

## NJDEP Announces FHA Emergency Rulemaking

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At a Stakeholder meeting on May 25, 2022, the New Jersey Department of Environmental Protection (“NJDEP”) announced emergency rulemaking for the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 et seq.

The emergency rules will, amongst other things, raise the requirement for design flood elevation in a fluvial flood hazard area. It raises the Design Flood Elevation by two (2) feet, (will expand the flood plain and require that first floors of all buildings in the flood plain be DEP base flood elevation plus 2’ and from the FEMA 100 year elevation plus 3 feet), and will incorporate the new precipitation projections (year 2100) into stormwater best management practices (“BMP”) designs, which will impact the sizing of stormwater management systems. Any construction must meet the FEMA NFIP standards and relevant sections of the Uniform Construction Code. Also, existing Verifications, without a related permit, may no longer be valid. This increase in elevations may also impact the feasibility of a project, because of access issues. All floodways should remain the same.

NJDEP will not commit to exactly when the emergency Rule will be adopted. NJDEP intends to adopt the emergency rules in mid-June and recommends that any applications that may be impacted be submitted to NJDEP by **Friday, June 10, 2022** in order to remain subject to the existing rules. That application must be deemed complete upon submission.

If the project is now not within the regulated flood plain, but is within the regulated flood plain under the emergency rules, you must be in construction to be exempt from the emergency rules. If you have a permit for the construction, you can rely on that permit. The stormwater provisions would rely on Section 1.6 of the stormwater rules as to whether they will have to comply with the new precipitation projections.

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*Linda M. Lee, Michael P. Castore, and Steven J. Corodemus also contributed to this article.*

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