Stream Encroachment

• What is stream encroachment?

  Stream encroachment in the Land Use Program is a term that refers to development or construction within the flood plain.

Flood Plain Regulations

• New Jersey regulates construction in the flood plain under the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq) and the implementing rules at N.J.A.C. 7:13
Flood Plain Regulations

FLOOD HAZARD AREAS
58:16A-50. Short title; declaration of policy
a. This act shall be known and may be cited as the "Flood Hazard Area Control
Act."
b. It is in the interest of the safety, health, and general welfare of the people of the
State that legislative action be taken to empower the Department of Environmental
Protection to delineate and mark flood hazard areas, to authorize the Department of
Environmental Protection to adopt land use regulations for the flood hazard area, to
control stream encroachments, to coordinate effectively the development,
dissemination, and use of information on floods and flood damages that may be
available, to authorize the delegation of certain administrative and enforcement
functions to county governing bodies and to integrate the flood control activities of
the municipal, county, State and Federal Governments.

So what is the Flood Plain?

- The flood plain is the area next to a body of
  water, such as a stream, lake, or pond that
  floods when it rains. The extent of the flood
  plain is determined by the area that would
  flood in a 100 year storm.
- A 100 year storm is a storm that has a 1 in 100
  chance of occurring during any particular year. It
does not mean that these storms occur one every
100 years, but that each year there is a 1% chance of a storm of
this magnitude occurring.

Why does the Flood Plain matter?

- There are two main reasons the state
  regulates work in the flood plain.
  1. To minimize losses due to the estimated $3
     billion dollars in flooding damage that occurs
     in the US each year.
  2. To minimize the effects of the planned
     waterfront development on other buildings
     within the floodplain. If your building
     displaces flood waters, those waters will
     result in a higher flood for the surrounding
     areas.
Definitions

• **The floodway** - The area of the flood plain that includes the stream bed, and usually extends to the banks or beyond. It is the area where water moves fast and is deep.

• **The flood fringe** - The area where waters are slow and still

![Image from http://www.newcastlecolorado.org](http://www.newcastlecolorado.org)

Construction

• Building in the floodway blocks flowing water. This can back up water upstream and worsen flooding

![Image from http://www.newcastlecolorado.org](http://www.newcastlecolorado.org)

Construction

• Building in the flood fringe prevents the spreading out of water. This makes flow faster and increases downstream flooding.

![Image from http://www.newcastlecolorado.org](http://www.newcastlecolorado.org)
How to Determine if a Property is in the Flood Plain

• Every body of water has a flood plain.
  – If there is a stream, lake, pond, or river on or near the property, it is likely in a flood plain.
  – If the land near the water body is flat it is more likely to be in the flood plain.
  – If there are steep slopes around the water bodies, the flood plain may be smaller and more restricted.

Mapping the Flood Plain

• Many of the flood plains for large streams and rivers have already been mapped. These maps are part of the Flood Insurance Program, and are called Federal Flood Insurance Maps.

Obtaining Flood Plain Maps

– These maps are available at municipal offices. Some of them are also available from the website of the Federal Emergency Management Agency (FEMA) at: www.msc.fema.gov

– You can search for maps by address on the site by clicking on the FEMA Flood Map Store icon.
Sample Flood Insurance Map

Mapping the Flood Plain

- Many of the flood plains of smaller streams, lakes, and ponds are not included on the Flood Insurance maps.

- If it is not already mapped, a determination is free through the DEP. A jurisdictional determination, or JD, can be obtained by contacting the NJ DEP representative in your county.

Contacts for JD's at NJ DEP

- Contacts for stream encroachment activities in the following counties:
  - (609) 984-0162
    - Ocean
    - Camden
    - Monmouth
    - Gloucester
    - Burlington
    - Salem
    - Atlantic
    - Cumberland
    - Cape May
  - (609) 984-0194
    - Hunterdon
    - Mercer
    - Middlesex
    - Union
    - Sussex
    - Warren
    - Bergen
    - Passaic
    - Morris
    - Union
    - Essex
    - Hudson
Does being in the Flood Plain mean nothing can be built?

- Building in the Flood Plain requires a permit. There are two types, major and minor

  Minor Permits - a minor permit is required if the flooding impacts are easy to determine, or if the impacts will be minor.
  - Examples:
    - Utility Lines
    - Single Family Homes

  Major Permits - a major permit is required if the flooding impacts or project are complex or difficult to determine without substantial calculations
  - Examples
    - Roads over streams
    - Complex projects

Applying for a permit

- If you need to apply for a permit, you may do so by obtaining a form from the NJ DEP website at http://www.state.nj.us/dep/landuse/forms/index.html#SE.

