

## **CHAPTER 9—REQUIREMENTS APPLICABLE TO SITE PLAN AND SUBDIVISION APPLICATIONS; GENERAL DEVELOPMENT PLANS**

### **SECTION 9.1 – OVERVIEW**

- A. The requirements of this Chapter are generally applicable to site plan and subdivision applications.

### **SECTION 9.2 – ENVIRONMENTAL IMPACT STATEMENT; WAIVERS**

- A. Requirement. All applications for preliminary site plan approval requiring surface area land disturbance of more than 5,000 square feet, and all applications for major subdivision approval regardless of land disturbance area, must include a fully completed Checklist Schedule BB Environmental Impact Statement (EIS) unless waived as provided herein. The Planning Board may also require a new, updated, or supplemented environmental impact statement as part of any application for amendment or extension of a previously approved major subdivision or major site plan, regardless of whether or to what extent an environmental impact statement was required or waived as part of the original application.
- B. Purpose. The Planning Board may use and distribute the information contained in the environmental impact statement as necessary to ascertain the extent of any environmental issues that should be considered and addressed as part of the proposed development project, whether by the Planning Board or by other regulatory agencies having proper jurisdiction.
- C. General Waiver of EIS. The Planning Board may waive all environmental impact statement submission requirements if the Board determines, based on information or materials provided by the applicant: (1) that the lot at which the development is proposed (the “subject lot”), and all other land that is close enough to the subject lot to be affected by the proposed development, is already developed to an extent that would likely preclude the risk of any significant environmental impact resulting from the proposed development; (2) that, within three years prior to the date the application was filed, a fully completed environmental impact statement reflecting no significant environmental conditions was completed for the subject lot, or for other land that is close enough to the subject lot to accurately reflect the subject lot’s environmental conditions, and that there has been no readily observable change in the condition of the lot that was the subject of such earlier environmental impact statement; or (3) that the nature or extent of the proposed development, when regarded in the context of readily observable conditions at the subject lot, reasonably indicates that the possibility of significant environmental impacts is remote. If, during review of the application, the Planning Board concludes that an environmental impact statement should have been required, it may require one at that time, provided that the Board must grant sufficient time for the applicant to prepare it, and also provided that the applicant must waive or toll any applicable deadline for the Board’s decision on the application in the interim. General EIS waiver requests shall made by providing the other information and materials contemplated herein, and referencing such information and materials in a Checklist A, Item 9, list of submission waivers along with an explanation of why the general EIS waiver request should be granted. General EIS waiver requests will be considered as part of the completeness review for the application.
- D. Waiver of Specific EIS Submission Requirement (Specific EIS Waiver). The Planning Board may waive specifically noted environment impact statement submission requirements based on information or materials provided by the applicant which confirm that such noted requirements are inapplicable to the subject lot or the proposed development project, or if such noted requirements can

be waived individually when applying the analysis set forth in Section 9.2.C, above. If, during review of the application, the Planning Board concludes that environmental impact statement information that was specifically waived should have been required, it may require that it be submitted at that time, provided that the Board must grant sufficient time for the applicant to prepare it, and also provided that the applicant must waive or toll any applicable deadline for the Board's decision on the application in the interim. Specific EIS waiver requests shall be made by marking a "W" in the space in the left-hand column of Environmental Impact Statement Checklist Schedule BB which corresponds to the checklist item for which the waiver is being requested, providing information or materials as contemplated herein and referencing them in the Checklist A, Item 9, list of waiver requests with explanations as to why each specific EIS waiver request should be granted. Specific EIS waiver requests will be considered as part of the completeness review for the application.

### **SECTION 9.3 – REQUIRED GUARANTEES; SURETY**

In accordance with NJSA 40:55D-53.4, for the purpose of assuring the installation and maintenance of bondable land development improvements, as conditioned of all final site plan, subdivision, and/or zoning permit approvals, the Board or Zoning Permit, as appropriate, shall require, and the Township Committee shall accept the following guarantees:

#### **A. Performance Guarantees**

1. The furnishing of a performance guarantee in favor of the Township in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The performance guarantee shall also cover the cost for privately-owned perimeter buffer landscaping in an approved phase or section of a development, either as a separate guarantee or as a line item of the performance guarantee.
2. The cost of improvements covered by the performance guarantee shall be determined by the Township Engineer.
3. The Township Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.

#### **B. Maintenance Guarantee**

1. In accordance with NJSA 40:55D-53.4a(2), developer shall post with the municipality, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: storm water management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the storm water management system, if any, which cost shall be determined by the Municipal Engineer. Additionally, in accordance with NJSA 40:55D-53.4a(2) a maintenance guarantee is required for any items on the performance bond associated with improvements being dedicated to the Municipality if any, which cost shall be determined by the Municipal Engineer.
2. The Maintenance Guarantee shall be furnished upon the inspection and issuance of final approval of the applicable private site improvements by the Municipal Engineer.
3. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

C. Temporary Certificate of Occupancy Guarantee

1. Pursuant to NJSA 40:55D-53(1)(c), a developer shall furnish a Temporary Certificate of Occupancy Guarantee (TCOG) whenever the developer seeks a temporary certificate of occupancy for a development, unit, lot, building, or phase of development. The TCOG shall be furnished in favor of the municipality in an amount equal to 120% of the cost of installation of any improvements which (1) remains to be completed or installed under the terms of the temporary certificate of occupancy; (2) are required to be completed or installed as a condition precedent to the issuance of a permanent certification of occupancy; and (3) are not covered by an existing performance guarantee.
2. The scope and amount of the TCOG shall be determined by the Municipal Engineer.
3. The TCOG shall be released upon the issuance of a permanent certificate of occupancy along with the approval of the Municipal Engineer.

