

**FLOOD HAZARD AREA CONTROL ACT RULES  
N.J.A.C. 7:13 et seq., adopted June 20, 2016**

Permit-by-Rule #26: Forest Management  
Activities

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## 7:13-2.2 Regulated Waters

(a) All waters in New Jersey are regulated under this chapter except those described at (a)1 through 4 below. Every regulated water possesses a flood hazard area and/or a riparian zone as set forth at N.J.A.C. 7:13-2.3:

1. Any manmade canal;
2. In accordance with N.J.S.A. 58:16A-60, any coastal wetlands regulated under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.);

3. Any segment of water that has a drainage area of less than 50 acres, provided one or more of the following applies:
  - i. The water has no discernible channel;
  - ii. The water is confined within a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel, or basin (not including any water that historically possessed a naturally-occurring, discernible channel, which has been piped, culverted, ditched, or similarly modified); and/or
  - iii. The water is not connected to a regulated water by a channel or pipe, such as an isolated pond or depression that has no outlet; and
  
4. Any water-filled depression created in dry land incidental to construction or remediation activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of “waters of the United States” in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-1.4.



## 7:13-2.3 REGULATED AREAS

(a) For each regulated water, as described at N.J.A.C. 7:13-2.2, the Department identifies and regulates the water and the area surrounding it in two different ways, resulting in the regulated areas described at (b) and (c) below.

(b) A flood hazard area exists along every regulated water that has a drainage area of 50 acres or greater. If a regulated water has a drainage area of less than 50 acres, the water does not possess a flood hazard area that is regulated under this chapter.

1. The flood hazard area is comprised of a flood fringe and a floodway, except for the Atlantic Ocean and other non-linear tidal waters such as bays and inlets, which do not have a floodway. Therefore, the entire flood hazard area along these tidal waters is considered to be a flood fringe for the purposes of this chapter.
2. The methods for determining the limits of the flood fringe and floodway are described at N.J.A.C. 7:13-3.

(c) A riparian zone exists along both sides of every regulated water and includes the regulated water itself, except as provided in 1 below.

1. There is no riparian zone within or along the following:

- i. The Atlantic Ocean;
- ii. New Jersey's barrier island complex;
- iii. Any lawfully existing manmade lagoon;
- iv. Any lawfully existing stormwater management basin or wastewater treatment pond;
- v. Any segment of a regulated water enclosed within a lawfully existing pipe, culvert, or bridge; and
- vi. Any lawfully existing, manmade open channel that was created to convey stormwater, provided the channel is fully lined with manmade impervious material, such as a concrete low-flow channel within a stormwater basin or a ditch completely lined with concrete or asphalt.

2. The extent of a riparian zone is determined in accordance with N.J.A.C. 7:13-4.

# 7:13-2.4 Regulated Activities

(a) Any action that includes or results in one or more of the following constitutes a regulated activity under this chapter if undertaken in a regulated area, as described at N.J.A.C. 7:13-2.3:

1. The alteration of topography through excavation, grading and/or placement of fill;
2. The clearing, cutting, and/or removal of vegetation in a riparian zone. Areas containing vegetation for a portion of the year, such as agricultural areas that are periodically plowed and cultivated, are considered vegetated for the purposes of this chapter;
3. The creation of impervious surface;
4. The storage of unsecured material;
5. The construction, reconstruction, repair, alteration, enlargement, elevation, or removal of a structure; and
6. The conversion of a building into a single-family home or duplex, multi-residence building, or critical building.

