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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

Flood Hazard Area Control Act Rules

Coastal Zone Management Rules

Freshwater Wetlands Protection Act Rules

Proposed Amendments: N.J.A.C. 7:7-6.4, 15.2 and 25.1; 7:7A-11.1; and 7:13-1.2, 6.7, 7.8 through 7.12, 7.29, 7.56, 7.58, 7.61, 8.5, 8.6, 8.8, 8.13, 9.5, 9.6, 9.8 through 9.10, 11.2, 12.5, 12.14, 13.1, 13.2, 13.6, 13.7, 13.8, 13.14 through 13.20, and 20.1

Proposed New Rule: N.J.A.C. 7:13-13.4

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., specifically 13:1D-33, 13:20-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 05-16-05.

Proposal Number: PRN 2016-084.

A **public hearing** concerning this notice of proposal will be held as follows:

Friday, July 22, 2016 at 10:00 A.M.

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, NJ 08625

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Submit comments by August 19, 2016, electronically at

<http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection

(Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.

Attn: DEP Docket Number 05-16-05

New Jersey Department of Environmental Protection

Office of Legal Affairs

Mail Code 401-04L

401 East State Street, 7th Floor

PO Box 402

Trenton, NJ 08625-0402

This rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

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The Department is proposing amendments and new rules in the Flood Hazard Area Control Act (FHACA) Rules, N.J.A.C. 7:13, the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7, and the Freshwater Wetlands Protection Act (FWPA) Rules, N.J.A.C. 7:7A, to make adjustments addressing certain concerns raised through the public comment process for the new and amended FHACA Rules adopted elsewhere in this issue of the New Jersey Register (referred to hereafter as the “adopted FHACA Rules”). The proposed amendments and new rules fall into six categories:

1. Improvements to riparian zone protections;
2. Improving the consistency of the FHACA Rules with the Uniform Construction Code (UCC) and National Flood Insurance Program (NFIP);
3. Improving the consistency between the FHACA Rules and CZM Rules;
4. Facilitation of environmentally beneficial activities;
5. Clarification that permits-by-rule, general permits-by-certification, and general permits may not be used for activities qualifying as “major development”; and
6. Implementation of a cap on stormwater calculation review fees and clarification regarding the appropriate application fee to modify these calculations.

Improvements to Riparian Zone Protections (N.J.A.C. 7:13)

Riparian zones are vegetated areas adjacent to regulated waters that help maintain water quality and temperature, stabilize banks, provide protection from flooding, and serve as wildlife habitat. In addition to various amendments adjusting and enhancing the standards for regulated activities in riparian zones, the Department is proposing amendments specific to the 300-foot riparian zones adjacent to Category One waters in order to enhance protection of the exceptional

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ecological, water supply, recreational, and/or fisheries significance of these waters. The Department also is proposing amendments to the mitigation provisions that are intended to strengthen mitigation requirements and ensure that appropriate compensation for the riparian zone functions and values lost as a result of permitted riparian zone disturbance is provided. Specifically, in addition to the existing requirement that mitigation must be provided in all cases where riparian zone disturbance under an individual permit: (1) exceeds the limitations set forth in Table 11.2; (2) is associated with site remediation projects, solid waste facility closures, or activities not listed in Table 11.2; and (3) is located within a 300-foot riparian zone and is associated with the construction of certain railroads, roadways, and stormwater discharges, the Department is proposing to require that mitigation be additionally provided for all riparian zone disturbance associated with any activity under an individual permit within a 300-foot riparian zone, regardless of whether the activity is a major development under the Stormwater Management rules, except for certain activities that were exempt from the prior SWRPA requirements under N.J.A.C. 7:8-5.2(d) and for disturbance associated with one single-family home or duplex that meets the limitations of Table C.

General Permit-By-Certification Requirements (N.J.A.C. 7:13-8.6 and 8.13)

General Permit-By-Certification 6 (N.J.A.C. 7:13-8.6)

The Department is proposing amendments, described later in this Summary, to general permit-by-certification 6 for the construction of one single-family home or duplex in a tidal flood area that establish differing requirements regarding allowed limits of disturbance, and the relationship of the allowed disturbance to the top of bank, depending upon whether the impacted riparian zone is a 50-foot, 150-foot, or 300-foot riparian zone. In order to ensure that the flood

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hazard area, floodway, and riparian zone limits upon which the authorization is based are accurate, the Department is proposing to add a new requirement at N.J.A.C. 7:13-8.6(a)1 that applicants for an authorization under this general permit-by-certification must first obtain a verification from the Department of any flood hazard area design flood elevation, floodway limits, and riparian zone limits onsite. Because general permit-by-certification authorizations are provided to applicants electronically upon certification that the requirements of the permit are met, a verification of site conditions is necessary prior to applying for authorization.

The width of the riparian zone, as established by the required verification, will, among other things, determine the amount of riparian zone disturbance allowed under the proposed rules. The Department is proposing to amend recodified N.J.A.C. 7:13-8.6(a)7 to specify new disturbance limits applicable within a 50-foot riparian zone. Particularly, it is proposed that no more than 3,500 square feet of riparian zone vegetation may be cleared, cut, and/or removed from a 50-foot riparian zone. The requirement that no disturbance is located within 25 feet of any top of bank unless the project is adjacent to an existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water that is currently applicable to all riparian zone disturbance under this general permit-by-certification is continued without change. The proposed reduction in the allowable amount of disturbance within a 50-foot riparian zone from 7,000 square feet to 3,500 square feet is intended to ensure that the functions and values of the riparian zone are maintained, and also to match the individual permit standards for a house within a 50-foot riparian zone under Table C. Further, on sites where the riparian zone is 50-feet, disturbances beyond the 50-foot riparian zone are not subject to the FHACA rules.

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Therefore, the Department has determined that a proportionally smaller area of allowed disturbance is appropriate within the 50-foot riparian zone.

The Department is additionally proposing to amend recodified N.J.A.C. 7:13-8.6(a)8 to specify disturbance limits and the relationship of the area of disturbance to the top of bank for impacts to a 150-foot riparian zone. Proposed new N.J.A.C. 7:13-8.6(a)9 establishes similar standards for activities located within a 300-foot riparian zone. Both recodified paragraph(a)8 and new paragraph (a)9 continue the existing 7,000-square-foot limit currently applicable to all riparian zone disturbances under this general permit-by-certification. However, for both 150-foot and 300-foot riparian zones, the area adjacent to the top of bank of the regulated water within which disturbance may not occur is expanded from the existing generally applicable 25-foot area. Particularly, as proposed recodified paragraph (a)8 and new paragraph (a)9 provide that, within a 150-foot riparian zone, no disturbance can occur within 75 feet of any top of bank, and, within a 300-foot riparian zone, no disturbance can be located within 150 feet of any top of bank, for reasons described below.

Activities within the inner portion of a riparian zone may be more likely to have an adverse impact on the surface water through destabilization of the channel, erosion and sedimentation, heat pollution of the water through the removal of shade trees, and loss of habitat if proper measures are not taken to avoid impacts. Vegetation immediately adjacent to the regulated water also buffers the land areas from negative impacts of flooding. Because each application for an authorization under a general permit-by-certification is not directly reviewed by Department staff, it is appropriate to limit activities under general permit-by-certification 6 to the portion of the riparian zone farthest from the top of bank in order to ensure that any adverse

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impacts are avoided and that the essential functions and values of the inner portion of the riparian zone are not compromised. If there is no feasible alternative to developing a project in the inner portion of the riparian zone, an applicant must apply for a general permit or an individual permit, both of which allow Department staff to fully evaluate potential alternatives to, and impacts of, the proposed project. Requiring an applicant to obtain Department review where impacts are proposed within the inner half of a riparian zone is consistent with the Department's intent that any unavoidable disturbance only occur as far as possible from the regulated water, as expressed in the individual permit context at N.J.A.C. 7:13-11.2(b)2.

General Permit-By-Certification 13 (N.J.A.C. 7:13-8.13)

The Department is proposing amendments to general permit-by-certification 13 for the placement of solar panels, which are similar to those limiting how close disturbance may be to the top of bank of the regulated water described above with reference to general permit-by-certification 6, and for the same reasons summarized above. Because differing limitations are proposed for where allowed disturbance may occur in relationship to the top of bank of the regulated water associated with the riparian zone depending upon the width of the riparian zone, proposed new N.J.A.C. 7:13-8.13(a)3 requires the applicant for an authorization under general permit-by-certification 13 to obtain a verification prior to applying for an authorization.

Specifically, in a 50-foot riparian zone, no disturbance can occur within 25 feet of any top of bank (unless the project is adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water); for a 150-foot riparian zone, no disturbance can occur within 75 feet of any top of bank; and within a 300-foot riparian zone, no disturbance can occur within 150 feet of any top of bank (see proposed N.J.A.C. 7:13-8.13(a)4 through 6).

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General Permit Requirements (N.J.A.C. 7:13-9.6 and 9.9)

General Permit 6 (N.J.A.C. 7:13-9.6)

General permit 6 authorizes the construction of one single-family home or duplex and one associated driveway that does not cross a regulated water. This general permit is currently limited to development in a fluvial flood hazard area. Under the existing rules, the standards of general permit-by-certification 6 are the same as general permit 6, except as follows. First, general permit-by-certification 6 authorizes activities in a tidal flood hazard area whereas general permit 6 authorizes activities in a fluvial flood hazard area. Second, general permit 6 contains standards related to flood storage displacement, which is appropriate for development within a fluvial flood hazard area but is not necessary for development within a tidal flood hazard area, since the loss of flood storage in a tidal flood hazard area does not exacerbate flooding (see N.J.A.C. 7:13-11.4(d)1). Finally, general permit 6 includes requirements that ensure any driveway constructed under an authorization meets the individual permit standards at N.J.A.C. 7:13-12.6(c) for driveways. Rather than requiring an individual permit in situations where the construction of a single-family home or duplex in a tidal flood hazard area does not meet the proposed more prescriptive standards of general permit-by-certification 6, the Department is proposing to modify the scope of general permit 6 to apply to the construction of any single-family home or duplex regardless of whether it is located within a tidal or fluvial flood hazard area.

In this rulemaking, the Department is proposing to amend the allowable area of riparian zone vegetation that may be cleared, cut, and/or removed under the general permit. Rather than

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apply a uniform limit of 7,000 square feet of disturbance regardless of the width of the riparian zone, the Department is proposing to establish a limit of 3,500 square feet of riparian zone disturbance within a 50-foot riparian zone (see proposed new N.J.A.C. 7:13-9.6(a)7) and a limit of 7,000 square feet of disturbance within a 150-foot or 300-foot riparian zone (see proposed N.J.A.C. 7:13-9.6(a)8 and 9). These limits are the same as the riparian zone disturbance limits under Table 11.2 for the construction of a single-family home or duplex under an individual permit. Amendments are also proposed to provide additional protections to the inner 150-foot portion of a 300-foot riparian zone and the inner 75-foot portion of a 150-foot riparian zone. Specifically, recodified N.J.A.C. 7:13-9.6(a)8 is proposed for amendment to provide that in a 150-foot riparian zone no more than 7,000 square feet of riparian zone vegetation can be cleared, cut, and/or removed and that disturbance within 75 feet of any top of bank must be avoided to the maximum extent practicable. Proposed new N.J.A.C. 7:13-9.6(a)9 limits the clearing, cutting, and/or removal of riparian zone vegetation within a 300-foot buffer to 7,000 square feet and requires that disturbance within 150 feet of any top of bank to be avoided to the maximum extent practicable. While general permit-by-certification 6 prohibits disturbance within the inner 150-foot portion of a 300-foot riparian zone, general permit 6 requires disturbance in the inner portion be avoided to the maximum extent practicable. This difference is due to the different application procedures for an authorization under a general permit-by-certification and a general permit. A general permit application undergoes a full review by Department staff in which the feasibility of avoiding disturbance within the inner portion of a 300-foot riparian zone, the potential impacts associated with the project, and any mitigating factors that reduce those impacts can be evaluated to determine if it is appropriate and necessary for the project to occur

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within that portion of the riparian zone. For similar reasons, the 75-foot area adjacent to the top of bank of a regulated water receiving a 150-foot riparian zone must be avoided to the maximum extent practicable, rather than entirely avoided as required in the general permit-by-certification context. With reference to a 50-foot riparian zone, there is no additional requirement that disturbance be located outside of the inner portion of the riparian zone to the maximum extent practicable because existing N.J.A.C. 7:13-9.6(a)6, which is not proposed to be amended, already provides that no disturbance can be 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.

As indicated above, standards for flood storage displacement contained in the existing general permit are important in fluvial flood hazard areas, but not necessary for development within tidal flood hazard areas, now proposed to also be included under general permit 6. Proposed N.J.A.C. 7:13-9.6(a)10 includes an amendment to make clear that these considerations only need to be addressed where the development is proposed within a fluvial flood hazard area.

General Permit 9 (N.J.A.C. 7:13-9.9)

General permit 9 authorizes the construction or reconstruction of a bridge or culvert across a regulated water with a drainage area of less than 50 acres. N.J.A.C. 7:13-9.9(a)7, which establishes a 2,500 square foot limit of riparian zone disturbance, is proposed for deletion. Instead, under proposed new N.J.A.C. 7:13-9.9(a)7, any new bridge or culvert or any new railroad or roadway it conveys proposed to be located within a 300-foot riparian zone is not eligible for authorization under the general permit. A riparian zone width of 300 feet is assigned to regulated waters designated as Category One waters, as well as all upstream waters in the

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same HUC-14 watershed as the Category One water (see N.J.A.C. 7:13-4.1(c)1). These waters have exceptional ecological, water supply, or recreational significance, and/or exceptional fisheries resources. Authorizing the construction of a bridge or culvert over such a water could allow a new roadway to be constructed which could have potentially great consequences on the water supply, ecological, recreational, and fisheries significance of the water. The construction or reconstruction of a bridge or culvert located within a 300-foot riparian zone may, therefore, only be authorized under an individual permit, which may require mitigation as a condition of the permit.

