, and that granting the hardship exception would not compromise the reasonable requirements of public health, safety, and welfare, or the environment;
2. The Department determines that the cost of compliance with the requirements of this chapter is unreasonably high in relation to the environmental benefits that would be achieved by compliance; or
3. The Department and applicant agree to one or more alternative requirements that, in the judgment of the Department, provide equal or better protection to public health, safety, and welfare and the environment.

(c) In addition to meeting at least one of the requirements in (b) above, a project or regulated activity is eligible for a hardship exception under this section only if the applicant demonstrates that:

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1. Due to an extraordinary situation of the applicant or site condition, compliance with this chapter would result in an exceptional and/or undue hardship for the applicant and/or would adversely impact public health, safety, and welfare;
2. The proposed project or regulated activities will not adversely affect the use of contiguous or nearby property; and
3. The proposed project or regulated activities will not pose a threat to the environment, or to public health, safety, and welfare.

(d) In determining whether to approve a hardship exception for an application satisfying the requirements of (b) and (c) above, the Department shall consider the extent to which the applicant, prior or current property owner(s), and/or their agents may have directly caused or contributed to the hardship.

(e) To obtain an individual permit based on a hardship exception, the applicant shall submit an application for an individual permit pursuant to N.J.A.C. 7:13-18 and shall include the following additional information as applicable:

1. A detailed narrative that:
  - i. Explains how the project or regulated activity for which the applicant is seeking a hardship exception meets at least one of the requirements at (b) above as well as all of the requirements of (c) above; and
  - ii. Demonstrates that the applicant has pursued alternate designs and/or locations for the project or regulated activity, as applicable, which have proven to be not feasible;
2. A description of any potential impacts of the proposed project or regulated activity upon the environment;
3. If the hardship exception request relates to the requirements for buildings at N.J.A.C. 7:13-12.5, all necessary structural, socio-economic, flood-proofing, and/or other information relevant to support the request;
4. If the hardship exception request relates to the access requirements of N.J.A.C. 7:13-12.6, proposed access routes to and from the property during a flood;
5. If the hardship exception request relates to any potential impacts from or to flooding, the projected height, velocity and duration of the floodwaters expected at the site during the flood hazard area design flood, as well as evidence that the project will not adversely affect the hydraulic capacity of any water so as to cause or increase flooding upstream and/or downstream of the proposed project;
6. If the hardship exception request is based on economic grounds, detailed financial documentation to support the request;
7. A description of the existing development in the area and any potential impacts of the proposed project or regulated activities on that development; and
8. Any additional information that the Department determines is reasonable and necessary to evaluate whether the hardship exception request meets the requirements of this section.

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- (f) The Department shall review an application for an individual permit based on a hardship exception in accordance with the procedures for an individual permit at N.J.A.C. 7:13-21.
- (g) A delegated agency shall not issue an individual permit based on a hardship exception.

**SUBCHAPTER 16. EMERGENCY AUTHORIZATIONS**

**7:13-16.1 Standard for issuance of an emergency authorization**

(a) The Department shall issue an emergency authorization only if the person seeking such authorization demonstrates that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and the threat, severe loss, or degradation:

1. Can only be prevented or ameliorated through undertaking a regulated activity; and
2. Is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.

**7:13-16.2 Procedure to request an emergency authorization**

(a) A person requesting an emergency authorization shall provide the Department with the following information by telephone and, in addition, by fax, electronic mail, or letter, unless the nature of the emergency is so immediate that only telephone notice is feasible:

1. The name, address, and contact information for the owner(s) of the property upon which the regulated activity will be conducted and for the owner(s) of any other properties affected by the proposed regulated activity;
2. A demonstration that the property owner(s) has given permission for the proposed regulated activity or, in the case of a public entity proposing activities on private property through power of eminent domain, a written statement of the public entity's intention to conduct the regulated activity;
3. The street address, lot, block, municipality, and county of the property upon which the regulated activity is proposed;
4. The nature and cause of the threat to life, severe loss of property, or environmental degradation, including the condition of existing structures, the vulnerability of people and/or property, and the threat to the environment;
5. The date and time at which the person requesting the emergency authorization learned of the threat to life, severe loss of property, or environmental degradation;
6. The nature and extent of the proposed regulated activity;
7. The proposed start and completion dates for the proposed regulated activity;
8. Photographs of the area where the regulated activity will be conducted;
9. If possible, a site plan showing the proposed regulated activity and anticipated impacts of the proposed activity to flood hazard areas and riparian zones; and
10. Any other information necessary for the Department to ensure compliance with the

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requirements of this chapter.

(b) A person requesting an emergency authorization need not comply with the public notice requirements at N.J.A.C. 7:13-19 or submit an application fee. However, public notice and an application fee are required for the application for the general permit authorization or the individual permit, as applicable, that, as required at N.J.A.C. 7:13-16.3(e), must be submitted for the activities conducted under the emergency authorization.

**7:13-16.3 Issuance of emergency authorization; conditions**

(a) The Department shall issue or deny an emergency authorization within 15 calendar days after receiving a request that meets the requirements of N.J.A.C. 7:13-16.2. The Director of the Division of Land Use Regulation, or the Director's designee, shall provide this decision to the person who requested the emergency authorization verbally and, if the decision is to issue the emergency authorization, shall provide written confirmation within five working days thereafter.

(b) Within 20 calendar days after the verbal decision to issue an emergency authorization, the Department shall publish notice of the emergency authorization in the DEP Bulletin.

(c) The Department's written confirmation of its decision to issue the emergency authorization shall include:

1. A full description of the activities authorized under the emergency authorization;
2. The timeframes within which the regulated activities authorized under the emergency authorization must be commenced and conducted as set forth in (d) below;
3. A requirement that the person conducting the regulated activities authorized under the emergency authorization provide regular updates of progress at the site;
4. Any limits or other criteria necessary to ensure compliance to the maximum extent practicable with all requirements of this chapter; and
5. A requirement to provide mitigation for impacts to riparian zones in accordance with N.J.A.C. 7:13-13, as appropriate.

(d) The regulated activities authorized under the emergency authorization shall be commenced and conducted within the following timeframes:

1. Activities authorized under the emergency authorization shall be commenced within 30 calendar days after the Department's verbal decision is provided pursuant to (a) above, unless the Department establishes a different timeframe in accordance with (f) below. If the emergency activities are not commenced within 30 calendar days or by the date established under (f) below, as applicable, the emergency authorization is automatically void as of the 30th calendar day after the verbal approval or as of the date established in accordance with (f) below, as applicable; and
2. Activities authorized under the emergency authorization, including any required restoration, shall be completed within 60 calendar days after the Department's verbal decision is provided in accordance with (a) above, unless the Department establishes a different timeframe in accordance with (f) below. If the regulated activities authorized under the emergency authorization are not completed within 60 calendar days or by the



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date established in accordance with (f) below, as applicable, the regulated activities shall cease until either a general permit authorization or an individual permit is obtained, or another emergency authorization is obtained.

(e) The person to whom the emergency authorization is provided shall submit a complete application in accordance with N.J.A.C. 7:13-18 for an authorization under a general permit or for an individual permit for the activities conducted under the emergency authorization within 90 calendar days after the Department's verbal decision is provided in accordance with (a) above, or by a different date established in accordance with (f) below, as applicable.

(f) The Department shall establish a timeframe different from those set forth at (d) or (e) above where the applicant demonstrates that the timeframe set forth at (d) or (e) cannot feasibly be met for all or a portion of the authorized activities or where the Department determines that a different timeframe is necessary to facilitate the regulated activities.

(g) The person to whom the emergency authorization is provided shall conduct all activities authorized under the emergency authorization in accordance with all requirements that apply to that activity under this chapter to the maximum extent practicable.

(h) The general permit authorization or individual permit application submitted under (e) above shall, in addition to meeting the application requirements for the specific general permit authorization or individual permit, include:

1. A demonstration that the regulated activities conducted under the emergency authorization meet the requirements of this chapter, or an explanation as to why full compliance could not be achieved; and
2. "As-built" site plans, signed and sealed by an engineer, land surveyor, or architect, as appropriate, showing the regulated activities that were or are being conducted under the emergency authorization.

(i) Upon review of the application submitted under (e) above, the Department shall require design changes, restoration, and/or stabilization measures as necessary to ensure the requirements of this chapter are met to the maximum extent practicable.

(j) The Department may modify or terminate an emergency authorization at any time without prior notice if the Department determines that modification or termination is necessary to protect public health, safety, and welfare, and/or the environment.

(k) If the person to whom the emergency authorization was provided conducts any regulated activity not authorized under the emergency authorization and/or the general permit or individual permit obtained thereafter for the activities governed by the emergency authorization, such shall constitute a violation of this chapter subject to enforcement action under N.J.A.C. 7:13-24.

## **SUBCHAPTER 17. PRE-APPLICATION CONFERENCES**

### **7:13-17.1 Purpose and scope**

(a) A pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project and the application procedures and standards that will apply to the project. A prospective applicant may request a pre-application conference for any

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project. In the appropriate case, the Department may determine that the questions raised by a prospective applicant can be adequately addressed by telephone or in writing.

(b) A pre-application conference is not mandatory, but is recommended for large and/or complicated projects.

(c) Discussion or guidance offered by the Department at a pre-application conference shall not constitute a commitment by the Department to approve or deny an application.

(d) There is no fee for a pre-application conference.

(e) Where the prospective applicant's project will require approvals from several Department programs, the applicant is encouraged to contact the Department's Office of Permit Coordination and Environmental Review at (609) 292-3600 for assistance in coordinating the various applications.

**7:13-17.2 Request for a pre-application conference; scheduling; information required**

(a) Except as provided at (b) below, a request for a pre-application conference shall be directed by electronic mail to [LURTechSupport@dep.nj.gov](mailto:LURTechSupport@dep.nj.gov), or by writing to the address set forth at N.J.A.C. 7:13-1.3 to the attention of "Supervisor, (county in which the proposed project is located)."

(b) A request for a pre-application conference for a dredging or dredged material management project shall be directed to Supervisor, Office of Dredging and Sediment Technology, Site Remediation Program, NJ Department of Environmental Protection, P.O. Box 420, Mail Code 401-06C, 401 East State Street, 6th Floor, Trenton, NJ 08625 (Telephone: (609) 633-6801).

(c) A request for a pre-application conference for any project shall include the following:

1. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;
2. Site plans or conceptual designs depicting the proposed development, if available;
3. The street address, lot, block, municipality, and county of the property upon which the regulated activity is proposed; and
4. A copy of any letter of interpretation pursuant to the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, or any flood hazard area verification pursuant to N.J.A.C. 7:13-5, that the Department has issued for the site. If neither a letter of interpretation nor a flood hazard area verification has been issued, the prospective applicant shall provide the general location of freshwater wetlands, freshwater wetland transition areas, State open waters, flood hazard areas, and/or riparian zones.

(d) Within 10 calendar days of receipt of the material submitted in accordance with (c) above, the Department shall:

1. Determine that a pre-application conference is necessary and contact the prospective applicant to schedule a pre-application conference; or
2. Determine that a pre-application conference is not necessary and that the prospective applicant's questions can be addressed in writing or by telephone. Where the

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Department makes such a determination, the Department shall address the questions within 20 calendar days of receipt of the material submitted in accordance with (c) above.

## **SUBCHAPTER 18. APPLICATION REQUIREMENTS**

### **7:13-18.1 Purpose and scope**

- (a) This subchapter sets forth the application requirements for:
1. A verification;
  2. An authorization under a general permit-by-certification;
  3. An authorization under a general permit, except for general permit 1 (see N.J.A.C. 7:13-9.1); and
  4. An individual permit.
- (b) The application requirements for the following are set forth elsewhere in this chapter:
1. For an applicability determination, see N.J.A.C. 7:13-2.5;
  2. For an application for a revision of a Department delineation, see N.J.A.C. 7:13-3.7;
  3. For an application for authorization under general permit 1, see N.J.A.C. 7:13-9.1;
  4. For approval of a mitigation proposal, see N.J.A.C. 7:13-13;
  5. For an emergency authorization, see N.J.A.C. 7:13-16; and
  6. For an extension, transfer, or modification of an approval, see N.J.A.C. 7:13-22.3, 22.4, or 22.5, respectively.

### **7:13-18.2 General application requirements**

(a) The Department provides a checklist for each type of application submitted under this subchapter. The checklist identifies all of the submissions required under the rules to be part of an application, and also the appropriate level of detail and the format of the information to be submitted for each type of application. For example, where the rules require, as part of an application, the submittal of photographs showing certain types of information, the corresponding checklist will indicate, based on the type of development the particular permit covers, the number and orientation of photographs of the location of the proposed development. Where the rules require the submittal of a site plan, the corresponding checklist will indicate, based on the type of development the particular permit covers, the scale and details of the information to be illustrated on the plan. Checklists can be downloaded from the Department's website at <https://www.nj.gov/dep/landuse> or obtained by contacting the Department at the address set forth at N.J.A.C. 7:13-1.3.

(b) The level of detail and documentation required for an application shall be commensurate with the size and impact of the proposed regulated activity or project, its proximity to environmentally sensitive areas, and its potential for impacts to the environment and flooding. The Department shall, upon request, provide an applicant with guidance regarding the

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appropriate level of detail for an application based on the activity the applicant proposes to undertake.

(c) The following persons may submit an application under this subchapter:

1. The owner(s) of a site on which an activity is proposed or conducted, or which is the subject of the verification;
2. An agent designated by the owner(s) of a site to obtain or operate under a verification, an authorization under a general permit or general permit-by-certification, or an individual permit on behalf of the owner(s); or
3. A public entity proposing an activity within a right-of-way or easement that is held or controlled by that entity or that will be appropriated by that entity under the power of eminent domain; and
4. A person that has the legal authority to perform the activities proposed in the application on the site, and to carry out all requirements of this chapter.

(d) An application shall be certified as set forth in (l) below by the following individual(s), or by a duly authorized representative, as described at (e) below:

1. If the applicant is a corporation, a principal executive officer of at least the level of vice president;
2. If the applicant is a partnership or sole proprietorship, a general partner or the proprietor, respectively;
3. If the applicant is a municipality, or a State, Federal, or other public entity, either a principal executive officer or ranking elected official; or
4. If the applicant is an entity not covered at (d)1 through 3 above, all individual owners of record of the property upon which the activities will occur.

(e) An individual is a duly authorized representative of the applicant under (d) above only if the authorization is:

1. Made in writing by an individual required to certify under (d) above and is provided to the Department as part of the application; and
2. Specifies that the authorized representative is either:
  - i. The individual who has overall responsibility to obtain the verification and/or operate, construct or complete the activity, such as a contractor, construction site supervisor, or other individual of equivalent responsibility; or
  - ii. A position of responsibility equivalent to that of the individual in (e)2i above. In this case, the individual holding the specified position is the duly authorized representative for purposes of (d) above.

(f) If the written authorization provided to the Department under (e) above is no longer accurate because a different individual or position has overall responsibility to obtain the verification and/or operate, construct, or complete the activity, a new authorization satisfying the requirements of (e) above shall be submitted to the Department prior to or concurrent with any reports, information, or applications requiring the applicant's certification.

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(g) If an application includes activities within a right-of-way or easement, the application shall include written consent for the activity from the holder(s) of the right-of-way or easement.

1. For a gas pipeline located within a municipally owned right-of-way, written consent shall consist of one of the following:

- i. Written consent from the municipality in the form of a resolution of the governing body or an ordinance;
- ii. A municipal designation of the route pursuant to N.J.S.A. 48:9-25.4; or
- iii. A Board of Public Utilities designation of route pursuant to N.J.S.A. 48:9-25.4.

(h) Any site plan submitted as part of an application shall be signed and sealed by an engineer, land surveyor, or architect, as appropriate, unless both (h)1 and 2 below apply, in which case the applicant may elect to prepare his or her own site plan:

1. The applicant proposes the construction of a single-family home or duplex or an accessory structure, such as a patio, garage, or shed on his or her own property for his or her own use; and
2. The proposed regulated activity or project is one for which no survey, topography, or calculations are necessary to demonstrate the requirements of this chapter are met.

(i) Any professional report, survey, calculation, or other document prepared by a consultant, engineer, land surveyor, architect, attorney, scientist, or other professional and submitted as part of an application shall be certified in accordance with (j) below. This certification is separate from the certification of the application by the applicant.

1. Stormwater management calculations, hydrologic calculations, hydraulic calculations, and flood storage displacement calculations shall be signed and sealed by a New Jersey licensed professional engineer.
2. Structural stability calculations, hydrostatic and hydrodynamic loading calculations, and flood-proofing calculations shall be signed and sealed by a New Jersey licensed professional engineer or architect.

(j) The certification required by (d) and (i) above is as follows:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.”

(k) Failure to provide complete and accurate information of which the applicant or its agents are aware, or reasonably should have been aware, may result in denial of an application or termination of the authorization under the general permit-by-certification or general permit, or the individual permit under N.J.A.C. 7:13-22.8, and may subject the applicant or its agents to enforcement action under N.J.A.C. 7:13-24.

(l) When a proposed regulated activity or project requires more than one approval under this subchapter, or requires, in addition, an approval under the Coastal Zone Management Rules at

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N.J.A.C. 7:7 and/or the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, an applicant may submit a single application for all of the approvals, except for an authorization under a general permit-by-certification or a letter of interpretation under the Freshwater Wetlands Protection Act Rules, provided that the application meets all application requirements of each such approval included.

(m) Submission of an application under this chapter constitutes consent from the owner of the site allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site. This consent shall continue in effect for the duration of the permit application review and decision process, including for the duration of any appeal made from the permit decision.

**7:13-18.3 Additional application requirements for an authorization under a general permit-by-certification**

(a) An application for authorization under a general permit-by-certification shall be submitted electronically through the Department's online system at <https://www.nj.gov/dep/online>.

(b) In addition to meeting the requirements at N.J.A.C. 7:13-18.2, the applicant is required to provide the following in the online application for a general permit-by-certification:

1. The number (and subject matter) of the general permit-by-certification under which the application for authorization is being submitted;
2. The name of or other identifier for the proposed regulated activity or project;
3. The location of the proposed regulated activity or project, including address, city, state, zip code, municipality, State plane coordinates, lot, and block, as necessary;
4. Information specific to the proposed project related to the requirements of the general permit-by-certification under which the application is being submitted, such as, for example, the area of proposed disturbance to riparian zone vegetation under general permit-by-certification 2 (see N.J.A.C. 7:13-8.2);
5. Contact information for both the applicant and the property owner, including: name, address, telephone number, e-mail address, municipality, county, organization, and organization type;
6. A certification, as set forth in N.J.A.C. 7:13-18.2(j), as to each of the following:
  - i. That the site identified in the application is the actual location of the project site;
  - ii. That public notice of the application has been provided in accordance with N.J.A.C. 7:13-19;
  - iii. That the applicant has obtained written consent from the property owner that the application can be made on the property owner's behalf. This certification is required regardless of whether the applicant and property owner are the same person; and
  - iv. That conditions specific to the general permit-by-certification under which the application for authorization is being submitted are or will be met. For example, an applicant for authorization under general permit-by-certification 6 must certify that

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the proposed building being reconstructed is not located within a floodway;

7. To accomplish the certification at (b)6 above, the PIN that was issued to the applicant upon registering with the Department's online system; and
8. The application fee for a general permit-by-certification set forth at N.J.A.C. 7:13-20.

(c) Once the online application process is successfully completed, the authorization will be accessible to the applicant through the Department's online system at <https://www.nj.gov/dep/online>.

#### **7:13-18.4 Additional application requirements for an authorization under a general permit or for an individual permit**

(a) An application for authorization under a general permit or for an individual permit shall be submitted electronically through the Department's online system at <https://nj.gov/dep/online>, including all application information and supporting documentation.

(b) In addition to meeting the requirements at N.J.A.C. 7:13-18.2, the applicant is required to provide the following in the online application for a general permit or individual permit:

1. The number and subject matter of the general permit or individual permit under which the application is being submitted;
2. The name of or other identifier for the proposed regulated activity or project;
3. The location of the proposed regulated activity or project, including address, city, state, zip code, municipality, State plane coordinates, watershed information, lot, and block, as necessary;
4. Information specific to the proposed project related to the requirements of the authorization or permit under which the application is being submitted;
5. Contact information for the applicant, the property owner, any designated agent(s), and the municipal clerk for each municipality in which the project is located, including: name, address, telephone number, email address, municipality, county, organization, and organization type;
6. The PIN that was issued to the applicant upon registering with the Department's online system; and
7. The appropriate application fee set forth at N.J.A.C. 7:13-20.

(c) In addition to meeting the requirements at (b) above, an application for an authorization under a general permit or for an individual permit shall include the following digital documents, which must be uploaded to the online service, in the format specified in the appropriate application checklist:

1. A completed Property Owner Certification form(s) signed by the applicant and all individuals required to certify to the application in accordance with N.J.A.C. 7:13-18.2(d). The Property Owner Certification form is available from the Department at the address set forth at N.J.A.C. 7:13-1.3;

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2. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:13-19, including a completed Public Notice form, available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
3. Site location maps, including the following:
  - i. A copy of the tax map for the property;
  - ii. A copy of the portion of the county road map showing the property location; and
  - iii. A copy of the USGS quad map(s) that includes the site, with the site clearly outlined to scale;
4. Site plans, certified in accordance with N.J.A.C. 7:13-18.2(i), that include the following, both on and adjacent to the site:
  - i. Existing features, such as lot lines, structures, land coverage, and vegetation, which are necessary to demonstrate that the proposed delineation, regulated activity, or project meets the requirements of this chapter;
  - ii. All proposed regulated activities, such as changes in lot lines; the size, location, and details of any proposed structures, roads, or utilities; details of any clearing, grading, filling, and excavation; the location and area of any riparian zone vegetation that will be disturbed; cross-sections of regulated waters or water control structures being analyzed; and the anticipated limits of disturbance;
  - iii. Existing and proposed topography where necessary to demonstrate that the proposed delineation, regulated activity, or project meets the requirements of this chapter. All topography shall reference NGVD or include the appropriate conversion factor to NGVD;
  - iv. Details of any proposed soil erosion and sediment control measures;
  - v. The location of any riparian zone onsite and well as details of any proposed mitigation;
  - vi. A metes and bounds description of any existing and proposed flood hazard area and floodway limits onsite, as well as an indication of which method in N.J.A.C. 7:13-3 was used to determine these limits, unless the applicant is seeking a verification of only the riparian zone;
  - vii. If the entire site lies within a flood hazard area and/or floodway, the site plans shall indicate this, as well as the elevation(s) of the flood hazard area design flood throughout the site; and
  - viii. If construction is proposed in a regulated water, the site plans shall include a thorough description of proposed construction methods, a timetable for construction, and details of any trenching, diversionary channels, temporary piping, and other disturbances to the regulated water;
5. In addition to the site plan specified at (c)4 above, other visual representations, such as photographs, graphs, maps, and tables, that illustrate existing site conditions and the proposed delineation, activity or project;
6. Calculations, analyses, data, and supporting materials necessary to demonstrate that the



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proposed delineation, activity, or project meets the requirements of this chapter, and the requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8, if applicable;

7. Any information necessary to ensure compliance with State and/or Federal law, and/or to determine whether an application for a verification, for an authorization under a general permit or for an individual permit meets State and/or Federal standards; and
10. A copy of all conservation restrictions that impact any portion of the site that is the subject of the application.

(d) An application for an individual permit for a regulated activity or project in the Pinelands Area as designated under the Pinelands Protection Act at N.J.S.A. 13:18A-11.a shall also include a Certificate of Filing, a Certificate of Completeness, or a resolution approving an application for public development, issued by the New Jersey Pinelands Commission.

(e) If a proposed activity or project for which an authorization under a general permit or an individual permit is sought requires mitigation in accordance with this chapter, the applicant may submit a mitigation proposal as part of the application for the authorization or permit. If the applicant does not submit a mitigation proposal with the application, the applicant shall submit the mitigation proposal at least 90 calendar days before the start of activities authorized by the permit, in accordance with N.J.A.C. 7:13-13.

#### **7:13-18.5 Additional application requirements for a verification**

(a) Applications for verifications submitted concurrently with any of the following application types shall be submitted electronically through the Department's online system at <https://nj.gov/dep/online>, including all application information and supporting documentation, and shall be subject to the application requirements at N.J.A.C. 7:13-18.4(b) and (c):

1. A general permit authorization under this chapter, the Coastal Zone Management Rules, N.J.A.C. 7:7, or the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A;
2. An individual permit under this chapter, the Coastal Zone Management Rules, N.J.A.C. 7:7, or the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A; or
3. A transition area waiver under the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(b) Applications for verifications submitted independently from any of the applications listed at (a) above shall be submitted to the address set forth at N.J.A.C. 7:13-1.3(c)2. In addition to meeting the requirements at N.J.A.C. 7:13-18.2, they shall include the following material, in the number and format specified in the appropriate application checklist:

1. A completed application form as described at N.J.A.C. 7:13-22.3(c)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
2. Documentation that public notice of the application has been provided in accordance with N.J.A.C. 7:13-19;
3. The appropriate application fee as set forth at N.J.A.C. 7:13-20;
4. Site plans, certified in accordance with N.J.A.C. 7:13-18.2(i), that include the

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following, both on and adjacent to the site:

- i. Existing features, such as lot lines, structures, land coverage, and vegetation, which are necessary to demonstrate that the proposed delineation meets the requirements of this chapter;
  - ii. Existing topography, where necessary, to demonstrate that the proposed delineation meets the requirements of this chapter. All topography shall reference NGVD or include the appropriate conversion factor to NGVD;
  - iii. The location of any riparian zone onsite;
  - iv. A metes and bounds description of any existing and proposed flood hazard area and floodway limits onsite, as well as an indication of which method at N.J.A.C. 7:13-3 was used to determine these limits, unless the applicant is seeking a verification of only the riparian zone;
  - v. If the entire site lies within a flood hazard area and/or floodway, the site plans shall indicate this, as well as the elevation(s) of the flood hazard area design flood throughout the site;
5. State plane coordinates for a point at the approximate center of the site, except for a delineation or a linear activity or project as provided at (b)5i below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point for the site.
- i. State plane coordinates shall be provided for a delineation of a flood hazard area or riparian zone, or a linear activity or project, such as a roadway, utility, stream bank stabilization project, or sediment and debris removal project, as follows:
    - (1) For a delineation or a linear activity or project of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the delineation or linear activity or project and the coordinates for points located at 1,000-foot intervals along the entire length of the delineation or linear activity or project; and
    - (2) For a delineation or a linear activity or project of less than one-half mile in length, the State plane coordinates shall include the coordinates for the end points of the delineation or linear activity or project;
6. In addition to the site plan specified at (b)4 above, other visual representations, such as photographs, graphs, maps, and tables, that illustrate existing site conditions and the proposed delineation;
7. Calculations, analyses, data, and supporting materials necessary to demonstrate that the proposed delineation meets the requirements of this chapter; and
8. Any information necessary to ensure compliance with State and/or Federal law, and/or to determine whether an application for a verification meets State and/or Federal standards.

