

NJPACT Regulatory Update

OCTOBER 2024



New Jersey Department of Environmental Protection Proposes Amended Land Use Regulations
Permit Application needs to be technically complete prior to rule change: Anticipated - Summer/Fall 2025

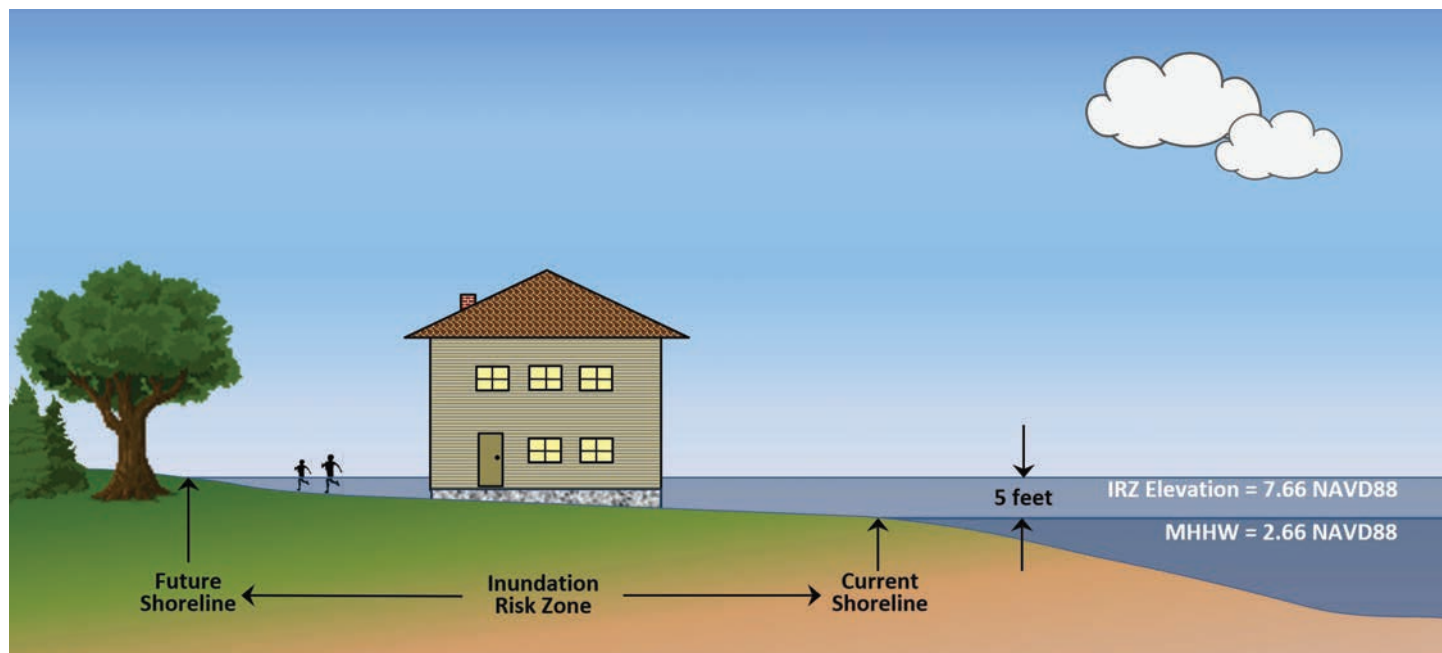
The New Jersey Department of Environmental Protection (NJDEP) is proposing amendments to the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), Freshwater Wetland Protection Act Rules (N.J.A.C. 7:7A), Coastal Zone Management Rules (N.J.A.C. 7:7), and Stormwater Management Rules (N.J.A.C. 7:8). The NJDEP published its Protecting Against Climate Threats (PACT) Resilient Environments and Landscapes (REAL) rule in the August 5, 2024 New Jersey Register and has up to a year to adopt the proposed amendments. The following information summarizes some of the main changes.

