

ASK A LAWYER

New rules limit development close to streams

State restrictions take two forms

Q. There is a stream on my property. I have been told that there are new state rules that will limit the development of my property because of the stream. How do I find out what the impact on development will be?

On Nov. 5, 2007, the New Jersey Department of Environmental Protection reissued its regulations under the Flood Hazard Protection Act. The NJDEP has replaced the old stream-encroachment rules with more stringent regulations. For instance, under the old rules, development generally was not allowed within 25 or 50 feet of the stream. Under the new rules, the smallest buffer is 50 feet and the largest is 300 feet.

There are two different sources of development restrictions. The first set of restrictions applies to the stream's "riparian zone." The riparian zone is a buffer (50 feet, 150 feet or 300 feet) on each side of a stream wherein the disturbance of vegetation is strictly limited. Which buffer applies depends upon the quality of the stream — "better" quality streams will have a larger buffer. An environmental engineer and environmental attorney can help determine the size of the "riparian zone" for your on-site stream.

The second set of restrictions applies to regulated work within

what is called the "flood-hazard area." This zone is composed of two areas, the "floodway" and the "flood fringe."

Different development restrictions apply to work within the floodway as opposed to the flood fringe — the restrictions being more severe in the floodway. Again, an environmental engineer and environmental attorney can help determine (A) whether your proposed project is in the floodway or the flood fringe and (B) what that determination means for your proposed development.

Knowing which rules apply to your proposed development will allow you to see what work actually can be done on the property and thus make informed decisions about how to proceed.

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