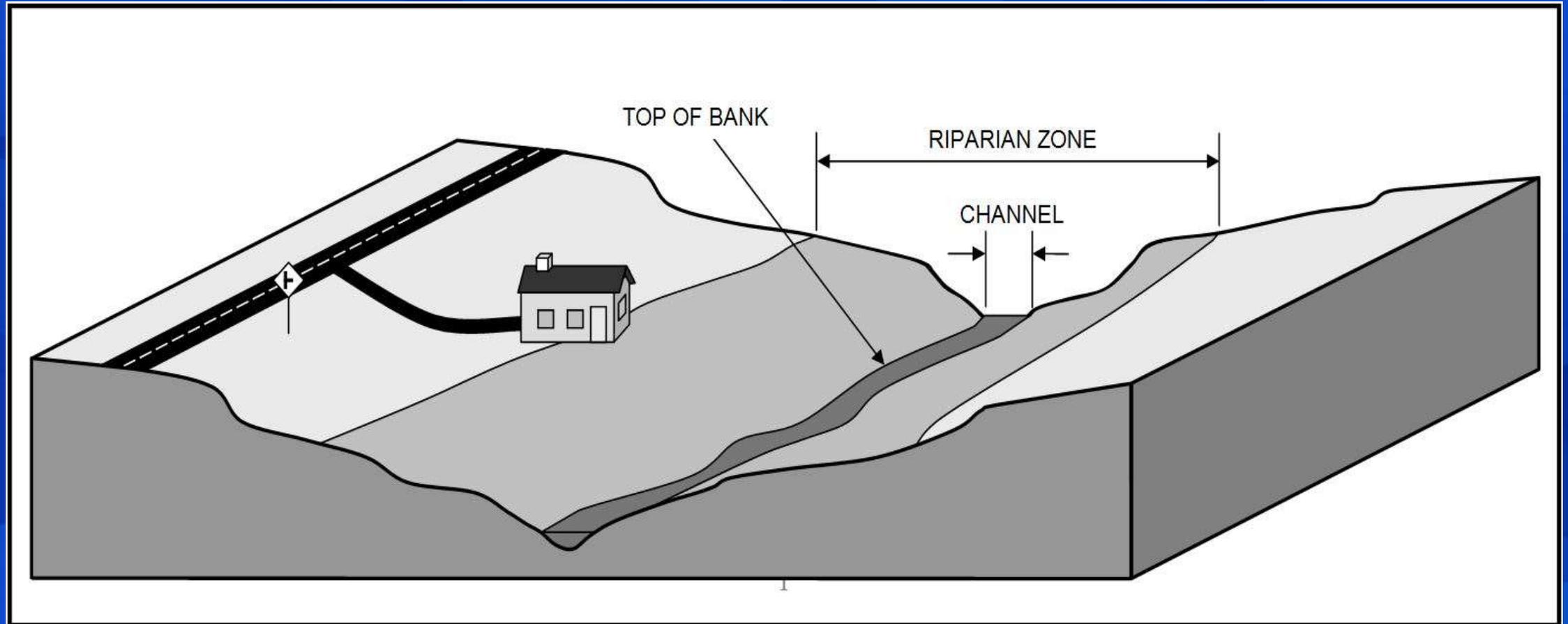
## 7:13-4.1 The riparian zone

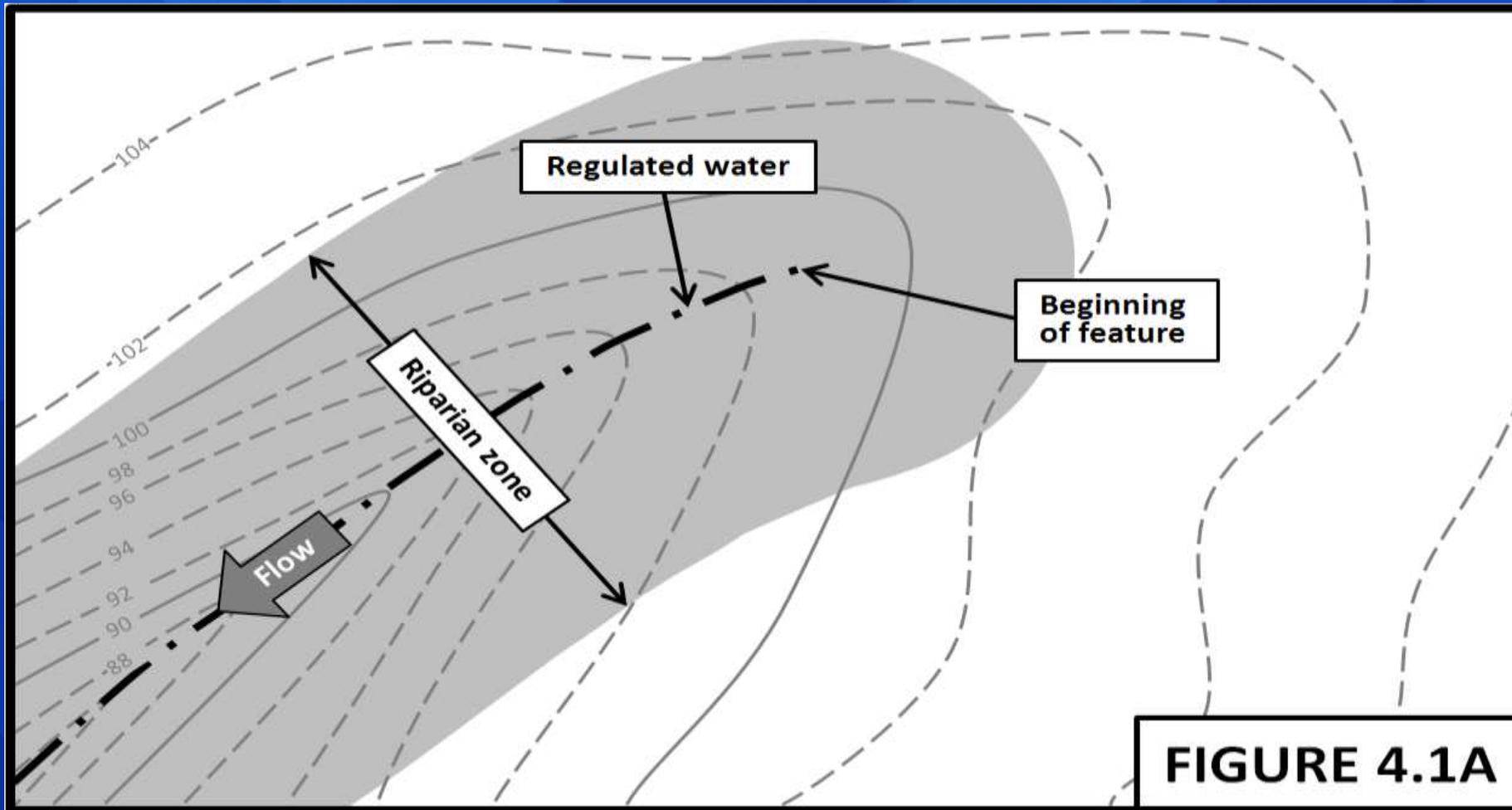
- a) A riparian zone is the land and vegetation within and adjacent to a regulated water. Riparian zones exist along both sides of every regulated water and include the regulated water itself, except as provided at N.J.A.C. 7:13-2.3(c)1. The extent of a riparian zone is determined in accordance with (b) through (h) below.
- b) The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank.

(c) The width of the riparian zone is as follows:

1. The width of the riparian zone along any regulated water designated as a Category One water, and all upstream tributaries situated within the same HUC-14 watershed, is 300 feet;
2. Except for the regulated waters listed at (c)1 above, the width of the riparian zone along the following regulated waters is 150 feet:
  - i. Any trout production water and all upstream waters (including tributaries);
  - ii. Any trout maintenance water and all upstream waters (including tributaries) located within one mile of a trout maintenance water (measured along the length of the regulated water); and
  - iii. Any segment of a water flowing through an area that contains a threatened or endangered species, and/or present or documented habitat for those species, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water). A list of critically dependent species is available from the Department at the website set forth at N.J.A.C. 7:13-1.3; and
3. For all other regulated waters not identified in (c) 1 or 2 above, the width of the riparian zone is 50 feet.