D. Safety and Stabilization Guarantee

1. Pursuant to NJSA 40:55D-53(1)(d), a developer shall furnish a Safety and Stabilization Guarantee (SSG) in favor of the municipality, either as a separate guarantee or as a line item of the performance guarantee.
2. The amount of the SSG for development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000. The amount of the SSG for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:
  - a. \$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.
3. The municipality shall release a separate SSG to a developer upon the developer's furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required pursuant to this chapter.
4. A SSG shall be available to the municipality for the purpose of returning property that has been disturbed to a safe and stable condition, or taking other measures to protect the public from access to an unsafe or unstable condition. An SSG shall only be available to the municipality when:
  - a. Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and
  - b. Work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality's intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a SSG until a period of 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. A municipality shall provide written notice to the developer by certified mail or other form of delivery providing evidence of receipt.
5. The municipality shall release a SSG upon the Municipal Engineer's determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

- E. Other governmental agencies. In the event that other governmental agencies or public utilities will automatically own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

- F. Township Solicitor Review. The performance, maintenance, TCOG and SSG guarantees must be reviewed by the Township Solicitor to confirm that they are issued satisfactory as to form, sufficiency, and execution and they meet all statutory requirements. After review and approval of the Township Solicitor all guarantees must be posted in original form with the Township Clerk prior to the Planning Board Chair's and Secretary's signature of any site plan, subdivision plat or minor subdivision deed, and prior to issuance of any zoning, building or other permit or certificate.
- G. Extension of Time. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of installation, which cost shall be determined by the Municipal Engineer according to the method of calculation set forth in NJSA 40:55D-23.4 as of the time of the passage of resolution.
- H. Default; Reductions and Release. If the required improvements are not completed or corrected in accordance with the performance guarantee, the developer and surety, if any, shall be liable thereon to the municipality for the reasonable cost of the improvements not completed or corrected and the municipality may either prior to or after the receipt of the proceeds thereof complete such improvements. Such compilation or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law (NJSA 40A:11-1 et seq.). Otherwise, the guarantees will be subject to reduction and release as provided in NJSA 40:55D-53.
- I. Request for List of Uncompleted or Unsatisfactory Completed Improvements. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of the same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the Municipal Clerk, that the Municipal Engineer prepare, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to this Section, a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the Municipal Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgement of the obligor. Thereupon the Municipal Engineer shall inspect all bonded improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request. The list prepared by the Municipal Engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent or, and remedy for, the unsatisfactory state of each completed improvement determined to be unsatisfactory. The report prepared by the Municipal Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvement, in accordance with the itemized cost estimate prepared by the Municipal Engineer and appended to the performance guarantee pursuant to this Section.
- J. Action by the Governing Body. The governing body, by resolution, shall either approve bonded improvements determined to be complete and satisfactory by the Municipal Engineer, or reject any or all of these improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee and the "safety and stabilization bond" relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Municipal Engineer and appended to the performance

guarantee pursuant to this Section. This Resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Municipal Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee and “safety and stabilization bond,” with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and “safety and stabilization bond” attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Municipal Engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the municipality may retain 30 percent of the amount of the total performance guarantee and “safety and stabilization bond” to ensure completion and acceptability of all improvements, as provided above, except that any amount of the performance guarantee even if such release would reduce the amount held by the municipality below 30 percent. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.

- K. Engineering Inspection Fees The obligor shall reimburse the municipality for reasonable inspection fees paid to the Municipal Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (1) and (2) of this paragraph. The developer shall post the inspection fees in escrow in an amount:
1. Not to exceed 5% of the cost of bonded improvements that are subject to a performance guarantee in accordance with Section 9.3; and
  2. Not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee in accordance with section 9.3, which cost shall be determined pursuant to NJSA 40:55D-53.4.
  3. Installments For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees. For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, shall be 25% of the inspection fees. When the balance on deposit drops 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.
  4. Request for additional deposit If the Municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs 1 and 2 of this subsection, is insufficient to cover the cost of additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, signed by the Municipal Engineer, which; informs the developer of the need for additional inspections.
- L. Applicability of Amendments Not Codified in This Ordinance Any and all amendments made to NJSA 40:55D-53 et. al. that have not been codified in this Ordinance shall be deemed incorporated herein.
- M. Applicability to Existing Projects The modification in this sections shall be applicable to all projects that have not yet received final approvals from the Township Planning Board or the Township Zoning

Board of Adjustment and/or which have not posted bonds and begun construction of required improvements as of January 16, 2018, the date of enactment of P.L. 2017, c. 312 obviated the Township's previously lawful ordinances.

