

New Jersey Re-Adopts Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) with Concurrent Rule Proposal Publication – June 2016

On June 20th, the NJDEP adopted the June 2015 Flood Hazard Area Control Act (FHACA) Rule proposal without substantial changes. Changes were also adopted to the Coastal Zone Management (CZM) Rules and Stormwater Management (SWM) Rules so that these three land use rules are consistent. The most significant revisions to these adopted rules are:

- 1) Riparian zones (RZ) for water bodies that flow through mapped acid producing soil areas will no longer be 150 feet wide, but rather 50 feet. Managing work conducted in acid producing soil areas will continue to be overseen by Soil Conservation Districts (SCD).
- 2) Placement of stormwater discharges within the 150 and 300 foot RZ will now be acceptable to address concerns raised by local SCDs regarding downstream erosion.
- 3) The Special Water Resource Protection Area (SWRPA) requirements for Category 1 waters in the SWM Rules were repealed. Impacts to RZs associated with Category 1 Waters will be reviewed pursuant to the FHACA Rules.
- 4) The rule adoption increases allowable area of RZ disturbance in the Individual Permit table and adds new activity specific categories including trails/boardwalks and remediation.
- 5) The RZ mitigation policy has been updated to be similar to the freshwater wetland mitigation program with respect to mitigation ratios and hierarchy.
- 6) Remediation projects may potentially be allowed to displace up to 20% of the flood storage volume if an applicant demonstrates that compensation is not feasible.
- 7) The FHACA Rules now require material permanently placed within a FHA to meet the Residential Direct Contact Soil Remediation Standards to the maximum extent practicable. Any material that does not meet these standards should be limited to areas situated outside any floodway and above the 10-year flood elevation. Any material that does not meet these standards must be stabilized such that the material will not erode or be transported offsite during the FHA design flood.

Along with the rule adoption, NJDEP issued a concurrent FHACA rule proposal. The 60-day public comment period will end on August 19, 2016. Key proposed changes in the concurrent rule proposal include:

- 1) A requirement for an analysis for impacts to the inner 150 feet of a 300 foot riparian zone – similar to the SWPRA portion of the SWM rules that was repealed or similar to a hardship waiver of the FHACA;
- 2) Improving the consistency of the FHACA Rules with the Uniform Construction Code and National Flood Insurance Program specifically with respect to work in the V zone and Coastal AE zone;
- 3) Implementation of a \$20,000 cap on stormwater calculation review fees.

The adoption document and concurrent rule proposal can be accessed here:

<http://www.state.nj.us/dep/rules/adoptions.html>

To discuss this rule adoption and concurrent rule proposal and how they might be applicable to your project, please contact:

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