# RIPARIAN ZONE



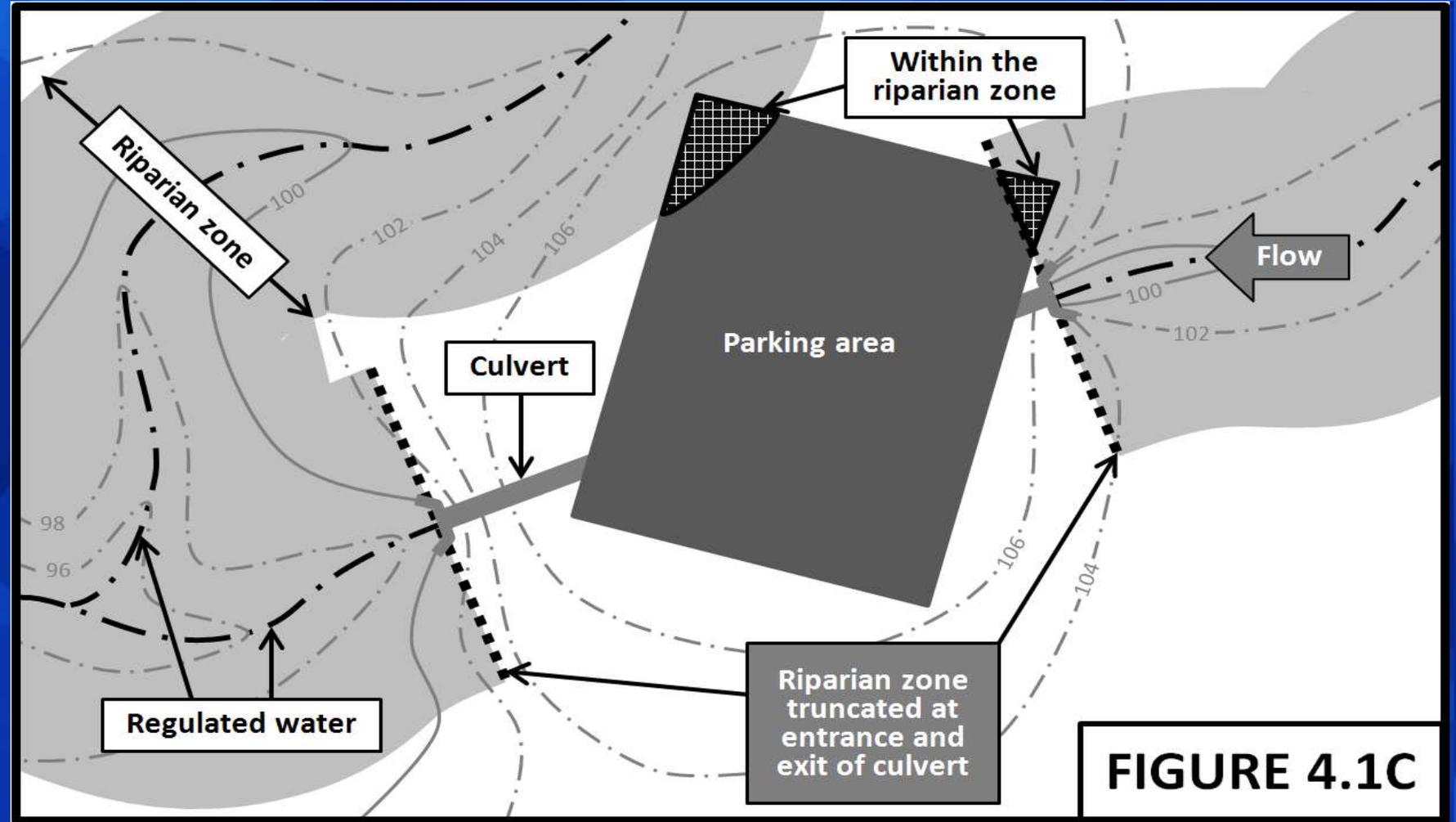


## REGULATED WATER AND THE RIPARIAN ZONE

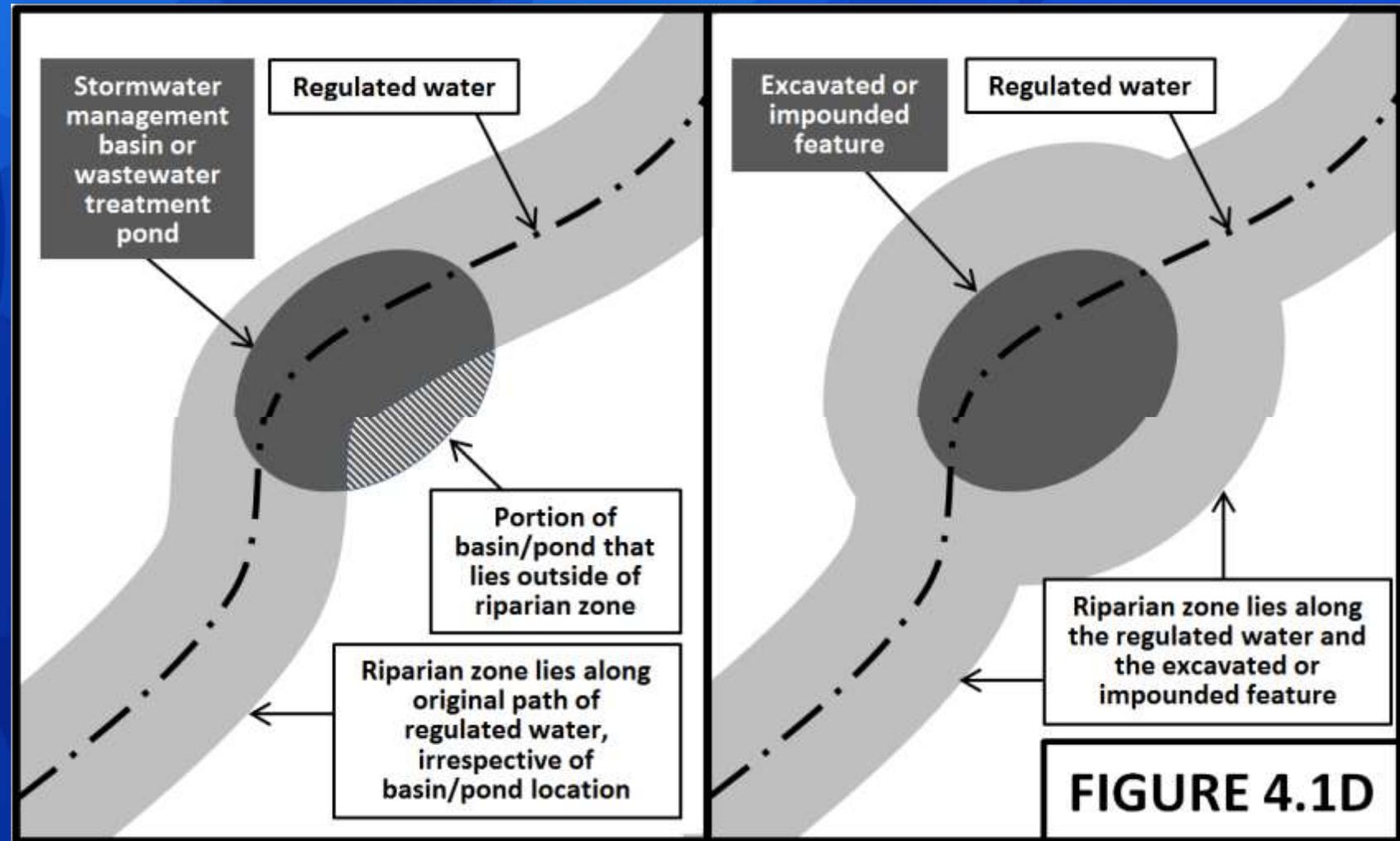
(d) Where a regulated water naturally forms, begins, or ends within a site, the riparian zone arcs around the end of the feature.



