Major Development Definition

1. **Nature of the Change:**

   Existing: "Development"...In the case of development on agricultural land, development means; any activity that requires a state permit; any activity reviewed by the County Agricultural Boards (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

   Proposed: "Agricultural or horticultural development" means construction for the purposes of supporting common farmsite activities, including but not limited to: production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

   "Agricultural or horticultural use" means the use of land for common farmsite activities, including but not limited to: the production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

   Proposed "Major development" ... Major development shall not mean agricultural or horticultural use.

   Why you are seeking the change/the benefits this change will bring:

   We are seeking the above changes to provide for a distinction between common farmsite activities and new construction on agricultural lands. the current definition of development is excessively broad and misleading.

   Rule Citation: 7:8-1.2

2. **Nature of the Change:**

   Proposed: Any application for a new agricultural or horticultural development that meets the definition of major development at N.J.A.C. 7:8-1.2 shall develop and implement a Farm Conservation Plan. For the purposes of this section, Farm Conservation Plan means a site specific plan that prescribes needed land treatment and related conservation and natural resources management measures, including forest management practices, that are determined to be practical and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of nonpoint source pollution.

   Proposed: Encroachment within the designated special water resource protection area under (h)(1)(i) above shall only be allowed where previous development or disturbance has occurred.

Existing agricultural or horticultural uses that lie within the special water resource protection area are not intended to be covered by the provisions of this section.

Why you are seeking the change/the benefits this change will bring:

Soil Conservation Districts are not equipped to evaluate proposed agricultural or horticultural development in accordance with these rules. Currently, Districts are directed to request assistance from NJDA-SSCC staff in the determination of whether or not proposed activities meet the rule requirements. The Natural Resources Conservation Service maintains a comprehensive suite of best management practices that can address the requirements of this section.

Additionally, ongoing agricultural activities within the special resource protection area should be excluded from the requirements of this section with a distinction between agricultural or horticultural use and a parking area or maintained lawn.

Rule Citation: 7:8-5.4(b); 7:8-5.5(h)(1)(ii)

Increased or New Standards

3. **Nature of the Change:**

Volume if going to someone else's basin

Why you are seeking the change/the benefits this change will bring:

The SWM rule compliance is typically met by reducing peak flows from a site and allows the increase of runoff volume. However, when the discharge goes into a storm sewer system that discharges into a downstream basin, the increased volume of runoff could cause the function of the downstream basin to fail. Where the discharge does not go into a stream, it needs to be determined if the increases in runoff volume could result in adverse impacts to downstream structures. If so, the applicant must resolve the issue with the owner of the structure.

Rule Citation: 7:8-5.4(a)3

4. **Nature of the Change:**

50% TSS removal for reconstruction

Why you are seeking the change/the benefits this change will bring:

The Stormwater Management rules should provide the 50% TSS removal in the language to be consistent with the SWM FAQ.

Rule Citation: 7:8-5.5

Calculation Related Changes

5. Nature of the Change:

There needs to be more clarity on "existing conditions" for runoff analysis. There have been different interpretations. The letter of the reg says the lowest runoff condition in the last five years, but some DEP agencies take that as allowing previous impervious surface that existed within the prior 5 years to be considered impervious.

Why you are seeking the change/the benefits this change will bring:

The latter interpretation is reasonable and should be used. I have worked on more than one site requiring cleanup/remediation where above ground tanks/pavement was removed to clean up the soil. It is not appropriate to penalize the owner for keeping the surface as gravel. The alternates are to delay cleanup or pave the area only to remove it again.

Rule Citation: 7:8-5.6(a)2

6. Nature of the Change:

Remove Rational/Modified Rational

Why you are seeking the change/the benefits this change will bring:

The use of the Rational/Modified Rational for stormwater runoff computations should be removed. This results in values inconsistent with the NRCS method. Many hydrologic analysis programs do not perform the critical duration storm evaluation discussed in Appendix A-9 of the SESC in NJ. This often requires the need to perform separate hand computations to establish the critical duration storm and is rarely done.

Rule Citation: 7:8-5.6(a)1ii

Preserve Existing Natural Features

7. Nature of the Change:

Somewhat disagree with the recommendation for the requirement that major developments use green infrastructure as opposed to nonstructural measures to meet the water quantity, water quality and groundwater recharge standards. Prior to the use of any structural measures (including GI), nonstructural measures should be incorporated to the maximum extent practicable.

Why you are seeking the change/the benefits this change will bring:

Stormwater management LID measures should be adopted in order to preserve or mimic the natural hydrologic features and characteristics of the land. This should be done using the 9 prescribed nonstructural management strategies first. GI should be used following incorporation

of nonstructural measures. GI also provides multiple secondary benefits including reducing air temperatures, removing air pollutants, reducing asthma and heat-related illnesses, providing savings in cooling costs, providing climate resiliency and providing and/or improving wildlife habitat.

Rule Citation: 7:8-5.2(a); 5.3(b)

8. **Nature of the Change:**

Requirements and/or incentives for the preservation of existing natural and open space on the site

Why you are seeking the change/the benefits this change will bring:

While the retention standard discussed above would have significant benefits compared to the current rules, in some cases developers could choose to comply with it by paving over most or all of a site and using only engineered practices for stormwater management. Even if green infrastructure practices were exclusively used, the many benefits of open space would be lost.

We urge DEP to couple the retention standard with requirements and/or incentives for natural and open areas to be preserved on the site. The U.S. Geological Survey has found that land cover is one of the most important factors in water quality results, even when BMPs are used to treat runoff. Further, open space provides significant social, economic, and environmental benefits beyond water quality.

As an initial matter, the nonstructural stormwater management strategies in N.J.A.C. 7:8-5.3 should not be deleted from the regulations, or converted into non-mandatory planning requirements, but rather retained as required design standards for projects. Additionally, DEP should consider adopting additional incentives for sites to preserve open space, such as: ensuring that the calculation of a site's retention volume fully accounts for undisturbed open space by awarding it a runoff coefficient of zero; offering a fast-track permitting process to projects that preserve a certain amount of open space; or waiving or reducing permitting fees for such projects.

Rule Citation: 7:8-5.3

9. **Nature of the Change:**

Require that existing natural features of a site be preserved and maintained as a primary method of reducing stormwater runoff and filtering pollutants, and that low impact development through preservation of specific types of natural features – e.g., types of forest, meadow – be incorporated into the BMP Manual.

Why you are seeking the change/the benefits this change will bring:

The nonstructural strategies / LID techniques based on preserving existing natural areas must not be lost in the stormwater rules. Forest and meadows are powerhouse green infrastructure

features and should count as such. The circumstance where forest is removed to make room for a basin should not happen.

Rule Citation: