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RULE ADOPTIONS

Reporter

58 N.J.R. 2157(b)

**NJ - New Jersey Register PAW 2026 SEPTEMBER SEPTEMBER 21, 2026 RULE
ADOPTIONS ENVIRONMENTAL PROTECTION -- WATERSHED AND LAND MANAGEMENT**

Agency

ENVIRONMENTAL PROTECTION > WATERSHED AND LAND MANAGEMENT

Administrative Code Citation

Adopted Amendments: N.J.A.C. 7:7-26.1; 7:7A-19.1; 7:8-1.6; and 7:13-2.1 and 21.1

Text

Coastal Zone Management Rules

Freshwater Wetlands Protection Act Rules

Stormwater Management Rules

Flood Hazard Area Control Act Rules

New Jersey's Protecting Against Climate Threats Resilient Environment and Landscapes Rules

Proposed: June 1, 2026, at 58 N.J.R. 1581(a).

Adopted: August 27, 2026, by Josph J. Seebode, Acting Commissioner, Department of Environmental Protection.

Filed: August 27, 2026, as R.2026 d.107, **without change**.

Authority:

As to N.J.A.C. 7:7: N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:1D-9 et seq., 13:1D-29 et seq., 13:9A-1 et seq., 13:19-1 et seq., 23:2A-1 et seq., and 58:10A-1 et seq.;

As to N.J.A.C. 7:7A: N.J.S.A. 13:9B-1 et seq., 23:2A-1 et seq., and 58:10A-1 et seq.;

As to N.J.A.C. 7:8: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., 13:19-1 et seq., 23:2A-1 et seq., 40:55D-93 through 99, 58:1A-1 et seq., 58:4-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A50 et seq.; and

As to N.J.A.C. 7:13: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 23:2A-1 et seq., 58:1A-1 et seq., 58:10A et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

DEP Docket Number: 02-26-05.

Effective Date: September 21, 2026.

Expiration Dates: July 8, 2027, N.J.A.C. 7:7;

April 12, 2029, N.J.A.C. 7:7A;

May 20, 2028, N.J.A.C. 7:8; and

July 8, 2028, N.J.A.C. 7:13.

The Department of Environmental Protection ("Department," "NJDEP," or "DEP") is adopting amendments to the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7, the Freshwater Wetlands Protection Act (FWPA) Rules, N.J.A.C. 7:7A, the rules governing Stormwater Management (SWM), N.J.A.C. 7:8, and the Flood Hazard Area Control Act (FHACA) Rules, N.J.A.C. 7:13, to extend the legacy period by an additional year, until July 20, 2027, to provide the Department with the opportunity to evaluate the Resilient Environment and Landscape (REAL) rules to increase efficiency, consistency, and accountability in its permitting processes, consistent with directives of Governor Sherrill's Executive Order No. 5 (2026), while still serving the rules' critical goals.

Summary of Hearing Officer's Recommendations and Agency Responses: The Department held a public hearing, through video conferencing, on the rulemaking on July 7, 2026, which began at 6:00 P.M. The Department received 28 public comments at the virtual hearing, which are included in the comments and responses below. Jennifer Moriarty, Assistant Commissioner for Watershed and Land Management, served as the hearing officer for the public hearing. After reviewing the comments received, the hearing officer recommended that the Department adopt the proposed amendments. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
Attn: Docket No. 02-26-05
[page=2158] 401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

This adoption document may be viewed or downloaded from the Department's website at:
<https://dep.nj.gov/rules/notice-of-rule-adoptions/>.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the June 1, 2026 notice of proposal through July 31, 2026. All comments received and the Department's responses to them are summarized below. The following persons or groups submitted timely written and/or oral comments on this rulemaking:

1. An identical letter was submitted by six individuals. The Department has designated this letter as Commenter 1. Where individuals added comments in addition to those appearing on the form letter, their name is listed separately in the commenter list.

1.1 Noel Simon
1.2 Sandra Lubrano
1.5 Jae Prowse

1.3 Karen O'Hara
1.4 Kelly Curran
1.6 Sara Soens

2. Steven Weinberg
3. Christopher Crane--Dynamic Engineering Consultants, P.C.
4. Daniel Kennedy--Commercial Real Estate Development Association
5. Matthew Halpin--New Jersey Society of Municipal Engineers
6. Sheila Baker Gujral
7. Mara Tippet--Raritan Headwaters Association
8. Liz Thompson--New Jersey Farm Bureau
9. Kyle England--Utility and Transportation Contractors Association of NJ
10. Peter Kasabach--New Jersey Future
11. William Merunka
12. Michael Meyer
13. Stan Greberis
14. Ronn Rotonda
15. Peter Reilly
16. Alicia Herzog
17. Judith Funari
18. John Gallagher
19. Robert Dickson
20. Dawn M
21. Peter Hartney--Borough of Surf City
22. Joseph Hetzel--NoToGCL
23. Jonathan McWilliams
24. Steven Weinberg
25. Nandini Checko
26. Nancy Dhulipala
27. Carmen Amato, Gregory Myhre, Brian Rumpf-9th District Legislative Office
28. Joseph Mancini--Long Beach Township
29. Glen Van Olden--New Jersey Farm Bureau
30. Seb Alex
31. Joseph Hetzel
32. Bill Wolfe
33. Andrew Feranda
34. Erin Gomez--New Jersey Environmental Lobby
35. Molly Riley--New Jersey Future
36. Karen--Lyn Gregory

37. Sharon Stoneback
38. Glenn Schifferdecker
39. Robin Suydam
40. Ellen Pedersen
41. Jeanette Bergeron
42. Michael Klein--Pinelands Alliance
43. Jennifer Hickey
44. Daniel E. Cohen--Municipality of Princeton
45. Jennifer Coffey--ANJEC
46. Danielle McCulloch-American Littoral Society
47. Mark Asher--Asher, Son, White and Partners
48. Michael Pisauro--Watershed Institute
49. Allison McLeod--New Jersey League of Conservation Voters
50. Kyle Ominski--Long Beach Township
51. Anjuli Ramos-Busot--New Jersey Sierra Club
52. Cynthia Korman
53. Louis Baldanza--New Jersey Builders Association
54. Eleanor Gruber--League of Women Voters of New Jersey Natural Resources Committee
55. Stanislav Jaracz--Franklin Township Environmental Commission
56. Horatio (Ray) Nichols
57. Jennifer Duckworth
58. Joel Viereck--Viereck Farms LLC
59. Matt Polsky
60. Raymond Cantor-New Jersey Business and Industry Association
61. Jeffery Lamborn
62. Diane Jansen
63. Cheryl Dzubak
64. Mary Schmidt
65. Elizabeth Hinckley
66. Jane Conrad
67. Allison Rufe Burkard--OSK Design Partners
68. Devyani Guha
69. Ben Vitale
70. Herbert Lazar
71. Geraldine Sybesma
72. Michael Staff
73. Michael Egenton--New Jersey State Chamber of Commerce

74. Carly Eidman
75. Dennis Hart--Chemistry Council of New Jersey
76. Clifford Wymbbs
77. Andrew Stockton--Eastern Civil Engineering, LLC
78. Kate Gibbs--Engineers Labor Employer Cooperative 825
79. Jessika Sherman--New Jersey Future
80. Michele Langa--Hackensack Riverkeeper & NY/NJ Baykeeper
81. Oren Rabinovich
82. Melissa Danko--Marine Trades Association of NJ
83. Grant Lucking--New Jersey Builders Association
84. Nicholas Kikis--New Jersey Apartment Association
85. Laurie Howard--Passaic River Coalition
86. Rachael Davis--Waterspirit
87. Karen Strickland
88. Doug O'Malley--Environment New Jersey

A summary of the comments timely submitted, and the Department's responses follow. After each comment, the number(s) in parentheses identifies the respective commenter(s) listed above.

Beyond the Scope of the Rulemaking

1. COMMENT: The commenter states that they registered for the NJPACT REAL virtual public hearing on September 3, 2025, but received no confirmation and, therefore, was unable to attend. The commenter asks if this will happen again for the July 7, 2026 virtual public hearing. (12)

RESPONSE: This comment is beyond the scope of this rulemaking. While the Department believes all registrants received confirmation, any member of the public would have been able to attend, even if they did not pre-register.

