

Summary of Preliminary Comments
Submitted by Various Interest Groups on the Flood Hazard Area Control Act Rules
March 1, 2011

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
<p>1. Acid Producing Soils</p>	<ul style="list-style-type: none"> • Reduce 150' RZ to 50'. • Eliminate NJDEP review of acid soils impacts and defer to SCD/NRCS on this topic. • Accept PE certification that a project has been designed to mitigate for acid soils, in cases where a project doesn't need an approval from SCD/NRCS. 	<ul style="list-style-type: none"> • 150' RZ stretches too far and should be reduced. • There are other organizations who review and monitor acid soils, so NJDEP does not need to be involved. 	<ul style="list-style-type: none"> • The 150' RZ should be reduced to 50' for areas with acid producing soils. • There is no scientific basis for the placement of 150' RZ for acid soils. • Mitigation of acid soils is a construction issue, not a regulatory issue, and DEP should not be involved. • If the proposed activity is limited to vegetation cutting in the RZ and/or only placement of fill in the RZ and no acid producing soils would be exposed the RZ should be 50' instead of 150'. • In order to test for acid-producing soils, a backhoe is required. Since there are sometimes freshwater wetlands along streams, DEP requires FWW GP 12 to dig test pits. This necessitates a whole other permitting process which is time consuming and expensive. • Driving and operating a backhoe through a RZ and digging test pits is disturbance, so this activity alone could require some type of FHA permit, but the rules don't address this. Perhaps rules could allow acquiring soil samples for 	<ul style="list-style-type: none"> • Don't reduce RZ widths in any case.

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			<p>acid soils testing as a PBR and provide an exclusion from needing a FWW GP12.</p> <ul style="list-style-type: none"> • Acid producing soils are already regulated under the Soil Conservation rules. Is it necessary to regulate them under the Flood Rules as well? • Rules should address actual disturbance of acid producing soils verses just requiring a 150' RZ because these soils might exist. For example, if a project will disturb the 150' RZ to install a stormwater outfall, an applicant should not be penalized if they can document that acid producing soils do not occur at the depth in which the stormwater pipe an associated rip rap apron is going to be installed. 	
<p>2. Administrative Process</p>	<ul style="list-style-type: none"> • Require pre-apps with site remediation and Land Use for clean-up projects in order to make sure both programs are on the same page prior to the application being submitted. • Permit review times should follow the Coastal Rules: Everything that comes in the door gets a project identification number; Reject application if all required information is not submitted; If all information is there but application needs revisions, accept it but request 	<ul style="list-style-type: none"> • Applicants at local levels are required to provide state approvals for site, so having a copy of DEP approval is useful. • SCD should be front line for changes in project that occur after DEP approval. • The 20 working-day administrative review is sometimes used to reject projects for technical reasons. This is unfair, since technical reviews should happen during the remainder of the 90-day clock. By stopping the clock over and 	<ul style="list-style-type: none"> • The rules should incorporate a permit extension for projects that are under construction at the time the permit is set to expire. • Permits should run with the land, not the applicant. • Need preliminary review and feedback earlier in the review process. • Do not want to be notified of issues late in the 90-day review, which would require an unreasonable concession on applicant's part or a request for 	<ul style="list-style-type: none"> • There are conflicts with the Highlands Rules, which should be resolved. • We object to the automatic completeness and automatic approval that will occur if DEP fails to meet the rule's administrative deadlines for GPs and IPs. • The same review procedures should apply to GPs and IPs.

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	<p>additional information (technical deficiency); Once application is complete, 90-day review begins.</p> <ul style="list-style-type: none"> • Photos of the specific project location: For electronic submission we should require photos of specific locations (make clear on the checklists how many required and what the photos should show); for instant decision, we should not require photos. • Eliminate the need for certain maps (road map, soils survey) for GPs & IPs submitted electronically. For regular submissions, require that the entire application be placed on a CD. • Application contents: reduce the amount of copies submitted. For GPs, require 2 sets of signed and sealed plans and 3 CDs for GP's. For IPs, require 5 signed & sealed plans and 5 CDs of the entire application which includes plans. We should also include language that more copies may be requested by DEP. • Applications for multiple LUR permits need to only submit one set of 5 plans and 5 CDs. • We should add a section in the rule that allows us to request final copies if the plans change. • Compliance statement should 	<p>over during the administrative review, it can take months to work out minor issues.</p> <ul style="list-style-type: none"> • 90 days is an appropriate amount of time for DEP to review projects, but receiving major comments on the 89th day is very problematic. It often forces us into 30-day extensions or withdrawing the project, when it could have been handled much easier if we were made aware of problems earlier in the review. • We understand that internal guidelines are helpful to DEP staff, but they should be shared with the public, and cannot be stricter than the existing rules. 	<p>an extension or a denial of the permit.</p> <ul style="list-style-type: none"> • The administrative process needs to be clearer and more consistent. • Administrative improvements would be very helpful. • Applicant and agent must be sent copies of permits when issued. • NJDEP should reduce the number of permit plans required when submitting for more than one type of land use permit. • Allow electronic submission of applications. • Establish more standardized format for submission of applications. Have the applicant prepare a draft "permit" which would help NJDEP staff review. • Develop an online system by which applicants and their agents can track the progress of permit application review depicting steps such as received, completeness review performed, review staff assigned, supervisor to that review staff, application number, date by which NJDEP must make permit decision (for 90 day permits), field visit performed, additional information requested, permit submitted to supervisor for signature, permit issued, etc. It is 	

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	<p>take the form of certifications and/or be a description. Just one hard copy needed since the compliance statement will be on the CDs.</p> <ul style="list-style-type: none"> • We do not need to require applicants to submit previous DEP approvals because we can access them on NJEMs. Applicant can simply provide a list of prior approvals. • We should no longer ask for a completed flood hazard checklist. • Natural Heritage Program letter: we should require a certification on the application form that applicant has pre-screened the site for species critically dependent on the watercourse instead of requiring actual letter. • Should we still require transfers? Or simply say permit runs with the land? If we keep transfers, allow transfer of projects approved with a hardship exception in appropriate cases. 		<p>difficult for us to track the progress of application review. NJDEP has lost applications at many stages of review.</p> <ul style="list-style-type: none"> • Can the NJDEP send preliminary comments to the applications before day 80 of the 90 day review clock? Our recent applications have gone down to the wire, which forces us to feel pressure to comply with the comments instead of discussing their merit. Would it be possible to provide at least preliminary comments after 45 days, or just shorten the overall review time to 45 or 60 days? 	
<p>3. Building Standards</p>	<ul style="list-style-type: none"> • Resolve any conflicts with DCA's requirements that may exist. • Require flood-proofing 1' above design flood elevation, rather than to the flood elevation (unintended omission in existing 	<ul style="list-style-type: none"> • All building standards should be removed from the rules. DCA is the final authority on this issue, not DEP. • DEP rules should not exceed Universal Construction Code standards. 	<ul style="list-style-type: none"> • Basements and floors below flood elevation should be allowed. • If FEMA will insure a building, then DEP should allow it to be constructed. • Rules are poorly written when 	

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	<p>rules).</p> <ul style="list-style-type: none"> • Require applications for reconstructed buildings in the floodway to have flood calculations proving the building will withstand flood forces (unintended omission in existing rules). 		<p>constructing below the flood elevation. It doesn't clearly say what you can have below the flood elevation.</p> <ul style="list-style-type: none"> • Example of a project in Jersey City that needed underground parking, raised entrances and parking garages and also designed flood proofing below grade: The rules did not allow the proposed design, and it had to be a hardship. Lenders and investors had concerns. The exemption and variance process would be better. End result was ok, but process was lengthy. Lenders presume that an applicant will not receive a hardship exemption, so it adds uncertainty into system that dissuades investors. • The residential parking requirements in a flood hazard area should be modified for locations in urban areas where all the adjacent streets flood near a river (i.e. Paterson, Jersey City, etc.). Requiring these properties to elevate parking one foot above the flood elevation does not promote redevelopment and revitalization of these areas. A project in a blighted area should not be required to do an exhaustive alternative analysis to substantiate that parking at grade is the only viable option. 	

