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DEPARTMENT OF ENVIRONMENTAL PROTECTION

**LAND USE MANAGEMENT
WATER MONITORING AND STANDARDS
Surface Water Quality Standards
Adopted Amendments N.J.A.C. 7:9B-1.4 and 1.15**

Proposed: May 21, 2007 at 39 N.J.R. 1845(a)
Adopted: May -- 2008 by Lisa P. Jackson, Commissioner,
Department of Environmental Protection ---
Filed: May --, 2008 R. d. **with substantive and
technical changes** not requiring additional public
notice and comment (see N.J.A.C. 1:30-6.3)
Authority: N.J.S.A. 58:10A-1 *et seq.*, 58:11A-1 *et seq.*,
N.J.S.A. 13:1D-1 *et seq.*
DEP Docket Number: 11-07-04/557
Effective Date:
Expiration Date:

The Department of Environmental Protection (Department) is adopting amendments to the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B. The amendments at N.J.A.C. 7:9B-1.4 modify the definition of “category one waters” and add new definitions for “Exceptional Ecological Significance”, “Exceptional Fisheries Resource(s)”, “Exceptional Water Supply Significance”, and “HUC 14.” The Department is also adopting amendments to upgrade to Category One antidegradation designation approximately 686 river miles.

In consideration of comments received regarding some of the proposed Category One designations based exceptional ecological significance - endangered or threatened species, the Department reevaluated all the waterbodies proposed for Category One upgrade based on endangered or threatened species. The Department determined that

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portions of certain waterbodies do not meet the criteria for Category One designation and is modifying the rules on adoption accordingly. These changes on adoption are explained in responses to comments 320 through 321, 340 through 341, and 388 through 397 below.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing on the proposal was held on June 28, 2007, at the Rutgers EcoComplex Environmental Research and Extension Center, Bordentown, New Jersey. Debra Hammond, Chief of the Bureau of Water Quality Standards and Assessment served as the hearing officer. 26 persons attended the hearing, and 11 provided testimony. The hearing officer recommended that the rules be adopted as proposed, with the changes described in the responses to comments and in the summary of agency-initiated changes below. The Department accepted the recommendation.

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

Office of Legal Affairs

Attn. DEP Docket Number 11-07-04/557

New Jersey Department of Environmental Protection

P.O. Box 402

Trenton, NJ 08625-0402

Summary of Public Comments and Agency Responses:

The following persons timely submitted written and/or oral comments on the proposal.

- 1 South Jersey Bayshore Coalition C/O ANJEC
- 2 Howell Township Environmental Commission
- 3 Ackerman Kathy
- 4 Ackerman Beth

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5	Akers	Fred	Great Egg Harbor Watershed Association
6	Aldrich	Chris	Lake Mohawk Country Club
7	Alford	Renee & Robert	Omni Environmental for Stony Brook Regional Sewerage
8	Amidon	Thomas	Authority
9	Armstrong	James G.	Township of Hardyston
10	Arnstein	Jesse	
11	Atkinson	Robert C.	
12	Bailey	Pamela	
13	Ball	Andy	
14	Balmer	Carole	
15	Banhart	Carol	New Jersey Conservation Foundation
16	Batty	Sandy	ANJEC
17	Blair	Rosemary	
18	Boulby	Driscoll	
19	Bowden	Robert	Township of Colts Neck
20	Bowers	Gerard R.	
21	Bracken	Thomas	
22	Breithaupt	David E.	
23	Briant	Robert A.	Utility and Transportation Contractors Ass. of NJ
24	Brogan	David	New Jersey Business & Industry Assn.
25	Brown	Harry E.	
26	Brunner	Joseph P.	Soulands Planning Council
27	Brush	Paul	Township of Toms River
28	Bubalis	Linda	
29	Buono	Barbara	New Jersey Senate
30	Buttars	Jane L.	
31	Buzzard	Diane	
32	Bzwiak	A.	
33	Campbell	Bob	
34	Carafello	John	
35	Carluccio	Tracy	Delaware Riverkeeper Network
36	Carswell	Kathy	
37	Charles	Lynn R.	
38	Chiusano	Gary H.	County of Sussex Board of Chosen Freeholders
39	Chrystie	Paul	Coalition for Affordable Housing & the Environment
40	Chute	Charles C	Lake Mohawk Yacht Club
41	Coffey	Jennifer	Stony Brook Millstone Watershed Ass.
42	Culver	Suzanne	Mannington Township

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43	D'amico	John	
44	Dech	David K	Planning Department, County of Warren
45	DeGerolamo	David	Aqua New Jersey Inc
46	Delmont	Adrian	
47	Dickenson	George-Therese	
48	DiLodovico	Anthony	Schoor Depalma
49	Dixel	Barbara	
50	Doherty	James R.	Township of Wantage
51	Dombrowski	Margaret	
52	Dunn	James	Lake Mohawk Country Club
53	Egenton	Michael A.	New Jersey Chamber of Commerce
54	Fair	Janet	
55	Ficquette	Bobby	Department of The Air Force
56	Flaherty	Ralph	Lake Mohawk Country Club
57	Foos	Ellen	
58	Fowler	Eugene	Township of Jackson
59	Frey	Wilma	New Jersey Conservation Foundation
60	Gambino	James Bonni &	
61	Garcia	Lyle	
62	Genovese	Vincent	
63	Gigliotti	Chris	Cornerstone Commons Urban Renewal LP
64	Glenn	Becca	Sierra Club
65	Godber	Alan S.	Lawrence Brook Watershed Partnership Inc.
66	Goldshore	Lewis	Goldshore Cash & Kalac for Lake Mohawc Country Club
67	Gorrie	Margaret R.	
68	Gowen	Catherine Kurtz	
69	Grasso	Jarrold	New Jersey Assn. of Realtors
70	Green	Elkins	State of New Jersey, Department of Transportation
71	Grillo	Stacy	
72	Grunstein	Gabi	New Jersey Farm Bureau
73	Guadagno	Victor	
74	Guiditta	Robert	Courter Kobert & Cohen for Mars US
75	Haddad	Joseph	
76	Hamilton	Leslie	Township of Hardyston
77	Harkins	Joanne M.	New Jersey Builders Association
78	Harrington	Colleen	
79	Harrington	Jean	
80	Harris	David A.	

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81	Hartman	James	Department of the Army
82	Heck	Seymour C.	
83	Heckenberger	R. Scott	
84	Henderson	Helen	Save Barnegat Bay
85	Heuser	Carolyn	
86	Hirshblond	L. Manuel	Township of Dover
87	Hluchan	Richard M.	Ballard Spahr Andrews & Ingersoll
88	Hoagland	Jeff	Stony Brook-Millstone Watershed Association Sussex County Municipal Utilities Authority, Wallkill River Watershed Management Group, Lake Mohawk Country Club
89	Hofer	Ernest W.	
90	Hood	Kim	
91	Hood	Robert	
92	Hookway	Debbie	Lake Mohawk Country Club
93	Hookway	William & Deborah	
94	Horne	Eleanor V.	Lawrence Hopewell Trail Corporation
95	Horsfield	Tammie A.	Sussex County Chamber of Commerce
96	Hyde	Paul	
97	Jacob	Majah	
98	Jegou	Charles	Milltowners for a Sensible Ford Avenue Redevelopment
99	Jegou	Carol	
100	Johns	Dawn Marie	Sierra Club, Ocean County
101	Karosen	Laurence	
102	Karrow	Marcia A.	N.J. General Assembly
103	Kaspin	Joan	
104	Keefer	Dennis	Lake Mohawk Country Club
105	Kennedy	Susan	American Littoral Society
106	Kennedy	Milton L.	
107	Kenney	Paul	United States Department of the Interior, National Park Service
108	Kievit	Kenneth P.	Township of Hardyston
109	Kilduff	James	Borough of Franklin, Planning and Community Development
110	King	Mike	Phillipsburg Riverview Organization
111	Kinney	Peter	
112	Koch	Kim	
113	Kovacs	Sylvia	Warren County Environmental Commission
114	Koza	Mary Beth	Bristol-Myers Squibb Company
115	Kozinski	Larry H.	
116	Kozinski	Jane	Saul Ewing
117	Kramer	Mary Beth	Kramer Consulting
118	Krystopik	Norman	

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119	Krystopik	Andrew	
120	Larson	Janet N.	Township of Toms River
121	Lasinski	William	Township of Hardyston
122	Lawson	Sandy	Wanaque Reach
123	Leavens	William Barry	
124	Levandowski	Richard	
125	Lincoln	Diane	
126	Linder	Karen	
127	Littell	Robert E.	New Jersey Senate
128	Littell McHose	Alison	NJ General Assembly
129	Locher	Peter & Lynne	
130	Loevner	David	
131	Lord	Deborah G.	Pompeston Creek Watershed Association
132	Lycosky	Patricia A.	Vernon Township
133	Lynch	Diane	US DOI Fish and Wildlife Service
134	Macari	Bernice	Attached with Buono's letter
135	Machnik	Kathleen	East Amwell Township, Mayor
136	Manganaro	James	
137	Manion	Elaine	
138	Martineau	Linden	
139	Martinelli	Paul E.	Group 5 Development LLC
140	Masten	John	Institute for Advanced Study
141	Maxwell	John	New Jersey Petroleum Council
142	McAleer	Sean	
143	McAleer	Jill	
144	McBriar	Robert B.	Attorney for Lake Grinnell Homeowners' Association
145	McFadden	Doris E.	
146	McGuinness	Michael G.	National Association of Industrial and Office Properties
147	McKeon	David J.	Ocean County Planning Board
148	Merritt	Nancy L.	Salem County Watershed Task Force
149	Michaelsen	Lance	
150	Miller	Ralph J.	
151	Mittman	Christine	D R Horton Inc.
152	Morel	Mike	Morel Builders LLC
153	Morgan	Elaine	County of Sussex
154	Morrison	Janet	Mayor, Township of Vernon
155	Mulvihill	Andrew	Crystal Springs Builders
156	Muth	J. Todd	
157	Naisby	John R.	

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158	Naisby	Danielle	
159	Nargi	Robert	Union Township Environmental Commission
160	Nieuwenhuis	Richard E.	New Jersey Farm Bureau
161	Nolder	Amber	
162	Norkis	Charles M	Cape May County Municipal Utilities Authority
163	Nugaki	Jane	NJ Environmental Federation
164	O'Hearn	Robin	Skylands Clean
165	O'Keefe	Patrick J.	New Jersey Builders Association
166	Oltman	Laura	Eco Action Initiatives of Warren County
167	O'Neil	Lauren	Franklin Township Commissioner
168	Oroho	Steven V.	County of Sussex Board of Chosen Freeholders
169	Pedersen	Mrs. M.	
170	Peretta	Christopher	
171	Peretta	Tara A.	
172	Pierson	Cynthia	Pompeston Creek Watershed Association
173	Prickett	William	
174	Pringle	David	NJ Environmental Federation
175	Pylka	Joseph M.	Washington Crossing Audubon Society
176	Reardon	Cheryl	ANJEC
177	Reed	Russell M.	
178	Repka	Karen	
179	Riewerts	Henry	
180	Robinson	Michael W.	Environmental Commission of Riverton
181	Ross	Wayne	Township of Hardyston
182	Rotondi	Paul	
183	Sachau	Barbara	
184	Sajdak	Nathaniel	Sussex County Municipal Utilities Authority, Wallkill River Watershed Management Group
185	Salmon	Thomas	
186	Schmidt	Joseph E.	Milltowners for a Sensible Ford Avenue Redevelopment
187	Schmidt	Lois	
188	Schmidt	Mary	
189	Schneider	Paul	Giordano Halleran & Ciesla, for Leigh Realty, Inc.
190	Schueler	Stephen	Cosigned by D'Amico
191	Sebastian	Sandra	
192	Sebastian	Stan	
193	Sebastian	Jamie	
194	Serrett-Curran	Sandra	
195	Shakarjian	Michael P.	Borough of Milltown Environmental Commission

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196	Shake	Susan	
197	Simmons	William	Monmouth County Health Dept.
198	Sinden	Grace L.	
199	Smith	Marianne	Township of Hardyston
200	Smith	Frances	
201	Smith	Maryann	Township of Hardyston
202	Smith	Frances	Lake Mohawk Country Club
203	Snyder	Eric	County of Sussex, Division of Planning Save Rural Andover Borough, Delaware Riverkeeper Network, NJ Conservation Found., NJ Envi. Federation, NJ Highlands Coalition, Sierra Club
204	Snyder	Margaret Y	
205	Solomon	Mark	Pepper Hamilton, LLP, For Educational Testing Service
206	Souza	Stephen J.	Princeton Hydro, LLC, for Lake Mohawk Country Club
207	Spekhardt	Michael	Mayor, Township of Sparta State of New Jersey, Department of Community Affairs, Office of Smart Growth
208	Spinelli	Benjamin	
209	Stein	Jeanne	
210	Sterbenz	Paul	Master Consulting, Pa, for Town of Hackettstown
211	Stetar	Joseph	
212	Stewart	Russell	
213	Stickel	George A.	
214	Stokes	Eileen & Robert	
215	Stote	Barbara	
216	Stote	Lenny	
217	Stotini	Barbara	
218	Strickland	Sharon & Kern	Rutgers Environmental Law Clinic for Americal Littoral Society, Association of New Jersey Environmental Commissions, Hackensack Riverkeeper
219	Strickland	Carter	
220	Styler Barry	Beth	Musconetcong Watershed Association
221	Sweeney	Steven M	New Jersey Senate
222	Taylor	Steve Christopher	Manasquan River Watersehd Association
223	Teasdale	J.	Tewksbury Township Environmental Commission
224	Tenenbaum	Diane Alan &	
225	Tenenbaum	Diane	
226	Thomas	Thomas A.	Thomas Planning Associates, LLC
227	Tittel	Jeff	Sierra Club
228	Tower	Miriam	Township of Sparta

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229	Tubman	Lloyd H.	Archer & Greiner
230	Umscheid	Lou & Carole	
231	Van Abs	Daniel J.	New Jersey Watersupply Authority
232	Van Rossum	Maya K.	Delaware River Keeper
233	Varro	Thomas	Sussex County Municipal Utilities Authority
234	Vetrano	Glen	County of Sussex Board of Chosen Freeholders
235	Vitovic	Paul	
236	Walker	Lucille	
237	Waltman	James R.	Stony Brook-Millstone Watershed Association
238	Waltman	Alicia Brooks	
239	Wawrzyniak	Chad	
240	Wehmeyer	Joseph	Lake Mohawk Country Club
241	Wells	Warren	
242	Westerweller	Lynne	
243	Westerweller	Garry	
244	Wilkinson	Jessica	Friends of Hopewell Open Space
245	Willis	Elizabeth	
246	Willis	William John	
247	Wirths	Harold J.	County of Sussex Board of Chosen Freeholders
248	Wolfe	Bill	
249	Wolff	Richard C.	
250	Zanetakos	Marianne	
251	Zellman	Susan M.	County of Sussex Board of Chosen Freeholders
252	Zipf	Cindy	Clean Ocean Action
253	Zolnierzak	Pamela	
254	Antoniello	Marianne	
255	Abbamont Jr.	Joseph	

The following 24 persons submitted a form letter supporting Category One upgrade for Musconetcong River.

256	Musconetcong River.		
	Balestrieri	Anna	
	Bilar	Magda	
	Buback	Anna & Robert	
	Bubalis	Roger	
	C.A.	Michaels	
	Eisenger	Styra	
	Fouk	Cathy	
	Glinieki	Robert M.	
	Gomez	Frank	
	Gomez	Loretta	

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Goshen	Ilse	Bloomsbury Environmental Commission
Illegible	Mary	
Kalatucka	Jill	
Kathy	Newman	
Koch	Joyce	
Macgonagle	Cinny	
Normile	Marge & Larry	
Romino	Kathleen	
Spekhardt	Amy	
Sullivan	Richard	
Thomas	Gary	
Thomas	Lisa	
Waterson	Robert S.	
Wilder	Susanne	

257 The following 104 persons submitted post cards supporting the Category One upgrade for the Toms River.

Howell Township Environmental Commission

Bailey	Pat
Best	Andrew
Blake	Kevin & Christina
Borase	Natalie
Brenner	S
Brown	Sandra
Brown	Terrence
C	Herbert
Caieri Family	
Campbell	Eric
Capawana	C
Coccia	Laura
Coccia	Matthew
Coulson	Valerie
Czyzewski	Mr. & Mrs. Paul
Dacuik	Bonnie
Deboer	Debra
Desmarais	Chris
Devoursney	Robin
Dimarco	Ruth
Duncanson	Joan
Dwyer	Laura

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Egli	David
Felter	Cindy
Fenton	Lynne
Ferguson	Carolyn
Foglia	Nancy
Foglia	John
Franklin	Mari
Graziano	Angela
Greenstein	Barry
Hall	Cathy
Hanifin	Brian
Holzbaur	Linda
Huale	Kathy
Illegible	Phyllis
Illegible	
Illegible	
Illegible	Robert
Illegible	Bill
Illegible	
Imperati	Helen
Isaza	Jocelyn
Jackson	Joseph
Jackson	Mrs. Joseph
Jacler	Illegible
Jobin	Barbara & Ron
Johns	Thomas
Johns	Jude
Kelly	Barbara
Killeen	Heather
Kirk	Stephen
Kossakowski	Dawn
Kossick	Kenneth
Lauria	Bette
Leighton	J. Peter
Lookup	Megan
Madera	John
Magee	James
Maresca	Brian
Maresca	Lisa

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Marson	Catherine
Mayberg	Norm & K
Mccord	Monica
Mccord	Harry
Mccracken	Tammy
Meehan	Mary Ellen
Meehan	Craig
Mendoza	Bet
Millard	Joan
	Ed &
More	Gladys
Moser Family	
Mules	Donnarie
Murasky	Dolores
No Name	No Name
Pastine	Mary
	Mr. & Mrs.
Peters	J
Piccu	Chuck
Post	Donald
Post	Irene
Powell	Carmella
Quackenbush	Barbara
Rapsas	Tom
Roselli	Charlotte
Sammons	Rita
Schwann	Howard
Seeland	Faye
Sexton	Shane
Sheehan	Michael
Shipman	Carol
Silvia	Rosalie
Smith	Kelly
Stern	Yvonne
Stone	Laura
Terry	Cahill
Thorn	Diane
Topoleski	Alice
Washik	Corinne

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Washik	Richard
Weil	Fred & Evelyn
Wise	Linda
Yerike	Edith
Young	Doris & George
258	The following 133 persons submitted emails supporting Category One upgrade for Toms River.
Albano	Charles
Alexander	Eleanor
Artel	Natalie Aloyets
Austin	Mary Jo
Avery	Sarah
B	Nick
Bahr	Christine
Banta	Adam
Betz	Richard
Bhamra	Davinder
Blanchard	Dan
Blanchett	Walter
Borelli	Dorothy
Bottomley	Lucy
Brown	Janice
Burns	Rebecca
Callahan	Shannon
Carcone	Marlena
Carringer	Nancy
Carson	Maureen
Cayford	Laura
Chamberlain	David
Chiles	Sarah
Christ	Mercedes
Cifrese	Jodi Eckel
Clader	Sarah
Cogger	Liz
Coleman	Bradley
Craley	Austin
Cuturfello	Fiorella
D	C
Deangelis	Kate
Delanty	Florence

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Doe	John
Dubois	Amy
Dupras, Sr.	Arthur
Ebert	Chris
Eggers	Judith
England	Bob
Engleman	Chris
Ewing	Donna
Fletcher	Chris
Ford	Lori
Frank	Matthew
Galie	Apolonia
Garcia	Stefanie
Gebhard	Linda
Glynn	James
Goodnow	Wes
Gukczynski	Lynn
Gurman	Zena
Harrison	Jennifer
Hayes	Alison
Healy	Ethel
Henricks	Peter
Hoffman	M.
Johnson	Aaron
Johnson	Andrew
Kahn	Karen
Kelley	Richard
Kelly	Tom
Kelly	Chris
Kelly	Linda
Kistler	Ron
Kolarsick	Jennifer
Konczal	Eddie
Kravetz	Harold
Lagatta	Susan
Lavin	Anne Marie
Lear	Robert
Lee	Rosalynn
Lesnever	Darren

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Levin	Leslie
Lipari	Philip
Livingston	Amy
Lytle	Denise
Madama	Khadi
Maguire	Randall
Maizel	Joshua
Mannheim	Glenn
Marquit	Cindy
Mccullagh	Charlie
Mcdonnell	Joana
Mcdougall	Barbara
Mclain	Lisa Ritchie
McNair	John
Melillo	Phillip
Milkowski	Lynn
Miller	Marilyn
Miller	Kalman
Mottola	Patricia
Narasimhan	Seshadri
Nessim	Shlomo
Oren	Andrew
Palmer	Glenn
Panariello	Martin
Parsons	Arielle
Persiano	Marcia
Poaletti	Susan
Poulsen	Gil
Poyd	Laura
Prettyman	Charles
Racioppi	Nicholas
Rapsas	Tom
Reiss	Paul
Rizkalla	Annie
Rosenson	Leon
Rubin	Marc
Sabin	Kent
Sadlowski	Junelynn
Sauers	Paul

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Schneiderman	Neil
Schreck	Cara
Sherman	Rozalyn
Skierski	Christine
Smith	George
Sosnicki	William
Stokes	Jean
Sullivan	Carol
Svendsen	Kyle
Szura	Brian
Szymanski	Cathy
Szypryt	Ursula
Teixeira	Alfredo
Thompson	Rita
Toboada	Brian
Vetrano	Stephen
Vogrin	Jean
Walker	Colleen
Wardle	Lisa
Wei	Iping
Winston	Marilynn
Wisowaty	Maria

The following 1516 persons submitted form letters opposing the Category One upgrade for Lake
259 Mohawk

Edward & Elinor	
Abram	W.
Abrams	Nole
Adelato	Neil J.
Adkin	Arlene
Aebershol	William
Ahlberg	James
Aitker	Kevin
Aleasio	Roseanu
Ali	Moazanic
Allen	J.M.
Allergo	Sharon
Alni S.	Stephen
Alvarez	Darrell & Abby
Alvarez	Linda

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Anderson	Penny L.
Anderson	Rex
Andrews	Kylen
Anne	Ceteele
Annone	John & Donna
Apgar	Mary
Appel	Genevieve Fitzgibbon
Armas	Oliver
Armona	Lynda
Atkinson	Mr & Mrs Robert
Augenstein	John
Averill	David
Avion	Kate & Gordon
B. James	
Babla	Willi S.
Baer	John
Baete	John
Baller	Linda
Bancato	Mareletu
Banknorth	Td
Baran	Berenice
Baraugh	Illegible
Barny	Illegible
Barol	Theodore
Bartolomeo	Dominick
Basiakos	Steve
Batchelor	William
Bathia	Amy Pitts
Battaglia	Antoinette
Bauman	Mavis
Baumann	Muriel
Baungardner	N.
Bauss	Gail & Kenneth
Bayliss	William V.
Bectol	Jane
Beiley	Ronald
Belli	Robert
Bellum	Lorraine
Bender	Gudith E.

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Benk	Paul
Benle	S.
Benson	Marcia R.
Benson	Susan
Bernstein	R
Berrer	Randi
Bertoline	Lori
Beveridge	William
Bewer	Catherine
Bieganousky	Frank
Bieganowsky	Deborah
Birona	Robyn & Dennis
Bischoff	Chris
Bishor	Amy
Bisoglio	Marco
Biss	Pam
Bittle	A.
Blackman	Shirley
Bleakley	Morgan & Robert
Blindt	Helan
Blodgett	Donald A.
Bloomghia	Lillian
Blunt Iii	Elson
Boffa	David J.
Bolin	Audrey M.
Borden	James
Borny	Deborah
Botts	Lawrence
Bowld	Helene
Bowles	Carey
Bowley	Chris
Bowman	Micheal
Boyt	John F.
Brady	Brian L.
Brady	Mr & Mrs James F Carol &
Brady	John
Braendle	Ellen
Braendle	Edgar

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Branciforte	Adrienne
Brauer	Catherine
Brave	Donald A.
Brennan	Duffy
Bresty	Patrick
Brick	Susan
Brill	Robert& Cheryl
Brininger	
Broderick	Elaine & Stephan
Broderson	Christopher
Bronson	Douglas
Brook	David
Brooks	Matthew C.
Brooks	Gary F.
Brounlee	Barbara
Brown	Richard
Brown	Vincent
Brownofi	William
Brubacher	Eileen
Bruno	Illegible
Bryant	Eleanor J.
Buckey	Elaine
Buckley	John
Buckley	Helen
Buneski	J.M.
Burdon	Tina
Burghardt	Celeste
Burke	Richard
Busche	Michael
Busser	Charles
Butera	Mr. & Mrs. R.
Butler	R.
Byers	Robert M.
Byrne	Sandra
Cafferata	A.
Calf	Bob
Callahan	Tara
Callender	Paul
Calway	Richard

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Camacho	Cassavdea
Campbell	Catucia L.
Campbell	Francis
Campbell	H.E.
Cangialosi	Arthur
Capasso	Dorothy
Caprio	Kevin S.
Caputo	Peter
Carcone	John & Elizabeth
Carlson	Lisa
Carlson	Therese
Carlson	Dana
Carlson Jr	Richard D.
Carn	James D.
Carn	Chris
Carr	Raymond & Elizabeth
Carrigan	Dean & Karen
Carson	John H.
Carson	Gail
Carson	Kathleen D.
Carty	Ann
Carty	Phyllis M.
Caruso	Charles
Cascio	Aldo
Case	Sue A.B.
Cassano	Vito
Casso	Joseph
Cavanaugh	Michael T.
Ccaler	Laura
Cecere	Joseph
Cef	R
Cella	Jennifer & Gerard
Cena	Alan
Cericola	Marie P.
Cerra	Alan
Chapman	Ed
Chase	Laura
	Mr. & Mrs.
Chiappinelli	J.

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Chiong	Alex & Nicole
Chlodnicki	Christine
Christiano	Joe
Cifia	Paul
Cipollone	Carl
Circa	M.
Ciska	Elise
Clark	C.A.
Clark	Nadia
Clark	Matthew
Clark	Arthur & Maureen
Clark	Richard
Claus	Roy
	John &
Cline	Linda
Clohesay	Edward H.
Cmapbell	Kathy D.
Cofrancesco	Beth
Collins	Deidre
Collins	Dorothy
Columbi	May Clare
Conders	Lynde & Louis
Condon	Robert V.
Conklin	Howard
Connery	Thomas
Connolly	Robert
	Maria
Connor	Vegos
Conover	Robin
Conway	Sandra
Cooke	Kim
Cooper	Anita
Coppola	Linda
Corbo	Dawn
Cordero	Michael
Correy	Pat
Costa	Ralph R.
Costenzo	Vincent
Cote	Mr & Mrs Joseph R.