2. COMMENT: The commenter states that they provided comments through email on November 1, 2024, and received no acknowledgement of receipt or acknowledgement of their comments being addressed, despite the claim that the Department reads and responds to every comment received. (12)

RESPONSE: This comment is beyond the scope of this rulemaking. The Department received comments from "Michael Meyer," designated as Commenter 139 in the New Jersey's Protecting Against Climate Threats (NJPACT) Resilient Environment and Landscape (REAL) rules adoption, and provided responses to all comments. See 58 N.J.R. 259, 268, 269, and 307.

3. COMMENT: If an extension proceeds, it should be narrow, documented, and conditioned on the following: exclude projects in critical source-water areas, Category One watersheds, wellhead-protection areas, [page=2159] and Highlands preservation and planning areas; keep the redevelopment, water-quality, volume-reduction, and groundwater recharge standards in effect regardless of any extension applied to other provisions; require applicants to show substantial, site-specific pre-adoption design investment, rather than a placeholder filing; require any project materially modified after receiving legacy status to comply with current standards; and publicly report the number, location, and cumulative disturbed and impervious acreage of projects that qualify, so the actual scope of the extension is known, rather than assumed. (7)

4. COMMENT: The NJPACT REAL notice of substantial change lowered the revised building height from five feet to four feet without statistical data to support the reduction, and further, both the original and revised projections were highly unlikely under the most rudimentary statistical analysis. Accepting the Rutgers University Science and Technical Advisory Panel (STAP) Report finding that sea level rise in New Jersey is double the global rate and projecting out 80 years results in sea level rise of 10 inches. Why require buildings to elevate five feet, which is six times this amount? (12)

5. COMMENT: The climate-adjusted flood elevation's four-foot addition to FEMA's base flood elevation reflects the Department's own narrowing of the original proposal--reducing the projected sea-level rise

from roughly 5.1 feet to approximately 4.4 feet after reviewing updated climate modeling. The Department should retain the intermediate emissions scenario as the basis for the climate-adjusted flood elevation and should not further weaken this methodology. The United States is not on track to lower emissions, and in fact, is trending in the other direction. (49)

6. COMMENT: Was the supporting statistical analysis for NJPACT REAL reviewed by three independent unaffiliated experts in the field? If yes, where are their unredacted findings published? (12)

7. COMMENT: On July 29, 2025, the U.S. Environmental Protection Agency (EPA) repealed the endangerment finding, which had found there was a connection between individual motor vehicle emissions and changes in the climate. Please address how this impacts the basis of the NJPACT REAL rules. (12)

8. COMMENT: Will coastal municipalities revise/increase their maximum building heights to accommodate the new rules? If yes, will they revise building codes to reflect changed height-to-footprint ratios, structural slenderness ratios, susceptibility to hurricane force winds, etc.? (12)

9. COMMENT: Does NJPACT REAL present a design challenge in Avalon, because longer staircases will impinge upon permissible building depths for standard sized lots? (12)

10. COMMENT: Does REAL create an increased hardship on coastal communities, given that the elderly population is demographically higher than other areas? (12)

11. COMMENT: The legacy period requires a completed application, demonstration of a compelling public need, and "'hardship' will only be granted if public safety is not jeopardized." Regarding the hardship exclusion for low-income housing, why would low-income housing not be subject to the same flooding projections as other housing? Is NJPACT REAL protecting the environment but not citizens' low-income housing? (12)

12. COMMENT: The Department should take an incremental approach. (12 and 77)

13. COMMENT: The current median length for a homeowner to stay in their home is less than 12 years, so the rules could operate on the same time frame. This would encourage home improvement and continue to build our economy and infrastructure. (12)

14. COMMENT: The rules discourage investment because property improvements are assessed with a cumulative 10-year look-back and people will not want to reach the 50 percent valuation threshold that would make their homes subject to the new rules. Why do the improvements include end-of-useful-life structural features such as a roof? (12)

15. COMMENT: The projection is for 75 years. Would it be prudent to also project improvements to environmental stewardship, consider the increasing worldwide focus on climate change/global warming, increasing improvements, such as the increasing number of electric, hybrid, and alternate-fueled vehicles, etc.? REAL's assumption is that in 75 years, carbon emissions will remain constant. (12)

16. COMMENT: Are other coastal states adopting similar building standards? Are the REAL rules consistent with findings from other countries? The New Jersey sea level rise data was interpolated, not actual data, whereas actual data is used internationally. (12)

17. COMMENT: The Department must explicitly and publicly take regulatory action to respond to President Trump's EPA regulatory rollbacks and protect and strengthen New Jersey's regulatory framework. It must amend its current rules to require consideration and mitigation of climate risks associated with hazardous substances present at industrial facilities that are vulnerable to extreme weather events. (32)

18. COMMENT: How will New Jersey address our disappearing aquifers? (68)

19. COMMENT: The commenter states that, as a waterfowl hunter, they are deeply concerned if these regulations are adopted. The cedar trees are dying at the edge of the estuaries; we have to do something. (14)

20. COMMENT: As climate change super charges New Jersey's storms, prudent municipalities build recurring emergency expenses into their budget, but that policy requires grappling with budget and levy caps. As funding emergencies are outside of the current year's cap, local governments have a perverse incentive to use emergency appropriations regularly. (42)

21. COMMENT: The Department should designate a separate legacy trigger for publicly funded projects: grant award date or design contract execution, as so many often are grant funded with specific timelines. Also, include reviews required by other agencies. (5)

22. COMMENT: The commenters are concerned about generational and systemic changes to our land, our natural resources, and our wildlife habitat, as they have seen in housing developments and the loss of "protected" wetlands near Newark Airport, similar to what is now proposed at Teterboro Airport. Once wetlands are filled, they are gone forever--along with the flood storage capacity, ecological function, and public safety benefits they provide. (26 and 40)

23. COMMENT: The Department should promulgate a permit-by-rule or general permit-by-certification pursuant to N.J.A.C. 7:13-6.3, specifically for the replacement of existing, distressed residential septic system disposal beds. The individual floodplain permit required to construct a bed above grade demands time, data, and professional resources that drive compliance costs beyond homeowner benefit. This can result in the homeowner electing to repair the disposal bed function while the daily discharge of untreated effluent to groundwater continues. The cost of a floodplain hardship waiver could be easily reduced to a stated condition by deploying best practical technology. (38)

24. COMMENT: The commenters state that they support the Department's goal of resiliency and reducing flooding in the State. The commenters state that they don't contest that climate change is real and happening now. However, the REAL rules go beyond their purpose and have fundamental problems. The Department's science is outdated, incorrectly applied, and the rules would impede permitting efficiency and harm affordable housing. The Department should restart the REAL rules and holistically rework them. (60 and 78)

25. COMMENT: Reflect the diversity of New Jersey's communities by addressing regulations for "coastal" and "redevelopment" communities differently, rather than the previous one-size-fits-all approach. (78)

26. COMMENT: Many of the longstanding barriers to affordable housing production extend beyond the Department's regulatory authority and cannot, and should not, be addressed by weakening resilience standards. (35)

27. COMMENT: The Department should eliminate the affordable housing exemption within the rules. Low- and moderate-income families should not be put in harm's way from the sea level rise that we know is coming in the next few decades, and from the storm surge that can arrive tomorrow. Low-income residents are also significantly more likely to be physically disabled, which puts them at further risk in evacuating from harmful floods. (41 and 49)

28. COMMENT: Implementation of the REAL rules should be coordinated with the State's broader housing agenda, including zoning reform, implementation of Fair Share Housing obligations and the State Development and Redevelopment Plan, and continued investment in the Affordable Housing Trust Fund. Delaying emissions reductions have [page=2160] made addressing the impacts of climate change more difficult and more expensive over time. While New Jersey cannot determine the trajectory of global greenhouse gas emissions on its own, we can ensure that the homes, businesses, and infrastructure we build today are designed to withstand the conditions communities are already experiencing and prepared for even greater future risks. (35 and 79)

