

The background of the cover is a sepia-toned photograph of a large steel truss bridge spanning a river. The river flows over a low dam or weir, creating a wide waterfall. The water is turbulent and white with foam. In the background, there are trees and a street lamp. The overall mood is industrial yet natural.

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REPORT

WINTER 2008

**Coping with
Natural Community
Climate Change**

**Streams and the
New Flood Hazard
Area Regulations**

**2007 Environmental
Achievement Awards**



Director's Report

Affordable Housing and the Environment

In December, Department of Community Affairs Commissioner Joseph Doria told the Assembly Housing and Local Government Committee that while 1.3 million acres of land in the state remain undeveloped, standards proposed by the Department of Environmental Protection would limit any future housing development to 300,000 acres. According to the *Star-Ledger*, Doria said environmental restrictions that hamper New Jersey's affordable housing effort include regulations calling for 300-foot buffers on streams that feed reservoirs, and prohibiting the construction of sewer lines near pristine waterways or endangered species habitats.

Affordable housing and environmental protection do not have to be at odds. With careful planning, municipalities can and have provided affordable housing and still protected the environment. Weakening environmental restrictions so that affordable housing can be built will mean that people who live in this housing must suffer the environmental injustice of substandard protection for their communities and be put at risk for flooding and poor site design.

But to protect the environment, local governments must plan for the substantial housing need. A state consultant's report released in January 2008 found New Jersey will need 115,000 new units of affordable housing in the next 10 years for its moderate- and low-income residents. The Council on Affordable Housing (COAH) estimates another 51,000 houses and apartments must be rehabilitated.

To meet this need, COAH proposed amended regulations in December 2007 to

increase the municipalities' required affordable housing based on "growth share," a ratio based on the growth in market-rate residential and non-residential construction. The proposed new ratios require one affordable unit for every five new residences and one for every 16 new jobs in a community (up from the previous version's one in nine residential units and one for 25 jobs). Because a municipality must provide housing in relation to its share of growth, the amount of growth a municipality allows will directly impact its affordable housing obligation.

A current legislative proposal, sponsored by State Assembly Speaker Joseph Roberts, would eliminate the existing Regional Contribution Agreements (RCAs), where municipalities can meet up to half their obligation by sending funding to another municipality in its COAH region to construct or rehabilitate housing. The aim of the legislation is to give low and moderate income people more opportunities to live in the areas where job growth has occurred. This will require suburban and rural communities to provide their entire housing obligation within their municipalities.

Municipal Approaches

In their struggle to meet the increased obligation, communities may think inclusionary developments are the way to achieve low costs and may be tempted to award much higher density to builders for including affordable housing in their developments. However, this alternative consumes large land areas, and results in significant fiscal and environmental impacts. Over time, the costs of these

developments escalate as the residents need services from the town. Although many towns have zoned for age-restricted housing to avoid school costs, lately this type of development has overwhelmed the market and developers have requested lifting the age restriction to make the property marketable.

Forward-thinking municipalities will explore the alternatives to inclusionary development that have far less impact on municipal costs and the environment. The COAH rules offer an array of options for meeting municipal housing obligations. Rather than letting the developer do the planning, local governments can take an active role in determining where the housing should be located, including buying market-rate housing and subsidizing the sale or rent price to low-income residents. Towns can also work with nonprofits to construct housing, build 100 percent affordable housing themselves and provide group and assisted living homes, where each bedroom qualifies as an affordable unit.

Repeatedly, court decisions and state law have mandated that municipalities provide affordable housing. Proactive planning is key to realizing a future that meets the town's obligation and need and also protects the environment.

Sandy Batty
 Sandy Batty
 Executive Director

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The Association of New Jersey Environmental Commissions is a private, non-profit educational organization serving environmental commission and open space committee members, concerned individuals, non-profits, and local officials. ANJEC's programs aim to promote the public interest in natural resource preservation, sustainable development and reclamation and support environmental commissions and open space committees working with citizens and other non-profit organizations.