#### **SECTION 9.4 – Deadlines for Completion of Improvements**

- A. The Board must establish a deadline by which the applicant must complete all guaranteed improvements in connection with a site plan or subdivision approval. The deadline should be a date certain that is memorialized by Planning Board resolution prior to the posting of performance guarantee. The completion deadline is an administrative deadline established for purposes of measuring default under the performance guarantee, and should be based on the applicant's and Planning Board Engineer's estimate of when the project will be complete to the extent that the site improvements are necessary for proper use of the site and protection of those who are or may be affected by it. The completion deadline is separate and distinct from the expiration date of final site plan or subdivision approval as provided in *N.J.S.A. 40:55D-52*. The completion deadline may be established and thereafter extended by majority vote of the Board without public hearing or notice at any time prior to the expiration of final approval, provided that such deadline must be established prior to the review and posting of the performance and maintenance guarantees. After the guarantees have been posted the completion deadline may be extended by the Township pursuant to *N.J.S.A. 40:55D-53(b)*. Extension requests must be considered in light of the purposes expressed in this Section and will require a showing by the applicant that the site improvements are not or will not be needed within the originally estimated time.

#### **SECTION 9.5 – PHASING REVIEW**

- A. Phases or Sections. Any proposal to develop a major site plan or major subdivision project by phases or sections must be included in the initial application for preliminary approval (or a later amendment thereto) so that the Board can confirm, on the advice of its professionals, that any proposed phase or series of phases can stand alone in the event that the remainder of the project is not built. As part of such review, the Board may impose reasonable conditions as to the required phasing sequence, and as to the installation, maintenance and bonding of improvements that connect or serve multiple phases, or which straddle phase boundaries. Development by phases or sections will not be allowed if not approved in this manner.

#### **SECTION 9.6 – PRE-DEVELOPMENT REQUIREMENTS; INSPECTIONS**

- A. Prior to any land disturbance, clearing, grading or construction, the applicant must submit six (6) copies of final, approved, detailed construction plans to the Construction Code Office, and pay to the Township Treasurer, by cash or certified check, the inspection fee deposit fixed by the Township according to Subsection 9.6.E, below.
- B. All of the required improvements of a development shall be inspected during the time of their installation by the Township Engineer to insure satisfactory construction. The Township Engineer shall be notified at least seven (7) days prior to the start of construction and at least two (2) days before each stage of construction. No underground installation of any type shall be covered until inspected and approved by the Township Engineer. In no case shall any paving work be done without permission from the Township Engineer's office so that the Township Engineer or a qualified representative may be present at the time work is to be done. Additionally, the Township Engineer's

office shall be notified after each phase of work has been completed (i.e. road sub grade, curb forms, curbing, etc.) so that the Township Engineer or a qualified representative may inspect the work.

- C. If work proceeds initially or in any stage, or if any stage is completed without the notices required above, or if any underground installation is covered without inspection, or if any paving is done without advance permission, or if the developer violates any other requirement of any applicable law, regulation, ordinance, rule, or condition of development approval, the Township Engineer, in addition to all other remedies available to the Township, may issue an order requiring immediate cessation of the affected work and prohibiting resumption thereof until further approval is obtained or noncompliance is corrected.
- D. Inspection by the Township of the installation of improvements shall not operate to subject the Township to liability, suits, or claims of any kind that may at any time arise because of defects or negligence during construction.
- E. Inspection Fees. The developer shall reimburse the municipality for all reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements, which cost shall be determined pursuant to *N.J.S.A. 40:55D-53.4*. For those developments for which the inspection fees are less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall deposit the remaining 50% of the inspection fees. For those developments for which the inspection fees are \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees. The municipal engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.

## **SECTION 9.7 – OFF-TRACT IMPROVEMENTS**

- A. Off-tract improvements required. As a condition of site plan or subdivision approval the Planning Board may, in accordance with the provisions of *N.J.S.A. 40:55D-42*, require an applicant to pay his or her pro rata share of the cost of providing reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development. The proportionate or pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related or common area shall be based on the criteria established herein. For purposes of this Chapter, the term “reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefore” shall include all manner of road widening, water, sewerage, drainage, sight triangle, emergency access, declaration of restricted access, or any other type of easement, declaration or restriction that the Board determines is necessitated by the proposed development or subdivision, even if such easement, declaration or restriction will involve installation of physical improvements by the developer.

- B. Construction of improvements at sole expense of developer. In cases where off-tract improvements are necessitated by an applicant's development proposal, and where in such event it is determined that no other property owners receive a special benefit from such improvements, the applicant may be required as a condition of approval, and at the applicant's sole expense, to provide for and construct such improvements as if they were on-tract improvements.
- C. Other improvements. In cases where the applicant's development proposal creates the need for off-tract improvements which will also specially benefit properties outside of the development, the following criteria shall be utilized in determining the developer's proportionate contribution to the Township's cost of providing such improvements.
1. Sanitary Sewers. All sanitary sewer proposals must be reviewed for approval by the Pennsville Township Sewerage Authority. The applicant's proportionate share of distribution facilities, including the installation, relocation or replacement of collector, trunk and interceptor sewers, and appurtenances associated therewith, shall be computed as follows:
    - a. The capacity and design of the sanitary sewer system shall be based on the standards set forth in Chapter 8.
    - b. The Township Sewerage Authority Engineer shall provide the applicant with the existing and reasonably anticipated peak hour flows as well as capacity limited of the affected sewer system.
    - c. If the existing system does not have adequate capacity to accommodate the additional flows from the applicant's development, the pro rata share shall be computed multiplying the total cost of the off-tract improvement by the percentage of additional flows generated by the applicant's proposed development. Thus, if a sewer improvement will cost \$100,000 and it is determined that the applicant's development proposal will generate 50% of the peak hour flows that will be accommodated by it, the developer's share is computed as follows:  $\$100,000 \times .5 = \underline{\$50,000}$ .
  2. Water. The applicant's proportionate share of water distribution facilities, including the installation, relocation or replacement of water mains, hydrants, valves and appurtenances associated therewith, shall be computed as follows:
    - a. The capacity and design of the water supply system shall be based on the standards set forth in Chapter 8.
    - b. The Township Engineer shall provide the applicant with the existing and reasonably anticipated capacity limits of the affected water supply system in terms of average demand, peak demand and fire demand.
    - c. If the existing system does not have adequate capacity as defined above to accommodate the applicant's needs, the pro rata share shall be computed multiplying the total cost of the off-tract improvement by the percentage of additional water supply need by the applicant's proposed development. Thus, if a water supply improvement will cost \$100,000 and it is determined that the applicant's development proposal will require 50% of the additional supply that will be accommodated by it, the developer's share is computed as follows:  $\$100,000 \times .5 = \underline{\$50,000}$ .



