

CLIENT ALERT: NJDEP FLOOD HAZARD CONTROL ACT RULES – RIPARIAN BUFFERS

The New Jersey Department of Environmental Protection has advised that the Flood Hazard Control Act Rules which have been under consideration for almost two years have been filed and will become effective upon publication in the November 5, 2007 New Jersey Register. Among other things, the Rules will establish riparian buffers on both sides of streams which will extend from 50 to 300 feet depending on the classification of the stream. Category One streams and upstream tributaries in the same HUC-14 watershed will require 300 foot buffers; upstream tributaries to trout waters, certain endangered species and acid producing soils will require 150 foot buffers; and all other streams will require 50 foot riparian buffers.

Unlike other recent NJDEP enactments, the grandfathering/exemption provisions set forth in the Rules are extremely limited and the receipt of land use approvals alone will not be sufficient to obtain an exemption from the requirements of the Rules. The proposed exemption is available only for projects for which “the regulated activity is currently approved under a valid final municipal building or construction permit” issued prior to the effective date of the proposed rules. This raises the possibility of a material adverse economic impact to property owners that have previously obtained subdivision or site plan approval but will be unable to develop the property as approved unless a building or construction permit is received prior to the November 5, 2007 effective date. The NJDEP has steadfastly refused to expand the exemption provision.

The proposed Flood Hazard Control Act Rules also contain changes to the existing rules with respect to regulated waters, regulated areas, regulated activities and permit requirements. The Rules contain 46 new Permits-by-Rule, 16 new General Permits, new design and construction standards in flood hazard areas, new methods to delineate a flood hazard area and a new Statewide 0% net-fill requirement.

Questions or requests for assistance regarding the forthcoming Flood Hazard Control Act Rules should be directed to the Real Estate/Environmental Practice Group.