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<p>4. C1 waters</p>	<ul style="list-style-type: none"> • RZ and SWRPA need to be reconciled. • Useless to have separate SWRPA standards under SWM rules now that RZ is in FHA rules. • SWRPA determinations are based on Soil Surveys and USGS maps, which are not reliable resources for this purpose. • HUC-14 boundaries are not a good place to end 300' RZ – they were developed by USGS for other purposes and should not be used to limit RZ widths. 	<ul style="list-style-type: none"> • RZ and SWRPA need to be reconciled. • Most problematic issue within the rules, since many projects (like roads) are unavoidably within C1 buffer. • SWRPA is based on USGS maps and soil surveys, which is not appropriate. 	<ul style="list-style-type: none"> • RZ and SWRPA are very confusing and should be reconciled. • HUC 14 as the limit of jurisdiction is reasonable. It clearly defines area of jurisdiction, and therefore provides predictability. • Need mapping for trout production similar to C1 mapping. • SWRPA should be removed from Stormwater rules and merged with RZ in FHA rules. • SRWPA requirements should parallel the RZ requirements in the FHA rules, in that allowance for disturbance for certain uses should be permitted and compensation allowed for certain activities. 	<ul style="list-style-type: none"> • Adopting 300' RZ was a positive thing and consistent with other DEP regulations, such as Highlands. • HUC-14 limits are artificial and have nothing to do with environmental protection. DEP should find another way to define what areas receive a 300' buffer. • Use of HUC 14 as limiting factor is wrong. DEP is choosing a lower standard that is not appropriate. Need to take into account the connectivity of streams. • How HUC-14 lines were drawn is a mystery. It is not appropriate to base 300' RZ on them.
<p>5. Culverts & Bridges</p>	<ul style="list-style-type: none"> • Encourage new bridges and culverts to promote wildlife crossings. This is important due to climate change, as species move to more suitable habitats. DOT agrees with this concept. • Expand the section on channel modification and add detail as needed. • Make it easier for people to remove existing culverts & pipes in order to “daylight” streams. 	<ul style="list-style-type: none"> • There should be a GP for constructing culverts. • Rules should be more prescriptive regarding when hydrologic and hydraulic calculations are needed for bridges and culverts. • Add flexibility for type of culvert used. Three-sided culverts cost much more to install than four-sided culverts, and there does not seem to be any benefit. • Always requiring a three-sided 	<ul style="list-style-type: none"> • Three-sided culverts cost much more to install than four-sided culverts. • Box culverts (four-sided culverts) are often much more practical. • DEP needs to provide better justification for requiring three-sided culverts. • Rules require 0.0' rise in water surface elevation more than 500' from new bridge/culvert, which is too difficult to meet. • It should be clearly stated that 	

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		<p>culvert could have implications with existing utility lines during construction. There are ways to allow fish passage without requiring three-sided culverts.</p> <ul style="list-style-type: none"> • Add some for in-kind replacements of culverts. • Determine what makes a particular design “cost prohibitive,” which is used in section 11.7 to allow alternative designs. • Reconsider the requirement for low-flow aquatic passage in areas that no longer contain water. • It would be helpful if DEP came up with a GP that would allow bridge and culvert replacements that are slightly different than the existing structure, without need for hydrologic and hydraulic calculations. 	<p>replacement of an existing culvert with a culvert of the same dimensions and with no additional fill placement or rise in the roadway cross section does not require hydrologic and hydraulic calculations.</p> <ul style="list-style-type: none"> • Bridge crossings are difficult to get permits for. In order to place any type of crossing over a stream, approach ramps are necessary. This is especially true if the bridge deck is above the flood hazard elevation. DEP considers these approach ramps to be fill within a floodplain which is not permitted. How then is it possible to place a crossing without constructing a means to access the crossing? 	
<p>6. Definitions</p>	<ul style="list-style-type: none"> • Add definition for “ditches” and “manmade features.” • Add definition for “general game fish”. • Clarify what is a “canal.” • Clarify what is a “channel.” • Clarify what is a regulated “water.” • Clarify what is a “oceanfront barrier island, spit and 	<ul style="list-style-type: none"> • Add definition of “in-kind.” 	<ul style="list-style-type: none"> • “Water” as it applies to RZ should be changed to formally match current DEP policy (Refer to RZ topic). • A “disturbed” riparian zone should be better defined in the regulations. In reading some of the PBRs, the regulations seem to suggest that maintained lawn areas are considered “disturbed” riparian zones. Same would go for farm fields that are actively 	<ul style="list-style-type: none"> • Add definition of “drainage area.”

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	peninsula.”		<p>farmed and plowed.</p> <ul style="list-style-type: none"> • Provide definition for “previously disturbed.” This combined with other comments under RZ section will encourage redevelopment without creating an adverse environmental impact. • The definition of “previously disturbed areas” as it relates to the required stormwater management design is not provided in the regulations. • Need a better definition of “RZ.” • Definition of “vegetation” is needed, in context of what type is protected under RZ. • Impervious surface definitions should be made the same under all permit programs. For example, the FHA rules say gravel can be impervious but the SWM rules do not. Furthermore, gravel counts toward RZ disturbance limits but it is exempt from the SWM rules in some cases. This discrepancy should be fixed. • Clarify what is a “oceanfront barrier island, spit and peninsula.” • The method by which DEP determines if a stream is natural, manmade and/or relocated should be clearly outlined in the 	

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			regulations when determining if a water is regulated pursuant to N.J.A.C. 7:13. The various acceptable mapping sources and resource materials should be clearly identified.	
7. Dredging	<ul style="list-style-type: none"> • DEP needs to be asking questions about proper disposal of dredge spoils. • Testing of some dredged spoils in non-tidal areas may be justified. • Perhaps sediment removed from streams/lakes should be tested before disposal. 			
8. Electronic Submittal	<ul style="list-style-type: none"> • Allow for electronic submission of applications. 	<ul style="list-style-type: none"> • Allow for electronic submission of applications. 	<ul style="list-style-type: none"> • Allow for electronic submission of applications. • PE board has not yet reviewed issue of accepting electronic plans. This may require a statutory change, since current statute requires all plans to be signed and sealed. • Perhaps as a transition, DEP could require applicants to submit 1 or 2 plans that are signed and sealed, and the rest of the copies could be on CD. This would at least reduce the number of copies of plans being submitted. 	<ul style="list-style-type: none"> • Electronic submission would be acceptable, provided it is designed to reject applications if fields are not completed. • Some paper copies should still be required, since larger projects are difficult to review on computer. • DEP should allow PDFs of conceptual drawings. • Concerned about ability of some people to have necessary access to computers, should we move toward electronic submittals.
9. Fees	<ul style="list-style-type: none"> • Simplify fees. • FHA and SWM fees are much too high in comparison with other LUR programs. 	<ul style="list-style-type: none"> • Fees are too high for bridges and culverts. • DEP should consider reducing fees for public bridge and culvert 	<ul style="list-style-type: none"> • Current fees are more consistent than previous rules. • Seem to be penalized for retaining walls, especially in the 	

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	<ul style="list-style-type: none"> • Allow fee refund when an application is rejected and the applicant notifies DEP it does not intend to reapply. • No longer reduce fee for multiple permits. • Collect FHA fees in coastal areas. • Remove fees for retaining walls. 	replacements.	tidal areas. <ul style="list-style-type: none"> • Some confusion regarding the per-activity fee, such as when is it a separate fee and when is it related to another activity for which a fee is being paid. 	
10. General Comments	<ul style="list-style-type: none"> • We should do our best to encourage greener development. • Rules should recognize and facilitate publically funded projects. • Science supports increasing rainfall amounts and flooding, which should be accounted for in development of FHA standards. 	<ul style="list-style-type: none"> • Need more consistency in project review. LUR project managers interpret rule differently. • Add flexibility to regulations. • Temporary impacts should not require a permit. • Make allowances for temporary disturbances. Perhaps have one standard if disturbance will persist for less then 6 months and another if more then 6 months. • The rules need to allow or provide a better mechanism to handle projects that were not thought of during rulewriting. • Rules are so restrictive that it forces public entities to make projects fit into an arbitrary box, rather than designing what is best. • Let public needs dictate design, 	<ul style="list-style-type: none"> • Comments made in 2006 for current rule adoption still apply. • Need more consistency in project review. LUR project managers interpret rule differently. • Regulations need more flexibility. • LUR presumption is that a project does not comply unless it is demonstrated to comply. Engineers should be able to certify compliance in some cases. Right now engineers must prove everything to LUR, which is time-consuming, redundant, and expensive. • Need to develop a process to recognize General Development Plan approvals. Infrastructure needs to be completed earlier then main project. Often applicant is creating a fictitious site plan just to receive permits. 	<ul style="list-style-type: none"> • Comments made in 2006 for current rule adoption still apply. • The FHA rules made significant progress for protection in NJ. Any weakening of the rule would be a huge mistake. • In order to roll back regulations, DEP would need significant documentation, especially with increased flooding. • Current rules are well thought out and were an important rulemaking effort. It would be tragic to see the rules rolled back both economically and environmentally. • The volume of money to rebuild flood damaged areas is dramatic. DEP needs to retain strong protection against new development.