Proposed new N.J.A.C. 7:13-9.9(a)8 requires that the total area of riparian zone vegetation to be cleared, cut, and/or removed not exceed the limits set forth in Table 11.2. The limit of riparian disturbance depends on whether the bridge or culvert is new construction or reconstruction, and whether it is conveying a public roadway or railroad, a private driveway, or any other roadway. These limits are as follows: 6,000 square feet (in a 50-foot riparian zone) or 18,000 square feet (in a 150-foot riparian zone) for a new bridge or culvert conveying a new railroad or public roadway; 3,000 square feet (in a 50-foot riparian zone), 9,000 square feet (in a 150-foot riparian zone), or 18,000 square feet (in a 300-foot riparian zone) for the reconstruction of a bridge or culvert conveying a railroad or public roadway; 2,000 square feet (in a 50-foot riparian zone) or 6,000 square feet (in a 150-foot riparian zone) for the construction of a new bridge or culvert associated with a private driveway; 1,000 square feet (in a 50-foot riparian zone), 3,000 square feet (in a 150-foot riparian zone), or 6,000 square feet (in a 300-foot riparian zone) for the reconstruction of a bridge or culvert associated with a private driveway; 4,000 square feet (in a 50-foot riparian zone) or 12,000 square feet (in a 150-foot riparian zone) for a

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new bridge or culvert associated with the construction of any other roadway; and 2,000 square feet (in a 50-foot riparian zone), 6,000 square feet (in a 150-foot riparian zone), or 12,000 square feet (in a 300-foot riparian zone) for the reconstruction of a bridge or culvert associated with any other type of roadway. These limits are the same as for individual permits and allow an increase in the area of riparian zone disturbance to ensure that the activity can be completed. However, this general permit, in contrast to an individual permit for similar activities, is only applicable to the construction or reconstruction of a bridge or culvert crossing a water that drains fewer than 50 acres. Further, as explained below, several additional standards applicable to individual permits for these activities are proposed to be added to the general permit to ensure the scope and design of projects authorized under this permit appropriately minimize disturbance to the riparian zone and regulated water. Regulated waters that have a drainage area of 50 acres or more possess a flood hazard area pursuant to N.J.A.C. 7:13-2.3(b). Therefore, the construction or reconstruction of a bridge or culvert that crosses a water that drains more than 50 acres requires a more intensive review related to potential flooding impacts. Accordingly, such a proposed activity is appropriately reviewed under general permit 10, which is limited to the reconstruction of an existing bridge or culvert in certain limited cases where flooding is not a concern, or under an individual permit.

Proposed new N.J.A.C. 7:13-9.9(a)9 requires the construction of a bridge or culvert, which conveys a public roadway or railway to comply with existing N.J.A.C. 7:13-11.2(g)4, 5, and 6 proposed to be recodified as N.J.A.C. 7:13-11.2(g)2, 3, and 4, which are individual permit standards for the construction or expansion, reconstruction, or improvement of a public roadway or railway. These provisions require disturbance to be minimized, require a new crossing to be

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designed and constructed to be as nearly perpendicular to the channel as possible, and require a demonstration of compelling public need for the project if it occurs in a 150-foot or 300-foot riparian zone.

Proposed new N.J.A.C. 7:13-9.9(a)10 requires the construction or reconstruction of a bridge or culvert which conveys a private road to comply with existing N.J.A.C. 7:13-11.2(h)4, 5, 6, and 8, proposed to be recodified as N.J.A.C. 7:13-11.2(h)2, 3, 4, and 6, which are individual permit standards for the construction, or the expansion, reconstruction, or improvement of a private roadway. These standards require the applicant to minimize disturbance, demonstrate that the proposed activities are necessary for the continued safe access to the site, comply with specific requirements for a new bridge or culvert constructed to convey a new roadway that serves or accesses a lot that was created or subdivided after November 5, 2007, and, for a new crossing of a regulated water, demonstrate that developable land onsite cannot be feasibly accessed without crossing the regulated water and that the crossing is designed and constructed to be as nearly perpendicular to the channel as possible. These additional requirements ensure that the general permit standards for the construction or reconstruction of a bridge or culvert are as protective as the individual permit standards for roadways.

Requirements for a Regulated Activity in a Riparian Zone (N.J.A.C. 7:13-11.2)

The Department is proposing to recodify N.J.A.C. 7:13-11.2(d) as 11.2(b)3 to facilitate the addition of new requirements at N.J.A.C. 7:13-11.2(d) and to clarify that the requirement for removing all existing onsite impervious surface within 25 feet of the top of bank and replanting the area, as well as the exceptions to this requirement, apply to the issuance of an individual

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permit for any regulated activity that involves riparian zone disturbance. These requirements are recodified with no substantive change in text.

Additional Protections for the Inner 150 Feet of a 300-foot Riparian Zone (New N.J.A.C. 7:13-11.2(d))

New requirements for any regulated activity that involves clearing, cutting, and/or removal of vegetation within 150 feet of the top of bank along a water with a 300-foot riparian zone are proposed at new N.J.A.C. 7:13-11.2(d). These requirements are similar to the requirements at N.J.A.C. 7:7A-7.2(b) for the issuance of a freshwater wetlands or open water fill individual permit, with amendments to reflect that the proposed new subsection is only applicable to riparian zones to a Category One water, making some of the considerations applicable in the freshwater wetlands context not applicable under this subsection, and are intended to ensure that activities within 150 feet of a Category One water or regulated tributary to a Category One water are only conducted when there is no alternative to the activity and that the activity will not lead to the violation of State water quality standards and laws or otherwise have significant adverse environmental consequences. Under proposed new N.J.A.C. 7:13-11.2(d), the applicant must demonstrate that all of the requirements at N.J.A.C. 7:13-11.2(d)1, 2, and 3 are met before the Department will issue an individual permit for such activities. The inner 150-foot portion of a 300-foot riparian zone is essential for maintaining water quality, ecological health, and fisheries resources associated with Category One waters. However, the Department recognizes that there are limited situations in which conducting regulated activities within the inner 150-foot portion of a 300-foot riparian zone is necessary. The proposed requirements are intended to ensure that only those projects that have no alternative other than being located

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within the inner portion of the 300-foot riparian zone will be allowed and serve to strengthen the already stringent requirements for regulated activities in a riparian zone.

Proposed N.J.A.C. 7:13-11.2(d)1 requires the applicant to demonstrate that a regulated activity proposed within the inner 150 feet of a 300-foot riparian zone has no practicable alternative that would result in less adverse impact on the regulated water and its riparian zone and which would not cause other significant adverse environmental consequences. To be considered a practicable alternative under this paragraph, an alternative cannot simply substitute one adverse impact for another, such as the loss of endangered species habitat with decreased water quality. For example, an applicant may propose to construct a roadway through a riparian zone to access a buildable parcel of land. An alternate location for the roadway may exist, which impacts less riparian zone vegetation but also impacts a large area of freshwater wetlands rather than riparian zone vegetation. Such an alternative would not be considered a practicable alternative under N.J.A.C. 7:13-11.2(d)1, as the alternative that has less riparian zone impact additionally compromises other environmental resources, in this example, freshwater wetlands. Accordingly, this alternative location would not be one which would preclude potential approval of the application. However, the applicant would still have to demonstrate that no other potential alternate route exist which would reduce impacts.

Proposed N.J.A.C. 7:13-11.2(d)2 requires an applicant to demonstrate that the proposed activity will result in minimum alteration or impairment of the riparian or aquatic ecosystem. Category One waters may be designated as such due to ecological significance or their significant fisheries resources. The Department, therefore, will not issue an individual permit for

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an activity within the inner 150 feet of a 300-foot riparian zone if the activity would significantly alter or impair the riparian and aquatic ecosystem.

Proposed N.J.A.C. 7:13-11.2(d)3 requires the applicant to demonstrate that the proposed regulated activity is in the public interest. The Department will determine if a proposed activity is in the public interest by considering the factors proposed at N.J.A.C. 7:13-11.2(d)3i-vi. These factors are similar to the factors considered by the Department in determining public interest in the context of individual freshwater wetlands and open water fill permits.

Under proposed N.J.A.C. 7:13-11.2(d)3i, the Department will consider the public interest in preservation of natural resources and the interest of the property owners in reasonable economic development. Under this provision, the Department will weigh the overall public interest in protecting the riparian zone against the interest of an individual property owner. For example, there could be a situation where a single-family property owner owns a large lot and the only access to the lot is to cross a stream and riparian zone. If the Department were to not allow the crossing, it may be considered a taking of the property owner's rights to develop the land in a manner that was reasonable for them to assume when they purchased the parcel. In such a situation, the interest of the public in protecting all portions of the riparian zone from any impact is weighed against the reasonable right of the property owner to not lose all use of his or her property. However, the public interest would not be overcome entirely; instead, the public interest in preserving the benefits provided by the riparian zone would be protected to the maximum extent practicable with only unavoidable impacts allowed, minimization of those impacts, and by providing mitigation for any unavoidable impact to the 300-foot riparian zone in accordance with proposed N.J.A.C. 7:13-13.4.

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Under proposed N.J.A.C. 7:13-11.2(d)3ii, the Department will also consider the relative extent of the public and private need for the proposed regulated activity in determining if a proposed activity is in the public interest. If the project serves primarily a private need, such as a development that services only the residents of a private residential development, the Department is less likely to determine that the activity is in the public interest. In contrast, a flood control project that protects the greater community from the negative impacts of flooding would likely be determined to be in the public interest.

In accordance with proposed N.J.A.C. 7:13-11.2(d)3iii, the practicability of using reasonable alternative locations and methods to accomplish the purpose of the proposed regulated activity will also be considered in the Department's determination of whether a proposed activity is in the public interest. For example, there could be a situation in which one entity proposes a utility line, but another entity would like to use the site for a riverside public trail. Both projects arguably serve a public need, but it may not be necessary to locate both within the inner 150 feet of the 300-foot riparian zone. A trail designed to provide visual access to the regulated water would not likely serve its purpose further than 150 feet from the riparian zone. However, there may be an alternative location for the utility line that still allows the utility line to serve the public but does not conflict with other uses, such as recreation, that also serve a public need. If the purpose of the activity could feasibly be accomplished in a way that does not involve the clearing, cutting, and/or removal of vegetation within 150 feet of the top of bank of a water with a 300-foot riparian zone, proceeding with the activity in the inner 150 feet of the riparian zone is clearly not in the public interest.

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N.J.A.C. 7:13-11.2(d)3iv provides that the Department will also consider 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. Short-term benefits and adverse impacts will be considered, as will long-term benefits and impacts, on both public and private uses to evaluate if an activity is in the public interest. For example, a person may propose to perform site remediation activities to remove contaminated soil from an abandoned industrial site and convert the area to a public park. Such an activity would have a permanent, beneficial effect on the public use of the property.

Finally, under proposed at N.J.A.C. 7:13-11.2(d)3v and vi, the Department will consider the functions and values provided by the riparian zone proposed to be impacted and the probable individual and cumulative impacts of the regulated activity on public health, safety, and welfare, and the environment. Category One waters are precious resources due to their exceptional ecological, water supply, recreational, and/or fisheries resources, which benefit all New Jersey residents. Therefore, any activity that could potentially result in negative impacts to any of these functions and values would, therefore, not be in the public interest.

Exemptions from Table 11.2 (N.J.A.C. 7:13-11.2(f))

N.J.A.C. 7:13-11.2(f) exempts certain regulated activities from the riparian zone disturbance limits in Table 11.2. N.J.A.C. 7:13-11.2(f)6 exempts any regulated activity along an existing public roadway if the activity occurs in an actively disturbed area which is within an existing right-of-way or easement, undertaken by a public entity, necessary for the continued safe use of the roadway, and situated on an existing roadway embankment or within an area adjacent to the road which was disturbed in the initial construction of the roadway. While these

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requirements appropriately limit the exemption to only necessary disturbance of an already disturbed area, the Department is proposing to strengthen this provision to ensure inappropriate disturbance of riparian vegetation does not occur. Accordingly, the Department is proposing to amend N.J.A.C. 7:13-11.2(f)6 to restrict the amount of riparian disturbance that may be exempt under this paragraph to less than one acre in order to ensure that the benefits and functions of the riparian zone are not diminished through regulated activities associated with public roadways.

Regulated Activities not Listed in Table 11.2 (Table 11.2 and N.J.A.C. 7:13-11.2(y))

While Table 11.2 provides limits of riparian disturbance for a wide variety of activities that may take place in the riparian zone, the Department recognizes that some activities not listed in the table may be unavoidably located in a riparian zone. Accordingly, the rules allow a small amount of riparian zone disturbance of any kind for activities not otherwise listed in Table 11.2, with detailed requirements set forth in N.J.A.C. 7:13-11.2(y).

In the June 1, 2015 notice of proposal, adopted elsewhere in this issue of the New Jersey Register, the Department had proposed to simplify what was previously codified at N.J.A.C. 7:13-10.2(r) (now codified at N.J.A.C. 7:13-11.2(y)), change the maximum limit of disturbance to riparian zone vegetation, and provide a limited exception from the mitigation requirement that was contained in N.J.A.C. 7:13-10.2(r). As proposed at that time, the applicant would need to demonstrate that the project could not be accomplished or located in a manner that would reduce or eliminate riparian zone impacts, with a single one-quarter-acre limit proposed to be applicable to riparian zones of all widths. Further, mitigation would only be required for projects disturbing greater than 2,000 square feet of riparian zone vegetation due to the minimal impact anticipated from disturbances of 2,000 square feet or smaller. Finally, the June 1, 2015 notice of proposal

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would have eliminated the existing requirement that no building be constructed within 25 feet from the regulated water as unnecessary in light of a similar requirement that was proposed at N.J.A.C. 7:13-11.2(c).

As indicated in the Response to Comment 667 in the notice of adoption of the June 1, 2015 notice of proposal, published elsewhere in this issue of the New Jersey Register, in response to comments questioning the proposed one-quarter acre disturbance allowance regardless of the width of the riparian zone impacted and upon further consideration, the Department determined that further refinement of the subsection establishing limitations applicable to activities not otherwise covered in Table 11.2 was necessary and determined not to adopt the changes proposed in the June 1, 2015 notice of proposal, leaving the limits previously codified in N.J.A.C. 7:13-10.2(r) in place at N.J.A.C. 7:13-11.2(y) until different amendments, described below, could be proposed. Accordingly, the existing rules continue to allow 1,000 square feet of disturbance in a 50-foot riparian zone, 3,000 square feet of disturbance in a 150-foot riparian zone, and 6,000 square feet of disturbance in a 300-foot riparian zone that was previously codified at N.J.A.C. 7:13-10.2(r).

