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NJAFM Comments on the Proposed NJPACT REAL Rule Proposal

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The New Jersey Association for Floodplain Management (NJAFM) is a professional organization dedicated to inform and heighten awareness about flood risk, provide training and educational opportunities, and improve communication to better protect public safety, property, and the economy for communities throughout New Jersey. Our organization was founded in 2005 and consists of a wide array of professionals including certified floodplain managers, planners, engineers, surveyors, building code officials, elected officials, academics and certified public works managers. We represent employees in both public and private sectors, regulators and developers, and those interested in floodplain management. NJAFM represents over 300 experts in the field of floodplain management throughout the state.

NJAFM acknowledges the need for implementing rules that safeguard our communities from future flood threats resulting from the effects of climate change. We want to take this opportunity to recognize NJDEP for being proactive by proposing rules that attempt to address this eventuality. This is not an easy task and the efforts of all those involved should not be disregarded. As the premier floodplain management organization in the State of New Jersey, NJAFM welcomes the opportunity to continue working directly with NJDEP to refine the proposal based on the perspective of stormwater and floodplain management practitioners. We offer our knowledge and expertise in future stakeholder sessions, having a broad group devoted to floodplain management can only aid in the process of creating a robust rule.

In the meantime, we respectfully offer NJDEP comments for further consideration. We have structured our letter to capture the overarching themes of the rule proposal along with a several detailed technical comments.

Overarching Themes

Taking an Incremental Approach:

Climate is changing. Weather is changing. The increased threats from flooding and storm events should be reflected in our minimum construction requirements and development regulations, however, these regulations are written to protect development from site conditions that may be here 75 years from now. They are very progressive and forward thinking. The DEP regulations are set up for reexamination on a periodic basis. **We would recommend that an incremental approach be taken for the Inundation Risk Zone (IRZ) and Climate Adjusted Flood Elevation (CAFÉ).** This would allow local municipalities and developers the opportunity to adapt to changes in regulation, land use, tax revenue, emergency services, construction costs, and housing needs incrementally as part of a managed retreat from high-risk areas.

Financial Sustainability for Homeowners at all Income Levels

An incremental approach to implementing the rules ensures better long-term financial management for rebuilding and compliance. It allows insurers to gradually assess and price increased coverage limits, enabling property owners to secure more comprehensive protection against rebuilding costs. This method is both fiscally and socially prudent, making it easier for residents at all economic levels to afford to stay in and maintain their homes even after a disaster while promoting long-term community stability.

- **Limited Coverage for Increased Cost of Compliance (ICC):** The National Flood Insurance Program (NFIP) and most private insurers currently offer only \$30,000 for ICC coverage, which is often insufficient for properties requiring significant compliance updates. Few private insurers offer higher limits, but even these are limited to policyholders who also have their homeowners' insurance products.
- **Cost of Compliance Exceeds Coverage Limits:** Estimates indicate that compliant foundation rebuilds could cost between \$120,000 and \$250,000, significantly more than available ICC coverage. This gap in coverage could leave property owners with an out-of-pocket burden ranging from \$90,000 to \$220,000 in the event of a significant flood.
- **Pricing Challenges for Insurers:** Insurers have been reluctant to raise ICC coverage limits due to challenges in pricing these policies, largely because of limited experience with large-scale flood compliance rebuilds. An incremental implementation of the proposed guidelines would allow insurers time to evaluate probable losses and adapt their pricing models accordingly, potentially leading to broader and more affordable ICC coverage options.
- **Insufficient Ordinance and Law Coverage in Non-Standard Policies:** Many coastal property owners rely on excess and surplus lines carriers that typically offer only 10% of the insured structure's value for ordinance and law coverage. For a property valued at \$750,000, this would provide just \$75,000, which may not be enough to cover the cost of compliance under new regulations. For instance, if a fire prompts a rebuild requiring a new elevated foundation, the uncovered exposure could range from \$45,000 to \$175,000.