- In addition, you will most likely have to hire an engineer to do drawings of the proposed work and, in the case of a major permit, do the calculations of upstream and downstream effects.
Stream Buffers

Some streams have additional buffers that with extra protections:

- **Category One Waters** - 300 foot if stormwater management applies
  50 foot if sw management does not apply

- **C1 designation** “targets waterbodies that provide drinking water, habitat for Endangered and Threatened species, and popular recreational and/or commercial species, such as trout or shellfish. Waterways can be designated Category One because of exceptional ecological significance, exceptional water supply significance, exceptional recreational significance, exceptional shellfish resource, or exceptional fisheries resource.” (NJDEP)

- Trout waters - 50 foot
- Threaten or Endangered Species - 50 foot
- Acid Producing Soils - 50 foot
- Other waters - 25 foot

- [http://www.nj.gov/dep/cleanwater/c1.html](http://www.nj.gov/dep/cleanwater/c1.html)

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Stream Buffers

- The Stream Encroachment Administrative Checklist, found at [http://www.state.nj.us/dep/landuse/forms/chkstream.doc](http://www.state.nj.us/dep/landuse/forms/chkstream.doc) is required for permits and guides you through the requirements for obtaining one.

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- This is the end of the Stream Encroachment section of module 4. The rest of module 4 will focus on Tidelands.
TIDELANDS REGULATIONS

TIDELANDS ARE LANDS NOW OR FORMERLY FLOWED BY THE MEAN HIGH TIDE

(Mean High Tide = The level to which the water rose on an average day over a previous period of time - i.e., years or decades).

TIDELANDS IN NEW JERSEY ARE FOUND IN ALL COUNTIES EXCEPT WARREN, HUNTERDON, SUSSEX AND MORRIS

Riparian

Definition: Riparian means located by the banks of a river, stream, or other body of water.

Tideland Areas

• The state owns all Tide Flowed lands as Public Trusts Lands.
• Use of these areas is granted through a tidelands grant, license or lease
  • These areas are not private property – i.e., a homeowner’s dock may be private property, but the tideflowed land it sits on may be state owned.
• Property ownership in riparian areas may be regulated by the Bureau of Tidelands Management.
The Riparian Laws

- New Jersey Statute 12:3 1 to 28
- New Jersey Statute 13:1B-13.1 to 13.14

These statutes can be found online at:

http://www.njleg.state.nj.us
Click on Title 12

Scroll to 12:3 - 1

Navigate also to 13:1B -13.1 to 13.14 for further riparian statute language
The Tidelands Act: Online
http://www.state.nj.us/dep/landuse/12_3.pdf

Tideland Instruments
(All must be approved by the Tidelands Resource Council)

• **GRANTS:** Sale of the state title interest of generally formerly tide-flowed areas

• **LICENSES:** Rental agreement for presently tide-flowed areas

• **LEASES:** Long term rental agreement – i.e. homes over the water

Tideland Agreements
(All must be approved by the Tidelands Resource Council)

• **STATEMENTS OF NO INTEREST:** A document stating that the State of New Jersey agrees that it has no tidelands ownership interest in your property

• **NOTICES OF TITLE ACTION (LIENS):** Serves as notice in any search there is a problem. A notice will be filed if payments are delinquent or if there is no response to a violation.
This GIS image shows the Tidelands grid along the coast of the state. 

Note: The continuation of the grid up into the river systems of the state.

Download GIS Coverage
http://www.state.nj.us/dep/gis/tidelandsshp.html

FAQ’s about Tidelands:

What are riparian rights?
- Riparian rights are the rights of owners adjacent to tidelands to be the first person to request to use those areas. These lands are owned by the people of the State of New Jersey. You must first get permission from the State to use these lands, in the form of a tidelands license, lease or grant, and you must pay for this use.
What is a tidelands grant?
• A tidelands grant is a deed from the State of New Jersey selling its tidelands. Tidelands grants are generally only issued for lands already filled in and no longer flowed by the tide.

What is a tidelands license?
• A tidelands license is a short term revocable rental document to use tidelands, generally for structures such as docks, mooring piles and other temporary structures, as well as dredging projects. Licenses have a specific term, presently seven years.

What is a tidelands lease?
• A tidelands lease is a long term rental document to use tidelands, generally issued to marinas or homes over water. The term of a tidelands lease is generally 20 years.

What is a Statement of No Interest?
• A recordable document in which the State of New Jersey agrees that it has no tidelands ownership interest in your property. The reason may be that the State sold its tidelands, or that there is no ownership claim on your property.

FAQ’s Online
http://www.state.nj.us/dep/landuse/pamphlet.pdf
* This is a very valuable document to download!
Here is a typical Tidelands map showing Newark-Liberty Airport and Port Newark area...formerly flowed tidelands are indicated as red lines.