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Courtman	Melinda
Covin	Illegible
Cowell	Robert J.
Cox	John G.
Coyle	Kevin
Craig	Helen
Crisci	Julia & Sal
Cristofaro	Madeline
Cronin	Clare
Cronin	Ellen
Crystal	Raymond F.
Cumiskey	Dennis M.
Cummings	Melva A.
Curcus	John
Curd	Tyler
Curd	Karen K.
Curley	Eric
Curley	Bridget
Curran	Michael
	Robin
Curras	Miller
Currie	Illegible
Curry	Christopher J.
Cursie	Gail C.
Custode	Saro
Cutler Jr.	Robert C.
Cutting	Court & Sherry
Dabagian	Audrey & Harry
Daizeii	Joan
Dalichow	Michael & Annette
Dalton	Carol
Dalzell, Jr.	John
Dant	Victoria
Daranberg	Nancy
Daryk	Joseph
Davenport	Joan
Davis	Alan T.
Davis	Allissandra
Davis	Illegible

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Davis	Alyee Philip &	
Deacon	Mary	
Deaquino	Paul	
Debell	Myrm S.	
Deboer	William	Mayor, Wantage Township
Dechant	E.T.	
Decken	Jarry	
Decristofus	Louis	
Defelice	Ethel	
Defini	J	
Degan	Catherine	
Dege	Patrice	
Degraw	Mr & Mrs Richard J.	
Dehlinger	Jennifer	
Dejaney	Stephen	
Dekker	Robert H.	
Delaney	James Rolf &	
Delani	Phylis	
Delgrosso	Christina	
Delucca Jr.	Joseph R.	
Demuro	R	
Denbar	Lucy Mrs.	
Denmead	Edward	
Dentlar	Thomas	
Depaul	Joseph	
Deprez	Gene	
Dermody	Lauren	
Desimon	Lauren Mrs. Gerald	
Desmond Jr.	J.	
Dessy	P.H.	
Devine	Michael P.	
Dexter	Marian	
Deyoung	Laura S.	
Diamando	Stephanie	
Dicesare	R.	
Dichiau	Martha	

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Dideo	Gloria Mr & Mrs
Didiego	P.
Dietrich	Rosemary
Dillon	Illegible
Dillon	Faith
Dilorenzo	Mary
Dimmick	Adaline
Dingle	Craig
Donaldson	Janet
D'onofrio	Joanne
Donohue	Todd
Dooley	John
Douglass	James
Dragos	Marilyn
Duarte	Vania
Duddy	Terrence
Duff	Gertrude
Duffy	J.
Duffy	Mr.& Mrs.John
Duffy	Anita
Duffy	John & Evelyn
Dunn	J.C.
Duquette	Frank & Constance
Duraotino	Frank
Dus	Mike
Dyrsten	Kristi
Eberhert	Daniel R.
Eberling	Frances
Eckes	Craig & Cynthia
Edwards	Jacqueline
Egan	Phyllis B
Eichler	Wayne
Eldridge	Irene M.
Ellen R.	Ormond
Elling	Rc
Elliott	Colleen A.
Elliott	James
Ellis	Fred

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Elvarde	A.E.
Enberg	Bryan & Jennifer
Engel Family	
Englehard	James B.
Erek	Richard
Fabrizio	Thomas
Fagersten	Ronald & Vonndel
Fahsbender	Mazie
Fancher	R. Robert
Fanders	Fred
Farinah	F.
Farlane	T.
Farlow	Nancy K.
Farrell	Beth
Feldman	Mary
Feley	Brian
Felix	Francis J.
Felton	Barbara & Michael
Fendt	Daniel
Ferguson	Ronaid
Ferrante	David M.
Finkle	Margaret
Fioulla	Nally
Fishbone	Illegible
Fitzmaurice	Jack
Fitzpatrick	Thomas
Fitzpatrick	Kathleen
Fitzsimmons	Chris
Flanigan	Jeffrey Maria &
Fletcher	John
Flynn	Georgette & Richard
Foderaw	Albert
Foley	R.E.
Forester	Robert M.
Fox	Armando F.
Franchini	Daniel
Frederick	John
Frey	Janine S.

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Fritsch	Mr. & Mrs. J. Edward
Frumolt	Brian
Fuchs	Richard
Fugaro	Kathleen
Furfero	Mike
Furtes	Robert
Gaffney	Janire
Gall	Ted
Gallagher	Michael
Gallagher	Edward
Gallagher	Wanda
Galperin	Patricia
Gang	Michael
Gardiner	Carolyn
Garnett	Andrea
Garsi	Jacquelyn
Gassmen	Betty
Geary	Chris
Geddis	G.
Geety	Jessica
Gennaci	Michael Margo
Genovese Family	
Gensheimer	Margaret
Gerard	Glenn
Gerdes	Carl T. Philip &
Geron	Marie
Gertz	Carl
Gessciag	Heatheey
Giambalvo	Theresa M.
Giampoala	Mr. & Mrs. Joseph
Giantonio	Patricia
Giardinia	Ft.
Gibbs	Gilbert A.
Gibson	Susan
Gilman	Keith
Giordano	Anthony
Giordano	John Paul
Giordano	Connie

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Girard	Robert
Gitman	Maria & Barbera
Golaczewski	Ron
Goldbey	Barleaca Joe &
Gomez	Laurie
Gordon	Susan M.
Govignon	Edward
Grace	Brian
Graham	Neil
Grainger	Marion
Grana	Ronald
Grand	Domenic
Grauerholz	Lynn
Greenberg	Phyllis
Greenbery	Randi
Greenleve	Sandra
Greeuy	Arthur
Gretkowski	Tricia & Brain
Grieco	Scott & Diane
Griese	Glenn
Griffin	Gary
Groome	John
Guarneri	Phil
Gun	Waygang
Guthrie	Mary C. Phillip
Guthrie	Shane
Haas	Kurt
Haas	Gretchen
Haase	Glenda L.
Hajjar	Patricia
Hallenback	Anita
Halp	Jennifer
Hamdy	A.
Hanley	Dfendt
Hanlon	Terry
Hannam	Chris
Hannan	William

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Hanno	Susan
Hansen	J.E.
Hanser	Robecca R.
Harpell	Audrey
Harrigan	Ronald J.
Harris	R.D.
Harrison	Alice
Hart	S.J.
Hartig	Bruce
Hartman	Carole
Hast	Susan
Hastie	John
Hauck	H.G.
Haueter	David
Hedstrom	Richard
Hefferman	Brian
Heinzelman	Bethany A.
Hellhale	Jeff
Hemmineer	G.
Hempstead	Doris
	Jame &
Henderson	Carol
Henderson	Patricia Step
Hennessey	Eleanor
Hergyel	Katie
Hertzberg	J.
Hess	David
Higgins	James J.
Higgins	Suzanne
Hoag	Tracy
Hoder	C.
Hodum	Lynn
Hofer	Madeline C.
Hoffman	Barbara & Charles
Hoffman	D.
Hoffman	Mark
Hohne	Claude
Hopkins	Bob
Hopper	Elayne

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Hotchkiss	Karen
Houck	Ed
Hoveaud	A.
Hrabereheh	Donna
Hruska	Barry J.
Huber	Bonnie
Hughes	Patricia
Hughes	Jeff
Hull	William
Hunterton	Edith
Hurley	Thomas
Hutchings	Daniel
Hutloff	Florence
Hyland	Mk
Iannuzzi	Deanna & Anthony
Ilegible	Kathryn
Ilegible	W.W.
Iles	M.
Iliffe	Stuart B.
Illegible	
Illegible	
Illegible	Laura
Illegible	
Illegible	
Illegible	Veronica
Illegible	
Illegible	
Illegible	Kelly J.
Illegible	Jason
Illegible	Robert
Illegible	
Illegible	Carol
Illegible	
Illegible	
Illegible	
Illegible	
Illegible	Anthony
Illegible	Lisa
Illegible	

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Illegible

Mary

Illegible

Canna

Illegible

Andy &

Illegible

Kim

Illegible

Illegible

John & Illegible

Illegible

Illegible

Illegible

Illegible

Lisa & Bett

Illegible

Illegible

Angela

Illegible

Illegible

Denn's R.

Illegible

Illegible

Sammit

Illegible

Illegible

Jadetile

Illegible

Illegible

Jane

Illegible

Illegible

Illegible

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Illegible
Illegible
Illegible
Illegible
Illegible
Illegible
Illegible Rudolph
Illegible Margaret
Illegible
Illegible
Illegible Paul
Illegible
Illegible
Illegible
Illegible
Illegible
Illegible Brabis
Illegible
Illegible
Illegible Paul
Illegible David
Illegible Nancy
Illegible
Illegible Scimeia M.
Illegible
Illegible
Illegible
Illegible
Illegible
Illegible
Illegible
Illegible

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Illegible	Sheryl
Illegible	
Illegible	Franklin
Illegible	Susan
Illegible	
Illegible	Raymond J.
Illegible	Michael
Illegible	
Illegible	Lara
Illegible	Nicole
Illegible	Lynn
Illegible	
Illegible	
Illegible	
Illegible	
Illegible	Illegible
Illegible	
Illegible	Donna L.
Illegible	Diane
Illegible	

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Illegible	Richard
Illegible	
Illegible	Michael
Illegible	
Illegible	Joseph & Dorothy
Illegible	David
Illegible	Donald
Illegible	
Illegible	
Illegible	
Illegible	Jerald M.
Illegible	
Illegible	George
Illegible	Christian
Illegible	
Illegible	
Illegible	
Illegible	Pamela
Illegible	Caroline
Illegible	Joseph
Illegible	

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Illegible	
Illegible	Kenneth
Illegible	
Illegible	Kathleen
Illegible	
Illegible	Ali
Illegible	
Illegible	
Illegible	Frank
Illegible	
Illegible	
Illegible	Lucille
Illegible	
Illegible	Bolly A.
Illegible	Marlene
Illegible	
Illegible	Robert C.
Illegible	Illegible
Illegible	
Illegible	Illegible
Illegible	Fred
Illegible	
Illegible	
Illegible	
Illegible	William A.
Illegible	Mark
Illegible	
Illegible	
Illegible	Deluca

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Illegible	Carol
Illegible	
Illegible	
Illegible	
Illegible	Richard
Illegible	Edward
Illegible	James
Illegible	Nelson
Illegible	
Illegible	
Illegible	
Illegible	Joseph
Illegible	
Illegible	William J.
Illegible	
Illegible	S.
Illegible	
Illegible	Julie
Illegible	
Illegible	Carl
Illegible	
Ingram	Patty
Inn	Milton
Innberger	Walter & Donna
Isaac	Alisson
J Brawer	Michael P & Wendy
Jackober	Lambert A.
Jakober	Lambert
James	Glasson
James	Christopher
Janov	Michael
Janysson	Robert
Jarsi	Reed
Jelinek	Henry

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Jenkins	Melissa
Jenkins	Donna
Jenkins	Henry
Jensen	Gordon
John	Margaret Incantalupo
John	Swanson
John	Illegible
Johnson	Virginia
Johnson	Mary
Johnson	Elaine
Johnson	Cristina
Jones	Virginia D.
Jordan	Cole
Kadar	William
Kaiser	Denice
Kaiser	DI.
Kalinick	Carolyn & Joe
Kapahi	Vitay
Kaplan	Joan
Kapp	Michael B.
Kapsch	Chris
Karl	Diane
Karman	Sandra
Kashkin	Kenneth
Kasley	Mr. & Mrs. L.M.
Kata	Susan Diane
Kates	Steven
Katz	Bert
Keefer	Harold
Keein	Lori
Keller	Henry A.
Keller	Julia
Kelly	Larry & Marie
Kelly	Roberta J.
Kelly	Lori
Kelly-Harly	Illegible
Kemble	Liliana
Kenny	Susan
Kero	James

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Kersha	Vadim
Kets	Hedy
Keyvani	Michelle
Khoury	Karyn
Kibler	E.
Kiebler	Robert
Kirkpatrick	Jane
Kirne	Elaine
Kirschenbaums	Peter & Carol
Kitchell	Heddy
Kitchell	Maria Elena
Kitchell	Veriian
Kitchen	Phil
Klimek	Joseph E.
Klinck	Tammy
Knubels	Carol
Kociendri	Harry L.
Koff	Leslie
Konorr	Richard
Koochagian	Armen V.
Korczynski	John
Koski	Victor
Koteal	Teffrey
Kotrba	Rebecca Y.
Kowaiski	Mr & Mrs. J.P
Kowalski	C.
Kowasli	Eric P.
Kozly	Daniel
Kraus	Jill
Krauss	Susan
Krooss	Joan
Krooss	Bill
Krops	Katherine & George
Krushman	Garin
Kudless	Judith
Kullmann	R.Carry
Kuser	Tamare
Kusso	Jb
Kwasnik	Kathy

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L. Schilling	Susan M.
L. Smith	Michelle
Laflamme	Robert
Lafnza	Michael H.
Lager	James L.
Laker	Edward J.
Lambert	Jean
Lambert	Dennis
Lamken	Robert N.
Landrock	Roberta
Lane	Louise
Lang	Paul F.
Lanse	M.C.
Lany	Robert & Carroll Maryanne
Larosso	K.
Larson	Ray
Larue	Shannon
Lasser	Ruth
Latorre	L. Donald
Laviola	Mark
Lawrence	Pearson
Laws	Lorraine
Lazer	Carol
Leader	Jane
Leddey	Margaret B.
Leddy	Kevin
Lee	Illegible
Lennon	Nancy
Leo	R.
Leo	Clea
Lepsis	Jackee
Lesia M.	Gloria
Lewis	Barbara
Lewis	Regina L.
Lewitus	William J.
Libysen	Julian&Cari
Lid	Janine R.
Liebman	Stewart

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Lindquist	Eric
Linguito	Vincent A.
Lipourcy	Stephanie
Lissard	Judith
Liter	Walter Steve &
Littleton	Diane
Litz	Mark
Lohner	Denise
Lohr	Mike & Sandy
Lopez	Illegible
Loput	D. Lisa &
Lorbet	Tracy
Lorenz	Juergen A.
Lowery	Suzanne
Luby	Robert
Lucas	Joan
Lummus	Gary
Lupo	John
Lussler	Mr. & Mrs. Roger
Lydian	Joann
Lynch	Laura M.
Lynch	Harold
Lywott	Kevin
Mac Farlan	Linda
Macaty	R. & M.
Macchia	Louise
Macdonald	Illegible
Machetts	Alfred
Mackay	Deborah
Mackey	Marybeth
Macmunn	Maria C.
Magarino	Judy
Maher	Monica
Maher	Maureen K.
Mahon	Illegible
Majors	Richard
Makowitz	William C.

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Maldonado	Stacy
Maloney	Joyce
Mandelli	Illegible
Mangara	James
Maniscalco	Barbara
Mann	Barbara
Mann	G.
Manning	Thomas
Mantello	Angelo
Mapes	M.
Marach	John
Marceau	Thomas
Marcelles	P.B.
Marcellus	Debra
Marchant	George
Marin	Lorraine
Marinaro	Sam
Markey	Betty
Markham	Carmela
Markowitz	Sandra
Maron	Edward & Ann
Marshall	Patrick
Martin	Eric
Martin	Joe
Martin	Diane
Marting	Mindy
Marus	Thomas
Marx	Stan
Marx	John
Masci	R.
Masone	Vincent & Sally
Mastandua	Devidu
Mather	Richard
Matswiger	Emma M.
Maulyz	Illegible & Terry Doris &
Mayer	Bob
Mazich	James&Desiree
Mcbane	Dolores

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Mccarroll	Sharon
Mccartney	Julie L.
Mccasey	Ernest & Geraldine Jim &
Mccormack	Sharon
Mccormack	Illegible
Mccormick	Kimberly
Mcdermott	Donald
Mcdonald	R.M.
Mcdowell	Joel
Mcdowell	Paul
Mcfarlen	John
Mcgauley	Robert
Mcgrath	Thomas
Mcgregor	Donald R.
Mchagh	Margaret
Mchellar	Robert
Mchugh	Kathleen
Mckenna	Yvonne James&
Mckenna	Leah
Mclaughlin	Joan
Mclean	Gary
Mcmahon	Joan M.
Mcpeak	Glenn
Mcquillary	Robert E.
Meaney	Susan
Meeker	Ann H.
Megavley	Mary
Meidiing	Margaret
Meltzer	J.
Mendalbaum	Jerome L.
Merrill	Jeff
Merry	Ruby
Merwin	Janice
Meuza	Carol
Miceli	Karen A.
Middleton	Mark & Marlene
Miller	Mr. & Mrs.

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Miller	Steve
Miller	Robert
Miller	William
Miller	Dee
Milligan	J.J.
Milne	Margaret
Miner	Gail
Miner	Richard T.
Minko	Alfons E.
Moazami	Gill
Mohn	Ann
Mohr	Dennis
Molberg	Kevin
Molina	Richard
Moltenl	Dorothy
Monarty	Edna
Mondragon	Steve
Moneypenny	Lisa
Monroe	Mathew & Amy
Mooney	Mr. & Mrs. Francis
Moore	Randy
Moore	Pamela
Moossely	Cathy
Morrissey	Kay
Mott	Barbara
Mott	Joseph
Mudrick	Dennis
Muir	Charles
Mulby	Illegible
Mull	Harry
Mulligan	Thomas A.
Mulvany	Fran
Muolis	P. S.
Murphy	Kevin J.
Murphy	Clara M.
Murrey	Elizabeth
Myer	Brett
Myle	Mike
N.J	Evans

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Nankenris	Edward
Naylor	James
Nedilha	Sue & N.J.
Nelson	Carol
Nelson	Kathleen K.
Nestor	Kathleen
Neumann	Carol
Newman	Kathy
Newmark	Donald M.
Nichols	Helen
Nicholson	Debra Lynn
Niedka	Irenec
Nielsen	Paul & Maureen
Nielsen	Kathlen
Nike	Thomas S.
Nikola	Vicki
Nirsak	Illegible
No Name	No Name
Nochemson	Miriam
Nolan	Kevn
Nolan	Illegible
Nolas	Susan
Norman	Nancy
Norta	Lydia
Notal	Michael

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Nuttle	
Oakley	Glenn
Oconnor	Basil F.
O'connor	Margaret & George
O'connor	
Spritta	Cathleen
Oeters	Laura
Oghotia	Ann
O'grady	Harry
O'halloran	David
O'jreojt	Michael
Oki	Sharon
Olano	Diana L.
Old	Kurt
O'leary	Raymond
Oliviero	Marcia S.
Olsen	Lois
Olson	Jeffrey P.
Olson	Maria & Robert
O'neill	Brian
Opitz	Kloria P.
Orange	Donna M.
Oricchio	Ross
Owen	Albert
Pabella	Dave
Pagano	Illegible
Paglione	Paula & Martin
Paige	Charles
Palmer	Linda L.
Palmer	Gerard
Palumbo	Nicolina & Salvatore
Pamarise	Fames
Panicucci	Jeffrey
Pappas	Joan
Parker	Cecelia
Parrenhage	Charles
Parsons, Jr.	John L.
Pastis	Michael
Patalive	Mark

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Patterson	William
Patti	Jennifer
Paulie	Karin
Peak	P.
Pecoraro	Gerard
Perlmutter	Jerome A.
Perrone	Joseph P. Mr & Mrs
Peters	K.
Peterson	John R.
Peto	C.
Petruski	Evgene
Phillips	Nathan M.
Phillips	Reginald F.
Phillips	Alfred B.
Phillips	Lindsay W.
Pickens	Elerine
Pidgem	Bill
Piermatter	Louis
Pierson	Donald B.
Pierson	Thomas S.
Pietrowitz	Richard
Piniata	Stephen Bobbi &
Pino-Y-Torres	Jose
Pinto	Matthew
Piraino	Robert
Piros	Elemer
Pistola	Michael R.
Pitzer	Kristee Kae
Pitzer	Curt
Pizzi	Eleanor
Pizzulli	Michael & Diana
Plabsar	Mary Lou
Placye	Barbara
Platt	Dolores J.
Plerfn	Kum
Plortorer	Donald
Pointe	Anne & Frank

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Poleer	John
Pollison	Allison
Polner	Virginia
Polo	Nat
Pooler	Jeffry
Pope	David
Poppele	June
Portas	Richard & Anita
Porter	Raymond Hode
Porter	Jim
Post	John
Potts	Kenneth
Powers	Robin & Robert
Preston	John
Pretot	Patricia
Preziosa	Mr. & Mrs. James
Prickett	William
Pugliese	L.M.
Pugliese	Tony
Puglio	Cecilia
Purdie	Christine
Purdon	Daniel & Caroline
Pyle	John M.
Queen	Claire
Quinn	Doris S.
Quinn	Louise
Quinn	Robert
Racasi	Illegible
Randozzo	Dale & Anthony
Rank	Karl
Rankin	Wed W.
Rapp	Robert
Raslowsky	William
Rasmussen	Karen
Rasmusser	Bent
Rawlins	J.A.
Reading	Edward
Radio	Phil
Reardon	Robert V.

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	Dennis
Redshaw	Joann
Reenauer	Dean
Rehender	Walter
Reigstad	Mr & Mrs Ernest A.
Reilly	Birgitta
Reinuter	Dean
Remko	Leon
Rennea	Lauren
Rhee	Sammy
Rhodes	Ruth
Richards	Danna R.
Rider	Walter Mr & Mrs
Riehl	A.
Rippon	Cheryl
Rivera	Daisy
Rivielle	Michelle & Robert
Robbins	Illegible
Robertson	Jack
Robin	Platanic
Robinsons	Sean
Roby	Robin
Roessler	Kathleen
Romine	Tom&Kathy Tim &
Roper	Diana
Rosenberg	Stephen
Rosenthal	Lawrence & Michele
Ross	Peter
Ross	Richard J.
Ross	Jerome J.
Rossi	Robert
Roughgarden	Joyce
Rouse	Patrick
Roy	John L.
Roy	Catherine
Rue	Burbara
Rullo	Dennis G.
Rousseau	Glenn

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Russell	Roberta
Russo	Arlene
Russo	Robert
Ruzych	G. Allen
Ryan	Kathryn
Ryan	Mr. & Mrs. Peter
Ryan	Donald
Ryan	Sally A. J.
Rymosul	Cummings
Sadler	Jeff
Saefelder	Marilyan
Sakowski	J.P.
Salcedo	Fred
Salfelds	Mark Fred &
Salmon	Nancy
Saltos	Luci
Salu	B.
Sanabria	Teresita J.
Sanders	Denis
Sandgran, Jr.	Edward C. & Sarah
Sanford	Ken
Santomaria	Julie
Sargen	Peter R.
Sauder	Linda
Saunders	Richard
Savage	Daryl
Savarese	Arthur
Savoy	J
Sawyer	Regina
Sax	Regina
Scarpa	Catherine
Schabert	Frank & Helen
Schelle	Max
Schelle	Barbara
Scherzer	Norman A.
Schienne	Richard & Claire
Schmidt	Cliff & Nancy

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Schnurr	Mary Lou	
Schreck	Peggy	
Schupp	William	
Schurmann	Linda	
Schurmt	William	
Schwartz	Louise	
Schwarz	Adrienne	
Schweitzer	Robert	
Scott	Joyce And Donald	
Scott	Karen	
Scott	Jacqueline	
Scott	Keith	
Scott	Mark	
Seaman	Lucy	
Seawoody	Patricia	
Sebes	Christian	
Segale	George	
Seine	Daniel	
Sero, Jr	Carmen	
Serrett-Curran	Sandra	Sowinski Sullivan
Serrett-Curran	Susan	
Sgarlaro	R.	
Shaums	Catherine	
Shaw	Daniel A.	
Sheley	Eve	
Shelton	Joseph B.	
Shelton	Nathalie	
	Bonni &	
Shepard	John	
Shepherd	Jo & George	
Shepherd	Acott	
Sherbourne	Amanda	
Sheriden	Robert	
Sheridon	Daniel	
Shernce	B.	
Shillcock		
Siegel	Jill	
Sigiel	Julie & John	
Sikorski	Mr. & Mrs. Richard John	

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Sikucinski	Rosemary	
Sullivan	Jennifer A.	
Simonetti	Illegible	
Simpson	Carole A.	
Sisco	Sheila	
Slack	Andrea B.	
Slack	Jerry	
Slenin	Patrick J.	
Sloginski	Gina & Eric	
Slouka	Lori	
Slowkey	Illegible	
Smith	James	
Smith	Stanton L.	
Smith	Donald	
Smith	R. Steven	
Smith	Grace	
Smith	Michele	
Smith	Frances	
Smith	Donald L.	
Smith	Micheal B. & Lila D. Coello	
Smits	Allce	
Snyder, Jr.	W.J.	
Sodt	James D.	
Sokol	Illegible	
Soldi	Mary E.	
Soldovers	R.	
Solfelder	Brian E.	
Somers	Deanne	
Sowinski	Suzanne	Sowinski Sullivan
Spadavecchia	Robert	
Specca	Louis	
Speccessy	Kathy	
Spector	Marc	
Springer	Marilyn	
Stanske	Illegible	
Stappy	Micheel	
Stark	David G.	
Steckawich	Decathy	
Steinhardt	William	

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Stemley	Eileen
Stenkamp	Andrea
Stiansen	Sara
Stoddard	William
Stol	Barbara
Storey	Linda
Strasser	Robert F.
Strohben	William
Stuebling	Carl
Suadez	Lazaro F.
Sullivan	J.
Sullivan	Richard
Sullivan	Suzanne
Sullivan	William J.
Sullivan	Ellen
Sundby	Inger
Sutton	Bernard
Sweeney	Eugene & Dianne
Sweet	Vicki
Synnott	Darla
T. Haslock	
T. Okner	Donald
Takach	E.
Talley	Jennifer
Tanner	Paul
Taormina	John & Carole
Tarra	Gloria
Taylor	Irving
Taylor	Yary
Teed	Lisa
Tensen	Jan
Teresa	Mr. & Mrs. Charles
Teyk	Mike
Tham	K.
The Lasaters	
Thomas	Paul & Patricia
Thomas	Marhand Svetlana
Thomas	Regina
Thomson	Daphne Scott

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Thoresen, Jr	Roy A.
Thuem	Joseph J.
Tilbury	John
Tobin	Kathleen G.
Tomer	Barbara
Topper	Adriana
Townsend	D.
Trabile	Amy
Trachy	John
Tracy	Tom
Traneseur	Robert
Trillich	Barbara
Tripi	Barbara
Tuccello	Helen Maddon
Turner	Gordon
Turner	Ilegible
Tyler	John L.
Underwood	G.P.
Unsighed	
Unsigned	
Uogel	Z.L.
Urbanski	Jeff
Urtnowski	Janet
V. Sica	Dr & Mrs
Vaela	Mrs
	Rob &
Van Brunt	Robin
Vanderwold	Nancy
Vauthier-	
Caneiro	Dawn
Veidis	John
Vendle	Joseph
Venino	Sharon
Verdorn	Gerald & Betha

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Vernotino	Joann C.
Vey	Barbara
Viegas	Louise & Martin
Vogt	Christine
Volpe	Jon
Vonderahe	C.
Voorhees	Sallyann
Voreck	W.E.
Voreck	Ruth
Wachler	Kathleen M.
Wagner	Bryan
Walla	Mary
Walsh	M.
Walters	Louis
Walters	Tracey
Walts	Keith J.
Wan	Kwok Wah
Wand	C. Linden
Ward	Michael
Wardell	Jan
Warner	John W.
Warner	Kurt & Gail
Warren	William
Wathern	R.
Waverley	Eleanor
Wayle	Marcianne
Waynarski	Sharon.
Weaver	Susan
Wedel	Kathleen & Charles
Weed	John
Weigel	Raymond
Weisskopf	Ruth
Welch	
Welson	Beidget M.
Werner	Judith
Wes	Illegible
Whilesmith	M.
Whitehead	Robert
Wiard	Michael

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Wicker	Krista
Wiedmayer	Rona
Wilbert	Joan
Wilkins	Kathleen
Wilkinson	D.
Willen	David
Williams	John
Williams	Dorothy
Williams	Illegible
Williams	John
Wills	Joan D.
Wilson	Stephen C.
Wilson	Budget
Wilson	Illegible
Wilson	Caragh
Wilson	Stephen C.
Winberry	Laura
Winfield	Robert
Winkler	Helen
Wisotsky-Elin	Phyllis
Wolfe	Dorothy
Wolfson	Mr & Mrs Elliot
Womack	Robert
Wood	William
Wood	Sheila
Wood	Jason
Wood	Richard
Worker	Denise M.
Wright	Robert
Writht	Carol T.
Yanoso	Ellen
Yanvary	Lela
Young	Rebecca A.
Young	Robert & Eleann
Younkers	Jerald
Zagan	Jennifer
Zaiken	Eliot
Zande	Nancy & Arthur
Zannelli	Edward

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	Zentz	Michele	
	Zerillo	D.J.	
	Ziccarpi	Anthony	
	Ziccardi	James A.	
	Zimmenmann	Donna	
	Zimmerman	Beryl	
	Zimmerman	Adolph	
	Zoeller	Judith	
	Zuam	Leonard	
	Zuniga	E.	
	Zwigard		
259	Ewing		
260	Byer	David	Clean Ocean Action
261	Letizia	Thomas	Pepper Hamilton LLP
262	Segal	Nancy	Educational Testing Service
263	Abbaszadeh		
264			Toms River Ocean County Chamber of Commerce
265	Student	Michael	
266	Honold	Melissa	
267	Clark	Arthur & Maureen	
268	Macow	Bernice	

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General

1. COMMENT: The Salem County Watershed Task Force encourages and looks forward to the Department's continued monitoring of the nominated waterways for identification of additional endangered or threatened species, and/or the expansion of existing habitat. (148)

RESPONSE TO COMMENT 1: The Department appreciates the commenter's support.

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2. COMMENT: Is the Department contemplating other rules and/or restrictions for recreational lakes. (89, 200, 202, 206)

RESPONSE TO COMMENT 2: As explained in the summary, Category One protections are implemented through the Department's NJPDES wastewater discharge permitting rules, the Stormwater Management rules for new major development, and the Flood Hazard Area Control Act rules for construction activities. At this time, the Department does not anticipate proposing rules that would restrict recreational uses on lakes.