**7:13-18.6 Compliance statement requirement for an application for authorization under a**

**general permit**

(a) In addition to the requirements at N.J.A.C. 7:13-18.2 and 18.4, an application for authorization under a general permit shall include a compliance statement. The compliance statement is a narrative, which shall:

1. Demonstrate that the proposed regulated activity or project satisfies the requirements of the applicable general permit;
2. Demonstrate that the proposed regulated activity or project satisfies the requirements at N.J.A.C. 7:13-6.7; and
3. Describe the characteristics of the site and the location of all proposed regulated activities, potential impacts from the construction process, and, as applicable, the operation of the regulated activities after completion and any monitoring or reporting methods that will be used.

**7:13-18.7 Engineering report requirement for an application for a verification based on Methods 4, 5, or 6 or for an individual permit**

(a) In addition to the requirements at N.J.A.C. 7:13-18.2 and 18.4 or 18.5, as applicable, an application for a verification based on Methods 4, 5, or 6, pursuant to N.J.A.C. 7:13-3.4(f), 3.5, and 3.6, respectively, or for an individual permit shall include an engineering report. The engineering report shall include:

1. The signature and seal of an engineer;
2. The name, 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 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. For an application for a verification, all flood maps, drainage area maps, and other material used to determine the flood hazard area and/or floodway limits;
7. For an application for an individual permit, the total area of impervious surface proposed and the total land area that will be disturbed;
8. For an application for an individual permit for which the Department is reviewing a stormwater management plan pursuant to N.J.A.C. 7:13-12.2, the following information where applicable:
  - i. An explanation of how nonstructural stormwater management strategies have been

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- maximized on site, as required at N.J.A.C. 7:8-5.3;
- ii. A demonstration of how the regulated activity and/or 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 regulated activity and/or project meets the water quality standards at N.J.A.C. 7:8-5.5; and
9. For an application for an individual permit for a project located in the Central Passaic Basin that relies on fill credits, as described at N.J.A.C. 7:13-11.4(s) and (t), documentation that the fill credits have been purchased by the applicant prior to the submittal of the application.

**7:13-18.8 Environmental report requirement for an application for an individual permit**

(a) In addition to meeting the requirements at N.J.A.C. 7:13-18.2, 18.4, and 18.7, an application for an individual permit shall include an environmental report. The environmental report shall include:

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) that provide an environmental inventory of the site; and
3. An analysis of any potential temporary and/or permanent adverse environmental impact(s), whether onsite or offsite, of the proposed regulated activity or project on regulated waters, channels, riparian zones, fishery resources, and threatened or endangered species and their habitat. The analysis shall include:
  - i. A justification for the proposed regulated activity or project, including an explanation of why any proposed regulated activity or project and its location is the most appropriate for the site, and how the proposed location and design minimizes adverse environmental impact(s) to the resources identified in (a)3 above;
  - ii. An analysis of alternatives to the proposed regulated activity or project, including a no-build alternative;
  - iii. A description of all measures to be taken to reduce any potential adverse environmental impact(s) to the resources listed at (a)3 above;
  - iv. A plan to mitigate the effects of all adverse environmental impacts; and
  - v. Any monitoring or reporting methods that will be used.

(b) Where a survey for threatened or endangered species and their habitat under N.J.A.C. 7:13-11.6(e) is required, the survey shall be performed by a person with education and experience in wildlife biology, zoology, and/or botany, as appropriate, and shall include:

1. The name, address, and qualifications of all persons participating in the survey;

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2. The acreage of the surveyed area;
3. A USGS quad map with the surveyed area for each threatened or endangered species and their 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 threatened or endangered 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 observer 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:
  - i. Whether the subject was sighted directly or identified by call, track, scat, remains, or other indirect evidence of presence;
  - ii. The date(s) and time(s) of each such sighting or discovery of evidence;
  - iii. The relative age and condition of any indirect evidence observed and its location on the property;
  - iv. A description of the techniques and methodologies employed by the observer during the site investigation;
  - v. If a wildlife species is observed directly, the number of each species observed, likely age, observed activity, gender, location on or near the site, and proximity to the observer at each sighting; and
  - vi. If a plant species is observed directly, the number of each species observed and its location on or near the site.

## **SUBCHAPTER 19. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION**

### **7:13-19.1 Purpose and scope**

- (a) An applicant shall provide public notice in accordance with this subchapter for the following:
1. An application for a verification, pursuant to N.J.A.C. 7:13-5, which is based on Methods 4, 5, or 6, pursuant to N.J.A.C. 7:13-3.4(f), 3.5, and 3.6, respectively;
  2. An application for an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:13-6 and 8;

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3. An application for an authorization under a general permit pursuant to N.J.A.C. 7:13-6 and 9, except for general permit 1 for channel cleaning under the Stream Cleaning Act at N.J.A.C. 7:13-9.1;
4. An application for an individual permit pursuant to N.J.A.C. 7:13-10, 11, and 12;
5. A mitigation proposal pursuant to N.J.A.C. 7:13-13, which is not submitted as part of an application for an individual permit; and
6. An application for a major technical modification pursuant to N.J.A.C. 7:13-22.5(e).

(b) An applicant is not required to provide public notice for the following:

1. A request for an applicability determination pursuant to N.J.A.C. 7:13-2.5;
2. An application for a revision of a Department delineation pursuant to N.J.A.C. 7:13-3.7;
3. An application for a verification that is based on Methods 1, 2, or 3, pursuant to N.J.A.C. 7:13-3.3, 3.4(d), or (e), respectively;
4. Conducting an activity under a permit-by-rule pursuant to N.J.A.C. 7:13-6 and 7;
5. An application for authorization under general permit 1 pursuant to N.J.A.C. 7:13-9.1;
6. An application for an emergency authorization pursuant to N.J.A.C. 7:13-16;
7. An application for an extension of the term of a verification, authorization under a general permit, or individual permit pursuant to N.J.A.C. 7:13-22.3;
8. The transfer of a verification, authorization under a general permit, or individual permit pursuant to N.J.A.C. 7:13-22.4; and
9. An application for an administrative or minor technical modification pursuant to N.J.A.C. 7:13-22.5(c) or (d), respectively.

(c) When a proposed regulated activity or project requires more than one approval under this chapter, or requires, in addition, an approval under the Coastal Zone Management Rules at N.J.A.C. 7:7 and/or the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, an applicant may provide combined public notice for all applications submitted, provided the combined notice meets all of the notice requirements applicable to each application.

(d) Failure to provide public notice as required under this subchapter shall be cause for the Department to cancel an application under N.J.A.C. 7:13-21.5.

### **7:13-19.2 Timing of public notice of an application**

For any of the applications listed in N.J.A.C. 7:13-19.1(a), the applicant shall provide public notice in accordance with this subchapter no more than 30 calendar days prior to submitting the application, and no later than the date the application is submitted to the Department.

### **7:13-19.3 Contents and recipients of public notice of an application**

(a) For any of the applications listed at N.J.A.C. 7:13-19.1(a), the applicant shall provide a copy of the entire application, as submitted to the Department, to the municipal clerk in each

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municipality in which the site is located.

1. For applications submitted electronically, the applicant shall provide to the applicable municipal clerk(s) a description of the project, the specific permit(s)/authorization(s) being sought, and all items that will be uploaded to the online service, including all required items on the appropriate application checklist.

(b) For any of the applications listed in N.J.A.C. 7:13-19.1(a), the applicant shall provide notice of the application to all of the persons or entities at (b)1 through 6 below, in accordance with the timeframe specified at N.J.A.C. 7:13-19.2. The notice shall include the information specified at (d) below.

1. The construction official of each municipality in which the site is located;
2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the site is located;
3. The planning board of each municipality in which the site is located;
4. The planning board of each county in which the site is located;
5. The local Soil Conservation District if the regulated activity or project will disturb 5,000 square feet or more of land; and
6. All owners of real property, including easements, located within 200 feet of the property boundary of the site in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, unless the delineation, regulated activity, or project is one of those listed at (c)1 through 5 below, in which case the notice shall be provided as set forth in (c) below. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department.

(c) If the application is for a delineation, regulated activity or project listed at (c)1 through 5 below, the applicant shall provide the notice required at (b)6 above by publishing newspaper notice in accordance with N.J.A.C. 7:13-19.4 and, in addition, sending the notice at (d) below, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed regulated activity or project, excluding any conveyance lines suspended above the ground or small utility support structures such as telephone poles.

1. A delineation of one-half mile or longer of a regulated water;
2. A mosquito control activity subject to general permit 2 at N.J.A.C. 7:13-9.2;
3. A linear project of one-half mile or longer;
4. A public project on a site of 50 acres or more;
5. An industrial or commercial project on a site of 100 acres or more; or
6. A project to remove sediment or debris from a channel of one-half mile or longer.

(d) The public notice required at (b) and (c) above, other than newspaper notice, shall:

1. Include all of the following:

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- i. A brief description of the proposed delineation, regulated activity, or project;
  - ii. A site plan, showing the location and boundaries of the site and depicting the proposed delineation, regulated activity, or project in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the delineation, regulated activity, or project in relation to the property boundary is clearly shown; and
  - iii. A copy of the form notice letter, available from the Department's website as set forth at N.J.A.C. 7:13-1.3. The form notice letter explains that: an application will be submitted to the Department for the specific delineation, regulated activity, or project depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; and comments or information on the proposed delineation, regulated activity, or project and site may be submitted to the Department at the address set forth at N.J.A.C. 7:13-1.3 within 15 calendar days of receipt of the letter; and
2. Be sent by certified mail or by delivery whereby the signature of the person to whom the notice is delivered is obtained, except that an applicant may obtain written permission from the specific municipal or county entity to submit notice to it electronically.

(e) In addition to the information required at (d) above, the public notice for an application for an individual permit based on a hardship exception pursuant to N.J.A.C. 7:13-15.1 shall also include:

1. A description of the nature of the hardship; and
2. The citation and subject matter of each requirement in this chapter for which the hardship exception is being requested.

(f) An application for a verification, authorization under a general permit, individual permit, or major technical modification for a delineation, regulated activity, or project in the Pinelands Area as designated under the Pinelands Protection Act at N.J.S.A. 13:18A-11.a shall provide public notice to the New Jersey Pinelands Commission as follows:

1. For an application for an authorization under a general permit, an individual permit, or a verification in accordance with N.J.A.C. 7:13-18.5(a), a description of the project, including the lot, block, municipality, and county, and the specific permit(s)/authorization(s) being sought; or
2. For an application for a verification in accordance with N.J.A.C. 7:13-18.5(b) or a major technical modification, a copy of the completed application form as submitted to the Department.

#### **7:13-19.4 Content and format of newspaper notice**

(a) The newspaper notice pursuant to N.J.A.C. 7:13-19.3(c) shall be either a legal notice or a display advertisement in the official newspaper of the municipality in which the site is located, or



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if there is no official newspaper, a newspaper of general circulation in the municipality.

(b) The newspaper notice pursuant to N.J.A.C. 7:13-19.3(c) shall include all of the following:

1. The mailing address and telephone number of the Department set forth at N.J.A.C. 7:13-1.3;
2. The name and mailing address of the applicant;
3. The type of approval being sought;
4. A description of the proposed delineation, regulated activity, or project;
5. The street address of the site;
6. A list of each lot, block, municipality, and county within which the proposed delineation, regulated activity, or project will occur;
7. For an application for an individual permit based on a hardship exception pursuant to N.J.A.C. 7:13-15.1:
  - i. A description of the nature of the hardship; and
  - ii. The citation and subject matter of each requirement in this chapter for which the hardship exception is being requested; and
8. The standard language of the form notice letter available from the Department website as set forth at N.J.A.C. 7:13-1.3.
  - i. The form notice letter explains that: an application will be submitted to the Department for the specific delineation, regulated activity, or project as identified pursuant to (b)4 through 7 above; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; and comments or information on the proposed delineation, regulated activity, or project and site may be submitted to the Department at the address set forth at N.J.A.C. 7:13-1.3 within 15 calendar days of the date of the notice.

**7:13-19.5 Documenting public notice of an application**

(a) An applicant shall include as part of the application documentation that the required public notice of the application has been provided, as follows:

1. For public notice other than newspaper notice, the documentation shall consist of:
  - i. A copy of the certified United States Postal Service white mailing receipt for each public notice that was mailed, or other written receipt; and
  - ii. A certified list of all owners of real property, including easements, located within 200 feet of the property boundary of the site (including name, mailing address, lot, and block) prepared by the municipality for each municipality in which the project is located. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department; and
2. For newspaper notice, the documentation shall consist of:

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- i. A copy of the published newspaper notice; and
- ii. The date and name of the newspaper in which notice was published.

## **SUBCHAPTER 20. APPLICATION FEES**

### **7:13-20.1 Application fees**

- (a) This subchapter establishes the application fees for:
  1. A revision of a Department delineation, pursuant to N.J.A.C. 7:13-3.7;
  2. A verification, pursuant to N.J.A.C. 7:13-5;
  3. An authorization under a general permit-by-certification, pursuant to N.J.A.C. 7:13-6 and 8, except as provided in (b)3 below;
  4. An authorization under a general permit pursuant to N.J.A.C. 7:13-6 and 9, except as provided in (b)4 below;
  5. An individual permit pursuant to N.J.A.C. 7:13-10, 11, and 12;
  6. An extension of a verification, authorization under a general permit, or individual permit, pursuant to N.J.A.C. 7:13-22.3; and
  7. A modification of a verification, authorization under a general permit, or individual permit, pursuant to N.J.A.C. 7:13-22.5.
- (b) There is no application fee for:
  1. An applicability determination pursuant to N.J.A.C. 7:13-2.5;
  2. A permit-by-rule pursuant to N.J.A.C. 7:13-6 and 7;
  3. An authorization under the following general permits-by-certification:
    - i. General permit-by-certification 4 for enhancement of a riparian zone through the planting of native, non-invasive plant species, N.J.A.C. 7:13-8.4; and
    - ii. General permit-by-certification 5 for reconstruction, relocation, expansion, and/or elevation of a building outside a floodway, N.J.A.C. 7:13-8.5;
  4. An authorization under the following general permits:
    - i. General permit 1 for channel cleaning under the Stream Cleaning Act, N.J.A.C. 7:13-9.1;
    - ii. General permit 4 for creation, restoration, and enhancement of habitat and water quality values and functions, N.J.A.C. 7:13-9.4; and
    - iii. General permit 5 for the reconstruction and/or elevation of a building in a floodway, N.J.A.C. 7:13-9.5;
  5. An emergency authorization, pursuant to N.J.A.C. 7:13-16;
  6. A transfer of a verification, authorization under a general permit, individual permit, or emergency authorization, pursuant to N.J.A.C. 7:13-22.4; and

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- 7. An administrative modification, pursuant to N.J.A.C. 7:13-22.5.
- (c) Application fees shall be paid as follows:
  - 1. For applications submitted electronically, application fees shall be paid through the online service by credit card or e-check, or for applications for general permits, individual permits, or verifications in accordance with N.J.A.C. 7:13-18.5(a), the applicant may elect to receive a bill that shall be payable directly to the New Jersey Department of the Treasury; or
  - 2. For all other applications, application fees shall be paid by money order, check (personal, bank, certified, or attorney), or government purchase order made payable to the "Treasurer, State of New Jersey."
- (d) 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.
- (e) The fees for applications under this chapter are set forth in Table 20.1 below:

**Table 20.1  
APPLICATION FEES**

**Verification pursuant to N.J.A.C. 7:13-5**

	<b>Fee</b>
Method 1 (Department delineation method; see N.J.A.C. 7:13-3.3)	\$1,000 <sup>1</sup>
Method 2 (FEMA tidal method; see N.J.A.C. 7:13-3.4(d))	\$1,000 <sup>1</sup>
Method 3 (FEMA fluvial method; see N.J.A.C. 7:13-3.4(e))	\$1,000 <sup>1</sup>
Method 4 (FEMA hydraulic method; see N.J.A.C. 7:13-3.4(f))	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup>
Method 5 (approximation method; see N.J.A.C. 7:13-3.5)	\$1,000 <sup>1</sup>
Method 6 (calculation method; see N.J.A.C. 7:13-3.6)	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup>
Delineation of riparian zone only	\$1,000

**Authorization under a general permit-by-certification pursuant to N.J.A.C. 7:13-6 and 8**

<b>Type of General Permit-by-Certification</b>	<b>Fee</b>
General permits-by-certification 4 and 5	No fee
Any other general permit-by-certification	\$1,000

**Authorization under a general permit pursuant to N.J.A.C. 7:13-6 and 9**

	<b>Fee</b>
General permits 1, 4, and 5	No fee
Any other general permit	\$1,000

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**Individual permit pursuant to N.J.A.C. 7:13-10, 11, and 12**

		Fee
Individual permit for the construction of one single-family home or duplex, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or other accessory structure to a single-family home or duplex		\$2,000
Base fee for any other individual permit		\$3,000
Additional review fee per project element <sup>1</sup>		
Bank or channel stabilization, reestablishment, protection, or modification project	Review of hydrologic, hydraulic, and/or flood storage displacement (net-fill) calculations required	\$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup>
	No review of calculations required	\$1,000 per project
Bridge, culvert, footbridge, low dam, or other water control structure	Review of hydrologic, hydraulic, and/or flood storage displacement (net-fill) calculations required	\$4,000 per structure
	No review of calculations required	\$1,000 per structure
Review of flood storage displacement (net-fill) calculations for any project not listed above		\$4,000
Review of a hardship exception request		\$4,000
Utility line		\$1,000 per crossing of a regulated water

**Extension of a Verification, Authorization under a General Permit, or Individual Permit (N.J.A.C. 7:13-22.3)**

Type of Extension	Fee
Extension of a verification based on Method 1, 2, 3, or 5	\$240.00
Extension of a verification based on Method 4 or 6	Twenty-five percent of original application fee
Extension of a verification of the riparian zone alone	\$240.00
Extension of an authorization under a general permit	\$240.00
Extension of an individual permit	Twenty-five percent of original application fee

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**Modification of a verification, authorization under a general permit, or individual permit pursuant to N.J.A.C. 7:13-22.5**

	Fee
Administrative modification	No fee
Minor technical modification	\$500.00 per project element modified
Major technical modification	Thirty percent of the original permit application fee or \$500.00, whichever is greater

**Revision of a Department delineation pursuant to N.J.A.C. 7:13-3.7**

	Fee
Each major revision	\$4,000 plus \$400.00 per each 100-foot segment of regulated water (or fraction thereof) to be re-delineated <sup>2</sup>
Each minor revision	\$500.00

**Additional application fee for stormwater review if a project is a “major development” pursuant to the Stormwater Management Rules (see N.J.A.C. 7:8-1.2)<sup>3</sup>**

	Fee
Base fee for any major development	\$3,000
Additional fee for review of groundwater recharge calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)	\$250.00 per acre of impervious surface subject to water quality review (or fraction thereof)
Modification of previously reviewed stormwater calculations	Thirty percent of the original stormwater fee

<sup>1</sup> This fee does not apply for any application associated with the construction of one single-family home or duplex, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or accessory structure to a single-family home or duplex.

<sup>2</sup> The length of the regulated water shall be measured along its centerline. The length of a regulated water in which no channel is discernible shall be determined by measuring along the approximate centerline of the regulated water.

<sup>3</sup> The additional application fee for stormwater review set forth in this table shall not exceed \$20,000.

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**7:13-20.2 Annual adjustment of fees**

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and
2. Publish a notice of administrative change in the New Jersey Register that:
  - i. States that the Application Fee Adjustment Report is available on the Department's website at <https://www.nj.gov/dep/landuse>; and
  - ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following:
  - i. The number and type of Department staff required to perform each activity for which fees are charged and the projected total salaries of those staff for the upcoming State fiscal year;
  - ii. The total cost of fringe benefits for those Department staff, calculated as the projected total salaries of those staff multiplied by a percentage set by the New Jersey Department of the Treasury that reflects costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
  - iii. Indirect costs attributable to those Department staff, calculated as the total salaries and fringe benefits for those staff multiplied by a percentage known as the indirect cost rate. The indirect cost rate is negotiated annually with the U.S. Environmental Protection Agency and is the total of the Department's costs for management and administrative costs applicable to multiple cost objectives (including but not limited to, indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent, and the Department's share of the Statewide Cost Allocation Plan) divided by total Department direct salaries plus applicable fringe benefits; and
  - iv. Projected operating costs attributable to those Department staff, including, but not limited to, costs for postage, telephone, travel, supplies, and data system management;
2. Project the total amount of revenue expected to be received from application fees in the upcoming State fiscal year. This projection shall consider the following:
  - i. The number and type of applications received in previous State fiscal years;
  - ii. Any trend toward increasing or decreasing construction activities in regulated areas and such trend's impact, if any, on the number and type of applications anticipated for the upcoming State fiscal year; and
  - iii. Other data concerning economic trends reasonably likely to influence the number and type of applications anticipated for the upcoming State fiscal year;

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- iv. The application fees in effect at the time such projection is made.
3. Project the total amount of money to be available from sources other than application fees, such as State appropriations or Federal grants, for the upcoming State fiscal year;
4. Subtract the amounts in (b)2 and (b)3 above from the amount in (b)1 above. The remainder is the projected fee revenue shortfall for the upcoming State fiscal year; and
5. Divide the projected fee revenue shortfall in (b)4 by the total amount of revenue expected to be received from application fees in (b)2 to determine the fee adjustment factor. The amounts of the adjusted application fees for the upcoming State fiscal year shall be obtained by increasing the existing fees by the fee adjustment factor.

## **SUBCHAPTER 21. APPLICATION REVIEW**

### **7:13-21.1 General application review provisions**

- (a) This subchapter sets forth the review procedures for applications for a verification, applications for authorization under a general permit, and applications for an individual permit.
- (b) The review procedures for the following are set forth elsewhere in this chapter:
  1. For a request for an applicability determination, see N.J.A.C. 7:13-2.5;
  2. For an application for a revision of a Department delineation, see N.J.A.C. 7:13-3.7;
  3. For a mitigation proposal, see N.J.A.C. 7:13-13;
  4. For a request for an emergency authorization, see N.J.A.C. 7:13-16; and
  5. For a request to extend, transfer, or modify an approval, see N.J.A.C. 7:13-22.3, 22.4, or 22.5, respectively.
- (c) Any application for an authorization under a general permit or for an individual permit reviewed in accordance with this subchapter, other than those identified at (d)1 and 2 below, is subject to the application review requirements of the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. This subchapter incorporates those requirements and is consistent with N.J.S.A. 13:1D-29 et seq.
  1. An application for authorization under a general permit or an individual permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels is subject to all of the requirements of this subchapter except for the timeframes established for completeness review at N.J.A.C. 7:13-21.2 and for Department decision on an application that is complete for review at N.J.A.C. 7:13-21.3.
  2. An application for authorization under general permit 1 for channel cleaning under the Stream Cleaning Act at N.J.A.C. 7:13-9.1 is subject only to the review requirements at N.J.A.C. 7:13-21.4.
- (d) An applicant may submit a revised application at any time during the application review process. The applicant shall send a copy of the revised portions of the application to the municipal clerk of each municipality in which the site is located and shall provide notice explaining the revisions to any person listed at N.J.A.C. 7:13-19.3(b) whom the Department

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determines would likely be affected by the revised application. The applicant shall provide documentation in accordance with N.J.A.C. 7:13-19.5 that the notice was provided.

1. If an applicant submits a revised application less than 30 calendar days prior to the deadline for Department decision established pursuant to N.J.A.C. 7:13-21.3, the revised application shall state that the applicant consents to a 30-calendar-day extension of the decision deadline in accordance with N.J.A.C. 7:13-21.3(b).
- (e) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review.
- (f) Notwithstanding any other provision of this subchapter, an application for an authorization under a general permit or for an individual permit shall not be declared complete for review unless the applicant has obtained all tidelands instruments required for occupation of State-owned tidelands or has submitted a complete application for a tidelands instrument, available from the Department's website at [https://www.nj.gov/dep/landuse/tl\\_main.html](https://www.nj.gov/dep/landuse/tl_main.html) or from the Bureau of Tidelands Management at P.O. Box 420, Mail Code 501-02B, Trenton, NJ 08625-0420. An application for a tidelands instrument requires the name and address of the applicant/title holder and any agent, site location and description, a property survey, and title or deed information.
- (g) The Department shall publish notice in the DEP Bulletin of the receipt of each new application, the status of the application during review, and the Department's decision to approve or deny the application. Publication in the DEP Bulletin constitutes constructive notice to interested persons of Department actions on applications for a verification, applications for authorization under a general permit, or applications for an individual permit. Actual notice of the Department's decision to approve or deny an application will be provided, in accordance with N.J.A.C. 7:13-21.3, to the applicant and to persons who specifically request such notice.

### **7:13-21.2 Completeness review**

- (a) Within 20 working days after receiving an application for a verification, an application for authorization under a general permit, or an application for an individual permit, where day one of the 20-working-day period is the date the application is received, the Department shall take one of the following actions:
1. Determine the application is both administratively and technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the application;
  2. Determine the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or
  3. Determine the application is administratively incomplete and issue notification to the applicant in writing that the application is administratively incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted.



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(b) Within 15 calendar days after receiving the additional information submitted pursuant to (a)3 above for an administratively incomplete application, the Department shall take one of the following actions:

1. Determine that the application is both administratively and technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the application;
2. Determine that the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or
3. Determine that the additional information is not sufficient and issue notification to the applicant in writing that the application remains administratively incomplete. The notification shall specify the additional information required and the deadline by which the additional information must be submitted.

(c) Within 15 calendar days after receiving the additional information submitted pursuant to (a)2 or (b)2 above for a technically incomplete application, the Department shall take one of the following actions:

1. Determine the application is technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the additional information; or
2. Determine the additional information is not sufficient and issue notification to the applicant in writing that the application remains technically incomplete. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall declare the application complete for review, effective as of the date the Department received the additional information.