3. Roadways. The applicant's proportionate share of street improvements, widening, alignment, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, and utility improvements not covered elsewhere, the construction or reconstruction of new or existing streets and other associated street or traffic improvements, the applicant's proportionate cost shall be as follows:
    - a. The applicant shall be required to determine the existing and anticipated future peak hour flows based on a traffic impact study prepared as part of the application.
    - b. The applicant shall furnish a plan for the proposed off-tract improvement which shall include the estimated peak-hour traffic generated by the proposed development. The ratio of the peak-hour traffic generated by the proposed development to the future additional peak-hour traffic anticipated to impact the proposed off-tract improvement shall form the basis of the basis of the developer's proportionate share of cost, which share shall be computed by multiplying the total cost of the off-tract improvement by the percentage future peak-hour traffic generated by the applicant's proposed development. Thus, if a roadway improvement will cost \$100,000 and it is determined that the applicant's development proposal will generate 50% of the peak hour drives who will benefit from the improvement, the developer's share is computed as follows:  $\$100,000 \times .5 = \underline{\$50,000}$ .
    - c. Where the property which is the subject of a development application falls within a designated transportation improvement district as reflected in the Circulation Element of the Township Master Plan, the standards to be applied shall be in accordance with Section 9.7.E, below (Township engineer decides).
  4. Drainage Improvements. The applicant's proportionate share of stormwater and drainage improvements including the installation, relocation or replacement of storm drains, culverts, catch basins, manholes, riprap or improved drainage ditches and appurtenances thereto and relocation or replacement of other storm drainage facilities or appurtenances associated therewith, shall be determined as follows:
    - a. The capacity and design of the drainage system to accommodate stormwater runoff shall be based on the standards specified in Chapter 8.
    - b. The capacity of the enlarged, extended or improved system required for the development and areas outside of the developer's tributary to the drainage system shall be determined by the developer's engineer subject to approval of the Township Engineer. The plans for the improved system shall be prepared by the developer's engineer and the estimated cost of the enlarged system calculated by the Township Engineer. The developer's proportionate share of cost shall be equivalent to the percentage of stormwater runoff that will enter the improved off-tract drainage facilities from the developer's tributary. Thus, if the total cost of the improvements beyond the developer's tributary is \$100,000 and it is determined that 50% of the stormwater drainage flow into the said improvements comes from the developer's tributary, the developer's share is computed as follows:  $\$100,000 \times .5 = \underline{\$50,000}$ .
- D. Payment to Township. Any required contributions for off-tract improvements must be paid to the Township according to the terms of a written agreement prior to issuance of any zoning or construction permit for the proposed development.
- E. Computation by Township Engineer. In any case where an applicant does not provide the Planning Board with sufficient or satisfactory estimates or other sufficient or satisfactory information necessary

to apportion costs as required herein, the Planning may rely on the estimates of the Township Engineer and its other professionals for all such purposes.

#### **SECTION 9.8 – ACCEPTANCE OF STREETS AND IMPROVEMENTS**

- A. All easements for roadways, road widening, utilities, sight triangles, drainage and emergency access, and all declarations of covenant or restriction pertaining to maintenance of facilities, landscaping or other improvements, or for road access restrictions or any other purpose required as conditions of any Planning Board approval must be established, prior to signature of any site plan or subdivision deed or plat, by approved deed or other document of record as well as being indicated on any approved site plan or subsequently filed plat.
- B. Prior to the Planning Board Chair's or Secretary's signature of any site plan, subdivision plat or minor subdivision deed, and prior to the issuance of any zoning permit, building permit, or other permit or certificate, the applicant must:
  - 1. Prepare and submit all required deeds and other instruments as set forth above, with all legal descriptions and other schedules attached or otherwise included, for review and approval by the Township Solicitor and Engineer or, as the case may be, the Planning Board Solicitor and Engineer (depending on which of these officials are assigned responsibility for such review in the conditions of the Board's approval).
  - 2. After the deeds and instruments have been reviewed and approved as aforesaid, the applicant must have them executed, recorded and returned to the reviewing solicitor along with such additional proof as may be necessary, in such solicitor's opinion, to confirm that all such deeds and instruments have been properly executed and recorded, and that they are not subject or subordinate to any other interest which could extinguish them or otherwise render them ineffective.
- C. As part of the inspections performed pursuant to *N.J.S.A. 40:55D-53* to determine whether guaranteed improvements are complete or satisfactory, the Township Engineer must send written notice to all property owners at the project or development, or within 200 feet of it, with a request for any information they may have as to whether the improvements are complete or satisfactory.