29. COMMENT: The Department should use the extended legacy period to undertake a substantial review of the REAL rules and to develop revised standards grounded in observed risk rather than probabilistic modeling. The Department should account for the effect of increased compliance costs on affordable and market-rate housing production and appropriately weigh the risk-reduction benefits of the rules against the housing costs they impose. The review should give particular attention to the effect of the rules on infill and redevelopment within the State's existing urban centers, where additional permitting complexity and cost can render marginal projects economically infeasible and push development away from the very areas the State's smart-growth and redevelopment policies seek to prioritize. (84)

30. COMMENT: State agencies should align permitting, infrastructure investment, land use planning, and local assistance programs so that communities have the information and resources needed to implement the rules effectively. (79)

31. COMMENT: The commenter states that when they first started designing houses, there was no base flood elevation (BFE). Since then, elevations have increased to BFE plus three. This is all in the code. Today, houses are five feet higher out of the ground than they were 20 or 25 years ago, so the codes are not outdated. Therefore, the REAL elevation standards aren't necessary because we have something that works. The commenter would stay the course vis-a-vis the residential building heights. (47)

32. COMMENT: Today's design professionals are taking into account what has happened in the past and making very good decisions about elevation of occupied space. (38)

33. COMMENT: The new REAL rules are unworkable, unfunded, and out of step with Federal standards. The real rules require construction four feet above FEMA-based flood elevation and significantly expand the regulated flood zone. Meanwhile, complying with these standards provides New Jersey homeowners with no reduction in their National Flood Insurance Program (NFIP) costs. The State is requiring

homeowners to build to the higher standard and leaving them to pay for it entirely on their own with no insurance savings and no State assistance. The commenters support reasonable, resilient development and understand the need to prepare for long-term environmental change but maintain that State regulations must be realistic in scope, properly funded, and aligned with Federal programs. The State should provide meaningful financial assistance, align its elevation requirements with National Flood Insurance Program (NFIP) standards, and recalibrate the REAL rules to reflect the economic realities facing coastal communities and residents. (27, 28, 50, and 78)

34. COMMENT: The Department should restore flexibility for site-specific engineering analyses prepared by licensed professional engineers; provide a technical justification for requirements that differ from FEMA guidance, NFIP requirements, and nationally-recognized engineering standards; prepare a quantitative evaluation of additional flood-risk reduction achieved by the Department's REAL FHACA requirements, the measurable improvement in public safety, and the overall justification for the construction, engineering, and permitting burdens; conduct a comprehensive analysis of cumulative economic impacts on property owners, municipalities, housing, redevelopment, and infrastructure projects; broaden hardship provisions for individual homeowners; and streamline permitting for redevelopment. (77)

35. COMMENT: The commenter urges the Department to focus and prioritize green infrastructure because it has benefits to air and water quality besides water supply. (59)

36. COMMENT: The commenter states that they live in the outer coastal plain where flood damage has been due to dam failures. The movement of water through the soil here can easily handle a 100-year flood. (38)

37. COMMENT: The Department should direct local municipalities to recognize and enforce the State's climate-adjusted flood elevation plus one foot requirement for a minimum transition period of 60 days. (67)

38. COMMENT: Many provisions in the REAL rules, which went beyond the requirement that certain development sites in tidal flood hazard areas be elevated, were creating regulatory problems and could not be easily met. For example, eliminating certain general permits and imposing requirements that construction on a project commence within six months of permit issuance created new issues without providing an environmental benefit. (73)

39. COMMENT: The commenter states that sea-level rise projections for New Jersey extend far above four feet in higher emissions scenarios, and they remain open to advocating, in future rulemaking, for the Department to revisit raising the figure back up to five feet. (49)

40. COMMENT: Promote permit efficiency with measures such as binding review clocks with clearly stated deliverables and guidelines. Continue to allow for general permits, permits-by-rule, and registration which require limited administrative review. (78)

41. COMMENT: Rutgers University projects a 3.3- to four-foot sea level rise by 2100 through moderate emissions pathways. We must imagine and plan for massive emissions pathways given the fast tracking of climate crisis-inducing, fossil fuel sourced projects that emit dirty methane, which pollutes bodies at both ends of life. These emissions make flood threats worse, in addition to accelerated sea level rise projections. (86)

42. COMMENT: The commenter states that they are concerned about Atlantic City Electric's Battery Energy Storage System located in Beach Haven, particularly with regard to its emergency planning, firewater management, drainage, flood exposure, responder access, environmental review, and the facility's supporting documentation. This project should not qualify for REAL's legacy provisions. It is an example of the general principle that any legacy determination should be transparent and tied to a complete, accurately described project. (76)

43. COMMENT: While the Department continues to follow the best science and engineering, it is incumbent on the Department to explain that the utilized climate projections justify additional costs imposed today. (77).

44. COMMENT: The Department's REAL rules appear to reduce some of the flexibility historically available to qualified professionals by relying more heavily on assumptions and Statewide criteria rather than allowing site-specific engineering analyses to demonstrate equivalent or superior flood protection. REAL should continue to recognize the role of licensed professionals and allow appropriate engineering judgment to remain a central component of flood hazard management. The Department should establish appropriate performance standards while preserving the ability of qualified engineers to evaluate site-specific conditions and develop effective solutions. (77)

45. COMMENT: Explain the statutory basis for REAL's expanded requirements, the technical analysis supporting the selected design criteria, the flood-risk reduction expected by implementing REAL, and the

relationship between the anticipated public safety benefit versus the economic burden imposed. (77)

46. COMMENT: Requiring first-floor habitable living areas to be four feet above the established base flood elevation appears unreasonable. (77)

47. COMMENT: REAL will increase a variety of costs, including those associated with construction, engineering, surveying, permitting, municipal infrastructure, and housing, and will increase project timelines, creating barriers to redevelopment. (4 and 77)

48. COMMENT: The Department should identify the incremental cost of REAL and demonstrate the corresponding flood risk reduction. (77)

49. COMMENT: Resilience regulations should improve public safety without unintendedly discouraging investment, redevelopment, or necessary improvements. (77)

50. COMMENT: The Department should consider adding a question to the online application allowing the applicant to indicate whether the project is seeking to qualify for the legacy provision. (67)

51. COMMENT: The Department should actively support New Jersey's recreational boating industry and working waterfronts, rather than adopt rules that will accelerate the loss of these vital businesses. The ongoing conversion of marinas to private development and the resulting [page=2161] loss of public access to our waterways is a serious and worsening problem. These rules, as written, have the potential to exacerbate that trend by imposing costly and burdensome restrictions that prevent necessary improvements. The rules limit the ability for marinas to perform routine upkeep, repair and maintain aging infrastructure, and pursue reasonable expansion or modernization of these water-dependent facilities. New Jersey needs more marinas and marine support businesses to maintain and expand public access to our waterways, which is fundamental to our quality of life. (82)

52. COMMENT: It has not been made clear whether FEMA has weighed in on the delay. (49)

53. COMMENT: The REAL rules are meant to mitigate effects of disaster before it begins. (49)

54. COMMENT: The commenter states that their support for the extension of the legacy provisions of the REAL rules is not an endorsement of the REAL rules. The commenter does not agree with the Jobs Impact statement that says the rules will have a positive impact on jobs due to new standards that might result in higher demand for certain environmental, engineering, design, and planning professionals, since this does not acknowledge that the REAL rules will discourage development entirely. The Department should revisit this premise with the business community. (9)

55. COMMENT: The commenter asks if public roads are exempt from the definition of disturbance, noting that public roads require ongoing maintenance (milling, paving, resurfacing, reclamation, profile adjustments for safety) under limited funding, without increasing impervious surface, and are already managed through MS4 permits requiring stormwater maintenance. The commenter requests an exemption or clarification for public roadways that do not increase new impervious cover by more than a quarter acre. Without this exemption, there will be negative safety, environmental, and financial impacts, including elimination of safety improvements due to higher costs; reliance on milling/paving alone, leading to more asphalt use and reduced pavement service life; conflicts requiring utility relocation; lack of right-of-way; and lack of suitable adjacent property for stormwater measures. (5)

56. COMMENT: If the municipality has recently readopted their Municipal Stormwater Management Plan (MSWMP), the municipality should be allowed to hold off on adopting another MSWMP until the next scheduled reexamination of the municipal Master Plan with the recently adopted MSWMP deemed compliant in the interim. (5)

57. COMMENT: The Department should include alternatives to infiltration-dependent measures defeated by high groundwater, tidal tailwater, and salinity; including, but not limited to, a documented-infeasibility pathway with criteria and named acceptable alternatives. (5)

