

# **Land Use Regulatory Changes**

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**New Jersey Department of Environmental Protection  
Land Use Management**

**May 4, 2017**

# Today's topics:

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- **Brief overview of NJ's rulemaking process**
- **Recently adopted land use rules**
- **Proposed Rules**
- **Anticipated rulemaking**
- **Major Initiative**

# NJ Rulemaking

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## 1. NJDEP holds stakeholder meetings

- Seeking input from staff, regulated community, State & local governments, etc., on what works and doesn't work in existing rules

## 2. NJDEP staff writes rule proposal

- Includes detailed description (summary) of what is proposed to be added, deleted, or amended, why these changes are being made, and what impact they are expected to have

# NJ Rulemaking

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## 3. Proposal is reviewed & approved by:

- NJDEP management & attorneys
- Attorney General's Office
- Governor's Office
- NJ Office of Administrative Law



## 4. Proposal is published in NJ Register

- 60-day public comment period provided

# NJ Rulemaking

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## 5. NJDEP staff reviews comments and prepares adoption document

- Comments/questions are answered
- Rule is clarified
- Minor issues/mistakes resolved
- Major issues require new rulemaking to fix

# NJ Rulemaking

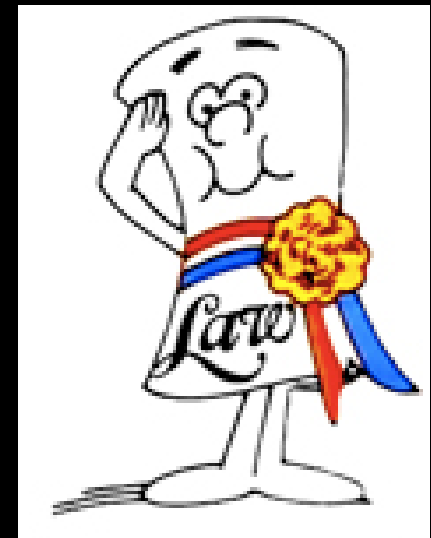
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## 6. Adoption is reviewed & approved by:

- NJDEP management and attorneys
- Attorney General's Office
- Governor's Office
- NJ Office of Administrative Law

## 7. Adoption is published in NJ Register

- New rules are generally effective upon publication





STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
**RULES & REGULATIONS**



### Current Rules and Regulations

- ▶ Listing of current rules and regulations

### Rule Proposals

- ▶ Current Proposals  
Listing and summary of rules proposed by NJDEP that are currently open for public comment
- ▶ Proposal Archive

### Rule Adoptions

- ▶ Current Adoptions  
Listing and summary of rules and regulations recently adopted by NJDEP
- ▶ Adoption Archive

### Notices

- ▶ Notices of Readoption
- ▶ Notices of Administrative Change
- ▶ Notices of Rule Petitions

### Additional Info

- ▶ How to obtain an official copy of NJDEP's rules

### Public Involvement

- ▶ Receive Rule Proposal Notices via Email- Subscribe to NJDEP's email LISTSERV to receive notices of DEP rule proposals electronically
- ▶ Rule proposals open for comment and public hearing info
- ▶ Submit an electronic comment on a DEP rulemaking
- ▶ Opportunities for public comment/participation prior to formal rulemaking

### Related Links

- ▶ NJOAL Free Lexis-Nexis Access
  - ▶ New Jersey Register
  - ▶ NJ Administrative Code
  - ▶ NJ State Legislature

# Recently Adopted Land Use Rules

- Emergency Flood Hazard Rules (2/19/13)
  - ABFE, rebuilding efforts
- Emergency Coastal Rules (4/16/13)
  - Rebuilding, facilitate recovery, resiliency
- Coastal Rule Phase I (7/6/15)
  - Administrative alignment, marinas, beneficial reuse of dredge material
- Flood Hazard Rules (6/20/16)
  - Administrative alignment plus more



