

No Local determination (By map)  
 Grant book

# Details of Proposed Flood Hazard Area Control Act Rules

October 30, 2002

| Existing Rules   | Proposed Rules   |
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| <b>Terms</b>   |  |
| 1. Many undefined terms used.  | Definitions have been greatly expanded.  |
| 2. Streams, rivers, and ponds are collectively called watercourses.  | Regulated feature is called a <i>water</i> . The term <i>watercourse</i> implies streams and rivers, but not lakes and ponds. Since the rule regulates all surface waters, the term <i>water</i> is more accurate.   |
| 3. Authorization is called a <i>stream encroachment permit</i> . However, many regulated activities do not involve streams or encroaching on streams.  | Authorization is called a <i>flood hazard area permit</i> . The name better reflects the scope of the rules and the purpose of the permitting program.   |
| <b>Regulated areas</b>   |  |
| 4. It is unclear which watercourses are regulated.   | The list of regulated waters is clarified.   |
| 5. Existing coastal rules and flood hazard area rules together create a loophole for certain projects in tidal flood hazard areas.   | Both rules are amended to eliminate this loophole. Other inconsistencies are eliminated. Proposed change will ensure that tidal areas have necessary flood protection. Projects in tidal floodways are no longer exempt.   |
| <b>Regulated activities</b>  |  |
| 6. "Development" in flood hazard areas is regulated, which is defined as a "construction activity or manmade land disturbance." This broad definition has led to many differing interpretations and jurisdictional problems, especially in areas of enforcement. | Regulated activities are specifically listed as follows: <ul style="list-style-type: none"> <li>• Topographic alterations (grading/excavation/fill)</li> <li>• Clearing/cutting vegetation in a riparian zone</li> <li>• Creating impervious surface</li> <li>• Storage of material</li> <li>• <u>Construction/reconstruction of a structure</u></li> <li>• Conversion of an existing building to a residence or public building</li> </ul>  |
| <b>Exempt activities</b>   |  |
| 7. It is not clear how to obtain a jurisdictional determination.   | The proposal includes a process for requesting an applicability determination to determine whether a permit is needed for an activity.   |
| 8. Activities that do not need a permit (exempt activities) are poorly described and organized, leading to confusion and inconsistency in applying the rules.  | <p>Exempt activities are listed and consolidated in one place. Activities that the current rule implies are exempt, but which are not specifically stated as such, are clearly described in the proposal.</p> <p><b>Activities exempt anywhere:</b></p> <ol style="list-style-type: none"> <li>1. Repair of existing structures</li> <li>2. Continued farming (with no fill or structures)</li> <li>3. Normal property maintenance in riparian zone</li> </ol> <p><b>Activities exempt if outside the channel and no trees are removed in riparian zone:</b></p> <ol style="list-style-type: none"> <li>1. Utility poles</li> <li>2. Fences open to flood flow</li> <li>3. Guardrails</li> <li>4. In-ground swimming pool</li> <li>5. Playground equipment/bleaches/picnic tables, etc.</li> <li>6. Open decks</li> <li>7. Underground fuel tanks ?</li> </ol> |

