

November 7, 2024
Via Rule Comment form
(<https://dep.nj.gov/rules/rule-comment-form/>)

New Jersey Department of Environmental Protection
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Attn: Melissa Abatemarco, Esq.

**RE: Public Comments
NJPACT Rules
(DEP Docket No. 05-24-05)**

Dear Ms. Abatemarco,

Dynamic Engineering Consultants, PC has prepared this letter as part of the public comment period for the NJ Protecting Against Climate Threats (NJPACT) Rules (**DEP Docket No. 05-24-05**). Dynamic was founded in New Jersey in 2003 as a multidiscipline engineering firm with a focus in Land Development and a wide range of project sizes, types, and complexities. The firm routinely works with the Department's Land Use Regulations at a state, county and local level. We believe that our experience will help to provide constructive commentary as it relates to the previously referenced rule proposal.

Below are our general commentary and questions on the rule, followed by numbered commentary and questions on specific rule sections in sequential order. As part of the NJDEP agency response to public comments, NJDEP should compile all comments verbatim and provide an itemized response to each individual comment to allow for proper vetting. Paraphrasing of individual comments negates the detail and nuance of the particular comment, glossing over the substantive concerns of an individual comment. For instance, the final adoption document for the 2023 Inland Flood Protection rule failed to appropriately address many comments as NJDEP attempted to consolidate multiple comments into one (1) single response.

Formation of Advisory Committee

We encourage the formation of an advisory committee that consists of NJDEP staff, land developers, public and private consultants, and other stakeholders to ensure that both the regulatory and regulated community are given the opportunity to discuss potential rule proposals before they are published. We would recommend regular meetings of the Advisory Committee, with more frequent meetings building up to the issuance of a rule proposal. This buy in from the regulated community is critical to fully understand the social, economic, and environmental

impact of a potential rule. An advisory committee could also test the effectiveness of rules in real world scenarios prior to implementation. The idea of an instantaneous change in regulation is archaic and unnatural. Allowing for testing and adjustment of a rule before it becomes effective would benefit all involved.

Consider Existing Development Constructed Prior to Current Flood Hazard Area Regulations

In addition to allowing a grace period, we would note that many of the most impacted structures from recent extreme flood events in the State were designed and constructed prior to the current Flood Hazard regulations. Therefore, they may be at significantly higher risk of flooding, while newer facilities are at much lower risk as they are required to be designed and constructed per the current Flood Hazard Area regulations. This is in an indication of the success of the flood hazard program and the current rules. A careful analysis of the performance of the current regulations should be considered before implementing more onerous regulations on the development community. How many of the structures damaged during extreme events, such as Sandy, Ida or Irene, were built or designed before the current flood hazard regulations were instituted? What were the outcomes of the infrastructure built to the higher standards?

Social Impacts

- **Issues with Proposed Amendment:**
 1. The proposed rule changes claim to have positive social impacts on our communities. However, the causes provided for positive social impacts are broad and were not quantified by the Department. There is a significant amount of existing development which is effectively being written off to climate change. The rules will cause blight in these areas long before the projected sea level rise impacts these communities.
 2. The rule proposal claims that positive social impact is caused by requiring stormwater management climate resilience planning for communities, reducing flood and coastal storm related damage to buildings, increasing public safety, improving water quality, and maintaining and improving natural resources statewide, especially in coastal communities. How can social impact be measured by these factors alone? What plans are in place to improve inadequate infrastructure to avoid a complete retreat from these areas?
 3. Social impact could also vary greatly throughout the state depending on how significantly the rule change would impact each community and unique landscape regions of the state (i.e. coastal communities, pinelands communities, urban communities, etc). For example, while the Department notes that only a small percentage of the state is impacted by the proposed Inundation Risk Zone, it disproportionately affects coastal communities and, in some cases, impacts entire communities.
- **Recommended Actions:**
 1. The Department should reanalyze the Social Impacts of the proposed Rule in more detail and should quantify the impacts.
 2. The Department should reanalyze the Social Impacts of the proposed Rule to break out impacts of the Rule to the various unique communities throughout the State (i.e. coastal communities, Pinelands communities, urban communities, etc).

Economic Impacts

- **Issues with Proposed Amendment:**
 1. The proposed rule changes claim to have positive economic impacts on our communities. While the Rule claims that this will cause long-term costs to decrease, short-term costs will increase significantly which will discourage many redevelopment projects.
 2. With expanded existing flood plain regulations and the Inundation Risk Zone (IRZ) being established, the areas where flood insurance will be required will increase significantly, causing people who previously did not need flood insurance to now need to purchase it.

3. Existing homeowners in the newly created Inundation Risk Zone (IRZ) and expansive Climate Adjusted Flood Elevation (CAFE) will be subjected to decreasing property values due to the regulatory burden imposed. These impacts will be felt much earlier than the rising sea level.
 4. Land developers, property owners and applicants are likely to spend more on costs related to application fees, site evaluation, engineering, design, raw materials, and construction labor.
 5. Construction costs will see a significant increase for the high cost to design flood-resilient developments such as elevated structures.
 6. Reviewing agencies will also spend more as they will likely see an increase in applications being submitted with the need for permits and staffing resources are now increased with the proposed Rule.
- **Recommended Actions:**
 1. The Department should perform a detailed Economic Impact analysis that reviews potential impacts to short term costs of the rule change.
 2. The Department should perform a detailed Economic Impact analysis that reviews potential impacts to costs related to application fees, site evaluation, engineering, design, raw materials, and construction labor.
 3. The Department should inform existing homeowners of their risk of future flooding, particularly in the Inundation Risk Zone. If such dire projections hold true, the public needs to be informed so that people can make informed decisions.
 4. The Department should perform a detailed Economic Impact analysis
 5. The Department should perform a detailed Economic Impact analysis that reviews potential impacts to construction costs for the high cost of designing flood-resilient developments such as elevated structures.
 6. The Department should perform a detailed Economic Impact analysis that reviews the potential impacts to reviewing agencies' costs.

Relevance to Sea Level Rise

- **Issues with Proposed Amendment:**
 1. It is clear throughout the NJPACT Rule Proposal that the purpose of the amendments is to attempt to address threats from future climate change and theoretical sea level rise models. The Department is proposing numerous amendments to the Stormwater Management Rule at N.J.A.C. 7:8 that are completely unrelated to future climate change.
- **Recommended Actions:**
 1. All stormwater-related amendments should be removed from the current NJPACT Rule Proposal as they are not related to the overall purpose of the rule proposal. All Stormwater Management amendments should be reviewed and vetted separately from the NJPACT Rule Proposal and should be proposed as a separate Rule Proposal. Analysis of the current stormwater management rules and their effectiveness in water quality, water quantity, and groundwater recharge should be assessed before introducing additional standards.

Insufficient Technical Guidance within the NJ Stormwater Best Management Practices (BMP) Manual

- **Issues with Proposed Amendment:**
 1. There are numerous proposed Stormwater Management amendments proposed that would require further technical guidance through revisions to the NJ Stormwater Best Management Practices (BMP) Manual.
- **Recommended Actions:**
 1. All stormwater-related amendments should be removed from the current Rule Proposal as the appropriate technical guidance has not been provided through revisions to the NJ Stormwater BMP Manual. A Rule cannot be proposed without properly vetting the technical guidance through the BMP as it creates gaps and potential conflicts with future designs and agency reviews.