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Cover: Raging floodwaters of the Delaware River nearly inundate the piers supporting the Milford-Upper Black Eddy Bridge, (Hunterdon) April 3, 2005. Photo by Peter Craig

Streams and the New Flood Hazard Area Regulations

By Abigail Fair, ANJEC Water Resources Project Director

The NJ Department of Environmental Protections new Flood Hazard Area Regulations are available at www.nj.gov/dep/rules/adoptions/adopt_071105a.pdf.

New Jersey's streams and rivers provide drinking water for over half of New Jersey's population as well as providing scenic beauty, recreational opportunities and wildlife habitat. Stream systems extend beyond the water flowing in the channel to include the stream banks (riparian area), the floodplain, adjacent wetlands and ecosystems of important biological diversity. Protecting the entire stream system or stream corridor is the best way to protect the stream's health and water quality.

The new Flood Hazard Area Regulations adopted November 5, 2007, provide some protection for stream buffers. However, the new program (www.nj.gov/dep/landuse/se.html) (also known as the Stream Encroachment Program) issues permits if a proposal meets the regulations. The primary focus continues to be flood damage prevention, not stream corridor protection.

Riparian Zone Protections

The more protective aspect of the new rules is protection for riparian zones - the land and vegetation adjacent to a surface water body. The regulations establish the following regulated riparian zones.

- 300 feet on both sides of Category One water and upstream tributaries within

- the same HUC-14 watershed; (Hydrologic Unit Codes for 970 sub-watersheds);
- 150 feet on both sides of
 - An upstream tributary to a trout production water not in the HUC-14 watershed;
 - A trout maintenance water body and all upstream tributaries within one mile;
 - Any segment of a water flowing through an area containing documented habitat for a threatened or endangered species of plant or animal;
 - Any segment of a water flowing through an area containing acid producing soils.
- 50 feet along both sides of all other waters.

The riparian zone regulations limit the area of vegetation that can be disturbed for various regulated activities. An applicant can obtain a flood hazard area permit for disturbance of the riparian zone if he/she meets very stringent conditions. They must establish that

- The basic purpose of the project cannot be accomplished on site without disturbing vegetation in the riparian zone;
- Disturbance to the riparian zone is eliminated where possible and minimized where not possible by relocating the project, reducing the size of the project, or situating the project in portions of the riparian zone where

previous development or disturbance has occurred;

- Any temporarily cleared area of vegetation must be replanted with indigenous, non-invasive vegetation;
- An applicant must also meet the additional requirements for the specific proposed activity.

The riparian zone regulations also set a limit on the amount of disturbance allowed for 69 specific activities. The allowed riparian zone disturbances range from 300 square feet for reconstruction of a driveway in a 50-foot riparian zone to 5,000 square feet for construction of a private residence that received preliminary or final subdivision approval before October 2, 2006 in a 300-foot buffer and that meets the Stormwater Management Regulations (www.njstormwater.org). A number of permits allow disturbance in the riparian zone only 25 feet from the top of bank, including

- New private residences on a lot that received preliminary or final approval before October 2, 2006;
- An addition to an existing building or construction of a building appurtenant to an existing building;
- A public access way along a tidal water;
- Construction of a water dependent project that requires clearing, cutting, removing vegetation in the riparian zone.

The NJ Department of Environmental Protection (NJDEP) will issue hardship waivers for projects that go beyond the limits set for riparian zone projects. The applicants must

- Provide 2:1 compensation in the form of revegetation;
- Place a deed restriction on the compensation area.

New Provisions

FLOOD HAZARD AREA VERIFICATIONS contain determinations NJDEP will make to verify the limits of the flood hazard area and/or floodway on a particular site. This provision enables an applicant to determine the extent of the regulated area on a site in order to plan if and where a project might be placed. Verifications, like permits, are valid for five years.

NJDEP created a comprehensive PERMITS-BY-RULE list judged to be de minimis activities that do not require prior NJDEP approval. They are similar to licenses in that no prior approval is required before initiating the specified activities to meet specific standards. There are two general requirements.

- All proposed structures must be suitably anchored;
- An activity must not require engineering calculations that the NJDEP would have to review.

The complete list can be found at NJAC 7:13-7.



