

## NJDEP PROPOSES TO CHANGE FLOOD HAZARD AREA CONTROL ACT RULES

NJDEP has proposed far-reaching regulations which could effect stream encroachment wetlands and buffers along streams and tidal areas.

Key highlights are:

- There are two distinct and overlapping areas of jurisdiction:
  - The flood hazard area
  - The riparian zone
- Approximately 35% of New Jersey lies in a flood hazard area
- The riparian Zone measures 50, 150 or 300 feet from a regulated water (currently 25 or 50 feet)
- Proposed New Rules
  - Proposed October 2, 2006
    - Courtesy copy at: [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)
- Planned for adoption Mid/Late 2007
- Rules affected:
  - Flood Hazard Area Act rules
  - Coastal Permit Program Rules
  - Coastal Zone Management Rules
  - Ninety-Day Construction Permits
- No Adverse Impact Theme: Ensuring that "...the action of one property owner does not adversely impact the rights of other property owners, as measured by increased flood peaks, flood stage, flood velocity, and erosion and sedimentation..."
- Jurisdiction Three Steps
  - Determine if you are along a regulated water
  - Determine if you are within a regulated area along this water
  - Determine if you are proposing a regulated activity
- Regulated Waters

All waters in New Jersey are regulated except:

  - Manmade channels
  - Coastal wetlands
  - Any water that drains less than 50 acres if:
    - The water has no definable channel OR
    - 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 natural channels that were previously modified OR
    - 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.
- Regulated Areas
  - A flood hazard area exists along every regulated water that has a drainage area of 50 acres or more
  - A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula

- Regulated Activities
  - The alteration of topography through excavation, grading or placement of fill
  - The clearing, cutting, or removal of vegetation in a riparian zone
  - The creation of impervious surface
  - The construction, reconstruction and/or enlargement of a structure
  - The conversion of a building into a private residence or a public building
  - The storage of unsecured material
  
- Permit Requirement
  - Before undertaking a regulated activity in a regulated area, you must first obtain one of the following for the work:
    - A permit-by-rule (N.J.A.C. 7:13-7)
    - A general permit (N.J.A.C. 7:13-8)
    - An individual permit (N.J.A.C. 7:13-9, 10 & 11)
    - An emergency permit (N.J.A.C. 7:13-12)
    - A coastal permit (N.J.A.C. 7:7 and 7:7E)
  
- Coastal vs. FHA Rules
  - The list of exempt tidal waters is proposed for deletion so that all waters in NJ will be regulated under the FHA rules
  - New special area created for the riparian zone in Coastal rules at N.J.A.C. 7:7E-3.26
  - Coastal rules will cross-reference proposed FHA rules
  - All coastal permits will therefore need to meet all FHA standards
  - Since all coastal projects must now meet all FHA standards, getting a coastal permit satisfies FHA permitting requirements – you will never need both permits for same activity
  
- Grandparenting
  - You are grandparented from the new rules if, prior to their adoption, you:
    - Submit a complete application for a stream encroachment or coastal permit (and subsequently obtain the permit) OR
    - If you do not need a stream encroachment or coastal permit under the current rules:
      - You must obtain a final municipal building or construction permit OR
      - If no municipal building or construction permit is needed, you must begin construction
  
- Flood Hazard Area
  - Area inundated by the flood hazard area design flood
  - In tidal areas: equal to 100-yr (1%) flood
  - In fluvial areas: equal to 100-yr (1%) flood plus a factor of safety
    - Existing rules require assumption of full development of upstream watershed
    - Proposed rules add different factors of safety depending on the mapping resources available
  - Six methods available to determine the flood hazard area depending on the available mapping and type of project
    - Method 1 (Department delineation method)
    - Method 2 (FEMA tidal method)
    - Method 3 (FEMA fluvial method)
    - Method 4 (FEMA hydraulic method)
    - Method 5 (Approximation method)
    - Method 6 (Calculation method)

- Riparian Zone
  - Existing stream buffer is:
    - 50 ft along C1 waters, and waters with trout, T&E species or acid producing soils
    - 25 ft along all other waters
  - Proposed riparian zone is:
    - 300 ft along C1 waters & some tributaries
    - 150 ft along waters with trout, T&E species or acid producing soils
    - 50 ft along all other waters
  - Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the feature's centerline
  - Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water
  - Along an amorphously shaped feature, such as a wetland complex, through which a regulated water flows but which lacks defined channel, the riparian zone is measured landward of the feature's centerline
  
- 300-ft Riparian Zone
  - Applies along any C1 water and all tributaries in same HUC14 watershed
  - Not the same as the 300-ft special water resource protection area under stormwater management rules
  - Proposed riparian zone applies to:
    - All C1 waters under the jurisdiction of flood hazard area rules (see regulated waters at N.J.A.C. 7:13 2.2)
  - Special water resource protection area applies to:
    - Only those C1 waters shown on USGS quads or local soil survey, that are associated with major development (if 1 acre disturbance or if 1/4 acre impervious surface proposed)
  
- 150-ft Riparian Zone
 

Applies along the following waters:

  - Any upstream tributary trout production water
  - Any trout maintenance water and all upstream tributaries within one mile
  - Any segment of a water flowing through an area that contains documented habitat for threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival and all upstream tributaries within one mile
  - Any segment of a water flowing through an area that contains acid producing soils
  