2. Further, if the Rule is amended without properly vetting BMP revisions, it effectively gives the Department full discretion to impose unrealistic stormwater requirements by bypassing the formal rule making process.
3. The Department should issue a revision to the Best Management Practices Manual in conjunction with the Rule amendment to avoid any discrepancies or gaps in technical guidance. The Department should consult with industry stakeholders and professionals to review proposed revisions to the BMP manual to ensure they are properly developed.

NJPACT Rule Proposal Comments

The following comments were prepared as they relate to the various proposed Rule changes. The comments make reference to the specific Rule section, provide a summary of issues, and provide a list of recommended actions. As noted above, we request the Department to consolidate all comments verbatim and provide an itemized response to each individual comment to allow for proper vetting.

Comment 1 – N.J.A.C. 7:7-1.5 – “Habitable” definition

- **Current Standard:** Structures are considered “habitable” if it has been or could have been legally occupied in the most recent five-year period.
- **Proposed Amendment:** Amends the definition to refer to structures that are intended for human occupation and/or residence.
- **Issues with Proposed Amendment:**
 1. This significantly broadens the number of structures captured by the definition of “habitable” and would include structures that are not intended for overnight occupancy, do not have typical amenities of a primary residence, and/or would not be eligible for a Certificate of Occupancy. This amendment would regulate cabanas and other regularly occupied structures as residential developments. This lack in clarity could result in overreach from the Department that are considered “habitable” under the new definition but are not in practice.
- **Recommended Actions:**
 1. Provide separate and more specific terminology to confirm which structures, that are not actually habitable, should be regulated.

Comment 2 – N.J.A.C. 7:7-2.4 – Waterfront development exemptions

- **Current Standard:** A structure does not have to exist at the time of application to be eligible for the waterfront development exemption.
- **Proposed Amendment:** The waterfront development exemption will be limited to existing structures that are in place at the time of the application.
- **Issues with Proposed Amendment:**
 1. The intent of the modification to the exemption is to limit reconstruction in areas affected by flood waters. However, if the previous structure was demolished for reasons other than flood or environmental damage, within a reasonable period of time from when the application is made, there should be the opportunity to apply for the exemption.
- **Recommended Actions:**
 1. Provide additional clarification for situations where a structure is recently demolished by choice of the property owner.

Comment 3 – N.J.A.C. 7:7-3.5(d)– Waterfront development exemptions

- **Current Standard:** Activities under a permit-by-rule do not contain a timeframe within which they must commence.
- **Proposed Amendment:** Activities under permits-by-registration shall commence within 180 days of the date of registration.
- **Issues with Proposed Amendment:**
 1. The intent of the modification to the exemption is to limit reconstruction in areas affected by flood waters. However, if the previous structure was demolished for reasons other than flood

environmental damage, within a reasonable period of time from when the application is made, there should be the opportunity to apply for the exemption.

• **Recommended Actions:**

1. Consider an option to obtain an extension for permit-by-registrations.
2. Do not enact a timeframe within activities authorized under a permit-by-registration shall commence so long as the rules have not been updated since the permit-by-registration has been obtained.
3. Consideration should be given to review of permits outside of the Department's control which may extend beyond 180 days.

Comment 4 – N.J.A.C. 7:7-9.50 – Inundation risk zone

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** The proposed rule establishes design and construction standards that are applicable within the inundation risk zone.
- **Issues with Proposed Amendment:**
 1. This section appears to be identical to the proposed rule at 7:13-11.5 Requirements for a regulated activity in an inundation risk zone.
 2. As 7:13 applies to all Coastal permitting, and there does not appear to be specific Coastal requirements in this section, our office does not believe that this rule needs to be repeated in 7:7-9 as a special area.
- **Recommended Actions:**
 1. To avoid redundancy, our office recommends only including the inundation risk zone requirements within N.J.A.C. 7:13 rather than in both 7:13 and 7:7.

Comment 5 – N.J.A.C. 7:7-9.50(b).1.ii – Permanent or daily inundation

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** “The minimum amounts of inundation that would cause the lowest portion of the project site to be inundated on a regular basis, such as daily or seasonal high tides ...”
- **Issues with Proposed Amendment:**
 1. Frequency and amount of inundation would depend on the year and the anticipated amount of sea level rise anticipated for that year. It appears that “minimum depth/amount of inundation” needs to be defined in order to address the above. Assuming all sites would begin to be inundated when water reached the lowest portion of the site perimeter, the inundation depth at that elevation would simply be 0’.
- **Recommended Actions:**
 1. Provide more specific information for this requirement in order for the regulated community to assess the nature and purposes of the requirement further.

Comment 6 – N.J.A.C. 7:7-9.50(b).1.iii – Permanent or daily inundation

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** “... the minimum amounts of inundation that would cause the lowest portion of the primary roadway(s) providing regular or emergent access to the site to be inundated daily and the corresponding maximum depth of inundation on the roadway.”
- **Issues with Proposed Amendment:**
 1. Frequency and amount of inundation would depend on the year and the anticipated amount of sea level rise anticipated for that year. It appears that “minimum depth/amount of inundation” needs to be defined in order to address the above. Assuming all sites would begin to be inundated when water reached the lowest portion of the site perimeter, the inundation depth at that elevation/moment would simply be 0’.
- **Recommended Actions:**
 1. Provide more specific information for this requirement in order for the regulated community to assess the nature and purposes of the requirement further.

Comment 7 – N.J.A.C. 7:7-9.50(b).2 – Inundation Risk Assessment

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** “Prepares and provides an Inundation Risk Assessment that analyzes the potential adverse impacts of inundation on the site of the regulated activity.”
- **Issues with Proposed Amendment:**
 1. There are no standards set forth for the preparation of an Inundation Risk Assessment, nor the required qualifications for an individual that is appropriately qualified to assess risks for injury and loss of life. Applicants and their consultants would require specific direction as to how to evaluate same. The proposal further notes “increases in short- and long-term costs due to inundation...”; however, the cost to repair, replace, reconstruct, etc. will vary depending on the year, contractor, etc. making it difficult to determine these costs. Further, methods for determining costs for evacuation are not provided and should be based upon a standard procedure or resource for consistency across all applications.
- **Recommended Actions:**
 1. Provide more specific direction as to how to evaluate risks for injury or loss of life, as to how to determine costs as well as how to establish a standard evacuation procedure and cost for same.

Comment 8 – N.J.A.C. 7:7-16.12(d) –Traffic Level of Service Requirements

- **Current Standard:** The current standard discourages any development that causes a location on a roadway to operate in excess of capacity Level D in post-construction conditions.
- **Proposed Amendment:** The proposed rule amends this section to include the construction phase in addition to post-construction conditions.
- **Issues with Proposed Amendment:**
 1. The construction phase should not be applicable to this requirement. Temporary or permanent lane closures that are often needed during construction to ensure on-site safety could result in a temporary LOS degradation during a specific phase of work. By discouraging LOS D during construction, Applicants will be incentivized to explore means and methods of construction that would avoid lane closures. The inclusion of the construction phase in this section goes against the promotion of safe construction practices and presents a significant hurdle for projects that do not result in a post-construction degradation in LOS but require lane closures for construction.
 2. How is it intended for Applicants to demonstrate the level of service with which adjacent roadways will operate during construction? Will NJDEP require a traffic study that includes pre-construction, construction, and post-construction conditions? Is NJDEP equipped to review these studies?
- **Recommended Actions:**
 1. Amend this section of the rule to read, “reduction in level of service below D shall be limited during construction while still providing necessary traffic control practices and industry standard site safety.”