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| Existing Rules  | Proposed Rules  |
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|   | <p><b>Activities exempt if outside both the floodway and riparian zone:</b></p> <ol style="list-style-type: none"> <li>1. No more than 10 yd<sup>3</sup> of fill</li> <li>2. Repaving existing road/parking lot (and raised by no more than 3")</li> <li>3. Aboveground fuel tank</li> <li>4. At-grade parking lots, trails, etc., with less than 0.25 acres impervious surface</li> <li>5. Any kind of fence</li> <li>6. Utility building with no foundation under 1000 ft<sup>2</sup> on farm</li> <li>7. Open-frame utility towers</li> <li>8. Some soil conservation practices</li> <li>9. Some new farming (with no fill or structures)</li> <li>10. Temporary storage of construction materials</li> <li>11. Typical storage of material at a house</li> <li>12. Typical storage of material at a business</li> </ol> |
| <b>Flood hazard area</b>  |   |
| <p>9. Most flood hazard areas in the State have not been mapped by DEP. If flood mapping is not available, an applicant must often determine the extent of the flood hazard area on a site through extensive calculations. This can be time-consuming and expensive.</p>  | <p>The proposal includes a hierarchy of six methods by which an applicant can determine the extent of the flood hazard area on a site.</p> <ul style="list-style-type: none"> <li>• Method 1: State study<br/>(must be used where available)</li> <li>• Method 2: FEMA tidal area<br/>(flood hazard area = 100-year flood)</li> <li>• Method 3: FEMA fluvial area<br/>(flood hazard area = 100-year flood + 1 ft)</li> <li>• Method 4: FEMA flow rate<br/>(calculate using 125% of FEMA 100-year flow)</li> <li>• Method 5: Approximated<br/>(based on drainage area and WMA)</li> <li>• Method 6: Calculation<br/>(calculate using 125% of existing 100-year flow)</li> </ul>  |
| <p>10. In most cases, FEMA flood mapping may not be used to determine the flood hazard area limit.</p>  | <p>The use of FEMA flood mapping is allowed in most cases where State flood mapping does not exist. Since FEMA 100-year flood plains are usually smaller than State flood hazard areas, a safety factor is added in fluvial areas. Allowing use of FEMA maps will make it easier and cheaper to determine the flood hazard area, but the added safety factor will ensure flood protection.</p>  |
| <p>11. There is no simple and inexpensive method to approximate the flood hazard area limit. If an applicant proposes a small project (where it is not necessary to know the exact flood hazard area limit) or wants to avoid building in the flood hazard area altogether, the applicant often has no option but to calculate the exact flood hazard area limit.</p> | <p>The proposal adds a method to conservatively approximate the flood hazard area for many projects if there is no State or FEMA flood mapping available for the site. This simple method for approximating the flood hazard area will help persons with smaller projects or adaptable sites avoid delay and expense.</p>   |

| Existing Rules  | Proposed Rules  |
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| <b>Riparian zone</b>  |   |
| 12. Each water is surrounded by an area within which vegetation is protected. The existing rule does not name this area, but the vegetation within it is usually referred to as near-stream vegetation. This is a misnomer since vegetation is protected along all features, including rivers and lakes.  | In the proposal, this area is named the riparian zone. The riparian zone also includes the channel, since the rules also protect vegetation in the channel. In cases where no top of bank is discernible, the riparian zone will extend outward from the limit of the 2-year flood  |
| 13. Protected area extends: <ul style="list-style-type: none"> <li>• 50 feet from channel if: <ul style="list-style-type: none"> <li>- Category one</li> <li>- Trout production &amp; upstream</li> <li>- Trout maintenance &amp; 1 mile upstream</li> <li>- Acid-producing soils</li> <li>- Threatened &amp; endangered species</li> </ul> </li> <li>• 25 feet from channel for all other streams</li> </ul> | Protected area extends: <ul style="list-style-type: none"> <li>• 150 feet from channel if: <ul style="list-style-type: none"> <li>- Category one</li> <li>- Trout production &amp; upstream</li> <li>- Threatened &amp; endangered species</li> </ul> </li> <li>• 75 feet from channel for all other streams</li> </ul> <p style="text-align: right;"><i>Hydro wetlands</i><br/><i>cl</i><br/><i>Wetlands</i></p>               |
| 14. Standards for development in protected area are vague.  | The proposed standards for disturbance to vegetation in the riparian zone are strict and clear.   |
| <b>Verification</b>   |   |
| 15. DEP does not issue a document that verifies the flood hazard area limit independent of a proposed construction project. However, property owners often need to know the extent of the flood hazard area on a site before planning construction.   | The proposal includes a procedure for obtaining a DEP verification of the flood hazard area limit on a site, independent of any proposed construction. This is analogous to a freshwater wetlands letter of interpretation. This will aid the public in project planning.   |
| 16. Existing rule requires applicants to set a boundary called a stream encroachment line. This line can be established anywhere outside the floodway and is generally the limit of encroachment into the flood hazard area. Since the line does not reflect the limit of flooding, it is meaningless to most applicants and causes confusion to future property owners.                                      | The proposal omits the stream encroachment line requirement and instead requires that applicants show flood hazard area limit and/or floodway limit in most cases where grading or construction is proposed. This will improve accuracy and reduce confusion. This change will also be more helpful to future buyers of land, since the flood hazard area limit and floodway limits actually reflect limit of DEP jurisdiction. |
| <b>Permits-by-rule</b>  |   |
| 17. All activities are either exempt or require a full permit. There are no general permits or permits-by-rule. Some of the activities that are exempt under the existing rules must be done within certain limits and conditions in order to have no impact, and thus are more appropriate as permits-by-rule than exemptions.   | The proposal includes 31 permits-by-rule covering activities that have negligible impacts, if conducted according to the conditions in the rules. Eight require a simple application (but no fee) and automatic approval if DEP does not respond (see below). The permits-by-rule should encourage applicants to scale down projects to meet the permit-by-rule limit.  |