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		<p>not the rules.</p> <ul style="list-style-type: none"> • It is too difficult for public entities to get permits for necessary bridge and culvert replacements. These projects are being proposed for the public good, and should not be unduly hindered. 	<p>Need means of approving limits and overall layout concept.</p> <ul style="list-style-type: none"> • DEP should take into account value of feature being regulated. • Hope there is a continuation of coordination with rule/policy team and LUR after the rule is issued. • Website tracking is a good thing. • Should consider changing name of rule to reflect RZ standards, since rule implies only FHA is regulated. • Rule is too complicated and should “lose some weight.”. • Would like DEP to state up front if they will not approve a project. Giving false hope to clients, in order to avoid conflict, is not helpful. • There is sometimes a disconnect between rulewriters and implementers. Staff needs more education, especially when new rules are adopted. • In order to avoid construction of new houses in floodplains, perhaps DEP could require floodplain portions of large tracts to be dedicated to the municipality for preservation and the remaining development could be clustered to get any proposed homes out of the 	<ul style="list-style-type: none"> • Need to strengthen DEP response/oversight after a flood. Local governments are not properly applying standards in giving money to rebuild. • Want <i>effective</i> protection, not efficient protection for the “trust resources” of NJ. • Rules do not regulate many waters that drain less than 50 acres, which is a problem. We should not leave out the crucial headwater systems. • If DEP weakens regulations, grandfathering provisions should be consistent across the board. Do not structure them to inappropriately favor development. • It is the state’s responsibility to develop standards that side on public safety and environmental protection, not designing exemptions that protect development rights. • We fear that economic and development pressure will improperly skew the rules. • Want an economic benefit discussion, as well as public health discussion, as part of any proposed rules. • The River Value Report-published by Delaware River Keeper was published last year and it is a great resource to use

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			<p>FHAs. This way, the number of lots remains the same, yet the total disturbance is less and the necessary infrastructure is reduced.</p> <ul style="list-style-type: none"> • The frequently asked questions and answers should be incorporated into the actual regulations. 	<p>for this rule proposal.</p> <ul style="list-style-type: none"> • DEP should set priorities of what is good and bad, and adopt rules accordingly. • Rules should promote restoration. • Reduce regulatory burden in some cases. For example, encourage created wetlands, and do not require permits for their maintenance. • Rules should include a limit on impervious coverage. For example, if a watershed gets to a certain percentage of impervious coverage, it needs an intervention. • Preserve the high quality watersheds. This needs different kind of regulatory thinking. • Current rules are actually quite generous in what they allow. • Stop allowing oil and propane tanks in the FHA. This creates extremely hazardous situations. • DEP should review the final Report by New York State Sea Level Rise Task Force to the NY Legislature: http://www.dec.ny.gov/energy/67778.html. This report looks broadly at sea level rise for NY's coastline and has several recommendations that extend beyond regulatory aspects.

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				<ul style="list-style-type: none"> • DEP should review NYC Waterfront Planning Page: http://www.nyc.gov/html/dcp/html/cwp/index.shtml. • Delegation of authority and review of delegation should be better reflected in the rules.
11. General Permits	<ul style="list-style-type: none"> • Explain that you cannot have a GP and an IP at the same time. Multiple GPs are fine. • Expand GP1 for stream cleaning. • Clarify and expand GP 3 for transportation projects, and ensure that stream channel will not be blocked & floodway will not be obstructed. • GP4 (stormwater maintenance)- do not allow culvert replacement under this GP. It should be an IP. • GP3 (scour protection) - should be IP. • Remove requirement that GP 8, 9 & 10 must have prior FWW approval. • Add GP for site remediation & landfill closure projects. • Limit GP4 to projects that do not need a review of hydrologic & hydraulic calculations - or convert it into a new GP that allows replacement-in-kind, like FWW GP1. 	<ul style="list-style-type: none"> • GP 4 (stormwater maintenance) should be a PBR for in-kind replacement of culverts, bridges, stormwater pipes, etc. • DEP should address issues related to linear development, such as create waivers or a new GP. • Safety improvements warrant special consideration. New GP should be developed to provide special consideration for bringing roads up to safety standards and general system maintenance. • Project managers should have discretion to make a project fit a GP if it doesn't exactly meet the GP requirements. • Clarify that the agricultural GPs apply to practices that "Occur on land that is actively farmed, or managed under a conservation plan." • GP 2A: This is intended to be a very broad GP covering a wide range of conservation practices but because of the specific 	<ul style="list-style-type: none"> • Most if not all GPs should become PBRs, provided engineer certifies compliance. • Structure GPs similar to FWW. Current IP process is painful, expensive, and unpredictable. • Existing GPs should become PBRs. All should have clear standards and process should follow structure of the rest of DEP. • Create more GPs particularly for those that do not need detailed engineering calculations. • GP6 (reconstruction of damaged house) should be amended to allow for a basement to be restored/continued below the FH elevation if it legally existed prior to the damage. • RZ disturbance in Table C should be regulated as GPs instead of IPs. Activities exceeding Table C should need an IP. • 90-day clock would be ok for GPs especially if there were 	<ul style="list-style-type: none"> • Address cumulative impacts of GPs. If a particular watershed hits a certain allotment of GPs, then all other applications in watershed must be an IP. • There should be threshold limits within PBR/GP and IP categories. For instance percentage of impervious cover and impact amount. • People should not be encouraged to rebuild homes damaged by flooding under GP6, since it may be determined that the flood fringe and the floodway were previously misidentified or that they were never previously identified at all and the likelihood of a reoccurrence is high. Perhaps, in working with the applicant, a better less vulnerable location for the reconstruction on the property can be identified and agreed upon. • <u>No</u> new residential construction should be allowed in FHAs. At the very least, DEP must not allow applications for such construction to be reviewed

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	<ul style="list-style-type: none"> • Convert existing GPs to permits-by-rule where possible. • Create new GP for Maintenance and repair of existing features. • Create new GP for Underground utility lines. • Create new GP for Hazardous site investigation and cleanup. • Create new GP for Landfill closures. • Create new GP for House additions. • Create new GP for Surveying and subsurface investigation. • Create new GP for Lake dredging. • Create new GP for Water monitoring devices. • Create new GP for Mosquito control activities. • Create new GP for Habitat creation and enhancement activities. • Create new GP for Trails and boardwalks. • Create new GP for Footbridges. • Create new GP for Docks and piers. • Create new GP for Bank 	<p>mention of bank stabilization it has tended to be viewed more for streambank stabilization projects. GP should be reworded with language we've provided.</p> <ul style="list-style-type: none"> • Create a new Agricultural GP for bank stabilization and restoration projects using the provisions of GP 2A as currently written. Also consider a GP for similar stream restoration activity in non-agricultural areas, which is approved by and performed under the supervision of NRCS. • Broaden GP 2D for wetland restoration and wildlife habitat improvement projects to include more of the activities associated with restoration. Currently, this GP just applies to ditch plugs. Expand to include surface grading activities where volume of fill does not exceed volume of excavation and anchoring of trees and deadfalls for habitat creation and organic matter addition. • Clarify under GP 2E that fencing associated with the ford is part of the activity and not subject to an additional permit or approval. 	<p>more.</p> <ul style="list-style-type: none"> • Need a GP similar to FWW for airport sight clearing. It is a safety issue and some airports are not implementing safety measures because of problems with RZs. Make it similar to FWW GP9, for cutting of trees without stump removal. • Some issues have arisen due to strict RZ standards for property maintenance (like clearing necessary to access an abandoned mine shaft that needed to be filled.). • Need a way to deal with hazardous waste cleanups within the rule. How do you deal with capping a site and RZ impacts and compensation? 	<p>under GP7 and should instead require an IP</p>