The Department is now proposing to refine its regulation of these “other” regulated activities in ways that will better protect the riparian zone than the amendments that had been proposed in the June 1, 2015 notice of proposal. Rather than creating a one size fits all standard, regardless of the width of the riparian zone impacted, the proposed amendments continue to differentiate limits according to the width of the riparian zone, with particular emphasis placed on protection of 300-foot riparian zones adjacent to Category One waters. Further, the proposed amendments distinguish between disturbance to an actively disturbed area and disturbance to an

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undisturbed area, and incorporate stricter standards to limit activities in the riparian zone to those that cannot avoid being located within the riparian zone. Particularly, the Department is proposing to amend the allowable disturbance limits for any regulated activity not listed in Table 11.2 (“other”) as well as the standards for the issuance of an individual permit for such activities set forth at N.J.A.C. 7:13-11.2(y).

With reference to the total area of disturbance allowed pursuant to Table 11.2, the Department is proposing that in both 50-foot and 150-foot riparian zones the area of allowed disturbance increased to one-quarter of an acre (10,890 square feet), from the existing limits of 1,000 square feet and 3,000 square feet respectively, with two very significant differences from what had been proposed for these two riparian zones in the June 1, 2015 notice of proposal. First, rather than permitting the total disturbance allowed to occur anywhere in the riparian zone, the proposed amendments to Table 11.2 provide that only 1,000 square feet of a 50-foot riparian zone and only 3,000 square feet of a 150-foot riparian zone can be located within riparian zone areas that are not considered actively disturbed in accordance with the FHACA rules, with any other disturbance up to the one-quarter acre total maximum allowed required to be located in actively disturbed areas. Accordingly, the entire potential increase in total area of disturbance over the allowed impact under the existing rules for 50-foot and 150-foot riparian zones must be confined to actively disturbed areas with no increase in disturbance allowed in areas that are not actively disturbed.

The second change, applicable not only to 50-foot and 150-foot riparian zones, but also 300-foot riparian zones, is proposed amendments to N.J.A.C. 7:13-11.2(y) designed to funnel any impacts to riparian zone vegetation to actively disturbed areas and increase the

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demonstration that must be made before any impact to undisturbed areas will be allowed.

Particularly, N.J.A.C. 7:13-11.2(y) currently requires, among other things, that the applicant demonstrate that there is neither an alternate means of accomplishing the project nor an alternate onsite location that would reduce or eliminate impacts to the riparian zone, and that all disturbance in the riparian zone is as far from the regulated water as possible. The Department is proposing to amend the rule to require that this demonstration be made before impacts to riparian zone vegetation located in an actively disturbed area is allowed at proposed N.J.A.C. 7:13-11.2(y)2. In contrast, before impacts to riparian zone vegetation in an area not actively disturbed are allowed, proposed N.J.A.C. 7:13-11.2(y)3 requires that the applicant meet a stricter standard. Particularly, the applicant must show that there is no other feasible use of the site that would reduce or eliminate the area of riparian zone vegetation impacted. The proposed paragraph provides examples of the types of change that must be considered and demonstrated to be unfeasible, including changing the type of project, before impacts to areas not actively disturbed are allowed.

The proposed increase in the amount of disturbance allowed in 50-foot and 150-foot riparian zones that are actively disturbed areas is appropriate for several reasons. The increased disturbance limit only applies to actively disturbed areas; the riparian zone disturbance limit for areas that are not actively disturbed is the same as in the existing rules. As defined at N.J.A.C. 7:13-1.2, an actively disturbed area is 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. Areas occupied by impervious surface, actively farmed areas, and areas which are periodically maintained (such as through

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seasonal mowing or cultivation) are examples of actively disturbed areas. Forested areas and areas of non-ornamental woody vegetation are not considered part of an actively disturbed area. Therefore, additional disturbance to areas that are already disturbed and altered from a natural condition will have a *de minimis* impact on the existing riparian zone functionality. By allowing an increase in the amount of disturbance in 50-foot and 150-foot riparian zones that are actively disturbed areas for activities not otherwise listed in Table 11.2 and establishing different demonstrations that must be made before an activity will be allowed to impact an actively disturbed area or an area of riparian zone vegetation that is not actively disturbed, the Department will direct development away from undisturbed riparian zones and towards areas where the activity will have a *de minimis* impact.

Further, all riparian zone disturbance under an individual permit, whether occurring in an actively disturbed area or not, must meet the strict avoidance and minimization standards at N.J.A.C. 7:13-11.2(b). In order for the Department to issue an individual permit that results in the clearing, cutting, and/or removal of vegetation in any riparian zone, the applicant must make clear that the basic purpose of the regulated activity or project cannot be accomplished onsite without disturbing vegetation in the riparian zone, and that clearing, cutting, and/or removal of riparian zone vegetation is minimized by, for example, situating the regulated activity as far away from any regulated water as feasible and limiting construction to areas that are devoid of vegetation, are actively disturbed, or other areas where the benefits and functions of a riparian zone are deteriorated and impaired as a result of a previous development. In addition, as discussed later in this Summary, mitigation performed in accordance with N.J.A.C. 7:13-13 is

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required for all areas of riparian zone vegetation cleared, cut, and/or removed under this category in cases where disturbance exceeds 2,000 square feet.

While an increase in the total potential riparian zone impact is proposed for 50- and 150-foot riparian zones, provided the increased impact occurs to actively disturbed areas and the demonstrations required under N.J.A.C. 7:13-11.2(y) are made, for a 300-foot riparian zone, proposed amendments reduce the total area of undisturbed riparian zone vegetation that may be impacted and add other requirements that increase the protections for these waters. Particularly, the current 6,000 square feet allowance in Table 11.2 for impacts from the “other” category is amended to provide that a maximum of 3,000 square feet of the 6,000 square feet total disturbance can be located within a riparian zone area that is not actively disturbed. Accordingly, the maximum impact to areas of riparian zone vegetation that are not actively disturbed is reduced from 6,000 square feet to 3,000 square feet, with any other disturbance required to be in an actively disturbed area. Further, disturbance in areas of a 300-foot riparian zone that are not actively disturbed is proposed to be limited to areas more than 150 feet from the top of bank of the Category One water.

Additional amendments to N.J.A.C. 7:13-11.2(y) are proposed to further refine and enhance the regulation of activities in a riparian zone not specifically listed in Table 11.2 or N.J.A.C. 7:13-11.2(g) through (x). As explained above, the requirement at N.J.A.C. 7:13-11.2(y)2 that no building is constructed within 25 feet of any top of bank or edge of water is proposed to be deleted to avoid redundancy with other provisions in this chapter. These new requirements strengthen the standards for the issuance of an individual permit for activities not listed in Table 11.2 and limit disturbance of undisturbed riparian zones to only those situations

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that such disturbance is unavoidable. Finally, it should be noted, as discussed below, that N.J.A.C. 7:13-11.2(y)4, which requires mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed, is proposed for deletion as all mitigation requirements within N.J.A.C. 7:13-11.2 are proposed to be consolidated at N.J.A.C. 7:13-13.4.

Mitigation Requirements for Individual Permits (N.J.A.C. 7:13-11.2, 13.4, and 13.9)

Requirements for a Regulated Activity in a Riparian Zone (N.J.A.C. 7:13-11.2)

N.J.A.C. 7:13-11.2(e) specifies when mitigation will be required for activities that impact riparian zone vegetation. The existing subsection requires that mitigation be provided when riparian zone impacts exceed the limit specified in Table 11.2 applicable to the activity being conducted and when the activity is conducted in accordance with N.J.A.C. 7:13-11.2(g), (h), (j), (r), and (s), which require mitigation to be provided for all riparian zone impacts, not just those in excess of the areas specified in Table 11.2. N.J.A.C. 7:13-11.2(g), (h), and (j) require mitigation when the activities covered by those subsections are undertaken for all impacts in 300-foot buffers, while N.J.A.C. 7:13-11.2(r) and (s) require mitigation for activities covered by those subsections for all impacts to riparian zone vegetation regardless of whether the impact is to a 50-foot, 150-foot, or 300-foot riparian zone.

In place of the existing requirements, the Department proposes to require that mitigation be provided for all impacts (not just those in excess of the limits applicable to the activity in Table 11.2), with certain exceptions set forth in N.J.A.C. 7:13-13.4, when the regulated activity is located within a 300-foot riparian zone, as well as when the riparian zone impact is associated with an investigation, cleanup, or removal of hazardous substances pursuant to N.J.A.C. 7:13-

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11.2(r), when the activity causing the riparian zone vegetation impact is authorized under a solid waste landfill closure plan and post-closure plan or disruption approval in accordance with N.J.A.C. 7:13-11.2(s), and when the activity is one not listed at N.J.A.C. 7:13-11.2(g) through (x), but is captured by the “other” category addressed by N.J.A.C. 7:13-11.2(y). For riparian zone impacts not falling within one of these categories, mitigation would continue to be required for riparian zone impacts in excess of the impact allowed for that activity under Table 11.2. The proposed new language no longer specifically refers to N.J.A.C. 7:13-11.2(g)3, (h)3, or (j)4 as provisions that require mitigation for all impacts. As indicated above, these paragraphs currently require mitigation for all impacts from certain activities when conducted in a 300-foot riparian zone. As the Department is proposing to expand the requirement to provide mitigation for impacts to 300-foot riparian zones, continuing to separately identify these provisions is no longer necessary.

Requiring mitigation for individual permit impacts in a 300-foot riparian zone with limited exceptions is intended to strengthen the protections afforded these areas. This is appropriate since, as discussed above, 300-foot riparian zones adjacent to Category One waters are intended to protect, among other things, the quality of these waters.

The Department is additionally proposing several amendments to N.J.A.C. 7:13-11.2 designed to improve the overall organization of the FHACA Rules concerning mitigation requirements for individual permit activities. A series of amendments are proposed to relocate requirements specifying the amount of mitigation required to compensate for conduct of a regulated activity impacting a riparian zone from various subsections in N.J.A.C. 7:13-11.2 to a new section in the mitigation subchapter, proposed N.J.A.C. 7:13-13.4. Particularly, mitigation

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requirements from N.J.A.C. 7:13-11.2(g)2 and 3, (h)2 and 3, (i)2, (j)2, (j)3ii, (j)4ii, (k)1, (q)1, (r)2, (s)3, (t), (u)1, (v), and (w)1, and (y)4 are proposed to be relocated from those subsections to the new N.J.A.C. 7:13-13.4. With the proposal to consolidate the required demonstration that must be made before a stormwater discharge, conduit outlet protection, and/or conveyance swale will be allowed in either a 150-foot or 300-foot riparian zone into proposed N.J.A.C. 7:13-11.2(j)2, existing N.J.A.C. 7:13-11.2(j)4i, which currently makes that requirement applicable to a 300-foot riparian zone, is proposed for deletion. In addition to being recodified to N.J.A.C. 7:13-13.4, N.J.A.C. 7:13-11.2(g)2 and 3, and (h)2 and 3 are proposed for amendment as summarized below under “*Amount of Mitigation Required (N.J.A.C. 7:13-13.4).*”

Finally, other amendments are proposed throughout N.J.A.C. 7:13-11.2 to reflect recodification resulting from the deletion of the above referenced provisions and incorporation of requirements related to the amount of mitigation required for various impacts to riparian zone vegetation into proposed N.J.A.C. 7:13-13.4.

Amount of Mitigation Required (N.J.A.C. 7:13-13.4)

As discussed above, the Department is proposing to consolidate and amend provisions that establish the amount of mitigation required for different regulated activities in a riparian zone authorized under an individual permit in proposed new N.J.A.C. 7:13-13.4, Amount of mitigation required.

Proposed N.J.A.C. 7:13-13.4(a) establishes the scope of the section. As indicated, the amount of mitigation required depends on the area of riparian zone vegetation cleared, cut, and/or removed, the width of the riparian zone, and the type of regulated activity. These three

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factors influence the degree to which riparian zone functions and values are impacted by a regulated activity.

New N.J.A.C. 7:13-13.4(b) sets forth the amount of mitigation required for activities within a 300-foot riparian zone, and requires that mitigation be provided for the total area of vegetation cleared, cut, and/or removed, with limited exceptions as associated with the activities listed at N.J.A.C. 7:13-13.4(b)1 through 4. Particularly, exceptions are provided for construction or other activities related to utility lines, construction associated with a single-family home or duplex, and construction of a trail or boardwalk. These activities when conducted in a 300-foot riparian zone are not required to provide mitigation in cases where the limitations of Table 11.2 are met. However, if riparian zone disturbance exceeds the limits of Table 11.2, mitigation is required for the total area of vegetation impacted, not simply the area in excess of Table 11.2. These same activities are either entirely exempt from groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of the SWM rules pursuant to N.J.A.C. 7:8-5.2(d) or, in the case of single-family home construction, were generally exempt from the SWRPA requirements specified at prior N.J.A.C. 7:8-5.5(h) because in most cases such construction did not exceed either the one acre of disturbance or 0.25 acres of impervious surface standard necessary to be considered “major development” and thus subject to any of the requirements of the SWM rules. Accordingly, these activities were not subject to the limitations applicable to SWRPAs. Further, with regard to single-family home construction, these activities are limited to a single home on a single lot and are, in most instances, undertaken by the homeowner. It has been the Department’s experience that onsite mitigation in these instances is often not practicable and requiring homeowners to pursue offsite mitigation options is unduly

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burdensome. Therefore, rather than require these homeowners to undertake the extensive burden of applying for a hardship exception, the Department has determined exempting these activities is appropriate. However, as noted above, if riparian zone disturbance exceeds the limits of Table 11.2 for these activities, then mitigation is required for the total area of vegetation impacted, not simply the area in excess of Table 11.2.

Proposed N.J.A.C. 7:13-13.4(c) establishes mitigation for activities within a 50- or 150-foot riparian zone.

Under proposed N.J.A.C. 7:13-13.4(c)1, mitigation is required for the total area of riparian zone disturbance for regulated activities subject to N.J.A.C. 7:13-11.2(r) or (s). This requirement is continued from N.J.A.C. 7:13-11.2(r)2 and (s)3 with no change in substance.