(d) The applicant shall send the additional information submitted to the Department pursuant to (a)2 or 3, (b)2 or 3, or (c)2 above to the municipal clerk of each municipality in which the project is located and shall provide notice explaining that additional information has been submitted to the Department to any person listed at N.J.A.C. 7:13-19.3(b) whom the Department determines would likely be affected by the additional information. The applicant shall provide documentation in accordance with N.J.A.C. 7:13-19.5 that the additional information and notice were provided.

(e) An applicant shall submit all additional information pursuant to (a)2 or 3, (b)2 or 3, or (c)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:13-21.5, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.

(f) If the Department does not take one of the actions in (a) above within 20 working days after receiving an application, the application shall be declared complete for review, effective as of the

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date the application was received by the Department, and the Department shall make a decision to approve or deny the application by the applicable deadline set forth at N.J.A.C. 7:13-21.3.

(g) If the Department does not take one of the actions at (b) or (c) above within 15 calendar days after receiving additional information submitted for an administratively or technically incomplete application, the application shall be declared complete for review, effective as of the date the additional information was received by the Department, and the Department shall make a decision to approve or deny the application by the applicable deadline set forth at N.J.A.C. 7:13-21.3.

(h) The Department shall hold a fact-finding meeting on an application for a verification or an application for an individual permit if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding meeting.

(i) Once an application for a verification, an application for authorization under a general permit, or an application for an individual permit is complete for review, the Department shall make a decision to approve or deny the application by the applicable deadline established under N.J.A.C. 7:13-21.3.

**7:13-21.3 Department decision on an application that is complete for review**

(a) Within 90 calendar days after an application for a verification, application for an authorization under a general permit, or application for an individual permit is declared complete for review in accordance with N.J.A.C. 7:13-21.2, the Department shall:

1. Determine that the application meets the requirements of this chapter and issue a verification, authorization, or individual permit approving the application in writing. The verification, authorization, or individual permit shall include any conditions necessary to ensure compliance with this chapter; or
2. Determine that the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.

(b) The 90-calendar-day deadline set forth in (a) above may be extended for 30 calendar days by mutual agreement between the applicant and the Department. An applicant consenting to an extension shall do so in writing. The deadline shall not be extended by less than or greater than 30 calendar days.

(c) If the Department does not make a decision to approve or deny an application for a verification, application for authorization under a general permit, or application for an individual permit by the applicable deadline set forth in (a) or (b) above, the application shall be deemed to have been approved as of that deadline. Regulated activities shall not commence unless and until all required tidelands instrument(s) to use and occupy State-owned tidelands are obtained.

1. An authorization or individual permit issued under this subsection shall include the standard conditions set forth in N.J.A.C. 7:13-22.2.

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2. A verification, authorization, or individual permit issued under this subsection shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-24 for any activity undertaken in violation of this chapter.
- (d) The Department shall provide notice of the decision on an application for a verification, application for authorization under a general permit, or application for an individual permit in the DEP Bulletin and to any person who specifically requested notice of the decision on a particular application.
- (e) The Department shall not waive the timeframes established in this subchapter for review and decision on an application.

**7:13-21.4 Department review and decision on an application for an authorization under general permit 1 for channel cleaning under the Stream Cleaning Act**

- (a) Within 15 calendar days after receiving an administratively and technically complete application for authorization under a general permit 1 for activities that do not include the removal of sediment, or within 60 calendar days after receiving an administratively and technically complete application for activities that include the removal of sediment, where day one of the 15- or 60-calendar-day period is the date the application is received, the Department shall take one of the following actions:
1. Determine that the application meets the requirements of this chapter and issue an authorization approving the application in writing. The authorization shall include any conditions necessary to ensure compliance with this chapter; or
  2. Determine that the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.
- (b) If the Department does not make a decision to approve or deny an application for a authorization under a general permit 1 by the applicable deadline set forth in (a) above, the applicant is authorized to commence stream cleaning activities in accordance with the Stream Cleaning Act provisions of the Flood Hazard Area Control Act at N.J.S.A. 58:16A-67.
1. An authorization issued under this subsection shall include the standard conditions set forth in N.J.A.C. 7:13-22.2.
  2. An authorization issued under this subsection shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-24 for any activity undertaken in violation of this chapter.
- (c) The Department shall provide notice of the decision on an application for authorization under general permit 1 in the DEP Bulletin and to any person who specifically requested notice of the decision on a particular application.

**7:13-21.5 Cancellation of an application**

- (a) The Department shall cancel an application for any of the following reasons:

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1. An applicant does not submit additional information within the timeframe prescribed by the Department under this subchapter for an application that has been determined to be administratively or technically incomplete;
  2. The applicant does not submit a fee required under N.J.A.C. 7:13-20, or the Department cannot collect the fee for any reason (for example, if a check is returned for insufficient funds); or
  3. The applicant does not comply with the applicable public notice requirements at N.J.A.C. 7:13-19.
- (b) To cancel an application, the Department shall:
1. Send the applicant a written notice of its intent to cancel the application, and notifying the applicant that the fee and/or additional information identified pursuant to (a) above must be provided to the Department within 15 calendar days.
  2. If, by the 15-calendar-day deadline, the applicant submits a written statement providing good cause for the delay in providing the fee and/or additional information, the Department shall extend the time required for submittal.
  3. If the applicant does not submit the fee and/or additional information, or a statement of good cause for delay under (b)2 above, the Department shall cancel the application and send the applicant a written notice of the cancellation.

#### **7:13-21.6 Withdrawal of an application**

An applicant may withdraw an application in writing at any time during the Department's review of the application. The Department shall promptly acknowledge the withdrawal in writing.

#### **7:13-21.7 Re-submittal of an application after denial, cancellation, or withdrawal**

If an application for a verification, an application for an authorization under a general permit, or an application for an individual permit is denied or cancelled by the Department, or is withdrawn by the applicant, the applicant may re-submit the application in accordance with N.J.A.C. 7:13-18. The Department shall treat a re-submitted application as a new application and shall review it in accordance with N.J.A.C. 7:13-21.

#### **7:13-21.8 Fee refund or credit when an application is withdrawn or cancelled**

- (a) Except as provided at (b) below, the Department shall, upon written request of an applicant, fully refund the submitted application fee in the following circumstances:
1. The application is withdrawn within 60 calendar days of its submittal to the Department and is not administratively complete;
  2. The application is withdrawn within 60 calendar days of its submittal to the Department and is not technically complete; or

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3. The application is withdrawn within 20 working days of its submittal to the Department, whether or not the application is administratively or technically complete.
- (b) The Department shall not refund a fee for an application that has been approved or denied or a fee that has been previously credited under (c) below.
- (c) If an application is withdrawn by the applicant under circumstances other than those identified at (a)1, 2, and 3 above, or is cancelled pursuant N.J.A.C. 7:13-21.5, any application fee that was paid to the Department shall be credited toward the application fee for one new application, provided the new application is submitted:
1. Within one year of cancellation or withdrawal;
  2. By the same applicant;
  3. For the same site; and
  4. For the same project.

## **SUBCHAPTER 22. PERMIT CONDITIONS; EXTENSION, MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF VERIFICATIONS, AUTHORIZATIONS, AND PERMITS**

### **7:13-22.1 Purpose and scope**

- (a) This subchapter sets forth the conditions that apply to all permits.
- (b) This subchapter sets forth the procedures for:
1. Extending the term of a verification, the duration of which is governed by N.J.A.C. 7:13-5.2(a); an authorization under a general permit, the duration of which is governed by N.J.A.C. 7:13-6.6; or an individual permit, the duration of which is governed by N.J.A.C. 7:13-10.2(a);
  2. Transferring a verification, an authorization under a general permit, or an individual permit to a new owner of the site where the delineation, regulated activity, or project authorized under the authorization or permit is taking place;
  3. Modifying a verification, an authorization under a general permit, or an individual permit;
  4. Suspending a verification, an authorization under a general permit, or an individual permit; and
  5. Terminating a verification, an authorization under a general permit, an individual permit, or emergency authorization.

### **7:13-22.2 Conditions that apply to all permits**

- (a) The Department places conditions on a permit to ensure that the approved project complies with this chapter. The conditions that apply to all permits are set forth in (c) below, and the additional conditions that apply to all permits except permits-by-rule are set forth in (d) below.

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(b) If a permittee undertakes any regulated activity authorized under a permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the permit and all conditions therein.

(c) The following conditions apply to all permits:

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit;
2. The issuance of a permit does not convey any property rights or any exclusive privilege;
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit;
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District having jurisdiction over the site;
5. 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;
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:13-22.7;
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (Warn DEP Hotline) of any noncompliance that may endanger the public health, safety, and welfare, or the environment. The permittee shall inform the Division of Land Use Regulation by telephone at (609) 292-0060 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:
  - i. A description of the noncompliance and its cause;
  - ii. The period of noncompliance, including exact dates and times;
  - iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
  - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance;
8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action under N.J.A.C. 7:13-24, as well as, in the appropriate case, suspension and/or termination of the permit;

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9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit;
  10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29;
  11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties;
  12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores;
  13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
    - i. Enter upon the permittee's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of the permit;
    - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit; and
    - iii. Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action under N.J.A.C. 7:13-24; and
  14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris, or structures within or adjacent to the channel while the regulated activity(ies) is being undertaken. Upon completion of the regulated activity(ies), the permittee shall remove and dispose of in a lawful manner, all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.
- (d) In addition to the conditions at (c) above, the following conditions apply to all permits except permits-by-rule:
1. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit;
  2. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect so long as the regulated activity or project, or any portion thereof, is in existence, unless the permit is modified pursuant to N.J.A.C. 7:13-22.5;
  3. Except for an authorization under general permit 1 for channel cleaning under the Stream Cleaning Act at N.J.A.C. 7:13-9.1, the permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a

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copy of the recorded permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:13-1.3;

4. The permittee shall perform any mitigation required under the permit prior to or concurrently with regulated activities in accordance with N.J.A.C. 7:13-13;
5. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment;
6. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit;
7. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request;
8. The permittee shall provide monitoring results to the Department at the intervals specified in the permit;
9. A permit shall be transferred to another person only in accordance with N.J.A.C. 7:13-22.4;
10. A permit can be suspended or terminated by the Department for cause;
11. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit;
12. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information; and
13. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, P.O. Box 420, Mail Code 401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of regulated activities.

**7:13-22.3 Extension of a verification, an authorization under a general permit, and an individual permit**

(a) A person may request one five-year extension of a verification, the duration of which is governed by N.J.A.C. 7:13-5.2(a); an authorization under a general permit, the duration of which is governed by N.J.A.C. 7:13-6.6; and an individual permit, the duration of which is governed by N.J.A.C. 7:13-10.2(a).

(b) The Department shall issue an extension only if:

1. A person submits a request for extension that meets the requirements of (c) below and that is received by the Department prior to the expiration of the verification, authorization, or individual permit. The Department shall not accept a request for extension received more than one year prior to the expiration of an authorization or individual permit;



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2. The person requesting the extension demonstrates that there has been no significant change in the overall condition of the site, including regulated waters, flood hazard areas, and riparian zones;
3. The person requesting the extension demonstrates that regulated activities approved under any authorization or individual permit for which an extension is sought have not been revised or amended, unless the permittee has obtained a modification of the authorization or individual permit under N.J.A.C. 7:13-22.5; and
4. For an individual permit, the person requesting the extension demonstrates that the rules in this chapter governing the regulated activities authorized under the permit for which an extension is sought have not been amended such that the activities do not meet the rules as amended.

(c) A request for an extension of a verification, an authorization under a general permit, or an individual permit shall include:

1. A completed application form available from the Department at the address set forth at N.J.A.C. 7:13-1.3. This form requires basic information regarding the proposed delineation, regulated activity, or project, including the type of application being submitted, the name and address of the applicant and any designated agents, the specific location of the delineation, regulated activity, or project, a brief description of the proposed delineation, activity, or project, and certifications as to the truth and accuracy of the information provided and as to the ownership of the property;
2. The appropriate application fee as set forth at N.J.A.C. 7:13-20; and
3. A narrative demonstrating that the requirements of (b) above are met.

(d) Within 15 calendar days after receiving a request for an extension of an authorization under a general permit or within 30 calendar days after a request for an extension of a verification or individual permit, the Department shall take one of the actions identified below. During the Department's review of the extension request, regulated activities subject to the authorization or individual permit may continue.

1. Determine the request meets the requirements of this section and issue an extension in accordance with (g) below; or
2. Determine the request meets the criteria for denial at (e) below and deny the extension request.

(e) The Department shall deny a request for an extension for any of the following reasons:

1. The verification, authorization, or individual permit for which the extension is sought is not one specified in (a) above;
2. The Department receives the request more than one year prior to the expiration date of the verification, authorization, or individual permit for which the extension is sought;
3. The Department receives the request after the expiration date of the verification, authorization, or individual permit for which the extension is sought;
4. The term of the verification, authorization, or individual permit for which the extension is sought has been extended before;

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5. The applicant does not demonstrate that all of the requirements at (b) above are met;
  6. The request does not include all of the information required to be submitted under (c) above; or
  7. The verification, authorization, or individual permit for which the extension is sought has been terminated in accordance with N.J.A.C. 7:13-22.8.
- (f) If the Department denies a request for an extension under (e) above:
1. The verification, authorization, or individual permit shall expire on its original expiration date or on the date of receipt of the denial by the permittee, whichever is later, unless already terminated in accordance with N.J.A.C. 7:13-22.8; and
  2. All regulated activities authorized under any authorization under a general permit or individual permit shall cease on the expiration date of the authorization or individual permit specified in (f)1 above, and shall not commence again unless and until a new authorization or individual permit is obtained in accordance with N.J.A.C. 7:13-18.
- (g) If the Department determines that the requirements of this section have been met, the Department shall issue an extension of the verification, authorization under a general permit, or individual permit for one five-year period, beginning on the original expiration date of the verification, authorization under a general permit, or individual permit. The extension shall be in writing, and shall include any conditions the Department determines are necessary to ensure the requirements of this chapter are met.

**7:13-22.4 Transfer of an emergency authorization, verification, authorization under a general permit, or an individual permit**

- (a) If the site for which the Department has issued a verification, or on which regulated activities are authorized pursuant to an emergency authorization, an authorization under a general permit, or an individual permit, is transferred to a new owner, the verification, authorization, or individual permit, including all conditions, shall be automatically transferred to the new owner, provided the verification, authorization, or individual permit is valid on the date that the site is transferred to the new owner.
- (b) The verification, authorization, or individual permit, transferred under (a) above shall continue in effect, provided that, within 30 calendar days after the transfer of ownership of the site, the new owner submits the following information to the Department:
1. The name, address, and contact information of the new owner; and
  2. Documentation that the transfer will not alter any condition on which the original verification, authorization, or individual permit was based and will not otherwise circumvent any requirement of this chapter.

**7:13-22.5 Modification of a verification, an authorization under a general permit, or an individual permit**

- (a) A verification that is valid as described in the provisions regarding duration of verifications at N.J.A.C. 7:13-5.3, an authorization under a general permit that is valid as described in the

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provisions regarding duration of authorizations under general permits at N.J.A.C. 7:13-6.6, or an individual permit that is valid as described in the provisions regarding duration of individual permits at N.J.A.C. 7:13-10.2, may be modified in accordance with this section through an administrative modification, a minor technical modification, or a major technical modification. An authorization under a general permit-by-certification shall not be modified.

(b) The term of a verification, an authorization under a general permit, or an individual permit shall not be extended by a modification.

(c) An administrative modification of a verification, an authorization under a general permit, or an individual permit applies to a change to a site plan or other document on which the original verification, authorization under a general permit, or individual permit was based but which does not alter the design or layout of the project or affect the flood hazard area design flood elevation, floodway limits, or riparian zone width. An administrative modification may include:

1. Correcting a drafting or typographical error on a site plan or report;
2. Improving topographical or other data in order to make the verification, authorization under a general permit, or individual permit more accurately reflect the site, the extent of regulated areas, and/or the permitted activities; or
3. Adding notes, labels, or other clarifying information to the approved site plan, if required to do so by the Department or another government entity.

(d) A minor technical modification of a verification, an authorization under a general permit, or an individual permit applies to a change in the design or layout of a project or the flood hazard area design flood elevation, floodway limits, or riparian zone width, including any associated change to an approved site plan or other document, that, without hydrologic, hydraulic, flood storage, stability, or stormwater calculations, the applicant demonstrates does not result in new or additional impacts to the flood hazard area or riparian zone. The Department therefore will not review such calculations in the context of a minor technical modification in order to determine if the modified regulated activity, project, or delineation continues to comply with the requirements of this chapter. A minor technical modification may include:

1. A change in materials or construction techniques;
2. A reduction in the amount of development on the site, such as deletion of a permitted structure or activity, or a reduction in the footprint of a regulated activity or project;
3. A change in the flood hazard area design flood elevation or floodway limits to comply with:
  - i. A Department delineation amended pursuant to N.J.A.C. 7:13-3.7 or 3.8, or otherwise amended or adopted by rulemaking; or
  - ii. FEMA flood mapping that is amended by FEMA;
4. A change in the riparian zone width due to data obtained by the Department after a verification is issued; and
5. A change in the size, shape, or location of the regulated activities or project, provided the total area covered by impervious surface does not increase.

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(e) A major technical modification of a verification, an authorization under a general permit, or an individual permit applies to any change in a delineation or regulated activities or project authorized pursuant to the verification, authorization, or individual permit, including any associated change to an approved site plan or other document, that is not addressed under (c) or (d) above and that does not require a new permit in accordance with (f) below.

(f) Notwithstanding any other provision in this section, the Department shall not issue a modification of a verification, an authorization under a general permit, or an individual permit if the Department determines that the person requesting the modification proposes changes to the delineation that constitute a substantial redelineation of flood hazard area design flood elevations or floodway limits or a substantial redesign of the regulated activities or project, or will significantly increase the environmental impact of the regulated activities or project, or will exacerbate flooding. In such a case, the applicant shall submit a new application for a verification, an authorization, or an individual permit in accordance with N.J.A.C. 7:13-18 and the Department shall review the application in accordance with N.J.A.C. 7:13-21. Changes for which a new application shall be submitted include:

1. In the case of a verification:
  - i. A redelineation of a verified flood hazard area and/or floodway limit, which is based on new hydrologic and hydraulic calculations; or
  - ii. Addition of any previously unverified sections of a regulated water; and
2. In the case of an authorization under a general permit or an individual permit:
  - i. A change to the basic purpose or use of a regulated activity or project, such as a change from the construction of a hospital to the construction of an apartment complex;
  - ii. An expansion of a regulated activity or project beyond that which was described in the public notice of the application provided in accordance with N.J.A.C. 7:13-19;
  - iii. A substantial redesign of the regulated activity or project or its stormwater management system such that the Department determines a new engineering analysis of the site and/or regulated activity or project is necessary;
  - iv. A significant change in the size or scale of the regulated activity or project, including the addition of structures;
  - v. A significant change in the impact of the regulated activity or project on any flood hazard area or riparian zone; or
  - vi. A change that would result in impacts to a site not owned or controlled by the permittee.

(g) The modified verification, modified authorization under a general permit, or modified individual permit, including all conditions listed therein, shall be recorded within 30 calendar days of receipt by the person requesting such modification, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. Where the site subject to the modified verification, modified authorization under a general permit, or modified individual permit is located within two or more counties, the modified verification, authorization, or permit shall be recorded within 90 calendar days of receipt. Upon

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completion of all recording, a copy of the recorded modified verification, authorization, or permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:13-1.3.

**7:13-22.6 Application for a modification**

(a) This section sets forth requirements for an application to modify a verification, an authorization under a general permit, or an individual permit. The general application requirements at N.J.A.C. 7:13-18.2 apply to applications for modifications in addition to the application requirements in this section.

(b) To apply for an administrative modification to a verification, an authorization under a general permit, or an individual permit under N.J.A.C. 7:13-22.5(c), the person requesting the modification shall submit:

1. A description of the proposed change to the site plan or other document on which the original verification, authorization, or individual permit was based;
2. The site plans approved as part of the verification, authorization, or individual permit with revisions illustrating the proposed change;
3. A copy of the verification, authorization, or individual permit for which the modification is requested; and
4. Any information necessary to ensure compliance with State and/or Federal law.

(c) To apply for a minor technical modification of a verification, an authorization under a general permit, or an individual permit pursuant to N.J.A.C. 7:13-22.5(d), the person requesting the modification shall submit:

1. A completed application form as described at N.J.A.C. 7:13-22.3(c)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
2. The appropriate application fee set forth at N.J.A.C. 7:13-20;
3. A description of the scope and purpose of the proposed change to the verified delineation or the regulated activity or project authorized under the authorization or individual permit;
4. The site plans approved as part of the verification, authorization, or individual permit with revisions illustrating the proposed change in the regulated activity or project;
5. A copy of the verification, authorization, or individual permit for which the modification is requested;
6. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the delineation and/or regulated activity or project, as applicable;
7. A revised environmental report if the proposed modification is of an individual permit. The revised environmental report shall address the aspects of the regulated activity or project that are proposed to be changed and demonstrate that the regulated activity or project for which the modification is requested continues to comply with all requirements of this chapter; and

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8. Any information necessary to ensure compliance with State and/or Federal law.

(d) To apply for a major technical modification of a verification, an authorization under a general permit, or an individual permit pursuant to N.J.A.C. 7:13-22.5(e), the person requesting the modification shall submit:

1. A completed application form as described at N.J.A.C. 7:13-22.3(c)1 and available from the Department at the address set forth at N.J.A.C. 7:13-1.3;
2. Documentation that public notice of the application for the major technical modification was provided in accordance with N.J.A.C. 7:13-19;
3. The appropriate application fee set forth at N.J.A.C. 7:13-20;
4. A description of the scope and purpose of the proposed change to the verified delineation and/or the regulated activity or project authorized under the authorization or individual permit;
5. The site plans approved as part of the verification, authorization, or individual permit with revisions illustrating the proposed change;
6. A copy of the verification, authorization, or individual permit for which the modification is requested;
7. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the delineation and/or regulated activity or project, as applicable;
8. Calculations, analyses, data, and supporting materials necessary to demonstrate that the delineation and/or regulated activity or project as proposed to be changed meets the requirements of this chapter, and the requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8, if applicable;
9. For a modification of a verification based on Methods 4, 5, or 6, pursuant to N.J.A.C. 7:13-3.4(f), 3.5, and 3.6, respectively, or an individual permit, a revised engineering report addressing the aspects of the delineation and/or regulated activity or project that are proposed to be changed and a demonstration that the delineation and/or regulated activity or project for which the modification is requested continues to comply with all requirements of this chapter;
10. For a modification of an individual permit, a revised environmental report addressing the aspects of the regulated activity or project that are proposed to be changed and a demonstration that the regulated activity or project for which the modification is requested continues to comply with all requirements of this chapter; and
11. Any information necessary to ensure compliance with State and/or Federal law.

**7:13-22.7 Suspension of a verification, an authorization under a general permit, an individual permit, or an emergency authorization**

(a) The Department shall suspend a verification, an authorization under a general permit, an individual permit, or an emergency authorization for good cause, including, but not limited to, the following:

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1. The verification, authorization under a general permit, individual permit, or emergency authorization was based on false or inaccurate information;
2. The permittee or person to whom the verification was issued has not complied with a condition of the verification, authorization under a general permit, individual permit, or emergency authorization;
3. The permittee has undertaken activities onsite that violate this chapter;
4. The permittee or person to whom the verification was issued has misrepresented or failed to fully disclose all relevant facts pertaining to the verification, authorization under a general permit, individual permit, or emergency authorization;
5. The permittee has failed to fully and correctly identify impacts of the regulated activity or project in the application for the authorization under a general permit, individual permit, or emergency authorization;
6. The regulated activities conducted pursuant to the authorization under a general permit, individual permit, or emergency authorization have caused unanticipated environmental impacts;
7. The permittee or person to whom the verification was issued has made a change in the delineation and/or project that, under N.J.A.C. 7:13-22.5, would require a modification to the verification, authorization under a general permit, or individual permit but the person to whom the verification was issued or permittee did not first obtain the required modification; or
8. The Department determines that suspension of the verification, authorization under a general permit, individual permit, or emergency authorization is necessary for emergency reasons or to protect public health, safety, and welfare of the environment.

(b) The Department shall provide written notice of a suspension by certified mail to the permittee or person to whom the verification was issued in accordance with (c) below, except if the verification, authorization under a general permit, individual permit, or emergency authorization is suspended for emergency reasons, in which case the Department shall contact the permittee or person to whom the verification was issued by telephone or by any practical method, and will follow up with written notice.

(c) A notice of suspension shall:

1. State that the verification, authorization under a general permit, individual permit, or emergency authorization is suspended upon the receipt of the notice by the permittee or person to whom the verification was issued;
2. Include the reasons for the suspension;
3. State that all regulated activities authorized under the suspended authorization under a general permit, individual permit, or emergency authorization shall cease immediately upon receipt of the notice by the permittee or person to whom the verification was issued; and
4. Notify the permittee or person to whom the verification was issued of the right to, within 10 calendar days after the permittee or person to whom the verification was issued receives the notice, request:

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- i. A meeting with the Department to discuss the suspension; and/or
- ii. An adjudicatory hearing in accordance with N.J.A.C. 7:13-23.

(d) Within 30 calendar days after receiving a notice of suspension under (b) above, the permittee or person to whom the verification was issued shall provide the Department with a written strategy to remedy the cause(s) of the suspension. The written strategy shall include:

1. A description of how the strategy will remedy the cause(s) of the suspension;
2. A demonstration that the strategy will bring the regulated activity or project into compliance with this chapter; and
3. A proposed timeframe within which the permittee will execute the strategy.

(e) Within 30 calendar days after the Department receives the written strategy required under (d) above, the Department shall take one of the following actions:

1. Accept the strategy, reinstate the verification, authorization under a general permit, individual permit, or emergency authorization, and require the permittee or person to whom the verification was issued to implement the strategy within a prescribed timeframe. The Department may add conditions or revisions as necessary to ensure that the strategy achieves compliance with this chapter;
2. Determine that the strategy is insufficient and request additional detail, information, and/or changes to the strategy, in order to remedy the non-compliance. Within 15 calendar days after the Department receives the requested information, the Department shall take either the action described at (e)1 above or the action described at (e)3 below; or
3. Determine that the strategy is unacceptable to achieve compliance with this chapter, and notify the permittee or person to whom the verification was issued of its intent to terminate the verification, authorization under a general permit, individual permit, or emergency authorization pursuant to N.J.A.C. 7:13-22.8.

(f) Noncompliance with any of the requirements of this section shall constitute cause for the Department to terminate the verification, authorization under a general permit, individual permit, or emergency authorization under N.J.A.C. 7:13-22.8.