Comment 9 – N.J.A.C. 7:7A-2.7 Stormwater management

- **Current Standard:** The current standard limits stormwater management review to major development within the area of the general permit.
- **Proposed Amendment:** Under the proposed rule, stormwater management review is expanded to include sites defined as a major development seeking a general permit.
- **Issues with Proposed Amendment:**
 1. A timeframe or statutory requirement for stormwater management review associated with wetlands permitting does not currently exist. There are multiple jurisdictions (municipality, county, SCD, etc.) that will have the ability to review stormwater management. That being said, establishing a timeframe for which review of this design component is to be completed by the DEP will assist applicants and design engineers to consolidate all review comments into more comprehensive revisions and limit requests for permit revisions caused by conflicting requirements between jurisdictions.

- **Recommended Actions:**

1. Implement a timeframe or statutory requirement for stormwater management review associated with wetlands permitting to ensure that the application is reviewed within a timely manner.

Comment 10 – N.J.A.C. 7:7A-5.7 Conditions applicable to an authorization pursuant to a general-permit-by-certification or a general permit

- **Current Standard:** The current standard does not include the phrase, “necessary for the conduct of the proposed project.”
- **Proposed Amendment:** The proposed rule introduces the phrase, “necessary for the conduct of the proposed project”
- **Issues with Proposed Amendment:**
 1. General permits are, by definition, limited in disturbance to natural resources and are intended to be prescriptive in nature meaning that if an applicant meets the requirements of a general permit, the activity should be approved. By introducing the phrase “necessary for the conduct of the proposed project”, the rule would allow for subjectivity as to whether a permit would be authorized. This would introduce inconsistency between reviewers, applicants and projects based on opinion and interpretation of what is necessary for a project.
- **Recommended Actions:**
 1. Do not adopt the phrase, “necessary for the conduct of the proposed project” within the language of the rule amendment.

Comment 11 – N.J.A.C. 7:7A-7.1 General Permit 1

- **Current Standard:** The current standard does not include the phrase, “necessary for the conduct of the proposed project.”
- **Proposed Amendment:** The proposed rule under section b.3.v. notes “No trees are cleared, cut and/or removed in a wetland or transition area outside the structure or conveyance feature.”
- **Issues with Proposed Amendment:**
 1. The clause from “iv” should be included in “v” as well (“unless such disturbance is unavoidable and necessary to gain access to the structure or conveyance feature and is minimized”). For example, if repair of an embankment is required, and access is limited, this general permit should still be applicable.
 2. This proposal does not allow for the expansion or modification of a stormwater management system, whereas in order to meet today’s rules, there should be the opportunity to modify an existing system in order to meet the current design standards for water quality, water quantity and groundwater recharge purposes. This would allow for the opportunity to enhance existing stormwater management features which would be beneficial to the environment and development.
- **Recommended Actions:**
 1. Our office recommends the clause from “iv” be included in “v” as well.
 2. Amend the rule to allow for the expansion or modification of a stormwater management system in order upgrade the system to meet current design standards.

Comment 12 – N.J.A.C. 7:7A-7.2 General Permit 2

- **Current Standard:** The current standard exempts horizontal directional drilling from the rules.
- **Proposed Amendment:** The proposed rule no longer exempts horizontal directional drilling and instead requires a general permit.
- **Issues with Proposed Amendment:**
 1. Horizontal direction drilling is used routinely by utility companies to upgrade and expand service areas. By requiring a general permit for horizontal directional drilling, the project may be delayed by the review process for what amounts to minimal disturbance of a wetland. As clearly articulated in the rules, it is critical that the work be performed with contingency plans in place.

- **Recommended Actions:**

1. We appreciate the attention to detail and protection of wetlands regarding the usage of horizontal directional drilling. Since the methods and techniques vary significantly from driller to driller, we would suggest that items 6-9 of the rule be submitted as part of the 14-day notice of construction rather than upon submission of an application, as there may be a significant gap in time between the submission of a permit application and the beginning of construction. This would allow the project owner time to adequately bid on the project with the understanding that these items are required.
2. Please clarify under 9.ii. the area to be grouted with cement or concrete. Typically, the entry and exit points in horizontal directional drilling are located outside of the wetlands and transition area and will be open cut trenches to connect to either existing utilities or proposed utilities which are installed by conventional open trench methods. It is unclear what area would need to be grouted in this scenario.
3. It would be more effective to provide notice of the work and inspection to ensure the work is done properly than review the project for compliance before the work is performed.

Comment 13 – N.J.A.C. 7:7A-7.6(a)4 – General Permit 6

- **Current Standard:** The current standard does not include language regarding vernal habitat species.
- **Proposed Amendment:** The proposed rule adds language regarding vernal habitat species.
- **Issues with Proposed Amendment:**
 - a) This section is contradictory to N.J.S.A. 13:9B-23b which states *“The department shall issue a general permit for a regulated activity in a freshwater wetland located in an area considered a headwater pursuant to the Federal Act if the regulated activity would not result in the loss or substantial modification of more than one acre of a swale or a man-made drainage ditch.”* The proposed rule issued a subjective standard which conflicts with state statute. Further this has been previously tested in the NJ Supreme Court (*re Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 852A.2d 1083(2004)*). The NJ Supreme Court found:

*“Although DEP might have a valid concern that the destruction of vernal habitats would cause adverse environmental impacts, and that such adverse environmental impacts are prohibited under the Act and the CWA, GP 6 was issued pursuant to N.J.S.A. 13:9B-23b, which does not mandate an [***28] adverse environmental impact analysis. Instead, the plain and unambiguous language of N.J.S.A. 13:9B-3b requires [***1092] that activities in isolated wetlands neither (i) disturb or destroy more than one acre of freshwater wetland, nor (ii) take place in wetlands of exceptional resource value. Those requirements are, in effect, a substitute for the adverse environmental impact requirement of N.J.S.A. 13:9B-23c.*

*We find no justification to read into N.J.S.A. 13:9B-23b the adverse environmental impact requirement of N.J.S.A. 13:9B-23c. When the Legislature expressly includes a requirement in one subsection and excludes that same requirement in other subsections of the same general statute, we need not strain to import that requirement where it is not. See *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 419, 730A.2d 327, 335 (1999) (noting that a term used by Legislature in one place should not be implied in another if excluded). We are convinced that if the Legislature intended to make general permits under both N.J.S.A. 13:9B-23b and N.J.S.A. 13:9B-23c [***29] subject to an adverse environmental impact analysis, it would have done so explicitly.”*

- **Recommended Actions:**

1. Do not adopt the change adding language regarding vernal habitat species to N.J.A.C. 7:7A-7.6.

Comment 14 – N.J.A.C. 7:7A-7.10A & 7.10B – General Permit 10A and 10B

- **Current Standard:** The current standard does not limit General Permit 10A and 10B to new access roads and has been used in expanding existing roadways.
- **Proposed Amendment:** The proposed rule limits General Permit 10A and 10B to new access roads.
- **Issues with Proposed Amendment:**
 1. General Permit 10A and 10B should be available for use in expanding existing roadways. This should be an option for both publicly owned roadways and existing private roadways proposed to be upgraded, expanded, or improved. This would limit the disturbance of a wetland to an

already disturbed portion of a wetland. For example, a farm road crossing a wetland would not qualify for a GP 10A or 10B to upgrade the road for future development.