3. COMMENT: The State should be providing those entities responsible for the water supply in a particular watershed, including the water supply authority, local communities, local watershed associations and other interested and concerned non-profits, with the tools to enable them to protect that water supply, to prevent its deterioration and to permit its enhancement and restoration to a more pristine state. (65)

4. COMMENT: Please inform us of any volunteer efforts in our area. (259)

RESPONSE TO COMMENTS 3 THROUGH 4: The Department provides public education resources through the Division of Watershed Management. The Department's Volunteer monitoring program provides local watershed associations with the tools necessary to monitor their watershed and identify and report problems. In addition, funds are available to protect and restore water quality. More information is available on the Department's website at: <http://www.state.nj.us/dep/watershedmgt/>. The Department also maintains a website with ways the public can help the environment at http://www.nj.gov/dep/citizen_help.html.

5. COMMENT: In the Category One rules, there needs to be a clear set of standards for each water body so the means to achieve the standard may be tailored to each. TMDL's should be provided for all streams to determine acceptable levels of impact. (203)

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RESPONSE TO COMMENT 5: The SWQS specify the water quality criteria to protect the existing and designated uses based on stream classification. Waterbodies that do not meet SWQS are listed as impaired on the State's Impaired Waterbodies List (303(d) List). The Department is required to develop TMDLs for these impaired waters to restore water quality. TMDLs are specific to the waterbody and establish reductions for all sources of a specific pollutant.

6. COMMENT: Best management practices (BMP's) should be developed for each water body and be applied against a defensible set of standards so that outcomes can be tested and adjusted to achieve the preferred goal. Improving stream quality can be achieved by establishing total maximum daily limits (TMDL) for each stream. This would provide a quantifiable means of establishing measurable outcomes. (154)

RESPONSE TO COMMENT 6: The Department is required to develop TMDLs for impaired waters to restore water quality. TMDLs are specific to the waterbody and establish reductions for all sources of a specific pollutant. If the sources are nonpoint in nature, the Department may require the implementation of specific BMPs to address the problem. The Department has developed a stormwater BMP manual that can be used by regulatory programs to reduce the impact of nonpoint sources of pollution. This manual is available at: http://www.njstormwater.org/bmp_manual2.htm.

7. COMMENT: The Department should strengthen the sewer and septic rules that are currently proposed and apply them to all major projects that presently exist, and apply the previously proposed stricter standards to the phosphorus clean-up of the Passaic River. (242, 243)

RESPONSE TO COMMENT 7: The commenter appears to be raising concerns with the proposed amendments to the WQMP rules, N.J.A.C. 7:15, also published in the May 21, 2007, New Jersey Register, and adopted elsewhere in this issue of the Register. The WQMP rules generally focus on planning for new development and do not specifically

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require upgrades or retrofits of existing wastewater treatment facilities. Under N.J.A.C 7:15-6, TMDLs are required to be developed for impaired waterbodies. In 2007 the Department proposed a TMDL to reduce the levels of phosphorus in the Passaic River watershed (See notice of adoption of amendments to the Northeast, Upper Raritan, Sussex County and Upper Delaware Water Quality Management Plans to Establish Total Maximum Daily Loads in the Non-Tidal Passaic River Basin and Pompton Lake/Ramapo River Addressing Phosphorus Impairments and to Establish Watershed Criteria", April 24, 2008; filed for publication in the May 19, 2008, N.J.R.). The phase 2 TMDL was based on a more comprehensive study of the watershed compared to the TMDL proposed for the Passaic River Basin in 2005 and was able to determine the phosphorus levels needed to attain an acceptable level of the response indicator, whereas the first TMDL was focused on meeting the numeric criterion in Wanaque Reservoir only. Implementation of the TMDL through the Department's permitting programs may require existing dischargers to install additional treatment technologies to fix existing water quality problems. This TMDL is based on watershed specific criteria to achieve the narrative nutrient criteria and to protect and restore the existing and designated uses. More information on the TMDL program is available at: <http://www.state.nj.us/dep/watershedmgt/tmdl.htm>.

8. COMMENT: The Department should use the power of its purse to protect truly exceptional waters. This could be accomplished by imposing water quality protection conditions on all future open space acquisitions (whether involving transfers or restrictions on title). Specifically, all future "open space" acquisitions involving funds administered by the Department should be required to eliminate all sources of pollution that enter Category One waters from anywhere in the watershed. At a minimum, the Department should:

- Require all properties in the preservation programs (for example, farms, and golf courses) to comply with all water quality protection standards;
- Mandate "green farming" practices, including water conservation, water quality Best Management Practices on all farmland and organic farming;

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-
- Prohibit application of pesticides or fertilizers;
 - Mandate septic maintenance and testing;
 - Mandate water conservation practices; and
 - Require geese control programs. (66, 165)

RESPONSE TO COMMENT 8: The designation of waterbodies as Category One requires additional protections when new and/or expanded discharges and activities are proposed. The antidegradation policies do not require the elimination of all pollution sources. Existing pollution sources as described by the commenter are grandfathered. However, if a waterbody is listed as impaired on the State's Impaired Waterbody List (303(d) List), the Department is required to develop a TMDL to reduce the levels of pollutants. To achieve the necessary reductions, the TMDL could require the types of actions suggested by the commenter.

Public Hearing and Comment Period

9. COMMENT: The SCMUA respectfully requests and hereby supports the consideration by the Department of a public hearing at which time many of the outstanding issues, questions, and concerns for Wallkill River Category One designation may be appropriately addressed. (233)

10. COMMENT: The Sparta Township Council strongly opposes the proposed amendments and requests an open public hearing for comments and questions in Sussex County prior to any rule adoption. (207)

11. COMMENT: The Wantage Township committee requests an open public hearing for comments and questions in Sussex County during the fall season of 2007. (50)

12. COMMENT: The commenter requests that the Department defer any action on the proposed regulations until further analysis and additional public hearings are held on these proposed rules. (132)

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13. COMMENT: The commenter is opposing the new regulations. The Department did not hold a public information meeting or public hearing in Sussex County or within 100 miles of the county. (3, 4, 13, 40, 50, 129, 194, 199, 201, 207, 209, 235, 245, 246, 254)

RESPONSE TO COMMENTS 9 THROUGH 13: Due to the State-wide application of the amendments to the SWQS rule the Department held the public hearing on the proposal on June 28, 2007 in a central location at the Rutgers EcoComplex Environmental Research and Extension Center, Bordentown, New Jersey. The public hearing was held in two sessions to accommodate people during work hours and after work hours. In addition to the public hearing, the Department accepted comments to the rule proposal in writing. This public comment process provides the public with an opportunity to present concerns orally at a public hearing and/or in writing. The Department gives the same weight to oral testimony and written comments.

14. COMMENT: The recently proposed amendments to water quality standards indicate a potential significant impact on the Township of Sparta and Hardyston. The Township Councils believe the two month comment period is unreasonable, inadequate, and unfair to local governments given the scientific complexities of this proposal. Therefore, the Township Councils hereby urge the Department to extend the public comment period on the proposed Category One regulations by 90 days, from July 20, 2007 to October 20, 2007 to allow adequate time for a detailed analysis, and thereby ensure an educated, informed response. (9, 76, 108, 121, 181, 228)

15. COMMENT: Complete public participation and opportunity for the people to review and comment must be emphasized and enforceable within any proposed rules, regulations and statutes for New Jersey water supplies and resources. The new rules as proposed apparently do not adequately and fairly provide for public participation. The current methodology appears more stringent and appropriate than the new rules as proposed. In fact the new rules as proposed actually undermine current regulatory protections and

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remove miles of now protected areas vital to the ecosystems that nourish the above referenced watershed areas. (14)

16. COMMENT: The Department should extend the comment period 90 days to allow adequate time for review and understanding of the amendments by Lake Mohawk residents. It is unreasonable to expect meaningful comments within a 60-day period, which is further, impacted by holidays and vacations. Furthermore, review of the Surface Water Quality Standards along with the proposed Water Quality Management proposed rules places a major burden on the reviewers, as it is over 530 pages combined, and the final date for receipt of comments is the same for both documents. (6, 21, 38, 52, 56, 73, 89, 92, 93, 104, 168, 224, 225, 234, 240, 247, 253, 255)

RESPONSE TO COMMENTS 14 THROUGH 16: The proposed amendments to the SWQS were published in the New Jersey Register on May 21, 2007 at 39 N.J.R. 1845(a). One month prior to the publication date, on April 24, 2007, the Commissioner announced through a press release that the proposal would be published and that the Department would be accepting public comments on it. The Department also posted a courtesy copy of the rule proposal on its web site at <http://www.nj.gov/dep/rules/> on April 23, 2007. The comment period regarding the proposed amendments to the SWQS was originally scheduled to close on July 20, 2007, however based on the comments received, the Department extended the comment period an additional 30 days until August 20, 2007. The Department believes it provided adequate time for public review and comment on the proposal.

Separate Category One definition amendments from amendments upgrading Category One waters

17. COMMENT: The Department should withdraw and bifurcate the rule proposal in to two: one addressing the pending proposal's substantive/procedural elements and another addressing the reclassification of specific waterbodies. The SWQS definitions for

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Category One should be adopted before the Department proposes to change the classification of specific waterbodies in reliance upon the proposed criteria. (66, 165)

18. COMMENT: The Category One proposal modified certain definitions; and simultaneously applied them. Before implementing the proposed definitions, which would be tantamount to adopting the procedures and standards that are hinted at in the basis document, the commenter recommends that the Department undertake a supplementary rulemaking regarding its reclassification process. The commenter is prepared to assist the Department in crafting such rules and their supporting guidelines. The proposal hints at some aspects of the ways in which the definitions will be applied but it does not formally propose the process (i.e., a coherent system of standards and procedures) whereby the proposed definitions will be implemented. That process must be vetted through a formal rulemaking before it can be applied. Similarly, to enable those outside the Department to participate meaningfully in the classification process, whether as petitioners or commentators, the definitions themselves require further elaboration. (66, 165)

19. COMMENT: The Department should withdraw its proposed amendments at this time and to re-introduce at a later date the amendments minus the changes in methodology and definitions, but including upgrading the 910 miles of streams and 1,300 acres of reservoirs, which would satisfy the current Category One requirements. (47)

20. COMMENT: The Department should adopt the upgrades without adopting the proposed definition. This is because the proposed definition is a limitation on, not a clarification of, the current definition. Therefore, since the upgrades qualify under the proposed definition, they unquestionably qualify under the current definition. If the upgrade cannot be separated from the proposed definition, then commenter recommends the Department immediately re-propose and upgrade 910 river miles. However, such an exercise seems academic and superfluous since the 910 miles clearly meet the current definition for a Category One designation. (260)

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21. COMMENT: The Department should re-propose the section of the rules that sets standards for future upgrades. The commenter believes that the 910 miles proposed for upgrade could be adopted based on existing criteria and that these should go forward despite the need for revisions in the standards section. (64, 35, 227, 232)

22. COMMENT: The commenter is concerned that the Department has made a potentially serious procedural error in proposing the new Category One upgrades by proposing new regulatory definitions and a new methodology as the basis for the proposed upgrades. This may be improper because administrative law requires that the Department must first duly adopt a definition before it can be applied.

The Department should re-propose the Category One upgrades under the existing methodology and existing definitions and include the Pequest River in Warren County in this round of upgrades, since it clearly merits Category One protection, had already been listed in March of 2003 as a candidate water body with both Federally and State listed endangered or threatened species, Dwarf Wedgemussel and has long been overlooked. The commenter believes this will avoid potential litigation, which could overturn all the new Category One upgrades. (166)

23. COMMENT: Waterways should not be reclassified until the proposed criteria are adopted and a fair analysis of each specific waterway is undertaken. The Department should conduct a rigorous social and economic analysis of the affects that will be experienced by private landowners that will be subject to the land takings due to the inclusion of tributaries. (23)

24. COMMENT: The commenter urges the Department to adopt the proposed Category One upgrades of approximately 910 stream miles and at the same time to abandon the proposed changes in definitions and methodology. However, the 910 miles of upgrades are inter-related to proposed changes in definitions and methodology and as a result, this

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approach may not survive legal challenge. New Jersey can not afford a repeat of that kind of set back in the Category One program. For these reasons, the commenter strongly opposes the subject proposal. The Department should cure the aforementioned procedural flaw and re-propose the same (and additional) waterbodies based upon current regulatory definitions and methodology. Reproposal and adoption could occur on an expedited basis, in less than six months. Reproposal should be proposed pursuant to the existing regulatory definitions at N.J.A.C. 7:9B and the existing Category One waters designation methodology. Reproposal would forego huge litigation risk and other policy reversals that weaken water quality protections in the subject proposal. (248)

25. COMMENT: The existing applicable regulatory definitions and the existing methodology are supported by science, legally defensible, and constitute sound public policy. In contrast, proposal provides no science and fact based rationale or justification of need for any revisions to the existing definitions and methodology. Rather, the alleged basis for the need for changes is limited to a broad, vague and unsubstantiated arbitrary conclusion: "Based upon the experience gained in the review and analysis of waterbodies for potential Category One designation, the Department is proposing to establish new definitions." This conclusion about the justification for revisions is merely asserted. It is not substantiated and supported by facts in the record and by any other rational basis. This unsupported assertion as justification for modification of the applicable definitions and methodology do not rise to a justification and is thus arbitrary, capricious and an abuse of discretion. The proposal had not been justified and therefore, should not go forward to adoption. (248)

26. COMMENT: The commenter urges the Department to reconsider the adoption of these new rules. In addition to solicit input from the general public by holding meetings around the State, and to make sure that there is no roll back for protections already in place. (33, 122, 110)

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27. COMMENT: The Department should repropose these rules with included clearer explanations of the definitions to better serve the intent of the regulations and deter loose interpretations. While the proposed rules attempt to safeguard these critical areas it is clear that further and additional methodologies will be required as future amendments to implement true protections for these water resources. (14)

RESPONSE TO COMMENTS 17 THROUGH 27: The Department believes that it was appropriate, and an efficient use of its limited resources, to change the definitions and propose Category One upgrades in the same proposal. The Department determined that a clarification of the definition of Category One was necessary, but that it was not necessary to delay the designation of certain waterbodies as Category One until the amendments to the definition were adopted. As pointed out by the commenters, the waters the Department proposed for upgrade to Category One qualified for that upgrade under both the pre-existing definition and the amended definition. Therefore, it was not necessary to adopt the proposed amendments to the definition before the Department could act to upgrade the identified waterbodies.

The Category One definition adopted in 1985 provided examples of waterbodies that could qualify as Category One. These included waterbodies that flowed through open space, wildlife management areas, shellfish waters and trout production waters. The Department has designated from 1985 to 2002 over 3,211 stream miles and 2,354 acres of lakes and reservoirs as Category One waters. However the specific basis was not detailed in the 1985 rulemaking. Between 1985 and 2002, Category One water upgrades were based on stream classification upgrades to FW2-TP (trout production waters).

In 2002, the Department began an intensive effort to identify additional waters that warranted enhanced protections afforded by designation as Category One based upon Exceptional Ecological Significance and Exceptional Water Supply Significance. Through several rulemaking efforts the Department clarified the types of data and the thresholds that would support upgrading the antidegradation designation. Factors such as

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color, clarity and scenic setting are subjective and as such have not been used to support upgrading the antidegradation designation for a waterbody. Through this adoption the Department is reorganizing the definition to clarify the purpose and the basis for upgrades to Category One antidegradation designation. In addition, by defining the terms “exceptional ecological significance”, “exceptional fisheries resource”, and “exceptional water supply significance” the Department is establishing a more objective basis for such upgrades.

As explained in the Summary of the rule proposal, the definitions specify the data and criteria utilized to identify waterbodies that qualify for consideration for upgrade to Category One designation. The definitions are data driven and will better serve as tools to identify waters that are exceptional by the Department and the public. For further discussion of the proposed amendments to the definition of Category One, please refer to the Department’s response to comments below on the definitions of “Category One,” “exceptional ecological significance,” “exceptional fisheries resource,” and “exceptional water supply significance.”

28. COMMENT: The Department should withdraw the Surface Water Quality Standards rule proposal because of the selective manner in which the Department obtained input on its Surface Water Quality Standards rule proposal. The Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., contemplates pre-proposal consultation as a means to afford interested parties a meaningful opportunity to participate in the development of rules and regulations. Under that Act, the Department should have opened its pre-proposal consultations with all interested stakeholders. Instead after only selective vetting, the Department published the Surface Water Quality Standards rule proposal to eliminate “the dangers of development.” (165)

29. COMMENT: The Surface Water Quality Standards were proposed with no stakeholder input. On May 24, 2007, the commenter wrote to the Department to request that this proposal be withdrawn, and that a stakeholder meeting be held after which a

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modified proposal could be put forth that is limited to definitions and a process for the designation and de-designation of Category One waters based on proposed criteria. (141, 146)

RESPONSE TO COMMENTS 28 THROUGH 29: The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., does not require agencies to publish an Interested Party Review or a pre-proposal prior to rulemaking. In this case, the Department did not opt to issue a pre-proposal. All changes including upgrading and/or possible downgrading stream classification and/or antidegradation designation must be accomplished through rulemaking which provides an opportunity for the public to review and comment on the basis for the action. As explained in previous responses, the Department provided an extended public comment period as well as a public hearing on the proposal.

Mapping

30. COMMENT: Will the Department publish a map indicating the new streams to be designated as Category One? (50, 207)

31. COMMENT: What is the timeline for the Department to release a Geographic Information System (GIS) map showing all Category One streams and lakes? (89, 200, 202, 206)

32. COMMENT: Given the Department's failure to timely provide the public with sufficient GIS information to assess its proposed reclassifications, the commenter believes that the Department must withdraw the portion that proposes to add specific waterbodies to N.J.A.C. 7:9B-1.15. (165)

33. COMMENT: The commenter is unable to conduct a complete review because GIS coverage of the waters proposed for upgrade is not yet available. Upon release of this GIS information, the commenter will conduct a thorough review and will work

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cooperatively with the Department to ensure that all waters supporting bog turtles and dwarf wedgemussels are correctly classified under the new definition. (133)

RESPONSE TO COMMENTS 30 THROUGH 33: The rule text provided a narrative description of each segment proposed for Category One upgrade at N.J.A.C. 7:9B-1.15. In addition, the Department posted maps of proposed stream segments as supporting documents at <http://www.state.nj.us/dep/wms/bwqsa/swqshome.html>. The rule text and the maps are the necessary tools for anyone with GIS capabilities to develop their own GIS coverage reflecting the proposed Category One waters. It should be noted when interpreting the stream classifications and anti-degradation designations that the narrative descriptions specified at N.J.A.C. 7:9B-1.15 govern. Once the Category One upgrades are adopted the Department will include these stream segments with the existing stream classifications and antidegradation designations available on GIS and the Department's interactive mapping tool.

34. COMMENT: For present listings, the Department should make specific findings of fact that each waterbody specific upgrade, while ostensibly made under the new methodology, is also justified under the older, more flexible and permissive methodology. It is important for the Department to state that the upgrades are supportable under the old methodology and within the Department's discretion, because some interested parties may claim that the upgrades themselves cannot be adopted at the same time as changes in the listing methodology under the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 to 21, and case law.

Under the unique circumstances of this rulemaking, where the new proposed rules are more restrictive than the currently existing rules, any procedural flaws are harmless. The waters could have been upgraded under the old rules, and therefore can be said to represent a "reaffirmation of . . . requirements already enunciated in existing regulations." *Radiological Society of New Jersey v. New Jersey State Dept. of Health*. Hospital Rate

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Setting Comm'n, 208 N.J. super 548,559 (App. Div. 1986); see also In re Application of Township of Jackson, 350 N.J. super 369,378 (App. Div. 2002).

The commenter believes such findings of fact are necessary to forestall any challenge to the upgrades, and also to give the Department the time and opportunity to re-evaluate and to re-adopt the existing standards. (1, 219)

35. COMMENT: The Department's rulemaking procedures are prescribed by the New Jersey Administrative Procedure Act (NJ APA). The Department acknowledges that it is proposing new definitions and that the proposed new definitions have been used to "qualify" waters as Category One waterbodies. This is a clear violation of NJ APA. An essential aspect of procedural due process is the notion that regulatory definitions are applicable only after an administrative agency duly promulgates them. In this case, the Department has violated these fundamental precepts because the subject proposal would apply proposed regulatory definitions before they are duly promulgated and become effective.

Impacted private property owners and developers are certain to recognize this fundamental procedural error and launch a legal challenge. Therefore, the Department should forego these legal challenges and publication of a response to comments by allowing the subject proposal to lapse. (248)

RESPONSE TO COMMENTS 34 THROUGH 35: The Department believes that it was appropriate, and consistent with the Administrative Procedure Act, to both change the definitions and propose Category One upgrades in the same rule proposal. The Department determined that a clarification of the definition of Category One was necessary, but that it was not necessary to delay the designation of certain waterbodies as Category One until the amendments to the definition were adopted since the upgrades are supportable under either the prior rules or the amended definitions. Specifically, all the waters the Department proposed for upgrade to Category One in this rulemaking

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qualified for that upgrade under both the pre-existing definition of Category One and the amended definitions.

In implementing the SWQS, the Department determined that it was necessary to initiate further rulemaking to clarify factors that would be used to determine if a waterbody qualified for Category One designation. Although exceptional ecological significance, exceptional fisheries significance, and exceptional water supply significance have historically been part of the Category One definition, these terms were not defined. Therefore, the Department determined that in order to continue to use these factors to upgrade waterbodies to Category One it was necessary to clarify these terms consistent with how it was implementing the rule. The new definitions are data driven and will better serve to identify waters that are exceptional. The Department's intention is to provide an open process by using these definitions as a tool in identifying waters that are eligible for Category One waters.

2003 Candidate List

36. COMMENT: The proposed revisions would narrow the scope of existing definitions and arbitrarily restrict the discretion provided in the current definitions and methodology. The result of the proposed changes would be to reduce the future ability of the Department to support Category One upgrades. The result of the proposed changes also would eliminate the March 3, 2003 proposed "Candidate Waterbodies" list (see 35 N.J.R. 1308(b)). The proposed changes are procedurally flawed and raise substantial likelihood of success legal challenge by those whom oppose the proposed upgrades. (248)

37. COMMENT: It appears that some of these river miles were adopted at the exclusion of others. Since the 910 river miles are proposed for an upgrade under the proposed standards, the Department has not determined whether the excluded miles meet the current definition of Category One. Therefore, while the 910 miles can be deemed recommended for upgrade, any excluded miles cannot be deemed denied. (260)

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38. COMMENT: What is the impact of the proposed new definitions and methodology on the March 2003 Proposed Candidate Waters List? The 2003 list was based on the current definitions and current designation methodology. Department scientists previously determined that those waters met the criteria in current regulations to qualify as Category One waters. Do waters on that list remain candidates under the proposed revised definitions and methodology? If not, why not? The Department may not silently repeal that list by the subject proposal. The commenter notes that the 2003 candidate waters list and the impact of the proposal on that list are not even mentioned in the text of the body of the proposal. The public deserves a full explanation and should be notified and able to comment on the issue of whether the subject proposal would repeal the 2003 list. That list received overwhelming public support in public comment submitted on the 2003 proposal. The Department is arbitrarily and without any asserted scientific basis essentially repealing that 2003 list. The Department's environmental and regulatory impact statements on the subject proposal are fatally flawed for the failure to consider and allow public comment on this important issue. (248)

39. COMMENT: Many stream segments initially identified in the earlier rule proposal have been deleted from this rule proposal due to the more stringent methodology standards to be adopted under the new rules. These stream segments are largely within the Highlands Preservation Area, and while that may offer certain protections under the Highlands rules, certain provisions in the Highlands Regional Master Plan may reduce the Highlands mandated stream buffers below 300 feet. The stream segments included in the earlier proposal include unnamed tributaries of various waterways in both the Wanaque and Pequannock Watershed areas of Watershed Management Area 3. The additional stream segments in the previous list included several non-trout waterways to enhance water quality or open space. The commenter urges the Department to include those streams that are not currently included in the new rule proposal. (164)

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40. COMMENT: The proposal lacks scientific support, would restrict the Department's ability to protect high quality waters, and would eliminate the 2003 Candidate Waters list in the absence of any public input on that dramatic policy decision. (248)

41. COMMENT: The Department should assist the public's understanding of its decision-making process by posting its internal candidate waters list on its website, as was done from 2003 to late 2006, when it was taken down from the site. The internal candidate list could be improved by assigning a timetable for completing the nomination process. Transparency and predictability in the program benefits all members of the public and allows for better planning, and may even forestall petitions, if the Department believes that is a desirable outcome for its own resource management purposes.

The Department should explain its internal processes for nominating Category One waters. The proposed rules explain the criteria to be used but not the agency's nominating procedures. The public needs to understand which programs within the Department have the authority and accountability for nominating waterbodies for Category One status, and how disputes within the Department are resolved. As a matter of good public policy, commentators believe that nominating authority should be devolved, at least at the initial stages, to all relevant programs. It makes sense, for example, for the Department to rely upon the resident species experts within the ENSP to nominate waterbodies that are important to protected species. (1, 219)

42. COMMENT: The Category One program has been both proactive and reactive at different times since its inception. The decision to post the DEP candidate list on the Department's website because of better transparency and predictability in the program benefits all member of the public and allows for better planning. It is reasonable for the public to expect that the Department implement some of its internal candidates and in the absences of DEP-sponsored listings, invoke the available petition for rulemaking procedures. (219)

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RESPONSE TO COMMENTS 36 THROUGH 42: As part of former Governor McGreevey's 2002 initiative to protect additional waters to strengthen protection of key drinking water sources and exceptional value resource waters, the Department embarked on an initiative to comprehensively review available data and information to determine which waters might qualify for additional water quality protection as Category One. The Department compiled a list of waterbodies that might be considered for future upgrades to Category One. These candidates generally included Water Supply Reservoirs and their natural drainages, exceptional ecological value waterbodies, and approximately 1,000 waterbody miles in open space. On March 3, 2003 the Department published a Notice of Opportunity for Public Comment on both the Blueprint for Intelligent Growth (BIG) Map and potential candidate waterbodies for Category One antidegradation designation (see 35 N.J.R. 1308(b)). The Department asked the public to provide comment on the DEP Category One candidate list and also asked for comment on alternative water resource protections for the headwaters of relatively undeveloped drainages of drinking water supply intakes. The public comment period closed on April 25, 2003. In response to the notice, the Department received several hundred nominations for Category One antidegradation designation. The Department removed the 2003 DEP Category One candidate list from its website in May 2007 when the proposal that is the subject of this adoption was published.

Pursuant to the Administrative Procedure Act, any changes to the SWQS must be adopted through a formal rulemaking process. The DEP Category One candidate list as well as the comments received and the waterbodies nominated by the public did not constitute formal rulemaking. The Department, therefore, is not constrained by the candidate list in determining which waterbodies it may propose to designate as Category One. However, the DEP Category One candidate list and the nominations did provide information to the Department on the level of support for upgrades of individual waterbodies.

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Since 2002, the Department has upgraded through rulemaking several of the waters on the DEP Category One candidate list. See 35 N.J.R. 2264(b), 35 N.J.R. 5086(a), 36 N.J.R. 3565(c), 37 N.J.R. 2251(a)), and 39 N.J.R. 1845(a). Through these rulemaking efforts, the basis and criteria for Category One upgrades have been refined. As a result, many of the waterbodies identified in the DEP Category One candidate list will require the collection of additional data in order to determine if they qualify for Category One designation under the amended definitions. Should the Department determine to upgrade any waterbodies on the DEP Category One candidate list or any other waterbody, the Department will initiate formal rulemaking with an opportunity for public comment.