# Flood Hazard Emergency Rules

(focus on rebuilding to best available mapping)

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- FEMA is replacing **advisory** maps by developing **preliminary** maps, which are more accurate
- **Preliminary** maps will eventually be published in the Federal Register and FEMA will hold public meetings in affected communities
- Once adopted by FEMA, maps will become **effective**



# Incorporating FEMA maps

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- NJDEP is working with FEMA to remap the State's flood hazard areas
- FEMA is putting NJDEP's **design flood elevation** on its maps
- People will easily see NJDEP & FEMA mapping online



# Coastal Emergency Rules

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- Emergency amendments effective April 16, 2013
  - Facilitation of the expeditious rebuilding of **residential and commercial** developments
  - Facilitation of renovation or reconstruction of existing **marinas** and construction of new marinas
  - Restoration of New Jersey's **shellfish industry**
  - Maintenance of **engineered beaches and dunes** and establishment of **living shorelines**
  - Facilitation of **removal of sand** and other material from waterways

# Adopted Changes to Coastal Rules

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- Combined 7:7 & 7:7E
- Transformed LU regulations
  - aligns the administrative process of 3 LU rules
- Transformed LU business processes
  - streamlines administrative process
    - sets the platform for e-submission

# Alignment of administrative procedures

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To the extent possible under statute:

- Definitions
- Contact information
- General provisions for PBRs and General permits
- Mitigation
- Conservation restrictions
- Emergency authorizations
- Pre-application conferences
- Application requirements
- Public notice
- Application review
- Permit conditions
- The modification, transfer, suspension and termination of approvals
- Requests for adjudicatory hearings
- Enforcement provisions

# Administrative Amendments

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- New Subchapter for general provisions for PBR, GP-by-certification, GP's and IP's
  - Content similar in both Coastal & FHA rules **except for the duration** of permit
    - **5 year permit w/ a 5 year extension** for GP's and IP's for activities occurring below MHWL in CR and GP & IP's in FHA rules
    - Coastal IP's for activities above MHWL will keep **commence and continue** language based on stakeholder comments

# Substantive Amendments

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- Two new permits by rule
  - Pool & Herbicide (<0.25)
- One new general permit
  - Herbicide (>0.25)
- Changes to existing single family homeowner general permit
  - 2 single family homes

# General Permit-By-Certification

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- Replacement bulkhead is located upland of any wetlands
- The construction of a bulkhead subject to wave run-up forces shall be designed and certified by a NJ licensed professional engineer
- The structure shall not create net adverse shoreline movement downdrift, including erosion or shoaling;
- Shall have no adverse impact to special areas
- Clean fill from an upland source shall be used for back fill



# Highlights of New Flood Hazard Rules

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1. All references to acid-producing soil deposits deleted
  - 150-ft riparian zone reverts to 50-ft
2. SWRPA deleted from SWM rules
  - Hybrid 300-ft riparian zone with new standards in FHA rules
3. More flexible riparian zone standards
  - Increased allowance for disturbance in many cases
  - New items added to the IP table
  - No prohibition on stormwater discharges within riparian zone
  - New riparian zone mitigation options

# Highlights of New Rules

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## 4. 62 permits-by-rule adopted

- Old rules had 47 PBRs
- A few old GPs were converted to PBRs

## 5. 15 general permits-by-certification adopted

- New type of permit
- Instant online approvals

## 6. 13 general permits adopted

- Old rules had 16 – most of these were converted to PBRs or GPBCs
- New GPs would have required an IP under old rules

# Highlights of New Rules

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## 7. Administrative procedures aligned with 2015 CZM rules

- Definitions
- Contact information
- General provisions for PBRs and General permits
- Mitigation
- Conservation restrictions
- Emergency authorizations
- Pre-application conferences
- Application requirements
- Public notice
- Application review
- Permit conditions
- The modification, transfer, suspension and termination of approvals
- Requests for adjudicatory hearings
- Enforcement provisions