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	<p>stabilization.</p> <ul style="list-style-type: none"> • Create new GP for Aboveground utility lines. • Create new GP for Forestry management activities. • Create new GP for Solar panels. • Create new GP for Malfunctioning individual subsurface sewage disposal (septic) systems. • Create new GP for Redevelopment of previously disturbed areas. • Create new GP for RZ enhancement activities. 			
12.Guidance Documents	<ul style="list-style-type: none"> • Concern expressed about whether use of guidance documents that are not referenced within the rules is appropriate (such as T&E lists, etc.) DEP’s policy on the use of guidance documents needs to be clarified. • Put list of critically dependant species in rule or point to document/manual. 	<ul style="list-style-type: none"> • Section 8 of the FHA Technical Manual is still missing. This section promised to deal with streambank restoration projects. Rules point to manual but manual does not currently offer guidance in this important area. American Water Resources Association provided help to NJDEP in past to develop missing section, and will be glad to help again. 	<ul style="list-style-type: none"> • All standards related to permit review should be in the rules, and not up to project manager’s interpretation. 	
13.Hardship Exceptions	<ul style="list-style-type: none"> • T&E standards should never be waived. Current allowance of this is inconsistent with other DEP rules. • We should clarify limits on what can be waived under a 		<ul style="list-style-type: none"> • Hardship waivers are subjective (see example in Urban areas). • Hardship waiver should be more favorable in PA1, PA2 and designated centers as well as for redevelopment projects that have 	<ul style="list-style-type: none"> • Hardship exceptions should be amended to incorporate specific standards or formulas to enable an applicant to prepare a cost benefit analysis or render a true demonstration of economic hardship.

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	<p>hardship exception.</p> <ul style="list-style-type: none"> • Add flexibility to hardship exception standards. 		<p>a net environmental benefit.</p> <ul style="list-style-type: none"> • In cases where a particular issue often pushes people into a hardship exception, it would be very helpful to include variance language right in rule text. For example, you must do X unless you can demonstrate Y& Z. 	
<p>14.Higher FHA Standards</p>	<ul style="list-style-type: none"> • Flood insurance rates go down when lowest floor is elevated 1' above flood elevation, so current requirement to elevate buildings above FEMA standard is very good. • Regulations need to take into account climate change and sea level rise. Higher standards are therefore necessary. 	<ul style="list-style-type: none"> • FEMA recommends adopting standards that exceed their minimum requirements. Raising buildings 1' above flood elevation lowers residential flood insurance rates an average of 39% so there is a significant benefit for residents, with little added construction costs in many cases. 	<ul style="list-style-type: none"> • Reexamine doubly-conservative requirement of 125% of the 100-year flow rate to establish flood hazard elevation and requiring buildings to be 1' above flood hazard elevation especially in urban areas. • FHA is inappropriately more stringent than FEMA. Need to apply common sense principles and return to Federal Standards where possible. • FEMA standards are not good enough. It is necessary to keep higher flood protection standards, since FEMA encourages this, especially in light of the widespread flooding NJ experiences. • Flooding is a real and present threat. 510 of 566 municipalities have had flood claims, costing approximately \$965 million, and flooding does not appear to be lessening. Higher standards are necessary to ensure public safety. 	<ul style="list-style-type: none"> • Increased flood protection under current rule is good. FEMA standards are not strict enough. • Do not roll back rules to the Federal minimum. Environmental community would strongly oppose this. • NJ is regional environmental leader and should appropriately pull people forward, not backward. • Rules should properly implement the police powers of the state to protect public safety. • There is ample economic support that stringent flood protection is a good thing to do. • Regulations need to take into account climate change and sea level rise. • Rules need to better regulate headwaters.

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			<ul style="list-style-type: none"> • FHA being more stringent than FEMA is very problematic within tidal areas. 	
<p>15. Hydraulics and Hydrology</p>		<ul style="list-style-type: none"> • Rules need to allow for engineering judgment, and should recognize sensitivity and limits inherent in models that are typically used. • We should not “split hairs” over minor deviations in calculations, given the inherent inaccuracies and assumptions related to H&H calculations. • Approximation method (Method 5) should incorporate new USGS regression equations as an alternate to table in Appendix 1. 	<ul style="list-style-type: none"> • Rules require floodways to be calculated using equal conveyance, for Methods 4 & 6, which limits development of land near streams, since it does not allow engineers to appropriately “push” floodway onto one side of a stream or another. • The rules require the use of State flood delineations where available. Many delineations are based on aerial mapping from 1962, and many changes have occurred since then. It does not seem prudent to rely on this old data, particularly if the applicant is voluntarily willing to use method 6. The rules should therefore allow the use of method 6 if the state study is over a certain number of years old. • The use of DEP delineations in some areas and FEMA maps in others areas seems inconsistent. • The state may consider moving to the FEMA maps for all flood hazard delineations in the next 5 or so years. What does that mean for the NJFHADF designation? • Acceptable flood study methodologies should be clearly 	

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
			<p>stated in the rules.</p> <ul style="list-style-type: none"> • Many agencies require the use of the DelMarVa unit hydrograph in determining peak flows for certain areas. DEP should specify where the use of this unit hydrograph is accepted and where it is not. 	
<p>16. Individual Permits</p>	<ul style="list-style-type: none"> • Clarify standards and exclusions for private residences that are not being constructed as part of a subdivision. • Establish standards for temporary road crossings and other projects. • Stop requiring bulkheads obtain PE certification. • Restructure section 11.14 to facilitate bank/channel restoration. • Dam construction is not regulated under 11.11, but what about Dam removal? • Explain that environmental report needs to include all impacts, such as under 11.14 not just Subchapter 10. 		<ul style="list-style-type: none"> • Most IPs should become GPs. All should have clear standards and process should follow structure of the rest of DEP. • People unfortunately think of an IP like a FWW IP. Need to correct this perception. 	<ul style="list-style-type: none"> • There should be threshold limits within IP categories rather than naming building types. For instance percentage of impervious cover and/or impact amount.
<p>17. Jurisdiction</p>			<ul style="list-style-type: none"> • Rewrite grandfathering provision so that anything approved locally before 11/5/07 is exempt from new rule standards adopted on that date. • Eliminate jurisdiction for waters with drainage areas of 	

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
			<p>less than 50 acres.</p> <ul style="list-style-type: none"> • Eliminate jurisdiction for any manmade water, especially for RZ. • Once FHA is legally filled DEP should no longer assert jurisdiction over filled area. This should include stormwater systems outside/above FHA. 	
<p>18. Maps and drawings</p>	<ul style="list-style-type: none"> • Revise mapping to take into account for climate change and sea level rise. • Automatically amend State flood studies if FEMA adopts higher flood elevation. State studies are decades old and often out of date. FEMA has the money to remap floodplains, and sometimes FEMA elevations exceed the State maps. • We should consider changing the datum for maps and drawings from 1929 NGVD to 1988 NAVD. 		<ul style="list-style-type: none"> • Revise mapping to take into account for climate change and sea level rise. • Flood mapping is old, out-of-date, and perhaps not as conservative as we may think. • The rules should address the use of NAVD '88. All current survey work is done on State Plane Coordinates with NAVD '88 as the vertical datum. Furthermore, FEMA and most counties use NAVD '88. 	<ul style="list-style-type: none"> • Revise mapping to take into account for climate change and sea level rise. • Applicants should be required to provide GIS shape files so interested parties can overlay the file on their own mapping. • There should be standards for tabular submissions, mapping submissions. • DEP needs to keep current with technology requirements. • Data miner is a difficult tool to use. Highlands interactive maps have the potential for review and access to data.
<p>19. Modifications</p>		<ul style="list-style-type: none"> • DEP should add a time frame for permit modifications as well as a standard way of processing. 	<ul style="list-style-type: none"> • Establish more detailed criteria as to when a permit modification is required so that plan revisions to areas outside of FHA jurisdiction do not require a revised permit. 	
<p>20. Net-Fill</p>	<ul style="list-style-type: none"> • Revisit exemption for 5 yds³ or less. This is perhaps too lenient. • Address problems associated 		<ul style="list-style-type: none"> • There needs to be some recognition of the size of a drainage basin when evaluating projects. A small amount of fill 	<ul style="list-style-type: none"> • Applicants should be required to restore/create new flood capacity.