REGULATORY OVERLAP

43. COMMENT: The commenter requests evidence in relation to the necessity for overlapping protections in view of the wide variety of Department and Federal rules, regulations, and programs that already exist to provide protection for endangered or threatened species and habitat. (199, 201)

44. COMMENT: How will the different Departmental programs handle the overlap of jurisdiction? Will this be an additional lengthy and costly permit process impacting municipal projects and economic growth? Does the Department have the staff to administer the new rules? The commenters requests the Department to provide examples of overlapping standards and documentation that there are no legal conflicts. (50, 207)

45. COMMENT: When will the State resolve the regulatory jungle of overlapping rules and regulations and regulatory gaps created by overburdened and confusing legislation? Stormwater, surface and groundwater quality rules and standards must be coordinated and made to be implementable. Otherwise, the maze of conflicting and onerous regulations is just another excuse to prevent appropriate development. (154)

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46. COMMENT: There needs to be a comprehensive discussion of all Department regulatory overlaps and combinations between the wide variety of Department programs and rules (for example, stormwater, surface water quality, ground water quality, the Category One proposals, and stream encroachment). (153, 184, 203)

47. COMMENT: The State regulates waterbodies and surrounding land under a variety of programs. There is no need to burden the sale of property with unnecessary regulations. The proposed regulations expanding the Category One designation are overly burdensome in that many of the waterbodies included in the proposal are already regulated under other programs, such as the Highlands Act and in the Pinelands. The Highlands Region has limited areas for new construction within the planning area and the additional proposed buffers will interfere with the Highlands Regional Master Plan and further reduce the area available for building. If the other authorities did not feel it necessary to create a stronger buffer when drafting the earlier regulations, then it is unnecessary to further regulate through the expansion of the Category One waters. There is a complex permitting process already in place that ensures that the Department is able to monitor any development throughout the State. (69)

RESPONSE TO COMMENTS 43 THROUGH 47: As explained in the proposal summary, the Department develops and administers the SWQS pursuant to the Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 *et seq.* and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* The SWQS are further developed and administered in conformance with requirements of the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, commonly known as the Clean Water Act (CWA), and the Federal regulatory program established by the United States Environmental Protection Agency (USEPA) at 40 CFR Part 131. The SWQS include general requirements, use designations, classifications, antidegradation categories, and water quality criteria applicable to the surface waters of the State. The SWQS are established to address the Department's responsibilities to conduct a continuous planning process pursuant to Section 303 of the CWA, 33 U.S.C. § 1313, and the WQPA, N.J.S.A. 58:11A-1 *et seq.*

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The SWQS establish the designated uses to be achieved for individual waterbodies and specify the water quality criteria necessary to achieve these uses. Designated uses include drinking water, propagation of fish and wildlife, recreation, agricultural and industrial supplies, and navigation. Based on the designated uses, the Department establishes stream classifications and an antidegradation designation for each waterbody.

The SWQS are implemented through the Department's various regulatory programs, including the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules at N.J.A.C. 7:14A, the Stormwater Management Rules at N.J.A.C. 7:8, the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, Water Quality Management Planning rules at N.J.A.C. 7:15, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A and the Coastal Zone Management rules at N.J.A.C. 7:7E. The SWQS do not regulate development nor require site-by-site analysis or permit review. Thus, no additional staff is necessary to administer these adopted amendments to the SWQS.

A 300-foot buffer is also required adjacent to all "Highlands Open Waters" in the Highlands Preservation Area, if the proposed project is regulated by the Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38). If a project requires a Highlands approval, it does not require a separate approval or permit under the Flood Hazard Area Control Act rules. If a project is exempt from the Highlands Water Protection and Planning Act rules and the project involves regulated activities in regulated areas pursuant to the Flood Hazard Area Control Act rules, then a Flood Hazard permit is required. Thus, one permit or the other is required for regulated activities and there is no regulatory overlap between these rules.

With respect to the designation of Category One waters in the Highlands Planning Area, the Highlands Water Protection and Planning Act does not preclude the Department from upgrading watercourses in the Planning Area. Furthermore, as noted in response to comments 66 through 67 the implementing rules (Flood Hazard Area Control

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Act rules at N.J.A.C. 7:8 and the Stormwater Management rules at N.J.A.C. 7:8) do not prohibit development.

48. COMMENT: The Department should not consider whether other potentially applicable regulations such as wetlands regulations will require consideration of species habitat as part of a permitting process. Not all harmful activities will be subject to Department's permit review. And the text of the Category One regulations would be nullified if the existence of other regulatory programs allowed the Department to refuse to consider species impacts in its listing decisions. (1, 219)

RESPONSE TO COMMENT 48: The purpose of the SWQS is to protect and maintain water quality and to protect existing uses. The Department determined that Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater would benefit from effort to protect existing water quality. While other rules protect threatened and endangered species and their habitat, the SWQS provide water quality protection. The upgraded antidegradation designation complements the species and habitat protections provided by these programs by ensuring that water quality will not be degraded.

49. COMMENT: The proposed Flood Hazard Area Control Act regulation (FHACA) should not be considered in a vacuum. These proposed regulations unto themselves are burdensome and will have serious implications for stakeholders in the Wallkill and Pequest watersheds. It is our understanding that the FHACA proposal will be published in October 2007, and that these regulations will essentially rewrite the "stream encroachment regulations". The FHACA regulation will define riparian zone in Category One waterway as 300 feet including all upstream tributaries. These regulations will potentially limit the maximum area of vegetation that can be disturbed, and require the applicant to prove that the basic purpose of the project cannot be accomplished without disturbing riparian zone vegetation. This limitation would include stormwater discharge facilities, structures and the like.

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It is suggested that implementation of the Category One rule proposal should be delayed and the corresponding public comment period be extended until such time as the FHACA regulations are formally proposed so that affected parties/stakeholders can truly evaluate and determine the overall impact of the overlapping regulations. To otherwise proceed ahead and dramatically alter the intent and impact of the Category One designation at a near future date would be inappropriate and defeats the purpose of this public comment period. (233)

RESPONSE TO COMMENT 49: The Department proposed the new FHACA rules on October 2, 2006(see 38 N.J.R. 3950(a)), eight months before the SWQS proposal that is the subject of this adoption was published on May 21, 2007. The FHACA rules were subsequently adopted effective November 5, 2007. See 39 N.J.R. 4573(a). The public therefore had sufficient notice that the protections established to protect water quality in the FHACA rules would apply to waters designated as Category One under the SWQS. The Category One designation of a watercourse is based solely on the exceptional ecological significance of the resource itself and is not influenced by the impacts to development that may result from implementation of the designation. The FHACA rules protect Category One waters by requiring a 300 foot riparian zone (buffer) adjacent to the watercourse and certain tributaries. A detailed discussion regarding the need for riparian zones can be found in the summary the FHACA rule proposal.

50. COMMENT: The Pinelands are regulated by the Pinelands Commission and there are building restrictions within the Pinelands area. Any waterbodies changed to Category One within the Pinelands will further restrict the area and will interfere with the authority of the Pinelands Commission to govern the area. (69)

RESPONSE TO COMMENT 50: Waters within the boundaries of Pineland Protection and Preservation Area are designated as PL. PL waters are part of the highest antidegradation designation of Outstanding National Resource Waters (ONRW). The

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Department did not propose Category One designation for any waters classified as PL. These waters are not designated as Category One as they are more appropriately designated as ONRW.

General Impact

51. COMMENT: Business is leaving New Jersey in large numbers. Some are leaving due to high costs, others because of the ever-growing regulation and costs to conduct business here in New Jersey. Residents are also looking to reduce their property taxes and find more affordable housing options. (69, 95)

52. COMMENT: Protecting the environment and natural resources is of great importance however, doing so by not considering property owner rights and a municipality's ability to advance through development is not a good practice. (139)

53. COMMENT: The Category One designations have a significant impact to development projects due to the Stormwater Regulations and if adopted as proposed, the Stream Encroachment Regulations. Without addressing the impact of application of other regulatory programs due to changes made by the proposal, the Department has failed to comply with the Administrative Procedures Act. (155)

54. COMMENT: The Department's rule proposal does not address sufficiently either the individual or the cumulative impact of the rule on important non-environmental criteria, including jobs and the economy. The Department has failed to adequately address the social, economic and job impacts of its proposed rule. (261, 205)

55. COMMENT: The proposal as currently written fails to adequately consider the far reaching impact that the regulations will have on the economic future of those communities affected by the Category One designations. The reclassification of waterways as Category One does not only impact those businesses, homes, and developments that already exist as the proposal claims. The proposal will have a much

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more far reaching impact on municipalities, private property-owners, and businesses than the economic impact statement considers. (199, 201)

56. COMMENT: The reclassification of waterbodies will have social and economic ramifications well beyond those mentioned in the basis document's "impact" statements. Private parties must be afforded an opportunity to be heard on actions which will affect their interests. To fulfill its legal obligations in this regard, the Department must, as a matter of law, formally adopt and promulgate the procedures whereby decisions are made and how the participation of interested parties will be facilitated. (66, 165)

57. COMMENT: The rules do not assess the impacts on the historic, social, economic, and tax value of communities. (50, 207)

58. COMMENT: The commenter recognizes that protection of "truly exceptional waters" can yield positive benefits, but there are costs as well. A rigorous analysis of the proposal's impacts is essential to balancing those benefits and costs. To proceed to adoption without such an analysis is to risk imposing social and economic costs far in excess of its benefits. (66, 165)

RESPONSE TO COMMENTS 51 THROUGH 58: The Department acknowledges that there are likely to be many site-specific impacts related to the implementation of the Category One upgrades through the Department permitting programs. However, since the Department cannot anticipate the circumstances surrounding any particular future proposed project, the impact analyses in the proposals addressed in a more general way the expected economic, social, and environmental impacts, as well as the impacts to jobs, agriculture and small business, of the amendments as they would relate to development and regulated activities reviewed under the NJPDES rules, the Stormwater Management rules, and the Flood Hazard Area Control Act rules. See also response to comment 60 and response to comments 66 through 67.

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59. COMMENT: While the proposal justifies the imposition of new restrictions on development and redevelopment on the basis of protecting certain surface waters from degradation by human activity, nowhere does it explain why certain sources of human made pollution should be ignored. The only rationale that can be inferred for the proposal's narrow focus is found in the "Agricultural Industry Impact" statement: a lack of permitting jurisdiction. 39 N.J.R. 1862. (66, 165)

RESPONSE TO COMMENT 59: This rule does not impose regulatory restrictions on development or redevelopment. The Department's regulatory programs establish permit requirements for new and expanded discharges and new development based on the stream classification and antidegradation designation to protect and maintain water quality and the existing uses. Agricultural operations generally do not require NJPDES permits; therefore, the proposed rules are not expected to have a significant impact upon the agriculture industry.

60. COMMENT: The Department proposes to upgrade specific waterbodies without conducting the promised analyses of the impacts anticipated for "each segment". The Department must address the segment-specific impacts that will, as it has acknowledged, result from those reclassifications. Until the public is afforded the opportunity to comment based on their impact analyses, the reclassifications should not be adopted. (66, 165)

RESPONSE TO COMMENT 60: In accordance with the Administrative Procedure Act, the Department is required to include a description of the expected socio-economic impact of the rule, as well as the expected environmental impact, agricultural industry impact, jobs impact and a regulatory flexibility analysis. The Department provided these impact statements. The Department has no way to know the future plans for any project until applications are submitted. Therefore, it is not possible for the Department to analyze the project specific impacts of the Category One designation.

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As indicated in the economic impact statement, a new or expanded NJPDES facility must demonstrate that existing water quality can be maintained before the Department can issue a NJPDES permit for the new or expanded facility. The Department considers the size of the receiving stream, the volume of wastewater, current levels of pollutants in the receiving stream, and effluent characteristics in developing effluent limitations that will maintain the existing water quality as required by N.J.A.C. 7:9B-1.5(d). Site-specific conditions preclude a “one size fits all” analysis. An applicant for a NJPDES permit would be required to determine existing water quality as part of its application and demonstrate that the new or expanded discharge would not result in a measurable change in water quality. The Department has no way to know the future plans for a NJPDES facility until an application for a new or expanded discharge is submitted. Therefore, it is not possible for the Department to address in the proposal impact analyses the waterbody-specific impacts due to NJPDES point sources.

The requirement to maintain a 300 foot buffer is triggered for new major development under the Stormwater Management Rules and for regulated activities that under the Flood Hazard Control Area Act rules. Again, the Department has no way to know a property owners’ future plans. Therefore, the impacts of a Category One upgrade for an individual project located on a specific waterbody cannot be specifically anticipated.

61. COMMENT: New residential and commercial development proposed in a municipality and subject to the new regulations will have a reduced building area. As the projects are reduced in scope, the benefits to the municipality will decrease. Smaller commercial projects mean fewer jobs within a community and fewer ratables for a town. Reduced residential development in communities that need housing means many families who may have been able to afford a home in a certain area will no longer be able to because of an increase in housing prices caused by a decrease in the housing supply. (69)

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RESPONSE TO COMMENT 61: While designating a waterbody as Category One may reduce the area available for future development and may as a consequence limit housing that can be built within the 300 foot riparian zone of the waterway, the benefits of water quality protection benefit all residents of New Jersey. The designation of Category One antidegradation protection will discourage development where it would impair or destroy natural resources and the environmental qualities vital to the health and well being of the citizens of New Jersey. The maintenance of water quality resources is important to all residents, particularly to the many communities that depend upon surface waters for public, industrial, and agricultural water supplies, recreation, tourism, fishing, and shellfish harvesting.

Economic Impact

62. COMMENT: These potential rules erode the potential viability of development in such a huge area, and the commenter believes it will affect both the economic and social structure in many areas of New Jersey. (87,152)

63. COMMENT: The Economic Impact Statement published was wholly inadequate in attempting to determine the cost/benefit of the rule proposal. It appears that the Department has lowered the bar for those seeking reclassification of water bodies to Category One, while with the same brush, minimizing the potential economic impacts to permit holders, property owners, municipalities and the general public by indicating: “Compliance with the special protection measures for Category One rules . . . may generate an increased financial burden on developers and municipalities”. This proposal goes far beyond the potentially affected dischargers for this round of nominees to Category One. It will open the floodgates to many more Category One proposals, which will effectively dilute the significance of a Category One designation (puns intended).

Whether by minimizing potential economic impact to permit holders, property owners, municipalities, and the general public or by sheer neglect, the Department has

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inadequately addressed the mandatory requirements for an appropriate Economic Impact Statement concerning the current Category One Rule Proposal. Until such time as further detailed economic information is provided, the Category One Rule Proposal should be held in abeyance. To otherwise proceed ahead not only defeats the intent of the Economic Impact requirements, but also potentially represents a “taking” by the Department relative to property owners whose values may be adversely impacted as a result of the Category One designation. (233)

RESPONSE TO COMMENTS 62 THROUGH 63: The protection of New Jersey’s natural resources is in the best interest of all the residents of the State, and such protection and economic growth are not mutually exclusive. Furthermore, this rule does not govern development but rather classifies waters. As described in the proposal, the upgrade in the antidegradation designation for the identified waterbodies may result in an increased financial burden on developers seeking to build near the identified waterbodies. For example, the designation may require additional protections under Department land use regulations such as the Stormwater Management rules (N.J.A.C. 7:8) or the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). The designation of a waterbody as Category One may impact the scope and extent of development potential for a parcel, but may also add value to the areas adjacent to the Category One waterbody. The reclassification of these waterbodies however, does not preclude development, or constitute a taking as the commenters suggest. The Department’s regulatory programs under the Stormwater Management rules (N.J.A.C. 7:8) or the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), allow the Department to consider site-specific factors when issuing permits for development projects. These permits enable permittees to conduct a variety of activities on properties containing Category One waters.

64. COMMENT: All new construction in municipalities with new Category One waterbodies will be affected by the proposed regulations. Any development within the vicinity of the additional buffer will be negatively impacted. Impacted municipalities

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may have to create new Master Plans to consider the changes to certain sites brought on by the new 300-foot buffers. (69)

65. COMMENT: Municipalities may be forced to rezone certain areas to take into account the new buffer to ensure lots meet the required minimum lot size in a particular zone. If the new buffer significantly impacts an area within a municipality and reduces the amount of buildable land on each lot, municipalities will have to reduce the minimum lot size within a zone to create conforming lots for development. The buffers will impact all municipal planning. (69)

RESPONSE TO COMMENTS 64 THROUGH 65: As described in the proposal, the reclassification of the identified waterbodies to Category One is expected to have economic impacts to municipalities. This impact includes an impact to municipal planning. While the rule does not require that municipalities re-zone or readopt their master plan, the update of the master plan and zoning ordinances consistent with Department regulations does provide consistency across various levels of government for the regulated public.

66. COMMENT: Owners of large homes and small commercial properties may fall under the regulations. Property owners who have lived on their properties for years may find that they are no longer free to expand their own buildings. The regulations may have a negative impact on small businesses seeking to expand their operations. There is a definite potential to create a financial burden on smaller property owners. (69)

67. COMMENT: There remains a significant gray area as to what are acceptable uses within the 600 feet stream corridor. The buffer implemented along Category One streams through the stormwater rules prevents a farmer from expanding his/her operation in such an area even though an effect on actual water quality will never be realized. Agriculture has long relied on the expertise and site specific planning provided through the United States Department of Agriculture's (USDA), Natural Resource Conservation Service

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(NRCS), and its Field Office Technical Guide (e-FOTG) (often referenced in NJ regulations) to protect water quality. It would be difficult if not impossible to find site where such an extensive buffer, as the one required for Category One streams, was recommended by the NRCS to protect water quality. The commenter recommends that the Department default to site specific buffers to protect water quality when available. (72, 160)

RESPONSE TO COMMENTS 66 THROUGH 67: The SWQS do not regulate development. Buffers are established under the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Those rules do not prohibit development in the 300 foot buffer but rather limit development in order to be protective of water quality. Some encroachment into the buffer is allowed in accordance with those rules and small expansions may not be regulated at all.

The Stormwater Management rules regulate “major development”, that is, development that involves an increase in impervious cover of one quarter of an acre or more; or that results in one acre of disturbance. Many projects and activities will not reach those thresholds and therefore are not subject to the Stormwater Management rules. Also in the Stormwater Management rules, at N.J.A.C. 7:8-5.5(h), some encroachment into disturbed areas is allowed. In addition, linear development can be authorized in an undisturbed SWPRA with mitigation.

Pursuant to the Flood Hazard Area Control Act rules, riparian zones apply to regulated waters, which include all waters except: manmade canals, coastal wetlands and tributaries that drain less than 50 acres, if the tributaries does not have a defined bed and bank, is not connected to another regulated water, or is confined to existing and lawfully created manmade conveyance structures. These rules regulate the following activities: excavation, grading and/or placement of fill; the clearing, cutting and/or removal of vegetation in a riparian zone; the creation of impervious surface; the storage of unsecured material; the construction, reconstruction and/or enlargement of a structure; and the

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conversion of a building into a private residence or a public building. Pursuant to N.J.A.C. 7:13-10.2, certain activities are permitted in a riparian zone. In addition, a hardship exception is available for certain projects as set forth at N.J.A.C. 7:13-9.8.

Standards protecting vegetation in the riparian zone and Special Water Resources Protection Areas do not apply where no vegetation exists (paved or developed areas). However, all other applicable standards of the rules apply. With regard to agricultural activities, while both rules provide some exceptions for certain agricultural activities, the Stormwater Management and Flood Hazard Control Act rules do not treat those activities that will have a significant impact differently. The Field Office Technical Guide is not considered a substitute for the applicable standards under either of the rules.

For additional information on the Stormwater Management rules, see www.njstormwater.org; and for additional information regarding Department land use regulations, such as the Flood Hazard Area Control Act rules, see the Division of Land Use Regulation's website at www.nj.gov/dep/landuse. For more information regarding implementation of buffer fact sheet at <http://www.nj.gov/dep/>.

68. COMMENT: The "economic impact" statement implies that the proposal's only general statewide effect will be changed administrative and compliance costs. Even though the proposal has the avowed purpose of discouraging development in certain areas, there is no discussion of the consequences of such a policy. The proposal does, however, recognize that individual reclassifications "may result in a range of economic impacts, ranging from no impact to potentially significant impact." Yet the proposal to triple the State's Category One waterbodies (and an undisclosed number of tributaries) offers no assessment of its (individual or cumulative) economic consequences. If adopted as proposed, well over half of New Jersey's surface waters will be "exceptional" / Category One or "outstanding" (ONRW) and, therefore, will be virtually off-limits to future development and redevelopment. Whatever the environmental merits of such a policy, it is inconceivable that it is without economic consequence. It is incumbent upon

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the Department, as a matter of law and sound policymaking, to present a competent analysis of those economic impacts. The absence of such an analysis impedes informed judgment of the merits of the proposal and possible alternatives to it. (66, 165)

69. COMMENT: The proposed amendments will certainly have a negative economic impact on housing prices, businesses and municipalities. The regulations will hinder the ability to build new construction in the volume necessary to keep up with the development demands in New Jersey. Businesses will not have the same freedom to move to a new location or to expand an existing location because of the additional costs necessitated by the amended regulations. The Department recognizes that there is potential, and we believe a real potential, for a significant economic impact on business owners seeking to expand their business because of the mandatory upgrades required for Category One waters. The economic impact will also affect owners of commercial property seeking to lease or sell to businesses. Property owners may not be able to market successfully to businesses as a result of the arduous permitting process and overly stringent regulations. The economic impact on the commercial market has the potential to be severe, with businesses finding them very limited in where they are able to start up and/or relocate. The burden placed on small businesses that may have been operating in a certain location for years will certainly have an effect on both the economy and the employment of those working in these businesses. (69, 189)

RESPONSE TO COMMENTS 68 THROUGH 69: The Department addressed the anticipated impacts to development projects related to implementation of the Category One upgrades under the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules(N.J.A.C. 7:13). As explained in response to comments 66 through 67 the SWQS do not establish buffers or regulate development. Development, redevelopment, and expansion are not prohibited by this or the Stormwater Management rules or Flood Hazard Area Control Act rules, and in fact in some circumstances may not even be regulated. While the Department acknowledges that the designation of waters as Category One will likely result in an economic impact, an accurate estimate of individual

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and cumulative impacts cannot be made because the intentions of developers, speculators and landowners cannot be specifically anticipated. A detailed understanding of development plans is necessary in order estimate the impacts of the buffer requirements. The Department was mindful of such impacts but necessarily also considered the economic impact to all of the State's citizen resulting from degraded water quality. These include higher costs for the treatment of drinking water; a loss of revenue from a decrease in recreational and tourism opportunities caused by events such as beach closings and decline in wildlife populations that attract tourists; as well as negative impacts to commercial fishing and shellfish harvesting activities. Such impacts affect all citizens and many visitors of the State and thus were appropriately considered by the Department as well as those associated with potential limitations on development resulting from the 300 foot buffer.

70. COMMENT: It seems that the Department has not fully contemplated the social and economic impacts of this regulation particularly as it relates to redevelopment. It seems clear that the environment will benefit greatly from the redevelopment of property under existing regulations rather than the regulations which existed at the time of the original development. In the case of Mountain Creek, the original development occurred under the rules and regulations in place in the 1960's and 70's. It is suggested that the Department add the words "except in areas deemed in need of redevelopment" at the end of each definition. (48)

RESPONSE TO COMMENT 70: This rule designates waters as Category One based on their exceptional ecological significance. The Department maintains that these waters warrant protection and that good water quality is the right of all citizens regardless of the redevelopment opportunity or level of urbanization of the adjacent land area. Furthermore, this does not regulate development and therefore does not preclude redevelopment. Development adjacent to Category One waters and their tributaries are regulated pursuant to the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules (FHACA) at N.J.A.C. 7:13. Both rules establish a 300

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foot buffer, known as the Riparian Zone in the FHACA rules and the Special Water Resource Protection Area in the Stormwater Management rules, adjacent to Category One waters and their tributaries within the same sub-watershed. Both rules protect existing vegetation within the 300 foot buffer. Since redevelopment typically involves the construction of impervious surface over existing impervious surface, which does not contain vegetation, there should be minimal impact to redevelopment projects.

IMPLEMENTATION

71. COMMENT: Property owners may in the future be required to alter or expand their existing septic systems due to the systems becoming obsolete or in relation to making improvements to their homes. Under the proposed regulations are such activities permitted? If property owners are not permitted to alter or repair their septic systems they would be in danger of jeopardizing the water quality through septic spills or leakage which would be contrary to the regulations' goals. (199, 201)

RESPONSE TO COMMENT 71: This rule does not regulate the installation or replacement of septic systems. The Department recognizes the importance of septic system repair and the resultant improvement or protection of water quality. The designation as Category One will not preclude a property owner from repairing or replacing an existing septic system.

BUFFERS

72. COMMENT: It is apparent there is no scientific basis for any buffers over 80 feet much less 300 feet. These figures were established by the previous McGreevy administration with no consideration given to any scientific basis except to stop development and control over private lands. New Jersey on a national basis is now known as one of the worst states to do business in or establish new locations of any type. These new regulation send the wrong message at the wrong time to investing in New Jersey and have the potential to destroy the economy of this State. The commenter urges

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the Department to reject these new regulations and revise the existing regulations to more reasonable levels based on scientific facts. (34)

73. COMMENT: The one size fits all approach does not work. Buffers should vary based on the reasons for Category One designation, and the type and area of discharge (for example, science supports that 50' buffers are often sufficient protection to ensure drinking water quality in reservoirs). If the Department moves forward with different categories of Category One designation, then it should designate variable buffers accordingly (50 feet for reservoirs, up to 300 feet for habitats, zero buffers for recreational usage, since such usage requires direct access, and docks). (141, 146)

74. COMMENT: There hasn't been any confirmed science as to how the 300 foot buffer was established. Is a 300 foot clear zone buffer better than a 150 foot buffer of trees, shrubs and topographic relief? Does a road traversing the buffer effectively destroy the intent of a buffer? The State should identify options or measures (best management practices) that could be utilized in lieu of a 300 foot buffer. A 100 or 150 foot buffer with environmental enhancements such as additional vegetative cover and other protective measures as will be proposed in the Black Creek Watershed Restoration and Protection Plan will be far superior to the arbitrary 300 foot delineation. (154)

RESPONSE TO COMMENTS 72 THROUGH 74: This rule does not establish buffers or regulate development. However, the buffers established in both the Flood Hazard Area Control Act rules (N.J.A.C. 7:13) and the Stormwater Management rules (N.J.A.C. 7:8) are supported in the scientific literature, which is detailed in the proposal summaries and responses to comments for both rules. The proposal of the Stormwater Management rules was published in the New Jersey Register on January 6, 2003 at 35 N.J.R. 119(a). The basis for the riparian zones established in the Flood Hazard Area Control Act rule is discussed in the summary of that proposal at 38 N.J.R. 3971 -, and in the response to comments in the adoption at 39 N.J.R. 4618 - 4629. See also, I/M/O Stormwater

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Management Rules, 384 N.J. Super. 451 (App. Div) cert denied 188 N.J. 489 (2006), which affirmed the Department's authority to use stream buffers to protect water quality.

75. COMMENT: The broad application of the proposed 300 foot buffers is not necessarily the most effective mechanism for preventing the degradation of water quality. The buffers do little or nothing to address the pollution resulting from activities that already exist within the 300 foot buffer, but rather it unfairly burdens those seeking to construct new development. There are more effective and less prohibitory mechanisms that can be incorporated into the proposed regulations which will protect and enhance surface water quality. There are numerous best management practices such as dry extended detention basins, wet ponds, constructed wetlands, and mechanical filtration devices that can be put in place in order to reduce pollution. These mechanisms will provide for a range of 60% to 80% removal of total suspended solids which in conjunction with a storm water management plan would meet the goals set forth by the proposed regulations. (199, 201)

76. COMMENT: Roadways and other paved areas should mark the termination of the buffer. Where practical, protective measures can be implemented along the waterside of the roadway thus providing a real buffer instead of a buffer, that consists of roadways and parking areas. (154)

RESPONSE TO COMMENTS 75 THROUGH 76: This rule does not establish buffers. Buffers are established in the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). See response to comments 72 through 74 regarding the basis for the buffer requirements.

77. COMMENT: Hardships that are faced by affected parties as a result of the proposed waterbodies receiving the Category One designation requires that the Department adopt new provisions to the SWQS that afford reasonable relief to the Special Water Resource Protection Area Rules (N.J.A.C. 7:8-5.5(h)) that regulate development proximate to

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Category One waterbodies, provided reasonable protection of those waterbodies is afforded. (114)

78. COMMENT: While buffers are one tool to reach this goal, universal application of buffers may not necessarily be the best and most sustainable tool for long-term protection and enhancement of New Jersey's exceptional waters. Most importantly, wholesale application of the buffers without consideration of the individual circumstances of an area fails to take into account the State's equally important policies of promoting economic development, providing adequate and diverse housing, and redeveloping urban and older suburban cities. It also tends to undermine the State's policy of directing development and redevelopment into designated centers. However, opportunities exist, in certain circumstances, to utilize comprehensive planning that incorporates an array of environmental protections while allowing appropriately located, appropriately scaled and appropriately designed development to take place.