Proposed N.J.A.C. 7:13-13.4(c)2 establishes mitigation requirements for a regulated activity subject to N.J.A.C. 7:13-11.2(y), which covers activities not listed at N.J.A.C. 7:13-11.2(g) through (x). N.J.A.C. 7:13-11.2(y) is intended to capture situations where a specific regulated activity is not otherwise addressed in Table 11.2, and an applicant demonstrates that there is no other reasonable means of accomplishing the project or other feasible location onsite to undertake the project, which would reduce or eliminate the impact to actively disturbed areas, and further, where riparian zone disturbance is located outside of an actively disturbed area, that there is no other feasible use of the site that would reduce or eliminate the area of disturbance, 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. N.J.A.C. 7:13-13.4(c)2 establishes that, for activities under N.J.A.C. 7:13-11.2(y) that result 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

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of vegetation cleared, cut, and/or removed. This ensures that robust mitigation is required for all but the smallest activities. Under existing N.J.A.C. 7:13-11.2(y), applicants are required to provide mitigation for the total area of riparian zone disturbance. However, where the area of riparian zone vegetation proposed to be disturbed is less than 2,000 square feet, and is located within a 50- or 150-foot riparian zone, the Department has determined that such activities would have a *de minimis* impact on riparian zone functionality and thus do not require compensatory mitigation.

Proposed N.J.A.C. 7:13-13.4(c)3 establishes that mitigation is required for the area of any riparian zone vegetation cleared, cut, and/or removed in excess of any limit set forth in Table 11.2 for all other regulated activities not listed at N.J.A.C. 7:13-13.4(c)1 and 2. This requirement consolidates the amount of mitigation required for all other activities into one clear paragraph to enhance organization and understanding, as compared to the existing rules listing this requirement separately within the requirements of each activity in N.J.A.C. 7:13-11.2.

As a result of the proposed insertion of new N.J.A.C. 7:13-13.4, existing N.J.A.C. 7:13-13.4 through 13.20 are proposed to be recodified as N.J.A.C. 7:13-13.5 through 13.21 and cross-references throughout Subchapters 12 and 13 are amended to reflect the proposed new codifications (see, for example, N.J.A.C. 7:13-12.14(d), where cross-references to riparian zone creation and riparian zone restoration are amended).

Riparian Zone Mitigation Hierarchy (N.J.A.C. 7:13-13.9)

N.J.A.C. 7:13-13.8, Riparian zone mitigation options and mitigation location, which is proposed to be recodified with amendments as N.J.A.C. 7:13-13.9, governs the mitigation

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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. The heading of the section, as well as select language as noted below, are amended to be similar to the parallel section in the CZM Rules at N.J.A.C. 7:7-17.14, Wetlands mitigation hierarchy.

Recodified N.J.A.C. 7:13-13.9(a) sets forth the scope of the section and is continued without amendment.

Existing N.J.A.C. 7:13-13.8(b) provides that mitigation for a riparian zone vegetation disturbance shall be provided in one or more of the following means, as determined in consultation with the Department: (1) Purchase of credits from a mitigation bank with a service area that includes the location of the disturbance; (2) Onsite creation, restoration, enhancement, or preservation; and/or (3) Offsite creation, restoration, enhancement, or preservation in the same watershed management area as the disturbance. Under existing N.J.A.C. 7:13-13.8(b), no method of riparian zone mitigation is given priority over another. However, as noted in the scope of the FHACA Rules at N.J.A.C. 7:13-1.1(c), riparian zones provide many important functions that contribute to ecological health both locally and within a given watershed. For example, riparian zone vegetation on a site reduces pollutant loading and runoff volumes reaching the waterway, which helps to increase the quality of the receiving surface water and preserve channel integrity at the site. These benefits provided onsite additionally ameliorate sediment loading and reduce water quality impairment downstream of the site. Providing mitigation on the same site as a proposed activity, therefore, provides the most direct avenue to ensure that any

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impairment to riparian zone functionality caused by the regulated activity is fully offset in a manner that preserves riparian zone benefits both locally and within the watershed.

Therefore, the Department is proposing a mitigation hierarchy at N.J.A.C. 7:13-13.9(b) and (c). Similar to the freshwater wetlands mitigation requirements in the FWPA rules at N.J.A.C. 7:7A-15.6 and the coastal wetlands mitigation hierarchy in the CZM rules N.J.A.C. 7:7-17.14, the proposed hierarchy, provides that riparian zone mitigation must, to the maximum extent practicable, be provided through onsite riparian zone creation, restoration, enhancement, or preservation. Only where onsite mitigation that fully compensates for the disturbance is not practicable will offsite mitigation be authorized by the Department to compensate for any portion of the mitigation obligation that cannot be satisfied onsite.

Where it is demonstrated that the mitigation obligation cannot be fully satisfied onsite, offsite in the same watershed management area as the impacts, or through the purchase of credits from a mitigation bank as provided in proposed N.J.A.C. 7:13-13.9(b), proposed N.J.A.C. 7:13-13.9(c) allows the mitigator to satisfy any remaining obligation through offsite mitigation in an adjacent watershed management area, as approved by the Department and provided the mitigation fully compensates for the disturbance.

Therefore, the Department is proposing a mitigation hierarchy at N.J.A.C. 7:13-13.9(b) and (c). Similar to the freshwater wetlands mitigation requirements in the FWPA rules at N.J.A.C. 7:7A-15.6 and the coastal wetlands mitigation hierarchy in the CZM rules N.J.A.C. 7:7-17.14, the proposed hierarchy provides that riparian zone mitigation must, where feasible, be provided through onsite riparian zone creation, restoration, enhancement, or preservation. Only where onsite mitigation that fully compensates for the disturbance is not feasible will offsite

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mitigation or the purchase of credits from a mitigation bank be authorized by the Department to compensate for any portion of the mitigation obligation that cannot be satisfied onsite.

The determination as to whether mitigation under N.J.A.C. 7:13-13.9(b) is feasible necessarily involves analysis of the potential mitigation areas and determination as to whether mitigation that will fully compensate for any ecological loss, as required by N.J.A.C. 7:13-13.2(a), is practicable. The factors that the Department will consider when determining the feasibility of mitigation are set forth at proposed new N.J.A.C. 7:13-13.9(b)1 through 4: size, location, habitat value, and interaction with nearby resources.

As explained at proposed N.J.A.C. 7:13-13.9(b)1, the larger a mitigation area, the greater its potential environmental benefit. Further, a mitigation area associated with a large existing riparian zone complex is more likely to be environmentally beneficial. N.J.A.C. 7:13-13.9(b)2 explains that in considering location, a mitigation area adjacent to public land or another preserved area is more likely to be environmentally beneficial. As explained in proposed N.J.A.C. 7:13-13.9(b)3, a mitigation area that will provide habitat for threatened or endangered species is more likely to be environmentally beneficial. Proposed N.J.A.C. 7:13-13.9(b)4 explains that a mitigation project is more likely to be environmentally beneficial if it complements existing resources. An example is a mitigation project that adds riparian wetlands habitat adjacent to an existing stream, which enhances the environmental value of both the riparian area and the stream.

Existing N.J.A.C. 7:13-13.8(d), which sets forth additional standards for mitigation associated with a major development within a 300-foot riparian zone, is continued without amendment at N.J.A.C. 7:13-13.9(d).

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Consistency of the FHACA Rules with UCC and NFIP (N.J.A.C. 7:13)

The UCC, N.J.A.C. 5:23, adopted by the New Jersey Department of Community Affairs (DCA) and administered locally by municipal construction officials, establishes standards for buildings in New Jersey, including flood elevation requirements for buildings in a flood hazard area and flood-proofing standards. The UCC is consistent with the Federal Emergency Management Agency's (FEMA) NFIP standards (44 CFR Parts 59, 60, 65, and 70). The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP. Participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding. In general, the elevation requirements contained in the FHACA Rules require that buildings be elevated to a height equal to or greater than the elevation that would be applicable under the UCC. However, in limited circumstances, the requirements specified by the UCC may result in a building being required to be elevated to a greater height than is required by the FHACA Rules. Accordingly, amendments are proposed to definitions and building standards to address discrepancies in elevation requirements and flood-proofing standards and incorporate the standards of the UCC, where those standards require construction at a higher elevation. Specific amendments are described in detail below.

Amendments are also proposed to ensure the standards for construction in V zones and coastal A zones in the FHACA Rules are consistent with the UCC, and thus consistent with NFIP standards. V zones are areas subject to flooding that are potentially subject to breaking

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wave heights three feet or more above the anticipated tidal stillwater elevation during a 100-year flood. Landward of the V zone in coastal areas is the coastal A zone, which is potentially subject to breaking wave heights between 1.5 and 3.0 feet. Both V zones and coastal A zones are particularly vulnerable to flooding. These areas, thus, require more stringent building standards to protect the public from the impacts of flooding than is otherwise required outside these areas. For this reason, FEMA and DCA have incorporated additional standards for buildings located in these areas to ensure that such buildings are suitably resistant to displacement, buoyancy, and structural damage during flood events.

Lowest Floor (N.J.A.C. 7:13-1.2, 7, 8, 9, and 12.5)

Definitions (N.J.A.C. 7:13-1.2)

The FHACA Rules establish required minimum lowest floor elevations for buildings to protect public safety. However, in V zones and coastal A zones, the UCC in some cases sets higher standards than the FHACA Rules. On September 21, 2015, DCA adopted amendments to the UCC, which incorporate by reference portions of the 2015 International Building Code and 2015 International Residential Code. With certain exceptions, the UCC requires foundations in the coastal A zone to meet the same requirements as foundations in the V zone and establishes elevation requirements for the bottom of the lowest supporting horizontal structural member of the lowest floor. The FHACA Rules, as modified by amendments adopted elsewhere in this issue of the New Jersey Register, define and use the term “lowest floor,” which refers to the top surface of the floor of the lowest enclosed area of a building, but does not account for the lower

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components that support that floor (floor joists, supporting beams, etc.), which can be damaged by wave energy in V zones and coastal A zones.

To correct this inconsistency, the Department is proposing to replace the existing definition of “lowest floor” at N.J.A.C. 7:13-1.2 with a new definition specifying that the lowest floor of a building means the bottom of the lowest supporting horizontal structural member of the building when the building or a portion of the building is in a V zone or coastal A zone. For buildings not located in a V zone or coastal A zone, the proposed new definition continues the existing definition of “lowest floor” with clarifying amendments that do not change the meaning of the existing definition. The reference to basements in the existing definition of “lowest floor” is not continued because the FHACA Rules do not permit the construction of basements (enclosures with a floor that is below grade along all sides) within a flood hazard area. The existing reference had led applicants to believe that a basement was in some cases permissible under the FHACA Rules. Since this is not the case, the reference to basements is removed.

This proposed amendment will align the standards of the FHACA Rules with the UCC in order to ensure that the FHACA Rules incorporate the minimum standards applicable to construction in these areas that are designed to provide a more robust level of protection to people and property in areas that are particularly vulnerable to the negative impacts of flooding.

Permit-By-Rule, General Permit-By-Certification, and General Permit Standards (N.J.A.C. 7:13-7, 8, and 9)

In addition to the standards discussed above, the 2015 International Building Code and 2015 International Residential Code (incorporated by reference in the UCC) in some cases may

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require even greater freeboard (feet above the base or design flood elevation) for residential buildings and certain other buildings to protect people and property in the case of a flood emergency. These more stringent requirements in the International Building Code, for example, are applied to buildings that would pose a high risk to the public or significant disruption to the community should they be damaged, unable to perform their intended functions after flooding, or fail due to flooding, and to buildings that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the community at large in the event of failure, disruption of function, or damage by flooding (see ASCE 24-14 Table 1-1, Flood Design Class of Buildings and Structures). The Department shares the goal of protecting public health, safety, and welfare from flooding and so is incorporating by reference the elevation standards of the UCC. The Department is specifically proposing to amend several permits-by-rule, general permits-by-certification, and general permits to establish that the lowest floor of a building constructed under these specific authorizations must be at least one foot above the flood hazard area design flood elevation and cannot be lower than the elevation required under the UCC. Identical language is proposed to be added to: permit-by-rule 11 (reconstruction, relocation, and/or elevation of a lawfully existing building) at N.J.A.C. 7:13-7.11(a)3; permit-by-rule 12 (construction of an addition(s) to a lawfully existing habitable building) at N.J.A.C. 7:13-7.12(a)3, general permit-by-certification 5 (reconstruction, relocation, expansion, and/or elevation of a building outside a floodway) at N.J.A.C. 7:13-8.5(a)5; general permit-by-certification 6 (construction of one single-family home or duplex in a tidal flood hazard area) at recodified N.J.A.C. 7:13-8.6(a)5; general permit-by-certification 8 (construction of an addition to a lawfully existing building) at N.J.A.C. 7:13-8.8(a)3; general permit 5 (reconstruction and/or

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elevation of a building in a floodway) at N.J.A.C. 7:13-9.5(a)1; and general permit 6 (construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water) at N.J.A.C. 7:13-9.6(a)4.

Individual Permit Standards

The FHACA Rules contain standards for buildings constructed under a flood hazard individual permit at N.J.A.C. 7:13-12.5. The requirements concerning the lowest floor of a new habitable building constructed under a flood hazard individual permit are codified at N.J.A.C. 7:13-12.5(i). The Department is proposing to update existing N.J.A.C. 7:13-12.5(i) for consistency with the standards of the UCC.

N.J.A.C. 7:13-12.5(i) sets forth the standards for issuing an individual permit to construct a new habitable building. This provision is proposed to be amended to clarify that the requirements at paragraphs (i)1–4 concern the elevation of the lowest floor of the building. Similar to the amendments described above to the permits-by-rule, general permits-by-certification, and general permits that authorize the construction of a building, N.J.A.C. 7:13-12.5(i)1 through 4 are proposed for amendment to establish that the lowest floor of a building under an individual permit must be at least one foot above the flood hazard area design flood elevation and cannot be lower than the elevation required under the UCC. As noted below, additional amendments are proposed at N.J.A.C. 7:13-12.5(i)3 and 4 to address construction within V zones and coastal A zones.

N.J.A.C. 7:13-12.5(i)3 requires the lowest floor of a multi-residence building to be one foot above the flood hazard area design flood elevation, unless certain requirements are satisfied.