**7:13-22.8 Termination of a verification, an authorization under a general permit, an individual permit, or an emergency authorization**

(a) The Department shall terminate for good cause a verification, an authorization under a general permit, an individual permit, or an emergency authorization that has been suspended pursuant to N.J.A.C. 7:13-22.7. Good cause for termination includes, but is not limited to, the following:

1. The permittee has not ceased all regulated activities as required in the notice of suspension pursuant to N.J.A.C. 7:13-22.7(c)3;
2. The permittee or person to whom the verification was issued has not complied with the requirement at N.J.A.C. 7:13-22.7(d) to submit a strategy to remedy the causes of the suspension; or



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3. The Department has determined that the strategy submitted is unacceptable to achieve compliance with this chapter.
  - (b) The Department shall provide written notice of its intent to terminate a verification, an authorization under a general permit, individual permit, or emergency authorization by certified mail to the permittee or person to whom the verification was issued.
  - (c) The permittee or person to whom the verification was issued may request an adjudicatory hearing on the notice of intent to terminate in accordance with N.J.A.C. 7:13-23. The hearing request shall be submitted within 10 calendar days after receipt of the notice of intent to terminate.
  - (d) If the permittee or person to whom the verification was issued does not request an adjudicatory hearing under (c) above, or if the adjudicatory hearing request is denied, the verification, authorization under a general permit, individual permit, or emergency authorization shall automatically terminate, effective 10 calendar days after the permittee or person to whom the verification was issued received the notice of intent to terminate under (b) above.
  - (e) If the Department terminates a verification, an authorization under a general permit, individual permit, or emergency authorization, the permittee or person to whom the verification was issued shall take all of the actions at (e)1 through 3 below. Failure to do so shall constitute a violation of this chapter and shall subject the permittee or person to whom the verification was issued to enforcement action pursuant to N.J.A.C. 7:13-25:
    1. Remedy any changes to the site made in violation of this chapter;
    2. Remedy any adverse impacts to flooding and the environment caused by the regulated activities on the site; and
    3. Restore, to the maximum extent practicable, the site to its condition prior to the start of the activities authorized under the authorization under a general permit, individual permit, or emergency authorization.

## **SUBCHAPTER 23. REQUESTS FOR ADJUDICATORY HEARINGS**

### **7:13-23.1 Procedure to request an adjudicatory hearing; decision on the request**

- (a) This subchapter sets forth the process by which a person may request an adjudicatory hearing to contest a Department decision to approve or deny an application under this chapter. A person seeking to contest an administrative order and/or a civil administrative penalty assessment shall do so in accordance with the adjudicatory hearing request provisions applicable to Department enforcement actions under this chapter at N.J.A.C. 7:13-24.
- (b) To contest a Department decision on an application under this chapter, a person shall submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin. If a person submits the adjudicatory hearing request after this time, the Department shall deny the request.

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(c) A person requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:13-1.3:

1. The name, address, daytime telephone number, fax number, and e-mail address of the person requesting the hearing, and of the person's authorized representative;
2. A copy of the Department decision on which a hearing is being requested;
3. The date that the Department decision on which a hearing is being requested was received by the person requesting the hearing;
4. A specific admission, denial, or explanation of each fact appearing in the Department decision, or a statement that the person is without knowledge thereof;
5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and
6. Where the person submitting the hearing request is not the person to whom the decision that is being contested was issued, evidence that a copy of the hearing request has been mailed or delivered to the person to whom the decision was issued.

(d) A person requesting an adjudicatory hearing shall:

1. Submit the original hearing request to:  
New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Attention: Adjudicatory Hearing Requests  
Mail Code 401-04L, P.O. Box 402  
401 East State Street, 7th Floor  
Trenton, NJ 08625-0402; and
2. Submit a copy of the hearing request to the Director of the Division of Land Use Regulation, at the address set forth at N.J.A.C. 7:13-1.3.

(e) Nothing in this subchapter shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, at N.J.S.A. 52:14B-3.1 through 3.3.

(f) The Department shall notify the requester that the request for hearing is granted or denied. If the hearing request is denied, the denial shall provide the reason(s) for the denial. If the hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for a contested case hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) A final decision issued by the Commissioner after the hearing in the Office of Administrative Law shall be considered final agency action for purposes of the Administrative Procedure Act, and shall be subject to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.

**7:13-23.2 Procedure to request dispute resolution**

As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter 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 that the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation.

**7:13-23.3 Effect of request for hearing on operation of permit or authorization**

(a) When a permittee requests an adjudicatory hearing to appeal any portion of a permit or an authorization, the operation of the permit or authorization shall be automatically stayed in its entirety, unless the permittee shows good cause in writing why the permit or authorization should continue in effect while being contested. All permitted activities shall stop as of the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

(b) When a person other than the permittee requests an adjudicatory hearing on a permit or authorization, the operation of the permit or authorization is not automatically stayed. The Department shall stay operation of the permit or authorization only if it determines that good cause to do so exists. If a stay is imposed, all permitted activities shall stop as of the date the stay is imposed, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

**7:13-23.4 Notice of settlement agreement**

(a) If the Department and the person requesting an adjudicatory hearing agree to a settlement that may result in the issuance of a flood hazard area permit for a regulated activity, notice of the opportunity to comment on the settlement shall be provided as follows:

1. The person who requested the adjudicatory hearing shall send by certified mail a "notice of intent to settle" the matter, using the notice form available from the Department at the address set forth at N.J.A.C. 7:13-1.3, to the following:
  - i. Each person who was provided specific notice of the application which resulted in the decision that is the subject of the adjudicatory hearing request; and
  - ii. Each person who commented on the application;
2. The Department shall publish in the DEP Bulletin the notice of intent to settle, and shall accept comments on the notice for at least 30 calendar days; and
3. If, after the 30-calendar-day comment period under (a)2 above, the settlement is finalized, the Department shall publish a notice of the final settlement in the DEP Bulletin.

## **SUBCHAPTER 24. ENFORCEMENT**

### **7:13-24.1 General provisions**

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 58:16A-50 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, and in accordance with the grace period requirements set forth at N.J.A.C. 7:13-24.11, pursue the remedies specified in (a)1 through 5 below. Pursuit of any of the remedies specified under this section shall not preclude the Department from seeking any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:13-24.2;
2. Levy a civil administrative penalty in accordance with N.J.A.C. 7:13-24.5 or 24.6;
3. Bring an action for a civil penalty in accordance with N.J.A.C. 7:13-24.7;
4. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:13-24.8; and/or
5. Petition the Attorney General to bring a criminal action in accordance with N.J.A.C. 7:13-24.9.

(b) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any property, facility, building, premises, site, or place for the purpose of investigating an actual or suspected source of pollution of the environment and conducting inspections, collecting samples, copying or photocopying documents or records, and for otherwise ascertaining compliance or noncompliance with any laws, permits, orders, codes, rules, and regulations of the Department.

(c) Each applicant or permittee shall provide, upon request of the Department, any information required to determine compliance with the provisions of N.J.S.A. 58:16A-50 et seq., or any rule or regulation adopted, or permit or order issued pursuant thereto.

(d) For the purposes of this subchapter, a permit shall mean authorization under a general permit-by-certification, authorization under a general permit, individual permit, emergency authorization, letter of authorization, memorandum of agreement, or other written authorization, or other approval issued pursuant to N.J.S.A. 58:16A-50 et seq.

### **7:13-24.2 Issuance of an administrative order**

Whenever the Department finds that a person has violated any provision of N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 35 calendar days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:13-24.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If a hearing is not requested within 35 calendar days of receipt of the order, then the order shall become final on the

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36th calendar day following receipt. A request for hearing shall not automatically stay the effect of the order.

**7:13-24.3 Assessment, settlement, and payment of a civil administrative penalty**

(a) To assess a civil administrative penalty under N.J.S.A. 58:16A-50 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order, or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:13-24.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:13-24.4, a notice of civil administrative penalty assessment becomes a final order on the 36th calendar day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies an untimely submitted hearing request pursuant to N.J.A.C. 7:13-24.4(a), a notice of civil administrative penalty assessment becomes a final order on the 36th calendar day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies a hearing request pursuant to N.J.A.C. 7:13-24.4(d) because it does not include all the required information, a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial by the violator; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, R. 4:42-11(a). Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 90 calendar days of the date that payment is due; or

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2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 90 calendar days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:13-24.5 or 24.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:13-24.5(h)4 or 24.6;
2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties, pursuant to N.J.A.C. 7:13-24.5(g)1i or 24.6, including measures to clean up, reverse, or repair environmental damage caused by the violation, or to remove the violation;
3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
4. Any other terms or conditions acceptable to the Department.

**7:13-24.4 Procedures to request and conduct an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment**

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 58:16A-50 et seq., the violator shall submit a hearing request in writing within 35 calendar days after receipt by the violator of the administrative order and/or the notice of a civil administrative penalty assessment being contested. If a violator submits the hearing request after this time, the Department shall deny the request.

(b) A violator requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:13-1.3:

1. The name, address, daytime telephone number, fax number, and e-mail address of the violator requesting the hearing and the violator's authorized representative;
2. A copy of the Department's administrative order and/or notice of a civil administrative penalty assessment for which a hearing is being requested;
3. The date that the administrative order and/or notice of a civil administrative penalty assessment was received by the violator;
4. A specific admission or denial of each of the facts appearing in the Department's administrative order and/or notice of civil administrative penalty assessment or a statement that the person is without knowledge thereof. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is

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true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

5. A statement as to whether the violator agrees to allow the Department to delay the transfer of a granted hearing request to the Office of Administrative Law for the purposes of engaging in settlement negotiations as provided by the Uniform Administrative Procedure Rules at N.J.A.C. 1:1-8.1(b);
  - i. A person may request that the Department determine whether the matter 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 that the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation. More information about the Office of Dispute Resolution is available from the Department's website at <https://www.nj.gov/dep/odr>;
6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
7. An estimate of the time required for the hearing (in days and/or hours); and
8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) A person requesting an adjudicatory hearing shall:

1. Submit the original hearing request to:  
New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Attention: Adjudicatory Hearing Requests  
Mail Code 401-04L, P.O. Box 402  
401 East State Street, 7th Floor  
Trenton, NJ 08625-0402; and
2. Submit a copy of the hearing request to:  
New Jersey Department of Environmental Protection  
Bureau of Coastal and Land Use Compliance and Enforcement  
P.O. Box 420  
Mail Code 401-04C  
401 East State Street, 4th Floor  
Trenton, NJ 08625-0420

(d) If the violator fails to include all the information required by (b) above, the Department may deny the hearing request.

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(e) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**7:13-24.5 Civil administrative penalties for failure to obtain a permit prior to conducting regulated activities**

(a) For the failure to obtain a permit prior to conducting regulated activities, the Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:13-2.1.

(b) Each violation of N.J.A.C. 7:13-2.1 shall constitute an additional, separate, and distinct violation.

(c) Each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate, and distinct offense.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within Table 24.5A in (f) below by determining the number of points pursuant to (e) below. The civil administrative penalty shall be the amount within Table 24.5A in (f) below, unless adjusted pursuant to (g) and/or (h) below.

(e) The Department shall use the two factors described in (e)1 and 2 below to determine the number of points assigned to each violation.

1. The conduct factor of the violation shall be classified as major, moderate, or minor and assigned points as follows:
  - i. Major shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator and is assigned five points;
  - ii. Moderate shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and
  - iii. Minor shall include any other conduct not included in (e)1i or ii above and is assigned one point.
2. The seriousness factor of the violation is assigned points as provided below and shall be based on the type, size, and location of the violation as provided at (e)2i through iv below, whether the activity also constitutes a Tidelands violation as provided at (e)2v below, and whether the activity impacted a resource of concern as provided at (e)2vi below:
  - i. An impact to a channel, such as a physical alteration including excavation, grading, channelization, channel widening, dredging, and channel relocation, or a change in the channel equilibrium, channel bank stability, or water quality, is assigned points as provided at (e)2i(1) through (3) below and shall be based on the length of the channel impacted. A violation that disturbed:
    - (1) Greater than 300 linear feet of channel is assigned five points;
    - (2) Greater than 75 linear feet up to and including 300 linear feet of channel is assigned three points; and



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- (3) Up to and including 75 linear feet of channel is assigned one point.
- ii. An impact to a floodway, such as the construction or placement of structures, fill, or obstruction within the floodway, is assigned points as provided at (e)2ii(1) through (3) below and shall be based on the type and volume of fill or obstruction constructed or placed within the floodway, whether the fill constitutes a habitable building, and the area of the footprint of the structure:
  - (1) A violation comprised of the placement of fill or obstruction within the floodway:
    - (A) Greater than 100 cubic yards is assigned five points;
    - (B) Greater than 25 cubic yards and up to and including 100 cubic yards is assigned three points; and
    - (C) Up to and including 25 cubic yards is assigned one point;
  - (2) A violation comprised of the unauthorized construction of a habitable building or addition within the floodway is assigned five points; and
  - (3) A violation comprised of the unauthorized construction of any other structure having a footprint of greater than 150 square feet is assigned three points.
- iii. An impact to a flood fringe, such as the construction or placement of structures, fill, or obstruction within the flood fringe, is assigned points as provided at (e)2iii(1) through (3) below and shall be based on the volume of fill or obstruction constructed or placed within the flood fringe, whether the structure complies with this chapter notwithstanding that a flood hazard area permit was not obtained, and, in the case of a building, the elevation of the lowest floor in relation to the minimum elevation required for the type of building:
  - (1) A violation comprised of the placement of fill or obstruction within the flood fringe:
    - (A) Greater than 200 cubic yards is assigned five points;
    - (B) Greater than 50 cubic yards up to and including 200 cubic yards is assigned three points; and
    - (C) Greater than five cubic yards up to and including 50 cubic yards is assigned one point;
  - (2) A violation comprised of the unauthorized construction of a habitable building where the "as-built" lowest floor elevation is:
    - (A) Below the minimum elevation required for the type of building is assigned five points; and
    - (B) At or above the minimum elevation required for the type of building is assigned two points; and
  - (3) A violation comprised of the unauthorized construction of any other structure, where the structure that was constructed without a flood hazard area permit:
    - (A) Does not comply with this chapter is assigned three points; and

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(B) Does comply with this chapter is assigned one point;

- iv. An impact to a riparian zone, such as the clearing, cutting, and/or removal of vegetation, the construction, reconstruction, relocation, or enlargement of the footprint of any structure, and all site preparation such as excavation, filling, and grading of any kind within the riparian zone, is assigned points as provided at (e)2iv(1) through (4) below and shall be based on the area disturbed and the type of vegetation that was disturbed:
  - (1) A violation that disturbed:
    - (A) Greater than 15,000 square feet is assigned three points;
    - (B) Greater than 7,000 square feet up to and including 15,000 square feet is assigned two points; and
    - (C) Greater than 400 square feet up to and including 7,000 square feet is assigned one point;
  - (2) A violation comprised of activities in which the riparian zone has been clear-cut of existing woody vegetation (trees and shrubs) and stumped, with the removal of the root, or vegetation otherwise destroyed by being buried under fill is assigned three points;
  - (3) A violation comprised of activities in which the riparian zone has been clear-cut of existing woody vegetation (trees and shrubs), with stumps remaining is assigned two points; and
  - (4) A violation comprised of activities in which an existing shrub layer within the riparian zone is removed but trees remain is assigned one point;
- v. In addition to the points assessed in accordance with (e)2i through iv above, for a violation located in a State-owned Tidelands area for which a current tidelands instrument has not been obtained, or for which payment is in arrears, the Department shall assess one point.
- vi. In addition to the points assessed in accordance with (e)2i through v above, for a violation that impacts a resource of concern as described at (e)iv(1) through (6) below, the Department shall assess one point per resource of concern.
  - (1) A regulated water identified as trout production or trout maintenance, or which contains other fishery resources;
  - (2) A regulated water designated as Category One;
  - (3) A regulated water within the Central Passaic Basin;
  - (4) A regulated water that is a present or documented habitat for threatened or endangered species;
  - (5) A channel or floodway; and
  - (6) The portion of the riparian zone within 25 feet of the top of bank of a regulated water.

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(f) The Department shall sum the total points assigned according to the two factors in (e) above, and shall determine the base penalty amount per day using the following table:

**Table 24.5A**

**Base Penalty Points Table**

<b>Points</b>	<b>Base Penalty</b>
1-3	\$500
4-6	\$1,000
7-8	\$2,000
9-10	\$3,000
11-12	\$6,000
13-14	\$8,000
15-16	\$10,000
17-19	\$15,000
20-22	\$20,000
23 or more	\$25,000

(g) The Department shall adjust the amount of the base penalty assessed pursuant to (f) above based upon the mitigating penalty component as calculated in Table 24.5B below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in Table 24.5B below to obtain the mitigating penalty component. Where neither mitigating factor in Table 24.5B applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (f) above, unless adjusted pursuant to (h) below.

**Table 24.5B**

**Mitigating Penalty Component**

<b>Mitigating Factor</b>	<b>Multiplier</b>
Where the nature, timing, and effectiveness of any measures taken by the violator to remove the unauthorized regulated activities and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 calendar days of receipt of the notice of violation from the Department	0.50
Where a complete application is submitted within 30 calendar	0.50

days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized regulated activities without the need to modify the regulated activities, provide riparian zone mitigation, or restore disturbed regulated areas	
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2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (g)1 above, where applicable, from the base penalty.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (f) and, where applicable, (g) above based upon any or all of the factors listed in (h)1 through 4 below. No such factor constitutes a defense to any violation. The factors are:

1. The compliance history of the violator;
2. The frequency with which any violation of any provision of N.J.S.A. 58:16A-50 et seq., or rules, permit, or order adopted or issued pursuant thereto occurred, including environmental impacts;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating, or aggravating circumstances.

(i) The total civil administrative penalty shall be the daily civil administrative penalty determined under (d) through (h) above, multiplied by the number of calendar days during which each violation continued or remained in place without the required permit.

(j) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

**7:13-24.6 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities**

(a) For violations other than failure to obtain a permit prior to conducting regulated activities, the Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto. The Department shall assess penalties under this section rather than under N.J.A.C. 7:13-24.5 when N.J.A.C. 7:13-24.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto, shall constitute an additional, separate, and distinct violation.

(c) Where any requirement of N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto, may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains

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to each such act, condition, or occurrence shall constitute an additional, separate, and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall use the two factors described at (e) and (f) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty. The applicable daily penalty amount is determined using the base daily penalty matrix in the table below, based on the seriousness of the violation determined pursuant to (e) below and the conduct of the violator determined pursuant to (f) below.

**Table 24.6  
Base Daily Penalty Matrix**

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$25,000	\$15,000	\$10,000
	Moderate	\$15,000	\$7,500	\$5,000
	Minor	\$10,000	\$5,000	\$1,000

(e) The seriousness of the violation shall be determined as major, moderate, or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or safety, property, the environment, or the flood hazard area regulatory program, or seriously deviates from the applicable law and/or condition. "Serious deviations" include, but are not limited to, those violations which are in complete contravention of the law, requirement, and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement, or condition. Violations of "major" seriousness include, but are not limited to:
  - i. Conducting any activity that adversely impacts flooding, flood potential, the flood hazard area habitat for threatened or endangered wildlife or plant species, the pattern of riparian zone vegetation, or water quality;
  - ii. Placing fill, excavating, and/or grading within the flood hazard area;
  - iii. Clearing, cutting, and/or removal of vegetation within the riparian zone;
  - iv. Placing fill, excavating, and grading within the flood hazard area and/or clearing, cutting, and/or removal of vegetation within the riparian zone in excess of that which is authorized by a permit or plan;
  - v. Conducting regulated activities during a restricted time period identified in Table 11.5, Restricted Time Periods for Regulated Waters with Fishery Resources, at N.J.A.C. 7:13-11.5;

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- vi. Failure of a permittee to timely record a conservation restriction or other required instrument, and the property has been sold or transferred; and
  - vii. Failure of an applicant, permittee, or violator to provide information upon request to determine compliance with any applicable law and/or condition.
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, or property, the environment, or the flood hazard area regulatory program, or is a substantial deviation from the applicable law and/or condition. "Substantial deviation" includes, but is not limited to, violations which are in substantial contravention of the law, requirement, and/or condition, and/or which substantially impair or undermine the protection, operation, or intent of the law, requirement, and/or condition. Violations of "moderate" seriousness include, but are not limited to:
    - i. Failure to record a conservation restriction or other required instrument, and the property has not been sold or transferred; and
    - ii. Failure to properly remediate and restore impacts caused under a terminated permit or approval; and
  3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.
- (f) The conduct of the violator shall be determined as major, moderate, or minor as follows:
1. Major conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. There is a rebuttable presumption that any violation of a Department permit, applicability determination, and/or Tidelands instrument or the conditions thereof to be knowing violations;
  2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
  3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.
- (g) The total civil administrative penalty shall be the daily civil administrative penalty determined under (d) through (f) above, multiplied by the number of calendar days during which each violation continued or remained in place without the required permit.
- (h) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

### **7:13-24.7 Civil penalties**

(a) Any person who violates the provisions of N.J.S.A. 58:16A-50 et seq., any regulation, rule, permit, order, or court order issued pursuant to thereto, or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:13-24.3, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each calendar day during which a violation continues shall constitute an

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additional, separate, and distinct offense. In addition to any penalties, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq. The Superior Court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law of 1999 in connection with N.J.S.A. 58:16A-50 et seq.

### **7:13-24.8 Civil actions**

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to this act, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Recovery of reasonable costs of any investigation, inspection, or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
3. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;
4. Recovery of compensatory damages for any loss or destruction of natural resources, including, but not limited to, wildlife, fish, aquatic life, habitat, plants, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection; and/or
5. Execution of an order requiring the violator to restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for an off-site restoration alternative as approved by the Department.

(b) Recovery of damages and costs under (a) above shall be paid to the State Treasurer.

### **7:13-24.9 Criminal actions**

(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of N.J.S.A. 58:16A-50 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto.

(b) A person who knowingly, purposely, or recklessly violates N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of no less than \$5,000 and not more than \$50,000 per day of violation, or imprisonment, or both.

(c) A person shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not more than \$50,000 per day of violation, or imprisonment, or both, if the person:

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1. Knowingly, purposely, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto; or
2. Falsifies, tampers with, or purposely, recklessly, or knowingly renders inaccurate, any monitoring device or method required to be maintained under N.J.S.A. 58:16A-50 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto.

#### **7:13-24.10 Recording a notice concerning violation with deed for the property**

(a) On order of the Commissioner, the clerk or registrar of deeds and mortgages of the county where the property on which the violation occurred is located shall record a notice concerning the violation of the N.J.S.A. 58:16A-50 et seq. with the deed for the property. Any fees or other charges that are incurred by the Department for the recording of the notice concerning the violation shall be paid by the owner of the affected property or the violator.

(b) The notice concerning the violation shall remain attached to the property deed until the violation has been remedied and the Commissioner has ordered the clerk to remove the notice concerning the violation. The Commissioner shall immediately order the notice removed once the violation is remedied, or upon other conditions set forth by the Commissioner.

#### **7:13-24.11 Grace period applicability; procedures**

(a) Each violation, identified in Table 24.11 at (f) below by an "M" in the Type of Violation column for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as a minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-calendar-day grace period as described at (e) below.

(b) Each violation identified in Table 24.11 at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table 24.11 at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table 24.11 at (f) below but is comparable to a violation designated as "M" in Table 24.11 and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 calendar days as described at (e) below.
2. If the violation is not listed in Table 24.11 at (f) below and is not comparable to a violation listed in Table 24.11 but the violation meets all of the criteria of (d)1 through 9 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 calendar days as described at (e) below.
3. If the violation is not listed in Table 24.11 at (f) below but is comparable to a violation designated as "NM" in Table 24.11, then the violation is a non-minor violation and is not subject to a grace period.



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4. If the violation is not listed in Table 24.11 at (f) below and is not comparable to a violation listed in Table 24.11, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to a grace period.
5. Comparability of a violation to a violation in Table 24.11 at (f) below is based on the nature of the violation(s) (for example recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table 24.11 unless the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 calendar days for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local governmental agency;
3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;
5. In the case of a violation of the N.J.S.A. 58:16A-50 et seq. or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;
6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local governmental agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;
7. The violation poses minimal risk to the public health, safety and natural resources;
8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and
9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

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- i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and
  - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 calendar days.
2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.
3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.
4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 calendar days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:
  - i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
  - ii. Whether the delay has been caused by circumstances beyond the control of the violator;
  - iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
  - iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.
5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.
6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations relating to N.J.S.A. 58:16A-50 et seq. and this chapter as minor (M) or non-minor (NM) are set forth in Table 24.11 below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table 24.11 and the rule to which the violation description corresponds, the rule

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shall govern.

**Table 24.11**

<b>Rule Citation</b>	<b>Violation Description</b>	<b>Type of Violation</b>
N.J.A.C. 7:13-1.4(a)2ii	Failure of a delegated county governing body to uphold the requirements of this chapter	NM
N.J.A.C. 7:13-1.4(c)	Failure of a delegated county governing body to permanently retain a copy of all required documents that document that it has discharged its delegated duties	NM
N.J.A.C. 7:13-2.1(a)	Conducting regulated activities without prior Department approval	NM
N.J.A.C. 7:13-5.6	Failure to record the metes and bounds description of a verified flood hazard area and/or floodway limit on the property deed within 90 calendar days of issuance of the verification	NM
N.J.A.C. 7:13-5.6	Failure to submit proof to the Department of recording of the metes and bounds description of the verified flood hazard area and/or floodway limit on the property deed within 90 calendar days of issuance of the verification	M
N.J.A.C. 7:13-6.7, 7, 8, and 9	Failure to comply with all conditions of a permit-by-rule, general permit-by-certification, or general permit, except as indicated directly below	NM
N.J.A.C. 7:13-8 and 9	Failure to submit to the Department any documentation required by a general permit-by-certification or general permit	M
N.J.A.C. 7:13-10.3	Failure to comply with all conditions of an individual permit except as indicated directly below	NM
N.J.A.C. 7:13-10, 11, and 12	Failure to submit to the Department any documentation required by an individual permit	M
N.J.A.C. 7:13-13	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:13-13	Failure to comply with all conditions of a mitigation plan	NM
N.J.A.C. 7:13-14.1	Failure to place land intended for mitigation within a conservation restriction	NM
N.J.A.C. 7:13-14.1	Failure to submit proof that a conservation restriction has been recorded	M

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N.J.A.C. 7:13-16.3	Failure to comply with the terms of an emergency authorization, except as specified below	M
N.J.A.C. 7:13-16.3(e) and (h)	Failure to file a complete permit application and "as-built" site plans for completed activities authorized under an emergency authorization within 90 calendar days after verbal approval	NM
N.J.A.C. 7:13-16.3	Undertaking emergency activities not authorized under N.J.A.C. 7:13-16.3; undertaking emergency activities that do not meet the design and construction standards of this chapter	NM
N.J.A.C. 7:13-18	Submittal of false information by the applicant, its consultants and/or agents	NM
N.J.A.C. 7:13-18.2(k)	Failure to provide complete and accurate information of which an applicant or its agents are aware, or reasonably should have been aware	NM
N.J.A.C. 7:13-19	Failure to provide timely public notice of an application	M
N.J.A.C. 7:13-22.5(g)	Failure to record a modified verification, authorization under a general permit, or individual permit	NM
N.J.A.C. 7:13-22.5(g)	Failure to provide proof that a modified verification, authorization under a general permit, or individual permit has been properly recorded	M
N.J.A.C. 7:13-22.6	Failure to submit to the Department an application for modification of a general permit authorization or individual permit, should a permittee propose a change in the development	NM
N.J.A.C. 7:13-22.7 and 22.8	Failure to comply with the terms of a suspension or termination notice	NM
N.J.A.C. 7:13-22.8(e)	Failure to properly remediate and restore impacts caused under a terminated permit or approval	NM

## APPENDIX 1

### APPROXIMATING THE FLOOD HAZARD AREA DESIGN FLOOD ELEVATION

As described in detail at N.J.A.C. 7:13-3, the Department and FEMA have adopted flood mapping along many of the State's waters. In absence of a Department delineation<sup>1</sup>, or FEMA flood mapping that meets the requirements of N.J.A.C. 7:13-3.4(b), an applicant may use the approximation method described at N.J.A.C. 7:13-3.5 in conjunction with this appendix.