Solely focusing on regulation for protection of the State's natural resources, without balancing that policy with the other significant policies of the State, will likely not be a long-term solution for preserving the quality of the state's critical resources. Therefore, the Department's stormwater management rules need to be amended to provide flexibility in situations where prior existing uses along Category One waters in designated centers can be improved through the adoption of a comprehensive protection plan and implementation strategy.

The stormwater management rules should specifically permit adjustment of the buffers within designated centers to provide the opportunity to remediate existing conditions, permit a municipality to incorporate the course of a Category One waterway as it passes through its jurisdiction into its overall planning as a community amenity, allow for crossing Category One waters in designated centers, where it will enhance the design and mobility of the center and permit appropriate redevelopment opportunities. Achieving a properly designed center only helps to attain enhanced opportunities for

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protection outside the center. These flexibilities should be predicated upon a community's participation in the Plan Endorsement process and the enactment of a comprehensive program that incorporates appropriate measures at the local level designed to provide protection for the community's environmental resources. The end effect will be to provide for a sustainable solution for the protection of the water quality in these streams beyond what the application of a buffer would accomplish. The plan endorsement process will provide a vehicle to undertake this detailed analysis of the conditions surrounding a Category One waterway in designated centers on a case-by-case basis, and will provide both the basis for a comprehensive planning approach to achieve the goals of restoring, enhancing and maintaining the integrity of our waters. (208)

RESPONSE TO COMMENTS 77 THROUGH 78: This rule does not establish buffers. Buffers are established in the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). See response to comments 66 through 67 for a discussion of these rule provisions. The Department considers the protection of buffers to be an essential best management practice that will maintain water quality. The buffer requirements are designed to protect Category One waters from changes in quality and hydrology associated with new development. Cumulative, ancillary impacts, such as additional pollutant loads from increased traffic, will be addressed to the extent that the affected stormwater systems are subject to the Phase II Municipal Stormwater Permitting Rules, such as through street sweeping requirements. It should be noted that connection of stormwater flows generated from new development to Category One streams via existing stormwater systems is not permitted, because it bypasses the Special Water Resources Protection Area and the benefits it provides. Since the implementing rules contain standards that allow for some development, including crossings, and most redevelopment, the adoption of this rule and the implementation of those rules do not in any way preclude economic development.

The Department agrees that a comprehensive planning approach, including the Plan Endorsement process, will result in stronger environmental protection that includes

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restoration, enhancement and maintenance of water quality. As such, the Department fully participates in the Plan Endorsement process, and seeks to ensure that provisions that protect environmentally sensitive features are included in, and implemented by, municipal planning. However, Plan Endorsement or Center Designation by the State Planning Commission, on which the Department is represented, does not modify or alter the existing regulatory requirements.

79. COMMENT: Under the Category One rules, habitat management plans should be encouraged as offsets and a model such as the Stormwater Plan model should be developed. (153, 184, 203)

RESPONSE TO COMMENT 79: The Department believes the commenter is referring to the Stream Corridor Protection Plan provision at N.J.A.C. 7:8-5.5(h) wherein a modification of the standard 300 foot width of the Special Water Resource Protection Area can be requested. The Surface Water Quality Standards do not regulate development or establish buffers. A tool such as habitat management plans is an appropriate suggestion for the rules that implement the protection measures for Category One waters, for example, the Stormwater Management rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act rules (N.J.A.C. 7:13) and the Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A). The commenter is encouraged to submit comments when these rules are open for public comment in the future.

NJPDES

80. COMMENT: Where a municipality or entity wants to trade its flow “allocation” to another municipality or entity within the approved Sewer Service Area, but the total flow being processed does not exceed permitted flows, is an antidegradation review triggered? Would a similar allocation transfer which expanded the Sewer Service Area but resulted in no increase in permitted flow trigger an antidegradation review? (233)

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RESPONSE TO COMMENT 80: As stated in the rule proposal's Economic Impact analysis, the antidegradation provisions are triggered when an applicant proposes a new or expanded activity that has the potential to lower water quality. Previously approved wastewater discharges authorized under the NJPDES program, as well as existing development, are not subject to the antidegradation policies unless a new or expanded activity is proposed.

Renewal of an existing discharge permit does not require an antidegradation analysis unless additional flow or loading is requested as part of the renewal. Therefore, an existing wastewater treatment facility that is not expanding and not seeking any increased loadings for its discharge would not trigger an antidegradation analysis simply because the receiving waters are upgraded to Category One. This would include a reallocation of wastewater flows between municipalities served by the NJPDES facility.

81. COMMENT: The Department has indicated that existing permitted facilities will not be affected "unless a new or expanded activity is proposed." If a plant is not expanding and not seeking any increased loadings for discharge, what "activity" would nonetheless trigger an antidegradation review for the facility? (233)

82. COMMENT: If improvements to the sewer plant are needed to meet new permit limits, a mechanism must exist to allow the construction of those improvements. (205)

RESPONSE TO COMMENTS 81 THROUGH 82: As indicated in the response to comment 60, an antidegradation analysis is required for a new and/or expanded discharge. However, in addition to the NJPDES rules, the SWQS are also implemented through the Stormwater Management rules at N.J.A.C. 7:8, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A, Coastal Zone Management rules at N.J.A.C. 7:7E, Flood Hazard Area Control Act rules at N.J.A.C. 7:13, and Water Quality Management Planning rules at N.J.A.C. 7:15. While the antidegradation provisions of the SWQS may apply only to new and expanded discharges to surface waters, these other rules may

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regulate other activities conducted by the NJPDES permitted facility. For example, expanding the size of the parking lot could be an activity that might be regulated under these rules. The Stormwater Management rules establish the 300 foot buffer or Special Water Resource Protection Areas and regulate major development within these buffers to protect Category One waters. The Flood Hazard Area Control Act rules at N.J.A.C. 7:13 establish riparian zones and regulate certain activities within those areas to protect against water quality degradation, among other things. Questions regarding those rules should be directed to the Department programs responsible for administering them, and are beyond the scope of this rule proposal.

83. COMMENT: When antidegradation review is triggered, does Department use the permitted loading or the actual performance of the facility that is invariably better than the permitted load when assessing whether a measurable impact will occur from a plant expansion or activity at issue? (233)

RESPONSE TO COMMENT 83: As indicated in the summary, an antidegradation analysis is required when the NJPDES facility applies for a NJPDES permit to increase the quantity (loading) of a pollutant to be discharged beyond that currently authorized in the facility's NJPDES permit. Pursuant to the new Water Quality Management Planning Rules at N.J.A.C. 7:15-5.25(d), the facility is required to evaluate alternatives that would not result in additional permitted loading. Based on the commenter's example, where the actual loading is less than the permitted loading, the permittee would first be required to demonstrate that more loading was necessary, before the Department would consider authorizing the permittee to conduct a water quality study to determine existing water quality.

84. COMMENT: If new treatment requirements such as phosphorus removal are imposed and that technology causes a measurable increase in TDS, is such treatment prohibited or otherwise impacted by the Category One designation? (233)

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RESPONSE TO COMMENT 84: The Category One antidegradation designation means that waters designated as Category One are protected from “measurable changes in water quality” due to their unique characteristics. Effluent limitations established under a NJPDES permit for a new or expanded discharge to Category One waters would have to meet the applicable surface water quality criteria and the antidegradation policies for those waters. This means that the discharge would not be permitted to cause a measurable increase in the water quality by any other regulated parameter, in the receiving water. This does not mean that dischargers will be exempt from meeting phosphorus removal requirements imposed under a NJPDES permit; it means that whatever removal technology is used, such technology would not be allowed to create a new water quality problem, in this case, a lowering of water quality in the receiving waters that are designated as Category One.

85. COMMENT: If an existing limitation is under appeal and not yet achieved, does the Category One designation act to preclude modification of that disputed permit provision? (233)

RESPONSE TO COMMENT 85: As stated in response to comment 60, the antidegradation provisions are triggered when an applicant proposes a new or expanded activity that has the potential to lower water quality. Therefore, the Category One designation would not affect the existing effluent limit or restrict the actions resulting from resolving the permit dispute until the NJPDES facility applies for an expansion.

86. COMMENT: Does the “no measurable change” standard preclude changes in water quality that would generally be considered improvements in water quality? (233)

RESPONSE TO COMMENT 86: The Category One antidegradation designation does not prohibit measurable changes that would improve water quality. As stated in the rule proposal summary, the antidegradation designation of a waterbody determines if any lowering of water quality toward criteria may be allowed. The Category One

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antidegradation designation means that waters designated as Category One are protected from “measurable changes in water quality” due to their unique characteristics. Because Category One is an antidegradation designation; and because the antidegradation designation determines if water quality may be lowered; therefore, the Category One antidegradation designation can only prohibit a lowering of water quality and the “no measurable change in water quality” restriction for Category One waters can only mean no measurable change in water quality that would lower degrade the existing water quality toward criteria.

87. COMMENT: Where it is clear that a “measurable” pollutant increase would not adversely impact the endangered or threatened species and is associated with a pollutant that presently is discharged in negligible levels (for example, trace metals, organics, and pesticides) would the Category One designation nonetheless require that the pollutant be evaluated and/or reduced to ensure a no measurable change to occur? If instream pollutant concentrations are higher than the area where the “measurable” water quality change is occurring, will the Department allow that measurable change to occur? Would Department entertain a variance to the Category One requirement in that instance? (233)

88. COMMENT: The Department needs to establish some reasonable method whereby a community may demonstrate that the change in water quality that would otherwise trigger the Category One restriction is not necessary to maintain the presence of the endangered or threatened species. Such a variance procedure would avoid imposing stringent pollution reduction requirements that may cause more environmental harm than good. (233)

RESPONSE TO COMMENTS 87 THROUGH 88: As stated in the Federal standards analysis of the rule proposal, the Federal Clean Water Act (CWA), 33 U.S.C. 1251 et seq., requires the establishment of water quality standards for all surface waters of the United States. Individual states are given the primary responsibility for developing and adopting surface water quality standards applicable to their waters. Key elements of the

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surface water quality standards program required under the CWA are: a classification system establishing designated beneficial uses of the waters; ambient water quality criteria necessary to protect those uses; minimum uses to be attained, which reflect the fishable and swimmable goals of the CWA; and antidegradation policies and implementation procedures to prevent water quality from degradation.

Under the adopted rules, a measurable increase in pollutants caused by a new or expanded discharge to Category One waters is prohibited, regardless of the particular basis used to qualify a given waterbody for Category One designation.

Protection of endangered or threatened species is only one consideration in establishing the exceptional ecological significance of a waterbody, and exceptional ecological significance only one consideration in designating a waterbody for Category One protection. Just because the resulting water quality from a new or expanded discharge would be less than the levels present in other waterbodies that also support the same endangered or threatened species is not justification to allow a lowering of water quality in a Category One waterbody. As indicated in response to comments 187 through 191, the USFWS and the USEPA are evaluating the existing aquatic life criteria to determine if the existing criteria are adequately protective of specific endangered or threatened species. Lacking a determination that the existing criteria are adequate, the Department could not conclude that the increased discharge would have no impact on the endangered or threatened species.

N.J.A.C. 7:9B-1.8 establishes procedures consistent with 40. C.F.R. 131 for issuing NJPDES permits with modified water quality-based effluent limitations (also known as variances) for individual discharges to Category One waters at and are not being amended at this time. To obtain a variance under N.J.A.C. 7:9B-1.8, the applicant would need to demonstrate to the satisfaction of the Department that the water quality criteria are not attainable because of natural background; or because of irretrievable man-induced conditions; or flow conditions or water levels prevent the attainment of the use;

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or result in substantial and widespread adverse social and economic impact. However, a demonstration that the “measurable” pollutant increase would not adversely impact the endangered or threatened species is not a basis for granting a variance.

Grandfathering

89. COMMENT: The application of Stormwater Regulations and if adopted as proposed, the Stream Encroachment Regulations to projects proposed along streams proposed to be Category One without some form of grandfathering is in violation of the US and NJ Constitutions as a taking without adequate notice. (155)

90. COMMENT: The proposed rules do not adequately explain the grandfathering process or exemptions for existing sites and approved projects. Can the Department provide detailed fact sheets that outline the exemptions? (50, 207)

91. COMMENT: Projects that have received approvals but have not yet broken ground will now be subject to the new regulations, creating completion problems for both developers and municipalities. If developers are now forced to apply for new permits, municipalities may be left with undeveloped land that was on its way to a viable use before the new regulations were enacted. The current permitting process from DEP for new construction covers all aspects and provides more than adequate protection for the State’s natural resources. (69)

92. COMMENT: The rule does not take into account development proposals which are not yet fully approved or constructed, but have been the subject of many years of careful planning and approval decisions by local land use agencies, and in which considerable investments have been made in good faith reliance on such actions. The Department in its rulemaking must recognize the importance for the private sector to be able to rely on predictability in regulation and, specifically, the decisions made by governmental entities with the statutory authority to plan for development and redevelopment in designated areas. Such decisions have already taken into the account the balance between

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development along with the economic and social benefits that it brings and the need for environmental protection. The present Category One designation proposal essentially wipes out these efforts. This has negative consequences not only on the development community, but the public as well. This would be in addition to the loss of employment and taxes that would be generated by the projects. (189, 205, 261)

93. COMMENT: The Department should identify explicitly within its SWQS rule proposal the point in the development approval process (for example, a complete application for approval of a general development plan, preliminary site plan, preliminary subdivision plan, final site plan or final subdivision plan pursuant to N.J.S.A. 30:55d-10.3) a proposed, but not yet fully approved, project is exempt from the effects of the Category One stream designation. In the absence of clear, rationale and fair grandfathering protections, private investment in New Jersey will be deterred. (189, 261)

94. COMMENT: The commenter believes that the proposal does not fully address the "grandfathering" of proposed development or construction applications. Landowners have spent substantial amounts of money relative to costs for design, engineering, architecture, permit acquisition, legal services, and local zoning and planning board review concerning development and construction proposals. The proposed regulations should specifically acknowledge this issue and should fairly protect those homeowners and business that have expended monies following the current rules and regulations. The current proposal is not specific enough in identifying when in the application process a project is grandfathered. (23)

95. COMMENT: The commenter requests that a "grandfather clause" be added to the proposed rule amendment. By proposing to add a number of surface water bodies to the Category One and simultaneously requiring a 300 foot special water resource protection area, these projects are not being treated in the same manner as projects affected by the February 2, 2004 rule. The only way to treat these development projects equitably is to add a grandfather clause which exempts those projects which have obtained municipal

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land development approvals as of the date of adoption of the new Category One listing. (189, 229)

96. COMMENT: The proposal does not adequately address the grandfathering of development proposals in which considerable investments have been made in a good faith reliance on existing regulations and plans. Involving, as they do, numerous agencies at several levels of government, New Jersey's permitting procedures are complex and lengthy. The Department should make explicit at which point in the approval process (for example, a complete application per N.J.S.A. 40:55D-10.3) a proposed, but not yet fully approved, project will be grandfathered from the effects of a reclassification. In the absence of clear grandfathering protections, private investment will be deterred. (66, 165)

97. COMMENT: Because the rule is implemented in major part through the Stormwater Management rules, proposed amendments to the Flood Hazard Control Act rules, and the NJPDES permit program, the grandparenting/exemptions provided in those rules should be clarified and expanded to provide that permit renewals will not be subject to the new riparian buffer requirements, or the antidegradation standards, and that any renewal application will be considered under the prior rules and standards. (205)

98. COMMENT: The commenter respectfully requests that a hardship waiver or exception be granted to properties that provide affordable housing and supportive services and have received preliminary and final approval prior to February 7, 2005. (63)

RESPONSE TO COMMENTS 89 THROUGH 98: The SWQS do not regulate development and therefore do not include exemption or "grandfathering" provisions. The Economic Impact analysis in the proposal explained the impacts that the Category One antidegradation designations would have under Department's NJPDES wastewater discharge permitting program and land use permitting programs.

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With regard to NJPDES permits, as explained in response to comment 60, compliance with the antidegradation policy for Category One waters is required when an applicant proposes a new surface water discharge or applies to increase the permitted loading authorized under an existing NJPDES permit. To be exempt from requirements made applicable by a newly effective Category One designation, the facility must have a final NJPDES permit for the new facility or the expansion. If the facility has not received a final NJPDES permit before an antidegradation designation becomes effective, and the permit for the new facility or the expansion does not contain effluent limits that maintain the existing water quality, the Department will issue or reissue the NJPDES permit that meets the requirements made applicable by the newly effective Category One designation.

Based on comments received the Department is clarifying the effect of the adoption of Category One designation on projects subject to land use permitting (CAFRA, waterfront development, freshwater wetlands, and flood hazard area control) that have prior approvals. The approach described below is necessary to balance environmental protection with the significant investment expended on pending or existing projects. This approach is consistent with grandfathering provisions described in the November 5, 2007 adoption of the Flood Hazard Area Control Act rules. See 39 N.J.R. 4573.

The new Category One designation triggers requirements for incursions in or impacts to the “buffer” along a Category One waterbody. The buffer established under the Stormwater Management rules, N.J.A.C. 7:8, is termed the Special Water Resource Protection Area. The buffer established under the Flood Hazard Area Control Act (FHACA) rules, N.J.A.C. 7:13, is termed the riparian zone. The requirements related to the riparian zone became effective as part of the comprehensive new FHACA rules that were promulgated on November 5, 2007. The riparian zone requirements under the new FHACA rules apply to more projects than do the Special Water Resource Protection Area requirements of the Stormwater Management rules because of the greater extent of waters

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regulated under the FHACA rules, and because more types of activities and projects are regulated under the FHACA rules as compared to under the Stormwater Management rules. The latter apply only to "major development" (that is, development that involves an increase in impervious surface of one quarter of an acre or more, or that results in one acre or more of disturbance). Consequently, the requirements of the FHACA rules related to the riparian zone will govern most development subject to Department land use permitting that is adjacent to Category One waters and their tributaries.

A project that did not require a FHACA permit before the effective date of a Category One designation will not require a FHACA permit because of the Category One, designation, provided that, consistent with the criteria set forth at N.J.A.C. 7:13-2.1(c)4, as of the effective date of the Category One designation, the project received a municipal approval that enables commencement of construction or did not need a municipal approval but certain construction activities were completed.

In addition, a project that received a land use permit from the Department that was issued prior to the effective date of a Category One designation continues effective unless revisions to the project scope or activities warrant a new application.

If a project requires an additional land use permit from Department, review of the additional permit application will be exempt from requirements based on a subsequently effective Category One designation provided the permittee's current permit for the project included a stormwater management review consistent with the Stormwater Management rules effective February 2, 2004 and any subsequent amendments. For example, where the Department issues a flood hazard permit prior to the effective date of a Category One designation and the permit is still valid, and a freshwater wetlands permit is also required, the buffer and/or stormwater review is not required for the freshwater wetlands permit review unless the flood hazard permit expires or a new flood hazard permit is required due to project changes. An application that is received by the Department and is

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complete for review prior to the effective date of a Category One designation is not subject to the requirements made applicable by such designation.

The Department intends to propose rules that reflect the above approach where necessary.

TAKINGS

99. COMMENT: The commenter is against the measures that take away more property rights. (185)

100. COMMENT: The amendments to rules defining and increasing the number of Category One waters will have a negative impact on property sales throughout the State. The reduction in building lots caused by the more stringent regulations will have a harmful effect on property values. As it becomes more difficult to build, the prices of new and existing homes will increase due to a low housing supply. Since homeownership is slowly becoming an unattainable goal for a portion of the State's population, the increase in housing cost will only continue to price more residents out of the housing market. The proposed regulations will preclude construction near lakes and rivers; areas greatly desired by future homeowners. Such restrictions will drive those homeowners to other states. (69)

101. COMMENT: Does the Department have a plan to deal with the equity issues of the property owners, the lost tax revenue and the lost jobs for the municipality? (50, 207)

102. COMMENT: What measures does the State intend to initiate to compensate land owners for their loss of equity? Let's not make the same mistake as the Highlands Act has created. Taking of land through habitat classification and 300 foot buffer delineation doesn't serve the public interest if the public has its property rights taken without just compensation. (154)

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103. COMMENT: Many or most of these areas are already covered by transition areas of up to 150 feet, which serve as buffers for these waterways. Further, expansion of these buffers amount to further taking of lands by restrictions. These lands, many privately owned, could be developed in a reasonable fashion, providing homes for families and working with the environment, but with the doubling or more of these buffers, many, even large, lots become not viable any longer. Property that was owned, maintained, taxed, etc. for a short period of time or a lifetime is now taken from them by regulation. As more and more land is taken away, those, like me, who currently live here have to pay forever. (87, 152)

104. COMMENT: The lack of compensation for landowners in the Category One designated areas contradicts State policy on takings. The Department's proposal however, makes no mention of compensation and seems to eliminate any rights of property owners in the designated Category One areas. So, while the State is advocating that municipalities and other local government units provide adequate compensation and appropriate protections for property owners, the Department would be allowed to effectively take thousands of acres of land with no compensation and no protections for property owners whatsoever.

This proposal seems to impose severely restrictive limits on development based upon limited scientific data and a complete disregard for local planning. This seems to contradict the Governor's goal of sustaining and growing New Jersey's economy. This seems to be extremely harsh and will have a severely negative impact on New Jersey's economy.

It is clear that the growth of New Jersey's economy is inextricably tied to the ability of the private sector to invest in our State. It is also clear that the Department has a responsibility to protect the natural resources of our State, as well as the safety of our citizens. However, NJBIA is concerned that an extremely restrictive land use policy

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through takings, based upon inadequate scientific data as authorized under this proposal, could have a severely negative effect on any future investment in our State. (24, 53, 141)

105. COMMENT: The proposed rules go beyond statutory authority and in some instances will effectively preclude a property from being developed, resulting in a taking. The proposed rules do not address compensation and do not include an effective means to provide relief for property owners who will not be able to develop their lots as a result. This is contrary to Public Advocate Ronald Chen's defense of just compensation. (141, 146)

106. COMMENT: The proposed regulation changes result in an effective "eminent domain" seizure by the State of New Jersey on the property owned by taxpayers. (259)

107. COMMENT: Prior to the adoption of new rules that severely restrict the use of lands of State-wide or region-wide importance, a practical and immediately available means to transfer development rights to appropriate locations (for example, centers) must be in place. Additional funding for farmland and open space acquisition or easement purchase must be immediately available to local governments and non-profit groups to fairly compensate land owners for the value of their lands. (153, 184, 203)

108. COMMENT: The State must have a Transfer of Development Rights (TDR) program in place to offset serious value losses from habitat classification and the 300 foot buffer. The rules should not be adopted until this is a reality, not just a discussion. This will take a substantial amount of time, as there will have to be centers/receiving areas identified in every municipality that wants to safeguard equity. Extra-municipal TDR remains problematic. (203)

109. COMMENT: Additionally there are potential impacts to the success of TDR programs that would direct development and redevelopment to existing communities, especially in reference to the Highlands Region. (72, 160)

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110. COMMENT: The State must have a plan in place to offset the serious land value losses through habitat classification and the substantial losses from the 300 foot buffer in the proposed Category One rule. These rules should not be adopted without a funding source in place to replace lost tax revenue. (95)

111. COMMENT: Postpone implementation of SWQS until landowners are compensated for land utilized to enhance/protect water supply. Water quality standards must be amended to include provisions to compensate impacted landowners. Possible amendments to be included are:

- Water tax to compensated landowners;
- Tax on public water utilities;
- Tax on municipal water utilities;
- Mandatory use restrictions and conserve water measures (179)

112. COMMENT: In the C1 rules, protection methods should be developed/described as equivalent or better than a measured distance of 300 feet. A freestanding number does not take into account vegetative cover, topography, separation by roads or other barriers, etc. (203)

RESPONSE TO COMMENTS 99 THROUGH 112: These rules, which amend the definition of Category One and upgrade the antidegradation designation of several waterbodies to Category One, do not regulate development, establish buffers or classify habitat. Habitat classifications are made by the Department and are included in the Landscape Project Maps. Buffers are established in the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). As a result, these rules do not constitute a taking of property without just compensation.

The fact that certain waterbodies will require review and approval of an activity before it can legally commence as a result of this rule does not constitute a taking of

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property without just compensation. Courts have long held that the government must first be given an opportunity to make a final determination as to what development is permissible on the property under the relevant regulations, before a legal claim for a constitutional taking can be brought. See, *OFP LLC v. State*, 395 N.J.Super. 571 (App. Div. 2007). The Stormwater Management rules and the Flood Hazard Area Control Act rules, for example, do not prohibit new development in the 300 foot buffer but rather limit development in order to be protective of water quality. The Stormwater Management rules only regulate new “Major Development”, that is, development that involves an increase in impervious cover of one quarter of an acre or more; or that result in one acre of disturbance. The Flood Hazard Area Control Act rules regulate disturbances within the flood hazard area and the riparian zone. These rules limit the disturbance of the existing vegetated buffer along a stream from regulated activities. Moreover, both rules contain provisions to allow disturbance within the buffer. For example, at N.J.A.C. 7:13-9.8, the Department provides a hardship exception for the issuance of an individual permit under the FHACA rules. This hardship exception is intended for circumstances where there is not a feasible and prudent alternative to the project, the cost of complying is unreasonably high in relation to the benefits, or the Department and the applicant have agreed to alternative requirements that the Department determines will provide equal or better protection of the environment and public health, safety and welfare. Thus, development is not precluded adjacent to Category One waters, and the Department does not agree that this rule, or the rules that implement buffers, will result in a taking or "eliminate opportunity for development". As such, the development of compensation measures is unwarranted.

The buffers established in both the Flood Hazard Area Control Act rules (N.J.A.C. 7:13) and the Stormwater Management rules (N.J.A.C. 7:8) are supported in the scientific literature which is detailed in the summary and response to comment documents of both rule proposals. For the Stormwater Management rules, see proposal at 35 N.J.R. 119(a) (January 6, 2003) and adoption at 36 N.J.R. 670(a) (February 2, 2004). For the FHACA rules, see proposal at 38 N.J.R. 3950(a) and adoption at 39 N.J.R. 4618 –

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4629 (November 5, 2007). The riparian zones established in the Flood Hazard Area Control Act rule are justified in the summary language at 38 N.J.R. 3971-3973 (October 2, 2006. See also, I/M/O Stormwater Management Rules, 384 N.J. Super. 451 (App. Div) cert denied 188 N.J. 489 (2006), which affirmed the Department's authority to use stream buffers to protect water quality.

The Department also disagrees that this rule conflicts with the goal of economic development within the State of New Jersey. Economic growth is indeed vital to the sustainability of the State but the Department believes that growth and natural resource protection are not mutually exclusive. The State's natural resources, including water resources, are held in public trust and their protection is in the best interest of all New Jersey's citizens, particularly given the cost of amelioration and potential for loss of revenue resulting from poor water.

With respect to the suggestion that a Transfer of Development Rights (TDR) program be established in conjunction with this rule, the Department agrees that TDR is a valuable tool for the preservation of land. However, it is not within the scope of this rule to develop a TDR program.

EXEMPTIONS

113. COMMENT: The Department should exempt the school facilities from the new regulation and maintain the current strict storm water, wetland and stream encroachment regulations. (207)

114. COMMENT: The proposed rules should be amended to exempt properties locally approved and planned consistent with the State Plan. (50)

115. COMMENT: No discussion has been made regarding how designated centers may exist where Category One stream buffers affect such an area. Exemptions or waivers should be allowed especially where an improvement (i.e. highway, building, parking)

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exists within the 300 foot buffer area. Growth areas serviced by water and sewer infrastructure don't degrade water quality but enhances it and therefore should be exempt from applying the entire 300 ft. buffer delineation. (154)

116. COMMENT: There is a need for clarification regarding the permitting process for projects seeking hardship waivers or variances for work to be done within the 300 foot buffer area proposed in the regulations. (199, 201)

117. COMMENT: In the Category One rules, exemptions should be more clearly laid out. Specifically water quality management activities should be permitted within the 300-foot buffer. (203)

118. COMMENT: Provisions should be made to accommodate improvements to public facilities. (147)

119. COMMENT: The commenters request the Department that municipal park and recreation facilities be exempt or have modified standards. (50, 207)

120. COMMENT: The Lawrence Hopewell Trail (LHT) Corporation supports the goals of the SWQS, requests that the Department consider exemptions for projects, such as the LHT, that are for the public benefit and that help reduce dependence on automobile transportation, promote respect for and enjoyment of the beautiful open space that is a part of the Stony Brook-Millstone Watershed, and help transform places into sustainable communities. The achievement of these goals through the Lawrence Hopewell Trail will contribute to the improvement of the overall quality of life in central New Jersey. (94, 222)

121. COMMENT: Partially developed areas, which will be in-filled through rezoning or redevelopment, should be exempt. Such exemptions are not provided and should be permitted. (154)

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RESPONSE TO COMMENTS 113 THROUGH 121: The Surface Water Quality Standards do not regulate development and thus, do not contemplate exemptions for particular projects. Where projects are newly regulated as a result of the re-designation of a watercourse, the implementing program determines how the SWQS are applied with respect to an individual project. For example, if an applicant believes that strict compliance with the requirements of the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), would create an undue hardship, N.J.A.C. 7:13-9.8 sets forth a procedure by which an applicant can apply to the Department for an exception from strict compliance with one or more requirements of those rules, including the riparian zone provisions.