58. COMMENT: The Department should include an exemption for replacement of existing public storm drainage conveyance systems within the limits of an existing public roadway to not count towards the total area of disturbance. (5)

59. COMMENT: The Department should clarify that replacement of existing public sanitary sewer systems is exempt. All other linear improvements for linear utility improvements are exempt. If this exemption is not included, it will have a negative impact due to increased project costs where there is no increase in new impervious coverage. (5)

60. COMMENT: Nonstructural stormwater management strategies are often ineffective in tidal flood-influenced areas, where recurring tides and sea-level rise create unavoidable physical risks. In these cases, structural protections are typically necessary to reduce flood impacts. The Department should

include language acknowledging that nonstructural measures may not be practical in tidal flood zones and provide alternative measures, such as establishing criteria for approving structural solutions that may be more effective in a specific case. (5)

61. COMMENT: Chapter 3 in the Stormwater Management Best Management Practices (BMP) Manual refers to two sets of New Jersey rules that establish a comprehensive framework for addressing the stormwater runoff quality impacts associated with stormwater runoff discharges. The chapter further sets forth the required elements of MSWMPs. All municipalities recently completed a Watershed Improvement Plan (WIP) Phase 1 for the entire municipality pursuant to New Jersey rules. This was a substantial effort with limited budgets and workforce at the municipal level. There are overlapping requirements with both of these plans. The Department should combine the MSWMP and WIP into one plan to reduce effort at the Municipal level. (5).

62. COMMENT: The commenters who oppose the legacy extension proposal likely have not read the entire REAL rule and they certainly will not have to live with the consequences if it is adopted as scheduled. (60)

63. COMMENT: The REAL rules were creating regulatory confusion. (73)

64. COMMENT: The Department should establish a formal review timeframe for all permits included in the Land Use regulations, including Freshwater Wetlands, to allow applicants to have a consistent expectation of time to receive approval while allowing staff the ability to thoroughly review applications. The implementation of a fixed number of days to review applications would advance the Department's goal of streamlining permit reviews while maintaining the protections enforced by the rules. The commenter urges the Department to consider a maximum review period of one year, to give applicants a clear expectation of timeframes while allowing the Department the flexibility to prioritize resources and review applications that may have more seasonal dependence over the course of a year. (3)

65. COMMENT: Much of the opposition to the rule is based upon a targeted misinformation campaign. Much of the objection to the rule is based in part or fully on the assertion that the proposed five feet and then four feet of sea level rise has only a 17 percent confidence level of occurring. This is an inaccurate reading of the relevant scientific reports and the notice of proposal despite the many times the Department corrected this misstatement during the meetings and elsewhere. If this rule can be derailed based upon misinformation and threat of a legal challenge, future rules that improve public health and safety, as well as enhance environmental protections will be more susceptible to these same tactics. This will make the Department's job much harder. (45, 80, and 88)

66. COMMENT: The same organizations sowing disinformation about the REAL rules circulated similar narratives warning of economic devastation with the first adoption of the modern Stormwater Rules in 2004, previous updates to the Flood Hazard Area Protection Act rules in 2008/2009 and 2015, and Water Quality Management Plan rules in 2008 through 2012. None of their foretold economic impacts from rulemakings that protect public safety have been born out over the past two decades. (88)

67. COMMENT: The commenter states that they understand and support the goal of modernizing our land-use standards to reflect current and future conditions to mitigate the negative impacts of extreme weather events and flooding. (78)

68. COMMENT: The Department should eliminate the categorical hardship exception currently available to affordable housing and other developments in flood hazard areas. (49)

69. COMMENT: The Department should establish clear criteria for evaluating whether proposed amendments improve permitting efficiency while maintaining the resilience outcomes the REAL rules are intended to achieve. The criteria should identify the purpose of each amendment, the measures that will be used to assess its effectiveness, and the process for determining whether additional changes are warranted after implementation. A transparent evaluation framework will provide greater predictability and accountability for applicants, regulators, local governments, and other stakeholders. (79)

70. COMMENT: The commenters thank the Department for its continued stakeholder engagement and for proactively reviewing the REAL rules to identify needed improvements. (82 and 83)

71. COMMENT: When the Department determines that a project qualifies for legacy treatment, the Department should publicly identify the applicant, application, submission date, administrative-completeness date, technically complete date, project scope, rules being applied, and basis for the legacy determination. The public should be able to distinguish between an application merely received before a deadline and an application determined to be complete and eligible. (76)

72. COMMENT: Applications involving electrical substations, battery energy storage facilities, hazardous materials, emergency infrastructure, stormwater systems, drainage controls, or essential utility equipment in flood-prone coastal communities should not receive legacy treatment without documented

review of applicable flood hazard, coastal, [page=2162] stormwater, drainage, containment, and climate-resilience requirements. (76)

73. COMMENT: Nothing in the extension should limit the Department's authority to require additional approvals, corrective measures, containment systems, monitoring, environmental testing, runoff controls, or compliance with applicable public health and environmental requirements. (76)

74. COMMENT: The commenter states that their organization should be given a permanent seat on the BMP Technical Committee plus a standing role in future Land Resource Protection rulemaking. (5)

75. COMMENT: The commenter states they are open to small amendments to the rules if they will be helpful towards implementation, clarity, and closing common sense loopholes. (49)

76. COMMENT: Flooding and storms are becoming more frequent and damaging. Do not extend the legacy period any further than this notice of proposal. Economic issues are not superior to saving lives, property, and preparing for rising sea levels and increasingly worse storms. (15)

77. COMMENT: The Department should consider amendments to N.J.A.C. 7:8 that will align the enforcement of the REAL Rules to residential projects through Residential Site Improvement Standards (RSIS) with the timing of the proposed legacy period for NJDEP applications. Doing so will prevent scenarios where there is inconsistency between two sections of the New Jersey Administrative Code regarding which version of N.J.A.C. 7:8 applies to a project. (3)

78. COMMENT: The proposed one-year extension should function as a transition to successful implementation, not as a substitute for implementation. The commenter strongly recommends that the Department complete a draft of any proposed amendments before the end of 2026. This schedule would allow sufficient time for publication, public comment, and necessary revisions while keeping the updated rules on track for implementation by July 2027. Further delays would postpone both the practical lessons that can be gained through implementation, and the resilience benefits the rules are intended to provide. (79)

79. COMMENT: The commenter recommends an official implementation tools package from the Department, including submission checklists, worked examples, binding written interpretations, a technical contact for review agencies, and continuing education unit credit training. (5)

80. COMMENT: The Department should consider utilizing the additional time afforded by the proposed legacy extension to implement a training program. The Department should expand its training and educational efforts related to the REAL rules. Consistent interpretation of the rules across the Department, design community, and local reviewing agencies is critical to the success of a smooth and effective transition to the REAL rules. Enhanced training and guidance would promote a uniform understanding of the regulations, resulting in more consistency in permit reviews to help streamline the permit review process. (3)

81. COMMENT: The REAL implementation will experience "hiccups" if applicants, professionals, and Department staff are "flooded" with new applications for a rule that still requires revisions. Single family homeowners may get crushed financially and stuck with time delays. Consider implementing REAL by phasing in the rules, with larger new development being regulated first. The Department can determine what is "large" (for example, greater than 50 residential units, over 5,000 square feet). Don't make a single farm or single-family home have to navigate the unknown. (33)

82. COMMENT: Do not let special interests and ignorance prevent us from advancing a more sustainable future. (71)

83. COMMENT: Please help us all! (36)

84. COMMENT: The commenter states that they are upset with the Department's customer service, as they didn't receive an answer to their question, and the representative was rude and unhelpful. (30)

85. COMMENT: Why is New York listed first for FIFA and many other events that are held in MetLife Stadium? (17)

RESPONSE TO COMMENTS 3 THROUGH 85: These comments are beyond the scope of this rulemaking. Through this rulemaking, the Department is extending the duration of the legacy period that was adopted on January 20, 2026. See 58 N.J.R. 247(a); 1581(a). In addition, the Department is amending the FHACA rules to clarify that the legacy period includes projects in fluvial or tidal flood hazard areas that either secure specified approvals pursuant to the Municipal Land Use Law or begin construction within the legacy period. See 58 N.J.R. 1582. This rulemaking is not changing any other provision of the NJPACT REAL rules, nor is it making any broader changes to the legacy period, and, thus, comments regarding the substantial standards of the underlying rules are beyond the scope. However, the Department will consider these comments as it reviews the REAL rules for potential amendments. As the legacy period

continues, the Department will also review and revise its guidance, training, and operational plans to ensure a smooth transition at the end of the legacy period.