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The Department is proposing to specify at new N.J.A.C. 7:13-12.5(i)3vi that a building may not be wholly or partially within a V zone or the Department will not issue a permit for construction of a multi-residence building with a floor elevation lower than the elevation required at N.J.A.C. 7:13-12.5(i)3. If the lowest floor is below the required elevation, this is considered an enclosure below the required elevation under the UCC, which is unsafe and, therefore, prohibited in V zones. As proposed at new N.J.A.C. 7:13-12.5(i)3vii, new multi-residence buildings in coastal A zones are also ineligible for the exception to the floor elevation requirement, unless an architect or engineer certifies that the building's foundation is designed in accordance with the UCC. The UCC, in most cases, requires buildings in coastal A zones to meet the same requirements as buildings in V zones. However, there are certain cases in which a building in a coastal A zone may be constructed to a different standard than the same building in a V zone. Rather than repeat the UCC's standards in the rule text, the Department is instead proposing to require a certification from an architect or engineer that such standards are met.

Similar amendments are proposed at N.J.A.C. 7:13-12.5(i)4iv to specify that lowest floor of other habitable buildings may not be lower than one foot above the flood hazard area design flood elevation if the building is located wholly or partially within a V zone and to N.J.A.C. 7:13-12.5(i)4v to specify the same for buildings in coastal A zones, unless an architect or engineer certifies that the building's foundation is designed in accordance with the UCC.

The FHACA Rules include, at N.J.A.C. 7:13-12.5(p), individual permit standards for the construction of an enclosure that lies below the lowest floor of a habitable building or an enclosure below the flood hazard area design flood elevation that is attached or detached from a habitable building and intended to be used as a garage or parking area. The standards established

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in N.J.A.C. 7:13-12.5(p) are universal, with the same standard applicable in V zones and coastal A zones as are mandated in all other regulated areas. In contrast, the UCC generally prohibits the construction of an enclosure below the required lowest floor elevation in these areas. The Department is, therefore, proposing new N.J.A.C. 7:13-12.5(p)4 to prohibit authorization of an individual permit for such an enclosure, if any portion of the building is located within a V zone. As discussed above, while the building requirements for coastal A zones in the UCC are usually identical to the requirements for V zones, there are certain exceptions. The Department is, therefore, proposing to prohibit, at new N.J.A.C. 7:13-12.5(p)5, the issuance of an individual permit to construct an enclosure below the lowest floor of a habitable building or below the flood hazard area design flood elevation if a building that is within a coastal A zone unless an architect or engineer certifies that the building's foundation is designed in accordance with the UCC.

The Department is also proposing to align the flood-proofing requirements of the FHACA Rules with those required under the UCC. The existing rules contain dry flood-proofing requirements at N.J.A.C. 7:13-12.5(r) and wet flood-proofing requirements at N.J.A.C. 7:13-12.5(s). While these subsections describe the required result that flood-proofing methods must achieve, they do not contain technical standards to ensure the success of the implemented measures in achieving the required goal. The Department is, therefore, proposing at N.J.A.C. 7:13-12.5(r) to establish that a permit will be issued to dry flood-proof a building only if the building is designed and constructed to meet the dry flood-proofing requirements of the UCC, and is proposing at N.J.A.C. 7:13-12.5(s) to establish that a permit will be issued to wet flood-proof a building only if the building is designed and constructed to meet the wet flood-proofing requirements of the UCC. The appropriate sections of the UCC are further incorporated by

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reference, in accordance with N.J.A.C. 1:30-2.2. These amendments will direct applicants to the detailed technical standards of the UCC to increase the protection of people and property afforded by proper flood-proofing techniques.

Consistency between FHACA and CZM Rules (N.J.A.C. 7:7)

Ongoing Department rulemaking efforts seek to align the land use permitting rules (FHACA, CZM, and FWPA rules) to the extent the respective enabling statutes allow.

Alignment of the rules is especially important when a proposed activity is regulated under more than one of the permitting programs. The Department is proposing amendments to ensure the requirements of the CZM Rules are compatible with those of the FHACA Rules with respect to the construction of one or two single-family homes or duplexes.

Coastal General Permit 4 (N.J.A.C. 7:7-6.4)

Coastal general permit 4 (N.J.A.C. 7:7-6.4) authorizes the development of one or two single-family homes or duplexes and/or accessory development located landward of the mean high water line and not located on a bulkheaded lagoon lot. In the existing rule, development under this general permit must comply with several special area rules, including the beach, flood hazard area, wetlands, and riparian zone special area rules. The riparian zone rule at N.J.A.C. 7:7-9.26(e) requires all development in riparian zones authorized under the CZM Rules to conform to the requirements applicable to a flood hazard area individual permit, permit-by-rule, or general permit, found in N.J.A.C. 7:13. However, the FHACA Rules do not have provisions allowing the construction of two single-family homes or duplexes. This discrepancy essentially

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prevents the use of coastal general permit 4 in riparian zones, which was not the Department's intent when promulgating this general permit.

To remedy this inconsistency, the reference to N.J.A.C. 7:7-9.26, Riparian zones, is proposed to be deleted from N.J.A.C. 7:7-6.4(c). The Department is instead proposing specific standards for development under coastal general permit 4 within a riparian zone at new N.J.A.C. 7:7-6.4(d). Under proposed N.J.A.C. 7:7-6.4(d)1, no disturbance can be 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. While general permit 4 does not currently apply to bulkheaded lagoon lots, the proposed provision would be applicable on other bulkheaded properties. This requirement is consistent with the requirement for flood hazard individual permits at N.J.A.C. 7:13-11.2, adopted elsewhere in this issue of the New Jersey Register, and is intended to prevent the increased erosion, flooding, and water quality impacts associated with a destabilized bank. Bulkheads, retaining walls, and revetments stabilize banks along regulated waters and therefore alleviate concerns about bank destabilization.

Proposed N.J.A.C. 7:7-6.4(d)2 and 3 set forth riparian zone disturbance limits for development under coastal general permit 4 within 50-foot, and 150-foot or 300-foot riparian zones, respectively. These riparian zone disturbance limits are consistent with the amount of riparian zone disturbance allowed for one single-family home or duplex under N.J.A.C. 7:13-11.2(m) and presented in Table 11.2.

Recodified N.J.A.C. 7:7-6.4(e) is proposed for amendment to reference these new requirements. Recodified N.J.A.C. 7:7-6.4(f) through (o) are proposed for amendment to update citations and cross-references to accommodate the recodification of these subsections.

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Housing Use Rule (N.J.A.C. 7:7-15.2)

N.J.A.C. 7:7-15.2 sets forth individual permit standards for single-family and duplex developments. N.J.A.C. 7:7-15.2(e) is similar to general permit 4 and establishes standards relevant to the development of one or two single-family homes or duplexes and/or accessory development. N.J.A.C. 7:7-15.2(f) is similar to general permit 5 and establishes standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single-family home or duplex and/or accessory development. While development under general permits 4 and 5 must comply with N.J.A.C. 7:7-9.26, Riparian zones, N.J.A.C. 7:7-15.2(e) and (f) do not include a similar requirement. In order to ensure that development under N.J.A.C. 7:7-15.2 does not adversely impact riparian zone functionality, proposed new N.J.A.C. 7:7-15.2(e)2 incorporates the same riparian zone standards as are proposed under general permit 4, and a requirement that development under N.J.A.C. 7:7-15.2(f) must comply with N.J.A.C. 7:7-9.26, Riparian zones, is proposed at N.J.A.C. 7:7-15.2(f)1.

Facilitation of Environmentally Beneficial Activities

Several flood hazard permits-by-rule authorize limited riparian disturbance associated with certain environmentally responsible activities associated with agricultural, wetlands restoration, or wildlife management. To facilitate these environmentally beneficial activities, which are performed with the approval and/or under the supervision of the United States Department of Agriculture (USDA) and/or the United States Fish and Wildlife Service (USFWS), the Department is proposing amendments to three permits-by-rule.

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Permit-By-Rule 56—Continuation or Commencement of Natural Resource Conservation

Practices Associated with Agricultural Activities (N.J.A.C. 7:13-7.56)

This permit-by-rule authorizes regulated activities associated with environmentally beneficial agricultural practices. The Department received comments from USDA indicating that the requirement at N.J.A.C. 7:13-7.56(a)4 that limits clearing, cutting, and/or removal of riparian zone vegetation to actively disturbed areas is needlessly limiting and in some cases prevents natural resource conservation practices from being undertaken. The Department recognizes that limited clearing of riparian zone vegetation outside of actively disturbed areas is sometimes appropriate to accommodate the beneficial activities authorized under permit-by-rule 56 and is, therefore, proposing to replace N.J.A.C. 7:13-7.56(a)4, as adopted elsewhere in this issue of the New Jersey Register, with the requirement that activities under permit-by-rule 56 do not disturb more than 2,000 square feet of riparian zone vegetation outside of actively disturbed areas. Disturbance of this area of riparian zone vegetation will have a *de minimis* impact on the functions of the riparian zone and is appropriate to facilitate beneficial natural resource conservation practices in the riparian zone.

Permit-By-Rule 58—Filling or Modification of a Manmade Regulated Water for Freshwater

Wetlands Restoration

This permit-by-rule authorizes the filling of a manmade regulated water for the purpose of freshwater wetlands restoration. Historic freshwater wetlands losses to agriculture and other development in New Jersey are extensive. The Department supports efforts to restore previously

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compromised wetlands to functioning ecosystems with wetlands hydrology, vegetation, and soils. The permit-by-rule requires any work associated with the filling of a manmade regulated water for wetland restoration purposes to be approved by and performed under the supervision of the USDA's NRCS or local Soil Conservation Service. The Department is proposing to add the USFWS to the list of agencies that may approve and supervise activities under this permit-by-rule at N.J.A.C. 7:13-7.58(a)1. The USFWS regularly works to restore wetland habitat through the Partners program and often works with landowners who are ineligible for NRCS programs to pursue these beneficial activities.

The Department is additionally proposing to amend N.J.A.C. 7:13-7.58(a)3 to replace the requirement that clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas with the requirement that no more than 2,000 square feet of riparian zone vegetation is cleared, cut, or removed outside of actively disturbed areas. This is an appropriate area to facilitate these environmentally beneficial activities and will have a *de minimis* impact on the environment.

Permit-By-Rule 61—Construction of a Pump and/or Water Intake Structure in or along a Regulated Water for Livestock (N.J.A.C. 7:13-7.61)

The construction of a pump and/or water intake structure to water livestock is an environmentally beneficial agricultural practice. Providing water to livestock outside of the regulated water itself limits livestock access to the regulated water and, therefore, decreases the risk of compromising water quality with animal waste and destabilizing the channel through destruction of riparian zone vegetation. A comment received by USDA on the June 1, 2015

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notice of proposal indicated that the limit of 1,000 square feet of riparian zone disturbance established at N.J.A.C. 7:13-7.61(a)4 would preclude many projects from being eligible for this permit-by-rule. The Department is, therefore, proposing to increase the amount of vegetation that may be cleared, cut, and/or removed under permit-by-rule 61 to 2,000 square feet. This amount of disturbance will have a *de minimis* impact on riparian zone functionality and will facilitate beneficial practices that will protect water quality and riparian zone functionality in the long-term.

Clarification that Permits-By-Rule, General Permits-By-Certification, and General Permits May Not be Used for Activities Qualifying as “Major Development”

“Major development” is defined by the SWM rules at N.J.A.C. 7:8-1.2 as “any ‘development’ that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more ...” While it is unlikely that activities authorized under a permit-by-rule, or most activities authorized under a general permit-by-certification or general permit, would be large enough to constitute a major development under this definition, and, as indicated below, several permits-by-rule, general permits-by-certification, and general permits already include a specific provision ensuring that an activity that is part of a project that meets the definition of “major development” cannot be authorized by that permit, it remains possible that an activity might qualify for authorization under other permits-by-rule, general permits-by-certification, or general permits even if the activity, in combination with other activities, would constitute “major development.” In the limited cases where a permit-by-rule, general permit-by-certification, or general permit activity does constitute a major development,

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the municipality in which the project is situated is required, as part of its New Jersey Pollutant Discharge Elimination System permit, to ensure the requirements of N.J.A.C. 7:8 are met.

However, to ensure that permits-by-rule, general permits-by-certification, and general permits authorize only relatively minor construction projects that do not require municipal review of stormwater calculations to determine compliance with N.J.A.C. 7:8, the Department is proposing to prohibit a regulated activity that would meet the definition of major development from being authorized under a permit-by-rule, general permit-by-certification, or general permit, as described below.

Conditions Applicable to a Permit-By-Rule (N.J.A.C. 7:13-6.7)

Specifically, the Department is proposing, at new N.J.A.C. 7:13-6.7(c), that regulated activities may not be authorized under a permit-by-rule general permit-by-certification, or general permit if the activity, in combination with all proposed activities, constitutes a major development as defined at N.J.A.C. 7:8-1.2. Consequently, should an activity that would otherwise meet the requirements of one of these permits constitute a major development, an individual permit for the activity is required, thereby ensuring that the Department reviews stormwater management calculations and confirms compliance with N.J.A.C. 7:8.

Permits-By-Rule, General Permits-By-Certification, and General Permits (N.J.A.C. 7:13-7, 8, and 9)

Several permits-by-rule, general permits-by-certification, and general permits in the existing FHACA Rules already contain a provision that specifies that an activity may not be

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authorized under the permit if the activity, in combination with all proposed activities, constitutes a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2. In light of the proposed amendment to N.J.A.C. 7:13-6.7 that makes this limitation applicable to all permits-by-rule, general permits-by-certification, and general permits, these existing provisions are proposed to be deleted as redundant. Particularly, the Department is proposing to delete N.J.A.C. 7:13-7.8(a)6, 7.9(a)7, 7.10(a)5, and 7.29(a)11, which state that permits-by-rule 8, 9, 10, and 29, respectively, cannot authorize a major development. The Department is also proposing to delete N.J.A.C. 7:13-8.6(a)8, 9.6(a)10, 9.8(a)11, 9.9(a)9, and 9.10(a)9, which state that where activities under general permit-by-certification 6 and general permits 6, 8, 9, and 10, respectively, constitute a major development, the applicant demonstrates that the requirements of N.J.A.C. 7:8 are met as this demonstration is no longer applicable. Minor amendments are proposed to the paragraphs immediately preceding the deleted paragraphs to facilitate the deletion without affecting meaning.