#### **SECTION 9.9 – MAINTENANCE OF STREETS PRIOR TO ACCEPTANCE**

- A. Until such time as the streets and other improvements are accepted by the Township, the developer shall be obligated to perform all maintenance, including but not limited to all snowplowing of such streets.
- B. In the event the developer fails to maintain the streets or other improvements and thereby creates a hazard, drainage failure, or other problem that could result in harm to persons or property, the Township may perform such maintenance as is necessary to eliminate the hazard or problem. The costs incurred by the Township in so doing shall be billed to and paid by the developer, and if not so paid within 30 days after billing, shall be reimbursed to the Township from the developer's inspection or review escrows. Maintenance work performed by the Township as a result of the developer's failure to properly maintain shall not constitute an acceptance of the streets, drainage or other improvements.

## **SECTION 9.10 – ASSIGNMENTS; DEVELOPMENT AGREEMENTS**

- A. If the applicant intends to assign the approval and sell the subject property before the posting of performance and maintenance guarantees, the applicant must enter into a written agreement with the Planning Board and the purchaser/assignee which confirms whether and to what extent the purchaser/assignee will assume all rights and obligations pursuant to the approval, including the posting and/or release of performance and maintenance guarantees, and which resolves all issues as to the disposition of the applicant's remaining escrow account balances or replenishment obligations.
- B. If the applicant intends to assign the approval and sell the subject property after the posting of performance and maintenance guarantees, the applicant must enter into a written agreement with the Township and the purchaser/assignee which confirms whether and to what extent the purchaser/assignee will assume all rights and obligations pursuant to the approval including the posting and/or release of performance and maintenance guarantees, and which resolves all issues as to the disposition of the applicant's remaining escrow account balances or replenishment obligations and performance and maintenance guarantees.
- C. When reviewing and deciding site plan, subdivision, and other applications, the Board may, in its discretion, require that matters relating to the Township's procedural or administrative oversight and control of a project, or matters whose resolutions are contingent upon future events but which do not substantively alter the approved plans or any substantive conditions of approval, be resolved by later written agreement between the developer and the Township, and that any such written agreement be a precondition to signature of any plan, plat or deed. Likewise, the Township may require such an agreement prior to signature of any plan, plat or deed whenever such matters have not been adequately addressed in resolutions of approval. The subject matter of the agreements contemplated in this paragraph must be procedural and administrative in nature, and cannot substantively alter the approved plans or any substantive conditions of approval without further approval of the Planning Board.

## **SECTION 9.11 – “FIELD CHANGES” AND “MINOR AMENDMENTS”**

- A. “Field change” means a proposed deviation from a technical or design requirement or specification of an earlier granted, unexpired development approval (not including any requirement or specification regulated by the Residential Site Improvement Standards) that is confirmed by the Township Engineer to be so minor that it would not result in any difference in function or appearance at or near the project site, or any change in the estimate(s) by which performance and maintenance guarantees are calculated.
- B. “Minor amendment” means a proposed deviation from a technical requirement or design specification of an earlier granted, unexpired development approval (not including any requirement or specification regulated by the Residential Site Improvement Standards) that is confirmed by the Planning Board to be so minor that it would result in only a slight difference in function or appearance at or near the project site, and would probably not be an issue of any concern for any interested party, nearby property owner, or the general public.
- C. Field Change Request. An applicant or developer seeking a field change must submit a written request by correspondence to the Township Engineer describing the requirement or specification in question and the proposed change, and including proof satisfactory to the Township Engineer that the proposed change qualifies as a “field change” as defined above. No application fee is required,

provided that the Township Engineer's charges to the Township for reviewing field change requests shall be reimbursed to the Township from the applicant's review or inspection escrows pursuant to *N.J.S.A. 40:55D-53, et seq.* If the Township Engineer agrees that the proposed change qualifies as a field change, the Township Engineer shall approve the request in writing and provide copies of the approval to the Construction Code Office, the Planning Board Secretary, and the Planning Board Engineer. Denial of a field change request shall not preclude the applicant or developer from seeking approval of the change as a minor amendment.