# Understanding the Rules



Five important documents to guide you:

**1. The adopted rules (6/20/16 NJR)**

Final word on what can or cannot be approved

**2. The proposal summary (6/1/15 NJR)**

Explains NJDEP's intent when proposing rules

**3. The adoption document (6/20/16 NJR)**

Contains NJDEP's response to comments that are made on the proposal and also shows changes that are made on adoption

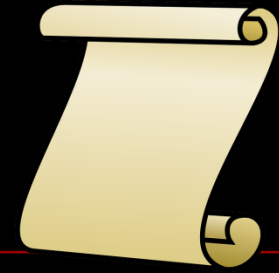
**4. The technical manual (coming soon)**

Provides diagrams, illustrations, and examples on how to meet rules. Explains - but does not override - the adopted rules

**5. The administrative order**

# 2016 FHA Rules

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- Legislature initially passed a resolution to prevent NJDEP from adopting
  - NJ constitution provides that the State legislature can override executive branch rulemaking if the rules do not meet legislative intent of enabling statutes – namely:
    - Flood Hazard Area Control Act
    - Water Pollution Control Act
  
- NJDEP amended the proposal and adopted FHACA Rules on 6/20/16

# NJDEP Administrative Order 2016-06

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- Signed by NJDEP Commissioner Martin on 7/22/16
- Immediately puts into place two aspects of the concurrent proposal:
  - Added justification for work within “inner 150” feet of 300-ft riparian zones (see newly proposed 11.2(d))
  - Increased mitigation requirements for work within a 300-ft riparian zones (see newly proposed 13.4(b))



# Section 11.2 - riparian zone standards

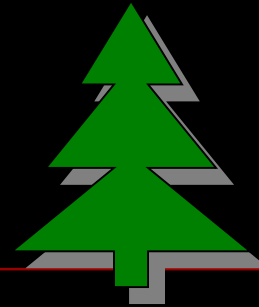
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- Existing 10.2 is repealed and replaced with all new 11.2
- Was 10.2(a)-(v) now 11.2(a)-(z)
- Amended area of disturbance for some activities
- No need for hardship in most cases when limit is exceeded
- Additional items permitted in riparian zones
- New mitigation requirements for work along Category One waters



# 11.2(b) – basic standards

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## The most important riparian zone standard:

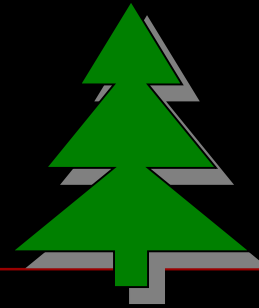
(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:

1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;
2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:
  - i. Situating the regulated activity or project as far from any regulated water as feasible; and



## 11.2(b) – basic standards

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- ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:
  - (1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;
  - (2) Abandoned pavement that has partially revegetated;
  - (3) Areas of dirt and gravel that are primarily devoid of vegetation;
  - (4) Eroded embankments; and
  - (5) Landscape islands within a paved parking area.

# 11.2(d) – restoring RZ within 25 ft.

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(d) The Department shall issue an individual permit for a regulated activity within a riparian zone only if all existing onsite impervious surfaces located within 25 feet of the top of bank are removed and the riparian zone is replanted with vegetation in accordance with (z) below, except in the following cases:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;



# 11.2(d) – restoring RZ within 25 ft.

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2. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface would likely exacerbate flooding or erosion, expose hazardous substances or solid waste, or otherwise threaten public health, safety, welfare, and/or the environment. In such a case, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible and protective of public health, safety, and welfare, and the environment, be replanted with vegetation in accordance with (z) below; or



## 11.2(d) – restoring RZ within 25 ft.

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3. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this subsection would prevent reasonable use or access to the site and/or cause an unreasonable burden upon the applicant. For example, lawfully existing pavement around a building, which is located within 25 feet of a top of bank, may provide essential access to and around the building and the removal of such impervious surface would result in noncompliance with local building or fire codes and/or disrupt normal access to and throughout the facility. In such cases, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible, be replanted with vegetation in accordance with (z) below.