86. COMMENT: Agriculture has not been meaningfully addressed in the process of promulgating the REAL rules and previous comments and repeated requests for an open dialogue on agriculture have gone unanswered. (29 and 58)

87. COMMENT: The REAL rules have negative impacts on agriculture. They add another layer of uncertainty, cost, and delays placed on working farms that are already under tremendous pressure. A farmer may not even know what approval is needed without first hiring an engineer, surveyor, or environmental consultant. Normal farm maintenance may now require technical review, mapping, certifications, Farm Conservation Plan interpretation, and possibly outside agency coordination before we even know whether the activity is allowed. This will discourage farmers from making necessary improvements and devalue farmland. Farms must remain economically viable. (8, 29, and 58)

88. COMMENT: The Department should use the legacy extension to provide a carve-out for routine and necessary farm activities. There must be a formal agricultural pathway developed with the New Jersey Department of Agriculture, Natural Resources Conservation Service, Soil Conservation Districts, and farmers before legacy ends. The Department should also revisit and clarify the definitions of "actively farmed" and "regulated waters." (29 and 58)

89. COMMENT: "Commercial farms," as defined at N.J.S.A. 4:1C-3, should be exempt from the REAL rules but remain subject to preexisting regulatory requirements. (8)

RESPONSE TO COMMENTS 86, 87, 88, and 89: While the commenters' concerns are beyond the scope of this rulemaking, the Department clarifies that ongoing agricultural activities, as described by the commenters, are specifically exempt from the provisions of the REAL rules. The commenters are directed to N.J.A.C. 7:7-2.3 and 2.4, 7:7A-2.4(b), and 7:13-2.5(a)8. However, during the legacy period, the Department is engaging with the Department of Agriculture as it reviews the rules for possible amendments.

90. COMMENT: The commenters request that the Department bar the use of the one-year REAL legacy provisions for the Glassboro-Camden Passenger Rail Line. (16, 19, 20, 22, 23, and 31)

RESPONSE: The application of the legacy provisions to a specific project is beyond the scope of this rulemaking. For additional information on the application of the legacy provisions, please see the Response to Comments 112 through 135.

Support

91. COMMENT: The commenters state that they strongly agree with the notice of proposal and encourage the Department to expeditiously adopt it. (53, 58, 60, 67, 73, 75, 77, 78, 83, and 84)

92. COMMENT: The commenters state that extending the legacy period will provide certainty for property owners, municipalities, and the construction industry, providing adequate time to meet the legacy requirements and potentially providing cost savings compared to trying to meet the July 20, 2026, deadline. It will allow housing, environmental, business, labor, and local government stakeholders the opportunity to work toward a rule that appropriately balances climate resilience with housing affordability, redevelopment, and economic growth. Some commenters further note it reflects the Governor's priorities expressed in Executive Order No. 5 (2026) and will allow time for the State to streamline or simplify permit reviews in the regulatory programs impacted by the REAL rules. It will avoid subjecting contractors, developers, and municipalities to consecutive rounds of compliance changes and allows resulting amendments to be incorporated once rather than layered on top of a standard in transition. (3, 4, 8, 9, 33, 53, 73, 78, 82, and 83)

[page=2163] 93. COMMENT: Extending the legacy period recognizes the catastrophically negative impacts the REAL rules would have had on projects and priorities throughout New Jersey. (78)

RESPONSE TO COMMENTS 91, 92, AND 93: The Department acknowledges these comments in support of the legacy extension.

Opposition and Criticism

94. COMMENT: The commenters urge Governor Sherrill and the Department to abandon the rulemaking to delay, rollback, and rewrite the NJPACT REAL rules and instead allow the rules to go into effect as scheduled. Many commenters note that the rules reflect the best science. The rules protect public health and safety, human lives, property, public and critical infrastructure, water quality, aquifers, and drinking water, as well as affordability for residents, affordable property insurance and flood insurance, municipal tax bases, municipal and State budgets, municipal bonds, and the State's bond credit rating. Some commenters note that the rate of climate change is increasing and storms are getting stronger, more

frequent, and more widespread. The commenters observe that many residents have already been negatively impacted by flooding, and some share personal accounts of recent flooding, including flooding from tropical storms such as Irene, Sandy, Elsa, and Ida, but also flash flooding from ordinary rainstorms. These floods impacted themselves, their towns, their families, and their property, in some cases leaving emotional and financial hardship as they had to rebuild. Several commenters argue that in the long run it will be cheaper to address flood risk through planning rather than repairing and rebuilding, and old ways of doing things won't protect us in the future. Some add that New Jersey can no longer rely on Federal funding to help shoulder the burden of disaster recovery. (1, 2, 6, 10, 13, 18, 24, 25, 26, 32, 34, 35, 37, 39 through 46, 48, 49, 51, 52, 54, 55, 56, 57, 61 through 66, 68, 69, 70, 71, 72, 74, 79, 80, 81, 85, 86, 87, and 88)

95. COMMENT: The commenters present statistics that illustrate the urgency of addressing the impacts of climate change. The commenters cite various research indicating that New Jersey is two times more vulnerable to climate change than the rest of the United States; by 2050, New Jersey will have well over 40,000 parcels with areas partially below the boundary tideline; 73,000 to 113,000 buildings worth between \$ 60 to \$ 96 billion in New Jersey are at risk of flooding; from 1980 to September 10, 2024, there were 72 confirmed weather/climate disaster events with losses exceeding \$ 1 billion each that affected New Jersey, an average of over \$ 1 billion every nine months; in 2025, municipalities on Long Beach Island issued between 1,700 and 2,200 construction permits for new construction and redevelopment; and in the future more than \$ 50 billion worth of homes and buildings could flood at least once a year. In addition, investments in resiliency yield cost savings ranging from \$ 6.56 at the low end to \$ 25.00 at the high end per \$ 1.00 spent. (42, 45, 51, 55, 80, 86, and 88)

96. COMMENT: Any extension of the legacy period should be limited to no more than 90 days, with a hard, non-renewable end date, and require public reporting on the status and substance of any proposed amendments before that date. (88)

97. COMMENT: Many commenters state that the Department can implement permit efficiency efforts without changing the rules and putting the public at risk. Adopting the rules provides greater regulatory certainty, and many challenges the rules may present can be solved without weakening the rules. Recent flooding across the State has reinforced the urgent need to strengthen--not weaken--New Jersey's resilience to the growing impacts of climate change. Implementing the rules is the best way to address the remaining implementation questions. Some commenters add that Executive Order No. 5 does not require or even suggest suspending climate-resilience standards. (7, 10, 24, 25, 26, 35, 40, 45, 48, 55, 61, 80, 85, 87, and 88)

98. COMMENT: If the Department believes targeted amendments are warranted, it can pursue that separate rulemaking without freezing implementation of the adopted rules. (87 and 88)

99. COMMENT: Many commenters state that the REAL rules have been years in the making and have undergone extensive scientific review, public comment, and revision. There has been an extraordinary period of time for interested parties to understand the issues and provide formal and informal feedback. Some commenters note that the Department has already made significant changes in response to stakeholder concerns, including reducing some of the original protective standards and including a six-month legacy period to ease the transition for projects already in the pipeline. There is no new science suggesting the REAL rules should be further modified. Delaying the rules undermines the transparent public process used to formulate the rules and sends the troubling message that years of collaborative policymaking can be set aside despite broad stakeholder participation. (7, 34, 45, 49, 51, 54, 69, 80, 85, 87, and 88)

100. COMMENT: The commenters state that postponing implementing the REAL rules only benefits developers. It will cause negative economic impacts overall, as resiliency measures provide a net economic benefit to the State. Permits issued pursuant to the legacy rules allow new development to be built pursuant to outdated standards. REAL's adoption acknowledged the positive social impact of resilience while the legacy rulemaking states the delay will be economically neutral. These statements of neutrality are unsupported and countered by resilience literature. (1, 7, 40, 41, 44, 45, 46, 48, 49, 52, 56, 66, 68, 69, 80, 85, 87, and 88)