| Existing Rules  | Proposed Rules   |
|---|--|
|   | <p><b>General permits-by-rule</b></p> <ol style="list-style-type: none"> <li>1. Activity along stream that drains &lt; 50 acres if freshwater wetlands permit also obtained</li> <li>2. Small projects in tidal flood fringe, and large projects if coastal permit also obtained</li> <li>3. Reconstruction in flood fringe</li> <li>4. Aboveground swimming pool in flood fringe</li> <li>5. Fence around pool in floodway</li> <li>6. 300 ft<sup>2</sup> addition to building in flood fringe</li> <li>7. Second-story addition to a building in flood fringe</li> <li>8. 150 ft<sup>2</sup> free-standing building in flood fringe</li> <li>9. Roof on poles in flood fringe (pole barn/carport)</li> <li>10. Jacking a utility line under a water</li> <li>11. Placing a utility line in a roadway over a water</li> <li>12. Attaching a utility line to a bridge/culvert over a water</li> <li>13. Placing a utility line parallel to a water outside riparian zone</li> <li>14. Bridge deck or superstructure replacement above flood hazard area</li> <li>15. Minor sediment removal in or near a culvert or stormwater discharge</li> <li>16. Storage of material for an existing business (lumber yard/car dealership)</li> <li>17. Disposal of hazardous material at a licensed facility</li> <li>18. Disposal of solid waste at a licensed facility</li> <li>19. Removal of fill or structure from flood fringe</li> <li>20. Dock or boathouse on lake</li> <li>21. Boat launching ramp</li> <li>22. Fish habitat enhancement device</li> <li>23. USGS flow gage</li> </ol> |
| <p>18. Amendments to the Flood Hazard Area Control Act were adopted in 1998 which authorizes local governments to perform stream cleaning (AKA the "stream cleaning bill").</p>   | <p>The provisions of the stream cleaning bill are included as well as a clarified procedure for obtaining DEP approval. A simple application to DEP with no fee is required, but approval is automatic after either 15 or 60 days (depending on whether sediment is removed) if DEP does not respond. This will bring the rules into compliance with the Flood Hazard Area Control Act. This PBR is equal to the freshwater wetlands GP26.</p>   |
| <p>19. A recently funded, major federal bridge repair initiative will require additional scour protection on many bridge abutments located along streams. This type of work requires a permit under the existing rules.</p> | <p>Scour protection is critical to maintaining the structural integrity of bridges. If done within the conditions of the permit-by-rule, the work will not impact flooding or the environment. The proposal includes a permit-by-rule for government agencies to provide scour protection for existing bridges. <del>PBR requested by NJDOT</del> A simple application to DEP with no fee is required, but approval is automatic after 30 days if DEP does not respond.</p>  |
| <p>20. The current application process is difficult and can be time-consuming and costly. Therefore, farmers often undertake agricultural activities that require a permit without obtaining one.</p>                       | <p>Six permits-by-rule for NRCS designed, SCD approved agricultural projects are introduced. These were requested by NRCS and SCD. A simple application to DEP with no fee is required, but approval is automatic after 30 days if DEP does not respond. These permits-by-rule will replace an outdated 1978 MOA between DEP and SCD. This will encourage farmers to work with NRCS and SCD and to comply with our rules.</p>  |

