

MID ATLANTIC REAL ESTATE JOURNAL

NEW JERSEY-PENNSYLVANIA-DELAWARE-MARYLAND-VIRGINIA

Friday, March 14, 2008

Volume 20, Issue 5

SOUTHERN NJ

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New flood hazard control rules bring regulatory high water mark to South Jersey

NJ recently adopted new flood control rules that could have far reaching implications for development in South Jersey. The rules were initially announced in 2006 after severe floods impacted the State that summer and New Jersey's Flood Mitigation Task Force recommended changes to the state rules governing development in flood plains.

Adopted under the Flood Hazard Area Control Act, the new rules incorporate more stringent standards for development in flood hazard areas and riparian zones adjacent to surface waters throughout the State. While the rules allow for several methods to determine the extent of flood hazard areas, the Department of Environmental Protection (DEP) has already delineated the flood hazard areas of numerous waterways in the State. In Camden Cty., flood hazard areas have been mapped for portions of Big Timber Creek, Pennsauken Creek, Fourmile Branch, Great Egg Harbor River, and Pump Branch. Developers with projects within the flood hazard areas of those waterways are re-



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quired to use DEP's flood hazard determinations or submit an application for their modification to the department.

The previous rules required any fill added to a flood plain, e.g., in connection with construction activity, be offset by having fill removed from that same flood plain totaling at least 80% of the fill added. In what is being called the 0% net fill provision, the new rules increase that requirement to 100% in all non-tidal flood hazard areas of the State, bringing requirements previously applied only in the Highlands and Central Passaic Basin to South Jersey.

The new rules also implement increased protection for near-stream vegetation. While previ-

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ous rules contained riparian buffer zones that covered areas 25' or 50' from streams, the new rules expand those zones to encompass areas 50, 150, or 300' wide along the sides of all regulated surface waters in the State.

The width of the applicable riparian zone is determined by the classification of the water body in question, with Category One waters triggering the 300' buffer. Category One waters in Camden Cty. include Mason Run near Pine Hill, and Trout Run near Sharps Corner.

Trout production or trout maintenance waters, any water flowing through the habitat of a threatened or endangered species dependent on that water for survival, and any section of water flowing through an area with acid producing soils receive the

150' buffer. All remaining waterways, with limited exception, receive a 50' buffer. Information on the classification of water bodies in Camden Cty. and the rest of southern NJ can be found on DEP's website at www.state.nj.us/dep/wms/bwqsa/swqshome.html.

While the expanded scope of the new rules means that more projects will fall under the regulatory umbrella, the new flood hazard rules contain 46 permits-by-rule, and 16 general permits that are designed to ease the additional regulatory burden. The general permits cover activities ranging from channel clearing to the reconstruction of damaged residences, and allow those activities to proceed without obtaining an individual permit. The permits-by-rule similarly allow property owners authorization to undertake specific activi-

ties without the need to obtain prior written approval from DEP. A list of the activities covered by the general permits and permits-by-rule can be found at N.J.A.C. 7:13-7.1 and 8.1.

While many questions remain, the new flood hazard rules are sure to have implications for development throughout the State and warrant close scrutiny by the real estate community.

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