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N.J.A.C. 7:7A
FRESHWATER WETLANDS PROTECTION ACT RULES

Statutory authority:
N.J.S.A. 13:9B-1 et seq.

Date last amended:
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For regulatory history and effective dates, see the New Jersey Administrative Code.

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“Special aquatic site” means a site described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.), except freshwater wetlands which, for the purposes of this chapter, shall not be considered special aquatic sites. In general, special aquatic sites are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted functions and values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. As of September 4, 2001, the following special aquatic sites are described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.): sanctuaries and refuges, wetlands (note: while freshwater wetlands are excluded from the definition of a special aquatic site for purposes of this chapter, other wetlands, such as most coastal wetlands, would be considered special aquatic sites), mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

“State Forester” means the chief forester employed by the Department.

→ “State open waters” means all waters of the State as defined in this section, including waters of the United States as defined in this section, but excluding ground water as defined at N.J.A.C. 7:14A, and excluding freshwater wetlands as defined in this section. The following waters will generally not be considered State open waters for the purposes of this chapter. However, the Department shall determine, on a case-by-case basis, if a particular watercourse or water body listed below is a State open water:

1. Non-tidal drainage and irrigation ditches excavated on dry land;
2. Artificially irrigated areas which would revert to upland if the irrigation ceased;
3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;
5. Water-filled depressions 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";
6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Federal act (other than cooling ponds);
7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices; and
8. Stormwater management facilities created in uplands.

“Stormwater management facility” means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with applicable local, county and State regulations. These facilities may include retention basins, detention basins, infiltration structures, grassed swales, rip-rap channels and/or stormwater outfalls.

“Swale” means a linear topographic depression, either naturally occurring or of human construction, which meets all of the following criteria:

1. It is surrounded by uplands except where runoff flows out of it.

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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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(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:

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,

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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.

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.

ie drainage ditch

(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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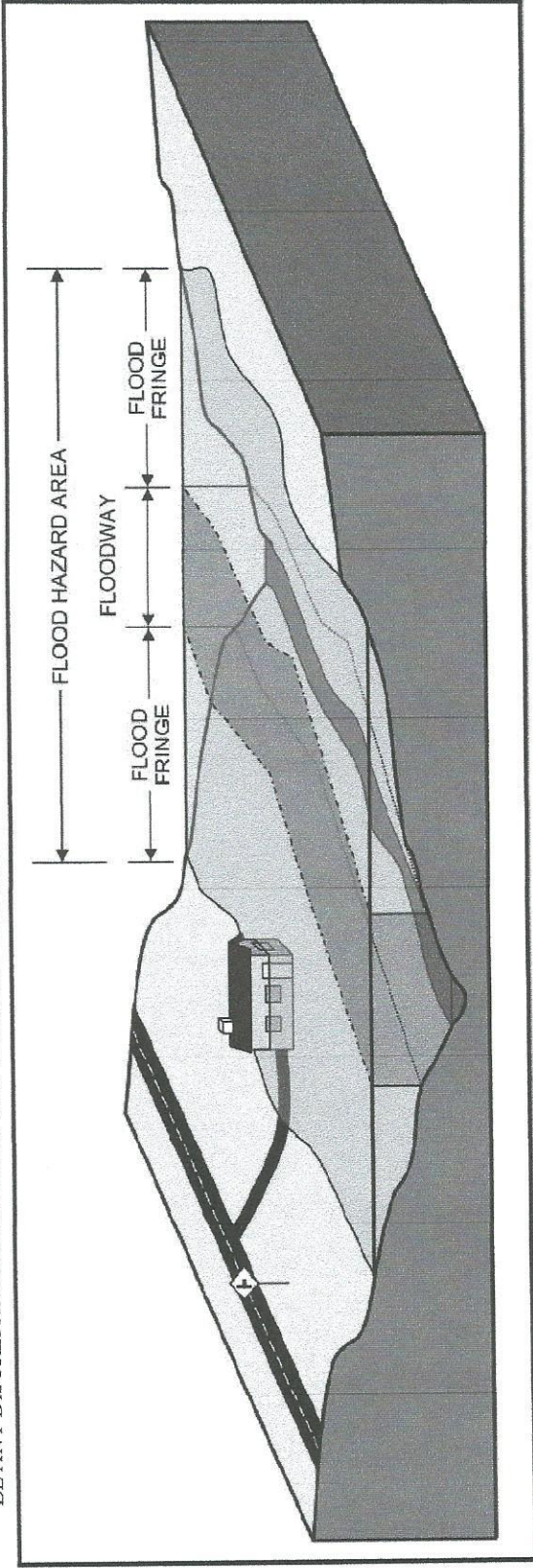


FIGURE 2.3A: THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE

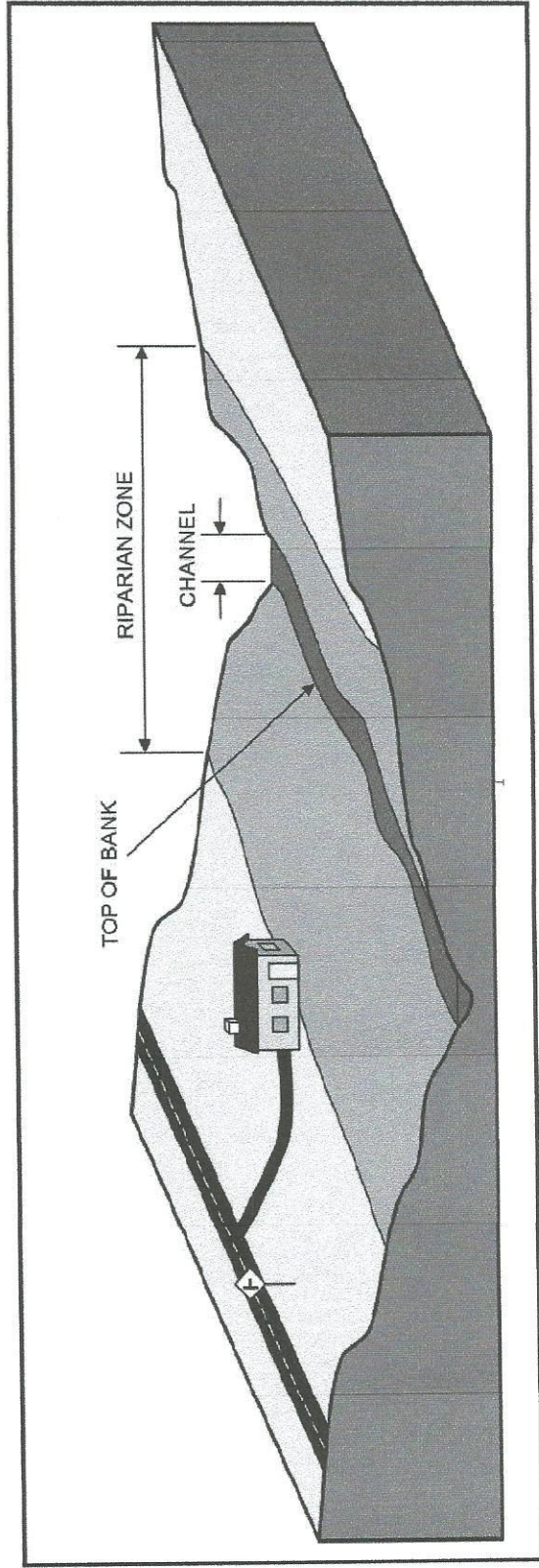


FIGURE 2.3B: THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150, OR 300 FEET OF THE CHANNEL

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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. 7:13-18.4(a)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.