- **Recommended Actions:**

1. Do not amend the rule to limit General Permit 10A and 10B to new access roads.

Comment 15 – N.J.A.C. 7:7A-7.26 – General Permit 26

- **Current Standard:** General Permit 26 is limited to 1 acre of disturbance.
- **Proposed Amendment:** The proposed rule limits General Permit 26 to 0.5 acres of disturbance.
- **Issues with Proposed Amendment:**
 1. A wetland that meets the requirements of general permit 26 would be significantly degraded in its existing condition and likely not function as a typical wetland to which disturbance would be detrimental. By reducing the allowable disturbance area, the rule proposal effectively discourages improvement of the wetland and potentially relocating disturbance to wetlands that are more functionally valuable.
- **Recommended Actions:**
 1. Do not amend this section to limit General Permit 26 to 0.5 acres of disturbance.

Comment 16 – N.J.A.C. 7:7A-8.1 – Transition Area Waiver impervious coverage limits

- **Current Standard:** The current standard limits impervious coverage within 20 feet of wetlands.
- **Proposed Amendment:** The proposed rule limits impervious coverage within 25 feet of the wetland.
- **Issues with Proposed Amendment:**
 1. The nature, condition and functionality of the existing wetlands area to which the transition area is adjacent and requested to be restored should be considered. If the wetland or transition area does not have functional value, there should be no need to restore an adjacent transition area that will not provide an inherent benefit. For example, an existing parking lot that has been adjacent to a wetland for decades and is adjacent to other existing parking lots is not going to increase functional value to the adjacent wetland.
 2. There are exceptions noted to allow portions of existing impervious surfaces to remain within 25 feet of the wetland area; however, “remain” should not be the only option (i.e. replacement of the existing impervious surface in kind should be permitted to improve the condition and allow for improved stormwater management).
- **Recommended Actions:**
 1. Do not require transition area restoration if it will not provide an inherent benefit to its associated wetlands.
 2. Provide an exception to allow portions of existing impervious surfaces to be improved in kind and allow for improved stormwater management.

Comment 17 – N.J.A.C. 7:7A-8.2 – Transition area averaging plan waiver

- **Current Standard:** The current standard limits disturbance within 10 feet of wetlands for a continuous distance of 100 feet.
- **Proposed Amendment:** The proposed rule limits disturbance within 25 feet of wetlands.
- **Issues with Proposed Amendment:**
 1. If there is an allowance for impervious surfaces within 25 feet of a wetlands flag, there also needs to be a clause that allows for grading associated with construction of that impervious surface within that remaining 25 feet from the wetlands itself to allow for construction. While this disturbance within 25 feet of the wetlands may impact the wetlands, it is temporary in nature and can be revegetated to maintain some functional value.
- **Recommended Actions:**
 1. Allow for grading activities associated with the construction of an impervious surface to occur within 25 feet of a wetland.

Comment 18 – N.J.A.C. 7:8-5.5(a) – Water quality standards for reconstructed impervious

- **Current Standard:** Water quality measures are not required for reconstructed impervious surfaces.

- **Proposed Amendment:** Water quality measures are required for one-quarter acre or more of reconstructed regulated motor vehicle surface.
- **Issues with Proposed Amendment:**
 1. Will be very difficult for urban areas to comply with this requirement.
 - a) Underutilized and dilapidated properties are frequently the subject of urban redevelopment projects. In many cases development seeks to rehabilitate these areas with new construction that is more efficient and environmentally friendly. Many times, there is an overall reduction in impervious coverage and a significant reduction in motor vehicle travel surface which inherently benefits water quality and a multitude of other climate factors. The proposed rule fails to give credit to reducing impervious coverage for urban redevelopment projects.
 - b) Urban redevelopment tends to fall in New Jersey's overburdened communities which are in need of redevelopment. By enacting a higher standard for reconstructed impervious it deters development in areas where water quality is likely already impaired, and the current standards already are shown to improve water quality.
 2. Water quality gauges are showing water quality is getting better in NJ.
 - a) The Department issued a report on Water Quality Trends in Nutrients in New Jersey Streams, Water Years 1971-2016, dated April 21, 2020. The report shows that many locations have seen improvements in Water Quality throughout the State and notes that increased altered land has a direct correlation to degradation of water quality. By enacting a higher standard for reconstructed impervious in terms of water quality the State is discouraging redevelopment of urban areas, thrusting development into unaltered/undeveloped areas, which are prone to reduce water quality.
 3. Current and proposed regulations give no credit for water quality for redevelopment projects on contaminated sites that are being remediated as part of the redevelopment.
 - a) Many redevelopment projects are conducted on sites that are contaminated and incorporate sophisticated soil and groundwater remediation measures, including long term monitoring to ensure the measures are effective. By mitigating existing contamination, the remediation of these sites clearly results in a significant water quality improvement which is not recognized under the current or proposed Stormwater Management Rule at N.J.A.C. 7:8. As noted above, redevelopment of sites with existing impervious would be discouraged due to the proposed enhanced water quality standard due to increased construction costs.
 - b) Many remediation projects prohibit infiltration in the subsoil due to contamination, which significantly hinders the ability for developers to provide adequate water quality measures such as infiltration basins, pervious pavement, bioretention basins, etc.
 4. Requiring water quality measures for redevelopment will result in more exposure and excavation of contaminated soils.
 - a) If reconstruction projects are required to provide water quality, it will result in a larger amount of contaminated soils and groundwater to be exposed to the environment as green infrastructure BMPs require significant over excavation to install. For redevelopment projects that consist of existing parking areas that are simply proposed to be reconstructed, the proposed rule change would require the entire parking area to be significantly over excavated to install green infrastructure. This is a negative impact from an environmental standpoint.
 5. There is no feasible alternative to allow for redevelopment projects to meet the water quality using green infrastructure.
 - a) There are many examples of densely urban areas where the existing impervious coverage and/or building coverage can be 80% or more of the lot area. Using green infrastructure to meet water quality requirements would require a large portion of these sites to be removed and dedicated for stormwater measures. This will discourage redevelopment.
 6. There is no feasible alternative to allow for water quality measures to be installed for existing sites where there is no public infrastructure to tie into.

- a) There are many examples of sites where there is no public infrastructure to tie into or the existing infrastructure is not adequate. Requiring sites to provide water quality measures will not be feasible in this situation. This will discourage redevelopment.
 7. It is the goal of most State, County, and Local agencies to redevelop existing sites that are substandard, unsafe, unsanitary, dilapidated, vacant, or obsolete. The proposed Rule change will unjustly burden developers and governmental agencies to provide water quality measures for reconstruction of existing sites. The proposed rule change creates economic and environmental hardships and will discourage redevelopment throughout New Jersey.
- **Recommended Actions:**
 1. The Department should eliminate the Rule amendment as currently proposed.
 2. The Department should give water quality credit to projects that reduce impervious coverage and regulated motor vehicles surfaces.
 3. The Department should give water quality credit for projects that propose soil and/or groundwater mitigation for contaminated sites.
 4. The Department should allow the use of non-Green Infrastructure water quality treatment measures to promote redevelopment of brownfield sites, landfill caps, urbanized areas, areas in need of redevelopment, etc.