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	<p>with 10-year flood net-fill issue. Perhaps require calculations for FHADF and 10-year flood rather than two separate slices of FHA.</p>		<p>will have minimal if any impact in a large watershed.</p> <ul style="list-style-type: none"> • Current requirement to balance fill in two slices (below the 10-year flood and above the 10-year flood) causes problems when entire site is below 10-year flood. • Reexamine 0% net fill requirement. Going back to 20% net fill may be more appropriate. • Requirement to calculate all net-fill projects using average-end method or grid method is costly, time-consuming, and less accurate than computer calculations. • Allow PE certification that project meets net-fill requirements. • DEP should use Civil 3D computer program to evaluate net-fill calculations, which would help the industry because they can send DEP the data. • Explain what is considered “free flow” in context of obstruction to flood flows and/or allowing access to flood storage compensation. For example, a pipe was unfairly not allowed as a connection between a site and a proposed flood storage compensation area. • Please clarify whether the filling of a man-made pond 	<ul style="list-style-type: none"> • We support the rules’ preservation of flood storage as well as the scheme for offsite compensation and the fact that the 0% overall fill limitations must be met for both the FHA flood and 10-year flood.

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			<p>within a FHA constitutes flood storage displacement.</p> <ul style="list-style-type: none"> • The concept of “free flow” into zero net fill compensation areas as stated in NJAC 7:13-10.4(q)3 and NJAC 7:13 10.4(r)5 should be further defined. For sites that are entirely below the floodplain, connecting compensation areas with a pipe that is beneath an area that will completely be overtopped should be considered “free flow”. Specifically, can a pipe be used to convey flow into and out of compensation areas? If so, how big should this pipe be? • With the addition of more complicated net fill calculations and the advancement of computer based software, computer generated net fill calculations should be acceptable. They can more accurately determine these calculations, especially for streams with varying topography and channel configurations, then traditional average end area methods. • Net fill regulations should not be imposed on sites that are required to be capped as part of a remedial action work plan. 	
21.PBR	<ul style="list-style-type: none"> • Identify projects with <i>de minimis</i> impacts that can be considered new PBRs. 	<ul style="list-style-type: none"> • Create additional PBR activities for agriculture, or if a minimal level of review is 	<ul style="list-style-type: none"> • PBRs should be expanded to any project regardless of size; should be based on 	<ul style="list-style-type: none"> • There should be threshold limits within PBR/GP and IP categories rather than naming

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	<ul style="list-style-type: none"> • Create PBR for forestry plans that are reviewed and approved within a forestry management plan. • Create PBR for wildlife enhancement plans reviewed and approved by other agencies. • Create PBR for livestock crossings reviewed and approved by other agencies. • Allow for PBR only if permeable materials are used instead of impervious when repaving is involved. • Create PBR for solar panels. • Clarify language for wind turbine permit-by-rule, so text matches rest of section. This permit-by-rule was added in 2009 and has some grammatical inconsistencies with the rest of N.J.A.C. 7:13-7.2. • For some permits-by-rule, specify that removal of trees greater than 5 dbh in a RZ is prohibited. Or possibly line this up with the FWW rule 7:7A-2.2(c)4, to say hand trimming of trees or other vegetation is acceptable provided the trimming does not alter the character of the RZ. • Encourage applicants to leave existing vegetation on the banks for stabilization and shading. 	<p>necessary, create a new category for agricultural PBR activities that require a 14 day notice to DEP. Place in this category a number of activities for which we will provide rule text suggestions.</p>	<p>environmental impact not stormwater management.</p> <ul style="list-style-type: none"> • Allow PBR for grading and fill in a tidal FHA when no building is to be constructed in the floodplain. • Fill in tidal FHA is not restricted and therefore does not require review of calculations, so it should be allowed under PBR at N.J.A.C. 7:13-7.2(a)2. • GPs should become PBRs. All should have clear standards and process should follow structure of the rest of DEP. • Expand PBR especially when trying to maintain structures. • Need a PBR for soil borings- The rules are silent on the taking of soil borings in the RZ. It should be clarified that soil borings may be for any purpose such as geotechnical borings, investigation for hazardous waste, etc., provided no trees are removed and temporarily disturbed vegetation is restored. • PBR for Signs and Light Poles for roadways, rail lines: For existing roadways, rail lines or airport runways the construction of a sign, including variable message signs and associated conduits and utility boxes or light pole that is not an open frame tower in the FHA for an 	<p>building types. For instance % impervious cover and impact amount.</p> <ul style="list-style-type: none"> • • The PBRs at N.J.A.C. 7:13-7.2(e) (for storage of material at homes, businesses, and hazardous and solid waste facilities) should require notice and prior approval from DEP.

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	<ul style="list-style-type: none"> • N.J.A.C. 7:13-7.2(b)14 Allow boathouses under this permit-by-rule. Boathouses are not addressed in the rules, but have no more impact to impounded waters than a dock. • While most permits-by-rule are structured to not be major developments, some do not specify. Cannot allow major development to occur under permit-by-rule. • Allow small expansions of existing development within 25' of channel under PBRs, such as adding a deck. • Allow removal of trees and woody shrubs under property maintenance PBR, provided such vegetation is a threat to existing and existing structure.) 		<p>existing roadway should be allowed under PBR. This would permit this activity which promotes roadway safety. We could also specifically disallow billboards. (Note: this is currently allowed for utility towers under PBR (c)1. The activity is allowed currently in a previously disturbed RZ under PBR (a)2.)</p> <ul style="list-style-type: none"> • Please clarify if a backstop is allowed in a floodway under the PBR at N.J.A.C. 7:13-7.2(b)10 for recreational structures. • PBR or GP should be created for electric utility infrastructure maintenance to cover: ROW vegetative maintenance; ROW utility infrastructure maintenance, repair and replacement activities; and Modifications to existing substations within the substation fence line. • The PBR for normal property maintenance needs to allow the use of herbicide as long as the EDC has a valid NJDEP Aquatic Use Permit. • Remedial activities are not addressed adequately in the regulations. Additional PBRs are warranted for remedial investigation activities. 	
22.PBR Notice	<ul style="list-style-type: none"> • Some PBRs require prior notice of at least 14 days. This 		<ul style="list-style-type: none"> • The regulations should specifically state that if there is 	<ul style="list-style-type: none"> • Some PBRs and GPs inappropriately do not require

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	<p>sets us up for failure - if a project needs notice, then it should be a GP.</p> <ul style="list-style-type: none"> • Scrap prior notice. When required, people expect something from us in writing. • PBRs should be reviewed by someone. This gives perception that someone is watching, so compliance is more likely. • Add language to PBR that states that activities do not exempt requirements of another regulation (i.e. FWW, CAFRA). • Allow for e-permitting. • Any notice should be the same for all PBRs. 		<p>no response from NJDEP within 14 days of notice, the activity may proceed.</p>	<p>public notice. How will interested parties or municipalities know whether something is in violation, or be able to make relevant comments to DEP, if they do not even know about the project?</p>
<p>23.Public Notice</p>	<ul style="list-style-type: none"> • We should require public notice for all GPs. Judge decided (and DAGs agreed) that applicants must provide notice to property owners within 200' for all wetlands permits. If we want to stay consistent with FWW rules, we need to require notice for FHA GPs. • Public notice for linear projects (such as roadways) is inconsistent between programs, and can add undue burden on applicants. • Unclear if newspaper notice can be used for new pavement and new pipeline. • Require notice for single 	<ul style="list-style-type: none"> • DEP should accommodate municipalities who want to see applications. • DEP should standardize the way that public notice is done. • Public Notice for linear projects: Notify press, municipal broadcast, public meetings, posting on agency web page. 	<ul style="list-style-type: none"> • Notices should be the same for all LUR approvals 	<ul style="list-style-type: none"> • Concerned about effective public review of applications and the ability of the public to read and understand the mapping. • Current public notice requires three copies to be sent to the municipal clerk, for distribution to other municipal offices. This is not effective. Notice should be made directly to environmental commission.