Additionally, an amendment is proposed to permit-by-rule 10 regarding the types of activities that are authorized. Permit-by-rule 10 authorizes general construction activities located outside a flood hazard area in a riparian zone, provided the conditions listed at N.J.A.C. 7:13-6.7 and within the permit-by-rule are met. Certain types of development are prohibited under the existing permit-by-rule at N.J.A.C. 7:13-7.10(a)1, since construction of the identified structures may pose an environmental or flooding risk, which must be evaluated under a general permit or individual permit, or are covered under other permits-by-rule that place necessary restrictions on development to ensure the purposes of the chapter are met. Specifically, the permit-by-rule does

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not authorize the construction of any habitable building, fuel tank, solar panel, or underground utility line that conveys a gas or liquid.

As noted in the Department's June 1, 2015 notice of proposal of this permit-by-rule, "permit-by-rule 10 is identical to permit-by-rule 9, with the exception of the provisions related to construction within a floodway, since any activity located outside a flood hazard area is necessarily located outside a floodway and therefore cannot obstruct flood flows or exacerbate flooding" (See 47 N.J.R. 1120). Since permit-by-rule 9 authorizes activities within a flood hazard area, it is important that no habitable building be constructed. The FHACA Rules set forth standards related to the elevation of the lowest floor of habitable buildings within flood hazard area. For example, permit-by-rule 11 at N.J.A.C. 7:13-7.11 for the reconstruction, relocation, and/or elevation of a lawfully existing building requires that the lowest floor of the building is reconstructed or elevated to at least one foot above the flood hazard area design flood elevation, and further restricts the design and usage of any enclosures below the lowest floor. However, these standards are not applicable to habitable buildings located outside a flood hazard area, as there is no flood elevation to reference in areas that are not subject to flooding from the Department's design flood. Therefore, the Department is proposing to allow the construction of habitable buildings under permit-by-rule 10, provided all other conditions of the permit-by-rule are met.

Stormwater Calculation Review Fees (N.J.A.C. 7:7-25.1, 7:7A-11.1, and 7:13-20.1)

Cap on Stormwater Calculation Fee

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On February 2, 2015, the Department adopted amendments, repeals, and new rules concerning fees for applications for permits and determinations or approvals under the FWPA, FHACA, and CZM Rules. Among other things, the adopted amendments, repeals, and new rules established a simplified, cohesive fee structure across the three chapters of rules, and made uniform the fees for certain permits and determinations that are common to all three programs. (See 46 N.J.R. 1839(a); 47 N.J.R. 422(a)). However, the adopted fee provisions did not include a maximum amount (cap) that an applicant may be charged for the review of stormwater calculations when a proposed project is a “major development” in accordance with N.J.A.C. 7:8-1.2. The lack of a cap could result in fees calculated in accordance with the rules exceeding the amount that the Department’s review of stormwater related calculations and issues is likely to entail in some cases. Therefore, the Department is proposing to establish a cap of \$20,000 for all stormwater review fees in the FWPA, FHACA, and CZM Rules.

Prior to the February 2, 2015 amendments to the land use permitting fee rules, the review of stormwater calculations required as part of a coastal, flood hazard, or freshwater wetlands permit incurred a maximum potential fee of \$16,000. This \$16,000 cap was established in 2006, when the Department first added a fee for review of stormwater calculations for “major developments” under the FHACA, FWPA, and CZM Rules (See 38 N.J.R. 134(a), 4205(a), and 4209(a)). In the notice of proposal Summary of the proposed addition of the fee for flood hazard permits (see 37 N.J.R. 2636(a)), the Department explained that the additional workload imposed by the need to review stormwater calculations for compliance with N.J.A.C. 7:8, required a separate fee. Most applications that require review of stormwater calculations also involve pre-application conferences and an increased number of phone calls and other communication with

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applicants in order to ensure compliance with the SWM rules, in addition to the time spent by staff on reviewing the stormwater calculations themselves. Project review times are, therefore, greater for major development projects that require stormwater review than for other projects. The additional fee for major development projects that require the review of stormwater calculations was established to reflect the substantial increase in workload generated by the Department's obligation to assess compliance with the SWM rules and is proportional to the type, size, location, and level of proposed development.

The Department amended the method for calculating stormwater review fees as part of the 2015 rulemaking, which removed the \$16,000 cap. However, the Department has determined that the total elimination of any cap could result in fee calculations that would exceed the Department's likely investment of resources to review stormwater aspects of larger projects. The Department is, therefore, proposing a \$20,000 cap to the stormwater review fees under all three land use rule chapters. The proposed \$20,000 cap is similar to the \$16,000 cap adopted in 2006, updated to reflect current economic conditions. At N.J.A.C. 7:7-25.1(g) Table A in the CZM Rules, N.J.A.C. 7:7A-11.1(g) Table A in the FWPA rules, and N.J.A.C. 7:13-20.1(e) Table 20.1 in the FHACA rules, the Department is proposing to add a note under the portion of the table that establishes the fees for stormwater review if a project is a "major development." The note states that the additional application fee for stormwater review set forth in this table shall not exceed \$20,000. The cap ensures that the fee charged allow the Department to cover costs of operation while ensuring that the fee is reflective of the Department's efforts.

Modification of Previously Reviewed Stormwater Calculations

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The Department is additionally proposing to clarify the application fee required for a modification of previously reviewed stormwater calculations. Where a project for which a permit or approval is being sought constitutes a major development pursuant to the SWM Rules at N.J.A.C. 7:8-1.2, Department staff conducts a review of stormwater management calculations to determine compliance with the requirements of N.J.A.C. 7:8. Accordingly, the CZM Rules at N.J.A.C. 7:7-25.1, the FWPA Rules at N.J.A.C. 7:7A-11.1, and the FHACA Rules at N.J.A.C. 7:13-20.1 establish application fees for this review, which are required in addition to the application fee for the type of permit or approval being sought. For example, an applicant seeking an individual permit for the construction of a bridge under the FHACA Rules, which requires the review of hydrologic and hydraulic calculations, would be assessed \$3,000 for the individual permit base fee and an additional \$4,000 for the review of the bridge, for a total application fee of \$7,000. Should the bridge be associated with a major development, additional application fees for stormwater review would be assessed, the minimum fee for this review being \$3,000.

Where a permittee revises the design of a project approved by the Department, a modification of the associated permit or approval is required. In certain cases, the revised design can alter the stormwater management plan that was reviewed and approved by Department staff. The CZM, FWPA, and FHACA Rules all provide for a major technical modification of a permit or approval, the application fee for which is 30 percent of the original application fee paid by the applicant, or \$500.00, whichever is greater. It is the Department's intention to apply the same application fee to the review of stormwater management calculations, where such calculations are revised as part of a modification. However, as this is not explicitly stated in the fee tables in

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the CZM, FWPA, and FHACA Rules, some applicants have not correctly calculated the application review fee.

The Department is, therefore, proposing to add to the stormwater fee table in the CZM, FWPA, and FHACA Rules a clarification that, where an applicant seeks a modification of stormwater calculations previously reviewed by Department staff under a permit or approval, the application review fee for the modified calculations is 30 percent of the original stormwater fee. Using the example above, assuming an individual permit fee of \$7,000 and a stormwater review fee of \$3,000, the application fee to modify the individual permit would be \$2,100 (30 percent of \$7,000) and the application fee to modify the stormwater calculations would be \$900.00 (30 percent of \$3,000). It should be noted that the stormwater modification fee is necessary only where Department staff must review revised calculations in order to determine compliance with N.J.A.C. 7:8. Where a modification to a permit or approval does not alter the previously reviewed stormwater calculations, no review fee for modified stormwater calculations is required.

Social Impact

The proposed amendments and new rules will have a positive social impact in several ways. The proposed amendments will protect water quality, direct development away from flood-prone areas, promote consistency between the standards of the FHACA Rules and other applicable requirements, and facilitate environmentally beneficial activities, where appropriate.

Amendments to riparian zone standards will also have a positive social impact. Additional protections for riparian zone vegetation, specifically protections proposed for 300-

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foot riparian zones, will preserve the water supply, ecology, recreational value, and fisheries resources of the State's most valuable waters, to the benefit of all who reside in this State.

Additionally, the proposed consolidation of mitigation requirements into a new section in the mitigation subchapter will facilitate understanding of and compliance with riparian zone mitigation requirements.

Amendments proposed to coastal general permit 4 (N.J.A.C. 7:7-6.4) and related amendments to coastal individual permit standards (N.J.A.C. 7:7-15.2(e) and (f)) will eliminate confusion among the regulated public with regard to the construction of one or two single-family homes or duplexes on sites that are located within both the coastal zone and the riparian zone, and ensure that necessary environmental protections are in place.

Several proposed amendments promote consistency between the FHACA Rules and other State and Federal standards. Some building standards in the existing rules do not align with FEMA's standards for construction in communities participating in the NFIP and the requirements of the UCC. The differences between the Department's rules and other standards is not conducive to a streamlined and predictable permitting process. Under this rulemaking, the Department seeks to align the standards of the FHACA Rules with other applicable standards to ensure that protection of public safety and of property is maximized. For example, the amendment of the definition of "lowest floor" to be consistent with the UCC definition will reduce confusion while ensuring that the more protective standard is applied. The definition differentiates between structures in V zones or coastal A zones and structures outside of these areas to better protect people and property from flooding, especially in hazardous and particularly flood-prone areas. The amendment to require applicants to design and construct wet

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flood-proofing and dry flood-proofing in accordance with the applicable standards of the UCC similarly harmonizes the standards of the FHACA Rules with those of the UCC, which promotes compliance with current construction standards.

Several amendments are proposed to building requirements at N.J.A.C. 7:13-12.5 to align standards for development in V zones or coastal A zones with FEMA's standards and the UCC. Under the proposed rules, if a proposed new habitable building is entirely or partially located within a V zone or coastal A zone, the bottom of the lowest horizontal structural member cannot be less than one foot above the flood hazard area design flood or lower than the elevation required by the UCC, with certain exceptions for buildings in a coastal A zone where an engineer or architect certifies that the building's foundation is designed in accordance with the Uniform Construction Code. This ensures that, in the limited circumstances where the elevation of the lowest floor required by the UCC exceeds that required by the FHACA Rules, the regulated public understands that it is the more protective standard that must be satisfied. Additional amendments establish that an enclosure that lies below the lowest floor of a habitable building or lies below the flood hazard area design flood cannot be constructed in a V zone nor, in most cases, in a coastal A zone. These amendments align the standards of the FHACA Rules with the UCC and with FEMA's requirements for communities participating in the NFIP, which will save time and resources for applicants and better protect people and property from the impacts of flooding by steering certain types of development away from vulnerable areas.

Additionally, amendments to several permits-by-rule help facilitate environmentally beneficial activities such as those associated with a wildlife habitat management plan and/or environmentally beneficial agricultural operations. These amendments will have a positive social

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impact by streamlining the permitting process for applicants proposing activities that are environmentally beneficial.

Economic Impact

The Department anticipates that the proposed amendments will not create any significant economic impacts. The proposed additional requirements related to regulated activities and projects located within a riparian zone may have an economic impact on persons proposing regulated activities or projects in the 300-foot riparian zone. The Department anticipates that there may be additional cost to applicants proposing regulated activities resulting from the proposed additional mitigation requirements; for example, under the proposed amendments most development under an individual permit in a 300-foot riparian zone requires mitigation. Additional costs will, therefore, be incurred by those conducting regulated activities within a 300-foot riparian zone, including the cost of preparing a mitigation plan and executing that plan by onsite or offsite mitigation, or through purchasing credits through a riparian zone mitigation bank. Additionally, more robust requirements for conducting regulated activities within the inner 150 feet of the 300-foot riparian zone may cause those seeking to conduct such activities to spend more time and resources preparing an application in order to satisfy the additional requirements. The exact costs will depend upon factors including the area of riparian zone vegetation that is impacted, the ecological losses related to the impact to that specific property that must be compensated for, and the area of the State within which the proposed unavoidable impact is to occur. In many cases it is anticipated that additional costs may be minimized or avoided entirely by compliance with requirements that the proposed regulated activity avoid

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impacts to riparian zone vegetation and minimize unavoidable impacts by locating the proposed activity as far from the regulated water as possible.

The proposed amendments aligning the standards of the FHACA Rules with UCC standards will more efficiently regulate construction in flood hazard areas. Because the UCC is consistent with FEMA's NFIP standards, aligning the standards of the FHACA Rules with the UCC will ensure consistency across State and Federal programs resulting in a more predictable permitting process. The improved alignment with the UCC and other Department rules, as well as clarifications provided by the proposed amendments, will reduce the time spent preparing some applications and may, therefore, reduce the costs associated with the permit application process.

The proposed \$20,000 cap on the application fee for a stormwater review for a project that is a major development pursuant to the Stormwater Management Rules, N.J.A.C. 7:8-1.2, will help to meet the legislative intent that fees are adequate to remunerate the Department for the cost of application reviews. The costs the Department incurs from stormwater reviews for major developments include pre-application conferences, increased communication with applicants, and increased review times due to the need to review the stormwater calculations and evaluate the potential impacts associated with changes in stormwater quantity, quality, and recharge volume. Accordingly, the proposed amendments allow the Department to cover costs of operation while ensuring that the fee is reflective of the Department's efforts.

Environmental Impact

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The Department anticipates that the proposed amendments will have an overall positive environmental impact by facilitating activities on agricultural lands that provide ecological uplift, adding additional protections to the inner 150 feet of 300-foot riparian zones, and creating additional mitigation requirements in riparian zones. The proposed amendments will facilitate ecosystem restoration and encourage practices that protect water quality on agricultural lands by reducing administrative costs for landowners and farmers interested in engaging in natural resource conservation practices, wetlands restoration, and installation of pumps or water intake structures to provide water to livestock. Permits-by-rule, 56, 58, and 61 all require approval by Federal, State, or local agencies, which will further ensure that these projects with long-term ecological benefits will only cause *de minimis* impacts to the environment in the short-term of their implementation.