Note again Tidelines map showing areas that are currently developed, but were once previously flowed by the tide. This is a very good example why many property owners do not know they are regulated under Tidelands.

Determining a Tidelands Claim

- Ask yourself, does the State have a Tidelands Title or have Tidelands interest on a property?

- To assist you in determining the status of Tidelands ownership – Send a fax or mail a request to the BUREAU OF TIDELANDS MANAGEMENT and ask for a "DETERMINATION OF TIDELANDS OWNERSHIP INTEREST" (Must include tax lot and block numbers, municipality, county, nearest waterway, and a locator map (tax map, topo, survey, etc.) with the site clearly marked.)

FAX 609-633-6493
TO INVESTIGATE TIDELANDS CLAIMS

COPIES OF TIDELANDS MAPS ARE AVAILABLE IN COUNTY AND MUNICIPAL OFFICES, THE SECRETARY OF STATE, BUREAU OF TIDELANDS MANAGEMENT AND COASTAL ENFORCEMENT OFFICE IN TOMS RIVER

Tidelands: (609) 292-2573
Coastal Enforcement (Toms River): (732-255-0787)

Or – Consult this document
Available through the Bureau of Tidelands Management

Use the key within the Index to locate your specific area (i.e. Area 75 – Asbury Park)
From the Key you can go to a larger image of the area you are interested in.

To Request copies of Tidelands Maps or the Tidelands Map Index:

Write to:
The Division of Land Use Regulation
Bureau of Tidelands Management
PO Box 439
Trenton, NJ 0862

- Or -

Call: 609-292-2573

NATURAL EVENTS

In the case of erosion, the title to lands that slowly erode, shifts to the state.
**NATURAL EVENTS**

In the case of accretion, the title to lands that slowly builds up, shifts to the upland owner.

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**Tidelands License**

- A short term revocable rental document to use tidelands, generally for structures such as docks, mooring piles and other temporary structures, as well as dredging projects.

- Licenses have a specific term, presently seven, with an annual fee – minimum fee is $100.00.

- In lagoon areas, licenses are required for areas intersected by former tidal streams.

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**These are lagoons with former tidal streams**
APPLICATION Instructions for all Tidelands Conveyances
http://www.state.nj.us/dep/landuse/appinst.pdf

Tidelands License Application
http://www.state.nj.us/dep/landuse/licform.pdf

License Application Requirements
1. Application Form
2. Recorded Deed
3. Affidavit of Title
4. Agent’s Authorization Form
5. Survey copies
6. LURP #1 form or issued permit and approved plan

(The LURP #1 is proof of a permit application, but license application will not go to the Tidelands Resource Council until an actual permit is issued or a signed statement a permit is not required is received.)
Tidelands License Assignments

When property ownership changes, the current license can be re-assigned…..

Unless:
1. A license is delinquent
2. If a license is about to expire or renew

Tidelands Licenses and Marinas

• The fee for the license is based on the potential income from affected slips in Tidelands areas.
• Marinas pay their license fee in 2-payments a year: the 1st in June and the 2nd in September.
• With the 2nd payment, the marina must submit a certified report stating actual income.

MARINA OWNERS'/RENTAL SLIP PROPERTY OWNERS' CERTIFICATION
http://www.state.nj.us/dep/landuse/mipform.pdf
Tidelands Grants

- Grants are issued by the State of NJ to sell the formerly tidally flowed lands.
- It is required that the state must receive the current fair market value for the property.
- In the case of Tidelands Grants, there is no grandfathering.

Tidelands Grant Application

http://www.state.nj.us/dep/landuse/grntform.pdf

Tidelands Grant Application Requirements

The Grant recipient must be the upland property owner.

There must be an accompanying narrative appraisal, survey, recorded deed and agent's authorization form.
Agent’s Authorization Form
http://www.state.nj.us/dep/landuse/agntform.pdf

Statement of No Interest
• This statement is a formal, recordable state declaration that there are no Tidelands claims on a property in question.
• There is a $250.00 fee associated with this statement.

Statement of No Interest Application
http://www.state.nj.us/dep/landuse/sninet.pdf
Additional Forms:
Affidavit of Title
http://www.state.nj.us/dep/landuse/afftform.pdf

Certificate of Title
http://www.state.nj.us/dep/landuse/certform.pdf

Tidelands Resource Council Questionnaire
http://www.state.nj.us/dep/landuse/gfquform.pdf
Tidelands and other Division of Land Use Regulation Permits

NOTE: WHEN APPLYING FOR ANY CAFRA OR WATERFRONT DEVELOPMENT RELATED PERMIT, MAKE SURE TO INCLUDE EVIDENCE OF STATE TIDELANDS OWNERSHIP INTEREST.