

Regulatory Review Impacts of Adopted NJREAL Rule Amendments



CMP Policy and Implementation Committee

May 29, 2026

DEP's NJPACT - REAL Rule Amendments

- PROPOSED – 11/7/24
- NOTICE OF SUBSTANTIAL CHANGE – 9/19/25
- ADOPTED/EFFECTED – 1/20/26
- LEGACY PERIOD EXPIRES - 7/20/26

- PURPOSE:

Modernize NJ's Environmental Land Use Rules to respond to climate change by considering sea level rise and accompanying increased flood evaluation and expanded flood hazard areas.

Amended Land Use Program Rules

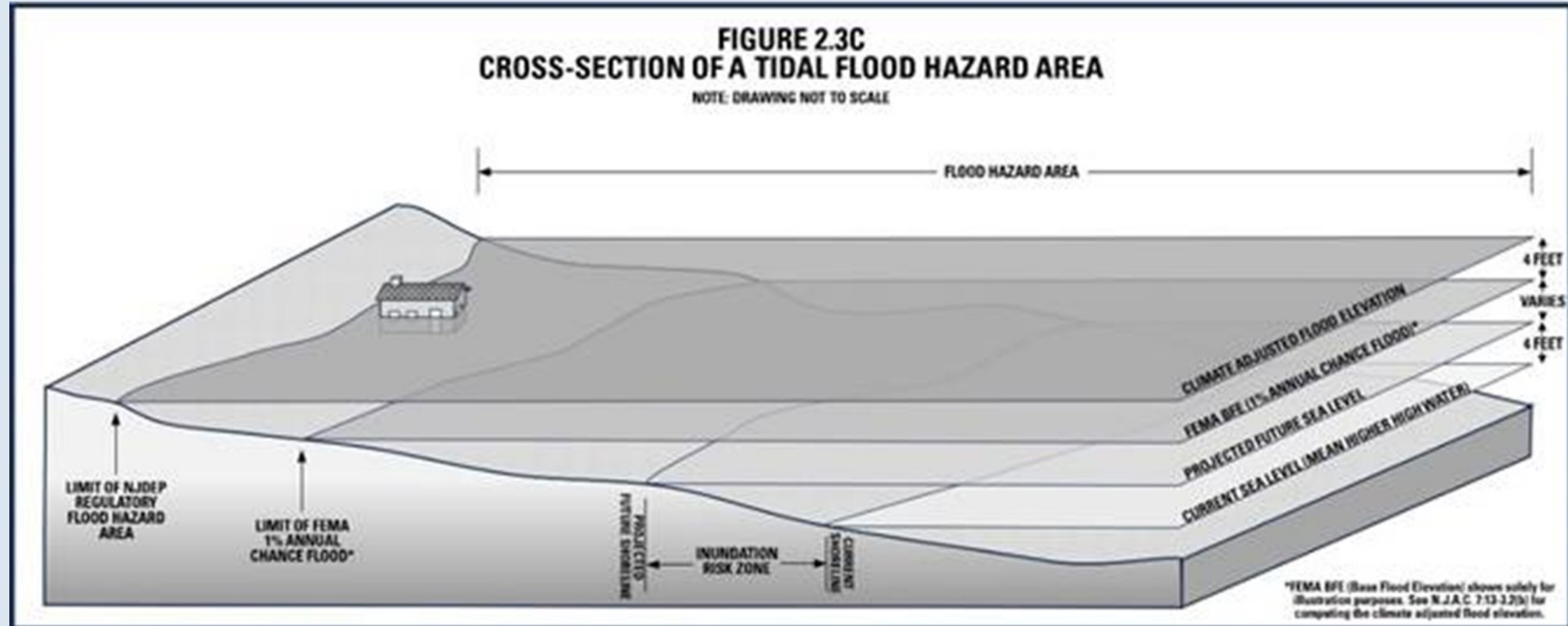
- Coastal Zone MANAGEMENT (CZM)
 - CAFRA
 - Coastal Wetlands
 - Waterfront Development
- FRESHWATER WETLANDS PROTECTION ACT (FWPA)
- FLOOD HAZARD AREA CONTROL ACT (FHACA)
- STORMWATER MANAGEMENT

Amendments

Flood Hazard

- Regulates development activities within Tidal Flood Hazard Areas and Flood Hazard Areas or Riparian Zones (Fluvial)
- Flood Hazard Area = land, and space above that land, which lies below the climate adjusted flood elevation.
- REAL Rules
 - Raised regulatory flood depth along tidal waters
 - Depth = 4ft above FEMA's 100-year flood elevation (flood caused by a tidal surge in the Atlantic Ocean, which has a 1% change of being equaled or exceeded within a 1-year period)
- Inland Flood Protection Rules (2023) –raised flooding depths along fluvial waters (flood elevation governed by stormwater runoff)