Note that this method approximates only the flood hazard area design flood elevation. This method does not approximate the floodway limit. Many activities are restricted within floodways and some calculations cannot be performed if the floodway limit is unknown. Therefore, the Department shall issue an individual permit for a regulated activity within an approximated flood hazard area only if the regulated activity meets the requirements at N.J.A.C. 7:13-3.5(f).

### HOW TO USE METHOD 5 (APPROXIMATION METHOD)

1. Determine which Watershed Management Area (WMA) the project is located within based on Figure 5 below. The Department can help in this determination at the applicant's request.<sup>2</sup>
2. Determine the contributory drainage area (CDA) of the water in question. USGS provides topographical mapping that can be used to make this determination. The Department can also help in this determination at the applicant's request.
3. Find the approximate depth of flooding from Table 1 below based on the WMA and CDA.
4. Find the low point elevation of each roadway crossing or other water control structure within 1 mile downstream of the site.<sup>3</sup> Figure 1 illustrates a typical roadway profile with a low point.
5. The approximate flood hazard area design flood elevation will be the higher of the following (see Figures 1 through 4):
  - The depth from Table 1, measured above the average streambed.<sup>4</sup>
  - The depth from Table 2, measured above the highest roadway low point described in 4 above.

### NOTES

1. See Appendix 2 for a complete list of delineations and N.J.A.C. 7:13-3.3 for more detail.
2. If a project spans more than one WMA, the approximate flood hazard area shall be determined separately within each WMA.
3. Some roadway or railroad crossings over very large bridges need not be included if the Department determines that such crossings will not affect flooding on the site. Contact the Department for further information.

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- The average streambed is the general "smooth" grade of the bottom of the channel, and does not include small pockets of erosion, individual boulders or other minor irregularities. The average streambed always has a positive slope toward downstream.

WMA <sup>1</sup> ↓	CONTRIBUTORY DRAINAGE AREA <sup>2</sup>														
	Shaded box indicates area in acres. Unshaded box indicates area in square miles.														
	FOR DRAINAGE AREAS UP TO → THE FLOOD DEPTH IS SHOWN ↓														
1		80	195	495	1.9	4.8	12.1	30.0							
2		80	195	495	1.9	4.8	12.1	30.0							
3			80	150	290	550	1.7	3.2	6.1	11.8	22.6	30.0			
4		70	130	235	430	1.2	2.3	4.1	7.6	13.9	25.4	30.0			
5		95	255	1.0	2.8	7.3	19.2	30.0							
6				85	280	1.4	4.7	15.3	30.0						
7							115	245	510	1.7	3.5	7.4	15.6	30.0	
8			60	115	210	395	1.2	2.2	4.0	7.5	14.1	26.3	30.0		
9		80	130	200	310	485	1.2	1.8	2.9	4.5	7.0	11	17.1	26.7	30.0
10	70	110	165	255	390	605	1.5	2.2	3.4	5.3	8.2	12.6	19.4	30.0	
11		80	145	265	490	1.4	2.6	4.8	8.8	16.1	30.0				
12				115	280	1.1	2.6	6.2	15.0	30.0					
13		85	210	530	2.1	5.1	12.7	30.0							
14		85	210	530	2.1	5.1	12.7	30.0							
15		85	210	530	2.1	5.1	12.7	30.0							
16		85	210	530	2.1	5.1	12.7	30.0							
17		85	210	530	2.1	5.1	12.7	30.0							
18	75	125	205	350	590	1.6	2.6	4.4	7.5	12.6	21.3	30.0			
19	60	115	225	440	1.3	2.6	5.1	9.9	19.2	30.0					
20	60	115	225	440	1.3	2.6	5.1	9.9	19.2	30.0					
DEPTH <sup>3</sup> (feet) →	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

**TABLE 1**  
**APPROXIMATE FLOOD DEPTHS ABOVE AVERAGE STREAMBED ELEVATION**  
 (SEE N.J.A.C.-7:13-3.5)

EXAMPLE: Going from left to right in any row, each number represents the upper drainage area limit for the flood depth shown at the bottom of the column. For example, in the row for WMA 10, a water with a drainage area of 70 acres or less has a flood depth of 5 feet. Similarly, any water draining between 70 and 110 acres has a flood depth of 6 feet. In the example illustrated with arrows above, any water with a drainage area of between 19.4 and 30.0 square

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miles in WMA 10 has a flood depth of 18 feet.

NOTES

1. The numbers in this column denote the Watershed Management Areas shown in Figure 5.
2. Flood depths shall be measured above the average streambed elevation as described elsewhere in this Appendix and as shown in Figure 3 below.

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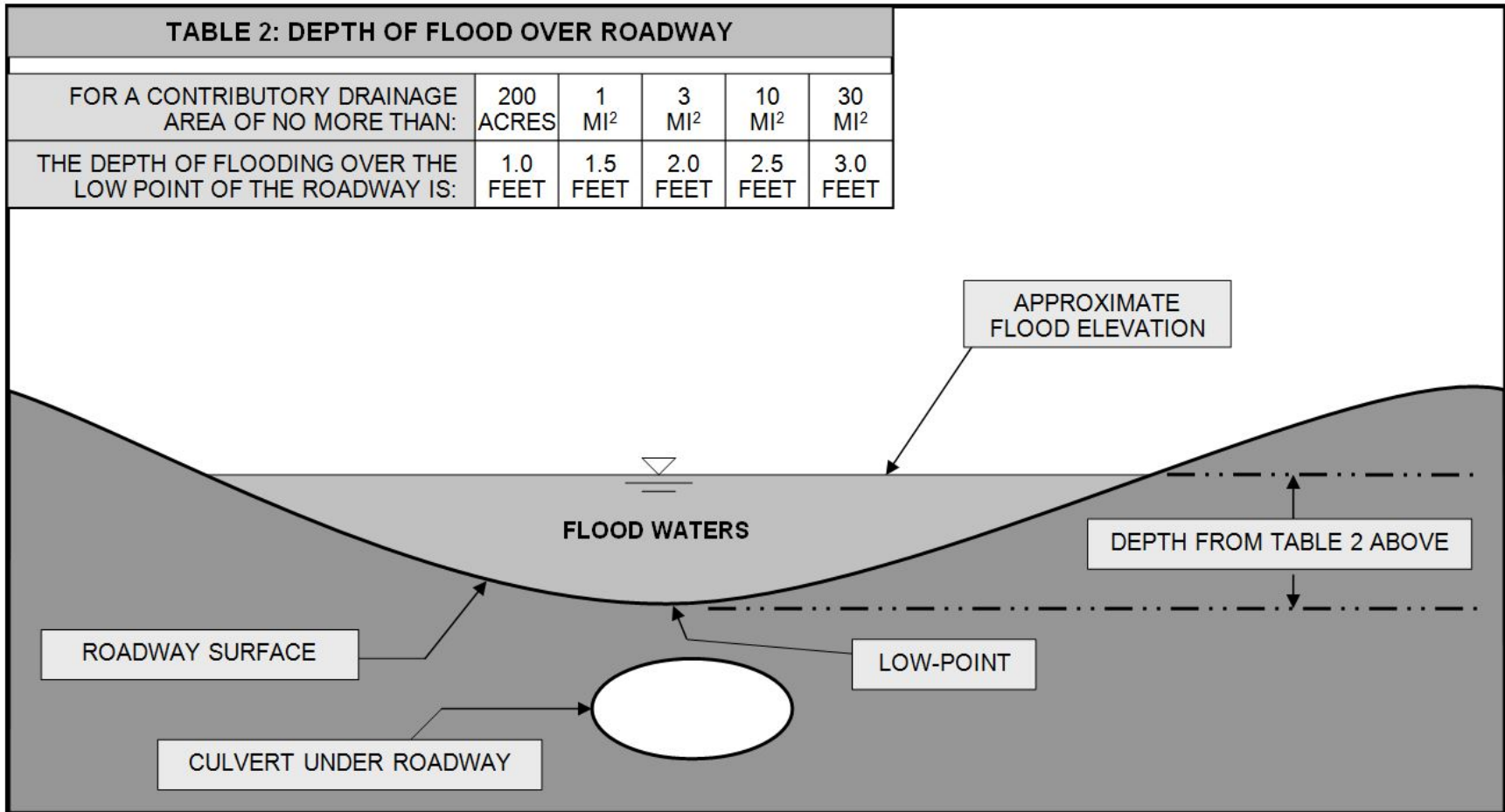


FIGURE 1  
 PROFILE OF A ROADWAY OVERTOPPED BY FLOOD WATERS  
 NOT DRAWN TO SCALE



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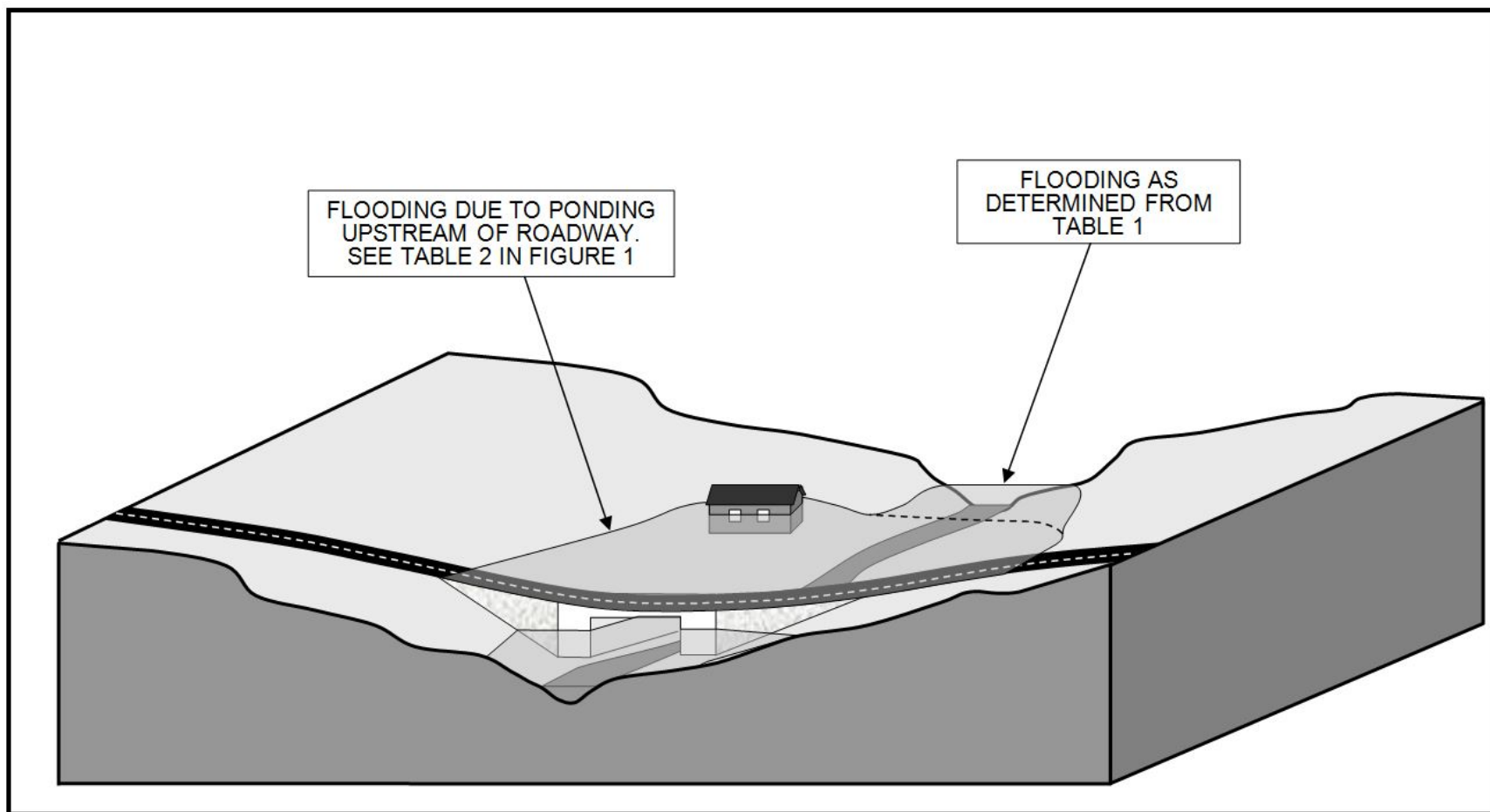


FIGURE 2  
THREE-DIMENSIONAL VIEW OF APPROXIMATE FLOOD HAZARD AREA  
NOT DRAWN TO SCALE

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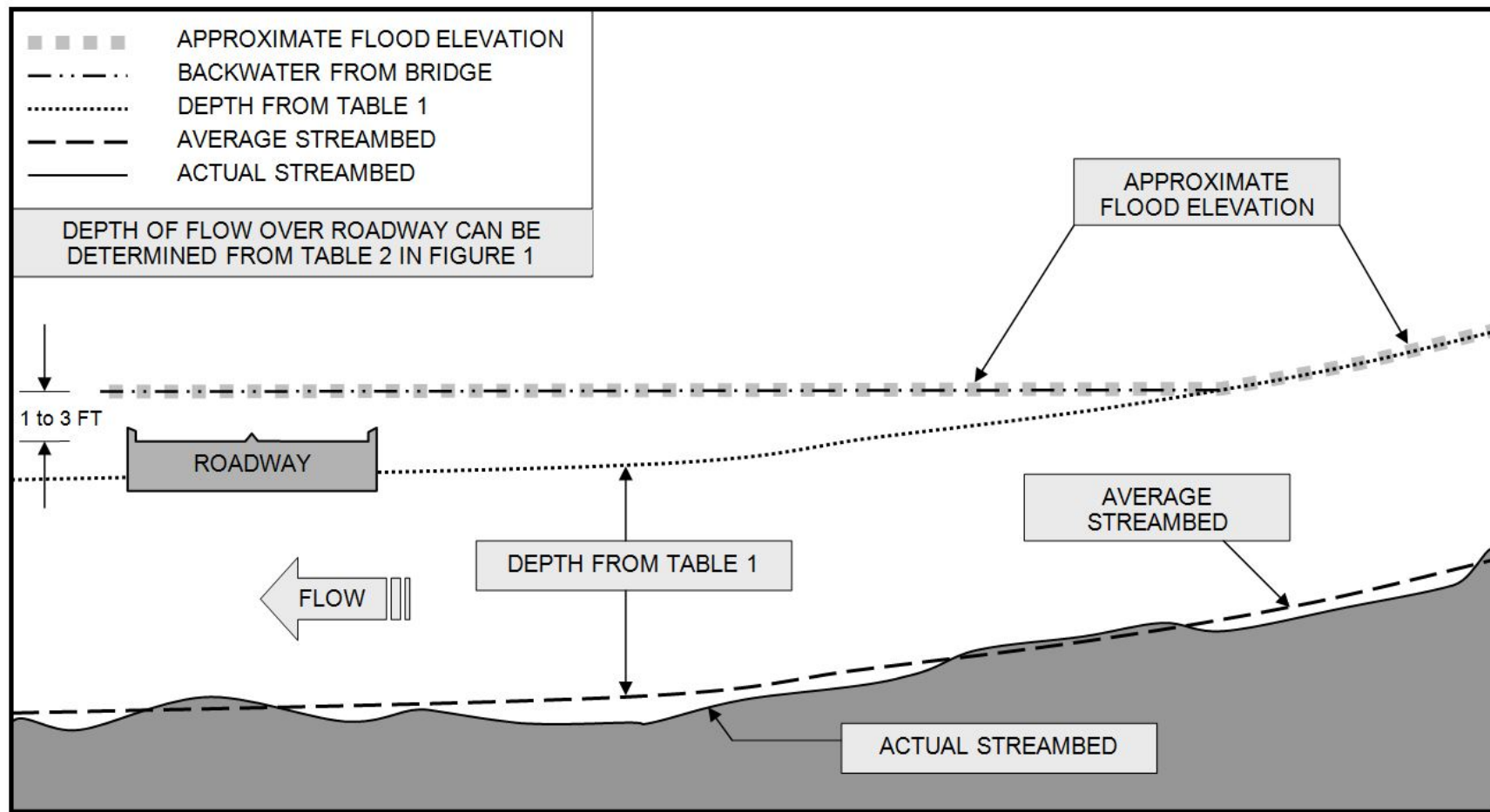


FIGURE 3  
PROFILE OF A TYPICAL CHANNEL WITH AN APPROXIMATE FLOOD HAZARD AREA  
NOT DRAWN TO SCALE

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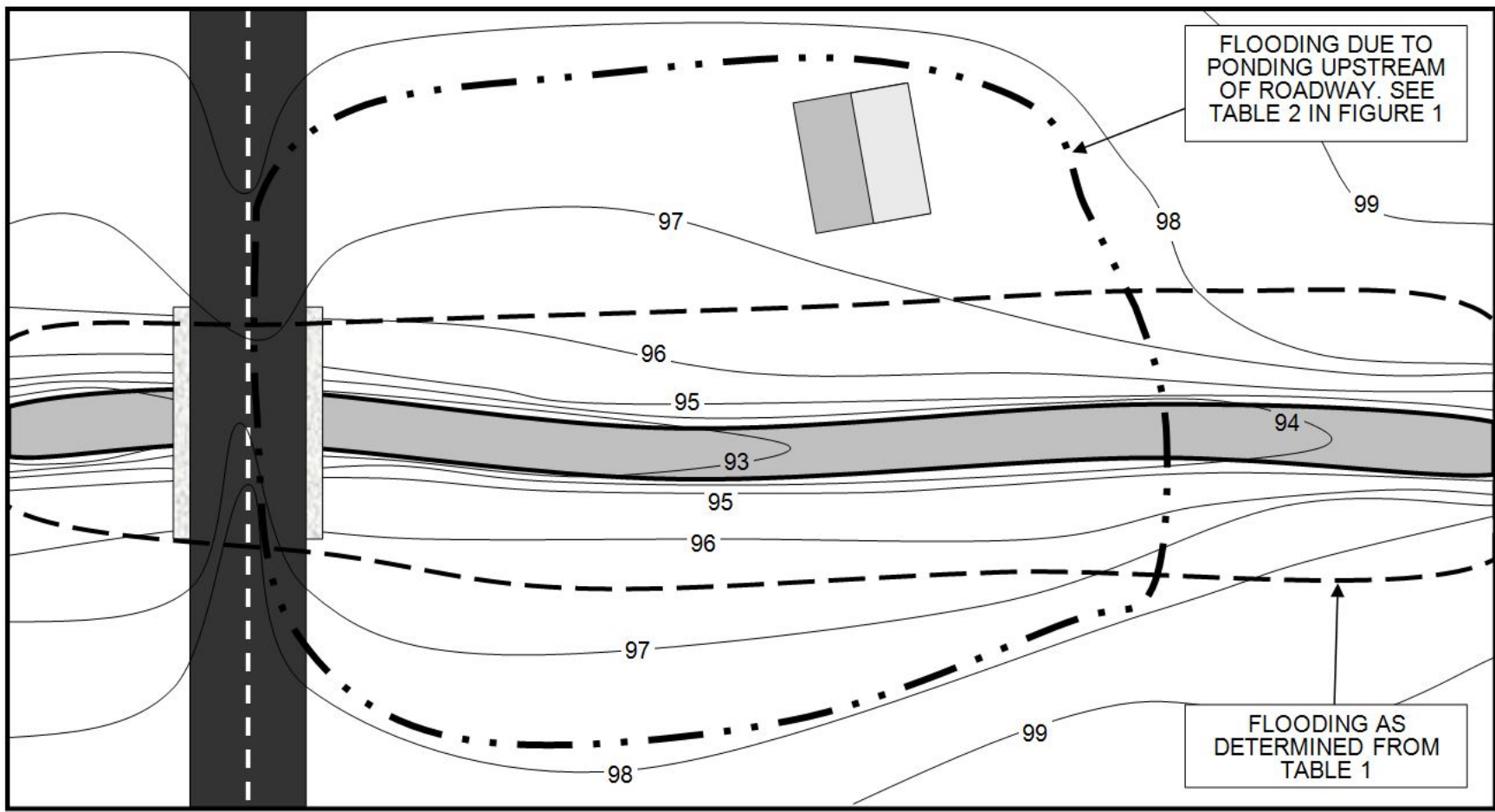
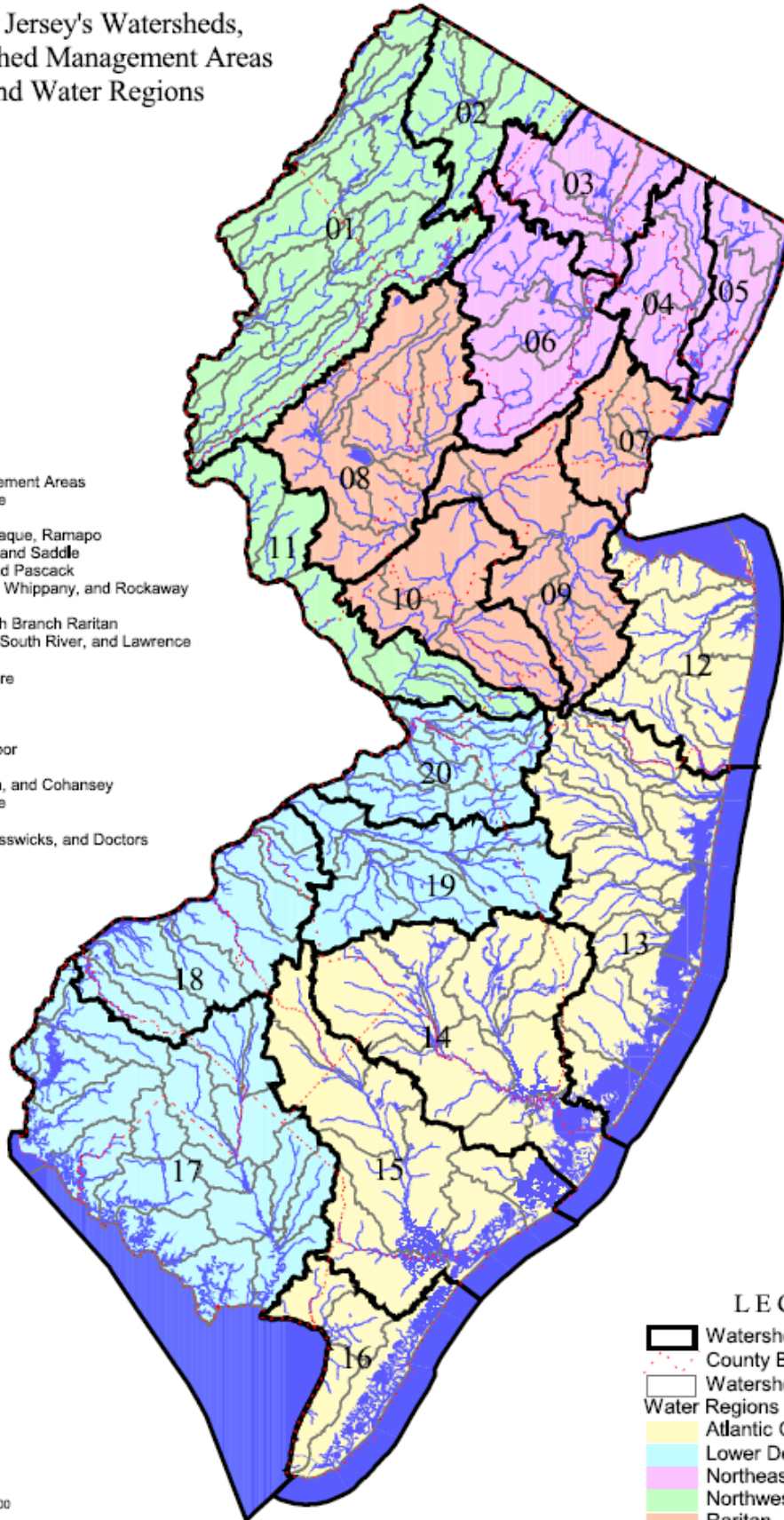


FIGURE 4  
PLAN VIEW OF AN APPROXIMATE FLOOD HAZARD AREA  
NOT DRAWN TO SCALE

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New Jersey's Watersheds,  
Watershed Management Areas  
and Water Regions

- Watershed Management Areas
- 01. Upper Delaware
  - 02. Walkkill
  - 03. Pompton, Wanaque, Ramapo
  - 04. Lower Passaic and Saddle
  - 05. Hackensack and Pascack
  - 06. Upper Passaic, Whippany, and Rockaway
  - 07. Arthur Kill
  - 08. North and South Branch Raritan
  - 09. Lower Raritan, South River, and Lawrence
  - 10. Millstone
  - 11. Central Delaware
  - 12. Monmouth
  - 13. Barnegat Bay
  - 14. Mullica
  - 15. Great Egg Harbor
  - 16. Cape May
  - 17. Maurice, Salem, and Cohansey
  - 18. Lower Delaware
  - 19. Rancocas
  - 20. Assiscunk, Crosswicks, and Doctors



**LEGEND**

- Watershed Management Areas
- County Boundaries
- Watershed Boundaries
- Water Regions**
- Atlantic Coastal
- Lower Delaware
- Northeast
- Northwest
- Raritan



NJDEP June 2000

**APPENDIX 2**

**LIST OF DEPARTMENT DELINEATED WATERS**

The following table lists the waters for which the Department has promulgated a delineation of the flood hazard area. This list is organized by county and municipality. In most cases the delineation includes both the flood hazard area design flood elevation and the floodway limit. To determine which mapping is available for a particular water, or to obtain copies of maps or other information regarding the use or revision of these studies, contact the Department as described at N.J.A.C. 7:13-3.3. An asterisk indicates that the Department delineation for that studied water was promulgated on or after January 24, 2013.