Comment 19 – N.J.A.C. 7:8-5.5(b) – Requirement for 95% TSS removal

- **Current Standard:** 95% TSS removal is required for new discharges into 300' riparian zones.
- **Proposed Standard:** 95% TSS Removal is required for all discharges that ultimately discharge into 300' Riparian Zone.
- **Issues with Proposed Amendment:**
 1. There is a mapping issue with the proposed amendment
 - a) The Rule amendment will require a significant undertaking for public agencies to map and monitor existing stormwater infrastructure where no mapping exists today. It will be an extreme burden and/or not possible for many public agencies to develop and maintain public stormwater infrastructure in perpetuity. Agencies will be required to perform detailed site surveying, video inspection, test pits, radar inspection, etc. in order to locate storm systems that could be many decades old. This will require public agencies to coordinate with potentially thousands of private property owners to locate and map storm infrastructure.
 2. The Rule amendment is unclear for situations where a proposed outfall discharges to grade, then may ultimately be tributary to a stormwater system that discharges to a 300' riparian zone.
 3. There is no Federal standard for the proposed Rule amendment. The amendment is arbitrary and not backed by science or precedent.
 4. It will not be feasible to provide 95% TSS removal for urban redevelopment projects as it requires numerous water quality measures to be installed in series. The proposed rule change will unjustly burden developers and governmental agencies to provide water quality measures for reconstruction of existing sites. The proposed rule change creates economic and environmental hardships and will discourage redevelopment throughout New Jersey.
 5. The proposed Rule amendment does not clarify if projects are exempt from this requirement when 100% of the water quality storm is infiltrated.
- **Recommended Actions:**
 1. The Department should not amend the standard as proposed. The Department should only require 95% TSS removal for new outfalls that discharge directly to 300' riparian zones.
 2. The Department should confirm 95% TSS removal is not required when the proposed stormwater discharge is disconnected from the ultimate outfall.
 3. The Department should confirm projects are exempt from this requirement when 100% of the water quality storm is infiltrated.
 4. The Department should allow the use of non-Green Infrastructure water quality treatment measures to promote redevelopment of brownfield sites, landfill caps, urbanized areas, areas in need of redevelopment, etc.

Comment 20 – N.J.A.C. 7:8-5.5(j) – TMDL requirements

- **Current Standard:** A current standard does not exist.
- **Proposed Standard: Stormwater** management measures shall be designed to incorporate any additional measures specified in a TMDL(s) approved or established by the EPA.
- **Issues with Proposed Amendment:**
 1. The Rule proposal is too broad and leaves TMDL requirements at the discretion of local agencies. This allows local agencies to bypass the formal Rule making process. The Rule can't be adopted as written as it creates a "moving target" with future TMDL requirements.
 2. TMDL requirements can contradict the requirements of N.J.A.C. 7:8. The Department needs to review all TMDL measures to ensure they do not contradict and are consistent with the purposes of N.J.A.C. 7:8.
 3. Under Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1313(d), States are required to develop a list of waters that currently do not meet, or are not expected to meet, applicable water quality standards after the implementation of technology-based controls. This list is known as the 303(d) List of Water Quality Limited Waters or, more simply, the "303(d) List." The 303(d) List includes a priority ranking for scheduling TMDLs, which are intended to address waters that are not meeting applicable water quality standards. The rule change fails to address this Federal requirement.
 4. This statement is too broad and doesn't define what additional measures are required to be established for major developments. The majority of TMDLs don't define specific measures that can be implemented on an individual project basis. Developers can't demonstrate compliance with the TMDL if specific criteria aren't defined in N.J.A.C. 7:8.
 5. The Rule does not address whether jurisdictions are required to incorporate these additional measures for all sites or only those discharging directly to the impaired waterbody.
 6. The Rule does not address whether standard removal rates will be established for the various compounds that could be present within the TMDLs such as Nitrogen, Phosphorus, Mercury, Dissolved Oxygen, Fecal Coliform, Total Coliform, E. Coli, Enterococcus, Pathogens etc. The Department needs to issue a revision to the NJ BMP manual to address this and it should be issued as part of the Rule amendment.
 7. How are nonpoint sources regulated for portions of project sites that sheet flow to the point of analysis? Specifically, some TMDLs reference fecal coliform from sources such as geese, which can occupy open space established at the perimeter of major developments, which are often unable to be treated based upon their proximity to the overall development, regulated areas, or lower elevations.
 8. Many TMDLs specify air quality as a source of the pollutant. How will compliance be demonstrated?
 9. Will there be additional Operation and Maintenance and/or monitoring requirements associated with TMDL compliance?
- **Recommended Actions:**
 1. The Department should eliminate the Rule as currently proposed.
 2. The Department should issue N.J.A.C. 7:8 Rule amendment(s) on a case-by-case basis when new TMDL standards are established to ensure they are consistent with N.J.A.C. 7:8.
 3. The Department should establish the 303(d) List of Water Quality Limited Waters as required by the EPA and should issue it as part of the N.J.A.C. 7:8 Rule amendment.
 4. The Department should issue a revision to the Best Management Practices Manual in conjunction with the Rule amendment to avoid any discrepancies or gaps in technical guidance. The Department should consult with industry stakeholders and professionals to review proposed revisions to the BMP manual to ensure they are properly developed.

Comment 21 – N.J.A.C. 7:8-5.6(d) – Volume reduction requirements

- **Current Standard:** A current standard does not exist.
- **Proposed Standard:** Establish a minimum volumetric reduction standard for major developments.
- **Issues with Proposed Amendment:**

1. The Rule does not address situations where there is no soil permeability available onsite.
 2. The Rule does not address situations where the existing site can have Karst topography. This results in a life safety issue.
 3. The Rule establishes an arbitrary existing conditions analysis (Wooded soils HSG D). This is not backed by science or any technical guidance.
- **Recommended Actions:**
 1. The Department should eliminate the Rule as currently proposed.
 2. The Department should amend the Rule to allow a major development to match or reduce existing Water Quality peak flow rate instead of creating an arbitrary existing conditions analysis.

Comment 22 – N.J.A.C. 7:13-1.2 – “Applicability Determination” definition

- **Current Standard:** Applicability Determinations have been utilized to determine whether a feature constitutes a regulated water.
- **Proposed Amendment:** Amends the definition of “applicability determination” such that an FHA Verification will be required to determine if a feature constitutes a regulated water.
- **Issues with Proposed Amendment:**
 1. Under the current definition, Applicability Determinations have been very helpful for Applicants in gaining a certain level of comfort regarding which regulations within N.J.A.C. 7:13 will be applicable to their proposed development and has helped ensure that Applicants submit for the correct permits and verifications.
 2. When an Applicant asserts that an on-site or nearby water is not regulated by N.J.A.C. 7:13, many municipalities require proof from the NJDEP, which has typically been obtained via an Applicability Determination.
 - a) Will there be a new application for “absence of regulated water” similar to a freshwater wetlands absence letter of interpretation?
 - b) There is a cost associated with preparing and submitting an FHA Verification application that is not commensurate with the amount of work needed to determine an absence of on-site regulated areas.
- **Recommended Actions:**
 1. Maintain the existing definition for Applicability Determination.
 2. Alternatively, introduce a presence/absence determination similar to wetlands that does not carry the \$1,000 application fee required for an FHA Verification as the burden of review will be minimal in comparison.