101. COMMENT: The Department has no basis to represent the environmental effect of the extension as limited without considering cumulative loading. Cumulative loading, not any single permit, is the relevant metric to quantify before acting: the number of projects likely to qualify, their combined disturbed and impervious acreage, and the resulting runoff volume and pollutant load under legacy design storms versus REAL design storms. In a watershed built from many small, second- and third-order tributaries that converge into larger streams, incremental increases in peak discharge and runoff volume from individual sites are additive downstream, even where each site independently satisfies its own on-site drainage calculations. Without that quantification, the Department has no basis to represent the extension's environmental effect as limited. (7)

102. COMMENT: Extending the REAL legacy period by an additional year could allow an applicant to avoid updated resilience requirements through an application filing that is incomplete, conceptual, vague, or materially different from the project ultimately constructed. This is particularly important for utility infrastructure located in a densely developed barrier-island community where flooding, storm surge, sea level rise, drainage limitations, summer congestion, evacuation constraints, and emergency-response access should be treated as central design considerations. The Department should either abandon the proposed extension or amend the final rule with appropriate protections. (45, 76, and 80)

103. COMMENT: The redevelopment and volumetric reduction standards, currently in the REAL rules, reduce what is required for municipalities to directly implement. The Watershed Assessment Report or Phase 2 of the Watershed Improvement Plan is due at the end of 2026, January 1, 2027. If the stormwater aspects of the REAL rules are delayed, municipalities will not be able to incorporate those benefits into their plans; that is, their plans will have to assume a redevelopment standard and volume reduction does not exist and will not improve water quality or reduce flooding. That additional burden will fall on the municipality to design, permit, and implement. Ultimately the taxpayers or property owners in the municipality will pay those costs. (7, 42, 45, and 80)

104. COMMENT: Volume reduction, not just conveyance, protects baseflow and private wells. REAL's water-quality design storm is fixed at 1.25 inches of rainfall and pairs volume-reduction and groundwater recharge standards with the updated conveyance sizing. Recharge lost to impervious cover and uncontrolled runoff is recharge that does not reach the aquifers that sustain private wells and dry-weather streamflow. A large share of Upper Raritan households rely on private wells, and stream monitoring shows baseflow-dependent reaches are the most sensitive to summer and drought-period stress. Further, erosion and channel instability are cumulative, not point-source, effects. These effects accumulate gradually and are not visible in an individual permit review, which is precisely why the design-storm standard, not case-by-case discretion, is the appropriate tool to control them. Delaying the recharge and volume-reduction standards for another construction cycle has a direct, physical connection to water availability and water quality. (7 and 87)

[page=2164] 105. COMMENT: While the extension of the legacy provisions is being couched as a delay, in reality, it's a rollback because, in accordance with the Administrative Procedure Act, the REAL regulations go into full effect on July 20, 2026, and there is no mechanism to stop them; so, those rules will be implemented, but whenever the Department adopts this rulemaking, the rules will be rolled back. This is bad public policy, confusing, and inefficient. (45, 80, and 87)

106. COMMENT: The Department cannot roll back the REAL rules because doing so would weaken existing water quality protections. Pursuant to the Clean Water Act (33 U.S.C. § 1342(o)(1)) and N.J.A.C. 7:9B-1.6(d), the Department is barred from adopting standards less stringent than prior permits or issuing permits that deteriorate water quality. Since New Jersey's stormwater rules are implemented through MS4/NJPDES permits, weakening them violates these principles. The Department has already found that most motor vehicle surfaces are unmanaged, significantly impair water quality, and cannot improve without addressing redevelopment--which would also increase damage costs in urban areas. Therefore, the Department cannot weaken requirements for redevelopment projects to address water quality and meet the volumetric reduction standard. (45, 80, 87, and 88)

107. COMMENT: New Jersey is an active participant in litigation targeting oil and gas majors for their inaction and deception of the public regarding their known impacts on climate change. The same liability could potentially be directed at the Department and State for the willing delay and potential weakening of public safety protections found in the REAL rules. Future storms and sea level rise science is well documented in the rulemaking, and the decision to ignore that science is likely to open the Department to future legal action. (88)

108. COMMENT: The rule being delayed is a technical correction, not a policy preference. The stormwater and flood-hazard standards REAL updates were sized, until now, to rainfall statistics from the National Oceanic and Atmospheric Administration (NOAA) Atlas 14, data that runs only through 1999. REAL replaces those static figures with projected precipitation for the applicable design storms, using the same methodology the Department adopted for flood elevations in the 2023 Inland Flood Protection rule. Industry analyses of that update have found it increases required stormwater basin sizing by roughly 20 to 50 percent depending on county and raises mapped flood elevations by one to three feet depending on the delineation method. (7 and 87)

109. COMMENT: The redevelopment trigger is where legacy pollution actually gets corrected. Pursuant to REAL, reconstruction of more than a quarter acre of impervious surface qualifies as major development and triggers full stormwater quality and volume-reduction compliance, and redevelopment with motor-vehicle areas must provide water-quality treatment even without adding impervious cover. This matters because most of the impervious surface generating polluted runoff in the Upper Raritan today--roads, parking lots, and older commercial sites--predates any stormwater treatment requirement and will not be retrofitted except when redevelopment occurs. Each project held using legacy standards for another year

is a missed, and often a decades-delayed, opportunity to correct an existing, uncontrolled discharge, not merely a delay in a new obligation. (7)

110. COMMENT: Enacting the REAL rules as originally planned, on July 20, 2026, hastens the opportunity to prevent life-threatening scenarios, which is more than mere "shifting the timing of costs and benefits" as the notice of proposal states (see 58 N.J.R. 1582). (42)

RESPONSE TO COMMENTS 94 THROUGH 110: The Department acknowledges commenters' concern that delaying protective standards in the rules, like requiring that critical buildings and their access roads be elevated using the climate-adjusted flood elevation, will have a negative long-term impact on affordability and public safety since permits may be issued during the extended legacy period that do not account for future conditions. See 56 N.J.R. 1402 through 1408 for the Economic Impact statement published with the REAL rules. Indeed, a safe and affordable home can be central to the stability of New Jersey families and, for homeowners, a critical vehicle for generational wealth creation. Prospective homeowners and renters should be confident that their home was constructed in a safe and resilient manner, in a safe location, and that there are safe evacuation routes from their home, if needed. Moreover, Moody's Investors Service determined that "New Jersey's adoption of stronger building codes, especially along the state's 130-mile coastline, is 'credit positive'" and indicated that "New Jersey's economic vulnerability to increased flooding is substantive" and "total storm damage in New Jersey since 1980 is equivalent to 5.7 percent of the State's gross domestic product, compared with 3.1 percent for the United States for the same time period." (Moody's Investor Service, State and local government-New Jersey. Proposed overhaul of land use rules will reduce climate risk vulnerability. (14 February 2020). https://www.moody.com/research/doc--PBM_1213713?docid=PBM_1213713; see also 56 N.J.R. 1402).

At the same time, ensuring the efficiency of the Department's permit processes also creates cost savings for consumers, which help residents afford homes. Thus, it is important that the Department take the time to re-evaluate the adopted REAL rules to identify whether targeted amendments may allow for streamlined or simplified permit reviews, while still accounting for future resilience--both of which improve affordability in New Jersey.

A limited-duration legacy extension minimizes the time before implementation begins, while ensuring the regulated public does not have to monitor and adjust to successive rule amendments that might result if the legacy period is not extended and amendments are made after implementation begins. The extended legacy period will enable the Department to engage with interested parties, including residents, municipalities, counties, regional planning entities, real estate developers, and members of the environmental, business, insurance, and real estate communities to determine if there are additional changes that should be made for efficiency while moving toward adoption of any amendments to the REAL rules prior to the expiration of the extended legacy period. The Department's impact statements acknowledged some negative impact to resilience due to the legacy extension, but determined that was balanced by the need to examine rules and processes to serve affordability and mitigated by the limited duration of the extension.