- D. Minor Amendment Request. An applicant or developer seeking a minor amendment must submit a written request by correspondence to the Planning Board Secretary, with copies to the Planning Board Chair, Planning Board Engineer, and Planning Board Solicitor, describing the requirement or specification in question and the proposed change, and stating why the applicant/developer believes that the proposed change qualifies as a "minor amendment" as defined above. No application fee is required, provided that the Planning Board Engineer's and Planning Board Solicitor's charges to the Township for reviewing minor amendment requests shall be reimbursed to the Township from the applicant's review or inspection escrows pursuant to *N.J.S.A. 40:55D-53, et seq.* The Planning Board Chair may either convene an *ad hoc* committee including no more than three other Planning Board members to discuss the matter with the Planning Board Engineer and/or Planning Board Solicitor and then recommend Board action on the request based on the committee's decision, or simply open the matter to the full Board as a new business item during a regular meeting for full Board consideration. In either event, minor amendment requests must be decided by majority vote of a no less than a quorum of Board members. If the Board determines that the requested change does not qualify as a minor amendment, that insufficient information has been presented to confirm whether it so qualifies, that the change is minor in nature but inappropriate in the context of the approval, or that the change may only be granted pursuant to the requirements of the Residential Site Improvement Standards, the Board must deny the request. Any approval of a minor amendment after performance and/or maintenance guarantees have been approved and posted with the Township shall be subject to the requirement that the Township Engineer must confirm, prior to the applicant or developer's implementation of the change, that either the change does not alter the cost estimate by which the performance and maintenance guarantee amounts were calculated, or that the cost estimate and the performance and maintenance guarantees have been properly revised to reflect the change, approved by the Township Solicitor, and posted with the Township. Approval or denial of a minor amendment request must be memorialized by resolution pursuant to *N.J.S.A. 40:55D-10*. Denial of a minor amendment request shall not preclude the developer from seeking approval of the change as a formal amendment to the application, provided that any proposed change that does not qualify as a minor amendment, or for which a formal application for amendment is filed, will be deemed to be a proposal to change "a significant condition or conditions" for purposes of triggering the application notice requirements specified in *N.J.S.A. 40:55D-12* and in Section 4.4 of this Ordinance.

## **SECTION 9.12 – GENERAL DEVELOPMENT PLANS**

- A. Classification. Applicants for subdivision or site plan approvals which meet the requirements for general development plans pursuant to *N.J.S.A. 40:55D-45, et seq.*, may also apply for general development plan approval.
- B. Application Requirements. Applications for general development plan approval shall include a completed Application Cover Sheet and be made in accordance with Checklist Schedule A (General Requirements), Checklist Schedule B (Approvals Requested), and Checklist Schedule JJ (General Development Plan), and shall include applicable fees and escrow deposits.

- C. Review. After the application has been certified or deemed complete pursuant to Section 4.1.B, the Planning Board shall review the general development plan application at a public hearing on public notice pursuant to *N.J.S.A.* 40:55D-11 through -12.2 for the purpose of making an informed decision as to whether the requirements of *N.J.S.A.* 40:55D-45.1 and other requirements necessary for general development plan approval have been met. The Board may require that the general development plan application be supplemented to include any information specified in *N.J.S.A.* 40:55D-45, *et seq.*, including but not limited to plans, reports, schedules or agreements set forth in *N.J.S.A.* 40:55D-45.2. If the planning board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of the hearing, an amended general development plan application shall be submitted and proceeded upon, as in the case of the original application. Any grant of general development plan approval shall be subject to subdivision, site plan, variance, or such other approvals as may be required for the proposed development by this Ordinance or other applicable laws or regulations.
- D. Time for Decision. The planning board shall grant or deny general development plan approval within 95 days following the date the application is certified or deemed complete pursuant to Section 4.1.B, or within such further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval of the general development plan.
- E. Denial. In the event the Board denies the general development plan application, such denial must be memorialized in a written resolution containing a statement of reasons for the denial, a copy of which shall be given to the applicant.
- F. Modification of Timing; Variation; Amendment. General development plan applicants may apply for modification of timing schedules, variations, or amendments of general development plan approval pursuant to *N.J.S.A.* 40:55D-45.4, -45.5, and/or -45.6 prior to expiration of the general development plan approval. Applications for such modification, variation or amendment must include the completed Application Cover Sheet, Checklist Schedule A (General Requirements), Checklist B (Approvals Requested), applicable Checklist Schedules KK (Modification of Timing), LL (Variation of Physical Features) and/or MM (Amendment or Revision), and all required materials, information and fees. All applications for such modification, variation or amendment must be heard on public notice pursuant to *N.J.S.A.* 40:55D-11 and -12. Any proposed general development plan modification, variation, or amendment must be consistent with all other Planning Board approvals and applicable municipal requirements.
- G. Expiration. General development plan approval shall expire five (5) years following the date the initial resolution of general development plan approval is adopted unless the applicant applies for preliminary subdivision or site plan approval for the planned development within that time. Otherwise, general development plan approval shall expire at the end of the term determined by the Planning Board, provided that the term of the effect of the general development plan approval cannot exceed twenty (20) years from the date the applicant receives final approval for the first section of the planned development. General development plan approval shall not alter the expiration periods or other deadlines that are applicable to any subdivision, site plan, variance or other approvals that are obtained in order to effectuate the general development plan.

## **SECTION 9.13 – NITRATE DILUTION MODEL REQUIREMENTS**

- A. Purpose and Overview – The purpose of this ordinance is to comply with the established standards for Wastewater Management Plans in the State of New Jersey. Specifically, the State requires that municipalities adopt ordinances that address the carrying capacity of Land.