In addition, as explained in response to comments 66 through 67, development is not prohibited within the 300 foot buffer. The Stormwater Management rules (N.J.A.C. 7:8) and Flood Hazard Area Control Act rules (N.J.A.C. 7:13) contain provisions to allow some disturbance in the buffer, for example, the standards at N.J.A.C. 7:8-5.5(h) that address disturbed areas and the provision for “other activities” in a riparian zone at N.J.A.C. 7:13-10.2(r). Furthermore, these rules may have little, if any, impact on redevelopment of existing impervious areas as the 300 foot buffers established are designed mainly to protect existing vegetation. Impervious cover is typically devoid of vegetation.

Finally, the Department believes that good water quality is the right of all citizens regardless of the level of urbanization, Planning area designation of the area where they reside or the nature of the proposed impact (e.g. school building). To that end all waters of the State, regardless of location, are a resource that are held in the public trust and that the Department has been charged with protecting.

122. COMMENT: The increase in the number of proposed waterways to be upgraded to the Category One status will present a hardship to the New Jersey Department of Transportation (NJDOT). Complying with the more restrictive 95% TSS removal rate

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for stormwater discharges and the 300-foot buffer requirements including the special water resource protection area (SWRPA) functional value analysis and mitigation for these additional waters will be challenging and costly. The NJDOT suggests that more latitude be given to public roadways that already exist with the 300-foot buffer. It is respectfully suggested that a streamlined process for obtaining hardship waivers and complying with the SWRPA functional value analysis and mitigation be developed. This would help to ensure the best use of public funding in order to achieve the goals of both Departments in providing safe, efficient transportation corridors and protecting water quality. Perhaps a programmatic agreement could be developed between the two Departments to facilitate this effort. (70)

RESPONSE TO COMMENT 122: The SWQS rule does not establish TSS removal rates or a 300-foot buffer. These standards are established in the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). The Department notes that the Division of Land Use Regulation has established a unit dedicated to the review of DOT projects in an effort to address such projects in a timely fashion and continues to work closely with the DOT through pre-application meetings and throughout the scoping and permitting process.

WAIVERS

Smart Growth Impact Statement

123. COMMENT: The “smart growth” impact statement neglects to mention the impact on some aspects of smart growth. Communities that discharge into Category One waters will not be able to increase flows, wasting existing infrastructure and encouraging sprawl based on septic development. (72, 160)

124. COMMENT: The discussion of the proposal’s smart growth impacts emphasizes the principles which “discourage development” (citing State Planning Goals 2 and 4), but ignores the principles promoting social and economic equality, a vibrant economy, workforce housing and vibrant communities (cf., State Planning Goals 1, 3, and 6). The

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“Smart Growth” discussion does not address how State designated centers and redevelopment areas would be impacted by the proposed standards. Nor does it distinguish between preservation and growth areas in the State Development and Redevelopment Plan, or among similar areas in the regional plans adopted under State statutes. The basis document only sketchily describes the classification process. It is possible that the Department will utilize screening procedures that give deference to planning decisions regarding where the need for houses and workplaces will be met. If the Department anticipates such a procedure, it should disclose what it is and how it will operate. If no such process is envisioned, then the asymmetry of the classification process places it in fundamental conflict with the principles of smart growth. (66, 165)

125. COMMENT: No watercourse should be designated as Category One in State Plan Planning Areas 1 and 2, designated centers, or municipally designated areas in need of redevelopment or rehabilitation due to the developed nature of these areas and prior land use planning decisions. The Department waiver processes are extremely cumbersome, expensive, time consuming and designed to deny waivers but not resolve problems. Nor should they be used to address problems for redevelopment of designated areas. Watercourses that flow through these developed areas should not be designated Category One. Any stream miles that flow through State Plan planning areas 1 and 2, SPC designated centers, and municipally designated areas in need of redevelopment or rehabilitation should not be designated as Category One. (77)

126. COMMENT: The proposed rules do not consider urban environments and they unilaterally apply a greenfields regulation methodology that is adverse to brownfield conditions, and cleanup and adaptive reuse strategies. The Department again fails to recognize the need to establish urban environmental protection parameters that will encourage the redevelopment of safe and healthy urban neighborhoods. (141, 146)

127. COMMENT: The Department should clarify that centers, as well as State Planning Areas 1 and 2, trump Category One water designation. Without these changes, the

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proposed rules will significantly limit the amount of development that can occur in redevelopment areas, as well as in centers and in Planning Areas 1 and 2. As currently proposed, these rules will seriously restrict and frustrate smart growth and redevelopment projects, despite valiant efforts by the Corzine administration to implement a carefully coordinated interagency strategy to strengthen New Jersey economy. (141, 146)

128. COMMENT: Land acquisition and infrastructure planning and design have already occurred in some of the areas proposed for Category One designation. This becomes another example of the Department changing the rules mid-stream, thereby harming existing land owners, developers, and infrastructure providers. The intent of this proposal seems to be to transcend the need to protect our waterways and water sources and create barriers to development, even in areas designated as Smart Growth areas. (45)

RESPONSE TO COMMENTS 123 THROUGH 128: Smart Growth is the term used to describe well-planned, well-managed growth that adds new homes and creates new jobs, while preserving open space, farmland, and environmental resources. Smart Growth supports livable neighborhoods with a variety of housing types, price ranges and multi-modal forms of transportation. Smart Growth is an approach to land-use planning that targets the State's resources and funding in ways that enhance the quality of life for residents in New Jersey.

The Department's action is consistent with and supports the State Development and Redevelopment Plan (SDRP). The Category One designations implement State Planning Goal 2 by conserving the State's natural resources, namely, its surface waters and associated biota. The actions also implement State Planning Goal 4 by providing a clean, safe and attractive environment essential to assuring the health of our citizens. Sustainable supplies of clean water, clean air, and an abundance of open space and recreational opportunities also assure a sustainable economy. Policy No. 2 of the Statewide Water Resource Policies provides for the integration of State, regional and local land use and water management planning to avoid surface and groundwater

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degradation due to the cumulative effects of point and nonpoint sources of pollution. Consistent with the SDRP, the Department is designating waters that provide a sustainable supply of water, support unique flora/fauna and other selected water resources for additional protections.

The same surface water quality criteria apply in Category One and Category Two streams. The additional protection provided by the Category One designation is to prevent degradation of existing water quality. While Category Two does provide water quality protection, the Department has made a determination that that healthy waterbodies that represent a natural or undisturbed state deserve the highest level of protection to ensure that the ecological integrity of the waterbody is maintained through the designation as Category One. The State's water supplies also deserve this level of protection to ensure that potable water supplies, and therefore drinking water, are as pollutant-free as possible. The Department believes that the upgraded antidegradation designations are consistent with Smart Growth and will ensure that development can occur without compromising critical environmental resources.

The Department believes that the upgraded antidegradation designations are consistent with Smart Growth and will ensure that development can occur without compromising critical environmental resources.

The Category One designations are implemented through the Stormwater Management rules and the FHACA rules. These rules limit rather than prohibit development, including remedial activities, within the buffer. The implementing land use rules contain provisions to allow disturbance in the buffer, for example, as the standards at N.J.A.C. 7:8-5.5(h) that address disturbed areas, the provision for "other activities" in a riparian zone at N.J.A.C. 7:13-10.2(r) and the hardship exception standards found at N.J.A.C. 7:13-9.8. Furthermore, these rules have little, if any, impact on redevelopment of existing impervious areas as the 300 foot buffers established are designed mainly protect existing vegetation. Impervious cover is typically devoid of vegetation.

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A community serviced by an existing NJPDES permitted facility that discharges to a Category One waterbody will be able to utilize the existing infrastructure up to the levels specified in the NJPDES permit. In accordance with the proposed WQMP rules, any additional development which cannot be accommodated by the existing permitted wastewater treatment facility will be limited to development on individual subsurface disposal systems (septics) unless the Department determines that the treatment plant can expand and still maintain existing water quality.

129. COMMENT: The Department has failed to address all the goals of the State Development and Redevelopment Plan. The rule does not address the impacts to a State Designated Town Center or provide alternate solutions to the elimination of the approved sites under the constitutionally mandated affordable housing obligation. How will the new Category One rule regulate or change the existing and future sewer capacity approved for a Designated Town Center and approved COAH site? (50, 207)

130. COMMENT: The increased buffer will have a negative impact on affordable housing. The process of a municipality receiving COAH certification will be frustrated by these amendments. The burden imposed on land as a result of the increased buffer will reduce the amount of buildable land a municipality has available. A municipality will then have to construct the same number of new market rate and affordable units on a smaller piece of property. A municipality that does not certify its affordable housing plan with COAH is open to lawsuits by developers referred to as a “builders remedy”. If a developer proposes to build affordable units on a site now encumbered by an increased buffer and the local governing body chooses to deny the application, there is a heightened risk for a builders remedy. This will result in a spending of municipal capital, and cost will be passed to the residents of the municipality.

To protect itself from lawsuits, the municipality will have to ensure that the assigned number of new affordable units is built. The increased buffer will force

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municipalities to ‘shoehorn’ major developments onto properties now smaller in buildable area as a result of the buffer. Developers may choose not to build multi-unit developments but may be forced to opt for smaller plans that consequently produce less affordable units. The municipality will have to rely on numerous projects to provide the required affordable units or will be compelled to fit more units on a smaller piece of property, eliminating planned open space. (69)

131. COMMENT: Specific accommodation must be provided for centers designated by the State Planning Commission and proposed through Plan Endorsement petitions. At the same time, center design should actively incorporate stream protection elements. Redevelopment projects that result in an improvement in water quality should be exempt from the requirements. (203)

RESPONSE TO COMMENTS 129 THROUGH 131: The additional protections provided by the Category One designation do not preclude development, including residential development with an affordable housing component. The Department continues to support the efforts of COAH and communities striving to meet their affordable housing obligation. However, affordable housing and environmental protection are not mutually exclusive as suggested by some commenters. In fact, as noted by one of the commenters, the New Jersey Supreme Court recognized in *Southern Burlington County NAACP v. Township of Mount Laurel*, 92 N.J. 158 (1983) (“Mt. Laurel II”) that affordable housing and environmental protection are not incompatible concepts. The Court also recognized that environmental constraints are an appropriate factor for trial courts to consider in analyzing the “builder’s remedy.”

The Department has identified waterbodies that meet the definition of Category One and provided a basis for each waterbody. For each of these waterbodies, the Department has determined that additional water quality protections are necessary and appropriate to maintain and preserve the existing surface water quality characteristics that led them to be upgraded. The additional protection provided by the Category One

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designation is that a discharge may not cause a change in the surface water quality. The Department disagrees with the suggestion that the Category One designation precludes development. Category One does not preclude a surface water discharge, although discharges to Category One waterbodies may not degrade water quality.

This rule does not regulate development or establish buffers and as such, it will in and of itself, have no impact on a Town Center designated by the State Planning Commission, affordable housing sites, or existing approved sewer service area. However, other regulatory and planning program standards of the Department may impact development proposed adjacent to these waterways. See response to comments 123 through 128 for further discussion of the State Planning area designations and Category One designation and redevelopment projects respectively. In addition, this rule should not significantly frustrate the ability of a municipality to receive substantive certification by the Council on Affordable Housing. The recently proposed COAH rules include a process to adjust the amount of "vacant land" available in any municipality that is identified by COAH as potential area for growth. The amount of "vacant land" in the municipality is a significant component of COAH's growth projections and associated growth share obligations. Any buffer related to this proposal, should be recognized in that adjustment process. So while the commenter is correct that "the increased buffer will reduce the amount of buildable land a municipality has available", the commenter is incorrect that the municipality will "then have to construct the same number of new market rate and affordable housing units".

Agricultural Impact Statement

132. COMMENT: New Jersey Farm Bureau suggests that the Department coordinate with the New Jersey Department of Agriculture before the adoption of this rule to discuss the mitigation of the impacts to agriculture from this rule. (72, 160)

133. COMMENT: The rules do not explain the impacts on the agricultural industry and the preserved farms. (50, 207)

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134. COMMENT: The Department does not recognize the economic impact of removing 600 feet along a stream corridor from a farmer's value as equity in his land. This has an actual impact in the landowner's net worth and therefore may impact his/her ability to borrow money necessary to expand or improve the farm operation. (72, 160)

RESPONSE TO COMMENTS 132 THROUGH 134: The Department's Agriculture Industry Impact statement focused on the potential wastewater permitting impacts to agricultural operations as the result of the proposed Category One upgrades. However, the Department does not expect the Category One designation to impact the ongoing agricultural activities. As to the potential impact of the upgrades on the equity of agricultural land, the Department understands that five factors are considered by a loan agency when evaluating a loan application. These are character (the owner's credit score), capital (the owner's net worth), collateral (security pledged for the payment of a loan), capacity (earnings and cash flow), and conditions (the terms of the loan). The adopted Category One upgrades have the potential to affect capital and collateral but would not affect the remaining factors. Consequently, the Department cannot make general conclusions regarding whether loans will be denied to agricultural operations based on implementation of the adopted rules.

While not specific to this rule, the Department coordinates extensively and works cooperatively with the New Jersey Department of Agriculture, the United States Department of Agriculture, and the Federal Farm Bureau toward the initiation of the New Jersey Conservation Reserve Enhancement Program (CREP) that is designed to address the issue of water quality impacts from agricultural uses. CREP is a Federal/State natural resource conservation program that addresses State and nationally significant agricultural related environmental problems. Under CREP, program participants receive financial incentives from USDA's Farm Service Agency (FSA) to voluntarily enroll in the Conservation Reserve Program (CRP) in contracts of 10 to 15 years. Participants remove

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marginal pastureland or cropland from agricultural production and convert the land to native grasses, trees and other vegetation.

Social impact

135. COMMENT: The social impact statement explains that improvements in Department's abilities to classify and protect surface waters will "result in a positive social impact." It offers no insight into the nature and magnitude of these social benefits, which are distinct from the environmental impacts which this section mentions. A proposal to "discourage" development and redevelopment will certainly impact key social objectives (for example, socio-economic integration). Regardless of whether the effects are positive or negative, the APA requires that they be assessed. The Department must do so. (66, 165)

RESPONSE TO COMMENT 135: The Administrative Procedure Act requires the Department to describe the anticipated socio-economic impacts of the rule. The Department addressed the anticipated social, economic and environmental impacts to projects due to these rule amendments. Similar to the economic impacts explained in response to comment 60, the social impact may vary from one water body to another depending on the activities proposed. The designation of Category One antidegradation protection will discourage development where it would impair or destroy natural resources and the environmental qualities vital to the health and well being of the citizens of New Jersey. The maintenance of water quality resources is important to all residents, particularly to the many communities that depend upon surface waters for public, industrial, and agricultural water supplies, recreation, tourism, fishing, and shellfish harvesting. In addition, the Category One waters will enable the Department to maintain existing water quality for the protection of existing and designated uses of the State's waters.

JOBS IMPACT

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136. COMMENT: The statement regarding the proposal's impacts on jobs suffers the same shortcomings as the economic analysis. (66, 165)

137. COMMENT: The Department states in its impact analyses that the proposed amendments will not have an effect on any jobs unless a business is forced to close as a result of noncompliance with the regulations. This is untrue. One area of work that will be negatively affected by these proposed amendments is the construction sector. There are over 150,000 construction workers in New Jersey involved in all aspects of construction. (U.S. Census 2002). Any regulation that will significantly decrease the amount of buildable land in the State will negatively impact the construction industry. (69)

RESPONSE TO COMMENTS 136 THROUGH 137: This rule does not establish buffers or regulate development. The rules that implement protections on Category One waters are the Stormwater Management rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rules (N.J.A.C. 7:13). These rules may limit but do not prohibit development within the 300 foot buffer. See response to comments 66 through 67 for a discussion on encroachment into the 300 foot buffer. The Department complied with the Administrative Procedure Act and addressed the anticipated impacts to development projects due to the Stormwater Management rules and the then proposed now adopted Flood Hazard Area Control Act rules in the impact statements of the proposed rule at 39 N.J.R. 1860. The designation of new Category One waters reduce the potential for creating new jobs to the extent that projects are regulated by the implementing rules and perhaps minimized in order to comply. Alternatively, such protections may also add value to the areas adjacent to the Category One waterbody. In addition, jobs are negatively affected by degradations to water quality. For example, recreational opportunities (i.e. wildlife watching, boating and beach tourism), commercial fishery and shellfishery jobs rely on good water quality and thus are positively impacted by increased protections of exceptional water resources.

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Category One Process

138. COMMENT: The commenters support the use of sound science for Category One designation that favors its limitation to scientifically based units, that is, specific stream segments, not the entire HUC 14 drainage area. (141, 146)

139. COMMENT: The rules elevate the status of less pristine streams and waterbodies, ignoring water quality impairments, to establish greater buffer areas and restrict growth. The rules promote a highly questionable assumption that all 910 miles of the proposed additional Category One waters have identical resource values occurring the entire length and breadth of these waters. (109)

RESPONSE TO COMMENTS 138 THROUGH 139: The Department has designated waterbodies as Category One to maintain their exceptional ecological significance, exceptional fisheries resource, or exceptional water supply significance. It is possible for a less pristine waterbody to qualify for Category One. Although there are different bases to designate Category One waters, the purpose is to protect and maintain the existing water quality and the exceptional uses.

The extent of a specific stream designation will depend on the basis for the upgrade. The Department decided that as part of the exceptional ecological significance, it is more appropriate to limit the Category One designation to only those portions of waterbodies that have documented sightings of the endangered or threatened species as well as those portions of waterbodies with habitat that would support the endangered or threatened species. Exceptional ecological significance under exceptional aquatic community may cover broader area (HUC 14 or subwatershed) than the sampled location because the monitoring data is used to assess the HUC14. Waters designated as Category One based upon exceptional fisheries are limited to those waters with unrestricted shellfish harvest or support trout production. The entire drainage above a water supply reservoir qualifies for Category One based on exceptional water supply significance. Therefore the entire HUC 14 is designated as Category One if the basis is exceptional

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water supply. However, the Category One designation is used to impose regulatory requirements for projects that require certain Department permits. Therefore, in accordance with those rules, regulatory restrictions, such as a 300 foot buffer adjacent to the watercourse, may apply upstream of the actual segment designated as Category One. Such protections are necessary because upstream impacts can have a significant effect on downstream water quality.

140. COMMENT: The proposed rules are missing criteria for the redesignation of streams that no longer meet the conditions for Category One designation. It is our belief that the Department should designate and redesignate streams no more frequently than as the rules expire (every five years). This would promote greater predictability, better planning, more efficiently protective to safeguard waters in the interim. (141, 146)

141. COMMENT: The lack of steps to improve existing water quality condemns urban communities to perpetually poor quality waterways. The old rules allowed for petitions regarding water quality improvements, while the new rules do not. As a result, Category One status for an urban waterway is no longer feasible regardless of future water quality. (39)

142. COMMENT: No waters should ever be removed from the Category One list. The Department must make any de-listing or other antidegradation decisions through notice and comment rulemaking. The public must be provided the opportunity to participate in decisions on important public resources such as Category One waters (1, 219)

RESPONSE TO COMMENTS 140 THROUGH 142: The Department does not agree with the commenter that changes to stream classifications and/or antidegradation designations should be limited to once every five years. Once an existing use has been documented, the Department's regulatory programs are required to protect trout and/or endangered or threatened species whether or not the antidegradation designation has been upgraded. Administratively delaying water quality protections may result in unnecessary

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degradation. Changes to any stream classification and/or antidegradation designation including downgrading are only made through a formal rulemaking process which involves formal rule proposal with impact statements, public participation, response to comments, and formal adoption. Therefore, the public will be provided with the opportunity to provide comment on any future stream classification or antidegradation designation.

The petition for rulemaking process is included in the APA. This rule does not restrict the submission of petitions to upgrade waterbodies to Category One. The new definitions for exceptional ecological significance, exceptional fisheries resource, and exceptional water supply significance clarify the requirement necessary to upgrade a waterbody.

143. COMMENT: The proposed rules should include negative criteria: default conditions (such as blight or brownfields) that automatically preclude a Category One designation. There are no provisions in the rule proposal to address redevelopment, yet it is a fact that redevelopment improves waters inasmuch as contaminants are removed. These rules will stop growth where growth is targeted to occur. Redevelopment areas should be excluded from Category One stream designation. (141, 146)

RESPONSE TO COMMENT 143: The Department identified the factors necessary to upgrade a waterbody to Category One through the new definitions of exceptional ecological significance, exceptional fisheries resource, and exceptional water supply significance. The Department does not expect a waterbody to meet all definitions. A waterbody may not meet criteria for aquatic community but qualify under endangered or threatened species. Therefore, waterbodies with negative criteria under one definition may qualify under a different definition. The SWQS do not impose regulatory requirements and therefore do not preclude redevelopment. Although not stated, it appears that the commenter is referring to the requirement for 300 foot buffers imposed by the Stormwater Management Rules and the 300 foot riparian zones imposed by the

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Flood Hazard Control Area Rules for development that impacts on a waterbody designated as Category One. Therefore any changes to accommodate development in areas designated as brownfields or redevelopment should be addressed through revisions to these rules not the Category One definition.

144. COMMENT: The Category One process has not really been applicable to South Jersey because of the narrowness of the criteria. There are no trout waters; in the south. That doesn't mean that there isn't good habitat for other fish assemblages, plants, and wildlife. (163)

RESPONSE TO COMMENT 144: Close to 50 percent of waters in Southern New Jersey are already designated as either Category One waters or designated as Outstanding National Resource Waters (ONRW) which includes FW1 and PL waters. Based on the definition for new exceptional ecological significance, the Department is designating Maurice River from Willow Grove Road to the confluence with Green Branch, Salem River from the source to Slabtown Road, including all tributaries to that segment, and a portion from Nichomus Run to Major Run, including both Nichomus and Major Runs, Oldmans Creek from Harrisonville Lake Wildlife Management Area to Kings Highway by Porches Mill, including all unnamed and unlisted tributaries, and Pompeston Creek from the Route 130 to the Broad Street Bridge, including unnamed and unlisted tributaries in this adoption.

145. COMMENT: It appears that the Department does not intend to explain its proposed reclassifications in a manner that will facilitate review (such as, consolidating all qualifying data in one document, in common formats, with standardized categories, etc.). Given the importance of the surface water quality standards, it is essential that the Department's technical criteria and administrative procedures be objectively defined and rigorously applied within a transparent process. These procedures should explicitly address how externally generated petitions for reclassification will be noticed and vetted. (66, 165)

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RESPONSE TO COMMENT 145: The Department has provided all the necessary data to demonstrate the waterbodies that were proposed for Category One qualified for this action. The Department believes that the process to designate waterbodies as Category One has been adequately documented and explained. These new data driven definitions will provide the public with the information necessary to document that a waterbody qualifies for Category One designation.

146. COMMENT: There is an institutional disconnect between the highest antidegradation standards in the State and the actual protection of these waters. One measure to identify this disconnect is to compare the new antidegradation designations under Category One to what has been happening in the Pinelands for the long term. The new Category One language of “no measurable change” in the Surface Water Quality Standards is far stronger than the language for the PL waters, and Category One uses 300 foot stream corridor buffers to protect water quality, and the Pinelands Commission does not use stream corridor buffers at all to protect water quality. (5)

RESPONSE TO COMMENT 146: All waters within the boundaries of Pinelands Protection and Preservation Area are classified as Pineland (PL) waters and designated as Outstanding National Resource Waters (ONRW). ONRW is the most protective tier of antidegradation designation. These waters are set aside for posterity because of their unique significance. PL waters are maintained in their natural state and the Department is not allowed to approve any activity which, alone or in combination with any other activities, might cause changes, other than toward natural water quality. The Department did not propose to add or modify the existing definitions in the SWQS or to change the antidegradation policy for PL waters.

The Pinelands Commission regulates development in the Pinelands. The Commission uses other measure to prevent environmental degradation. For example, new sewer plants and septic systems must be designed so that the discharges do not raise

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pollution levels to more than 2 mg/L nitrate. The Commission also requires a 300 foot buffer around wetlands. However, this distance can be reduced if it can be shown that the proposed development will not significantly harm the wetland area.

147. COMMENT: The Department should have a more transparent process when nominating Category One waters. The public shouldn't have to be guessing what the Department's looking at, that the proposed list of Category One waterways should be on the website, it should be an open process, and that it should be an ongoing process so that there are more chances for more waterways quicker and faster to be designated Category One. (163)

RESPONSE TO COMMENT 147: The new definitions of exceptional ecological significance, exceptional fisheries resource, and exceptional water supply significance are intended to provide a more transparent and open process. These definitions identify all the factors required to upgrade a waterbody to Category One designation. The Department's intention is that these definitions will act as a proactive and reactive tool in identifying waters for Category One upgrade.