<b>Atlantic County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Absecon City	None	N/A
Atlantic City	None	N/A
Brigantine City	None	N/A
Buena Borough	None	N/A
Buena Vista Township	None	N/A
Corbin City	Tuckahoe River	Entire reach
Egg Harbor City	Landing Creek	Upstream of confluence with Union Creek
	Mullica River	Entire reach
	Union Creek	Upstream of confluence with Landing Creek
	Union Creek Tributary	Entire reach
Egg Harbor Township	None	N/A
Estell Manor City	None	N/A
Folsom Borough	Great Egg Harbor River	Upstream of State Highway 54
	Great Egg Harbor River Tributary	Entire reach
	Hospitality Brook	Upstream of State Highway 54
Galloway Township	None	N/A
Hamilton Township	None	N/A
Hammonton Township	Cedar Brook	Between Wharton State Forest and Liberty Street
Linwood City	None	N/A
Longport Borough	None	N/A
Margate City	None	N/A
Mullica Township	Mullica River	Downstream of County Route 542
Northfield City	None	N/A
Pleasantville City	None	N/A
Port Republic City	None	N/A
Somers Point City	None	N/A

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Ventnor City	None	N/A
Weymouth Township	None	N/A

<b>Bergen County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Allendale Borough	None	N/A
Alpine Borough	None	N/A
Bergenfield Borough	Hirschfield Brook	Entire reach
	Hirschfield Brook Tributary	Entire reach
Bogota Borough	Hackensack River	Entire reach
Carlstadt Borough	None	N/A
Cliffside Park Borough	None	N/A
Closter Borough	Dwars Kill	Downstream of Piermont Road
	Kips Brook	Entire reach
	Oradell Reservoir	Entire reach
	Steinals Ditch	Entire reach
	Tenakill Brook	Entire reach
Cresskill Borough	Cresskill Brook	Entire reach
	Demarest Brook	Entire reach
	Tenakill Brook	Entire reach
Demarest Borough	Cresskill Brook	Downstream of County Road
	Demarest Brook	Downstream of County Road
	Tenakill Brook	Entire reach
Dumont Borough	Hirschfield Brook	Entire reach
	Hirschfield Brook Tributary	Downstream of Rucereto Avenue
Elmwood Park Borough	Passaic River	Entire reach
East Rutherford Borough	Passaic River	Entire reach
Edgewater Borough	None	N/A
Emerson Borough	Haunsmans Ditch	Downstream of Orchard Avenue
	Musquapsink Brook	Entire reach
	Oradell Reservoir	Entire reach
	Pascack Brook	Entire reach
Englewood City	Flat Rock Brook	Downstream of Flatbrook Nature Center
	Metzlers Creek	Entire reach
	Overpeck Creek	Entire reach
	Overpeck Creek Tributary 1	Downstream of a point located 350 feet downstream of Forest Avenue
Englewood Cliffs Borough	None	N/A
Fair Lawn Borough	Beaverdam Brook	Downstream of a point located 1,050 feet upstream of Morlot Avenue
	Diamond Brook	Entire reach
	Henderson Brook	Downstream of New Jersey Transit Railroad

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	Jordan Brook	Downstream of Berdan Avenue
	Passaic River	Entire reach
	Saddle River	Entire reach
Fairview Borough	Wolf Creek	Downstream of a point located 1,250 feet upstream of South Broad Avenue
Fort Lee Borough	None	N/A
Franklin Lakes Borough	Hohokus Brook	Downstream of a point located 400 feet upstream of Old Mill Drive
	Pond Brook	Downstream of Franklin Lake
Garfield City	Passaic River	Entire reach
	Saddle River	Entire reach
Glen Rock Borough	Diamond Brook	Entire reach
	Hohokus Brook	Entire reach
	Saddle River	Entire reach
Hackensack City	Coles Brook	Along municipal boundary with Paramus Borough, Bergen County
	Hackensack River	Entire reach
Harrington Park Borough	Blanch Brook	Downstream of a point located 50 feet downstream of Blanch Avenue
	Dorotockeys Run	Entire reach
	Hackensack River	Entire reach
	Oradell Reservoir	Entire reach
	Pascack Brook	Entire reach
	Tappan Run	Entire reach
Hasbrouck Heights Borough	None	N/A
Haworth Borough	Charles Brook	Downstream of Delaware Avenue
	Goffle Brook	Entire reach
	Kips Brook	Downstream of a point located 1,750 feet upstream of Haworth Avenue
	Oradell Reservoir	Entire reach
	Steinal Ditch	Entire reach
Hillsdale Borough	Hillsdale Brook	Entire reach
	Holdrum Brook	Entire reach
	Musquapsink Brook	Entire reach
	Pascack Brook	Entire reach
	Tandy Brook	Downstream of Pascack Road
	Township Brook	Entire reach
Ho-Ho-Kus Borough	Hohokus Brook	Entire reach
Leonia Borough	Flat Rock Brook	Entire reach
	Overpeck Creek	Entire reach
Little Ferry Borough	Hackensack River	Entire reach
	Overpeck Creek	Entire reach
Lodi Borough	Saddle River	Entire reach
Lyndhurst Township	Passaic River	Entire reach
Mahwah Township	Hohokus Brook	Along municipal boundary with Franklin

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		Lakes Borough, Bergen County
	Mahwah River	Entire reach
	Masonicus Brook	Downstream of a point located 60 feet upstream of Constantine Drive
	Ramapo River	Entire reach
Maywood Borough	None	N/A
Midland Park Borough	None	N/A
Montvale Borough	Bear Brook	Downstream of a point located 1,050 feet upstream of Grand Avenue
	Cherry Brook	Entire reach
	Echo Glen Brook	Downstream of a point located 500 feet upstream of Akers Avenue
	Fieldstone Brook	Downstream of Woodland Avenue
	Laurel Brook	Downstream of a point located 3,020 feet upstream of Mill Brook
	Mill Brook	Downstream of Summit Avenue
	Muddy Creek	Entire reach
	Pascack Brook	Entire reach
	Stateline Brook	Entire reach
Moonachie Borough	Hackensack River	Entire reach
New Milford Borough	Frenchs Creek	Downstream of New Bridge Road
	Hackensack River	Entire reach
	Hackensack River Bypass	Entire reach
	Hirschfield Brook	Entire reach
North Arlington Borough	Passaic River	Entire reach
Northvale Borough	Sparkill Brook	Entire reach
	Sparkill Creek	Entire reach
Norwood Borough	Dwars Kill	Downstream of Piermont Road
	Norwood Brook	Downstream of Broadway
	Oradell Reservoir	Entire reach
	Sparkill Brook	Downstream of Piermont Road
	Tappan Run	Downstream of a point located 1,200 feet upstream of Broadway
Oakland Borough	Ramapo River	Entire reach
Old Tappan Borough	Hackensack River	Entire reach
Oradell Borough	Hackensack River	Entire reach
	Hackensack River Bypass	Entire reach
	Oradell Reservoir	Entire reach
Palisades Park Borough	Overpeck Creek	Entire reach
Paramus Borough	Behnke Brook	Downstream of Midland Avenue
	Coles Brook	Entire reach
	Herring Brook	Downstream of a point located 125 feet upstream of State Highway 4
	Mannings Brook	Downstream of a Footbridge Located near Van Binsberger Boulevard



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	Saddle River	Entire reach
	Sprout Brook	Downstream of a point located 1,700 feet upstream of Sears Drive
	Van Saun Mill Brook	Downstream of a point located 1,100 feet upstream of Continental Avenue
Park Ridge Borough	Bear Creek	Entire reach
	Echo Glen Brook	Entire reach
	Hillsdale Brook	Downstream of New Street
	Holdrum Brook	Downstream of a point located 1,600 feet upstream of Rolling Hills Road
	Mill Brook	Entire reach
	Pascack Brook	Entire reach
Ramsey Borough	Darlington Brook	Between a point located 750 feet downstream of the confluence with Darlington Brook Tributary and a point located 1,500 feet upstream of said confluence (along municipal boundary with Mahwah Township, Bergen County)
	Darlington Brook Tributary	Entire reach
	Masonicus Brook	Entire reach
	Ramsey Brook	Downstream of a point located 550 feet upstream of State Highway 17
	Valentine Brook	Downstream of Darlington Avenue
	Valentine Brook Tributary 1	Downstream of Darlington Avenue
	Valentine Brook Tributary 2	Downstream of East Main Street
Ridgefield Borough	Bellmans Creek	Between Susquehanna Western Railroad and confluence with Wolf Creek
	Hackensack River	Upstream of a point located 400 feet upstream of the New Jersey Turnpike
	Overpeck Creek	Entire reach
	Wolf Creek	Downstream of a point located 1,250 feet upstream of South Broad Avenue
Ridgefield Park Village	Hackensack River	Entire reach
	Overpeck Creek	Entire reach
Ridgewood Village	Goffle Brook	Entire reach
	Hohokus Brook	Entire reach
	Saddle River	Entire reach
River Edge Borough	Coles Brook	Entire reach
	Hackensack River	Entire reach
	Van Saun Mill Brook	Downstream of a point located 1,100 feet upstream of Continental Avenue
River Vale Township	Cherry Brook	Entire reach
	Hackensack River	Entire reach
	Hillsdale Brook	Entire reach
	Holdrum Brook	Downstream of a point located 1,600 feet

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		upstream of Rolling Hills Road
	Pascack Brook	Entire reach
	River Vale Brook	Downstream of a point located 250 feet upstream of Ridge Road
Rochelle Park Township	Saddle River	Entire reach
	Sprout Brook	Entire reach
Rockleigh Borough	Sparkill Brook	Entire reach
Rutherford Borough	Passaic River	Entire reach
Saddle Brook Township	Coalberg Brook	Downstream of U.S. Highway 46
	Coalberg Brook Tributary	Downstream of U.S. Highway 46
	Saddle River	Entire reach
Saddle River Borough	None	N/A
South Hackensack Township	Hackensack River	Entire reach
	Saddle River	Entire reach
Teaneck Township	Frenchs Creek	Entire reach
	Hackensack River	Entire reach
	Metzlers Creek	Entire reach
	Overpeck Creek	Entire reach
	Teaneck Creek	Downstream of a point located 2,000 feet upstream of Degraw Avenue
Tenaflly Borough	Tenakill Brook	Downstream of Norman Place
Teterboro Borough	None	N/A
Upper Saddle River Borough	None	N/A
Waldwick Borough	Hohokus Brook	Along municipal boundary with Ridgewood Village, Bergen County
Wallington Borough	Passaic River	Entire reach
	Saddle River	Entire reach
Washington Township	Musquapsink Brook	Entire reach
	Musquapsink Brook Bypass	Downstream of Washington Lake
	Pine Brook	Downstream of a point located 175 feet upstream of Ridgewood Boulevard
Westwood Borough	Musquapsink Brook	Entire reach
	Pascack Brook	Entire reach
	Westdale Brook	Upstream 2,335 feet from Pascack Brook
Woodcliff Lake Borough	Bear Brook	Entire reach
	Hillsdale Brook	Downstream of New Street
	Musquapsink Brook	Downstream of Saddle River Road
	Pascack Brook	Entire reach
	Reservoir Brook	Downstream of Woodcliff Avenue
Wood-Ridge Borough	Saddle River	Entire reach
Wyckoff Township	None	N/A

<b>Burlington County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>

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Bass River Township	None	N/A
Beverly City	None	N/A
Bordentown City	Blacks Creek	Entire reach
	Crosswicks Creek	Entire reach
Bordentown Township	Blacks Creek	Downstream of U.S. Highway 206
	Crosswicks Creek	Entire reach
	Delaware River	Entire reach
	Delaware River Back Channel	Entire reach
Burlington City	None	N/A
Burlington Township	Crosswicks Creek	Entire reach
	Delaware River	Entire reach
	Mill Creek	Downstream of Interstate Highway 295
Chesterfield Township	None	N/A
Cinnaminson Township	None	N/A
Delanco Township	Delaware River	Entire reach
	Rancocas Creek	Entire reach
Delran Township	Rancocas Creek	Entire reach
Eastampton Township	North Branch Rancocas Creek	Entire reach
Edgewater Park Township	None	N/A
Evesham Township	Barton Run	Entire reach
	Barton Run Tributary 1	Downstream of New Road
	Barton Run Tributary 2	Downstream of Taunton Lake Road
	Black Run	Downstream of a private driveway located near Braddock Mill Road
	Black Run Tributary	Downstream of Braddock Mill Road
	Cropwell Brook	Downstream of North Cropwell Road
	Kettle Creek	Downstream of a point located 1,600 feet upstream of Hopewell Road
	South Branch Pennsauken Creek	Downstream of a point located 1,500 feet upstream of Old Marlton Pike
	Southwest Branch Rancocas Creek	Downstream of a point located 1,200 feet upstream of Bon Air Drive
Fieldsboro Borough	Delaware River	Entire reach
Florence Township	Bustleton Creek	Downstream of U.S. Highway 130
	Crafts Creek	Downstream of U.S. Highway 130
	Delaware River	Entire reach
	Delaware River Back Channel	Entire reach
Hainesport Township	Masons Creek	Entire reach
	North Branch Rancocas Creek	Entire reach
	South Branch Rancocas Creek	Entire reach
Lumberton Township	Bobbys Run	Downstream of Newbolds Corner-Mount Holly Road
	Little Creek	Entire reach
	Masons Creek	Downstream of Stacy Haines Road
	South Branch Rancocas Creek	Entire reach

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	South Branch Rancocas Creek Tributary	Downstream of Stacy Haines Road
	Southwest Branch Rancocas Creek	Entire reach
Mansfield Township	Crafts Creek	Downstream of U.S. Highway 130
	Delaware River Back Channel	Entire reach
Maple Shade Township	None	N/A
Medford Township	Ballinger Run	Downstream of the head of Lake Stockwell
	Ballinger Run Tributary	Downstream of a point located 90 feet upstream of Birchwood Drive
	Barton Run	Entire reach
	Barton Run Tributary 1	Entire reach
	Blue Lake Run	Entire reach
	Haynes Creek	Entire reach
	Little Creek	Downstream of State Highway 70
	Mimosa Lake Run	Downstream of Scout Drive
	Sharps Run	Downstream of Oliphants Mill-Hartford Road
	Skeet Run	Downstream of Hawkin Road
	Southwest Branch Rancocas Creek	Entire reach
	Taunton Lake Tributary	Downstream of Centennial Avenue
Medford Lakes Borough	Ballinger Run	Entire reach
	Lake Mishe-Mokwa Run	Downstream of Hiawatha Trail
Moorestown Township	Rancocas Creek	Entire reach
Mount Holly Township	Buttonwood Run	Downstream of Branch Street
	Mill Race	Entire reach
	Mount Holly By-Pass	Entire reach
	North Branch Rancocas Creek	Entire reach
Mount Laurel Township	Masons Creek	Entire reach
	Rancocas Creek	Downstream of the confluence of the North and South Branches
	South Branch Rancocas Creek	Entire reach
New Hanover Township	None	N/A
North Hanover Township	None	N/A
Palmyra Borough	None	N/A
Pemberton Borough	Budds Run	Downstream of a point located 850 feet upstream of Hanover Street
	North Branch Rancocas Creek	Entire reach
Pemberton Township	Baffin Brook	Downstream of Upton Station-Whitesbogs Road
	Budds Run	Downstream of a point located 850 feet upstream of Hanover Street
	County Lake Tributary	Downstream of Upton Station-

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		Whitesbogs Road
	Cranberry Branch	Downstream of Lakehurst Road
	Jefferson Lake	Upstream of Oregon Trail
	Little Pine Lake	Entire reach
	Mirror Lake	Upstream 11,600 feet from Lakehurst Road
	Mount Misery Creek	Downstream of a point located 1,300 feet upstream of Greenwood Bridge Road
	North Branch Rancocas Creek	Downstream of Mirror Lake
	Ong Run	Upstream 4,230 feet from Little Pine Lake
	Pole Bridge Branch	Between County Lakes Spillway and Whitesbogs Road
	Pole Bridge Branch Tributary	Downstream of Lakehurst Road
Riverside Township	Rancocas Creek	Entire reach
Riverton Borough	None	N/A
Shamong Township	None	N/A
Southampton Township	Beaverdam Creek	Downstream of U.S. Highway 206
	Friendship Creek	Downstream of State Highway 70
	Jade Run	Entire reach
	Little Creek	Downstream of a point located 2,000 feet upstream of Ridge Road
	North Branch Rancocas Creek	Entire reach
	South Branch Rancocas Creek	Downstream of Bed Beg Hill Road
Springfield Township	None	N/A
Tabernacle Township	None	N/A
Washington Township	Mullica River	Downstream of County Route 542
Westampton Township	Assiskunk Creek Tributary	Downstream of a point located 1280 feet upstream of Oxmead Road
	Mill Creek	Downstream of Interstate Highway 295
	Mill Creek Tributary	Downstream of Woodlane Road
	Rancocas Creek	Downstream of the confluence of the North and South Branches
	North Branch Rancocas Creek	Entire reach
Willingboro Township	Mill Creek	Entire reach
	Rancocas Creek	Entire reach
	South Branch Mill Creek	Downstream of Kennedy Parkway
Woodland Township	Bisphams Mill Creek	Between State Highway 70 and Cooper Road
	Burrs Mill Brook	Between a point located 9,350 feet upstream of Burrs Mill Road and a point located 17,150 feet upstream of Burrs Mill Road
	Shinns Branch	Downstream of Lebanon State Forest
	West Branch Wading River	Between County Route 532 and Lebanon

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		State Forest
Wrightstown Borough	None	N/A

<b>Camden County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Audubon Borough	None	N/A
Audubon Park Borough	None	N/A
Barrington Borough	None	N/A
Bellmawr Borough	Big Timber Creek	Upstream of Interstate Highway 295
Berlin Borough	None	N/A
Berlin Township	None	N/A
Brooklawn Borough	None	N/A
Camden City	None	N/A
Cherry Hill Township	South Branch Pennsauken Creek	Between the municipal boundary of Evesham Township and Mount Laurel Township, Burlington County, and a point located 1,500 feet upstream of Old Marlton Pike
Chesilhurst Borough	None	N/A
Clementon Borough	None	N/A
Collingswood Borough	None	N/A
Gibbsboro Borough	None	N/A
Gloucester Township	Big Timber Creek	Entire reach
	South Branch Big Timber Creek	Downstream of the head of Blackwood Lake, and also between a point located 2,800 feet downstream of Main Street and a point located 50 feet upstream of Redwood Street
Gloucester City	None	N/A
Haddon Township	None	N/A
Haddonfield Borough	None	N/A
Haddon Heights Borough	None	N/A
Hi-Nella Borough	None	N/A
Laurel Springs Borough	None	N/A
Lawnside Borough	None	N/A
Lindenwold Borough	None	N/A
Magnolia Borough	None	N/A
Merchantville Borough	None	N/A
Mount Ephraim Borough	None	N/A
Oaklyn Borough	None	N/A
Pennsauken Township	None	N/A
Pine Hill Borough	None	N/A
Pine Valley Borough	None	N/A

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Runnemede Borough	Big Timber Creek	Entire reach
Somerdale Borough	None	N/A
Stratford Borough	None	N/A
Tavistock Borough	None	N/A
Voorhees Township	None	N/A
Waterford Township	None	N/A
Winslow Township	Fourmile Branch	Downstream of a point located 900 feet upstream of an unimproved access road near the Atlantic City Expressway
	Great Egg Harbor River	Between New Brooklyn-Cedarbrook Road and Conrail Railroad
	Pump Branch	Between Waterford-Blue Anchor Road and Conrail Railroad (near the intersection of Old Egg Harbor Road and Steelton Road)
Woodlynne Borough	None	N/A

<b>Cape May County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Avalon Borough	None	N/A
Cape May City	None	N/A
Cape May Point Borough	None	N/A
Dennis Township	None	N/A
Lower Township	None	N/A
Middle Township	None	N/A
North Wildwood City	None	N/A
Ocean City	None	N/A
Sea Isle City	None	N/A
Stone Harbor Borough	None	N/A
Upper Township	Tuckahoe River	Downstream of the municipal boundary of Corbin City and Manor City, Atlantic County
West Cape May Borough	None	N/A
West Wildwood Borough	None	N/A
Wildwood City	None	N/A
Wildwood Crest Borough	None	N/A
Woodbine Borough	None	N/A

<b>Cumberland County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Bridgeton City	Cohansey River	Entire reach
	Cohansey River Raceway	Entire reach
	Indian Fields Branch	Entire reach
	Jackson Run	Entire reach
Commercial Township	Buckshutem Creek	Downstream of Buckshutem Road

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	Maurice River	Entire reach
Deerfield Township	Maurice River	Entire reach
Downe Township	None	N/A
Fairfield Township	None	N/A
Greenwich Township	None	N/A
Hopewell Township	None	N/A
Lawrence Township	None	N/A
Maurice River Township	Manantico Creek	Downstream of State Highway 55
	Manumuskin River	Along municipal boundary with Vineland City, Cumberland County
	Maurice River	Entire reach
Millville City	Buckshutem Creek	Downstream of Buckshutem Road
	Manantico Creek	Downstream of State Highway 55
	Maurice River	Entire reach
	Petticoat Stream	Downstream of Tenth Street
	White Marsh Run	Downstream of Rieck Avenue
Shiloh Borough	None	N/A
Stow Creek Township	None	N/A
Upper Deerfield Township	None	N/A
Vineland City	Blackwater Branch	Entire reach
	Cedar Branch	Downstream of Maple Avenue
	Long Branch	Entire reach
	Manantico Creek	Between the Manantico Lake Dam and Italia Avenue
	Manumuskin River	Entire reach
	Maurice River	Downstream of the Willow Grove Lake Dam
	Piney Branch	Downstream of North Valley Avenue
	Scotland Run	Entire reach

<b>Essex County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Belleville Town	Passaic River	Entire reach
	Second River	Entire reach
	Third River	Entire reach
Bloomfield Town	Second River	Entire reach
	Second River Tributary	Entire reach
	Third River	Entire reach
Caldwell Borough	None	N/A
Cedar Grove Township	Peckman River	Entire reach
	Peckman River Tributary	Downstream of a point located 90 feet upstream of State Highway 23
	Taylor Brook	Downstream of Ridge Road
East Orange City	Nishuane Brook	Entire reach
	Second River Tributary	Entire reach



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Essex Fells Borough	Pine Brook	Entire reach
Fairfield Township	Deepavaal Brook	Downstream of Clinton Road
	Green Brook	Entire reach
	Passaic River	Entire reach
	Pine Brook	Entire reach
Glen Ridge Borough	Nishuane Brook	Entire reach
	Second River	Downstream of Hillside Avenue
Irvington Town	Elizabeth River	Entire reach
Livingston Township	Bear Brook	Downstream of a point located 1,800 feet upstream of East Cedar Street
	Canoe Brook	Downstream of a point located 300 feet downstream of Interstate Highway 280
	Canoe Brook Tributary	Entire reach
	Passaic River	Entire reach
	Slough Brook	Downstream of a point located 150 feet upstream of Irving Avenue
Maplewood Township	East Branch Rahway River	Entire reach
Millburn Township	East Branch Rahway River	Entire reach
	Passaic River	Entire reach
	Slough Brook	Entire reach
	Van Winkles Brook	Downstream of Millburn Avenue
	West Branch Rahway River	Between Interstate Highway 78 and Glen Avenue
Montclair Town	Nishuane Brook	Downstream of a point located 100 feet downstream of Draper Terrace
	Second River	Downstream of a point located 100 feet upstream of Park Street
	Third River	Entire reach
Newark City	Passaic River	Entire reach
	Second River	Entire reach
North Caldwell Borough	Green Brook	Downstream of a point located 60 feet upstream of Mountain Avenue
	Passaic River	Entire reach
Nutley Town	Passaic River	Entire reach
	Third River	Entire reach
Orange City	East Branch Rahway River	Downstream of Forest Hill Road
	East Branch Rahway River East Fork	Between a point located 320 feet downstream of Freeman Street and Joyce Street
	Nishuane Brook	Entire reach
	Wigwam Brook	Downstream of Watchung Avenue
Roseland Borough	Canoe Brook	Entire reach
	Foulertons Brook	Downstream of a point located 50 feet upstream of Locust Avenue
	North Branch Foulertons Brook	Downstream of Livingston Avenue

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	Passaic River	Entire reach
South Orange Village Township	East Branch Rahway River	Entire reach
Verona Borough	Peckman River	Entire reach
West Caldwell Borough	Deepavaal Brook	Entire reach
	Green Brook	Entire reach
	Kane Brook	Downstream of Central Avenue
	Passaic River	Entire reach
	Pine Brook	Entire reach
West Orange Town	East Branch Rahway River	Downstream of Forest Hill Road
	Peckman River	Downstream of a point located 80 feet downstream of Prospect Avenue
	West Branch Rahway River	Downstream of a point located 50 feet upstream of Hooper Avenue
	West Branch Rahway River Crystal Lake Branch	Downstream of a point located 1,800 feet upstream of Suburban Drive

<b>Gloucester County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Clayton Borough	None	N/A
Deptford Township	Big Timber Creek	Entire reach
East Greenwich Township	Mantua Creek	Entire reach
	Edwards Run	Downstream of a point located 700 feet upstream of the New Jersey Turnpike
Elk Township	None	N/A
Franklin Township	Little Ease Run	Entire reach
	Scotland Run	Downstream of Washington Avenue
	Still Run	Entire reach
Glassboro Borough	Mantua Creek	Downstream of Fish Pond Road
Greenwich Township	None	N/A
Harrison Township	None	N/A
Logan Township	Raccoon Creek	Entire reach
	Oldmans Creek	Entire reach
Mantua Township	Mantua Creek	Downstream of State Highway 45
Monroe Township	Fourmile Branch	Downstream of a point located 900 feet upstream of an unimproved access road near the Atlantic City Expressway
	Hospitality Branch	Between the Diamond Lake Dam and the Spruce Lake Dam
National Park Borough	Woodbury Creek	Entire reach
Newfield Borough	None	N/A
Paulsboro Borough	Mantua Creek	Entire reach
Pitman Borough	None	N/A
South Harrison Township	None	N/A
Swedesboro Borough	Raccoon Creek	Downstream of a point located 125 feet