B. Background

1. The quality and quantity of ground water available directly affects the health and welfare of the population because ground water is the primary source of potable water for a significant number of Township residents.
2. Contamination of ground water by nitrates introduced by on-site disposal systems (i.e., septic systems) can result in a high concentration of nitrates.
3. Fertilization contributes to nitrate ground water contamination.
4. Additional pollutants, such as chemicals, pesticides and animal waste can be introduced into the ground water.
5. Rainwater penetration of the aquifer is necessary to dilute groundwater contamination.
6. The Office of Smart Growth, the New Jersey Department of Environmental Protection, and the Pinelands Commission promote and promulgate the use of Nitrate Dilution Models for land use purposes.
7. It is desirable and necessary to regulate development, processes and activities that threaten Pennsville Township's groundwater.
8. The nitrate dilution ordinance provides for a limitation on the nitrate loading based on the available dilution of each lot being subdivided that proposed the use of an onsite subsurface sewage disposal system.
9. This ordinance creates a zoning overlay for Pennsville Township to require the application of a nitrate dilution analysis to be applied to all subdivision applications in the Township not included in a sewer service area. This ordinance is being developed on an individual lot basis (lots created by subdivision) as opposed to a total watershed basis. As such, any application for a subdivision outside of the limits of the sewer service area that creates additional lots will require that the Planning Board apply the site specific Nitrate Dilution Model to the proposed subdivision.
10. This ordinance is not intended to regulate the development of existing individual lots. Individual lots shall continue to be required to meet the regulations for the NJDEP subsurface on-site disposal regulations and meet any and all bulk requirements provided by ordinance.
11. Further, this ordinance is not intended to modify the underlying zoning area requirements for individual lots; rather it required to address the standards established by NJDEP Wastewater Management. This ordinance shall be considered an overlay to the existing underlying zone.
12. The proposed on-site sewage disposal systems would continue to be required to be designed in accordance with "Standards for Individual Subsurface Sewage Disposal Systems" (NJAC 7:9A – Chapter 199) and continue to be under the jurisdiction of the Cumberland-Salem County Health Department and NJDEP where applicable.

- C. Applicability and Criteria – This ordinance applies to all lands within Pennsville Township, that are located outside of the sewer service area, that require subdivision approval through the Pennsville Township Planning Board which propose the use of onsite sewage disposal systems as the method to address sewage disposal. This would include; minor residential subdivisions, major subdivisions, as well as commercial, industrial, or institutional subdivisions.

The Planning Board and Construction Code Office must maintain a record of all systems approved and constructed within the Township.

D. Nitrate Dilution Model

1. A nitrate dilution model / analysis shall be provided as part of subdivision approval applications requiring septic systems to ensure that the number of units allowed, regardless of underlying zoning, supports conformance with the groundwater standards when considering the available dilution on site. The goal of the analysis is to meet anti degradation for groundwater for 2.0 mg/l.
2. If the designated minimum lot area for the zone can not meet the standards established for septic disposal systems pursuant to NJAC 7:9A, then the minimum lot area shall be adjusted to a larger size and configuration as is necessary in order to meet said standards.
3. The Nitrate Dilution Analysis shall utilize NJDEP’s Recharge-Based Nitrate-Dilution Model for New Jersey V6.0, as supplemented or amended, for residential subdivision, and the Recharge-Based Nitrate-Dilution Model for Small Commercial Establishments in NJ V.2, as supplemented or amended, for commercial/institutional subdivisions, or another method that has received approval from the NJDEP.

E. Requirements

1. Any proposed subdivision to be served by individual on-site disposal systems (septic) not within the sewer service area for Pennsville Township must meet the groundwater standard for nitrate (2 mg/l).
2. Ground water impacts for new or expanded discharges to groundwater (DGW) that exceed 2,000 gallons per day (GPD) shall be evaluated through the NJPDES permitting process and are subject to approvals by the NJDEP prior to any construction.
3. DGW less than or equal 2,000 GPD shall demonstrate conformance with the objective of protecting groundwater quality. Any subdivision meeting this criteria would be subject to submission of the nitrate model for local review only. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located will ensure that ground water exiting from the entire contiguous parcel

or entering a surface body of water will not exceed 2.0 parts per million nitrate/nitrogen, calculated pursuant to a Recharge-Based Nitrate-Dilution Model for New Jersey V6.0, as may be amended from NJDEP from time to time. The entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development, but may not include previously dedicated road rights-of-way. Any contiguous parcel under consideration must be deed restricted to prohibit any further development that would generate additional nitrate loading.

4. Approval of all individual subsurface sewage disposal systems under NJAC 7:9A remain under the jurisdiction of the appropriate County Health Department and/or NJDEP.
- F. Administration – The administration of the ordinance requirements must be handled by a combination of individuals. The Planning Board shall be responsible to track the number of systems and their acreage for compliance with the results of the individual model. The Township Engineer must complete the Determination of Capacity and retain record of review.
1. Application procedure – Planning Board – whenever an application is submitted to the Planning Board for submission review and the proposed method of sewage disposal is an individual onsite system, the applicant shall submit an application for Determination of Capacity. This application shall include the proposed use, the number of residential units and shall be submitted with the applicable fee for review. A Determination of Capacity for each lot will be reviewed by the Township Engineer who will issue a determination letter to the Planning Board as a completeness item for subdivision consideration. No application shall be deemed complete by the Planning Board unless a positive determination that each lot has satisfied the land area requirements for development as determined through the model.
  2. Application fees – The fee for review of the review of the application shall be \$200 for the initial submission and an additional \$100 for each subsequent submission required.