## 11.2(f) – **EXEMPT** from Table 11.2

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1. Any regulated activity that will not result in clearing, cutting, and/or removal of riparian zone vegetation, such as construction on a lawfully existing impervious surface, or within a lawfully existing gravel roadway or parking area.
2. Converting riparian zone vegetation within an actively disturbed area from one type to another, such as converting an actively farmed area into a lawn or garden, provided there is no net loss in the area of riparian zone vegetation.
3. Any temporary clearing, cutting, and/or removal of riparian zone vegetation within an actively disturbed area, provided all disturbed areas are adequately stabilized and replanted with vegetation in accordance with 11.2(z).

# 11.2(f) – **EXEMPT** from Table 11.2

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4. Relocating a lawfully existing structure, which is situated within a riparian zone, to an actively disturbed area on the same site, provided the area formerly occupied by the structure is stabilized and replanted with vegetation in accordance with 11.2(z).
5. Any disturbance to riparian zone vegetation that is completely submerged during normal flow conditions in a regulated water.



# 11.2(f) – **EXEMPT** from Table 11.2

6. Any regulated activity along a lawfully existing public roadway, provided the activity is:
  - i. Located within an actively disturbed area;
  - ii. Located within an existing right-of-way or easement;
  - iii. Undertaken by a public entity;
  - iv. Necessary for the continued, safe use of the roadway; and
  - v. Situated on a lawfully existing roadway embankment, or within an area adjacent to a lawfully existing roadway, which was disturbed for the initial construction of the roadway.



# 11.2(f) – **EXEMPT** from Table 11.2

7. Any clearing, cutting, and/or removal of riparian zone vegetation within a truncated portion of a riparian zone. For the purposes of this paragraph, an area is considered to be a truncated portion of a riparian zone if:
- i. The area is separated from a regulated water by a lawfully existing railroad or public roadway;
  - ii. The area does not slope toward the regulated water; and
  - iii. Stormwater runoff from the area does not drain into the regulated water.





# “Concurrent” FHA Rule proposal

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- Published in the 6/20/16 New Jersey Register
  - Proposes to amend newly-adopted rules
  - Ensures that work within 300-foot riparian zones has adequate avoidance, minimization, & mitigation
  - Requires that projects which constitute a “major development” under SWM rules can be issued only under an individual permit
- **See: <http://www.nj.gov/dep/rules/proposals/20160620a.pdf>**

# Coastal Rule (Public Access rule)

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- Published in the 9/6/16 New Jersey Register
  - Proposes to amend update several provisions to address the Superior Court, Appellate Division's decision in Hackensack Riverkeeper, Inc. and NY/NJ Baykeeper v. NJDEP and amendments to WDA & CAFRA laws
  - Clarify that the submission of a MPAP is entirely voluntary
  - Eliminate monetary contributions to a fund
- **See: <http://www.nj.gov/dep/rules/proposals/20160906a.pdf>**

# Freshwater Wetlands Protection Act Rulemaking

- Administrative Alignment
- Updated to reflect statutory changes
  - abandoned farming/established and on-going
  - Temporary farm structures
  - Blueberry/cranberry
  - Stream cleaning

# Anticipated Rulemaking

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- Coastal Rule Part II
  - V-zone
  - Aquaculture/Red Knot protections
  - Dune walkovers
  - Filled Water's Edge
  - FHA amendments (access to multifamily)
  - Trails and boardwalks

# Flood Hazard Technical Manual

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- Drafted FHA Technical Manual was distributed to stakeholders for comments
- Anticipate having the Manual available to the public for use in July/August

# Major Initiatives

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- Electronic Submission and processing of land use applications
  - Hired contractor to work on additional DEP online applications
- Dredge Material Management stakeholder group

# Questions?

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