Inundation Risk Zone (IRZ)

NJDEP will establish a **regulatory Inundation Risk Zone (IRZ)** largely in coastal areas along tidal waters that are predicted to be at risk of daily inundation or standing flood waters of up to 5.1 feet (by Year 2100). The extent of the IRZ is determined by **adding 5 feet to the calculated mean higher high water (MHHW) line elevation**. Projects in the IRZ involving new residential development, critical buildings and substantial improvements to existing structures will need to meet enhanced risk assessment criteria including an alternatives analysis designed to avoid the risk.

Two options for determining the IRZ are as follows:

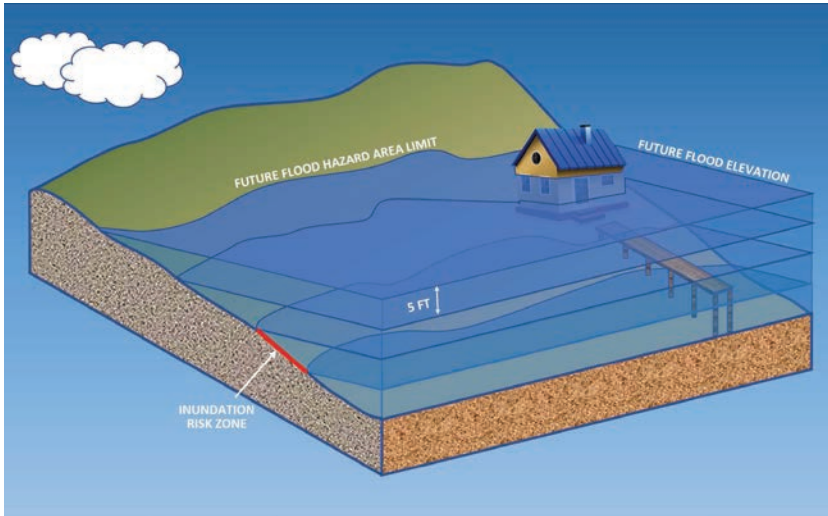
- Using the DEP's online mapping GIS tool [NJ-GeoWeb \(arcgis.com\)](https://arcgis.com)
- Using a site specific topography and NOAA Data. This extra effort would require a Licensed Surveyor to measure the ground elevation at MHHW. The new standards will approve the new/reconstruction/improved residential buildings, critical buildings and critical infrastructure. An Inundation Risk Assessment would potentially be required that analyses the potential adverse impacts of inundation on the site of the regulated activity.



Inundation Risk Zone (IRZ)

Climate Adjusted Flood Elevation (CAFE) - CAFE +1

The rule will also establish a new **Climate Adjusted Flood Elevation (CAFE)** in tidal flood hazard areas, which represents a **5-foot addition to FEMA's 100-year flood elevation** based on NJDEP's Sea Level Rise predictions. Residential and Critical buildings in the AE Zone floor surface must be at or above CAFE +1; Coastal AE and VE Zones Bottom of lowest horizontal structural member must be at or above CAFE +1. Dry Floodproofing and wet floodproofing measures also apply.