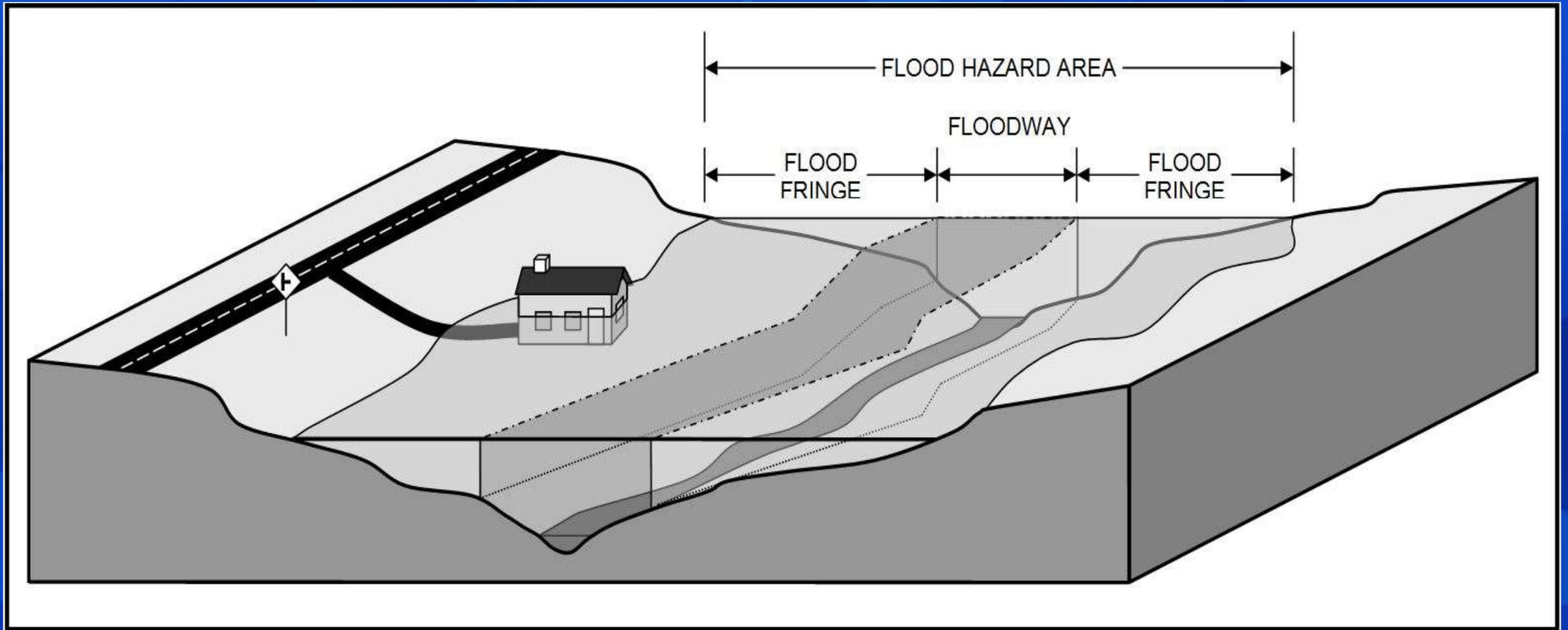
(F) Where a regulated water enters or exits a lawfully existing pipe, culvert, or bridge, which is not part of a roadway or railroad as described in (e) above, the riparian zone is truncated at the entrance and exit of the structure, at a straight line that runs perpendicular to the predominant direction of flow in the regulated water.



(g) Where a lawfully existing excavated area or impoundment filled with water lies along a regulated water, the riparian zone shall be measured outward from the top of bank of the excavated or impounded feature, with the exception of storm water management basins and wastewater treatment ponds, since such features do not possess a riparian zone pursuant to N.J.A.C. 7:13-2.3(c) 1.



# FLOOD HAZARD AREA



## 7:13-7.26 Permit-by-rule 26 – forest management activities

(a) Permit-by-rule 26 authorizes the forest management activities identified at (b) below, provided they are conducted in accordance with a forest management plan that has been approved by the New Jersey State Forester or designee before the activities are undertaken. Information and guidance related to forest management activities in flood hazard areas and riparian zones are provided in the document entitled, “New Jersey Forestry and Wetlands Best Management Practices Manual,” dated October 1995, which is available at [www.state.nj.us/dep/parksandforests/forest/nj\\_bmp\\_manual1995.pdf](http://www.state.nj.us/dep/parksandforests/forest/nj_bmp_manual1995.pdf).