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	family homes if hardship is requested.			
24.Redevlopment	<ul style="list-style-type: none"> • Reduce jurisdiction in urban areas and make redevelopment easier. • Increase flexibility for commercial redevelopment. • Create new GP for Redevelopment of previously disturbed areas. • Address situations when people want to pipe (or open) a stream for redevelopment projects. 		<ul style="list-style-type: none"> • Need to recognize in the rule that redevelopment is important. DEP needs to encourage redevelopment projects. • Redevelopment projects should not be automatically required to be above the floodplain elevation. Rather the requirement should be to max extent practical. In urban areas entire blocks are below FHA elevation. • Hardship waiver should be more favorable in PA1, PA2 and designated centers as well as for redevelopment projects that have a net environmental benefit. • Need to keep redevelopment in mind, it is not practical to keep people out of a FHA. 	<ul style="list-style-type: none"> • Redevelopment needs to be taken into consideration, and encouraged where appropriate.
25.Riparian Zones	<ul style="list-style-type: none"> • Make it easier for stormwater restoration and stream bank restoration. • Make compensation a more viable option. • Toughen standards for development within 50' of stream. • Allow no disturbance within 50 feet of a trout production water. • We need to better protect headwater areas. 	<ul style="list-style-type: none"> • Livestock crossings should not be delayed because of tree removal in RZ. • Add special provisions for linear projects. • Temporary impacts should be restored in-kind, and not require 2:1 compensation. • Relax RZ requirements. • RZ disturbance limits are too small for roadways. Double or triple existing limits. 	<ul style="list-style-type: none"> • RZs have caused a lot of problems. • Rules should clarify that RZ does not apply along piped waters. • 150' RZ should be reduced to 50', since stormwater and water quality impacts are adequately addressed by N.J.A.C. 7:8. • Clarify that thresholds for various crossings in Table C should be on a per-crossing basis. 	<ul style="list-style-type: none"> • The establishment of RZ was very positive for NJ. • Need to find a way to get ecological protections in RZ to apply to headwaters. Remove 50-acre limit. • RZ should be bigger - 50' is too small. • Consider a defined "no build zone" in all areas throughout the state. At a minimum buffers should be 100'. There is scientific justification for this,

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	<ul style="list-style-type: none"> • Having a 150' RZ is scientifically defensible. • We should explore whether we can base 300' RZ coverage on something other than HUC-14 boundary. • RZ protects SOW, which is a good thing. • Consider ending RZ at ridge line. Unclear what benefit there is to protecting RZ in cases where land does not slope/drain toward stream. • Allow septic system installation. • Remove RZ along all man-made features. FWW rules do not apply transition area long these features, which can be filled under GP7, so why should FHA rules protect them. • Keep RZ along man-made features. RZ provides important WQ functions, temperature moderation, and habitat, just like naturally-occurring features. Just because FWW allows ditch filling doesn't mean FHA rules must do the same. • Clarify that swales are not regulated. • Relocate SWRPA requirements from the Stormwater Management rules into FHA rules and eliminate any conflicts. 	<ul style="list-style-type: none"> • Better accommodate safety improvements, like removing 3-4' strip of grass to install guardrails. • There is confusion about how to calculate riparian areas. This must be clarified. 	<ul style="list-style-type: none"> • RSIS roadway design requirements are based on need, not ownership. Eliminate distinction between public and private road crossings. • Reexamine vegetation disturbance limits for all activities, in order to provide flexibility. • Consider RZ averaging similar to transition areas. • Clarify that temporary disturbance should not count toward the disturbance threshold limit if vegetation is restored in-kind or better. • When previously disturbed areas need to be reconfigured for redevelopment, vegetation thresholds in Table C should be based on net vegetation loss not total disturbance. 2:1 compensation should only apply to removal of non-disturbed vegetation. • Eliminate language at N.J.A.C. 7:13-10.2(d)1 & 2 that require avoidance and minimization of RZ disturbance. • Eliminate subjective constraint of N.J.A.C. 7:13-10.2(q)3 to demonstrate no other feasible location for water dependant activities in tidal areas. • We support RZs, but categories of disturbance need to be clearer. 	<p>which also demonstrates that a fixed buffer will reduce flood depths.</p> <ul style="list-style-type: none"> • RZ widths of 50'/150'/300' makes sense and is appropriate. • Buffer width should be doubled - 300' should be 600'. • Should revert back to old standard, which said that a watercourse always took the classification of what it flowed into. For example, current rubric allows lesser protection upstream of C1 and trout waters. No scientific basis for this. • DEP should consider using the 75-foot wide RZ already established as being appropriate for these waters under the Water Quality Management Planning Rules. • The FHA rules recognize the importance of protecting stream corridors by designating them as "Riparian Zones" and greatly expanding their protection over the previous FHA rules.

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	<ul style="list-style-type: none"> • Create a matrix for RZ averaging. • Add flexibility for projects in previously disturbed areas. • Clarify that temporary disturbance to previously disturbed areas (lawn, meadows) does not count against overall RZ disturbance limits. • Clarify what can and cannot be built within 25' of channel. • Reconsider values in Table C. • Deal with setback on development within 25' of tidal waters where it conflicts with Coastal rules. • Allow flexibility for roadways. Perhaps remove distinction between public and private roadways, or at least amend definitions. • Allow stormwater discharges within 150' & 300' RZ provided water quality design storm is infiltrated outside the RZ where possible. • N.J.A.C. 7:13-10.2(j), (k) and (l): Clarify what "temporary disturbance" is in this context. • N.J.A.C. 7:13-10.2(m): Allow more disturbance for a private residence. • N.J.A.C. 7:13-10.2(n): RZ area allowed for residential addition 		<p>We now know what a reasonable area of disturbance is, and what the project categories should be.</p> <ul style="list-style-type: none"> • Previously disturbed areas should be defined and should be expanded to include pastures & agricultural fields. • Applicants should not be penalized for removing invasive vegetation even if that vegetation is trees. • Rules do not recognize degraded RZs. Need to be flexible when enforcing RZs. • Explain that piped streams do not have RZs. • Explain that RZ arcs at end of stream but not at pipe entrance. • Better define how to measure RZ when no top of bank or channel is discernible. • Question whether trout maintenance and T&E waters should be protected 1 mile upstream. • RZ and SWRPA are very confusing and should be reconciled. • Want more flexibility in developing within the outer 150 of a 300' SWRPA. • Some do not feel that DEP has scientific basis for requiring a 300' RZ. Need to reevaluate this 	

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	<p>is too small and/or inconsistently applied.</p>		<p>requirement, since science only seems to support for wildlife corridors.</p> <ul style="list-style-type: none"> • Table C values are way to low; need to increase amounts or be similar to FWW in allowing averaging. • Ridge lines need to be considered when determining width of RZ. • RZ should be tiered like FWW buffers. • Temporary disturbance: Where lawn/meadow/Ag is being temporarily disturbed and will be returned to same or better condition, it should be excluded from inclusion in the calculation of amount of disturbance allowed in Table C. • Reconstructed roadways: RZ limits for existing linear facilities should be increased for reconstructed roadways. The approaches for many of these roadways are not perpendicular to streams. The allowable limits for RZ disturbance without compensation generally assume that the approach is perpendicular. • Public Roads and sidewalks: It should be clarified, as is practice, that sidewalks are included in the RZ allowance for roadway construction or reconstruction. 	

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			<ul style="list-style-type: none"> • Commercial driveways: should be a two classification system: roadways (public and private) and low density residential driveways. • Commercial driveways should have the same disturbance limits as roadways since most municipalities want the width for emergency access and the barrier free subcode requires the sidewalk. 20' (2'-10' graded areas) + 10' (one s/w with offset) + 40' (2-20' one-way each cartways per fire code) + 10' (median island)= 80'. • Maintenance Activities: should be the same as FWW rules to the extent possible. • Trails and boardwalks: Public trails and boardwalks should be added to Table C. Either an allowance for vegetation clearing should be provided or it could be indicated that if the trail is not overlain by impervious cover, no limitation on vegetation clearing would required. This is consistent with the Stormwater Management rules which exempt trails that are not impervious. • Subdivisions: Please clarify this latter requirement N.J.A.C. 7:13-10.2(g) which states under item 4 "the roadway accesses a lot that did not receive preliminary or final subdivision 	

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			<p>approval after October 2, 2006.</p> <ul style="list-style-type: none"> • Lawns: rules provide flexibility for work in “lawns.” This be expanded to include mowed fields and pastures as well as any vegetated areas that do not contain native woody vegetation • RZ disturbance for remediation of contaminated soils or sediments and landfill closure should be allowed without a limit on the disturbance area. This could be considered temporary disturbance and restoration of vegetation be required, similar to the FWW GPs 4 and 5. • The rules focus on development and do not address the need to impact riparian zones in order to remediate or redevelop a site. • Many projects require environmental remediation within the riparian zone, but the rules require 2:1 mitigation, which can create a hardship. Since the remedial activities are providing for better water quality than exists currently, 1:1 mitigation should be allowed. • Remove RZ protection along manmade features. Water quality and other benefits are not well supported along manmade features, such as roadside 	