Climate Adjusted Flood Elevation (CAFE) in Coastal Flood Hazard Areas

CURRENT

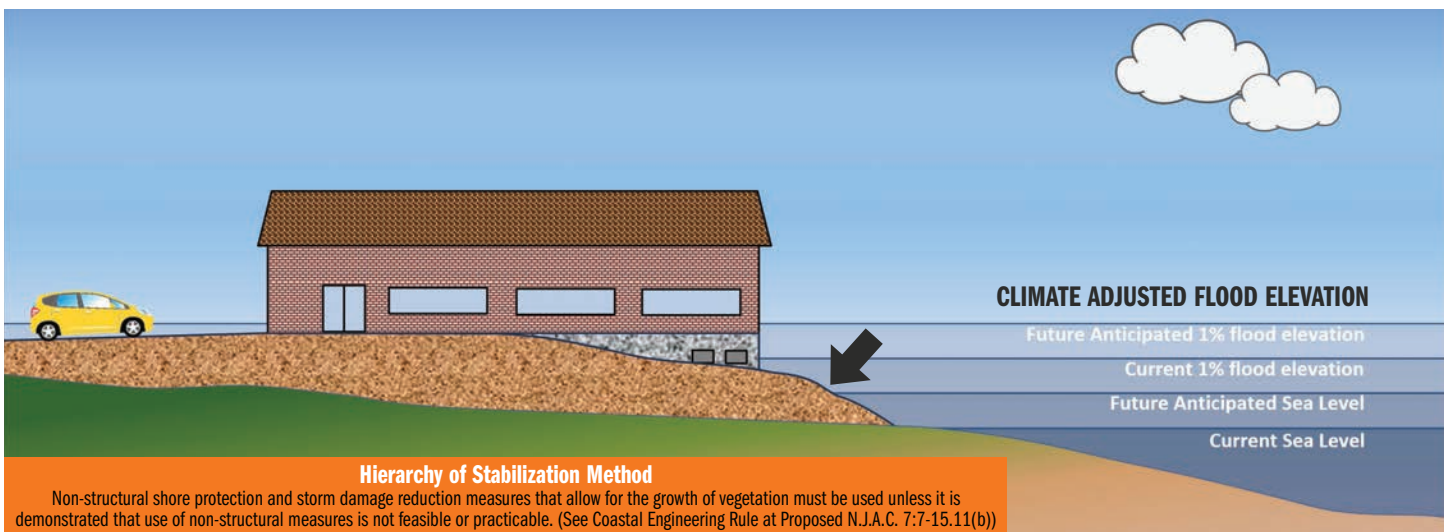
Approximately 16% of NJ lies in a FEMA-mapped floodplain

- Regulatory floor is equal to FEMA's 100-year flood elevation (BFE)
- One-foot of freeboard added for roads and buildings