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		upstream of County Route 551
Washington Township	Duffield Run	Downstream of a point located 1,350 feet upstream of the Kandle Lake Dam
	Mantua Creek	Between State Highway 47 and Fish Pond Road
	South Branch Big Timber Creek	Downstream of the head of Blackwood Lake, and also between a point located 2,800 feet downstream of Main Street and a point located 50 feet upstream of Redwood Street
Wenonah Borough	None	N/A
West Deptford Township	Mantua Creek	Entire reach
	Woodbury Creek	Entire reach
Westville Borough	None	N/A
Woodbury City	Woodbury Creek	Downstream of Underwood Avenue
Woodbury Heights Borough	None	N/A
Woolwich Township	Raccoon Creek	Downstream of a point located 125 feet upstream of County Route 551

<b>Hudson County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Bayonne City	None	N/A
East Newark Borough	Passaic River	Entire reach
Guttenberg Town	None	N/A
Harrison Town	Passaic River	Entire reach
Hoboken City	None	N/A
Jersey City	Hackensack River	Downstream of Newark Avenue
	Passaic River	Entire reach
Kearny Town	Hackensack River	Downstream of Newark Avenue
	Passaic River	Entire reach
North Bergen Township	Bellmans Creek	Between Susquehanna Western Railroad and confluence with Wolf Creek
Secaucus Town	None	N/A
Union City	None	N/A
Weehawken Township	None	N/A
West New York Town	None	N/A

<b>Hunterdon County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Alexandria Township	Delaware River*	Entire reach
	Harihokake Creek	Downstream of a point located 3,170 feet upstream of County Route 519
Bethlehem Township	Musconetcong River	Entire reach
	Spruce Run	Entire reach
Bloomsbury Borough	Musconetcong River	Entire reach

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Califon Borough	South Branch Raritan River	Entire reach
Clinton Town	South Branch Raritan River	Entire reach
Clinton Township	Beaver Brook	Downstream of a point located 2,700 feet upstream of Interstate Highway 78 Exit Ramp
	South Branch Raritan River	Entire reach
	South Branch Rockaway Creek	Entire reach
Delaware Township	Alexauken Creek	Entire reach
	Brookville Creek	Upstream 3752 feet from the Delaware River
	Delaware River*	Entire reach
	Third Neshanic River	Downstream of County Route 523
	Wickecheoke Creek	Downstream of County Route 604
East Amwell Township	Back Brook	Downstream of State Highway 179
	Neshanic River	Entire reach
	Neshanic River Tributary a	Downstream of a point located 50 feet upstream of Manners Road
	South Fork Third Neshanic River	Downstream of the intersection of Dunkard Church Road and Haines Road
	Stony Brook	Downstream of a point located 50 feet upstream of Linvale Road
Flemington Borough	None	N/A
Franklin Township	Cakepoulin Creek	Between a point located 3650 feet downstream of Quakertown Road and a point located 2700 feet upstream of Quakertown Road
	South Branch Raritan River	Entire reach
	South Branch Raritan River Tributary A	Entire reach
Frenchtown Borough	Delaware River*	Entire reach
	Little Nishisakawick Creek	Entire reach
	Nishisakawick Creek	Entire reach
Glen Gardner Borough	Spruce Run	Entire reach
Hampton Borough	Musconetcong River	Entire reach
High Bridge Borough	South Branch Raritan River	Entire reach
	Willoughby Brook	Entire reach
Holland Township	Delaware River*	Entire reach
	Delaware River Tributary 1	Downstream of Phillips Road
	Milford Creek	Downstream of Spring Garden Road
	Milford Creek Tributary 1	Downstream of Spring Garden Road
	Musconetcong River	Entire reach
Kingwood Township	Delaware River*	Entire reach
	Lokatong Creek	Downstream of a point located 5,908 feet upstream of State Highway 12

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	Lockatong Creek Tributary 1	Downstream of County Route 519
	Lockatong Creek Tributary 2	Downstream of a point located 150 feet upstream of Oak Grove Road
	Muddy Run	Downstream of Fitzer Road
Lambertville City	Alexauken Creek	Entire reach
	Delaware River*	Entire reach
	Swan Creek	Entire reach
	Swan Creek Tributary 1	Entire reach
Lebanon Borough	South Branch Rockaway Creek	Entire reach
	South Branch Rockaway Creek Tributary A	Downstream of U.S. Highway 22
	South Branch Rockaway Creek Tributary B	Downstream of a point located 150 feet upstream of Interstate Highway 78
Lebanon Township	Musconetcong River	Entire reach
	Rocky Run	Upstream 6,185 feet from Spruce Run
	South Branch Raritan River	Entire reach
	Spruce Run	Downstream of Glen Gardner Borough, Hunterdon County
	Willoughby Brook	Downstream of Buffalo Hollow Road
Milford Borough	Delaware River*	Entire reach
	Milford Creek	Entire reach
	Milford Creek Tributary 1	Entire reach
	Quequacommissacong Creek	Entire reach
Raritan Township	Neshanic River	Downstream of the Third Neshanic River
	Third Neshanic River	Entire reach
	South Branch Raritan River	Entire reach
Readington Township	Chambers Brook	Downstream of a point located 400 feet downstream of Pulaski Road
	Holland Brook	Downstream of County Route 523
	Lamington River	Entire reach
	Pleasant Run	Downstream of U.S. Highway 202
	Rockaway Creek	Entire reach
	South Branch Raritan River	Entire reach
	South Branch Raritan River Tributary A	Downstream of a point located 100 feet upstream of Barley Sheaf Road
	South Branch Rockaway Creek	Entire reach
Stockton Borough	Brookville Creek	Entire reach
	Delaware River*	Entire reach
	Wickecheoke Creek	Entire reach
Tewksbury Township	Lamington River	Entire reach
	Lamington River Tributary a	Downstream of a point located 650 feet upstream of Homestead Road
	Rockaway Creek	Downstream of County Route 512
	Rockaway Creek Tributary B	Downstream of a point located 1400 feet

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		upstream of Guinea Hollow Road
	South Branch Raritan River	Entire reach
Union Township	Mulhockaway Creek	Downstream of a point located 420 feet upstream of Gravel Hill Road
	South Branch Raritan River Tributary A	Downstream of Conrail Railroad (7,960 feet upstream of Race Street)
	Spruce Run	Entire reach
	Mulhockaway Creek Tributary B	Entire reach
	Mulhockaway Creek Tributary C	Entire reach
	Mulhockaway Creek Tributary D	Downstream of Interstate Highway 78
	Mulhockaway Creek Tributary E	Downstream of Interstate Highway 78
	Mulhockaway Creek Tributary F	Downstream of a point located 200 feet upstream of Baptist Church Road
	Spruce Run	Entire reach
West Amwell Township	Alexauken Creek	Downstream of State Highway 179
	Delaware River*	Entire reach

<b>Mercer County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
East Windsor Township	Bear Creek	Downstream of a point located 3,800 feet upstream of Dutch Neck Road
	Big Bear Brook	Downstream of State Highway 33
	Millstone River	Entire reach
	Rocky Brook	Entire reach
Ewing Township	Delaware River	Entire reach
	Ewing Creek	Downstream of Scotch Road
	Jacobs Creek	Entire reach
	Shabakunk Creek	Entire reach
	West Branch Shabakunk Creek	Downstream of a point located 2,000 feet upstream of Carlton Avenue
Hamilton Township	Assunpink Creek	Entire reach
	Miry Run	Entire reach
	North Branch Pond Run	Downstream of a point located 100 feet upstream of County Route 533
	Pond Run	Downstream of a point located 1,150 feet upstream of White Horse-Hamilton Square Road
Hightstown Borough	Rocky Brook	Entire reach
Hopewell Borough	Bedens Brook	Downstream of a point located 200 feet downstream of County Route 518
Hopewell Township	Bedens Brook	Entire reach

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	Delaware River	Entire reach
	Ewing Creek	Downstream of Scotch Road
	Jacobs Creek	Downstream of confluence with Ewing Creek
	Stony Brook	Entire reach
Lawrence Township	Assunpink Creek	Entire reach
	Little Shabakunk Creek	Downstream of a point located 200 feet upstream of Driveway within Rider University
	Sand Run	Downstream of a point located 6,000 feet upstream of Interstate Highway 295
	Shabakunk Creek	Entire reach
	Shipetaukin Creek	Downstream of Cold Soil Road
	Stony Brook	Entire reach
	West Branch Shabakunk Creek	Entire reach
Pennington Borough	Stony Brook	Entire reach
Princeton	Cherry Run	Downstream of Cherry Hill Road
	Harrys Brook	Downstream of a point located 50 feet upstream of Snowden Lane
	Harrys Brook Branch 1	Downstream of a point located 100 feet upstream of Bertrand Drive
	Harrys Brook Branch 2	Downstream of Harrison Street
	Harrys Brook Branch 2-1	Downstream of Van Dyke Road
	Harrys Brook Branch 2-2	Downstream of a point located 850 feet upstream of Grover Avenue
	Millstone River	Entire reach
	Mountain Brook	Downstream of a point located 1,000 feet upstream of Stuart Road
	Mountain Brook Branch 2	Downstream of a point located 80 feet downstream of Red Hill Road
	Stony Brook	Entire reach
	Van Horn Brook	Downstream of a point located 240 feet downstream of Arreton Road
	Van Horn Brook Tributary	Downstream of Herrontown Road
Trenton City	Assunpink Creek	Entire reach
Washington Township	Assunpink Creek	Entire reach
	Bear Creek	Downstream of a point located 3,800 feet upstream of Dutch Neck Road
	Hancock Creek	Upstream 3,900 feet from Assunpink Creek
	Miry Run	Downstream of Sharon Road
	New Sharon Branch	Entire reach
West Windsor Township	Assunpink Creek	Entire reach
	Bear Creek	Entire reach
	Big Bear Brook	Entire reach

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	Bridegroom Run	Downstream of a point located 3,250 feet upstream of County Route 535
	Canoe Brook	Downstream of Penn Lyle Road
	Duck Pond Run	Downstream of Penn Lyle Road
	Little Bear Brook	Downstream of Meadow Lane
	Millstone River	Entire reach
	Miry Run	Entire reach
	Stony Brook	Entire reach

<b>Middlesex County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Carteret Borough	None	N/A
Cranbury Township	Cedar Brook	Entire reach
	Cranbury Brook	Entire reach
	Millstone River	Entire reach
	Millstone River Tributary	Downstream of a point located 3,250 feet upstream of County Route 535
	Shallow Brook	Entire reach
Dunellen Borough	Green Brook	Entire reach
East Brunswick Township	Beaverdam Brook	Downstream of Dutch Road
	Bog Brook	Downstream of Dutch Road
	Cedar Brook	Downstream of a point located 7,000 feet upstream of Manalapan Brook
	Ireland Brook	Downstream of a point located 1,700 feet upstream of Fern Road
	Lawrence Brook	Entire reach
	Raritan River	Entire reach
	Sawmill Brook	Downstream of a point located 300 feet downstream of Summerhill Road
	South River	Entire reach
Edison Township	Bound Brook	Downstream of Conrail Railroad
	Raritan River	Entire reach
Helmetta Borough	Manalapan Brook	Entire reach
	Sawmill Brook	Downstream of a point located 700 feet upstream of Washington Street
	Sawmill Brook Tributary	Entire reach
Highland Park Borough	Raritan River	Entire reach
Jamesburg Borough	Barclays Brook	Entire reach
	Manalapan Brook	Entire reach
	Wigwam Brook	Entire reach
Metuchen Borough	Dismal Brook	Downstream of a point located 850 feet upstream of Conrail Railroad near Norcross Avenue
	Mill Brook Tributary	Downstream of Conrail Railroad
Middlesex Borough	Ambrose Brook	Upstream 1,100 feet from Green Brook



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	Bound Brook	Entire reach
	Green Brook	Entire reach
	Raritan River	Entire reach
Milltown Borough	Bog Brook	Downstream of Dutch Road
	Lawrence Brook	Entire reach
	Sucker Brook	Entire reach
Monroe Township	Barclays Brook	Downstream of State Home Road
	Bentleys Brook	Downstream of a point located 2,700 feet upstream of State Highway 33
	Cedar Brook	Downstream of Possum Hollow-Applegarth Road
	Clear Brook	Downstream of a point located 200 feet upstream of Union Valley-Half Acre Road
	Cranbury Brook	Downstream of Longstreet Road
	Cranbury Brook Tributary	Downstream of a point located 75 feet upstream of Union Valley Road
	Manalapan Brook	Entire reach
	Manalapan Brook Tributary	Downstream of Mott Avenue
	Matchaponix Brook	Entire reach
	Millstone River	Entire reach
	Shallow Brook	Downstream of the New Jersey Turnpike
	Wigwam Brook	Upstream 3,750 feet from Jamesburg Borough, Middlesex County
New Brunswick City	Lawrence Brook	Entire reach
	Mile Run	Entire reach
	Mile Run Tributary	Downstream of a point located 500 feet upstream of Triangle Road
	Raritan River	Entire reach
North Brunswick Township	Lawrence Brook	Entire reach
	Mae Brook	Downstream of Adams Lane
	Mile Run	Downstream of State Highway 171
	Oakeys Brook	Entire reach
	Six Mile Run	Downstream of a point located 3,150 feet upstream of Cozzens Lane
	Sucker Brook	Downstream of a point located 850 feet downstream of U.S. Highway 1
	Sucker Brook Tributary	Downstream of U.S. Highway 130
Old Bridge Township	Barclay Brook	Entire reach
	Cheesequake Creek	Downstream of Melvins Creek
	Matchaponix Brook	Entire reach
	Melvins Creek	Along Municipal Border with Sayerville Borough, Middlesex County
	South River	Entire reach
Perth Amboy City	Raritan River	Entire reach

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	Spa Spring Creek	Between a point located 2,350 feet downstream of Amboy Avenue and a point located 1000 feet upstream of Amboy Avenue
Piscataway Township	Bound Brook	Entire reach
	Raritan River	Entire reach
Plainsboro Township	Bee Brook	Downstream of a point located 2,900 feet upstream of Scudders Mills Road Bypass
	Cedar Brook	Entire reach
	Cranbury Brook	Entire reach
	Devils Brook	Entire reach
	Millstone River	Entire reach
	Shallow Brook	Entire reach
Sayreville Borough	Cheesequake Creek	Entire reach
	Crossway Creek	Downstream of Bordentown-Amboy Turnpike
	Melvins Creek	Entire reach
	Raritan River	Entire reach
	South River	Entire reach
	Tennents Brook	Entire reach
South Amboy City	Raritan River	Entire reach
South Brunswick Township	Carters Brook	Entire reach
	Carters Brook Tributary	Entire reach
	Cow Yard Brook	Downstream of a point located 400 feet upstream of Deans Lane
	Devils Brook	Downstream of Hay Press Road
	Great Ditch	Upstream 1,270 feet from Lawrence Brook
	Heathcote Brook	Downstream of a Dam Located 2,450 feet upstream of New Road
	Heathcote Brook Branch	Downstream of U.S. Highway 1
	Heathcote Brook Tributary	Entire reach
	Ireland Brook	Entire reach
	Lawrence Brook	Downstream of Amtrak near Ridge Road
	Lawrence Brook Tributary	Downstream of a point located 400 feet downstream of Deans Lane
	Millstone River	Entire reach
	Oakeys Brook	Downstream of Henderson Road
	Oakeys Brook Tributary	Downstream of a point located 900 feet upstream of Henderson Road
	Shallow Brook	Entire reach
	Six Mile Run Branch	Downstream of a point located 1,700 feet upstream of Stillwell Road
	Six Mile Run Branch Tributary	Downstream of a point located 325 feet upstream of Hawthorne Road

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	Switzgable Brook	Downstream of New Road
	Ten Mile Run	Downstream of a point located 110 feet upstream of Hastings Road
	Ten Mile Run Tributary 1	Downstream of a point located 50 feet upstream of Allstone Road
	Ten Mile Run Tributary 2	Downstream of Springdale Road
South Plainfield Borough	Bound Brook	Entire reach
	Cedar Brook	Entire reach
	Stream 14-14-2-2	Downstream of a point located 550 feet upstream of Grant Avenue
	Stream 14-14-2-2 Tributary	Downstream of a point located 275 feet upstream of Tompkins Avenue
	Stream 14-14-2-3	Entire reach
South River Borough	South River	Entire reach
Spotswood Borough	Cedar Brook	Entire reach
	Cedar Brook Tributary	Downstream of a Culvert Located near Gover Court
	Manalapan Brook	Entire reach
	Matchaponix Brook	Entire reach
	South River	Entire reach
Woodbridge Township	Arthur Kill	Entire reach
	Heards Brook	Downstream of a point located 30 feet upstream of U.S. Highway 9
	Parkway Branch	Downstream of the Garden State Parkway
	Pumpkin Patch Brook	Downstream of Inwood Avenue
	Rahway River	Entire reach
	Raritan River	Entire reach
	South Branch Rahway River	Entire reach
	Spa Spring Creek	Between a point located 2,350 feet downstream of Amboy Avenue and a point located 1,000 feet upstream of Amboy Avenue
	Woodbridge Creek	Downstream of Omar Avenue

<b>Monmouth County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Aberdeen Township	None	N/A
Allenhurst Borough	None	N/A
Allentown Borough	Indian Run	Entire reach
	Doctors Creek	Entire reach
Asbury Park City	None	N/A
Atlantic Highlands Borough	Many Mind Creek	Downstream of State Highway 36
	Wagner Brook	Downstream of a point located 200 feet downstream of State Highway 36
Avon-By-The-Sea Borough	None	N/A

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Belmar Borough	None	N/A
Bradley Beach Borough	None	N/A
Brielle Borough	None	N/A
Colts Neck Township	Barren Neck Creek	Downstream of a point located 1,450 feet upstream of Long Bridge Road
	Big Brook	Downstream of Laurelwood Drive
	Hockhockson Brook	Downstream of Hockhockson Road
	Marl Brook	Upstream 4,950 feet from Mine Brook
	Mine Brook	Downstream of Mercer Road
	Pine Brook	Downstream of Water Street
	Willow Brook	Entire reach
	Yellow Brook	Entire reach
	Yellow Brook Tributary	Downstream of a point located 1,600 feet upstream of Cedar Drive
Deal Borough	Poplar Brook	Entire reach
Eatontown Borough	Parkers Creek	Downstream of Conrail Railroad
	Wampum Brook	Between Fort Monmouth Military Reservation and a point located 500 feet upstream of Maxwell Road
	Whale Pond Brook	Entire reach
Englishtown Borough	Mcgellairds Brook	Entire reach
	Weamaconk Creek	Entire reach
	Weamaconk Creek Tributary	Entire reach
Fair Haven Borough	None	N/A
Farmingdale Borough	None	N/A
Freehold Borough	None	N/A
Freehold Township	Applegates Creek	Downstream of Willow Brook Road
	Burkes Creek	Entire reach
	Debois Creek	Downstream of Center Street
	Debois Creek Tributary	Downstream of Three Brooks Road
	Manasquan River	Downstream of a point located 2,000 feet upstream of Georgia Road
	Manasquan River Tributary A	Downstream of a point located 2,000 feet upstream of County Route 524
	Manasquan River Tributary B	Downstream of Winchester Drive
	Manasquan River Tributary C	Downstream of a point located 2,200 feet upstream of Old Post Road
	Mcgellairds Brook	Downstream of Pond Road
	South Branch Tepehemus Brook	Downstream of Robertsville Road
	Weamaconk Creek	Downstream of Pond Road
	Wemrock Brook	Downstream of State Highway 33 (Business)
	Yellow Brook	Downstream of Randolph Road
	Yellow Brook Tributary	Downstream of Paulette Drive

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Hazlet Township	None	N/A
Highlands Borough	None	N/A
Holmdel Township	Willow Brook	Downstream of a point located 100 feet upstream of Schanck Road
Howell Township	Bannen Meadow Brook	Downstream of a point located 650 feet upstream of Fort Plains Road
	Bills Brook	Downstream of County Route 524
	Gravelly Run	Downstream of a point located 500 feet upstream of Western Drive
	Ground Hog Brook	Downstream of a point located 300 feet downstream of Locust Avenue
	Haystack Brook	Downstream of a point located 4,300 feet upstream of Maxim-Southard Road
	Long Brook	Downstream of State Highway 33 (Business)
	Manasquan River	Upstream of Southard Road
	North Branch Metedeconk River	Entire reach
	Polipod Brook	Upstream 825 feet from Lake Louise
Interlaken Borough	None	N/A
Keansburg Borough	None	N/A
Keyport Borough	None	N/A
Little Silver Borough	Little Silver Creek	Entire reach
Lock Arbour Village	None	N/A
Long Branch City	Whale Pond Brook	Entire reach
Manalapan Township	Manalapan Brook	Entire reach
	Matchaponix Brook	Entire reach
	Mcgellairds Brook	Entire reach
	Milford Brook	Entire reach
	Pine Brook	Entire reach
	South Branch Tepehemus Brook	Entire reach
	Tepehemus Brook	Entire reach
	Weamaconk Creek	Entire reach
Manasquan Borough	None	N/A
Marlboro Township	Barclay Brook	Downstream of U.S. Highway 9
	Milford Brook	Downstream of a point located 50 feet downstream of County Route 520
	Pine Brook	Downstream of U.S. Highway 9
	South Branch Tepehemus Brook	Downstream of Robertsville Road
	Tepehemus Brook	Downstream of Robertsville Road
	Willow Brook	Downstream of a point located 100 feet upstream of Schanck Road
Matawan Borough	Gravelly Run	Entire reach

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	Matawan Creek	Between the Garden State Parkway and County Route 516
Middletown Township	None	N/A
Millstone Township	Manalapan Brook	Downstream of County Route 524
	Millstone River	Downstream of Sweetmans Lane
	Rocky Brook	Between a point located 2,240 feet downstream of Perrineville Road and a point located 1,800 feet upstream of Sweetmans Lane
	Toms River	Downstream of a point located 1,600 feet upstream of Squan Road
Monmouth Beach Borough	None	N/A
Neptune Township	Jumping Brook	Entire reach
	Shark River	Entire reach
Neptune City Borough	None	N/A
Ocean Township	Hog Swamp Brook	Between a point located 100 feet downstream of State Highway 71 and a point located 1600 feet upstream of State Highway 18
	Poplar Brook	Downstream of a point located 300 feet upstream of Poplar Road
Oceanport Borough	Turtle Mill Brook	Downstream of State Highway 71
Red Bank Borough	None	N/A
Roosevelt Borough	None	N/A
Rumson Borough	None	N/A
Sea Bright Borough	None	N/A
Sea Girt Borough	None	N/A
Shrewsbury Borough	Parkers Creek	Entire reach
	North Branch Parkers Creek	Downstream of State Highway 35
Shrewsbury Township	None	N/A
South Belmar Borough	None	N/A
Spring Lake Borough	None	N/A
Spring Lake Heights Borough	Wreck Pond Brook	Entire reach
Tinton Falls Borough	Jumping Brook	Downstream of a point located 2,600 feet upstream of Asbury Avenue
	Parkers Creek	Downstream of Conrail Railroad
	Pine Brook	Downstream of Water Street
	Shark River	Downstream of Shafto Road
	Swimming River	Upstream of County Route 520
Union Beach Borough	None	N/A
Upper Freehold Township	New Sharon Branch	Downstream of a point located 3,450 feet upstream of Egglinton Road
	New Sharon Branch North Tributary	Downstream of Egglinton Road

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Wall Township	Hannabrand Brook	Downstream of State Highway 34
	Shark River	Downstream of Shafto Road
	Shark River Tributary E	Downstream of a point located 4,844 feet upstream of State Highway 34
	Wreck Pond Brook	Downstream of a point located 4,700 feet upstream of the Garden State Parkway
West Long Branch Borough	Turtle Mill Brook	Downstream of State Highway 71
	Whale Pond Brook	Entire reach

<b>Morris County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Boonton Town	Rockaway River	Entire reach
Boonton Township	Rockaway River	Entire reach
Butler Borough	Pequannock River	Entire reach
Chatham Borough	Passaic River	Entire reach
Chatham Township	Passaic River	Entire reach
Chester Borough	None	N/A
Chester Township	Burnett Brook	Downstream of a point located 60 feet upstream of South Road
	Gladstone Brook	Downstream of a point located 4,845 feet upstream of the municipal boundary with Peapack-Gladstone Township, Somerset County
	Indian Brook	Upstream 5,840 feet from Burnett Brook
	Lamington River	Upstream of Black River Wildlife Management Area
	Peapack Brook	Downstream of a Private Driveway Located 6070 feet upstream of the municipal boundary with Peapack-Gladstone Township, Somerset County
Denville Township	Beaver Brook	Entire reach
	Den Brook	Entire reach
	Rockaway River	Entire reach
	Rockaway River Tributary 1	Downstream of the head of Rock Ridge Lake
Dover Town	Jackson Brook	Entire reach
	Mckeels Brook	Entire reach
	Rockaway River	Entire reach
East Hanover Township	Black Brook	Entire reach
	Pinch Brook	Entire reach
	Rockaway River	Entire reach
	Whippany River	Entire reach
Florham Park Borough	Passaic River	Entire reach
	Spring Garden Brook	Entire reach
Hanover Township	Black Brook	Entire reach