Comment 23 – N.J.A.C. 7:13-1.2 – “Barrier island complex” definition

- **Current Standard:** The definition of “barrier island complex” exists to exclude these land masses from possessing a riparian zone.
- **Proposed Amendment:** The “barrier island complex” definition is proposed for deletion to ensure consistent TSS removal requirements from either side of a water that is bordered by a barrier island complex.
- **Issues with Proposed Amendment:**
 1. Introducing a riparian zone on the Barrier Islands would have significant adverse economic impacts, as these communities heavily rely on bayside development to drive tourism and support businesses such as restaurants, tourism, and recreation.
 2. Equitable water quality protection around bays can be achieved by maintaining the “barrier island complex” definition and simply amending N.J.A.C. 7:8-5.5(i) to include runoff that is discharged from the bay side of a barrier island complex to a Category One water. This would ensure the TSS removal requirements from either side of a waterbody are consistent with each other without creating a riparian zone on a barrier island complex.
- **Recommended Actions:**
 1. Keep this definition in the rule and amend N.J.A.C. 7:8-5.5(i) as described above to achieve the desired regulatory outcome.

Comment 24 – N.J.A.C. 7:13-1.2 – “Substantial damage” and “substantial improvement” definitions

- **Current Standard:** The definitions for “substantial damage” and “substantial” are based on the construction costs associated with the current application.
- **Proposed Amendment:** The definitions for “substantial damage” and “substantial improvement” are proposed to be amended to include cumulative costs to a structure over time.
- **Issues with Proposed Amendment:**
 1. These definitions should not include the cumulative cost of repairing damage or routine maintenance, as down the line, this would unintentionally capture certain minor improvements to existing structures that are not appropriate to regulate under N.J.A.C. 7:13.
- **Recommended Actions:**
 1. Amend this change so the costs of work after the effective date of the rule only count towards the cumulative total associated with a structure if it is above a certain threshold, say 20% of the structure’s market value.

Comment 25 – N.J.A.C. 7:13-1.2 – “Tidal water” definition

- **Current Standard:** There is no definition for “tidal water.”
- **Proposed Amendment:** There is no definition for “tidal water” included within the rule amendment.
- **Issues with Proposed Amendment:**
 1. Given the rule amendment establishes additional criteria that apply to tidal waters and tidal flood hazard areas that do not apply to fluvial waters and fluvial flood hazard areas, including a definition for “tidal water” and how to determine its limits would assist in providing further overall rule clarity throughout N.J.A.C. 7:13.
- **Recommended Actions:**
 1. Create a definition for “tidal waters” to benefit the Department and Applicants alike. Withdraw the current Rule proposal so an appropriate definition can be established through the proper rule making process.

Comment 26 – N.J.A.C. 7:13-3.2 – 5’ Projected Sea Level Rise

- **Current Standard:** The design flood elevation within tidal flood hazard areas is equal to the 100-year flood elevation.
- **Proposed Amendment:** The climate adjusted flood elevation within tidal flood hazard areas will be equal to five (5) feet above the 100-year flood elevation.
- **Issues with Proposed Amendment:**
 1. Raising the climate adjusted flood elevation by five feet will have drastic socio-economic impacts within the affected regions.
 2. Per a 2022 technical report prepared by FEMA, not only is a five-foot increase in sea level rise an overestimation, but sea level rise is not anticipated to occur at a uniform rate across the coastlines.
 3. The 2019 STAP report utilized to determine the projected sea level rise has since been updated with lower sea level rise projections.
 4. This amendment is based on projections for the year 2100, as the rule proposal states that buildings constructed in 2025 are expected to be operational in 2100. This is an overestimation of the lifecycle of development as most buildings constructed today have a life expectancy of 40 to 50 years rather than 75 years.
 5. The NJDEP has stated that they are uncomfortable utilizing a projected sea level rise below the 83rd percentile outcome from the outdated STAP report. However, there are already many factors of safety built into the FHACA Rules, such as requiring the building finished floors and roadways to be 1' above the design flood elevation, which would be an additional 20% to a 5' increase. These redundant factors of safety should give the NJDEP the comfort level they need to utilize the median projection for sea level rise in lieu of the 83rd percentile projection.

- **Recommended Actions:**

1. Revise the rule proposal to utilize a median sea level rise outcome from a study that is no longer outdated, such as the Amry Corps Back Bay Study.
2. The change in sea level rise should be revisited with the expiration and reexamination of the rule rather than a far-reaching arbitrary date. Based on the typical building life cycle, sea level rise should be based on projections for 2065 to 2075, 40 to 50 years from now.
3. Consider amending the rule so the CAFE is determined by adding a specific number of feet to the 100-year flood elevation based on the site's location within the state, similar to how the Approximation Method utilizes different flood depths for different watershed management areas.

Comment 27 – N.J.A.C. 7:13-3.2 – Inundation Risk Zone

- **Current Standard** – There is no current standard.
- **Proposed Amendment** – The inundation risk zone will be established utilizing an online Department tool or by utilizing an elevation that is 5' above the mean higher high water line as determined by a Professional Land Surveyor.
- **Issues with Proposed Amendment:**
 1. Sea level rise will not be a sudden phenomenon. It will occur very gradually, and its advancement can be measured against current projections. As a result, these projections can be modified if sea level rise occurs quicker or slower than expected. Implementing a 5' increase from the onset of the rule change will not result in accurate determinations for the inundation risk zone.
- **Recommended Actions:**
 1. Implement a “managed retreat” approach where the inundation risk zone is based off projections 5 years from the effective date of the rule. After each five-year interval, the inundation risk zone can be updated based on updated scientific studies that account for how sea level rise has progressed since the latest rule change. This will result in a more accurate inundation risk zone throughout the state.

Comment 28 – N.J.A.C. 7:13-3.8(d)1 – Delmarva Unit Hydrograph

- **Current Standard** – The Delmarva Unit Hydrograph is not mentioned within N.J.A.C. 7:13 nor N.J.A.C. 7:8.
- **Proposed Amendment** – The rule amendment accepts the use of the Delmarva Unit Hydrograph for watershed hydrology calculations within an FHA Verification application utilizing the Calculation Method, where appropriate. However, there does not appear to be a similar amendment to N.J.A.C. 7:8 to utilize the Delmarva Unit Hydrograph for a stormwater management design for a site with the same watershed characteristics.
- **Issues with Proposed Amendment:**
 1. A potential discrepancy could occur where an on-site stream is modeled utilizing the Delmarva Unit Hydrograph whereas the stormwater management design for a development on the same site could be required to utilize the Standard Unit Hydrograph. In a situation like this, both analyses should utilize the same unit hydrograph.
- **Recommended Actions:**
 1. Amend N.J.A.C. 7:8 such that the Delmarva Unit Hydrograph will also be accepted for the preparation of stormwater management designs under the same circumstances it will be accepted to determine the flood hazard area and floodway by calculation.

Comment 29 – N.J.A.C. 7:13-6.5(d) – Permit-by-registration certification activity commencement timeframe

- **Current Standard:** A current standard does not exist as permit-by-registration is a newly proposed process.
- **Proposed Amendment:** Within 180 days of the date of registration under (b) above, the registrant shall certify at <https://www.nj.gov/dep/online> that the registered activities have commenced. If the required

certification is not provided within 180 days of registration, activities under the permit-by-registration may commence only if the owner of the site or a person suitably designated by the owner registers anew in accordance with (b) above.

- **Issues with Proposed Amendment:**

1. The regulation is not clear on how long a permit-by-registration certification is valid for. If the authorized activities commence within 180 days but the construction continues beyond, is a new permit-by-registration required? Also, are there any allowances for construction activities to stop and begin again?