The Need for Statewide Mapping:

The creation of the IRZ and expansion of the CAFE will increase the Department's oversight of land adjacent to tidal waterbodies. The Department estimates that 384 square miles of land in New Jersey currently lies within the tidal flood hazard area based on a review of FEMA mapping of the Special Flood Hazard Area. The regulated area is expected to expand by an additional 115 square miles under this proposal. Without clear mapping of the expanse of these areas it is left to local officials and the regulated community to determine risk. **We recommend that mapping of these new regulated areas be provided to the public.** Mapping these areas allows for the public at large to be informed of risk, gives local officials guidance on when to direct applicants to obtain permits from the department, and informs developers on the risk of investing in these areas. The lack of mapping throughout the state creates a burden on residents who may not be aware of their flood risk or the limitations on improvements to their residence. It leaves communities to interpret whether a project is regulated, many times a community is the first point of contact for regulatory guidance. Finally, it leaves developers uninformed to the risk of investing in these areas. Mapping

has historically been overlooked and continues to be overlooked as a tool for communication and planning of flood risk.

Minimum Training Requirements for Local Floodplain Administrators

The issue of flooding is so important that every municipality in New Jersey is required to designate a floodplain administrator. This role is crucial for implementing floodplain regulations, managing development in vulnerable areas, and coordinating disaster response efforts. However, as critical as this position is in protecting personal property and public safety the Division of Consumer Affairs, and the Department of Community Affairs have yet to recognize that New Jersey offers no educational requirements for the position of the local floodplain administrator. This failure has led to gaps in knowledge and skills essential for managing floodplain construction and mitigation to ensure effective oversight and management of floodplain areas. By having trained individuals responsible for floodplain management, communities can better address the complexities of flood risks, enhance public safety, and ensure compliance with the National Flood Insurance Program (NFIP) requirements. The state can impose the strictest regulations imaginable, however, without the benefit of requiring training for the local floodplain administrator, there is no assurance that the development plans and permits will be adhered to during construction. **We recommend that the state set minimum basic training requirements and education requirements for anyone designated to hold the position of a local floodplain administrator.** The lack of requirements to be a local floodplain administrator breeds potential for unaccountability. This requirement would facilitate community resilience by improving preparedness and response to flooding events.

Department Review of its Internal Capacity:

The expansion of regulated areas and conversion of permits by rule to general permits by registration will result in an increased volume of permit applications to the Department, which is already severely burdened by permit applications. **We recommend that the department review its internal capacity to meet review deadlines.** The capacity to thoroughly review an application is critical to ensuring public health and safety. The rules are complicated, and it takes time for even the most knowledgeable staff to get up to speed with rule changes. The Department should be prepared for the surge of applications leading up to the rule proposal and the increased complexity of review under the rule proposal.

Analysis of Downstream Relief Pathways:

The REAL rule, along with the Inland Flood Protection Rule, require increases in design storm intensity when calculating hydrographs for use in stormwater management systems, however little consideration is given to the downstream conveyance system. Much of the existing public and private infrastructure currently in place is undersized for these severe events. **We recommend that the department include analysis of downstream relief pathways through both conveyance and overland relief to ensure public health, safety, and welfare is met.** The intensity of storms appears to be changing and many of the fatalities associated with flooding are due to failing or inadequate conveyance systems. Introducing more water into these systems is only increasing the potential dangers.

Enforcement of the Rules

As previously discussed, currently, there are no formal educational requirements or competency evaluations for floodplain administrators. Although municipalities are considered "persons" for enforcement under 58:16A-51, the State seldom takes action against them for lapses in floodplain management, such as approving permits and construction within the floodway. NJDEP enforcement actions have traditionally targeted property owners rather than municipalities for these types of infractions. To improve floodplain management, **the regulation should establish certification or training requirements for floodplain administrators and increase accountability for municipalities under the Flood Hazard Area Control Act**, making them party to potential enforcement actions.

Technical Comments

7:7A-5.7(b)1 - This proposed rule change introduces a significant alteration in the regulation of general permits, shifting them towards individual permit requirements. General permits have traditionally facilitated the approval process for activities with minimal impacts on regulated freshwater wetland features. The proposed changes introduce subjective review criteria, which may lead to increased review times for Department staff. Current review times for general permits are already lengthy, often extending beyond six months to a year, which discourages their use whenever possible. The new requirement for an alternatives analysis could lead to increased costs for applicants, with potential cost implications for the regulated community, which is ultimately borne by broader community, while the ecological benefits remain uncertain.