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	Malapardis Brook	Downstream of South Jefferson Road
	Whippany River	Downstream of Interstate Highway 287 (near Hanover Avenue)
Harding Township	Great Brook	Upstream of Woodland Road
	Great Brook Tributary	Downstream of a point located 69 feet upstream of James Street
	Passaic River	Entire reach
	Primrose Brook	Between Great Swamp National Wildlife Refuge and a point located 1,821 feet upstream of Interstate Highway 287
	Silver Brook	Downstream of Interstate Highway 287
Jefferson Township	Lake Hopatcong	Entire reach
	Lake Hopatcong Tributary 2	Downstream of a point located 25 feet upstream of Lorettacong Drive
	Rockaway River	Downstream of a point located 7,500 feet upstream of Weldon Road
	Rockaway River Tributary 5	Downstream of a point located 1,700 feet upstream of Cozy Lake Dam
	Rockaway River Tributary 5-1	Downstream of the head of Moospac Lake
	Rockaway River Tributary 6	Downstream of a point located 100 feet upstream of Milton Road
	Rockaway River Tributary 7	Downstream of Weldon Road
	Weldon Brook	Downstream of East Shawnee Trail
	Pequannock River	Downstream of Oak Ridge Reservoir
Kinnelon Borough	Pequannock River	Downstream of a point located 600 feet upstream of the State Highway 23 U-Turn Across the River
Lincoln Park Borough	Beaver Dam Brook	Entire reach
	East Ditch	Entire reach
	Passaic River	Entire reach
	Pompton River	Entire reach
	West Ditch	Entire reach
Long Hill Township	Passaic River	Entire reach
Madison Borough	Spring Garden Brook	Downstream of a point located 400 feet upstream of Cross Street
Mendham Borough	None	N/A
Mendham Township	Burnett Brook	Entire reach
	Dawsons Brook	Entire reach
	Harmony Brook	Downstream of the Clyde Potts Reservoir Dam
	North Branch Raritan River	Entire reach
	Passaic River	Downstream of a point located 1,300 feet upstream of Tempe Wick Road
	Whippany River	Downstream of Harmony Brook



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Mine Hill Township	Lamington River	Downstream of the head of a lake located 5,100 feet upstream of State Highway 10
Montville Township	Beaver Dam Brook	Downstream of Waughaw Road
	Crooked Brook	Downstream of Lake Valhalla
	Crooked Brook Tributary	Entire reach
	Hatfield Creek	Downstream of a point located 800 feet upstream of Brittany Road
	Passaic River	Entire reach
	Rockaway River	Entire reach
	Stony Brook	Entire reach
Morris Township	Great Brook	Entire reach
	Watnong Brook	Entire reach
	Whippany River	Entire reach
Morris Plains Borough	Jaquis Brook	Entire reach
	Watnong Brook	Entire reach
Morristown Town	Great Brook	Downstream of a point located 70 feet upstream of James Street
	Whippany River	Entire reach
Mountain Lakes Borough	None	N/A
Mount Arlington Borough	None	N/A
Mount Olive Township	Budd Lake Tributary	Downstream of U.S. Highway 46
	Conlon Pond Brook	Downstream of a point located 2,600 feet upstream of the Northerly U.S. Highway 206 Crossing
	Drakes Brook	Entire reach
	Musconetcong River	Entire reach
	South Branch Raritan River	Downstream of Budd Lake
	Wills Brook	Downstream of a point located 4,150 feet upstream of Interstate Highway 80
Netcong Borough	Musconetcong River	Entire reach
Parsippany-Troy Hills Township	Eastmans Brook	Downstream of the head of Lake Parsippany
	Rockaway River	Entire reach
	Troy Brook	Downstream of a point located 900 feet upstream of Ulysses Street
	Watnong Brook	Downstream of Powder Mill Pond
	West Brook	Downstream of a point located 1,250 feet upstream of Preston Road
	Whippany River	Entire reach
Pequannock Township	East Ditch	Downstream of Mountain Avenue
	Pequannock River	Entire reach
	Pompton River	Entire reach
	Ramapo River	Entire reach
	West Ditch	Entire reach
Randolph Township	Lamington River	Entire reach

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	Rockaway River	Entire reach
Riverdale Borough	Pequannock River	Entire reach
Rockaway Borough	Beaver Brook	Entire reach
	Fox Brook	Entire reach
	Rockaway River	Entire reach
Rockaway Township	Beaver Brook	Downstream of Old Beach Glen Road
	Green Pond Brook	Downstream of An Interstate Highway 80 Ramp Located 2,025 feet upstream of State Highway 15
	Rockaway River	Entire reach
Roxbury Township	Drakes Brook	Downstream of Canal Street
	Lake Hopatcong	Entire reach
	Lamington River	Downstream of the head of a lake located 5,100 feet upstream of State Highway 10
	Musconetcong River	Downstream of Hopatcong State Park
	Rockaway River	Entire reach
	Succasunna Brook	Downstream of Eyland Avenue
Victory Gardens Borough	None	N/A
Washington Township	Drakes Brook	Entire reach
	Electric Brook	Downstream of the Lake George Dam
	Musconetcong River	Entire reach
	Musconetcong River Tributary B	Downstream of State Highway 24
	South Branch Raritan River	Entire reach
	Stephensburg Brook	Downstream of a point located 1,960 feet upstream of Stephensburg Road
	Stony Brook	Downstream of Fairview Avenue
	Tanners Brook	Downstream of Old Farmers Road
Wharton Borough	Rockaway River	Entire reach
	Green Pond Brook	Downstream of an Interstate Highway 80 ramp located 2,025 feet upstream of State Highway 15

<b>Ocean County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Barneget Township	None	N/A
Barneget Light Borough	None	N/A
Bay head Borough	None	N/A
Beach Haven Borough	None	N/A
Beachwood Borough	Jakes Branch	Along municipal boundary with South Toms River Borough, Ocean County, downstream of a point located 2,000 feet upstream of Double Trouble Road
Berkeley Township	None	N/A
Brick Township	None	N/A

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Dover Township	Toms River	Along municipal boundary with Manchester Township, Ocean County, and also downstream of South Main Street
Eagleswood Township	None	N/A
Harvey Cedars Borough	None	N/A
Island Heights Borough	None	N/A
Jackson Township	North Branch Metedeconk River	Along municipal boundary with Howell Township, Monmouth County
	Toms River Tributary	Upstream 7,840 feet from County Route 571
Lacey Township	None	N/A
Lakehurst Borough	Manapaqua Brook	Downstream of a point located 1,500 feet upstream of County Route 547
	Union Branch	Entire reach Including Horicon Lake
Lakewood Township	North Branch Metedeconk River	Along municipal boundary with Howell Township, Monmouth County
Lavallette Borough	None	N/A
Little Egg Harbor Township	None	N/A
Long Beach Township	None	N/A
Manchester Township	Davenport Branch	Downstream of Lacey Road
	Manapaqua Brook	Downstream of a point located 1,500 feet upstream of County Route 547
	Ridgeway Branch	Downstream of County Route 547
	Ridgeway Branch Tributary	Downstream of Wilbur Avenue
	Toms River	Along municipal boundary with Dover Township, Ocean County
	Union Branch	Downstream of State Highway 70 including Horicon Lake
Mantoloking Borough	None	N/A
Ocean Township	None	N/A
Ocean Gate Borough	Toms River	Entire reach
	Toms River Tributary	Downstream of a point located 200 feet upstream of West Point Pleasant Avenue
Pine Beach Borough	None	N/A
Plumsted Township	Crosswicks Creek	Entire reach
	Stonyford Brook	Downstream of Moorehouse Road
Point Pleasant Borough	None	N/A
Point Pleasant Beach Borough	None	N/A
Seaside Heights Borough	None	N/A
Seaside Park Borough	None	N/A
Ship Bottom Borough	None	N/A
South Toms River Borough	Jakes Branch	Downstream of a point located 2,000 feet upstream of Double Trouble Road

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	Toms River	Downstream of South Main Street
Stafford Township	None	N/A
Surf City Borough	None	N/A
Tuckerton Borough	None	N/A

<b>Passaic County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Bloomington Borough	Cold Spring Brook	Downstream of a point located 600 feet upstream of Glenwild Avenue
	Oakwood Lake Brook	Downstream of a point located 550 feet upstream of Woodward Avenue
	Pequannock River	Entire reach
	Posts Brook Tributary 1	Downstream of Glen Wild Lake
	Posts Brook Tributary 2	Downstream of Lake Ioscoe
	Van Dam Brook	Downstream of a point located 700 feet upstream of Knolls Road
	Van Dam Brook Tributary	Downstream of a point located 900 feet upstream of Tice Street
Clifton City	Passaic River	Entire reach
	Plog Brook	Downstream of a point located 150 feet downstream of Van Houten Avenue near Clifton Avenue
	Third River	Entire reach
	Wabash Brook	Downstream of a point located 150 feet downstream of Louise Street
	Weasel Brook	Downstream of a point located 150 feet upstream of Rutgers Place
	Weasel Brook Branch	Downstream of Garden State Parkway
	Weasel Brook Branch 3-5-2	Downstream of Athenia Avenue
Haledon Borough	Molly Anns Brook	Entire reach
Hawthorne Borough	Deep Brook	Entire reach
	Goffle Brook	Entire reach
	Passaic River	Entire reach
Little Falls Township	Great Notch Brook	Downstream of the municipal boundary with West Paterson Borough, Passaic County, near the Intersection of U.S. Highway 46 and Lower Notch Road
	Peckman River	Entire reach
North Haledon Borough	Buttermilk Falls Brook	Downstream of a point located 1,000 feet upstream of Belmont Avenue
	Glen Place Brook	Entire reach
	Molly Anns Brook	Entire reach
	Molly Anns Brook Tributary 3	Downstream of a point located near the intersection of Walray Avenue and Manor Road

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	Molly Anns Brook Tributary 4	Downstream of a point located 130 feet downstream of Gemeinhardt Place
	Molly Anns Brook Tributary 6	Downstream of Pleasant View Drive
	Squaw Brook	Downstream of a point located 950 feet upstream of Squaw Brook Road
Passaic City	Macdonald Brook	Downstream of a point located 300 feet downstream of Broadway
	Passaic River	Entire reach
	Weasel Brook	Entire reach
Paterson City	Molly Anns Brook	Entire reach
	Passaic River	Entire reach
	Slippery Rock Brook	Entire reach
Pompton Lakes Borough	Pequannock River	Entire reach
	Posts Brook	Downstream of the Lower Twin Lake Dam
	Ramapo River	Entire reach
	Wanaque River	Downstream of the Lake Inez Dam
Prospect Park Borough	Molly Anns Brook	Entire reach
	Passaic River	Entire reach
Ringwood Borough	Burnt Meadow Brook	Entire reach
	Burnt Meadow Brook Branch 5	Downstream of a point located 600 feet upstream of Woodside Avenue
	Cupsaw Brook	Downstream of a point located 50 feet upstream of Kraft Place
	Cupsaw Brook Branch 1	Downstream of a point located 200 feet downstream of Kendall Drive
	Cupsaw Brook Branch 2	Downstream of a point located 50 feet upstream of Skylands Road
	Cupsaw Brook Branch 3	Downstream of a point located 50 feet upstream of Skylands Road
	Cupsaw Brook Branch 4	Downstream of a point located 850 feet upstream of Kraft Place
	Erskine Brook	Downstream of the head of Upper Erskine Lake
	High Mountain Brook	Downstream of a point located 5,400 feet upstream of the James Drive cul-de-sac
	Meadow Brook	Downstream of the head of Skyline Lakes
	Meadow Brook Branch 2	Downstream of the head of Hidden Valley Lake
	Ringwood Creek	Downstream of a point located 100 feet upstream of Farm Road
	Ringwood Creek Branch 1	Downstream of a point located 35 feet upstream of Sloatsburg Road
	Stephens Lake Brook	Entire reach
	Stephens Lake Brook Branch 1	Upstream 1,420 from Conklintown Road

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	Stephens Lake Brook Branch 2	Downstream of a point located 2,000 feet upstream of Poplar Driver
	Wanaque River	Entire reach
	West Brook	Entire reach
Totowa Borough	Naachtpunkt Brook	Downstream of Totowa Road
	Passaic River	Entire reach
	Preakness Brook (Signac Brook)	Entire reach
Wanaque Borough	Meadow Brook	Entire reach
	Posts Brook	Entire reach (matches with Posts Brook Tributary 2 in Bloomindale Borough, Passaic County)
	Posts Brook Branch 1	Entire reach (matches with Posts Brook Tributary 1 in Bloomindale Borough, Passaic County)
	Posts Brook Branch 2	Downstream of a point located 1,100 feet upstream of Dupont Avenue
	Stephens Lake Brook	Downstream of a point located 3,380 feet upstream of the Stephens Lake Dam
	Stephens Lake Brook Branch 2	Entire reach
	Wanaque River	Entire reach
Wayne Township	Naachtpunkt Brook	Downstream of Totowa Road
	Packanack Brook	Downstream of a point located 300 feet upstream of Ratzer Road
	Passaic River	Entire reach
	Pequannock River	Entire reach
	Pompton River	Entire reach
	Preakness Brook (Signac Brook)	Downstream of County Route 504
	Ramapo River	Entire reach
West Milford Township	Belcher Creek	Downstream of a point located 20 feet upstream of Union Valley Road
	Belcher Creek Branch 1	Downstream of a point located 25 feet upstream of Union Valley Road
	Belcher Creek Branch 2	Downstream of a point located 7,750 feet upstream of the Reflection Lake Dam
	Cooley Brook	Downstream of a point located 1,925 feet upstream of Warwick Turnpike
	Green Brook	Downstream of a point located 1,300 feet upstream of Union Valley Road
	Greenwood Lake	Entire reach
	Longhouse Brook	Downstream of the head of Bearfort Waters
	Morsetown Brook	Downstream of the head of Carpi Lake
	Pequannock River	Downstream of Oak Ridge Reservoir

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		along Jefferson Township, Morris County, and also downstream of a point located 600 feet upstream of the State Highway 23 U-Turn across the river
	Posts Brook	Downstream of the head of Algonquin Waters
	Posts Brook Branch 3	Downstream of a point located 2,800 feet upstream of Weaver Road
	Posts Brook Branch 4	Downstream of a point located 440 feet upstream of Weaver Road
	West Brook	Between the Lower Mount Glen Lake Dam and the head of Indian Trail Lake By Pleasant View Drive
	West Brook Branch 7	Downstream of a point located 1,840 feet upstream of Lindys Road
West Paterson Borough	Dowling Brook	Downstream of a point located 90 feet upstream of Lackawanna Avenue
	Great Notch Brook	Entire reach
	Passaic River	Entire reach
	Pearl Brook	Downstream of a point located 940 feet upstream of Casson Lane
	Peckman River	Entire reach
	Slippery Rock Brook	Downstream of a point located 1,200 feet upstream of Wealelsdrift Road

<b>Salem County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Alloway Township	None	N/A
Carneys Point Township	None	N/A
Elmer Borough	None	N/A
Elsinboro Township	Salem River	Entire reach
	Alloways Creek	Entire reach
Lower Alloways Creek Township	Alloways Creek	Downstream of Salem-Hancocks Bridge Road
Mannington Township	Fenwick Creek	Downstream of Keasbey Creek
	Keasbey Creek	Between Fenwick Creek and a point located 50 feet upstream of Quaker Neck Road
Oldmans Township	Oldmans Creek	Downstream of the municipal boundary of Logan Township and Woolwich Township, Gloucester County
Penns Grove Borough	None	N/A
Pennsville Township	Salem River	Along municipal boundary with Both Elsinboro Township and Salem City, Salem County

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Pilesgrove Township	None	N/A
Pittsgrove Township	Maurice River	Downstream of the Willow Grove Lake Dam
Quinton Township	None	N/A
Salem City	Fenwick Creek	Entire reach
	Keasbey Creek	Between Fenwick Creek and a point located 50 feet upstream of Quaker Neck Road
	Salem River	Entire reach
Upper Pittsgrove Township	None	N/A
Woodstown Borough	None	N/A

<b>Somerset County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Bedminster Township	Chambers Brook	Downstream of the head of Echo Lake
	Clucas Brook	Downstream of County Route 523
	Herzog Brook	Downstream of County Route 512
	Hoopstick Brook	Downstream of County Route 523
	Lamington River	Entire reach
	Middle Brook	Downstream of a point located 50 feet upstream of Spook Hollow Road
	North Branch Raritan River	Entire reach
Bernards Township	Peapack Brook	Entire reach
	Dead River	Downstream of a point located 300 feet downstream of Interstate Highway 287
	Harrison Brook	Downstream of a point located 80 feet upstream of South Alward Avenue
	Harrison Brook Branch 2	Downstream of a point located 250 feet downstream of Debra Lane
Bernardsville Borough	Passaic River	Entire reach
	Indian Grave Brook	Entire reach
	Indian Grave Brook Tributary K	Downstream of a point located 100 feet downstream of Washington Corner Road
	North Branch Raritan River	Entire reach
Bound Brook Borough	Passaic River	Entire reach
	Green Brook	Entire reach
Branchburg Township	Raritan River	Entire reach
	Holland Brook	Entire reach
	Lamington River	Entire reach
	North Branch Raritan River	Entire reach
Bridgewater Township	South Branch Raritan River	Entire reach
	Chambers Brook	Downstream of the head of Echo Lake
	Green Brook	Entire reach
	North Branch Raritan River	Entire reach
	Raritan River	Entire reach



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Far Hills Borough	North Branch Raritan River	Entire reach
Franklin Township	Mile Run	Entire reach
	Millstone River	Entire reach
	Raritan River	Entire reach
Green Brook Township	Green Brook	Entire reach
	Stony Brook	Entire reach
Hillsborough Township	Millstone River	Entire reach
	Raritan River	Entire reach
	South Branch Raritan River	Entire reach
Manville Borough	Millstone River	Entire reach
	Raritan River	Entire reach
Millstone Borough	Millstone River	Entire reach
Montgomery Township	Bedens Brook	Entire reach
	Cruser Brook	Downstream of Belle Mead-Blawenburg Road
	Millstone River	Entire reach
	Pike Run	Entire reach
	Rock Brook	Downstream of Camp Meeting Avenue
North Plainfield Borough	Van Horn Brook	Entire reach
	Green Brook	Entire reach
Peapack and Gladstone Borough	Stoney Brook	Entire reach
	North Branch Raritan River	Entire reach
Rocky Hill Borough	Raritan River	Entire reach
	Millstone River	Entire reach
Somerville Borough	Van Horn Brook	Entire reach
	Macs Brook	Entire reach
South Bound Brook Borough	Peters Brook	Entire reach
	Raritan River	Entire reach
	Ross Brook	Downstream of U.S. Highway 22
Warren Township	Raritan River	Entire reach
	Corys Brook	Downstream of a point located 1,250 feet upstream of Powder Horn Drive
	Dead River	Entire reach
Watchung Borough	Passaic River	Entire reach
	Green Brook	Downstream of a point located 1,660 feet upstream of Apple Tree Road
	Stony Brook	Entire reach
	Stony Brook East Branch	Downstream of a point located 2,240 feet upstream of Valley Drive
	Stony Brook West Branch	Entire reach
	Stony Brook West Branch Tributary	Downstream of a point located 360 feet upstream of Carrar Drive

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<b>Sussex County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Andover Borough	Kymers Brook	Downstream of U.S. Highway 206
Andover Township	Pequest River	Downstream of U.S. Highway 206
	Kymers Brook	Entire reach
	Paulins Kill	Entire reach
Branchville Borough	Culvers Creek	Entire reach
	Dry Brook	Downstream of a point located 700 feet upstream of Maple Avenue
Byram Township	Lubbers Run	Entire reach
	Musconetcong River	Downstream of Hopatcong State Park
Frankford Township	Culvers Creek	Downstream of U.S. Highway 206
	Dry Brook	Entire reach
	Paulins Kill	Entire reach
Franklin Borough	None	N/A
Fredon Township	Pequest River	Section of River adjacent to Andover Township near Springdale Road
Green Township	Kymers Brook	Entire reach
	Pequest River	Entire reach
Hamburg Borough	None	N/A
Hampton Township	Paulins Kill	Entire reach
Hardyston Township	None	N/A
Hopatcong Borough	Lubbers Run	Downstream of a point located 3,500 feet upstream of County Route 605
Lafayette Township	Lafayette Township Tributary	Downstream of a point located 700 feet upstream of Little Road
	Paulins Kill	Entire reach
	Sparta Junction Tributary	Entire reach
Montague Township	Delaware River*	Entire reach
Newton Town	Moores Brook	Downstream of a point located 1,350 feet upstream of Lake Avenue
	Paulins Kill	Upstream 100 feet from the municipal boundary with Hampton Township and Andover Township, Sussex County
Ogdensburg Borough	None	N/A
Sandyston Township	Delaware River*	Entire reach
Sparta Township	Sparta Junction Tributary	Downstream of Layton Road
Stanhope Borough	Musconetcong River	Entire reach
Stillwater Township	Paulins Kill	Upstream of County Route 614
Sussex Borough	None	N/A
Vernon Township	None	N/A
Walpack Township	None	N/A
Wantage Township	Delaware River*	Entire reach

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<b>Union County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Berkeley Heights Township	Blue Brook	Along municipal boundary with Scotch Plains Township
	Green Brook	Downstream of a point located 1,660 feet upstream of Apple Tree Road
	Passaic River	Entire reach
Clark Township	Pumpkin Patch Brook	Entire reach
	Rahway River	Entire reach
	Robinsons Brook	Entire reach
Cranford Township	College Branch	Downstream of Springfield Avenue
	Gallows Hill Road Brook	Downstream of the Brookside Detention Basin
	Orchard Street Branch	Entire reach
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Adjacent to dike along Rahway River
Elizabeth City	None	N/A
Fanwood Borough	None	N/A
Garwood Borough	None	N/A
Hillside Township	Elizabeth River	Entire reach
Kenilworth Borough	Black Brook	Between the Rahway River Drainage Ditch and a point located 750 feet upstream of Springfield Road
	Branch 10-24	Downstream of South 31st Street
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Between Rahway River and Black Brook
	Stream 10-30	Between the Rahway River Drainage Ditch and a point located 30 feet upstream of Wilshire Drive
	Stream 10-30-1	Between the Rahway River Drainage Ditch and 14th Street
	West Brook	Entire reach
Linden City	Rahway River	Along municipal boundary with Woodbridge Township, Middlesex County
Mountainside Borough	Nomahegan Brook	Downstream of U.S. Highway 22
New Providence Borough	Passaic River	Entire reach
	Salt Brook	Downstream of a Railroad Located 1,200 feet upstream of Maple Street
	West Branch Salt Brook	Downstream of a point located 300 feet upstream of Morris Avenue
Plainfield City	Green Brook	Entire reach
	Cedar Brook	Downstream of Stelle Avenue

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Rahway City	Orchard Creek	Entire reach
	Rahway River	Entire reach
	Robinsons Branch	Entire reach
	South Branch Rahway River	Entire reach
Roselle Borough	West Brook	Upstream of Raritan Road
Roselle Park Borough	None	N/A
Scotch Plains Township	Ash Brook Swamp	Entire reach
	Blue Brook	Entire reach
	Branch 22	Downstream of a point located 1,500 feet upstream of Sleepy Hollow Lane
	Green Brook	Entire reach
	Robinsons Branch	Entire reach
	Winding Brook	Downstream of Elizabeth Avenue
Springfield Township	Bryant Brook	Between Van Winkles Brook and Bryant Brook Branch at Interstate Highway 78
	Bryant Brook Branch	Between Van Winkles Brook and Bryant Brook at Interstate Highway 78
	Rahway River	Entire reach
	Rahway River Drainage Ditch	Adjacent to dike along Rahway River
	Van Winkles Brook	Entire reach
Summit City	Passaic River	Entire reach
Union Township	Black Brook	Entire reach
	East Branch Rahway River	Entire reach
	Elizabeth River	Entire reach
	Rahway River	Entire reach
Westfield Town	Nomahegan Brook	Entire reach
	Rahway River Tributary	Downstream of a point located 720 feet upstream of Gallows Hill Road
	Robinsons Branch 15	Downstream of a point located 180 feet downstream of Shackamaxon Drive
	Robinsons Branch 15-1	Downstream of a point located 130 feet downstream of Rahway Avenue
	Robinsons Branch 15-2	Downstream of a point located 500 feet downstream of Grove Street
Winfield Township	Rahway River	Entire reach

<b>Warren County</b>		
<b>Municipality</b>	<b>Name of Studied Water</b>	<b>Section Studied</b>
Allamuchy Township	Musconetcong River	Entire reach
	Pequest River	Entire reach
Alpha Borough	None	N/A
Belvidere Town	Delaware River*	Entire reach
	Pequest River	Entire reach
Blairstown Township	Paulins Kill	Entire reach
Franklin Township	Mill Brook	Downstream of a point located 2,050 feet

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		upstream of State Highway 57
	Montana Brook	Downstream of a point located 100 feet upstream of State Highway 57
	Musconetcong River	Entire reach
	Musconetcong River Tributary A	Downstream of a point located 1,400 feet upstream of Asbury Road
	Pohatcong Creek	Entire reach
	Sigler Brook	Downstream of Bloomsbury Road
Frelinghuysen Township	None	N/A
Greenwich Township	Lopatcong Creek	Entire reach
	Merrill Creek (Including Left Channel)	Entire reach
	Musconetcong River	Entire reach
	Pohatcong Creek	Entire reach
Hackettstown Town	Hackettstown Brook	Downstream of a private road located 400 feet upstream of Franklin Street
	Musconetcong River	Entire reach
	Trout Brook	Entire reach
Hardwick Township	Delaware River*	Entire reach
Harmony Township	Buckhorn Creek	Entire reach
	Buckhorn Creek Tributary 1	Downstream of a point located 1,700 feet upstream of County Route 519
	Delaware River*	Entire reach
	Lopatcong Creek	Downstream of a point located 250 feet upstream of Allen Mills Road
Hope Township	Beaver Brook	Downstream of Interstate Highway 80
	Honey Run	Downstream of a point located Swayze Mill Road
Independence Township	Pequest River	Upstream of a point located 100 feet downstream of U.S. Highway 46
Knowlton Township	Delaware River*	Entire reach
Liberty Township	None	N/A
Lopatcong Township	Delaware River*	Entire reach
	Dry Run	Downstream of a point located 650 feet upstream of Powder Horn Road
	Lopatcong Creek	Entire reach
Mansfield Township	Hances Brook	Downstream of Highland Avenue
	Musconetcong River	Entire reach
	Pohatcong Creek	Downstream of Janes Chapel Road
	Trout Brook	Entire reach
Oxford Township	None	N/A
Phillipsburg Town	Delaware River*	Entire reach
	Lopatcong Creek	Entire reach
Pohatcong Township	Delaware River*	Entire reach
	Lopatcong Creek	Entire reach

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	Musconetcong River	Entire reach
	Pohatcong Creek	Entire reach
	Pohatcong Creek Tributary 1	Downstream of a point located 800 feet upstream of Conrail Railroad
Washington Borough	Shabbecong Creek	Entire reach
Washington Township	Musconetcong River	Entire reach
	Musconetcong River Tributary B	Downstream of State Highway 57
	Pohatcong Creek	Entire reach
	Shabbecong Creek	Downstream of Washington Borough, Warren County
White Township	Beaver Brook	Entire reach
	Delaware River*	Entire reach
	Pequest River	Entire reach