## **SECTION 9.14 – RIPARIAN BUFFER CONSERVATION ZONE**

### **Section 9.14-1 – PURPOSE AND STATUTORY AUTHORITY**

The purpose of this Ordinance is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes and other surface water bodies of the Township in Pennsville in order to provide compliance with NJAC 7:15-5.25(g)3 which requires municipalities to adopt an ordinance that prevents new disturbance for projects or activities in riparian zones. Authority is provided or limited as follows:

- A. Compliance with the riparian zone requirements of this Ordinance does not constitute compliance with the riparian zone or buffer requirements imposed under any other federal, state or local statute, regulation or ordinance.
- B. Use powers given to the Township of Pennsville under the provisions of the New Jersey Municipal Land Use Law, NJSA 40:55D-1 et seq, authorize each municipality to plan and regulate land use in order to protect public health, safety, and welfare through the protection and maintenance of native vegetation in riparian areas. The Township of Pennsville is also empowered to adopt and implement this ordinance under provisions provided by the following legislative authorities of the State of New Jersey:



1. Water Pollution Control Act, NJSA 58:10A-1 et seq
2. Water Quality Planning Act, NJSA 58:11A-1 et seq
3. Spill Compensation and Control Act, NJSA 58:10-23 et seq
4. Soil Erosion and Sediment Control Act, NJSA 4:24-39 et seq
5. Flood Hazard Area Control Act, NJSA 58:16A-50 et seq

### **Section 9.14-2 – DEFINITIONS**

The following definitions shall apply to all sections of the Pennsville Township Land Development Ordinance unless otherwise defined in other sections of the Ordinance, in which case the following definitions shall apply only to this Section 9.14

Acid producing soils means soils that contain geologic deposits of iron sulfide minerals (pyrite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.9 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

Applicant means a person, corporation, government body or other legal entity applying to the Township Zoning Officer, the Township Construction Code Office or the Pennsville Planning Board proposing to engage in an activity that is regulated by the provisions of this Ordinance, and that would be located in whole or in part within a regulated Riparian Zone.

Category One surface waters or C1 waters shall have the meaning ascribed to this term by the Surface Water Quality Standards, NJAC 7:9B, for purposes of implementing the policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

Intermittent Stream means a surface water body with definite bed and banks in which there is not a permanent flow of water and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at NJAC 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Lake, pond, or reservoir means any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at NJAC 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soils Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

Perennial stream means a surface water body that flows continuously throughout the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area

(SWRPA) pursuant to the Stormwater Management rules at NJAC 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Riparian Zone means the land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection area (SWRPA) pursuant to the Stormwater Management rules at NJAC 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

Special Water Resource Protection Area of SWRPA means a 300-foot ear provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management rules at NJAC 7:8-5.5(h).

Surface water body means any perennial stream, intermittent stream, lake, pond, or reservoir means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any regulated water under the Flood Hazard Area Control Act rules at NJAC 7:13-2.2, or State of New Jersey open waters identified in a Letter of Interpretation issued under the Freshwater Wetlands Protection Act Rules at NJAC 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation shall also be considered surface water bodies.

Threatened or endangered species means a species identified pursuant to the Endangered and Nongame Special Conservation Act, NJS 23:2A-1 et seq, the Endangered Species Act of 1973, 16 USC 1531 et seq, or the Endangered Plan Species List, NJAC 7:5C-5.1, and any subsequent amendments thereto.

Trout maintenance water means a section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at NJAC 7:9B.

Trout production water means a section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at NJAC 7:9B.

### **SEC. 9.14-3 ESTABLISHMENT OF RIPARIAN ZONES**

- A. Riparian zones adjacent to all surface water bodies shall be delineated as follows:
1. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed.
  2. The riparian zone shall be 150 feet wide along both sides of the following water not designated as C1 waters:
    - (a) Any trout production water and all upstream waters (including tributaries)
    - (b) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
    - (c) Any segment of water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically

dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

- (d) Any segment of a water flowing through an area that contains acid producing soils.
3. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
- B. The portion of the riparian zone that lies outside of a surface water body is measured landward from the top of the bank. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:
- 1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
  - 2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
  - 3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line; and
  - 4. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.
- C. The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area on any plan submitted to the Township of Pennsville in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the Township Zoning Officer, the Township Construction Code Official, or the Pennsville Planning Board, with, if necessary, the advice of the Township or Planning Board Solicitor and/or engineer, and, where required, by the New Jersey Department of Environmental Protection.
- D. No new land disturbance may occur within a riparian zone in connection with an Applicant's project or activity except for land disturbance within the limits of existing impervious materials coverage, provided that such impervious materials coverage is confirmed to have been in lawful existence as of the effective date of this section 9.14.

**Sec. 9.14-4 APPEALS; INTERPRETATIONS; VARIANCES**

- A. Appeals, interpretations and variance requests relating to riparian zones shall be governed by NJSA 40:55D-70. a, b, c, d(1) & d(2) respectively.

**Sec. 9.14-5 SEVERABILITY**

A. Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal Law.
2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.
3. The provisions of this Ordinance shall be cumulative with and not in substitution for all other applicable zoning, planning and land use regulations.

**Sec. 9.14-6 ENFORCEMENT**

A prompt investigation shall be made by the appropriate personnel of the Township of Pennsville of any person or entity believed to be in violation of this Section 9.14. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action in the Special Civil Part of the Superior Court, or in the Superior Court if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Township, pursuant to NJSA 26:3A2-25, to initiate legal proceedings hereunder in the Township's Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.