

PACT Flood Hazard & Stormwater Management Rules Update

Article By:

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Updating our prior alerts regarding the previously published Flood Hazard and Stormwater Protection Against Climate Threats rule proposal, NJDEP has filed the rule for publication of adoption. With this action, it is anticipated that the notice of adoption will be published in either the July 3 or July 17 *New Jersey Register*, and the amended rules will become **immediately effective** upon adoption. The amendments will substantially change the design flood elevation of regulated fluvial flood hazard areas, implementing up to a three-foot increase in regulated fluvial flood hazard area elevations statewide. The amendments will also require regulated major development to design stormwater facilities to manage stormwater runoff for both present-day storms, and future storms utilizing year 2100 rainfall projections that are significantly higher than current rainfall data.

A courtesy copy of the draft adoption can be found [here](#). Of note, NJDEP is proposing to change an element of the grandfathering/legacy approval provisions benefiting projects that are not subject to jurisdiction under the current Flood Hazard rules. The rule proposal provides that projects currently subject to Flood Hazard jurisdiction must have applications deemed administratively and technically complete prior to publication of the adoption notice in the *New Jersey Register* to be grandfathered. However, if no Flood Hazard approval is currently required for a project under the existing rules, the rule as revised in the adoption notice (see N.J.A.C. 7:13-2.1(c)4) provides for grandfathering protection for projects currently outside of flood hazard jurisdiction if, prior to adoption, they secured a qualifying local approval under the MLUL, such as site plan or subdivision approval, or a building or construction permit. If such local approvals are not required, grandfathering may still be achieved if construction commences prior to the effective date of the rules. The initial proposal contemplated grandfathering only if **all** required approvals were obtained **and** the regulated activity commenced prior to the effective date of the new rules, which would have made it more difficult for projects that currently do not require a permit to qualify for grandfathering protection.

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