7:8-1.2 - The Department's clarification that certain maintenance and repair activities, such as mill and overlay, are not considered disturbances is appropriate. However, the definition of reconstruction should also reference similar exemptions to ensure clarity. The definition of "Major development", particularly prong 4 which states the reconstruction of one-quarter acre or more of 'regulated motor vehicle surface' or 'regulated impervious surface' since (the effective date of this rulemaking) could categorize significant milling and overlay activities as major development. A practical solution would be to copy and paste the relevant exemptions from the definition of "Disturbance" into the definition of "Reconstruction" to clearly exempt maintenance work.

7:8-5.2(d)4 - It is recommended to include the removal of a dam alongside with its maintenance to clarify that stormwater management requirements do not apply even if more than one acre is disturbed during the dam removal process.

7:8-5.3(f)&(g) - Clarification is needed to ensure that exemptions for improvements to existing public roadways apply consistently, regardless of whether the improvements are made by private or public entities. The provisions should also extend to off-site and off-tract public roadway and railroad improvements required by public transportation entities, ensuring uniform treatment of all public infrastructure projects.

7:8-5.5(j) - The proposed regulation lacks specificity regarding the allocation of Total Maximum Daily Loads (TMDLs) for Major Development projects. While TMDLs are crucial for improving water quality, the regulation fails to provide specific site runoff standards for nonpoint source load allocations, relying instead on broad goals and policies. Clear guidelines are needed to determine site-specific runoff standards and best management practices (BMPs). Current NJAC 7:8 only

regulates Total Suspended Solids (TSS), while TMDLs encompass a broader range of pollutants. For the regulation to be effective, there needs to be a clear mechanism for determining site-specific standards and corresponding BMPs. Future TMDLs adopted by reference should adhere to the Administrative Procedures Act to avoid unanticipated regulatory changes.

7:8-5.6(d) - Since the adoption of the 'green infrastructure' rule, which limits certain basins to a maximum of 2.5 acres per structure, stormwater management plans have become difficult to manage. The introduction of a maximum size for certain basins has increased the complexity and volume of stormwater management plans, resulting in longer review times. This complexity could lead to a higher likelihood of errors and could potentially impact environmental quality. A reconsideration of the maximum size requirement may be warranted to streamline the process allowing for more efficient design and implementation.

7:13-3.2(b) 1. - The requirement to add 5.0' to the 100-year floodplain creates further conflicts with existing standards for Offsite Stability, as it could limit safe discharge locations for stormwater.

NJAC 7:13-12.5(b) - New Jersey's regulations provide requirements for a "building" but do not specify differences between residential and non-residential structures. The provisions in (b) allow an architect or engineer to certify equipment placement below the Climate Adjusted Flood Elevation without explicitly requiring that placement to comply with minimum elevation standards outlined by 44 CFR 60 and FEMA flood maps.

These provisions also permit the use of isolation methods and certifications by architects or engineers to confirm equipment functionality if submerged. This could include below-ground structures for mechanical and electrical utility equipment. Locating equipment below NFIP-recommended levels, however, could result in non-compliance for residential buildings and increase insurance costs for residents.

In high-value real estate areas, property developers of multi-family buildings may request exceptions for below-grade utility rooms, where roof decks and maximized residential or commercial space are valued. While such configurations may increase insurance premiums for residents, there is also the potential for displacement and decreased building resilience if flooding causes equipment damage due to design or maintenance issues. Additionally, New Jersey could face legal challenges under the Civil Rights Restoration Act of 1987 if non-compliant residential designs are permitted and NFIP minimum standards are not enforced while accepting federal funds for such purposes

7:13-7.30 - Permit by registration 30 addresses the maintenance of existing stormwater management structures. However, it could conflict with erosion and sediment control standards, given that it includes components regulated by soil conservation districts.



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NJAFM: Dedicated to Reducing Loss of Life & Property Damage Resulting from Floods & Promoting Sound Floodplain Management