KEEP CURRENT RULE

148. COMMENT: The commenter is deeply disappointed in the proposed revisions to the methodology used to determine whether a waterbody satisfies Category One criteria, and strongly urge the Department to withdraw its proposal at this time and reintroduce it later in the year with a few technical tweaks and no changes to the Category One program methodology now in use. The methodology currently in place provides a sufficient scientific basis for classifying a waterbody "exceptional" and granting a waterbody Category One designation; the new methodology would greatly weaken that, resulting in fewer deserving waterbodies that would ultimately be given Category One protection. It appears that the "more complete description of the characteristics that qualify a waterbody for consideration for Category One upgrade" is in fact a narrowing of the Category One definition and will result in fewer waterbodies qualifying for that

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designation. The commenter is especially concerned about excluding waterbodies that do not meet only one of the aquatic life criteria (dissolved oxygen, temperature, total phosphorus, and total suspended solids) or impervious surface criteria. The lack of compliance of a waterbody in only one of these areas under the current Category One program does not disqualify a waterbody from Category One designation, and that this has withstood legal challenge. (47)

149. COMMENT: The commenters are adamantly opposed to the changes in the qualifying criteria for Category One designations that are part of this proposal. While each of these Sussex County streams meets the proposed, constricted Category One definitions, it is believed that these waterbodies would clearly warrant Category One designation under the existing SWQS. The adoption of these definitions would diminish the protection of the existing uses and water quality of the remaining streams in the State. The proposed changes in the Category One definitions will result in greater limitations for streams to qualify for Category One status. These changes would result in new SWQS that would be less protective of the existing uses and water quality of the remaining streams in the State. (203)

150. COMMENT: The commenter is particularly concerned that changes in definitions and methodology for Category One designation currently being proposed will arbitrarily narrow the universe of streams that might be eligible for Category One designation. The commenter believes that it will become almost impossible for the Pequest in Warren County to ever be designated Category One under the proposed definitions and methodology, which will also exclude many other important water bodies from anti-degradation protection. This new approach is flawed in that it violates the Federal Clean Water Act mandate to protect all existing water uses, which, under the current rules and definitions, may include recreational uses and scenic value, as well as use by a wide variety of aquatic or aquatic dependent species. The proposed new methodology and definitions will limit the discretion of the Department to protect water quality by relying solely and strictly on an arbitrarily narrow set of parameters for determining waters of

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exceptional value. The current Integrated Ecological Assessment used by the Department, which is multi-faceted and holistic, lends itself to a flexible approach. This is more consistent with the Federal program for Outstanding National Resource Waters at 40 C.F.R. 131.12(a)(3), which is clearly the model for New Jersey's "Category One" program. (166)

151. COMMENT: Clean Ocean Action ("COA") objects to the new, proposed definition for "Category One waters." This proposed definition does not clarify the current definition. Rather, it significantly narrows the definition and will remove an undeterminable amount of waters from future consideration for Category One designation. Those waters excluded from consideration would include numerous "exceptional" waterbodies. As a result, the proposed definition would defeat the "primary objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters." (260)

152. COMMENT: The proposed criteria will make it much more difficult to get additional waterways upgraded to Category One. (163, 174)

153. COMMENT: The restrictiveness of the proposed definition is demonstrated by looking at current Category One waters listed in the SWQS. Numerous current listings do not meet the limited standards the Department is proposing. The amount of listed waters that do not fit within the proposed definition demonstrates the narrowness of the proposed rule. The proposed rule excludes by definition many exceptional waters and all waters with important aesthetic values. The proposed changes do not serve as clarification but rather an arbitrary limitation that contradicts the current rule. (260)

154. COMMENT: The commenter remains particularly concerned about the publication of the new proposed "definitions" as part of the proposal. Overall, the methodologies used by the Department are part of an on-going scientific process. It is reasonable to assume that such methods must evolve over time as new scientific methods are

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employed. Because regulations are cumbersome to amend to reflect scientific advances, the commenter strongly suggests that such methodologies should not be made part of the rule but should remain at the policy level. Adequate transparency can be provided by the publication of a periodically updated series of papers describing the current policies. (16)

155. COMMENT: The commenter believes that the existing definitions and methodology are the appropriate means to protect all the important values of exceptional waters. (166)

156. COMMENT: The commenter is troubled by the proposed new definitions of exceptional ecological significance. The decision tree apparently used by the Department is more restrictive and mechanical than authorized by applicable regulations. The Department has not yet developed a method for assessing recreational or aesthetic significance, and therefore, essentially ignoring those prongs of regulatory test. The applicable regulations for Category One selections should only be changed through notice and comment rulemaking process. (219)

157. COMMENT: The commenters have serious objections to the proposed designation process and fear that its implementation would strip New Jersey of the ability to adequately protect and maintain its high quality waterways. If enacted, this method would reverse tremendous advances in clean water protection in the State, contradict the commitments made by Governor Corzine, and leave New Jersey without the ability to adequately protect and maintain many of its most deserving waterways. (33, 110, 113, 219, 248, 252)

158. COMMENT: The commenter is opposed to the changes in the qualifying criteria and definitions for Category One designations that are proposed by the Department. These changes will severely limit the ability of streams to be designated as Category One, even though they are qualifying and in need of the designation. The antidegradation efforts of the State will be severely impeded by these changes. The State's surface waters

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will be degraded as a result. (26, 35, 175, 232, 237, 244)

159. COMMENT: Currently, the State employs a valid, scientific methodology under which over 1600 waterway segments have been identified as candidates for Category One protections. The State should expand Category One protections to more of these waterways. Yet under the newly proposed designation process, the decision to upgrade is based on a narrow set of water quality indicators that cannot provide a holistic view of the merits of a waterway. The measures of water quality that a waterway would be required to meet in order to be awarded the Category One designation are so restrictive as to bar likely thousands of miles of truly deserving waterways. The proposed criteria are also incapable of capturing the measures by which a waterway may be considered “exceptional”, such as its ecological, recreational, and water supply significance. (113, 219, 248, 252)

160. COMMENT: The implementation of the proposed designation process would mark a reversal of the clean water policy outlined by Governor Corzine. As a candidate, the Governor lauded the Category One program and promised to expand the protections to more deserving waterways across the State during his first year in office. The Governor renewed this commitment in August, indicating that he would upgrade the Musconetcong, Ramapo, Wallkill, and Pequest Rivers by the end of the year. As such, the commenters are more than disappointed to see this deadline missed but even more to see the Department lay out a plan that would undermine the strength of the Category One program and fail to upgrade exceptional waterways such as these permanently. (33, 110, 113, 219, 248, 252)

161. COMMENT: Clearly the proposed changes to the Category One designation process are so significant that they cannot be undertaken without input from the general public. The proposed designation process would severely limit the ability of citizens to successfully call upon or petition the Department to designate waterways for increased protections and is a dramatic change from the methodology currently used to designate

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Category One waterways. In fact, the commenters see no deficiency in the current methodology, which is more scientifically sound from an ecological basis than the changes proposed. (33, 110, 113, 122, 219, 248, 252)

162. COMMENT: The commenters would welcome the opportunity to work with the Department to design a new process to make the Category One designation process more transparent and predictable, but support the methodology currently in place and will not support a process that weakens the ability of the State to protect and maintain its best waterways. The commenters would like to expand upon our concerns in person at your earliest convenience. Please let us know a time when you and other key staff involved in the proposal will be available to meet. (113, 219, 248, 252)

163. COMMENT: The proposed designation process would also open up the methodology that is currently in use in the designation process to scrutiny and challenges from those looking to roll back the protections thousands of miles of rivers that the State currently enjoy. (113, 122, 219, 248, 252)

RESPONSE TO COMMENTS 148 THROUGH -163: As indicated in the response to comments 36 through 42, the Department determined that further refinement of the basis used to identify waterbodies that qualified for Category One designation through rulemaking was required. The definition of Category One waters still include all the possible routes such as; exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries resource(s); for a waterbody to be designated as Category One. To further clarify these terms the Department added definitions for each of these terms except for exceptional recreational significance definition. These definitions are data driven and will better serve to identify waters that are truly exceptional. The new definitions establish an open process for identifying waterbodies that may qualify for Category One designation in the future. The Department does not agree that these definitions limit the number of waterbodies that may qualify for Category One. In fact, the Department is adopting upgraded

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antidegradation designations for approximately 686 river miles in this rule. These waterbodies qualified under the Department's prior method and the method incorporated in these rule amendments. The Department designated Category One waters through several previous rulemakings since 2002, and the total miles upgraded were 653. Therefore these amendments represent the most significant action taken to upgrade waters to Category One since then.

In addition the Department retained the language pertaining to the purpose for designating waters as Category One, which is to protect the aesthetic value which includes color, clarity, and scenic setting in the Category One definition. In addition, the Department added "ecological integrity" as another purpose for designating waters as Category One. However, none of the waterbodies designated as Category One thus far was based on color, clarity, and scenic settings. These aesthetics are subjective and therefore, not easily quantifiable.

The most protective tier of antidegradation is Outstanding National Resource Waters (ONRW) which includes surface waters classified as FW1 and PL. These waters are set aside for posterity because of their unique significance. This is also the highest level of protection provide by the Federal Water Quality Standards Regulations (40 CFR 131.12). The Department can not approve any activity which might lower existing water quality. The second tier of antidegradation is Category One. The Department designates waters through rulemaking as Category One for protection from measurable changes in water quality because of their Exceptional Ecological Significance, Exceptional Water Supply, Exceptional Recreation, and Exceptional Fisheries to protect their aesthetic value and ecological integrity. The Federal Water Quality Standards Regulations (40 CFR 131.12) do not include an equivalent level of antidegradation protection as New Jersey's Category One and is generally considered Tier 2½. All waters not designated in the Surface Water Quality Standards as ONRW (FW1 or PL), or Category One are designated as Category Two. The same designated uses and water quality criteria apply

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to both Category One and Category Two waterbodies. However, a lowering of water quality may be allowed only in Category Two waterbodies to accommodate necessary and important social and economic development. New Jersey's Category Two designation provides the same protection as the Federal Tier 2. New Jersey does not use the Federal Tier 1 level of antidegradation protection which is the lowest level allowed. The uses and criteria to protect uses are based on stream classification not antidegradation designation. Waterbodies not designated as Category One receive the same level of protection, although not the same width buffer, as waterbodies that are designated as Category One.

The Department determined to make the designation of Category One waterbodies an open process that is data driven and therefore, is adopting definitions with specific criteria requirements for a waterbody to be designated as Category One. The Department believes that these definitions function as a proactive and reactive tool that will enable the Department and the public in designating Category One waters.

Definition

164. COMMENT: The proposed rules are unclear on or missing key definitions. The word "tributary" is used throughout the proposal, but has never been defined. (141, 146)

165. COMMENT: The Department has not as yet defined the term 'tributary'. Many of the watercourses within the redevelopment area are either man made or man altered to support recreational activities such as snow making, water park slides and swim areas, skiing, and tubing. Imposing regulatory restrictions on these waterbodies and adjacent areas could be critically detrimental to the proper redevelopment of the existing recreational area. (48)

166. COMMENT: The proposal does not clearly define a "tributary". The number of river miles may be substantially underestimated in that when tributaries are included, the amount of river miles will be significantly increased. The commenter believes that a

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substantial amount of private property will be taken without any compensation to private property owners. (23)

RESPONSE TO COMMENTS 164 THROUGH 166: The Department uses the term “tributary” in its commonly accepted meaning where a stream or other surface water that contributes flow to another body of water. Therefore, the Department does not agree that a definition is needed in the SWQS. The Stormwater Management rules and Flood Hazard Area Control Act rules identify tributaries that are regulated pursuant to these rules. For information regarding the regulatory buffers adjacent to Category one streams see response to comments 66 through 67.

167. COMMENT: New Jersey’s vulnerable streams deserve protection that is determined by more than the presence of trout production. The new clear, data-driven definitions will promote better decision making by the Department for the reclassification of streams. Streams should be upgraded based upon that presence of endangered or threatened species, the ability to support exceptional aquatic communities or their connection to drinking water sources. (61, 220)

168. COMMENT: Although ecological significance is not a direct water quality measurement, the commenter values the procedural steps in this definition as it has specific measurable criteria. (72, 160)

169. COMMENT: The New Jersey Water Supply Authority believes that the additional specificity for the definition of Category One waters will aid implementation of the Clean Water Act and the Water Pollution Control Act. (231)

RESPONSE TO COMMENTS 167 THROUGH 169: The Department acknowledges the commenter’s support.

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170. COMMENT: The proposed amendment would add protection of water's "ecological integrity" as an objective of Category One. The Department should define "ecological integrity" and explain the rationale for including this newly defined purpose. It is recommended that the term "biological functions" be defined and its role in the classification process explained; absent that, the term should be eliminated. (66, 165)

RESPONSE TO COMMENT 170: The terms ecological integrity and biological functions are most commonly used terms in biology and ecology. Ecological integrity means that the animals and plants present are those that would be expected to in habitat a relative undisturbed waterbody. Biological function means that animals and plants of various trophic levels are present in balanced populations where no single species or trophic levels predominate. The objective of the Category One designation is to maintain ecological integrity and biological functions which are measured by water quality, benthic macroinvertebrate, fish assemblage, and impervious surface. Therefore, the Department does not agree that the terms need to be defined in the rule. Waters that qualify for designation based upon exceptional ecological significance represent waters with biological integrity and intact biological function.

171. COMMENT: The proposed rules further narrow the definition of "Category One waters" by adopting very specific and limited definitions for "exceptional ecological significance," "exceptional fisheries resource(s)," and "exceptional water supply significance." This is troubling because the proposed definition of "Category One waters" limits the standards for listing solely to these three (3) bases and the basis of exceptional recreational significance, which the Department is not considering at this time as a basis. The proposed changes result in near total exclusion of saline and brackish waters from the proposed definitions and further demonstrates the definitions' restrictiveness. Indeed, none of the 910 river miles proposed for Category One include saline or brackish waters.

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The only way the Department will designate saline and brackish waters for Category One is if they are approved for unrestricted shellfish harvest. It seems improbable that under any other circumstances saline and brackish waters will be able to move out of the bottom tier of antidegradation protection in New Jersey. (260)

RESPONSE TO COMMENT 171: As explained in response to comments 148 through 163, the Department proposed new definitions of “exceptional ecological significance,” “exceptional fisheries resource(s),” and “exceptional water supply significance” only to clarify the Category One definition. The factors identified under each definition to designate Category One waters have already been used by the Department through several rulemakings since 2002 (see 35 N.J.R. 2264(b), 35 N.J.R. 5086(a), 36 N.J.R. 3565(c), 37 N.J.R. 2251(a)).

As indicated in response to comment 144 close to one half of the waterbodies in South Jersey are already protected either by Category One or Outstanding National Resource Waters (ONRW). A significant portion of the Atlantic Ocean, Barnegat Bay, and other coastal bays saline and brackish waters have been designated as Category One. The commenter is correct in noting that estuarine waters can not be designated based on the new definition for exceptional ecological significance because a benthic indicator does not exist for these waters. The Department is working with Rutgers University, USEPA and NOAA to develop benthic indicators for estuarine and ocean waters. Once these indicators are finalized this data will be available to support future Category One designations in coastal waters.

172. COMMENT: In order to strengthening the Department’s Surface Water Quality Standards for ONRW antidegradation, the commenter requests the Department to consider adding a definition for “antidegradation”, modifying the definitions for “FW1”, “Outstanding National Resource Waters”, and “Pinelands Waters” and modifying the antidegradation policy for PL waters. (5)

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RESPONSE TO COMMENT 172: The Department did not propose amendments to definitions or the policies identified by the commenter. The Department may review and revise these definitions and policies if necessary, in the future rulemakings.

Impaired waters

173. COMMENT: These definitions basically seem to define "exceptional" to mean water bodies that are already in relatively great condition. The commenter thinks "exceptional" should include water bodies that once were exceptional and have the opportunity with proper management to again be exceptional and to sustain important aquatic communities. Defining "exceptional" otherwise conflicts with the Clean Water Act's goal to "restore". The commenter suggests that such considerations of the ability of a water body or a portion thereof to be restored should be included in the rule.

This proposed rule helps sustain the status of only those water bodies that have survived to this point and is hardly encouraging for the future ecological well-being of the State. It is also discouraging to such organizations, which are working very hard, using volunteers, to try to protect and improve the ecology of our watershed. Maybe we should abandon our efforts as we don't seem to be getting much support to improve the environment from the Department. The commenter hopes that the Department will take appropriate action with changes to the rule to give us encouragement to continue our quest.

There needs to be a correct balance between preserving and restoring the natural ecology and the human development of the State. With the proposed rule, we are in danger of permitting more destruction of the ecology and loss of quality of life as well as loss of habitat for other creatures who need to share the State with us, but are not able to speak for themselves. The Department and we are all responsible for speaking up for those creatures. (65)

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174. COMMENT: The proposed rule is also myopic in that it views exceptional waters as those with minimal degradation. For example, the proposed rule defines “exceptional ecological significance” to require either one of a few specifically listed endangered or threatened species or it must support an “exceptional aquatic community.” The Department uses “exceptional aquatic community” because it believes a “waterbody’s ability to support a wide variety of aquatic species is a good indication of a healthy aquatic ecosystem.” Focusing on healthy aquatic ecosystems defeats the purpose of the Surface Water Quality Standards, which the Department administers “for the protection of high quality water and to restore impaired waters.” While the protection of healthier waters is a crucial goal, the Department must also work towards improving other waters as well. Further, some level of impairment does not mean a waterbody is not exceptional. Many waterbodies still perform important functions despite being degraded. (260)

175. COMMENT: The Department attempts to articulate its decision-making process and to make the listing process more predictable has gone too far by discarding a holistic, flexible approach in favor of a rigid “decision tree” with limited, unjustified trigger points for regulation. The effect of this process will be to make difficult for the Department to list Category One waters, and creates a gap between the program and the Legislature’s broad vision for the Department to “restore, enhance, and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life, and scenic and ecological values and to enhance the domestic, municipal, recreational, industrial, and other uses of water.” N.J.S.A. 58:10A-2. The commenter urges the Department to reconsider its approach in light of that goal, and in light of the fact that no Category One listing has been successfully challenged in the courts.

The Department should not use the Category One only to lock in waters that are already pristine or well-used. Rather, the surface water quality standards in general and the Category One program in particular incorporate a philosophy of restoration must be

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applied to waters that could be high quality or significant recreational, scenic, biological resources if protected under the Category One program. (1, 166, 219)

176. COMMENT: Category One designation should also be applied to waters that could be of higher quality. Waters of high quality without a Category One designation should not be presumed to be adequately protected. (105)

RESPONSE TO COMMENTS 173 THROUGH 176: Clean Water Act has many tools to restore, protect and enhance water quality. The SWQS include antidegradation policies to protect all high quality waters, even those not designated as Category One from a lowering of water quality. However, while no lowering in water quality can be authorized to a Category One waterbody, some lowering may be authorized in a Category Two waterbody to accommodate necessary development. There are restrictions and in no situation may the Department issue a NJPDES permit to a wastewater facility that would cause a violation of the water quality criteria in the receiving waterbody unless the facility qualified for a variance.

As part of the Section 303 of the CWA, the Department is also responsible for monitoring and assessing compliance with water quality standards. Waters which do not meet existing water quality criteria are impaired and listed on the State's List of Impaired Waters (303(d) List). These assessments are reported through the Integrated Report.

The antidegradation policies are is designed to protect waterbodies from degradation as a result of new and/or expanded discharges. Category One designation is not an appropriate tool to restore existing water quality impairments. Waterbodies listed as impaired are to be restored through the development of Total Maximum Daily Load (TMDL). Through the TMDL process, the Department will identify the sources of the pollutants and reductions necessary to achieve the water quality criteria. This process will involve both point sources and nonpoint sources. By implementing measures to

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restore water quality, it is possible that a waterbody that is currently impaired could in the future qualify for Category One designation.

177. COMMENT: “Category One Waters” should not include subjective criteria such as scenic setting or other aesthetic value. Significant recreational value should also be stricken from the definition. None of these are water quality criteria and cannot be measured or scientifically defended. Additionally the mere location of a stream should not dictate its level of protection. The fact that a portion of a stream runs through or adjacent to a Federal or State owned park, preserve, or wildlife management area, does not say anything about the stream’s water quality. (72, 160)

RESPONSE TO COMMENTS 177: The new Category One definition has been reorganized so that color, clarity and scenic setting or other aesthetic values are no longer considered a basis for designating waterbodies as Category One. Exceptional recreational significance has been retained in the definition but as indicated in the summary, the Department does not plan to upgrade any additional waterbodies for Category One designation based on exceptional recreational significance until a definition is adopted. Based upon the new Category One definition, a waterbody that flows through a State park, a wildlife management area or other special holdings would not automatically qualify for Category One designation. However, many of these waterbodies are likely to qualify under one of the other new definitions.

178. COMMENT: A stream or river segment that meets virtually every definition for upgrade to Category One can be held off the list if it is impaired for just one of dozens of parameters. A water body that is important to water supply, is of exceptional recreational use, and has exceptional scenic value will go unprotected on the basis of a minor impairment. Our waterways need to be upgraded for their highest and best uses and to protect existing water quality, which is the purpose of the Category One program. (64, 227)

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RESPONSE TO COMMENT 178: As indicated in the summary, the Department can upgrade waters for Category One designation based on exceptional ecological significance, exceptional fisheries resource, or exceptional water supply significance and once a definition is adopted for exceptional recreational significance. A waterbody does not have to meet all definitions to qualify for Category One designation but must meet at least one. Water quality impairment is only considered under the exceptional ecological significance using the exceptional aquatic community factors. A waterbody that is impaired for dissolved oxygen, temperature, total phosphorus and/or total suspended solids is not automatically ineligible for Category One designation based upon exceptional ecological significance. If a waterbody has unimpaired benthic macroinvertebrates and two other indicators of exceptional value, the waterbody could still qualify for Category One designation.

Aesthetics

179. COMMENT: "Exceptional recreational use", as well as scenic and aesthetic attributes, must remain an essential element of the definition of "Category One" waters. Commenters support the retention of those characteristics in the definition. (219)

180. COMMENT: The proposed rule is so selective that it arbitrarily removes from consideration many other factors that make the subject waters exceptional and aesthetically valuable. (260)

RESPONSE TO COMMENTS 179 THROUGH 180: The Category One definition retains the exceptional recreational significance as one of the factors to designate waters as Category One, which is to protect the aesthetic value which includes color, clarity and scenic setting. However, the Department requested for input to draft a new definition for exceptional recreational significance, see response to comments 274 through 281. As indicated in the proposal, the Department does not plan to upgrade any waterbodies based on exceptional recreational resource until a definition is proposed. Color, clarity, and scenic setting are still important factors in the definition of Category One. The

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Department reorganized the definition to indicate that one of the reasons for upgrading the antidegradation designation to Category One on the basis of exceptional ecological significance, exceptional water supply significance or exceptional fisheries resource is to protect their aesthetic value, including “color, clarity, and scenic setting.

181. COMMENT: The proposed definition strikes “clarity, color, scenic setting, or other characteristics of aesthetic value” as bases for designating waters as Category One. The language of the current rule makes no distinction between the status of “clarity” and “exceptional ecological significance” or “scenic setting” and “exceptional water supply significance.” Instead, all terms are listed as equal qualities and conjoined by an “or” to make each one individually sufficient as a basis for a Category One designation. The Department states that it is “reorganizing the definition of ‘category one waters’ because it believes it is necessary to clarify the purpose and bases for designating waters as Category One.” The proposed rule seeks to make aesthetic values a purpose, or end result, of a Category One designation. However, the current rule unambiguously treats aesthetic values as bases for designation. The distinction between basis and purpose is extremely important. Under the present rule, clarity, for example, is a sufficient basis for designating a waterbody as Category One. Under the proposed rules, clarity is a purpose and not sufficient to designate a waterbody. Characteristics of aesthetic value would no longer suffice individually, or at all, as standards for qualifying a waterbody for Category One. Instead, the Department proposes to limit the list of qualifiers to requiring either “exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s).” This is a fundamental change in the definition, cutting in half the list that qualifies waters for Category One. The proposed rules shift the balance by making aesthetic values a purpose. This removes an important basis for protecting our waters. (260)

182. COMMENT: The commenter indicates that there are four words in the definition, clarity, color, scenic setting and other characteristics of aesthetic value that needs to be defined or explained so that it's clear that these can be a reason for a Category One

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upgrade. The definition could begin and be concurrent with the recreational definition based on open space, similar to the Department's Highlands rules. The well-known water scenic use such as perhaps Patterson Great Falls on the Passaic should qualify for this kind of an upgrade, based on their scenic value. (59)

183. COMMENT: The basis document does not even loosely suggest how "aesthetic" characteristics (color, clarity, scenic setting) are defined (the criteria upon which they are measured or assessed) and how they influence reclassification determinations, if at all. The Department must make clear the role of aesthetic characteristics in the classification process. If they are not involved, that should be stated. If they are, then it is incumbent upon the Department to define the standards by which these characteristics will be measured and how those measurements will be considered in the classification of waters statewide. (66, 165)

184. COMMENT: The intent of the proposed rephrasing of the definition of Category One waters seems to be to use the Surface Water Quality Standards to open the door for the Department to impose new rules to protect scenic settings and other aesthetic values along the Category One streams. The regulation of aesthetics should remain with the municipality. (44)

RESPONSE TO COMMENTS 181 THROUGH 184: As indicated in the Summary of the rule proposal the Category One definition will retain the purpose for designating waters as Category One, which is to protect the aesthetic value which includes color, clarity and scenic setting. In addition, the Department also added "ecological integrity" as another purpose for designating waters as Category One. The adopted changes clarify the definition. The Department determined that aesthetics, color, clarity are very subjective and not easily quantifiable. The new definitions are designed to provide objective criteria to evaluate whether a waterbody qualifies for Category One designation. Establishing thresholds for aesthetic qualities such as color, clarity or scenic setting are just too subjective to use as a basis for designating a waterbody as Category

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One. For this reason, the Department did not propose to use aesthetics, color or clarity as a basis for designating waters as Category One.

T&E

185. COMMENT: Millions of species have become extinct over the centuries and some are due to specific man made influences (for example, fragmented habitat, and over harvesting); others may be due to long term climate change. Which are we addressing in the Category One rules and how confident are we that the proposed rules will have the anticipated effect? (203)

186. COMMENT: The standard that the Department is proposing that only one occurrence of a certain species is necessary, together with suitable habitat for such species, to qualify a waterbody as “exceptional ecological significance” has no scientific merit and is arbitrary and capricious.

One occurrence of any species is scientifically too small a population to provide any meaningful certainty of the stability, mortality and survivability of such species in a particular environment. To categorize a waterbody as Category One based on one occurrence is overbroad, arbitrary and capricious. This is true even as to the Green Floater which is a hermaphroditic species. With only one occurrence of any of the species, scientific principles dictate that the continued existence of such species at a particular location would be for a limited duration. For this reason, the reference to only one occurrence of a species in the definition of exceptional ecological significance has a flawed scientific basis and therefore is arbitrary and capricious and should not be adopted. (Masten)

RESPONSE TO COMMENTS 185 THROUGH 186: As indicated in response to comments 187 through 191, the existing aquatic life criteria are sufficient to protect most species. The USEPA and the USFWS are evaluating whether these criteria are adequate to protect endangered or threatened species. The Department has determined that

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maintaining the existing water quality is necessary to protect Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel. Where water level tends to become very low and sometimes non-existent in certain spots during summer droughts, leaving mussels with either no water or oxygen depleted water is certainly a threat to mussel species. The Department determined that protecting water quality from measurable changes certainly would not harm the endangered or threatened species populations and helps avoid subjecting them to future water quality degradation. According to the U.S. Fish and Wildlife Service, industrial, agricultural, and domestic pollution is responsible for the dwarf wedgemussel's disappearance over much of its historic range. 55 Fed. Reg. 9447 March 14, 1990. Historically, bog turtles and mussels have declined because of a number of man made influences, water quality changes, fragmentation of its habitat, habitat modification like dams, introduction of exotic or foreign species such as Asian clams, and loss of host fishes. Changes that affect the host fish, including water quality changes, affect the mussel.

The procedures for evaluating a new or expanded discharge to a Category One waterbody will ensure that the water quality currently supporting the identified population of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and/or Eastern Lampmussel is maintained. The Department applies 300 foot buffers to projects that might affect Category One waterbodies to ensure that the existing water quality is maintained. For more information on the buffers, see response to comments 66 through 67.

187. COMMENT: The water quality program has many tiers of protection to ensure that water quality will not adversely impact organisms inhabiting a receiving water. In addition to specific numeric standards, the Department imposes stringent requirements on whole effluent toxicity using sensitive indicator organisms that are predictive of instream impacts. Both the Department and USEPA assert that toxicity based impacts are not expected instream where these organisms are not impacted at critical low flow dilution

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conditions. This is a very conservative approach. The Department also has a separate program for assessment of nutrient impacts to ensure that excessive plant growth is not caused by a wastewater facility. The Department also has an antidegradation policy that precludes unnecessary changes in instream water quality and precludes any changes in water quality that would adversely impact any existing use in the stream, which would include the presence of endangered or threatened species. Nothing, however, in the record shows that a freeze on any measurable change in water quality is needed in addition to these measures to protect endangered or threatened species. Consequently, it is clear that there is no scientific basis to conclude that the current program, from a water quality perspective, fails to protect the organisms at issue in this rulemaking. The Department's action, therefore, is not required by or otherwise consistent with the manner in which water quality is regulated under Federal or State law. (233)

188. COMMENT: The Department appears to be trying to disguise regulation to address endangered or threatened issues as a water quality protection measure as the Department has been unable to gain support for significant endangered or threatened species regulations. (155)

189. COMMENT: There are already numerous regulations in place through the Department that protect the quality of surface water and ecological habitat. The adoption of the 300 foot buffer goes beyond what is necessary or scientifically justified to continue to maintain the State's important natural resources. Requiring that there be "no measurable change" in water quality goes beyond what is required to ensure that the habitat for endangered or threatened species is not negatively impacted. The Federal government has established through the courts that if Department is to adopt the standards proposed in the regulations they must demonstrate the need for such a restrictive approach. However, with the inadequate science and undocumented occurrences of endangered or threatened species it would seem unlikely that this approach is justifiable under the Federal guidelines. (199, 201)

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190. COMMENT: The Department stated that the proposed Category One amendments are “required by ... Federal statutes, regulations and guidance....” Please identify the Federal statutes and regulations that require Department to set a no measurable change requirement to ensure protection of endangered or threatened species. (233)

191. COMMENT: The proposed definition of “Category One” focuses only on the “no measurable change” requirement related to antidegradation. The Category One designation also affords additional riparian corridor protections through the Stormwater Management Rules and the Flood Hazard Area Protection Act rules (300 foot buffer requirement). The enhanced stream buffer may well provide a legitimate benefit to certain endangered or threatened species. If the Department seeks to enhance stream corridor protection for endangered or threatened species, it should do so directly through the applicable rules rather than using the Category One designation. The presence of the endangered or threatened species identified in the proposed SWQS does not provide an adequate basis to upgrade to Category One. (8)

RESPONSE TO COMMENTS 187 THROUGH 191: As explained in previous responses, according to the U.S. Fish and Wildlife Service (USFWS), industrial, agricultural, and domestic pollution is responsible for the dwarf wedgemussel’s disappearance over much of its historic range. 55 Fed. Reg. 9447 March 14, 1990. Historically, bog turtles and mussels have declined because of a number of man made influences, water quality changes, fragmentation of its habitat, habitat modification like dams, introduction of exotic or foreign species such as Asian clams, and loss of host fishes. Due to the sensitivity of freshwater mussels to a wide variety of environmental pollutants, along with the mussel’s inability to avoid contaminants introduced in the water column, existing water quality needs to be maintained and protected. As a result of a formal consultation between the USEPA and the USFWS in 1996, pursuant to Section 7 of the Endangered Species Act, the USFWS also recommended that the Department prohibit mixing zones in areas with documented endangered or threatened species and

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their habitat to ensure that the existing water quality remained unchanged and the species protected.