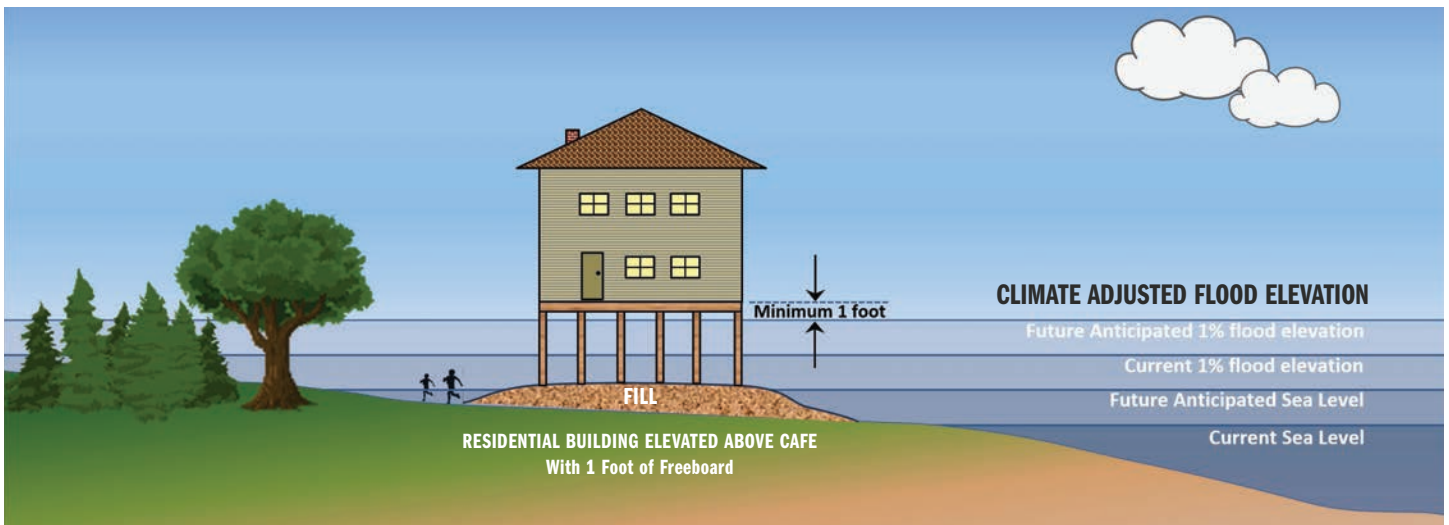
PROPOSED

Would add approximately 1.5% more land into regulatory floodplain

- New Coastal flood elevation will be equal to FEMA+5, plus one-foot of freeboard



Inundation Risk Zone and Future Flood Elevation



Inundation Risk Zone and Future Flood Elevation

Stormwater

- Definition of Major Development to be updated to provide consistency with municipal ordinances
- Stormwater quality requirements will be enhanced including new requirements on redevelopment of 80% TSS removal for stormwater runoff for new and reconstructed motor vehicle surface (increased from 50% for reconstructed impervious surfaces). Projects discharging directly into a 300 ft riparian zone will be required to provide 95% TSS removal

N.J.A.C. 7:8-1.2 Definitions

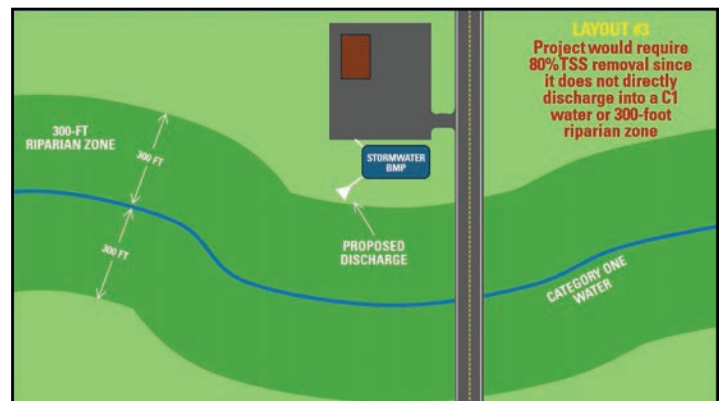
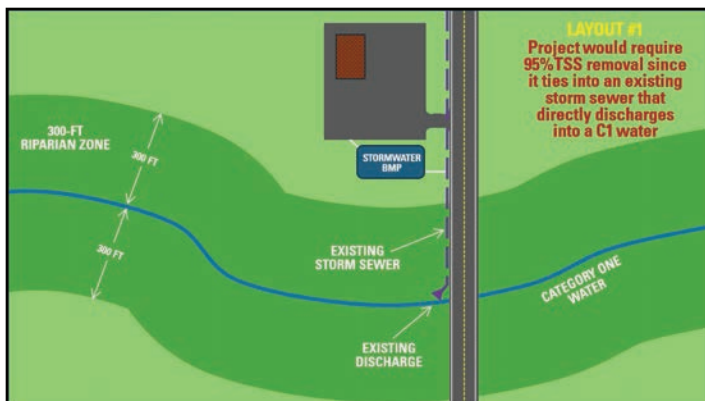
- Existing text in white
- Proposed new text in orange

Amend the definition of “**major development**” to ensure consistency between developments subject to DEP review and developments subject to local review under municipal stormwater control ordinances.

- This would eliminate a gap in the level of protection for water quality and flood prevention between State and municipal project reviews.

“Major Development” means an individual “development”, as well as multiple developments that individually or collectively result in:

1. The disturbance of one or more acres of land since February 2, 2004
2. The creation of one-quarter acre or more of “regulated impervious surface” since February 2, 2004
3. The creation of one-quarter acre or more of “regulated motor vehicle surface” since March 2, 2021
4. The reconstruction of one-quarter acre or more of “regulated motor vehicle surface” or “regulated impervious surface” since [effective date of the rules]
5. A combination of 2, 3, and 4 above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one-quarter acre or more.



