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NJDEP's REAL Rules: What Developers Need to Know

On January 20, 2026, the New Jersey Department of Environmental Protection ("NJDEP" or "Department") adopted the Resilient Environments and Landscapes ("REAL") rules, which are anticipated to have significant impacts on pending and future development projects throughout the State, particularly those located within tidal flood areas.

New Jersey's climate-driven regulatory framework continues to advance under Governor Murphy's Executive Order No. 100 (2020), which launched the New Jersey Protecting Against Climate Threats ("NJ PACT") initiative prioritizing climate change, sea level rise and flood risk throughout the State. Since then, the Department has steadily focused on reforming its Land Use regulations to prioritize adaptation to climate change and enhanced climate resiliency. In 2023, we saw the NJDEP adopt the Inland Flood Protection Rules to account for increased precipitation in riverine (fluvial) flood areas. Now, with the recent adoption of the REAL rules, NJDEP has extended those efforts to tidal areas by incorporating projected sea-level rise into coastal flood regulation.

The new rules are anticipated to be most impactful along the coast and other tidal areas throughout the State. However, inland projects could still be impacted given the breadth of changes across NJDEP's Land Use programs, including:

- Flood Hazard Area Control Act rules (N.J.A.C. 7:13)
- Coastal Zone Management rules (N.J.A.C. 7:7)
- Freshwater Wetlands rules (N.J.A.C. 7:7A)
- Stormwater Management rules (N.J.A.C. 7:8)

Some Major Aspects of the Rule Include:

1. Climate-Adjusted Flood Elevation

One of the most significant changes is the replacement of the former "design flood elevation" with the Climate-Adjusted Flood Elevation ("CAFE"). Previously, tidal flood standards were predominantly based on FEMA's 100-year flood elevation (also called the Base Flood Elevation or "BFE"). Under the REAL rules, the CAFE sets the flood elevation in tidal areas four feet above the BFE.

Potential implications: More properties may now fall within flood hazard regulation, and certain new and rehabilitated buildings, access roadways, utilities and other infrastructure elevations may need to be significantly elevated.

2. Inundation Risk Zone

The REAL rules introduce a new regulated area within tidal flood hazard areas: the Inundation Risk Zone ("IRZ"). The IRZ consists of areas projected to be inundated by tidal flooding by 2100. For certain residential and critical facilities, applicants must now evaluate future inundation risks and incorporate those projections into project design through alternative analyses.

Potential implications: Projects in the IRZ (particularly residential, critical buildings and emergency response infrastructure) will need to comply with additional modeling and analyses that could add permitting costs and extend approval periods. Designs may also need to be adjusted to mitigate future risks and certain design restraints could inhibit the practicality of a given project from an economic standpoint.

3. Expanded and Clarified Dry Access Standards

Prior to the REAL rules, critical buildings and multi-residence buildings were required to have at least one roadway serving the building to be constructed one foot above the (former) design flood elevation. However, REAL:

- expands these dry access requirements to also apply to developments involving two or more single-family homes and certain conversions of existing buildings;
- ties the roadway elevation standard to the new climate-adjusted flood elevation, and
- creates a structured engineering-based flexibility framework in fluvial flood areas.

Potential Implications: For some projects, particularly in low-lying areas, roadway elevation requirements may now be as consequential as building elevation, although the greater flexibility afforded in fluvial areas may provide relief to some applicants.

4. Affordable Housing and Hardship Exceptions

The REAL rules explicitly recognize Affordable Housing (i.e. very-low-income, low-income, or moderate-income housing as defined by the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.) as a "compelling public need" for purposes of seeking a hardship exception under the Flood Hazard rules.

Potential Implications: Affordable Housing projects have one less hurdle to overcome for purposes of seeking relief from applicable Flood Hazard requirements. However, those applicants will still need to demonstrate exceptional or undue hardship, that there are no feasible alternatives, and that the project will not increase risk to life or property to qualify.

5. Enhanced Mitigation Requirements

The REAL rules decrease mitigation thresholds when combining multiple general permits under NJDEP's Freshwater Wetlands regulations, as well as for certain riparian zone disturbances under the Flood Hazard rules.

Potential implications: New mitigation requirements could increase project costs, decrease buildable areas, and influence project design depending on the extent of the regulated areas present at the site. Mitigation and planting plan submissions and approvals may also now be required, even for certain temporary disturbances.

What Does all of this Mean for Developers?

In practical terms, REAL may result in:

- Increased project design, permitting and construction costs;
- Expansion of areas subject to NJDEP's regulations;
- Reduced developable footprint in some locations; and
- Longer review timelines and more detailed application requirements.

What Developers Should Do Now?

For projects in the planning or permitting phase, timing is critical. The REAL rules include "legacy" provisions intended to protect projects already in the permitting pipeline when the rules took effect. In general, projects with administratively and technically complete applications submitted to NJDEP within 180 days of the rule's January 20, 2026, effective date (i.e., by July 20, 2026) may be reviewed under the prior regulations rather than the new REAL standards. Projects that miss that window, or that are later materially revised or require a permit extension, may instead be subject to the new climate-adjusted flood elevation and related requirements.

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