TIDAL FLOOD HAZARD AREA



Amendments

Flood Hazard

- Construction standards based on flood level and relative impact that flood damage may cause.
- New development, substantially damaged or substantially improved (Residential, Critical Building, Critical Infrastructure) in Inundation Risk Zone requires:
 - Inundation Risk Assessment
 - On-site Alternative's Analysis
 - Risk Acknowledgement filed with FHA notice in title
- Development in Coastal Flood Hazard Zone
 - No inundation risk assessment or alternatives analysis
 - Short form of Risk Acknowledgement

Amendments

- Permit Types
 - Permits by Rule (now Permits by Registration)
 - Permits by Certification
 - General Permits
 - Individual Permits
- DEP will reevaluate and update stormwater and flood hazard rules within 5 years of 1/20/26 effective date and every 5 years thereafter to determine whether the sea level rise and precipitation data incorporated into the rules reflects the most accurate estimate for NJ at that time and amend the rules if necessary.

Amendments

Freshwater Wetlands

- Demonstrate compliance with Stormwater Management Rules for wetland impacts associated with major development
- Mitigation required for 17 out of 27 General Permits if impacts exceed 0.1 acres of disturbance total, combined area of wetlands, State open waters, or transition areas.
- Mitigation also required for temporary disturbances

Amendments

Horizontal Directional Drilling

Formerly: DEP approval not required

- Flood Hazard – Permit by Rule 36 - Placement of Underground Utility Lines using Directional Drilling or Jacking
- Freshwater Wetlands – General Permit 2 – Underground Utility Lines – No approval required if no disturbance and no draining or dewatering.

Amendments

Horizontal Directional Drilling

- Flood Hazard –
 - New Exemption for underground jacking
 - New General Permit – Placement of one or more underground utility lines using HDD or using underground jacking that does not qualify for the exemption
- Freshwater Wetlands (Amended General Permit 2 – Underground Utility Lines)
 - Required for any proposed underground utility lines proposed to be installed using HDD
 - Applicant must demonstrate that will not adversely impact or result in discharge to freshwater wetlands and State open waters
- Both General Permits require:
 - Potable water when drilling
 - NSF 60/61 drilling fluids and additives during drilling
 - Submission of Contingency Plan for inadvertent returns
 - Abandoned boreholes within 25 ft of surface filled with certified grout

Permit Coordination with DEP

Memoranda of Agreement

- COASTAL ZONE MANAGEMENT (1988)
- FRESHWATER PROTECTION ACT (1993)
- FLOOD HAZARD AREA CONTROL ACT (1998)

Coastal Zone Management (February 1988)

- Applicable to portions of the PNR that lie within the Coastal Zone
- Commission reviewing agency for:
 - Any CAFRA application
 - WQC/Coastal Wetlands/Waterfront Development – major development
- DEP sends application to Commission staff and staff provides comments to DEP identifying CMP provisions applicable to the proposed development and whether same is consistent
- DEP makes final permitting decision; rules require development be consistent with the intent policies and objectives of the Pinelands Protection Act and the Federal Act

Freshwater Wetlands MOA (1993)

- Commission, on behalf of DEP, issues Freshwater Wetland General Permits for development projects in the Pinelands Area
- Commission is the lead agency in the Pinelands Area for verification of the extent of Waters of the United States, i.e. wetlands and wetland boundaries
- Commission responsible for initial investigation of Freshwater Wetland violation in the Pinelands Area, if development application is required to be submitted to the Commission
- DEP cannot deem Freshwater Wetlands Individual Permit application complete for review without COF, Public Development Approval, etc. and cannot issue permit that is inconsistent with the CMP

STREAM ENCROACHMENT PERMIT MOA (1998) ISSUED UNDER FLOOD HAZARD AREA CONTROL ACT

- Authority limited to issuance of 3 general permits:
 - Construction of Foot bridges
 - Construction of Utility Line Crossings
 - Minor Grading Work
- Does not apply if development application to the Commission is not required

Recommendations

Flood Hazard –

- Terminate MOA
 - Rules complex
 - MOA is very limited
 - PC has not done permitting since early 2000s

Freshwater Wetlands

- Terminate MOA
 - Relevant provisions contained in DEP rules
 - PC lead on delineation of wetlands in Pinelands Area
 - Applicant needs COF or PC approval before Freshwater wetland permit application deemed complete
 - Mitigation requirements
 - PC does maybe 5 GP applications a year

Coastal Zone Management

- Update MOA
- Discuss refinements in process with DEP

Questions?