4 What activities are what are important repairs?

| Existing Rules   | Proposed Rules   |
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| <b>Permitting standards</b>  |  |
| 21. Standards for regulated activities are not well organized and are scattered throughout the rules.  | Standards for regulated activities are divided into two categories: area-specific and activity-specific, and are consolidated and clarified.   |
| 22. There are no specific limits on disturbance to channels. The requirements to minimize disturbance are vague and broad.   | The activities allowed in the channel are described in detail. Some activities are prohibited and limits on disturbance are placed on other activities. <i>Good → What are they?</i>   |
| 23. Fishery resources are protected, but it is unclear how to determine which waters have such resources.  | The list of waters with fishery resources are clarified. The activities allowed along such waters are also clarified. <i>How?</i>  |
| 24. The current DEP practice of accepting fill credits to compensate for excess fill in the Central Passaic Basin is not mentioned in the rules.   | Fill credits are described and provisions for their use are proposed. Fill credits involve excavating in the flood hazard area at one site to compensate for filling in the flood hazard area at another site.   |
| 25. Access roads to certain facilities such as hospitals, schools and nursing homes must be above the flood hazard area elevation.   | "Dry" access is also required for assisted living facilities, apartments, dormitories, jails, police and fire stations, emergency response centers and public shelters.  |
| 26. Bridges and culverts are often replaced because of structural or hydraulic deficiencies, or in response to necessary roadway improvements. However, replacement structures are not allowed to cause offsite flood elevations to change by any amount. Since replacement structures must often be a different shape or size than existing structures, this requirement is nearly impossible to meet. <i>→ Mitigate?</i> | Replacement bridges and culverts are allowed to cause up to a 0.2 foot rise in the flood hazard area elevation offsite within 500 feet of the replacement structure. The proposed change acknowledges the actual practice without compromising flood protection. This is similar to the standards for other in-stream projects, such as new bridges, which are also allowed to cause up to a 0.2 foot rise in the flood hazard area elevation. |
| 27. Many activities that are regulated and permitted do not have specific standards in the rules. Therefore, DEP staff must apply broad rule standards to specific projects, causing confusion and inconsistency.  | Specific standards for a number of common activities are proposed, such as footbridges, stormwater discharges, flood control projects, bank stabilization, and removal of fill or structures from a flood hazard area. <i>← C1</i>   |
| 28. It is not clear whether or when solid or hazardous waste can be disposed of in a flood hazard area.  | Future solid or hazardous waste disposal is prohibited in the floodway and riparian zone, and is restricted in the flood fringe. Existing solid or hazardous waste facilities are exempt, provided the volume of waste does not increase.  |
| 29. Unsecured material can wash downstream and cause serious damage. However, the rule does not specifically regulate the placement or storage of unsecured material in the flood fringe.  | The proposal includes standards for the storage of unsecured material in flood hazard areas, e.g., storage of lumber at a lumber yard, storage of vehicles at a car dealership or bus depot. <i>RECA (down down)?</i>  |
| <b>Combined permit</b>   |  |
| 30. Many activities need both a freshwater wetlands and a flood hazard area permit. This can be duplicative and cumbersome.  | The proposal adds a procedure for obtaining a combined flood hazard area and freshwater wetlands general permit for 5 common activities.   |