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			<p>ditches.</p> <ul style="list-style-type: none"> • Expansion into RZ for existing developments should be more flexible. For example, proposed site development outside RZ required changes to existing stormwater basin inside the RZ. This caused a lot of problems, but there was not alternative, since basin could not be moved. • The limits on RZ disturbance in Table C present a hardship on a property owner that occupied the land prior to the rules going into effect. For example, , an existing home on a 5-acre lot along a C1 may be entirely encompassed by a 300-foot RZ. The rules would not permit the owner to build a tennis court (7,200 S.F.) even if it is proposed in an area of maintained lawn since the disturbance limit of 6,000 S.F. would be exceeded. • No recognition is given to the size of the parcel when work is being done within a RZ. For example, a single-family home on a 1-acre lot is permitted 2,000 S.F. of disturbance within a 300-foot RZ to construct a 1,200 S.F. three-car detached garage. If the property was 15 acres, and the owner wanted two separate three-car garages, are they still limited to the same 2,000 S.F. of disturbance? What if they 	

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			<p>wanted one large six-car garage?</p> <ul style="list-style-type: none"> • Can some additional disturbance be permitted based on the size and existing use of the property? • Unlike FWW transition areas, RZs cross over paved roads, existing driveways, buildings, patios, structures, and pools. This creates an issue when a stream designated C-1 traverses an existing development. For example, I've seen situations where the 300-foot RZ is associated with a C-1 waterway that is located two houses down the street and across a road. • In ground swimming pools are permitted at 7.2(b)12. There is no guidance as to the placement of impervious patios around pools. Please provide guidance on the placement of decks and retaining walls within a RZ or FHA. • The rules make developing flag lots very difficult. This has been a problem development is allowed in a 300-foot RZ (by permit), but not in the 300-foot SWRPA, namely the inner 150 feet. 	
<p>26.RZ Compensation</p>	<ul style="list-style-type: none"> • Current rule requirements for compensation are too difficult to do in many cases. • DEP should add a hierarchy of 	<ul style="list-style-type: none"> • Allow for RZ compensation Banking. • Extremely difficult providing RZ compensation for roadway 	<ul style="list-style-type: none"> • Allow for RZ compensation banking. • There is currently no mechanism for generating RZ 	

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	<p>compensation methods so that people have more options.</p> <ul style="list-style-type: none"> • Hardship exception process should recognize that compensation may sometimes not be possible. • Include preservation and enhancement as viable methods. • Compensation should be 1:1 for site remediation and landfill closures. • Eliminate compensation for projects under the “other” category at 10.2(r). • Need to amend the RZ mitigation requirements to be consistent with what was proposed for new technical manual. • Allow RZ compensation plans to be submitted after permit approval. Remove requirement that plan is needed for administratively complete application, and simply require that plan must be approved prior to construction. This will match what FWW says for mitigation. • Clarify how to calculate RZ impacts, such as if you meet criteria under one category and then add an “other” do you need to mitigate for all impacts? 	<p>improvements.</p> <ul style="list-style-type: none"> • The costs to the State are significant to locate suitable locations to provide RZ compensation for roadway improvements. • Would like to see a monetary contribution to DEP (maybe Green Acres) instead of wasting time & money searching for RZ compensation areas, only to conclude that we can’t find a suitable property. • Set a reasonable limit on scope for site searches for RZ compensation. • Make RZ compensation more predictable. • Need guidance as to exactly what is required for mitigation. • Pull back from strict requirements of 2:1 in all cases. Perhaps allow meadow or areas with invasive species to be mitigated at a 1:1 ratio. • For phased projects, once you exceed limits, going forward always requires mitigation. • Clarify that mitigation is allowed on both private and public property. Green Acres must provide approval on their property. 	<p>credits.</p> <ul style="list-style-type: none"> • Regulations should spell out what you can and cannot do on public property. • Would support a riparian compensation fund. • 2:1 compensation should be per tree not per lost area. • Rules should be clarified. They should accommodate situations where no sites are available within the RZ of the stream traversed, to allow compensation on other streams in the HUC 14, etc., similar to the wetland mitigation rules. • Allowance and ratios for RZ preservation (for example 8:1) should be added to satisfy compensation requirements should be stated in the rules. • Compensation requirement for permanent development of a mowed RZ should be clarified. For example, if we plant a forested RZ, is 1:1 ratio acceptable? • Perhaps planting of trees in a paved RZ should count as 2:1 compensation as you are revegetating a previously un-vegetated area, then also planting it with woody vegetation. • Specifications for planting should be provided, such as tree 	

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			<p>replacement ratios, spacing, sizes, requirements for shrubs, etc.</p> <ul style="list-style-type: none"> • It should be clarified that RZ compensation on public lands and public parkland is allowed. This is potentially a great benefit to park and conservation land owners. • RZ disturbance falling under an IP at 10.2(r) requires 2:1 compensation. But if that same disturbance is proposed under the PBR at 7.2(a)2, it does not require compensation. This is a burdensome discrepancy. • A riparian zone mitigation hierarchy should be provided in the regulations. A monetary contribution to a NJDEP fund that reestablished riparian zones should be an option for mitigation. 	
<p>27.Stakeholder process</p>			<ul style="list-style-type: none"> • Good that DEP split the stakeholder groups. It facilitated free conversation. 	<ul style="list-style-type: none"> • Interest groups should not have been separated during stakeholder process. This reduced the integrity of the process. In fact, these meetings are not stakeholder meetings because of this separation. • We want fair, honest, open transparent communication, and should know what other stakeholders are saying so we can respond with facts. • Would like a written summary

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				of each stakeholder meeting.
28.Stormwater Management	<ul style="list-style-type: none"> • Stop doing stormwater management reviews under this rule. Let locals do it, since they are mandated to do it anyway. That way DEP staff can concentrate on issues that we alone are mandated to do, such as net-fill, hydraulic capacity, RZ reviews, etc. • BMP's regarding stormwater needs to be discussed with a larger group of stakeholders. • Applicants should retrofit detention basins to get some recharge, such as decompacting bottoms, eliminating low flow channels, etc. • Applicants should better maintain rip-rap fans on headwalls. • Applicants should add recharge strips along subdivision roadways and parking lots. • Applicants should retrofit catch basins to collect floatables. 	<ul style="list-style-type: none"> • DEP should not be requiring or using paper soil surveys for C1 determination or other purposes. They are problematic, and staff should be using web survey, which reflects best/current data. 	<ul style="list-style-type: none"> • We are experiencing different outcomes from different reviews at local and state levels. Applicants are caught in odd situations. Rules give municipal officials power, but State is still doing the review. • Town has the obligation to review stormwater, so why is DEP reviewing again? • Towns are weak on non-structural measures and often wait for State to review. • If you have a township approval of a stormwater plan, you should not need State approval. • SW/FHA need better coordination. • Regarding C1 buffers, DEP should regulate what is in existence rather than what is mapped. • Pilot stormwater program was a great idea. • SW reviews under FWW programs are suffering, because DEP staff must prioritize 90-day clock projects. • It is difficult to accommodate stormwater management in linear projects such as highways due to the lack of available land. In lieu of issuing waivers for 	<ul style="list-style-type: none"> • Pilot stormwater program is a bad idea.