Delaware River flooding

Photo by Peter Craig



*More Delaware River
flooding*

Photo by Peter Craig

Unlike permits-by-rule, applicants for GENERAL PERMITS (GPs) must obtain prior approvals from NJDEP. The applicant knows he has approval if he doesn't receive comment from NJDEP within 45 days of submission. NJDEP has identified sixteen activities covered by GPs as having minimal impacts on flooding and the environment as long as the activities meet the standards. They include

- Stream cleaning,
- Scour protection,
- Various agricultural activities,
- Relocation and reconstruction of damaged buildings,
- Maintenance of stormwater structures and
- Certain activities along small streams and in tidal flood hazard areas.

The complete list of GPs can be found at N.J.A.C. 7:13-8.

PUBLIC NOTICE requirements place more responsibility on the municipal clerk, who, presumably, will distribute them to the appropriate entities. Applicants are required to send the clerk three application copies. Previously, the applicant had to send public notice to the clerk, the environmental commission, planning board, municipal engineer and to the construction official.


Tools for Municipal Action

Municipalities can enact ordinances that are stronger than the state flood

hazard area rules. In these areas, development could not commence even with a state permit. Many municipal ordinances can help protect water quality and stream corridors.

- Stream Corridor or Buffer Ordinances establishing larger buffers than state regulations and that strictly control the types of activities allowed.¹ Existing municipal ordinances allow the following kinds of activities in stream corridors.
 - Wildlife sanctuaries, fishing, unpaved paths, maintenance of existing roads, farming, without structures and passive open space;
 - Some ordinances
 - Prohibit impervious cover and no alteration of the natural terrain in the stream corridor.
 - Require placement of conservation easements on the stream corridor when a tract with a stream comes in for subdivision or site plan approval.
 - A number of towns define the stream corridor as the stream channel, 100 year flood plain and a minimum of 100 feet from the edge of the flood plain. If there is no delineated flood plain, the 100-foot corridor is required and measured from the top of bank. If there is an area of steep slopes, it includes 15 percent abutting the outer boundary of the stream corridor.

¹ NJ DEP has other programs with goals to protect streams. They include the 2004 Stormwater Management Regulations and those for the current Water Quality Management Plans. Both rely on municipalities passing stream corridor ordinances in order to meet the stormwater and water quality management standards.

- o The U.S. Forest Service's model ordinance used by some provides a 75 foot corridor from the edge of a watercourse or the 100-year floodplain, whichever is greater. It provides for two zones. Zone one requires a minimum of 25 feet from the edge of the water or wetlands adjacent to the water. Zone two requires a minimum of 50 feet from zone one and allows more activities.
- Stormwater management ordinances can be stronger than the state standards. For example, the definition of major development could establish a lower threshold than one acre of disturbance before the regulations go into effect.
- Septic management ordinances would ensure adequate maintenance of septic systems.
- Shade tree protection provides important stormwater retention benefits that can protect streams and prevent increased flooding.
- Steep slope protection of slopes over 15 percent with prohibition of use on slopes above 25 percent minimizes erosion and sedimentation.
- Useable Lot Area ordinances with requirements for a minimum area of a lot being created for subdivision or site plan be free of defined environmentally sensitive areas.
- Organize wildlife surveys, water monitoring programs, lawn care workshops, tours by canoe or on foot;
- Write "op eds" for your local weekly newspaper;
- Involve citizens, local elected officials, school boards, staff and students in Stream Corridor Protection and Stormwater Pollution Prevention plans;
- During site plan review, encourage the use of natural rather than mechanical means of stormwater management when appropriate;
- Work with elected officials to put ordinances in place that protect stream corridors and surface water quality. 

How Environmental Commissions Can Help

Environmental commissions should work with the town clerk to insure that they receive a copy of all Flood Hazard Area permit applications. Commissions also have many opportunities to work with local officials and organizations to develop educational materials and programs to promote involvement in protection of local streams and rivers. These activities will also help towns comply with the state stormwater regulations. A few examples

- Inform citizens about the proper disposal of motor oil and other hazardous waste;
- Advise residents on the correct use of fertilizers and pesticides;



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