Coastal

- Biggest change will be Subchapter 13 and impervious surface coverage.
- Non-mainland (barrier island) coastal centers are proposed to be removed and, in certain areas new impervious cover limitations (**3%**) and vegetative preserve/plantings requirements will become applicable.
- A 3% cover limit will be applicable even in designated centers for lands identified as a Coastal Environmentally Sensitive Area, even if these areas can be otherwise developed with permits from discrete programs such as wetlands or flood hazard areas.

Amendments to CZM Rules at Subchapter 13

“CAFRA Critical Environmental Site” added to rules

- “Critical Environmental Sites” as established by the State Planning Commission due to environmental sensitivity
- Being incorporating into the CAFRA area for regulation of impervious and vegetative cover
- Impervious cover limit:
 - 3% of net land area
- Vegetative Cover Requirements:
 - 70% tree preservation for forested portion of site
 - 5% tree preservation and/or planting percentage for unforested portion of site

Wetlands

- “Alternative discussion” will be required for all FWW GP Applications (not a full Alternatives Analysis)
- Transition Area Waivers will require removal of impervious surface 25 feet from wetlands boundary. No proposed activities within 25 feet of wetlands, when apply for a TAW
- Entire TA will be Conservation Restriction with a TAW Averaging Plan
- Wetland mitigation requirements will be revised for impacts to wetland buffers. Mitigation proposals must include information on climate change
- New conditions will be imposed for wetland general permits requiring stormwater compliance for projects that are a major development. The Current rules only require SWM if the wetland and/or buffer impacts are considered major development in the regulated areas only

Flood Hazard

- Elimination of Permits-by-rules (PBR) and replacement with Exempt Activities, Permits-by-registration and additional General Permits-by-certification
- Elimination of General Permits for In-Kind Bridge Replacements
- Inclusion of Inundation Risk Zone on tidal flood hazard areas
- Requirements to obtain a CLOMAR on FEMA studied waters where activities are proposed within a FEMA-adopted regulatory floodway, and the proposed activities would result in a net increase (greater than 0.00 feet) to the 100-year flood elevation.
- A Verification will need to be obtained for projects impacting riparian zones.
- Mitigation will be required for all RZ Impacts within 150 foot RZ that exceed 2,000 SF
- Riparian Zones will be required on all features such as barrier islands, not just defined channels
- Recertification that the Flood Hazard Areas remain unchanged if work is not commenced within 180 days after a permit is issued. If flood hazard conditions have changed, the project may need to be revised to address the changed conditions; NJDEP approval must be obtained before the approved work can take place



Improve Protection of Land & Water Resources

FHACA RULES

- Repeal existing general permits for “in-kind” replacement of bridge and culverts. [Existing N.J.A.C. 7:13-9.9 and 9.10](#)
- Many bridges and culverts were constructed years ago without full regard for their impact on flooding, or aquatic and terrestrial species
- When a bridge or culvert is scheduled for replacement, this is an opportunity to ameliorate the adverse impacts of the existing structure
- Presenting an easy path to replace these structures “in-kind” simply maintains the status quo and misses out on the opportunity to improve environmental conditions and public safety

Resources

- A copy of the rule proposals can be found [here](#).
- The Permit Application needs to be technically complete prior to rule change
- Anticipated - Summer/Fall 2025
- Source of photos and slides in this document are public documentation on the NJDEP NJPACT Website from the webinars in May 2024.

Ready to Get Started?

Kristopher Krzyston, Vice President

P 732.865.9508
kkrzyston@tandmassociates.com

Ericka Naklicki, PWS

P 732.865.9509
enaklicki@tandmassociates.com

Timothy Morris, PE

P 732.865.9451
tmorris@tandmassociates.com