In the interim, if applicants choose to use the legacy provisions and apply pursuant to the rules predating REAL, applicants must comply with the legacy requirements by July 20, 2027, which are outlined in the rules. There has been no change or increase in requirements, nor has there been a change in the costs associated with complying with the previous rules. In addition, many seeking to qualify for the legacy provisions still must comply with the 2023 Flood Hazard Area Control Act rules (also known as the Inland Flood Protection rules). The Inland Flood Protection rules include consideration for increased precipitation and enhanced stormwater practices that provide flooding protections applicable in non-tidal areas of the State.

Finally, during the extended legacy period, the adopted REAL rules are in effect for those who choose to apply thereunder.

111. COMMENT: Inland and headwaters flood risk is not a secondary issue. Public discussion of REAL has focused heavily on coastal sea level rise, but the proposed extension would also delay provisions that matter Statewide for riverine flooding and stormwater management. New Jersey first incorporated projected precipitation into its Flood Hazard Area and Stormwater Management rules through the 2023 Inland Flood Protection rules. REAL builds on that approach by applying updated precipitation information more broadly to the design and review of stormwater systems. The use of projected rainfall is, therefore, neither new nor limited to coastal areas; it reflects the Department's recognition that infrastructure designed around historical rainfall alone may not adequately manage future storms. A Statewide delay justified largely through discussion of coastal concerns should not postpone inland protections without a separate evaluation of the effects on headwaters, riverine floodplains, stormwater systems, and downstream communities. These provisions may receive less public attention than coastal elevation requirements, but they are central to reducing runoff and managing inland flood risk. (7 and 87)

RESPONSE: The Department acknowledges the commenters' concerns regarding the potential effect on inland areas as a result of the extended legacy period. However, the provisions the commenter cites are

not subject to legacy and, thus, not impacted by this rulemaking.

Understanding Legacy

112. COMMENT: Although the language of the current legacy provision could be interpreted as inclusive of permits-by-registration and [page=2165] permits-by-certification, the Department's online guidance indicates it is not. (67)

113. COMMENT: The extension should not be interpreted to provide legacy treatment to a permit-by-rule, general permit-by-certification, or comparable authorization, unless that result is expressly supported by the regulatory text. (76)

114. COMMENT: Issue guidance expressly identifying how January 2026 permit-by-certification and permit-by-registration provisions apply during the proposed one-year extension. They should simplify permitting rather than increase cost and uncertainty. (4)

115. COMMENT: Expand the legacy provision to include permits-by-registration and permits-by-certification, not only general permit and individual permit applications. The adopted permit-by-certification and permit-by-registration requirements create immediate cost and process impacts for applicants because they may still affect project strategy, diligence, design assumptions, and the level of technical documentation required to determine the appropriate permitting path. At one firm alone, half of the single-family residential projects regulated by the Department would otherwise qualify for permits-by-registration or permits-by-certification but will now require full general permit applications for the sole purpose of qualifying for the legacy provision to avoid reductions in allowable building height. (46 and 67)

116. COMMENT: The proposed one-year pause primarily extends the ability of qualifying projects to be reviewed pursuant to prior regulations; it does not fully eliminate uncertainty created by the January 2026 rulemaking. Applicants must still evaluate whether a project qualifies for legacy treatment, whether an authorization can proceed pursuant to prior rules, whether a permit-by-certification or permit-by-registration is now required, and whether design changes made during the pause could affect eligibility. As a result, applicants may incur additional legal, engineering, survey, environmental, and permitting costs simply to preserve options during the legacy period. (4)

117. COMMENT: While extending the legacy provision gives more time to obtain compliance, it does not address one of the biggest issues and confusing aspects of the REAL rules. Legacy status is supposed to grant permission to adhere to the rules in place prior to the January 2026 adopted changes. Why can't applicants use the previous permits-by-rule? (11)

118. COMMENT: The notice of proposal talks about no additional costs, but property owners have to pay licensed professionals to prepare Flood Hazard Verification plans and applications, as well as general permit plans and applications and pay application fees so their project can use the old heights where it was previously a permit-by-rule and didn't require separate plans and application fees. (11)

119. COMMENT: The REAL legacy extension does not take into consideration the process the new rules require, which include engineering and hydraulic reports. The related professional services take approximately three months and cost up to \$ 5,000 to homeowners. Homeowners must bear thousands of dollars of upfront costs and months of professional work just to hold their place in line pursuant to the prior rules. Property owners are paying for additional engineering and application fees for approvals when we don't even know if the current rules will remain or be revised once everything is evaluated. (11, 28, and 50)

120. COMMENT: Implementation of the one-year pause should not impose immediate procedural costs that undermine its objectives. (4)

121. COMMENT: The State should communicate more clearly and directly with local municipalities and floodplain administrators regarding the applicability of the legacy provision, as well as their rights and responsibilities in administering their local ordinances. (67)

122. COMMENT: The Department should expand legacy protections for existing development and projects already substantially underway. (77)

123. COMMENT: When two houses side-by-side are being redeveloped by individual property owners, it doesn't seem fair that the homeowner in the climate-adjusted flood elevation just needs a permit by July 20, 2027, but the adjacent neighbor in the FEMA-designated AE flood zone (meaning that there is at least a one percent chance of flooding annually) that meets the permit-by-rule requirements of the pre-2026 rules has to jump through hoops to get approval. The REAL rules should allow legacy approval for all projects if the application is submitted to the municipality by a specific date. This is imperative when the climate-adjusted flood elevation rules may be revised or revoked. (11)

124. COMMENT: There appears to be a common misconception that the REAL rules have been suspended. (67)

125. COMMENT: Modify the legacy provisions to provide clear and direct communication (particularly with local municipalities and floodplain administrators). (67)

126. COMMENT: The commenters state they are concerned about the paused REAL rules. REAL requires applicants in the inundation risk zone to submit an inundation risk assessment, onsite alternative analysis, and risk acknowledgement to the Department prior to applying for a general construction permit. These additional requirements negatively impact construction permit applicants and add delays. The REAL rules give the Department 90 days to review these additional requirements, and this review can be extended if the Department requires additional information. Construction permits and construction officials act through the authority of the Department of Community Affairs (DCA), however it appears that the DCA is applying the new REAL requirements now, even though the Department has proposed extending the legacy provisions. If REAL's implementation is to be truly paused and revisited, the current pause until July 2027 should be acknowledged and paused by not only the Department but also by DCA. DCA should direct local construction officials to use the permitting rules, requirements, and processes that were required prior to January 20, 2026. Without including other agencies pausing the REAL rules, the pause is hollow and the requirements of the rule are still being implemented. (21 and 27)

127. COMMENT: The Department should provide additional guidance regarding the interaction between the proposed legacy period extension, municipal stormwater ordinance adoption schedules, and RSIS requirements. As currently structured, the extension to July 20, 2027, may create uncertainty for applicants and municipalities because projects may be subject to REAL-related standards through updated local ordinances or RSIS requirements before the legacy period expires. Clarification on how the legacy provisions apply to Department-permitted projects, municipally reviewed developments, residential projects governed by RSIS, and projects already in the local approval process would promote consistent implementation across the State. (3 and 5)

128. COMMENT: If the Department adopts the REAL legacy extension, it should do so strategically. The Department should define and manage how it will assess whether proposed amendments improve permitting efficiency while maintaining REAL's resilience outcomes and manage expectations about what can be accomplished during the legacy extension. Establishing clear evaluation criteria will increase transparency and accountability by helping stakeholders understand what each proposed amendment is intended to accomplish, how success will be measured, and how the Department will determine whether additional changes are needed after implementation. (35)

129. COMMENT: Each municipality maintains its own Flood Damage Prevention and Zoning ordinances and building height limitations are often tied to the municipality's Local Design Flood Elevation. Following publication of the REAL rules, several municipalities adopted ordinances or issued guidance allowing projects to comply with the State's climate-adjusted flood elevation plus one foot. However, since the announcement of the legacy extension, many have repealed or reversed those actions, indicating that they will review projects only pursuant to the legacy provision. As a result, many of our clients will now be required to bear the cost and delay associated with substantially more time-consuming and expensive full general permit applications. (67)

130. COMMENT: If an extension is promulgated, limit it to three to six months. New Jersey cannot afford to wait another year for the implementation of the REAL rules. (69)

