

Common problems with stream corridor ordinances (and how to fix them)

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Local protections enacted to limit flooding and protect clean water were weakened in many communities when the State of New Jersey revised the Flood Hazard Area Protection Rules. The New Jersey Department of Environmental Protection (DEP) adopted rollbacks to the flood rules in June 2016 and weakened rule provisions that prohibited clearing native vegetation and construction of additional development along streambanks, among other revisions that threaten clean water.

Local ordinances that referenced the flood rules (and incorporated the rules into local code by reference) must be revised to maintain the protections municipalities supported when the ordinances were adopted. Such ordinances may be named stream corridor, stream buffer, riparian corridor, riparian buffer protection, or conservation ordinances (referred to as stream buffer ordinances for the remainder of this article).

If your municipality is concerned about the impacts of additional flooding and water quality

degradation, ANJEC suggests that your environmental commission (EC) examine your local stream buffer ordinance and work with your governing body to build support for strengthening it.

Where to begin

The DEP flood rules are considered minimum standards and municipalities are specifically authorized to have more stringent rules by the *Flood Area Hazard Management Act*. Municipal ordinances contain several key components.

- First and foremost, your stream buffer ordinances should establish your intent to require buffers. For example, “The council finds that stream buffers adjacent to rivers, streams, lakes, and other surface

Members of the Union Township Environmental Commission at the site of a proposed riparian restoration project along Sidney Brook



water bodies that are adequately vegetated provide an important environmental, public health, and safety protections, and vital water resource benefits.”

- Secondly, ordinances need to establish the authority under which a municipality can adopt the ordinance. Municipal authority to adopt a stream buffer ordinance is rooted in the *New Jersey Municipal Land Use Law*, *Water Pollution Control Act*, *Water Quality Planning Act*, *Spill Compensation and Control Act*, *Soil Erosion and Control Act*, and the *Flood Hazard Area Control Act*. Be sure that your ordinance refers to the Acts and not the rules.

ECs should examine their municipal ordinances for references to the flood rules and to the Special Water Resource Protection Areas (SWRPA). SWRPAs were eliminated in the DEP’s rollbacks to the flood rules. SWRPA provided 300-foot buffer protections on streams designated by the State as Category One (C1) for their exceptional water quality and often because they are a drinking water source.

Addressing the gap

Although the state stormwater rules (N.J.A.C. 7:8) still provide for 300-foot buffer protections for C1 streams, the stormwater rules and standard municipal ordinances are triggered only when a development is of a certain size (more than one acre of disturbance or more than a quarter acre increase in impervious surface) and often don’t apply in urban or highly developed areas. The rollback in the flood rules thereby created a gap in protection for stream buffers that must now be bridged by revising local stream buffer ordinances.

Some ways to address this gap in protection are to define the stream buffer

You can do better

The stormwater and flood hazard rules still require some protections for C1 waters and their upstream tributaries situated in the same HUC 14 watershed. But the State rollbacks to the flood rules allow for more development and clearcutting of vegetation in the 300-foot stream buffer of a C1 stream, so deleting references to what is permitted in the State flood rules can make your local ordinance more protective than State provisions.

- 150-foot stream buffers are required by the State for all trout production and trout maintenance waters as well as waters that flow through habitat for threatened and endangered species.
- 150-foot buffer protections were eliminated by the State for acid producing soils. Acid producing soils release sulfuric acid when exposed to air and water. Generally they are found in a broad belt running southwestwardly from Raritan Bay. When acids are released, damage to plant life, aquatic ecosystems, and concrete and steel construction materials results. For more information about acid producing soils and their location see: www.state.nj.us/agriculture/divisions/anr/pdf/1_Acid%20Soil%202011.pdf.

The DEP flood rules require 50-foot buffers on all waterbodies not designated as C1, trout production, trout maintenance, or essential to threatened and endangered species. Following the science and recommendations of watershed groups, ANJEC recommends buffers larger than 50 feet to provide additional protection against current and future projected increases in flooding.

width and permitted uses within a stream buffer without referencing the DEP flood rules (7:13). For example, ECs may want to ask their governing body to adopt the following language, “The stream buffer shall be not less than 300 feet wide along both sides of any C1 water and all upstream tributaries situated within the same HUC 14 watershed. Stream buffers shall be not less than 150 feet wide along both sides of waters not designated as C1 waters.”

Your municipality may want to consider larger or smaller buffers for water bodies other than those designated as C1 depending on your existing development and soil types. Certain soil types, such as acid producing soils, may pose greater risks to water quality and healthy ecosystems than others. (See "You can do better" on page 15).

Environmental commissions should look for language in the "Permitted Uses" section of their ordinances that may state, "for C1 stream buffers, permitted uses are governed by the Stormwater Management (7:8) and Flood Hazard (7:13) rules." Consider more protective language instead, such as, "Stream buffers shall remain in natural condition, including agricultural areas, at the time of adoption of this ordinance, and may be restored to a natural condition. Clearing or cutting of trees and brush within the buffer is forbidden, except for: (1) removal of dead vegetation; (2) pruning for reasons of public safety; or (3)

the replacement of invasive species with indigenous species. The following activities are forbidden within a stream buffer: altering waterways; dumping trash, soil, dirt, fill, vegetative or other debris; regrading and/or construction." The ordinance may then proceed to list permitted uses such as open space, planting native vegetation or stabilization projects.

ANJEC suggests that to provide maximum protection, a stream buffer ordinance should be adopted by the governing body both under the general police powers provisions and as an amendment to the local land use code.

ANJEC does not provide legal advice and suggests that you consult with your municipal attorney for legal advice on revisions to your specific municipality's ordinance. If your municipality has not yet adopted a stream buffer ordinance, ANJEC can provide you with sample ordinances that other municipalities have adopted. 🍀

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