- 50-ft Riparian Zone
 

Applies to all waters in the State that do not have a 150-ft or 300-ft riparian zone

\*Note: more waters will have a 50-ft riparian zone than a 150-ft or 300-ft zone
  
- Permit Requirement
  - Before undertaking a regulated activity in a regulated area, you must first obtain one of the following for the work:
    - A permit-by-rule (N.J.A.C. 7:13-7)
    - A general permit (N.J.A.C. 7:13-8)
    - An individual permit (N.J.A.C. 7:13-9, 10 & 11)
    - An emergency permit (N.J.A.C. 7:13-12)
    - A coastal permit (N.J.A.C. 7:7 and 7:7E)
  
- Applicability Determination

- Free application to NJDEP to verify whether a permit is needed for a particular activity
  - Called a “jurisdictional determination” under the existing rules
- Verification
  - Application to NJDEP to verify the extent of a flood hazard area on a site
  - Similar to a freshwater wetlands letter of interpretation
  - Separate from a permit application
  - No more stream encroachment lines
- Permits-by-rule
  - 46 permits-by-rule are proposed
    - Minor repair and maintenance activities
    - Activities associated with an existing home or business
    - Other minor construction activities
  - No application necessary
    - require prior notification via mail or email so NJDEP can inspect work
- General permits
  - 16 general permits are proposed
    - Minor repair and maintenance activities by local governments (sediment removal, bridge scour protection, etc.)
    - Agricultural activities under NRCS oversight
    - Minor construction activities along water that drain less than 50 acres
  - Simplified application
    - \$500 application fee and 45-day review
- Individual permits
  - For all activities not covered by a permit-by-rule or general permit
  - Most applications under the new rules will be individual permits (unlike freshwater wetlands and coastal permit programs)
  - Application review standards and general conditions in sub 9
  - Area-specific standards in sub 10
    - Based on where a project is located (channel, flood fringe, riparian zone, etc.)
  - Activity-specific standards in sub 11
    - Based on the type of project (bridge, building, road, bank stabilization, etc.)
- Other approvals
  - Emergency permit (N.J.A.C. 7:13-12)
  - Revision to a verification, general permit, individual permit or a State adopted flood study (N.J.A.C. 7:13-13)
  - Transfer of an approval to another owner (N.J.A.C. 7:13-14)
- Project Standards
  - Numerous new standards are proposed
    - Riparian zone disturbance (7:13-10.2)
    - 0% net fill (7:13-10.4)
    - Elevating buildings (7:13-11.5)
- Riparian Zone Disturbance
  - Not a prohibition on construction
    - Disturbance must be justified
    - Each activity has limits on disturbance

- Designed to preserve vegetation
    - Redevelopment of non vegetated areas is not hindered, except that it should be pulled back at least 25 feet from bank where possible
  - Examples of activities allowed under certain circumstances
    - Road crossings
    - Utility lines
    - Bank stabilization
    - Stormwater discharge
    - One-house and apartment structures
    - Flood control project
  - All work must meet 3 basic criteria:
    - The basic purpose of the project be accomplished on site without disturbing vegetation in the riparian zone
    - Disturbance to the riparian zone is eliminated where possible, where not possible to eliminate, disturbance minimized through methods including locating the project in the portions of the riparian zone where previous development or disturbance has occurred.
    - All temporary cleared disturbance removed vegetation within riparian zone is replaced with indigenous, non-invasive vegetation upon completion of project
  - Plus, additional specific criteria must be met for each activity.
- Flood Storage Displacement
    - Proposed rules
      - 0% net-fill Statewide  
\*Note: net-fill only applied in non-tidal areas
    - Up to 20% net-fill allowed on site provided all fill is compensated by an equal cut in same floodplain off site
    - Compensatory flood storage cannot:
      - be in a floodway
      - be separated from the fill by a water control structure (bridge, dam, etc.) in most cases
      - be in an undisturbed riparian zone, SWRPA or Highlands Preservation Area buffer
      - be in a difference HUC14 watershed as the fill
      - cause significant adverse environmental consequences

Certain activities are exempt – see 10.4(d):

    - Any activity in a tidal flood hazard area
    - Any activity that displaces no more than 5 cubic yards of flood storage volume
    - The reconstruction of a lawfully existing railroad or public roadway, including any improvement or enlargement, provided flood storage volume displacement is minimized
    - The construction or improvement of a driveway across a regulated water (in certain cases)
    - The construction of one private residence (in certain cases)
    - The construction of a flood control project, provided flood storage volume displacement is minimized
    - The depositing of sediment removed from a channel (in certain cases)
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  - Elevating structures
    - Lowest habitable floor of buildings must be constructed at least 1 foot above the flood hazard area design flood elevation

- Note: when FEMA maps are used, the flood hazard area design flood is 1 foot above the FEMA 100-year flood in non-tidal areas. So lowest floor must be constructed 2 feet above FEMA 100-year elevation.
- Open area beneath a structure must be:
  - A garage under 625 square feet in footprint OR
  - A crawl space that is not more than 6 feet in height measured floor to floor
- If the above is not possible, then at least 25% of the exterior walls of the enclosed area must remain permanently open

The rules are far-reaching and have major effects on development and redevelopment throughout New Jersey. Agricultural, residential and commercial properties will find it harder to operate or build near streams, other waterways and wetlands.

The new rules are expected to be in effect by October 2007.