Several proposed amendments have been made to general permits-by-certification and general permits to provide further protections to riparian zones. These amendments limit the amount of riparian disturbance and add explicit protections for the inner half of 150-foot and 300-foot riparian zones. The Department has determined that the inner half of 150-foot and 300-foot riparian zones warrant further protection because of their important functions in protecting water quality and maintaining bank stability.

Proposed amendments to requirements for individual permits will provide increased mitigation in 300-foot riparian zones. The existing rules only require mitigation for the total area of any vegetation that is cleared, cut, and/or removed in a 300-foot riparian zone for a limited set of regulated activities including the construction, expansion, or restoration of public roadways, private roadways, and railroads, and the construction or reconstruction of a stormwater

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discharge. The Department also requires mitigation for all riparian zone disturbance associated with the investigation, cleanup, and/or removal of hazardous substances, solid waste landfill closures, and post-closure plans or disruptions, and activities covered under N.J.A.C. 7:13-11.2(y), regardless of the width of the riparian zone. Mitigation for other activities is required only for impacts in excess of the area allowed under Table 11.2. The proposed amendments require mitigation for the total area of disturbed riparian zone vegetation in any 300-foot buffer for all regulated activities authorized under an individual permit except in limited circumstances, which will help protect the important water resources surrounded by 300-foot riparian zones. Requiring mitigation for the total area of riparian zone disturbance in 300-foot riparian zones will restore the ecological functions of any potentially disturbed riparian zone vegetation.

The Department has sought to provide increased opportunities for ecological uplift on agricultural lands, increased protections for riparian zone vegetation, and forested areas within riparian zones, and increased compensation for disturbance of riparian zone vegetation by increasing mitigation requirements in 300-foot riparian zones. Through these proposed amendments, the rule will have a positive impact on the environment.

In addition, the amendment to N.J.A.C. 7:13-6.7 to specify that a permit-by-rule, general permit-by-certification, or general permit will not authorize an activity that constitutes a major development, as defined in the SWM rules, strengthens the Department's protection of public health, safety, and welfare, and the environment. Projects large enough to be a major development (other than the specifically exempted activities) can potentially alter the quality, quantity, or recharge volume of runoff, and may, therefore, negatively impact the water quality of an adjacent water. Therefore, these activities must be reviewed via an application for an

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individual permit. While limitations already in place limit the potential that any activity constituting major development could qualify for a permit-by-rule, and only in limited cases would qualify for a general permit-by-certification or general permit, the proposed amendment will ensure Department review under an individual permit for all projects meeting the definition of “major development” by prohibiting their approval under any permit-by-rule, general permit-by-certification, or general permit. In addition to ensuring Department oversight and review of impacts covered by the FHACA rules, Department review of activities qualifying as “major development” will ensure Department consideration of whether the proposed project satisfies the requirements of the SWM rules and thus additionally prevent adverse environmental impacts associated with changes in stormwater management conditions.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The Department's authority for regulating development within flood hazard areas and riparian zones comes solely from State statute, specifically N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 13:1D-1 et seq. The FHACA Rules are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal laws, Federal standards, or Federal requirements. The Federal Emergency Management Agency (FEMA) delineates flood hazard areas in the State for the purposes of the National Flood Insurance

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Program (NFIP). However, there is no Federal agency or program that directly regulates activities in flood-prone areas based on their potential flooding impacts. The Code of Federal Regulations, at 44 CFR Part 60, enables FEMA to require municipalities who participate in the NFIP to adopt certain flood hazard reduction standards for construction and development in 100-year flood plains. However, a community's participation in the NFIP is voluntary, and FEMA does not otherwise regulate land uses in flood hazard areas. Furthermore, the Federal flood reduction standards at 44 CFR Part 60 are administered by local governments.

The proposed amendments do not derive authority from any Federal law or under any State statute that incorporates or refers to Federal laws, standards, or requirements. However, the amendments do serve to align the requirements of the FHACA Rules with NFIP standards, in V zones and coastal A zones. These amendments harmonize State flood hazard area rules with national standards to facilitate compliance for NFIP-participating communities.

Jobs Impact

The FHACA Rules play a significant role in the planning and construction of residential, commercial, industrial, and public development in the State. The Department anticipates that the proposed amendments will not have a significant impact on the number or quality of jobs in the State. Many of the amendments serve to align the Department's construction standards under the FHACA Rules with UCC standards, which will not affect the number of people employed in the construction industry. Other amendments to building standards to better protect people and property from flooding are not anticipated to positively or negatively affect jobs in any sector. Amendments to riparian zone requirements, while potentially affecting the location, type, and

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cost of development permitted in the riparian zone, are not anticipated to impact jobs in the State. Amendments to permits-by-rule that facilitate environmentally beneficial agriculture and wildlife management activities are not anticipated to impact jobs but only serve to reduce the regulatory burden associated with these activities.

Amendments to riparian zone mitigation requirements may have a small positive impact on jobs related to mitigation. The proposed amendments require mitigation in more cases than are required in the adopted rules, which will increase the number of riparian mitigation projects. This increase may increase the demand for employees involved in the mitigation industry. In general, however, the Department does not anticipate that the proposed amendments will have a large impact on jobs.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed amendments on the agriculture industry. The Department anticipates that the proposed amendments will have an overall positive impact on the agricultural industry by facilitating the completion of projects that will have positive effects on soil conservation and water quality. The existing permits-by-rule 56, 58, and 61 require that any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas. This provision is proposed to be amended to require that 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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The amendments to permits-by-rule 56 and 58 will allow a greater range of soil resource conservation and wetland restoration projects to be commenced and completed on agricultural lands without requiring a FHACA permit application and will benefit farmers and landowners with a reduction in FHACA permit applications and associated costs. The goal of these projects is to reduce soil erosion and restore wetland ecosystem functions, which will have positive effects on bank stability, water quality, and flood attenuation. The amendment to permit-by-rule 61 will reduce the number of FHACA permit applications by farmers and landowners for construction of a pump and/or water intake structure in or along a regulated water for livestock, which will reduce costs and fees for projects that have significant water quality benefits. Projects authorized under permits-by-rule 56, 58, and 61 must be approved by the USDA's NRCS, local Soil Conservation Districts, and/or USFWS; approval by these organizations will ensure that the projects are being performed in accordance with N.J.A.C. 2:90-1.4, will not exacerbate flooding, and will have *de minimis* impacts on the environment.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a number of contractors, builders, and property owners that will be affected by the proposed amendments are "small businesses" as defined by the Regulatory Flexibility Act at N.J.S.A. 52:14B-17.

The proposed amendments apply to any person or entity owning property containing a flood hazard area and/or riparian zone, who intends to engage in a regulated activity. The FHACA Rules regulate new development and other activities in flood hazard areas based on

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impacts to and from flooding and in riparian zones taking into account loss of riparian zone functionality. As such, these rules will have the same impact on a small business as on any person proposing such activities in a flood hazard area or riparian zone.

Prior to undertaking regulated activities within a flood hazard area or riparian zone, the adopted rules require individuals to either qualify for authorization under a permit-by-rule or else apply for authorization under a general permit-by-certification or general permit, or an individual permit, as appropriate. Obtaining a certification or approval from the Department requires a certain amount of reporting and recordkeeping during the initial design and construction phase. The costs to small businesses in this regard are the same as to any person seeking to construct within flood hazard areas and riparian zones, including surveying costs, engineering and environmental consultant fees, and permit application fees. Furthermore, a copy of the permit and approved drawings must be maintained at the worksite and available for inspection, and the rules require reporting to the Department if unanticipated flooding or environmental damage occurs during or after construction, as well as any change in construction plans, transfer of ownership, or any noncompliance with the rules. Permittees are also required to furnish within a reasonable time any information that the Department requests to determine compliance with a permit or to determine whether cause exists for suspension or termination of a permit. These are basic requirements intended to ensure that permitted activities are undertaken in accordance with the requirements of the rules, as well as any conditions that may be placed on a permit, and do not affect small businesses differently than any person undertaking activities in a flood hazard area or riparian zone. The proposed amendments do not amend these requirements.

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In some cases, the proposed amendments may benefit small businesses. For example, the amendments to permits-by-rule 56, 58, and 61 that facilitate beneficial agricultural activities will have a positive impact on small farming operations by expanding the scale of activities that may be undertaken without the significant time and expense of obtaining a permit from the Department. Additionally, changes to mitigation requirements will result in more mitigation projects, which will have a positive impact on small businesses involved in mitigation.

The expanded mitigation requirements for activities with a 300-foot riparian zone and the strengthened requirements for applications proposing regulated activities within the inner half of any 300-foot riparian zone will increase the reporting and recordkeeping requirements for small businesses that seek to conduct regulated activities within these areas. As explained above, however, these requirements apply equally to any entity proposing to conduct activities in a 300-foot riparian zone.

Since the amendments are the minimum necessary to protect public health, safety, and welfare and the environment, adopting differing standards applicable to small businesses would not sufficiently protect the residents of New Jersey from the deleterious impacts of flooding.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine the impact, if any, on the affordability of housing. As indicated in the Economic Impact statement, the proposed amendments will make the FHACA Rules easier to understand and use where both the FHACA

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Rules and the UCC address certain development standards, having a slight positive economic impact in some cases by creating a permitting process that is more predictable and in line with NFIP requirements and UCC standards. The expanded mitigation requirements and stricter limits on the location of development in 300-foot riparian zones may, however, increase costs associated with constructing housing, depending on the location of the proposed development. However, the Department believes that it is unlikely that the economic impacts associated with the proposed amendments and new rules would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). As indicated in the Economic Impact statement, the proposed amendments will make the FHACA Rules easier to understand and use where both the FHACA Rules and the UCC address certain development standards, having a slight positive economic impact in some cases by creating a permitting process that is more predictable and in line with NFIP requirements and UCC standards. The expanded mitigation requirements and stricter limits on the location of development in 300-foot riparian zones may, however, increase costs associated with constructing housing, depending on the location of the proposed development. While these changes will result in cost savings in some cases and in

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increases costs in other cases, these changes will not be large enough to evoke a change in housing production in Planning Areas 1 or 2 or within designated centers.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 7

COASTAL ZONE MANAGEMENT RULES

SUBCHAPTER 6. GENERAL PERMITS

7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes

(a) – (b) (No change.)

(c) Development under this general permit shall comply with N.J.A.C. 7:7-9.22, Beaches; [7:7-]9.25, Flood hazard areas; [7:7-]9.26, Riparian zones; 7:7-]9.27, Wetlands; [7:7-]9.28, Wetland buffers; and [7:7-]9.36, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this general permit within a riparian zone, as defined in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2 and in this chapter at N.J.A.C. 7:7-9.26, shall comply with the following requirements:

1. 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;

2. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed; and

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3. Within a 150-foot or 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

[(d)] (e) In addition to meeting the requirements at (c) and (d) above, the development of two single-family homes or duplexes under this general permit on filled water's edge sites that have included a water dependent use at any time since July of 1977, shall comply with N.J.A.C. 7:7-9.23(e) of the filled water's edge rule.

[(e)] (f) Development under this general permit shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under [(e)1] (f)1 or 2 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at [(e)1ii] (f)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following conditions:

i. – iv. (No change.)

2. (No change.)

[(f)] (g) Development under this general permit shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at [(m)1] (n)1 below, unless the development meets either [(f)1] (g)1 or 2 below:

1. (No change.)

2. The development on the coastal bluff is located landward of the developed bluff area as defined at [(f)1] (g)1 above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is

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located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

[(g)] **(h)** Development under this general permit shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and [7:7-]9.19, Erosion hazard areas, except as excluded under [(g)1] **(h)1** below;

1. (No change.)

Recodify existing (h) – (l) as **(i) – (m)** (No change in text.)

[(m)] **(n)** Development under this general permit shall comply with the following setbacks:

1. – 2. (No change.)

3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with [(m)1] **(n)1** above.

[(n)] **(o)** (No change in text.)

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SUBCHAPTER 15. USE RULES

7:7-15.2 Housing

(a) – (d) (No change.)

(e) Standards relevant to the development of one or two single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than two [single family] **single-family** homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8, and provided the single-family home(s) or duplex(es) and accessory development are located landward of the mean high water line are as follows:

1. (No change.)

2. Development within riparian zones, as defined in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2 and in this chapter at N.J.A.C. 7:7-9.26, shall comply with the following:

i. 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;

ii. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed; and

iii. Within a 150-foot or 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

[2.] **3.** (No change in text.)

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[3.] **4.** Development shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under [(e)3i] **(e)4i** or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at [(e)3i(2)] **(e)4i(2)** below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) – (4) (No change.)

ii. (No change.)

[4.] Development shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at [(e)12i] **(e)13i** below, unless the development meets either [(e)4i] **(e)5i** or ii below:

i. (No change.)

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at [(e)4i] **(e)5i** above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

[5.] **6.** Development shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and [N.J.A.C. 7:7-]9.19, Erosion hazard areas, except as excluded under (i) below;

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- i. (No change.)

Recodify existing 6. – 11. as **7. – 12.** (No change in text.)

[12.] **13.** Development shall comply with the following setbacks:

- i. – ii. (No change.)

- iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with [(e)12i] **(e)13i** above;

Recodify existing 13. – 14. as **14. – 15.** (No change in text.)

- (f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at

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N.J.A.C. 7:7-2.2(b)8, and provided the single-family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7-9.22, Beaches, **9.26, Riparian zones,** [7:7-]9.27, Wetlands, [7:7-]9.28, Wetland buffers, and [7:7-]9.36, Endangered or threatened wildlife or vegetation species habitats;

2. – 13. (No change.)

(g) (No change.)

SUBCHAPTER 25. APPLICATION FEES

7:7-25.1 Application fees

(a) – (f) (No change.)

(g) The fees for applications under this chapter are set forth in Table A below:

Table A

APPLICATION FEES

...

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)

	Fee ¹
...	
Modification of previously reviewed stormwater calculations	Thirty percent of the original stormwater fee

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¹The additional application fee for stormwater review set forth in this table shall not exceed \$20,000.

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 11. APPLICATION FEES

7:7A-11.1 Application fees

(a) – (f) (No change.)

(g) The fees for applications under this chapter are set forth in Table A below:

Table A

APPLICATION FEES

...

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)

	Fee ¹
...	
Modification of previously reviewed stormwater calculations	Thirty percent of the original stormwater fee

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¹The additional application fee for stormwater review set forth in this table shall not exceed \$20,000.