(b) This permit-by-rule authorizes the following forest management activities, provided the conditions at N.J.A.C. 7:13-6.7 are met:

1. **Silvicultural prescriptions**, including planting trees and other vegetation, provided no grading or changes in topography occur in a fluvial flood hazard area;
2. **Harvest of trees** and other vegetation cultivated as **forest products**, provided:
  - i. Any clearing, cutting, and/or removal of riparian zone vegetation is limited to the area specified in the forest management plan; and
  - ii. Regeneration of the harvested area with vegetation, which is determined by the State Forester to be of equal or greater ecological function and value as the vegetation that was cleared, cut, and/or removed, is accomplished through replanting, natural regeneration, or a combination thereof;

3. **Construction and maintenance of a fence** to exclude deer and/or control other unwanted intrusions, provided:

- i. The fence is not constructed within any channel; and
- ii. Any fence located in a floodway has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement; and

#### 4. Construction and maintenance of a temporary forest road, provided:

- i. The sole purpose of the road is to support or provide access for forestry activities;
- ii. The road is no greater than 14 feet wide;
- iii. No grading or changes in topography occur in a fluvial flood hazard area, except where unavoidable to accommodate the installation of a crossing of a regulated water. In such a case, grading and changes in topography shall be the minimum necessary to install the crossing;
- iv. Any clearing, cutting, and/or removal of riparian zone vegetation and disturbance to channels is kept to the minimum necessary to successfully implement the project;
- v. Temporary mats are used where feasible to minimize potential erosion and adverse impacts to riparian zone vegetation; and

**vi. Any crossing of a regulated water is:**

- (1) Located as far downstream of the upstream property boundary of the site as feasible;
- (2) Designed to not increase the frequency or depth of offsite flooding during any flood event described in N.J.A.C. 7:13-12.1(i); and
- (3) Accomplished through the placement of a temporary span across the channel in a stable location, without disturbance to the channel. Where placement of a temporary span is not feasible, the placement of one or more pre-case culverts in channel, without permanent footings or abutments is acceptable. In such a case, stable material may be placed above the culvert to establish a level roadway surface, but the roadway shall not be paved; and

**vii. The road is removed and all disturbed areas are restored to their pre-construction condition within six months of the construction of the roadway, or within 30 days of either of the following, whichever occurs first:**

- (1) The land use of the site being accessed by the road changes from forestry to another use; or
- (2) The Department determines that the management activity at the site is not in compliance with the approved forest management plan.

(c) The removal of tree stumps is not authorized under this permit-by-rule.

(d) No clear-cutting of trees shall be undertaken in a riparian zone unless it is unavoidably necessary as part of a silviculture prescription for:

1. Atlantic white-cedar restoration. Information and guidance related to Atlantic white cedar restoration are provided in the document entitled "Atlantic White-Cedar: Ecology and Best Management Practices Manual," by K. A. Mylecraine and G. L. Zimmermann, dated 2000, which is available from the Department at: [www.nj.gov/dep/parksandforests/forest/njfs\\_awc\\_bmps.html](http://www.nj.gov/dep/parksandforests/forest/njfs_awc_bmps.html), unless the State Forester provides written approval authorizing modification of a practice in the manual where necessary to ensure the success of a given project;
2. Regeneration, where either of the following conditions creates the need for salvage and regrowth of trees and other vegetation, and the site would likely not naturally reestablish a healthy native ecosystem and therefore requires human intervention for proper and timely regeneration:
  - i. A forest stand is in decline or fragmenting; or
  - ii. Trees and other vegetation have been damaged by wildfire, storms, flooding, beaver activity, or other damage-causing factors; or
3. Sanitation, suppression, or salvage, where trees have experienced insect damage, disease outbreaks and/or death from drought or other conditions. This includes a situation where immediate suppression is necessary to remove the infested and/or infected host species, as well as the trees and vegetation in a surrounding buffer area, to prevent the adverse spread of the damage causing agent and reduce the corresponding potential future mortality in adjacent forest.