131. COMMENT: The Department should complete a draft of any proposed amendments before 2027. (35)

132. COMMENT: An applicant should receive legacy treatment only when the relevant application is administratively and technically complete. It must reflect the actual project, including specific construction, equipment, dimensions, location, disturbance, environmental effects, drainage consequences, flood elevations, containment measures, and mitigation measures. It should include [page=2166] required engineering documents, calculations, plans, fees, environmental information, flood information, drainage information, and other materials necessary for meaningful review. Later revisions should be limited to minor changes that remain within the scope of the pre-deadline application, and legacy should not apply if the project is materially revised, expanded, supplemented, relocated, redesigned, or converted into a substantially different project. This includes changes to firewater-containment systems, drainage modifications, stormwater-isolation systems, equipment pads, walls, tanks, berms, curbing, liners, sumps, valves, trenches, piping, retention structures, and monitoring or runoff-control systems, among other things. (76)

133. COMMENT: To the extent within the Department's jurisdiction, the legacy extension should not be interpreted in a way that reduces review of flooding, sea level rise, storm surge, stormwater management, contaminated runoff, emergency access, evacuation limitations, loss of electrical service,

loss of communications services, or infrastructure resilience. These considerations are particularly important for utility and energy facilities located in coastal communities. (76)

134. COMMENT: The Department must explain how it will treat applications that are submitted while the legacy extension is pending and the initial REAL legacy provision has expired. The Department has stated that it will continue to apply the REAL legacy provisions to eligible applications received on or after the original July 20, 2026, legacy period end date while the legacy extension rulemaking is pending. The Department should explain in its final action how those applications will be treated if the proposed extension is modified, withdrawn, delayed, or not adopted. (76)

135. COMMENT: The legacy extension rulemaking makes no mention of the impact of the extension on agriculture. (29)

RESPONSE TO COMMENTS 112 THROUGH 135: The REAL rule amendments were adopted on January 20, 2026, and all aspects of the REAL amendments became effective upon adoption. Generally, in reviewing an application, the Department applies the requirements of the Coastal Zone Management (CZM) rules, N.J.A.C. 7:7, Freshwater Wetlands Protection Act (FWPA) rules, N.J.A.C. 7:7A, Stormwater Management (SWM) rules, N.J.A.C. 7:8, and Flood Hazard Area Control Act (FHACA) rules, N.J.A.C. 7:13, that are in effect at the time the application is declared complete for review. However, the Department adopted "legacy provisions" in the REAL rules, which provide that the rules in effect immediately prior to REAL's effective date will be applied to any project for which the applicant submits an administratively and technically complete application to the Department before July 20, 2026, for an individual permit, general permit, verification, letter of interpretation, transition area waiver, or water quality certificate, pursuant to the CZM, FWPA, FHACA, or SWM rules. These legacy provisions are codified at N.J.A.C. 7:7-26.1(b), 7:7A-19.1(b), 7:8-1.6(b), and 7:13-21.1(b). The REAL rules are still effective during the legacy period for an applicant who chooses to submit their application pursuant to those rules instead of using the legacy provisions for the above permits/authorizations.

New exemptions and permits-by-registration became effective on January 20, 2026, replacing prior permits-by-rule, which were repealed. New and amended general permits-by-certification similarly became effective on January 20, 2026, replacing the prior general permits-by-certification. These authorizations are required to be utilized for regulated activities in the CZM, FWPA, and pre-adoption FHACA jurisdictions. However, while these new and amended permits-by-registration and general permits-by-certification are available for use by applicants today, they are not required for regulated activities located outside the pre-January 20, 2026, tidal flood hazard area until July 20, 2027. This is because there were no individual or general permit standards applicable to activities in the expanded flood hazard area prior to January 20, 2026. Thus, no flood hazard area approval is required for these activities until July 20, 2027. For an activity in the expanded flood hazard area to attain legacy status, however, the activity will need to receive Municipal Land Use Law (MLUL) approval or, where no MLUL approval is required, commence construction, prior to July 20, 2027, consistent with N.J.A.C. 7:13-2.1(c)3. For additional information and examples, see "NJPACT REAL: Legacy Provisions-Guide for Determining Which Rule Applies to Your Project" at <https://dep.nj.gov/njreal>.

The Department acknowledges commenters' concerns about municipalities inconsistently applying legacy in their local permit reviews. During the extended legacy period, the Department is examining this issue within the limits of its authority related to municipal implementation of their own ordinances. In addition, the legacy extension notice of proposal addressed agriculture impacts as follows: "The Department determined the REAL rules would have a minor, but positive, impact on the agriculture industry." 56 N.J.R. at 1412; 57 N.J.R. at 1590; and 58 N.J.R. at 350. As the impacts of the REAL rules, once implemented, are expected to be minimal, extension of the legacy period for one year is expected to have a minimal impact on the agricultural industry.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

As set forth at 56 N.J.R. at 1410-1411; 57 N.J.R. at 1590; and 58 N.J.R. at 526, the REAL rules did not exceed any standards or requirements imposed by Federal law. This rulemaking does not include any substantial amendments to the standards adopted through the REAL rules. The only adopted amendment is to the date of implementation of certain standards and requirements in the rules. There are no Federal standards or requirements applicable to the date of implementation of these standards and requirements.

The Department has determined that the adopted amendments do not include any standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), do not require any further analysis.

Full text of the adoption follows:

CHAPTER 7

COASTAL ZONE MANAGEMENT RULES

SUBCHAPTER 26. APPLICATION REVIEW

7:7-26.1 General application review provisions

(a) (No change.)

(b) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review, except as follows:

1. A regulated activity shall be subject to the requirements of this chapter in effect on October 5, 2021, provided the applicant submits a permit application to the Department that is declared administratively and technically complete or, in the case of CAFRA individual permits, complete for public hearing or public comment prior to July 20, 2027.

2. (No change.)

(c)-(g) (No change.)

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 19. APPLICATION REVIEW

7:7A-19.1 General application review provisions

(a) (No change.)

(b) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review, except as follows:

1. A regulated activity shall be subject to the requirements of this chapter in effect on November 7, 2022, provided the applicant submits a permit application to the Department that is declared administratively and technically complete prior to July 20, 2027.

2. (No change.)

(c)-(g) (No change.)

[page=2167]

CHAPTER 8

STORMWATER MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.6 Applicability to major development

(a) (No change.)

(b) Major development applications shall be subject to the stormwater management requirements in effect on July 17, 2023; provided the applicant submits an application to the Department for approval pursuant to one of the statutes listed at (a)1 through 5 above, which is declared administratively and technically complete or, in the case of CAFRA individual permits, complete for public hearing or public comment prior to July 20, 2027.

(c)-(h) (No change.)

CHAPTER 13

FLOOD HAZARD AREA CONTROL ACT

SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT OR AUTHORIZATION IS REQUIRED

7:13-2.1 When a permit or authorization is required

(a)-(b) (No change.)

(c) Undertaking a regulated activity in a regulated area does not require an approval listed at (b) above in the cases listed at (c)1, 2, and 3 below. For the purpose of this subsection, each distinct construction activity in a project, such as each building, road, or utility crossing, is considered a distinct regulated activity.

1.-2. (No change.)

3. The regulated activity is part of a project in a fluvial flood hazard area that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7, prior to July 17, 2023, or was part of a project in a tidal flood hazard area that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7, prior to January 20, 2026; provided one of the following applies:

i. The regulated activity is authorized under one or more of the following approvals pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), prior to July 17, 2023, in fluvial flood hazard areas, or prior to July 20, 2027, in tidal flood hazard areas:

(1)-(5) (No change.)

ii. The regulated activity does not require an approval identified at (c)3i above, and had commenced prior to July 17, 2023, in fluvial flood hazard areas, or prior to July 20, 2027, in tidal flood hazard areas.

(1)-(3) (No change.)

(d)-(e) (No change.)

SUBCHAPTER 21. APPLICATION REVIEW

7:13-21.1 General application review provisions

(a) (No change.)

(b) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review, except as follows:

1. A regulated activity shall be subject to the requirements of this chapter in effect on July 17, 2023, provided the applicant submits a permit application to the Department that is declared administratively and technically complete or, in the case of CAFRA individual permits, declared complete for public hearing or public comment prior to July 20, 2027.

2. (No change.)

(c)-(g) (No change.)

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