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|---|---|
| <b>Permit term</b>  |   |
| 31. Permits are valid for 5 years. This is sometimes too short for very large projects.   | The proposal provides for most permits to be valid for 5 years, but allows the DEP to issue a permit with up to a 10-year term for a large public project that cannot be constructed in a 5-year period. This will enable large public projects such as roadway improvements to be constructed under one permit instead of forcing the permittee to reapply halfway through construction. |
| <b>Emergency permit</b>   |   |
| 32. The procedure for obtaining an emergency permit is unclear.   | The proposal clarifies the procedure for obtaining an emergency permit.   |
| <b>Revision</b>   |   |
| 33. A revision to an approved project is allowed, but fees are in the 90-day rules and review procedures are not included.  | Revision fees are clarified and moved out of 90-day rules into flood hazard area rules. DEP's review procedure for a revision is included.  |
| <b>Reissuance</b>   |   |
| 34. Permits cannot be reissued or extended, so a new application and review is required even if a project is almost complete and the same standards apply.                              | The proposal includes a procedure to reissue permits for a 5-year period if a project is not completed within the 5-year life of the permit, provided the project still meets the rules.  |
| <b>Public notice</b>  |   |
| 35. Public notice requirements for applications are complicated and unclear, requiring multiple notices to the same agency, and notice to parties that have no interest in the project. | Public notice requirements are simplified and clarified. The number of persons notified for most projects is reduced. Each municipal clerk will get three copies to distribute within local government.   |
| 36. Permit applications for many small projects require no public notice.   | Some level of public notice is required for all applications.   |
| 37. All large projects require the same type and amount of public notice, regardless of size or complexity.   | Public notice requirements to certain neighboring property owners for some large sites and linear developments are reduced. This reduces notification of property owners who are very far away from a project and whose property could not be affected by the proposed activities. Similar to freshwater wetlands rules notice for large sites and linear developments                    |
| <b>Fees</b>   |   |
| 38. Application fees are not found in this rule but in the 90-day rules.  | Fees are relocated from 90-day rules, clarified and reorganized.  |
| 39. The application review fee for some project elements do not match the amount of time and effort necessary for DEP to review that element.   | Revised fees are more equitable, more accurately reflect DEP's review effort, and are increased to cover the program's operating costs.   |
| 40. There is no fee to review a hardship request, but these requests require as much DEP review as a major project element.   | Hardship request is assessed an additional fee unless involved with a private residence.  |
| 41. Fee for a modification (revision) to an approved project does not accurately reflect DEP effort in most cases.  | Proposal includes revised fee schedule that more accurately reflects the DEP review effort.   |

| Existing Rules  | Proposed Rules  |
|---|---|
| <b>Application review</b>   |   |
| 42. Many application review standards are located in the 90-day rules.  | Review standards are moved to flood hazard area rules, and all flood hazard area provisions are removed from the 90-day rules.  |
| <b>Appeals</b>  |   |
| 43. Existing appeal procedure is unclear.   | Appeal procedure is clarified.  |
| <b>Enforcement</b>  |   |
| 44. Penalties for violations are not included in the rules.   | Penalties are listed for knowing and other violations. Provisions explain that penalties accrue daily. These provisions are taken from the Flood Hazard Area Control Act.   |
| 45. Most flood hazard areas in the State have not been mapped by DEP. When a person undertakes an activity along an unmapped stream without a permit, DEP enforcement often cannot pursue the suspected violation because the actual limit of jurisdiction on site is unknown and cannot be determined without the cooperation of the potential violator. | The proposal provides that the approximate method shall be used to determine the limit of the flood hazard area in such cases, unless the potential violator provides a more accurate delineation of the flood hazard area. This will aid enforcement, and puts the burden on the potential violator to show that DEP's approximate delineation is incorrect. |
| <b>Other rules changed</b>  |   |
| 46. Existing N.J.A.C. 7:21 (long unused rule) refers to stream encroachment permits.  | N.J.A.C. 7:21 is amended to remove such references. Proposed change will eliminate unnecessary references left over from previous rule amendments.  |