- **Recommended actions:**

1. NJDEP should provide additional language to clarify how long the permit-by-registration certification is valid for once construction begins. Allowance should be made to obtain permits outside of the Department's control which may exceed 180 days for review.

Comment 30 – N.J.A.C. 7:13-7.2, 7.3, 7.4, 7.5, 7.6, 7.8, 7.11, 7.12, 7.15, 7.16, 7.20, 7.21, 7.23, 7.28, 8.1, 8.2, 9.5, 9.6, 9.7, 9.9, regarding regulated activities within 25 feet of the top of bank when the project is adjacent to a lawfully existing bulkhead, retaining wall, or revetment

- **Current Standard:** Disturbance allowed within 25 feet adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

- **Proposed Amendment:** No longer allows disturbance within 25 feet adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.

- **Issues with Proposed Amendment:**

1. The Department's justification for the proposed deletion of disturbance within 25 feet of the top of bank when the project lies adjacent to a lawfully existing bulkhead, retaining wall or revetment is **necessary** because '*engineered structures can fail*' is illogical and counterintuitive. This proposed change does nothing to address the Department's concern about the failure of lawfully existing bulkheads, retaining walls or revetments.

- **Recommended actions:**

1. If the Department is genuinely concerned about the failure of these types of existing structures, the rules should require those existing structures to be inspected and reinforced, repaired and/or replaced when regulated activities are proposed within 25 feet such structures.

Comment 31 – N.J.A.C. 7:13-7.8, 8.4, 8.11, 9.8 regarding the required minimum openings in handrails

- **Current Standard:** Handrails shall have large openings, so as not to catch debris during a flood and thereby obstruct floodwaters.

- **Proposed Amendment:** Openings in the fencing, between banisters, and in the latticework shall be no less than six inches. Any rails or banisters used in the stairway have openings no less than six inches apart

- **Issues with Proposed Amendment:**

1. Pursuant R312.1.3 of the International Residential Code, New Jersey Edition, required guards shall not have openings from the ground to the required guard height that allow passage of a sphere 4 inches (102 mm) in diameter. The proposed rule change is in direct conflict with existing New Jersey Code.

- **Recommended actions:**

1. The Department should modify the language to meet Building Codes.

Comment 32 – N.J.A.C. 7:13-7.11 – Construction of a fence

- **Current Standard:** Any fence located in a floodway has sufficiently large openings of so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement.

- **Proposed Amendment:** Any fence located in a floodway has openings of no less than six inches so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or

strand fences. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement.

- **Issues with Proposed Amendment:**

1. Swimming pools are required to be surrounded by a barrier with openings that do not allow passage of a 4" diameter sphere whereas the proposed rule change requires fences to have openings of 6" or more.
2. Fencing for security of safety reasons may be required to deviate from a 6" minimum standard.

- **Recommended actions:**

1. The Department should modify the language to meet building codes and take into consideration the purpose of the fencing. Orientation of the fence in relation to the flooding source should also be considered.

Comment 33 – N.J.A.C. 7:13-7.18 and 9.11 – Placement of solar panels

- **Current Standard:** Except for vertical support poles, all panels, cross-bracing, and other structural components, and all associated equipment are elevated to at least one foot above the flood hazard area design flood elevation.

- **Proposed Amendment:** Panels shall be elevated to at least one foot above the climate adjusted flood elevation.

- **Issues with Proposed Amendment:**

1. Solar panels have a lifespan of 25-30 years and would likely need to be replaced three times and raised incrementally prior to the five (5) foot increase in flood elevation forecast for the year 2100.

- **Recommended actions:**

1. The Department should consider stepping up the CAFE incrementally rather than the sudden five-foot raise that is proposed in order to encourage the development of solar fields and avoid unnecessary costs of construction.

Comment 34 – N.J.A.C. 7:13-10.4(d) – Obligations under the National Flood Insurance Program

- **Current Standard:** A current standard does not exist.

- **Proposed Amendment:** This new section requires applicants for individual permits to upload a copy of the required no rise certification or approved CLOMR from FEMA to the portal prior to the issuance of an individual permit.

- **Issues with Proposed Amendment:**

1. Given the limited timeline for NJDEP review of FHA IP applications (typically 90 - 120 days), obtaining an approved CLOMR from FEMA within the review period does not seem likely. Is the intention of the Department to make this a condition of the approval and not subject to the review period?

- **Recommended Actions:**

1. Make a CLOMR approval a condition of the approval instead of a requirement at the time of application review.

Comment 35 – N.J.A.C. 7:13-11.2(b)6ii – 150' Riparian zone impacts

- **Current Standard:** Table 11.2 currently establishes the maximum allowable area of riparian zone vegetation that can be temporarily or permanently cleared, cut, and/or removed associated with the regulated activities without providing mitigation.

- **Proposed Amendment:** Impacts to the 150-foot riparian zone in excess of 2,000 SF will require mitigation.

- **Issues with Proposed Amendment:**

1. This appears to drastically reduce the allowable disturbance within a riparian zone without providing mitigation.
 - a) The current allowable disturbances within the riparian zone are necessary in order to maintain water quality for a Stormwater Discharge.

- b) This would minimize the accessibility of providing roadway crossings and additional disturbances critical to a project as most would exceed 2,000 SF.
- c) Mitigation requirement puts an unwanted burden on the applicant/developer.
- **Recommended Actions:**
 1. Do not require mitigation for 150-foot riparian zone disturbances that are below the current Table 11.2 threshold.

Comment 36 – N.J.A.C. 7:13-11.2(b)6iii – 50’ Riparian zone impacts

- **Current Standard:** Table 11.2 currently establishes the maximum allowable area of riparian zone vegetation that can be temporarily or permanently cleared, cut, and/or removed associated with the regulated activities without providing mitigation.
- **Proposed Amendment:** Impacts to the 50-foot riparian zone in excess of 0.1 acres will require mitigation.
- **Issues with Proposed Amendment:**
 1. This appears to reduce the allowable disturbance within a riparian zone without providing mitigation.
 - a) The current allowable disturbances within the riparian zone are necessary in order to maintain water quality for a Stormwater Discharge.
 - b) This would minimize the accessibility of providing roadway crossings and additional disturbances critical to a project as most would exceed 0.1 acres.
 - c) Mitigation requirement puts an unwanted burden on the applicant/developer.
- **Recommended Actions:**
 1. Do not require mitigation for 50-foot riparian zone disturbances that are below the current Table 11.2 threshold.

Comment 37 – N.J.A.C. 7:13-11.4(d)1 – Requirements for a regulated activity in a flood fringe

- **Current Standard** – This section provides exemption from flood storage volume displacement limits within tidal flood hazard areas.
- **Proposed Amendment:** This section requires activities within tidal flood hazard areas to determine if any of the more frequent storms (10 yr, 100 yr, climate adjusted flood elevation) are fluvial influenced. If determined to be fluvial influenced, then flood storage displacement calculations are required for up to that storm event.
- **Issues with Proposed Amendment:**
 1. Making this determination can be burdensome, costly, and conflicting given the existing mapping/flood studies may not provide the information needed to make the determination for all storms.
- **Recommended Actions:**
 1. Provide clear guidance/locations of tidal flood hazard areas that do not require fluvial confirmation.