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
			<p>such projects, DEP should consider regional stormwater management facilities or banking which might include land preservation and tree planting to provide groundwater recharge offsets.</p> <ul style="list-style-type: none"> • There is confusion differentiating between the 300-foot RZ and 300-foot SWRPA. All streams regulated under 7:13 have a RZ, but the SWRPA only comes into play if the project is a major development. The problem is that permits are available to do work within the RZ, but if the SWRPA buffer applies to a project, the property may become completely useless because the stormwater rules prohibit encroachment into the SWRPA. This discrepancy needs to be resolved. • Please clarify how DEP regulates SWRPA disturbance in cases where no DEP permit is required. • Rules should simply require compliance with N.J.A.C. 2:90 and 7.8, rather than DEP staff reviewing offsite stability and stormwater issues. Alternately, language should be added, which clarifies that a mere increase in total flow volume is not a violation so long as the flow rate is controlled pursuant to the 	

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			applicable regulations.	
29.Stormwater Discharges	<ul style="list-style-type: none"> • Allow discharges within 150' & 300' RZ in some cases. 	<ul style="list-style-type: none"> • Allow discharges in 150' & 300' RZ. The current restrictions are particularly problematic along C1 waters. 	<ul style="list-style-type: none"> • Allow discharges in 150' & 300' RZ. You should be able to pipe runoff through RZ then discharge/connect directly to the water or an existing pipe. Existing standards in 150' & 300' RZs are too tough to meet. • Offsite impact standards at 9.2(f) & 11.1(f) should be amended to be more consistent with Common Law with regard to stormwater discharges near property boundaries. • The construction of stormwater outfalls has minimal impact and should be permitted within 150' RZ. Currently projects face extreme engineering and financial challenges because DEP policy directly contradicts SCD, which requires an applicant to bring the outfall down to the lowest stabilized point onsite. 	
30.Stream Cleaning	<ul style="list-style-type: none"> • Passaic River Task Force report recommends more flexibility for municipal stream cleaning projects. 	<ul style="list-style-type: none"> • GP 1 (stream cleaning): Local and County governments qualify for this GP, but the State must get an IP, which is unfair. For de-silting projects to always need an IP is very costly. 		<ul style="list-style-type: none"> • Stream cleaning should really be called "stream reaming" because it does major damage to the stream. • There is a misunderstanding that debris in streams is problematic. Accumulation of large woody debris is sometimes a flood problem, but detritus is necessary for stream health, fish habitat, etc.

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
				<ul style="list-style-type: none"> • Stream cleaning activities need clear and defined limits, and should be designed by an expert who understands stream systems. • People are being allowed to do awful things to streams under emergency permits. This practice should stop.
31. T&E/Critically Dependant Species	<ul style="list-style-type: none"> • Clearly define “critically dependant” and “water dependant” as used in the rules. • Additional RZ protection 1 mile upstream of T&E species is scientifically based. • Additional RZ protection 1 mile upstream of T&E species is <u>not</u> scientifically based. • Make T&E language similar to FWW rules. 		<ul style="list-style-type: none"> • DEP should consider mandatory release of T&E information to consultants. • Many of the critical in-stream, T&E species are not included in the Landscape Project/iMap. • The NHP database only reports sightings within a 1-mile radius (up and down) but additional RZ protection only applies if species is located downstream. So mapping is not useful. • DEP requires NHP letter but it does not add value to the process, therefore it is a waste of time and is often confusing to applicants. • Applicants have no way to know where the protected species is located, and therefore cannot plan projects. • 150’ RZ should be reduced to 50’ for areas supporting T&E species. • If RZ is not reduced, then list of T&E species which are critically dependant on regulated 	

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			<p>water needs to be scientifically reviewed.</p> <ul style="list-style-type: none"> • Plants are not mapped, so it is difficult for applicants to know if they have a rare or plant on their property. • We question the science of protection 1 mile upstream of T&E habitat. It seems like a buffer on a buffer, since landscape is a presumed habitat. • Plants listed need to be reviewed. Some listed plants are not critically water dependant. • Reevaluate how DEP regulates T&E species. • There are no threatened plants – only rare (and endangered). • Presence of only one sighting of a T&E species should not make a project redesign. • Need clarification on how DEP will make its RZ determination concerning endangered plans and whether it would be relying upon the information from the NHP. • DEP should re-examine its list of T&E species critically dependent on regulated waters and retain those endangered plants that are truly dependent on the specific waterway for its survival and expunge wetland associated and upland associated plants from the list. 	

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<p>32. Tidal Areas</p>	<ul style="list-style-type: none"> • Stop applying FHA rules in tidal areas. This has caused a lot of problems for developers and staff, and has added little or no value to projects. • It is important that we continue regulating tidal areas. Prior to 2007, residents in tidal areas did not receive adequate flood protection, as evidenced by immense flood damages along the coast over the years. Furthermore, no RZ protections existed along tidal raters under old rules, and there was no way to prevent obstructions within tidal channels. • Unclear why it is hardship for people to raise floors on new buildings 1' above FEMA requirement. Cost of elevating building is usually recouped in a few years due to lower flood insurance costs. • DEP should be more flexible allowing flood proofing to occur (rather than elevating buildings) in some cases. • DEP should eliminate any conflicts with the coastal rules in tidal FHAs, such as how to deal with floodway fill for docks, etc. • Deal with low floor/parking garage issue in urban tidal areas. • Increase flexibility for commercial redevelopment in 		<ul style="list-style-type: none"> • Eliminate jurisdiction along Hudson waterfront or allow for development that does not comply with elevation standards when surrounding development is already below flood elevation. • The rules do not adequately address certain issues along tidal waters. For example, the rules indicate you cannot place structures in the floodway, which has caused problems constructing bulkheads for the Hudson River Waterfront Walkway. A hardship exception should not be required for such an activity, since it clearly will not exacerbate flooding. • The requirement that building floors be constructed 1' above FEMA in tidal areas is a significant problem. Newer buildings and older buildings do not match up, and it causes problems with streetscapes, costs and logistics. 	<ul style="list-style-type: none"> • It is a positive for the environment that the FHA rules now coordinate with the Coastal Program. • It is great that the rules now cover tidal areas. This was a glaring omission in the previous rules. • DEP made significant progress when previously exempted tidal areas are now included within the FHA Rules. This significantly reduces public costs, and provides uniform flood protection Statewide. • The rules appropriately require certain Coastal GPs to reference and require compliance with FHA and RZ standards to ensure consistency in the various regulatory programs. • Rules need to take into account climate change and sea level rise. This is particularly important within tidal waters and coast lines where critical infrastructure is in place. DEP needs to focus on how it offer s protection and adapts to changing storm surges. • DEP's New Jersey Coastal Management Program Assessment and Enhancement Strategy characterized the risk to New Jersey citizens and properties from storm surges, flooding, shoreline erosion and

TOPIC	NJDEP	INTERAGENCY	DEVELOPMENT	ENVIRONMENTAL
	tidal FHAs			<p>sea level rise as being "high". The document also predicted that these threats will increase as a result of increases in sea level rise. Finally, the FHA rules are identified in the Coastal Hazards section of the Assessment as one of the means by which DEP intends to meet Section 309 Programmatic Objectives, and should therefore not be rolled back or reduced.</p> <ul style="list-style-type: none"> • The current FHA rules address previous inconsistencies with the Coastal Permitting Program and ensure that the more comprehensive FHA standards are applied to flood plains Statewide, regardless of their tidal or non-tidal nature. This better reflects the intent of the Flood Hazard Area Control Act, which contains no exemption for tidal waters.
33. Timing Restrictions	<ul style="list-style-type: none"> • Warm water timing restrictions differ from FWW. North of Interstate 195, warmwater fish timing restriction should be May 1 through July 31). • We need one source of timing restrictions that all rules point to, so that there are no conflicts. • Perhaps the type of activity should determine how strict timing restriction is. 		<ul style="list-style-type: none"> • DEP should simplify the application of timing restrictions to only jurisdictional areas such as wetlands, wetlands transition areas, RZs, and FHA areas. • Within jurisdictional areas, timing restrictions should be replaced by “appropriate vegetation management techniques” for T/E habitat. This should include mechanized mowing, spot treatment or basal application of herbicide, hand 	

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			cutting only (“lop and drop”).	
34. Utilities	<ul style="list-style-type: none"> • Vegetative maintenance in existing rights-of-way could be considered normal property maintenance under a PBR. • Rules should allow certain activities, such as applying herbicide that is specifically approved by DEP for use along a waterway. (We should reach out to the pesticide folks to see what they think about wording.) 		<ul style="list-style-type: none"> • Allow herbicide treatments within existing ROWs. • Disturbance limits in Table C are way too low for electric companies to meet other agency requirements (BPU, FERC, etc.) • Create GP to allow utilities to upgrade system maintenance (such as clearing trees in ROW) as a result of new State/Federal standards. 	
35. Verifications	<ul style="list-style-type: none"> • Allow verifications of just the FHA or the RZ, and not always require both. 	<ul style="list-style-type: none"> • DEP should not require verification for bridges/culverts • Approximation method should incorporate new USGS regression equations as an alternate to table in Appendix 1. 	<ul style="list-style-type: none"> • DEP should allow verification of RZ without FHA. • There is some confusion when you need a verification and when you don’t, which should be clarified. 	