CHAPTER 13

FLOOD HAZARD AREA CONTROL ACT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

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.

...

["Lowest floor" means the floor of the lowest enclosed area of a building, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access, or limited storage, which is constructed in compliance with this chapter.]

"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.**

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...

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

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) – (b) (No change.)

(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.

Recodify existing (c) - (d) as **(d) - (e)** (No change in text.)

SUBCHAPTER 7. PERMITS-BY-RULE

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. – 3. (No change.)

4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas; **and**

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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[; and].
- [6. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.]

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. – 4. (No change.)
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[; and].
- [7. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.]

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 [habitable building,] fuel tank, solar panel, or underground utility line that conveys a gas or liquid is constructed;

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2. (No change.)
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[; and].
- [5. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.]

7:13-7.11 Permit-by-rule 11 – reconstruction, relocation, and/or elevation of a lawfully 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. – 2. (No change.)
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. – 8. (No change.)

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

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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. – 2. (No change.)
3. The lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation, [unless otherwise approved by the local construction official having jurisdiction over the project] **and no lower than the elevation required under the Uniform Construction Code, N.J.A.C. 5:23;**
4. – 7. (No change.)

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. – 8. (No change.)
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[; and].
- [11. The project, in combination with all proposed activities, does not constitute a major development, as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2.]

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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. – 3 (No change)

[4. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.]

4. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed outside of an actively disturbed area.

7:13-7.58 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. (No change)

[3. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to actively disturbed areas.]

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3. No more than 2,000 square feet of riparian zone vegetation is cleared, cut, and/or removed outside of an actively disturbed area.

7:13-7.61 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. – 3. (No change)
4. No more than [1,000] **2,000** square feet of riparian zone vegetation is cleared, cut, and/or removed.

SUBCHAPTER 8. GENERAL PERMITS-BY-CERTIFICATION

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. – 4. (No change.)
5. The applicant obtains an engineering certification confirming that the lowest floor of the

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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. – 10. (No change.)

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;**

Recodify existing 1. – 3. as **2. - 4.** (No change in text.)

[4.] **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;**

[5.] **6.** (No change in text.)

[6.] **7.** [No] **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

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water;

[7.] **8.** [No] **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**

[8. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, the applicant obtains an engineering certification confirming that all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.]

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.

7:13-8.8 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. – 2. (No change.)

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. – 7. (No change.)

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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. – 2. (No change)

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;

[3.] **4. [No] 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 bank;

6. Within a 300-foot riparian zone, no disturbance is located within 150 feet of any top of bank; and

Recodify existing 4. – 5. as **7. – 8.** (No change in text.)

SUBCHAPTER 9. GENERAL PERMITS

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:

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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. – 7. (No change.)

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[, in a fluvial flood hazard area]

(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, [in a fluvial flood hazard area,] provided the conditions at N.J.A.C. 7:13-6.7 are met and:

1. – 3. (No change)
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. – 6. (No change.)
7. **Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed;**
- [7.] 8. [No] **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**

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top of bank is avoided to the maximum extent practicable;

[8.] **10.** [The] **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**

[9.] **11.** The applicable requirements at N.J.A.C. 7:13-12.6(c) are satisfied for any proposed driveway[; and].

[10. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules N.J.A.C. 7:8 are met.]

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. – 8. (No change.)

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[; and].

[11. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.]

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

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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. – 6. (No change)

[7. No more than 2,500 square feet of riparian zone vegetation is cleared, cut, and/or removed;]

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

[8.] **11. The timing restrictions set forth at N.J.A.C. 7:13-11.5(d) are observed[; and].**

[9. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules, N.J.A.C. 7:8, are met.]

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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 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. – 6. (No change.)
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[; and].
- [9. Where the project, in combination with all proposed activities, constitutes a major development, as defined at N.J.A.C. 7:8-1.2, all applicable requirements of the Stormwater Management rules N.J.A.C. 7:8 are met.]

SUBCHAPTER 11. AREA-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

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

(a) (No change.)

(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. – 2. (No change.)
- 3. All existing onsite impervious surface located within 25 feet of the top of bank is**

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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 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**

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feasible, be replanted with vegetation in accordance with (z) below;

Recodify existing 3. – 5 as **4. – 6.** (No change in text.)

(c) (No change.)

[(d) The Department shall issue an individual permit for a regulated activity within a riparian zone only if all existing onsite impervious surfaces located within 25 feet of the top of bank are removed and the riparian zone is replanted with vegetation in accordance with (z) below, except in the following cases:

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. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface 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
3. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this subsection 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 feet of a top of bank, may provide essential access to and around the building and the removal of such

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impervious surface would result in noncompliance with local building or fire codes and/or disrupt normal access to and throughout the facility. In such cases, 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.]

(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;**

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- 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 area of riparian zone vegetation being cleared, cut, and/or removed exceeds a limit in Table 11.2, or where vegetation is cleared, cut, and/or removed pursuant to (g)3, (h)3, (j)4, (r)2, (s)3, and/or (y) below, mitigation, in accordance with N.J.A.C. 7:13-13, is required.] **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. – 3. (No change.)

(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. – 5. (No change.)

6. Any regulated activity along a lawfully existing public roadway **that results in a net**

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loss of less than one acre of riparian zone vegetation, provided the activity is:

i. – v. (No change.)

7. (No change.)

Table 11.2

MAXIMUM ALLOWABLE AREA OF RIPARIAN ZONE VEGETATION THAT CAN BE TEMPORARILY OR PERMANENTLY CLEARED, CUT, AND/OR REMOVED WITHOUT ADDITIONAL JUSTIFICATION[, MITIGATION,] 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

...

[Any regulated activity not listed in this table above	(y)	1,000 ft ²	3,000 ft ²	6,000 ft ²]
Any regulated activity not listed in this table above				
Total area of disturbance permitted	(y)	One-quarter of an acre		6,000 ft²
Maximum portion of the total area of disturbance permitted above, which can be located within a riparian zone that is not an actively		1,000 ft²	3,000 ft²	3,000 ft² (must be located more than

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disturbed area				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. (No change.)
- [2. For the construction of a new railroad or public roadway within a 50-foot or 150-foot riparian zone, and for the expansion, reconstruction, or improvement of a lawfully existing railroad or public roadway within any riparian zone, which exceeds the limits set forth in Table 11.2, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;
3. For the construction of a new railroad or public roadway within a 300-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed;]

Recodify existing 4. -6. as **2. – 4.** (No change in text.)

(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

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roadway, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. (No change.)
2. For any construction within a 50-foot or 150-foot riparian zone that exceeds the limits set forth in Table 11.2, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;
3. For any construction within a 300-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed;]

Recodify existing 4. – 8. as **2. – 6.** (No change in text.)

(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. (No change.)
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, or for a project to line or pipe a channel in accordance with N.J.A.C. 7:13-12.14(c)4, 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[. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that

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is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2]; and

3. (No change.)

(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. (No change.)

[2. Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 50-foot riparian zone, the applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;]

[3.] **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[:

i. Demonstrates] **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

[ii. Provides mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2;]

[4.] **3.** Where the stormwater discharge, conduit outlet protection, and/or conveyance swale is located within a 300-foot riparian zone, [the applicant:

i. Demonstrates that situating the stormwater discharge and its associated disturbance

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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;

- ii. Provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed within the riparian zone; and
- iii. Where] **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.

[(1)] i. (No change in text.)

(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[. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2];

2. – 6. (No change.)

(l) – (p) (No change.)

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(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[. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2];
2. – 4. (No change.)

(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

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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. [This]

2. The demonstration or certification under (r)1 above shall include:

- i. (No change.)
- 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[; and].

[2. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.]

(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. (No change.)
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. [This]

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

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methods were not chosen[; and].

[3. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.]

(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. [In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2.]

(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[. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2];

2. – 3. (No change.)

(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

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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. [In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2.]

(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[. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2];

2. – 6. (No change.)

(x) (No change.)

(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. (No change.)

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[2. No building is constructed within 25 feet of any top of bank or edge of water;]

[3.] **2. [The] 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, which would reduce or eliminate the impact to the riparian zone; **and**

ii. (No change.)

[iii. All disturbance within the riparian zone is located as far from the regulated water as possible; and

4. The applicant provides mitigation, in accordance with N.J.A.C. 7:13-13, for the total area of vegetation that is cleared, cut, and/or removed.]

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) (No change.)

SUBCHAPTER 12. ACTIVITY-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

7:13-12.5 Requirements for a building

(a) – (h) (No change.)

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(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. – iii. (No change.)
 - 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; [and]
 - 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; [and]
 - 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**

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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. (No change.)
- 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; [and]
- 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) – (o) (No change)

(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

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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:

1. – 2. (No change.)

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; [and]

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

[4.] **6.** (No change in text.)

(q) (No change.)

(r) The Department shall issue an individual permit to dry flood-proof a building under (q)1 above only if the building is designed and constructed [with measures] **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 [during] **up to** a flood depth of at least one foot above the flood hazard area design flood elevation.

(s) The Department shall issue an individual permit to wet flood-proof a building under (q)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 [during] **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.

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(t) (No change.)

7:13-12.14 Requirements for bank stabilization and channel restoration

(a) – (c) (No change.)

(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. (No change.)

ii. Riparian zone creation in accordance with N.J.A.C. 7:13-[13.9]**13.10**; and/or

iii. Riparian zone restoration in accordance with N.J.A.C. 7:13-[13.10]**13.11**;

2. – 5. (No change.)

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.

...

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“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-[13.10]**13.11**, such as the removal of invasive plant species or the planting of native, non-invasive vegetation.

...

“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-[13.10]**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.

...

7:13-13.2 General mitigation requirements

(a) – (j) (No change.)

(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-[13.9]**13.10**;
2. Restoration mitigation - N.J.A.C. 7:13-[13.10]**13.11**;
3. Enhancement mitigation - N.J.A.C. 7:13-[13.10]**13.12**;
4. Preservation mitigation - N.J.A.C. 7:13-[13.12]**13.13**; and/or
5. Purchase of credits from a mitigation bank - N.J.A.C. 7:13-[13.13]**13.14**.

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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**

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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;

- 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-[13.4]**13.5** (No change in text.)

7:13-[13.5]**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-[13.20(a)]**13.21(a)** and (b).

(b) – (d) (No change.)

7:13-[13.6]**13.7** Basic requirements for mitigation proposals

(a) – (e) (No change.)

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(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. – 4. (No change.)

5. For creation and restoration projects, a preliminary characterization and assessment of the site in accordance with N.J.A.C. 7:13-[13.4(h)]**13.5(h)** to enable the Department to determine if contamination is present and if the proposed mitigation activities pose an ecological risk;

6. – 11. (No change.)

(g) (No change.)

7:13-[13.7]**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-[13.6]**13.7**, and:

1. – 2. (No change.)

(b) (No change.)

7:13-[13.8]**13.9** Riparian zone mitigation [options and mitigation location] **hierarchy**

(a) (No change.)

(b) Mitigation for a riparian zone vegetation disturbance shall be [provided in one or more of the following means, as determined in consultation with the Department:

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1. Purchase of credits from a mitigation bank with a service area that includes the location of the disturbance;
2. Onsite creation, restoration, enhancement, or preservation; and/or
3. Offsite creation, restoration, enhancement, or preservation in the same watershed management area as the disturbance.] **performed through creation, enhancement, restoration, or preservation of riparian zones onsite or, if that is not feasible, then 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:**
 1. **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;**
 2. **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;**
 3. **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**
 4. **Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For**

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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)[3] 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.

(d) (No change.)

Recodify existing 7:13-13.9 through 13.13 as **7:13-13.10 through 13.14** (No change in text.)

7:13-[13.14]**13.15** Financial assurance for mitigation projects; general provisions

(a) – (c) (No change.)

(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 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-[13.15]**13.16**;
2. A line of credit, in accordance with N.J.A.C. 7:13-[13.16]**13.17**;
3. A letter of credit, in accordance with N.J.A.C. 7:13-[13.17]**13.18**;
4. A surety bond, in accordance with N.J.A.C. 7:13-[13.18]**13.19**; and/or
5. (No change.)

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(e) – (i) (No change.)

(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-[13.11(e)]**13.12(e)** (for a riparian zone project)[,] or N.J.A.C. 7:13-[13.19(j)]**13.20(j)** (for a mitigation bank), as applicable.

(k) – (l) (No change.)

7:13-[13.15]**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. – 5. (No change.)

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-[13.14(l)]**13.15(l)**; and

7. (No change.)

(b) (No change.)

7:13-[13.16]**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. – 6. (No change.)

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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-[13.14(l)]**13.15(l)**.

(b) (No change.)

7:13-[13.17]**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. – 4. (No change.)
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-[13.14(l)]**13.15(l)**.

7:13-[13.18]**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 original surety bond. The surety bond shall:

1. – 3. (No change.)
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-[13.14(l)]**13.15(l)**.

7:13-[13.19]**13.20** Mitigation banks

(a) A mitigation bank requires approval by the Department prior to the sale or utilization of any

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mitigation credits. "Approval" for the purposes of this section means approval in accordance with N.J.A.C. 7:13-[13.20]**13.21**.

(b) – (d) (No change.)

(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. (No change.)
 - 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-[13.14]**13.15** for a mitigation bank involving creation or restoration mitigation, and filing of the conservation restriction;
2. – 7. (No change.)

(f) – (j) (No change.)

(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

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Department shall assert its rights to the financial assurance provided under N.J.A.C. 7:13-[13.14(k)]**13.15(k)** and (l).

7:13-[13.20]**13.21** Application for a mitigation bank

(a) – (b) (No change.)

(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. – 8. (No change.)

9. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:13-[13.19(e)]**13.20(e)**;

10. – 12. (No change.)

13. Financial assurance meeting the requirements of N.J.A.C. 7:13-[13.14]**13.15**;

14. – 18. (No change.)

(d) (No change.)

SUBCHAPTER 20. APPLICATION FEES

7:13-20.1 Application fees

(a) – (d) (No change.)

(e) The fees for applications under this chapter are set forth in Table 20.1 below:

Table 20.1

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APPLICATION FEES

...

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)¹

	Fee
...	
Modification of previously reviewed stormwater calculations	Thirty percent of the original stormwater fee

¹The additional application fee for stormwater review set forth in this table shall not exceed \$20,000.