Comment 38 – N.J.A.C. 7:13-11.5 – Requirements for a regulated activity in an inundation risk zone

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** This new section requires applicants to address development within the newly proposed inundation risk zone (5’ higher than the current mean higher high-water elevation).
- **Issues with Proposed Amendment:**
 1. The inundation risk zone will be slowly impacted over time and as such can be evaluated gradually as opposed to a 5’ jump in sea level rise at the onset of the rule. Evaluation of the sea level rise can be assessed and adjusted based on the most current rates/projections over time with additional revisions to the proposed rule.
 2. The standard will significantly impact existing development with regard to substantial improvements and property values. According to the Department, 97% of the inundation risk zone is developed or encumbered leaving only a small portion left for development. In many cases existing homes and businesses do not have the resources or expertise to address this

standard. This burden will cause blight in communities that are impacted by the inundation risk zone.

- **Recommended Actions:**

1. Evaluation of sea rise should be made incrementally based on current studies and reevaluated during regulation adoption to confirm rates. Notice should be provided to existing homeowners and businesses which are impacted by the rule change of the risks associated with their property so informed decisions can be made, as the average homeowner or business owner is not aware of the risks to their property and potential loss in property value with the rule proposal.

Comment 39 – N.J.A.C. 7:13-13.7(f)12 – Discussion which addresses effects of climate change

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** Applicants are required to provide a discussion which addresses the future effects of climate change.
- **Issues with Proposed Amendment:**
 1. This appears redundant to other application requirements specified in the rule proposal.
 - a) Is it the intention of the Department to require applicants to provide additional written documentation regarding the effects of climate change? This seems redundant to the climate adjusted flood elevation and future projected rainfall data which is already being implemented into the design requirements.
 - b) A typical Flood Hazard Area Engineering Report which would accompany an FHA application addresses each applicable requirement within 7:13, which would demonstrate technical compliance with the revised rules and thereby address the future effects of climate change.
- **Recommended Actions:**
 1. Revise the rule to eliminate this redundant requirement to avoid unnecessary burden on applicants and Department reviewers. Applicants are already required to incorporate the increased design flood elevation and future projected rainfall data into the design. Demonstrating compliance with these technical items addresses the future effects of climate change.

Comment 40 – N.J.A.C. 7:13-15.1(e)5 – Addressing community resiliency

- **Current Standard:** Applicants are required to provide proposed access routes to and from the property during a flood when seeking a hardship exception.
- **Proposed Amendment:** In addition to providing proposed access routes, applicants will be required to consider the impact of the project on the ability of the community to recover after a flood event.
- **Issues with Proposed Amendment:**
 1. A community's resiliency is subjective and dependent on many factors unrelated to a single project/development.
 - a) Recovery can depend on governmental resources, economic conditions, damage to surrounding infrastructure, and other factors unrelated to the subject development.
 2. The extents of the access route to/from the site are unclear.
 - a) There is no defined distance away from the site or place of refuge that proposed access should be provided. This leaves it up to interpretation of the reviewer and creates unclear expectations of the applicant.
- **Recommended Actions:**
 1. Revise the rule proposal to remove the irrelevant requirement related to community recovery. The rule proposal should be revised to define the proposed access route as the route from the subject development to the nearest local flood evacuation route to clarify that the applicant is not responsible for defining the entire route out of a flood hazard area.

Comment 41 – N.J.A.C. 7:13-15.1(f) – Additional information requests prior to hardship exception review

- **Current Standard:** The Department may request any additional information that it determines is reasonable and necessary to evaluate whether the request meets the requirements outlined in the rules.

- **Proposed Amendment:** The Department may request such information prior to its review of the hardship exception request.
- **Issues with Proposed Amendment:**
 1. Allowing the department to request any pertinent information prior to the beginning of the technical review ultimately delays the timed review period and is a hindrance to applicants.
 - a) This diminishes the distinction between the administrative completeness review and technical review. It also allows the department to circumvent the review clock, creating undue burden to an applicant.
- **Recommended Actions:**
 1. Revise the rule proposal to clarify that the Department may request additional information prior to the technical review of the hardship exception request which they deem necessary in order to deem the application administratively complete as per the submission checklist.

Comment 42 – N.J.A.C. 7:13-18.2(h) – Deem applications complete without ownership consent

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** When the applicant is a State agency with the power of eminent domain, the Department may not deem an application incomplete solely based on the lack of written consent from the property owner.
- **Issues with Proposed Amendment:**
 1. This provision does not appear necessary given the existing rules 7:13-16.2 “Procedure to request an emergency authorization”. It is not clear why any activity, aside from an emergency situation as defined in Subchapter 16, should be deemed administratively complete without written consent from the property owner.
- **Recommended Actions:**
 1. Remove this permission or further clarify that this may only pertain to applications related to an emergency situation as defined in the rule.

Comment 43 – N.J.A.C. 7:13-18.9(b)1 – Flood risk acknowledgement from owner

- **Current Standard:** A current standard does not exist.
- **Proposed Amendment:** The property owner of the property on which the regulated activities are proposed must provide written acknowledgement of the potential flood and inundation risk.
- **Issues with Proposed Amendment:**
 1. In some situations, it is more appropriate that the contract purchaser of the property provides such an acknowledgement. If the permit is not approved and the project does not move forward, the current property owner’s acknowledgement is irrelevant.
- **Recommended Actions:**
 1. Revise the rule proposal to allow the Department to accept such an acknowledgment from either the property owner OR the contract purchaser.

Comment 44 – N.J.A.C. 7:13-22.2(d)14 – 180-Day activity commencement requirement

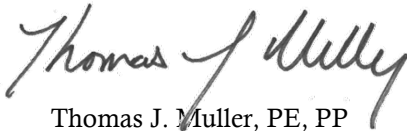
- **Current standard:** A current standard does not exist.
- **Proposed Amendment:** Activities permitted by all permits *except* permits-by-registration are required to commence within 180 days of the permit issuance.
- **Issues with Proposed Amendment:**
 1. Contradiction with proposed 7:13-6.5(d)
 - a) 7:13-6.5(d) of the proposed rule provides that activities under the permit-by-registration shall commence within 180 days of the date of registration.
 2. Requiring permitted activities to commence within 180 days is unrealistic.
 - a) The intention to ensure that the approved activities are based on the most recent flood data is understood, however, it is unreasonable to assume that the flood data could change enough to make an effective impact within 180 days, considering the Applicant is required to consider and utilize data projected to year 2100.

- b) This timeline is unrealistic considering the multiple agencies which need to approve the proposed activities. This requirement assumes that the project is very close to the construction phase by the time an FHA permit is issued. If changes to the Site Plans are required by the Department shortly before the FHA permit is issued, the Applicant will also be responsible for distributing the latest Site Plans to all other agencies having jurisdiction and seek approval of same before construction can commence.
 - c) This proposal effectively eliminates the validity of a permit for a five-year period. In many cases these permits are used as part of transactional agreements and the assurance that a permit is valid is necessary to obtain financing. By revisiting a permit every 180 days, it effectively diminishes the value and certainty of the permit.
- **Recommended Actions:**
 1. Revise either 7:13-6.5(d) or 7:13-22.2(d)14 for consistency.
 2. Revise the proposed rule to allow permitted activities to commence any time prior to the permit expiration.

We appreciate your consideration of the above comments and look forward to your responses to same. Should you have any questions, comments or require additional information, please do not hesitate to contact our office.

Sincerely,

Dynamic Engineering Consultants, PC



Thomas J. Muller, PE, PP



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