Pursuant to 40 C.F.R. 131.12, endangered or threatened species are an existing use that must be protected while the federal agencies are reviewing the criteria to determine if the criteria need to be strengthened in order to protect endangered or threatened species. The Department has determined that maintaining the existing water quality is necessary to protect Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel. The Department determined that Category One designation is an appropriate tool to maintain water quality in streams with known populations of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel identified as being of exceptional ecological significance.

These endangered or threatened species are critical water-dependent, extremely rare species in New Jersey and are incapable of relocating. The Department determined that the additional protection of Category One, which requires maintenance of existing water quality, may improve these species' ability to survive. The upgraded antidegradation designation complements the species and habitat protections provided through the land use regulatory programs by ensuring that water quality will not be degraded.

192. COMMENT: The Department proposed to change the definition of “Exceptional Ecological Significance” to add technical rigor and predictability to this basis for Category One designation. The Department should delete the first paragraph of the definition dealing with specific endangered or threatened species. The remainder of the definition (exceptional aquatic community) represents a well-conceived, predictable basis to define Exceptional Ecological Significance, which provides a strong basis for Category One designation. The Summary to the rule proposal admits that “the Department and the USEPA believe that the existing water quality criteria are adequate” to protect Federally

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listed endangered or threatened species. Given this, the presence of endangered or threatened species does not provide the Department a basis to require no measurable change in water quality, as long as the SWQS criteria are satisfied. The Department has offered no evidence whatsoever that minor changes in water quality concentrations, better than the SWQS criteria, would negatively impact the endangered or threatened species identified in the proposed definition. Indeed, such a finding for a particular water quality constituent would provide the basis to propose new criteria to protect endangered or threatened species, not a basis to require “no measurable change” for water quality in general. (8)

193. COMMENT: The proposal indicates that the United States Fish and Wildlife Service and United States Environmental Protection Agency are reviewing existing aquatic life criteria to ensure protection of Federal listed endangered or threatened species. The Department states that in its view, “the existing water quality criteria are adequate.” Nevertheless, the Department then proposes alternate water quality criteria for “certain aquatic dependent species”, the target species. Without reliable data that can be objectively applied to each of the seven species, a determination to use alternate aquatic life criteria is premature and, therefore, arbitrary. The Department should postpone action on the seven target species until the Federal agencies complete their review of the existing aquatic life criteria and Federally approved ecological standards become available. (66, 165)

194. COMMENT: The Department’s action is not necessary or scientifically justified to ensure protection of endangered or threatened species. Rather, existing antidegradation rules are sufficient to ensure that water quality will be maintained at a level that will ensure such organisms are not adversely impacted due to changes in instream water quality. As noted by the Department in the proposal, the United States Fish and Wildlife Service (USFWS) and the United States Environmental Protection Agency (USEPA) believe that existing water quality standards are sufficient to protect endangered or threatened species absent some credible information that shows the criteria are not

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sufficiently protective. USEPA relies on testing results from similar species (other mussels or turtles) to conclude whether or not adverse impacts to the endangered or threatened species is expected to occur. USEPA has never proposed that more restrictive antidegradation reviews and requirements are applicable simply because endangered or threatened species are present.

This same regulatory basis for setting standards is applicable to the establishment of non-degradation requirements for endangered or threatened species under the state SWQS rules. Department must demonstrate there is a need for such a stringent approach. (233)

RESPONSE TO COMMENTS 192 THROUGH 194: The USEPA does not dictate the criteria what a state may use to designate a waterbody for additional protections through its SWQS. Given this discretion, the Department has determined that it is appropriate to consider waterbodies with documented occurrences and suitable habitat for these particular water-dependent Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel as waterbodies of exceptional ecological significance. A detailed discussion regarding the use endangered and threatened species as a criterion for designation can be found in the summary of the proposal.

The Department has not proposed new aquatic life criteria for waterbodies that support Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, or Eastern Lampmussel. As indicated in the proposal summary, USEPA and USFWS are evaluating the existing aquatic life criteria to determine if the criteria need to be strengthened in order to protect endangered or threatened species. Thus, the Department is acting in the interim by designating waters as Category One in order to ensure that water quality is not degraded. Under the adopted definitions, where there is a documented occurrence(s) of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, or Eastern Lampmussel and

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suitable habitat is present, the waterbody is of exceptional ecological significance. The designation as Category One is intended to ensure that regulatory measures are required that will maintain the existing water quality and therefore, the continued existence of these endangered or threatened species.

The existing SWQS preclude the use of a mixing zone in developing effluent limitations for NJPDES permits for discharges to receiving streams with documented occurrences of any aquatic dependent endangered or threatened species. As a result, NJPDES permits issued to facilities which may impact endangered or threatened species must maintain existing water quality whether or not the waterbody is designated as Category One. The designation of a waterbody as Category One provides additional protections by requiring 300 foot buffers for new major development under the Stormwater Management Rules and for regulated activities that under the Flood Hazard Control Area Act rules.

195. COMMENT: There should be a clearly established process, which is based upon a reliable and objective framework, for verifying the occurrence of an endangered or threatened species. It is the commenter's understanding that the Department does not field verify almost all sightings through its own staffing. Because those making (or challenging) observations may not always be objective, it is essential that verification be conducted through a well-defined, consistently applied approach. To that end, the Department should develop a rigorous training and mandatory certification program for its volunteers on how to investigate and reliably document occurrences. (66, 165)

196. COMMENT: The commenters are concerned that sightings can be reported by anyone and are not subject to field verification by the Department. (141, 146)

197. COMMENT: The Department should commit adequate resources to continually upgrading and entering data into the Natural Heritage Database and, since "the public may report wildlife sightings to the ESPN", the Department should commit sufficient

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resources to public education on proper identification of endangered or threatened species and reporting of sightings. The commenter has had some experience in this area and is willing to assist the Department in this effort. Additionally, the Department should consider producing a “Citizen’s Guide to Identifying New Jersey’s Threatened and Endangered Species”, to assist citizens and local government in this effort. (Batty)

198. COMMENT: These water quality standards should not be used against wildlife and birds. Junk science, brought up by uninformed people, attempts to load up fake stats and information and place all the blame on wildlife or birds. The science from the New Jersey Division of Fish and Game is junk science in far too many instances and there should be truthful and honest science. (183)

RESPONSE TO COMMENTS 195 THROUGH 198: The Department upgraded waterbodies with documented occurrences of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and/or Eastern Lampmussel to Category One.

The protocol for accepting or rejecting species sighting reports (documented occurrences) is included in the NJDEP Landscape Project Report, see <http://www.nj.gov/dep/fgw/ensp/landscape/index.htm>. Interested parties may report any sightings information using the “Rare Wildlife Sighting Report Form”. The form requires that an aerial photograph, satellite image, or topographic map with the location precisely marked must be submitted as part of the sighting report which enable the ENSP program to field verify the sightings location if necessary. The Department verifies the sighting information on endangered or threatened species by evaluating the information submitted and the qualifications of the persons submitting the information to establish the information's reliability before submitting the information to the Natural Heritage Database.

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199. COMMENT: To the commenter's knowledge, the Department does not have reliable information as to where the State endangered or threatened targeted in-stream species are located. Absent consistent species-specific criteria, interested parties (including petitioners and commentators) cannot examine and independently determine that a species of concern is present and in need of protection. To overcome the lack of data, the Department proposes that a waterbody must have suitable habitat verified by the Department to support one of the seven target species; and documented occurrence(s) of at least one of these species verified by the Department. (66, 165)

200. COMMENT: The Department's reliance upon the Landscape Maps is inappropriate in this rulemaking, which seeks to "to identify waters that are truly exceptional." Landscape Maps do not display aquatic species including mussels and fish. The precise location of some species is unknown. The proposal should be amended to afford an interested party with the opportunity to present information regarding the accuracy of the mapping. (66, 165)

201. COMMENT: The Department should embrace the methodology and science behind its Landscape Project maps, as it has done in the wetlands program and other regulatory programs, and consider as "ecologically significant" all habitat patches of levels 3, 4, and 5 that intersect with a candidate water. In reviewing Wastewater Management Plans under Executive Order No. 109 (2000), and application for wetlands, CAFRA, and stream encroachment permits, the Department assesses encroachment on habitats for endangered or threatened species habitats designated as Rank 3, 4, or 5 on the Department's Landscape Project Maps. (219)

202. COMMENT: The Landscape Maps are very subjective and show only land habitat species, not in-stream species, such as the bog turtle. The proposed rules do not address how to find in-stream habitats. The public and stakeholders were not given the opportunity to provide input regarding the delineation of habitats. (141, 146)

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203. COMMENT: The Department states in the proposal that the presence of documented habitat for endangered or threatened species is delineated on the Landscape Maps. Our review of the Landscape Maps, however, reveals that it appears that there are no documented habitats delineated for the Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater or Triangle Floater. It would seem appropriate to clarify this apparent discrepancy. (48)

204. COMMENT: The Landscape Project maps and entries in the Natural Heritage Database or the Federal analogs are not the only evidence of endangered or threatened species habitat, as the Department and the US Fish and Wildlife Service may not have processed all sightings submitted by members of the public. The commenter requests that the Department clarify its position regarding the use of Landscape maps in making regulatory decisions, including Category One listings. (219)

RESPONSE TO COMMENTS 199 THROUGH 204: The Department upgraded waterbodies for Category One designation based on documented occurrence of one or more of the following endangered or threatened species: Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, or Eastern Lampmussel. The Department provided a narrative description of the waterbody proposed for upgrade based on the presence of one or more of the seven eligible endangered or threatened species in the rule summary. A map depicting the stream segments proposed for Category One designation was posted on the Department's website at <http://www.nj.gov/dep/rules/>.

The location data (documented occurrences) for all tracked species, including aquatic species such as freshwater mussels, are part of the Natural Heritage Database. These documented occurrences are the foundation for the Landscape Project maps. At the time of proposal, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel were not included in the Landscape Project (Version 2.1). On May 15, 2008 the Department published a new

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version of the Landscape Project (Version 3.0 Highlands). This new version includes freshwater mussels but is limited to the extended Highlands boundary.

An understanding the role of the waterbody in supporting the particular local population of the endangered or threatened species must be applied to support a determination that the water body itself is “ecologically significant.” That it lies within or flows through ecologically significant habitat is not, in and of itself, sufficient. In the Department's land use regulatory programs, the presence of a patch of habitat that is indicated on the Landscape Maps as suitable habitat for an endangered or threatened species is not determinative. A permit applicant may dispute the presumption of habitat suitability. Such challenges rely on information on local populations and habitat characteristics. Similarly the Department uses information on local populations and habitat characteristics to refine the basis for proposing Category One designations.

The Department reevaluated the spatial extent for bog turtle based on comments received on the proposed upgrades to Black Creek, and Wallkill River. The Department field verified the sighting records (documented occurrences) and the habitat for Brook Floater, Triangle Floater, Eastern Pondmussel, and Green Floater used to upgrade Stony Brook to Category One based on comments received. As a result of these reevaluations, the Department has made changes to the spatial extent of the Category One designation of the Black Creek, Wallkill River, Pequest River and Stony Brook on adoption. See responses to comments 320 through 321, 340 through 341, and 388 through 397.

205. COMMENT: The commenter is unaware of any documented information regarding the exact location of documented occurrences of Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater, exactly who sighted the species, how it was documented and when the species was sighted. It would appear that the definition does not provide clarity to the regulated community with regard to which waterbodies would qualify for Category One designation under this criteria. (48)

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RESPONSE TO COMMENT 205: The Department's ENSP program experts reviewed the sighting records and verified the results to ensure that the waterbodies supported documented occurrences and habitat. Regarding the sightings data see response to comments 195 through 198. The Department has provided the public with an opportunity to review and comment on the selected waterbodies designated for Category One based on endangered or threatened species. The Department also provided a map of the proposed Category One water areas at <http://www.nj.gov/dep/rules/>. Based on comments received, verification was conducted by the ENSP and changes to the spatial extent of the designation of the Black Creek, Wallkill River, Pequest River and Stony Brook are being made on adoption. See responses to comments 320 through 321, 340 through 341, and 388 through 397.

206. COMMENT: The proposed definition changes and upgrades are likely to benefit the dwarf wedgemussel and the bog turtle, and we strongly support these actions. As proposed, the new definition of Category One Waters would include all waters supporting dwarf wedgemussel or bog turtle. However, a preliminary review of the waters proposed for upgrade to Category One suggests that not all surface waters associated with a known bog turtle occurrence are included. (133)

207. COMMENT: The Department states that the continued viability of the listed species, including the Bog Turtle, is critically contingent on there being no change in existing water quality. It would seem that this assumption be supported by sound scientific data before it is utilized as the basis for a regulation. Copies of any studies that the Department has conducted in this regard would be appreciated. (48)

RESPONSE TO COMMENTS 206 THROUGH 207: The Department appreciates the commenter's support for the new definition. In this adoption, the Department is upgrading Olmans Creek, Pequest River, Pompeston Creek, Salem River, Wallkill River based on the presence of Bog turtles. In previous rulemaking, the Department designated

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Assiscunk Creek, Flat Brook and the Pequest River to protect dwarf wedgemussels and bog turtles. Other waterbodies may be upgraded in future rulemakings.

The bog turtle is a wetland species that occurs in discrete pockets within a larger wetland matrix due to the specificity of the species' habitat needs. Bog turtles inhabit specific wetland types that are susceptible to degradation due to negative changes in hydrology and water quality (See, for example, Bog Turtle (*Clemmys Muhlenbergii*) Northern Population Recovery Plan, U.S. Fish and Wildlife Service 2001 and The impacts of stormwater discharges on an emergent Bog community featuring a population of the Bog Turtle (*Clemmys Muhlenbergi*) in Gloucester County, New Jersey. Torok, 1994). Therefore, a large, contiguous wetland complex may only support bog turtles in a portion of its entirety. Streams can affect adjacent wetland quality based upon general proximity and hydrologic connectivity. Degraded stream water quality can negatively influence nutrient enrichment, vegetative composition, and hydrology in surrounding wetlands communities. Therefore, only those waterbodies where the stream intersected suitable habitat patches for bog turtle are being adopted as Category One.

208. COMMENT: A concern is the change on objectives of the Category One designation and the scope of protections offered to endangered or threatened species. Heretofore, Category One pertained to pristine streams such as the Flat brook. The new classifications extend to stream segments that are not high quality and to areas of potential wildlife habitat. (153, 203)

RESPONSE TO COMMENT 208: The new definition of Exceptional Ecological Significance provides the opportunity to protect unique and rare species by designating these waterbodies as Category One based on endangered or threatened species. A waterbody that support one of the seven listed endangered or threatened species does not necessarily need to display pristine water quality to qualify for Category One designation. The upgraded antidegradation designation complements the species and habitat protections provided by the Department's regulatory programs by ensuring that water

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quality is not degraded. The Department's intention is to base the upgrade on the documented occurrences of the specific aquatic dependent species not the presence of suitable habitat.

209. COMMENT: The New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 does not include use of the endangered or threatened species landscape project or habitat suitability for Category One designations. As the proposal does not comport with the enabling statute, the proposal cannot be properly adopted. (155)

RESPONSE TO COMMENT 209: The Department develops and administers the SWQS pursuant to several Federal and State statutes including Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* The Water Quality Planning Act, N.J.S.A. 58:11A-1 *et seq.* and the Department's general enabling statute, N.J.S.A. 13:1D-1 *et seq.* Under its enabling legislation, the Department formulates comprehensive policies for the conservation of natural resources, the promotion environmental protection and the prevention of pollution of the environment of the State. N.J.S.A. 13:1D-9. One of the clear policies of the State is to provide special protection to endangered species in order to maintain and, to the extent possible, enhance their numbers. N.J.S.A. 23:2A-2. Under the Endangered and Nongame Species Conservation Act, the Department is to "develop management programs which shall be designed to insure the continued ability of wildlife to perpetuate themselves successfully." N.J.S.A. 23:2A-4. The policies of the Water Pollution Control Act and the Water Quality Planning Act include restoring, maintaining and preserving the biological integrity and overall quality of the waters of the State, and to safeguard fish and aquatic life and scenic and ecological values, N.J.S.A. 58:10A-2; N.J.S.A. 58:11A-2. The presence of endangered or threatened species is an existing use that needs to be protected, preserved, and to the extent possible, enhanced, and use of the endangered or threatened species for Category One designations is authorized under the Department's statutory authority.

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210. COMMENT: Established habitats must be verified and not just classified as potential or suitable in order to justify Category One designation. Suitability should be quantified using appropriate criteria. There is scientific evidence that certain species don't return to areas already inhabited by human activity. Many species have different tolerance factors affecting their migration and homing characteristics. Therefore, more work needs to be performed so that appropriate criteria can be established and applied to various species and their habitat. (154)

211. COMMENT: Streams and lakes are proposed for classification on the basis of "suitable" rather than verified habitat. Where known populations of endangered or threatened species exist, they are fully deserving of protection and where they do not, there are clearly elements, even in the absence of additional development, that render the habitat unsuitable. The restrictions put in place to govern development and attenuate its impact on protected water bodies are not an array of techniques but only provide for linear setbacks ranging from 300 feet from water bodies to 1000 feet from vernal pools. As the intent is to protect overall water quality, there must be a provision in the rules for verification of habitat and use of alternative techniques. The former is the responsibility of the Department and the latter the responsibility of prospective developers.

Actively occupied habitat should be avoided. However, we are still not convinced that potential or "suitable" habitat should be used as grounds for Category One designation. There must be some independent vetting of the habitat delineation process. Turtle habitats and osprey habitats are very different and should be evaluated differently. Where an area is not inhabited by the relevant species, it probably is because the habitat and its surroundings are not suitable. For instance, species with little tolerance for human activity are not likely to return to an area where highways, recreation, or other disruptive activity are consistently a part of the environment. (153, 203)

RESPONSE TO COMMENTS 210 THROUGH 211: The Department agrees with the commenter that prior to upgrading a waterbody to Category One based on endangered or

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threatened species, the species must be documented as occurring in or near the waterbody to qualify for Category One designation. Suitable habitat alone is not sufficient to determine that a waterbody is of exceptional ecological significance. As indicated in response to comments 199 through 204, waterbodies were proposed for Category One designation based on documented occurrences and the presence of suitable habitat. The Department's intention is to protect water quality so that the species present and its suitable habitat that exists are protected. The Department designated segments of waterbodies with documented occurrences of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and/or Eastern Lampmussel upstream and downstream of the documented occurrence where suitable habitat exists. Based on comments received, the Department reevaluated the spatial extent of these designations to ensure that the segments being adopted as Category One included documented occurrences and suitable habitat. The Department has determined to not adopt the Category One designation for portions of some of the waterbodies. See responses to comments 320 through 321, 340 through 341, and 388 through 397.

212. COMMENT: Commenters are interested in the Department's justification for not including Wood Turtles as a species that could trigger Category One listings, because the Department has relied upon the presence of that species in upgrading waters to Category One in the past.

Please explain whether the Department takes into account the relationship between upland Category One buffers and protected species. The Department should explain, for example, whether wood turtle populations would benefit from the protected nesting, foraging, traveling and basking areas provided by riparian buffers and, if so, why that is not sufficient reason to consider wood turtles to be highly dependent on a protected riparian ecosystem. The Department should also explain whether there is any relationship between developed upland areas and the illegal collection of protected species. Given the Department's mission to restore populations to historic habitat, and to prevent the degradation of non-impaired or even moderately impaired waters to the point

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where they won't support viable populations, the Department must presume that wood turtles benefit from clean water and 300-foot buffers. The Department's bottom line must be that indicator species are those that would be adversely affected by any degradation in water quality or overall integrity of the riparian ecosystem. (1, 219)

213. COMMENT: Please explain whether the Department considers the documented occurrences of certain species to be sufficient for nominating Category One waters while others can only support nominations, and if so which species fall into each category and the methodology and basis for distinguishing between "listing" species and "supporting" species. (1, 219)

214. COMMENT: The Department's proposed rule will limit the number of endangered or threatened species that the Department will consider to indicate waters of exceptional ecological significance. The Department should reconsider its proposal and to adopt the current holistic approach, which allows for consideration of all protected species that might intersect with a waterbody. It is particularly important to consider that Category One status will create protected riparian corridors that will benefit many species that are not necessarily "water dependent" but that live in riparian areas. In addition, riparian corridors can provide wildlife transit corridors between large habitat blocks and can thereby help propagate endangered or threatened species and promote the genetic diversity of sub-populations. Although the proposal does not anywhere define water dependent in biological terms all species rely on water or on water related environments (wetlands, riparian corridors) for resting, nesting, breeding, or feeding are dependent on clean water, and should be considered as such by the Department. (219)

215. COMMENT: Although the Sierra Club supports most of the definitions, habitat suitable for wood turtles, bald eagles, black-crowned night heron, yellow-crowned knight heron, osprey, least tern, Atlantic green turtle, and Atlantic sturgeon, as well as warm water fisheries, should also be added. (64, 227)

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216. COMMENT: The commenter would like to urge the Department to look more holistically at the criteria, use the existing criteria and add to them, not subtract from them, some of the endangered plants, the Swamp Pinks, the Sensitive Joint Vetch and the Knieskern's Beaked-Rush. These are plants that exhibit wetland characteristic that needs to be protected. (163, 219)

217. COMMENT: The Department should identify the most sensitive aquatic habitats for such species as the Federally listed (endangered) Indiana bat (*Myotis sodalis*) and (threatened) Knieskern's beaked-rush (*Rhynchospora knieskernii*) and swamp pink (*Helonias bullata*), and to consider protection of these areas through future changes to the SWQS. (133)

218. COMMENT: The Department must include the following State and Federal endangered or threatened wildlife species: Bald Eagle, Pied-billed grebe, Black-crowned night heron, Osprey, Least tern, Roseate tern, American Bittern, Northern Harrier, Sedge Wren, Black Rail, Black Skimmer, Queen Snake, Atlantic Green Turtle, Short-nosed Sturgeon, Long-tailed Salamander, Blue-spotted Salamander, Eastern Tiger Salamander, Eastern Mud Salamander, Pine Barrens Treefrog, Southern Grey Treefrog, Wood Turtle, Yellow Lampmussel, Tidewater Mucket, Eastern Pondmussel which are either water-dependent or dependent upon the use of habitat located in the riparian zone of near rivers or estuaries. We note that the amphibians that depend upon seasonal, ephemeral breeding ponds might only be considered as triggers for the Category One program where such waterbodies are located in floodplains or are otherwise hydrologically connected to other waterbodies for some part of the year.

The Department should provide its justifications for not including these wildlife and plant species. In that explanation, please indicate whether the species would benefit from the availability of clean water that is unaffected by development, increased protection of waterbodies and, in particular, from the 300-foot protective buffers, all of which contribute to the "biological integrity" of the waterbody. If the Department

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concludes that any species would not benefit from aspects of Category One protection, please explain that conclusion and provide literature citations and other scientific support. The proposed rule states that the Department choose indicator species because "[water quality, water quantity and in-stream habitat may adversely affect the growth, reproduction and feeding of these species and if not maintained could lead to the extirpation of these species." 39 N.J.R. 1847. If that is the rationale for selecting species as listing criteria, the commentators believe that there is no principled distinction between the six species chosen by the Department and the species listed above. Please explain why the distinction is not arbitrary. (1, 219)

219. COMMENT: The Department inadequately explains the restrictive nature of the proposed definitions. "[T]he Department has determined that it is appropriate to consider waterbodies which support an endangered or threatened species as a waterbody of exceptional ecological significance." Yet there is no rational basis for the Department's stunted list of endangered or threatened species that make a waterbody have "exceptional ecological significance." Why are the listed species the only ones considered in the definition? Why aren't all endangered or threatened species included? Why aren't Kemp's Ridley turtles, loggerhead turtles, or short-nosed sturgeons listed in this section? (260)

220. COMMENT: The commenter questions the minimal list of endangered or threatened species included in the proposed rule and particularly concerned about the absence of the wood turtle from the list of species to be protected. The wood turtle is an existing use that must be protected in Highlands waterways, as was demonstrated in the south branch of Rockaway Creek and Sydney Brook, where basically the decision was made that it was an existing use and it depended on clean, clear, pure water and it needed, therefore, to be protected. It should be noted that any and all water-dependent or water-related endangered or threatened birds, mammals, reptiles other than the bog turtle, amphibians, odonate, Lepidoptera, or insects, including those that are water-dependent are missing from the list. Threatened or endangered plants species are also missing

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entirely. If the use of a water body by endangered or threatened species is an existing use that must be protected, as determined by the court or administrative decision, then all the endangered or threatened species that are dependent water body should be protected, not just some of them. (59)

221. COMMENT: The commenter supports the use of the specified mussel species as indicators since they are sensitive, sessile and diagnostic of long term trends in water quality. The Department should strongly consider the role that high quality water plays in the support of endangered or threatened species present in the entire (HUC 14) watershed, and extend the qualification criteria to include all endangered or threatened species present in the sub-watershed (HUC 14). The Department should broaden this list of qualifying species to include, at least, the full range of water dependent species including birds, reptiles, amphibians, invertebrates, mammals, and fishes. (16)

222. COMMENT: The commenter strongly suggests that the Department has within its body of knowledge sufficient information to include an expanded list in the current proposal. To cover additions to the endangered or threatened list in the future, the list, and the Natural Heritage Database should be referenced. (16)

223. COMMENT: The proposed criteria would divorce critical measures of the significance of a waterway from the designation process. The methodology currently used by the Department integrates data from landscape project maps and the Natural Heritage Priority database to determine if a waterway rises to the level of “exceptional ecological significance.” Yet despite the importance of maintaining a waterway’s integrity to protect its ecological resources, the proposed designation process would strip consideration of endangered or threatened plants, animals, shellfish, and ecological communities from the designation process in place of limited chemical and biological indicators of water quality. (113, 219, 248, 252)

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RESPONSE TO COMMENTS 212 THROUGH 223: In the past, waterbodies were upgraded to Category One as part of the integrated ecological assessment, (See 34 N.J.R. 3889(a) and 35 N.J.R. 4949(a)). The integrated ecological assessment utilized a variety of water quality, biological survey, and environmental indicator information, including information on endangered or threatened species, to determine if a stream exhibits characteristics that are of “exceptional ecological significance” and, thus, should be protected as a Category One waterbody. The Department determined that the presence of only certain endangered or threatened species, should be a qualifying factor for a waterbody to be designated as Category One.

As part of this rulemaking, the Department bifurcated the integrated ecological assessment so that waterbodies that supported specific endangered and threatened species could qualify for Category One designation without any other additional information. The Department identified seven endangered or threatened species that could qualify a waterbody for Category One designation based upon exceptional ecological significance. Waterbodies may be designated Category One where documented occurrence and suitable habitat is reported for Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater. Due to the rarity of the species, and, for the mussels, due to their being sessile, survival and reproduction of the seven specifically identified water-dependent endangered or threatened species is extremely difficult when there are changes in water quality. Water quality, water quantity and in-stream habitat may adversely affect the growth, reproduction and feeding of these species and, if these features are not maintained, could lead to their extirpation. The Category One designation of waterbodies that support these species will maintain the existing water quality and the continued viability of these species.

The commenters suggest that all State and Federally listed threatened and endangered species including wood turtles, birds, amphibians, fish, mammals, invertebrates, reptiles, and plants would benefit from additional water quality protection.

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As indicated in Response to Comments 185 through 186, the USEPA and the USFWS are evaluating existing national recommended water quality criteria to determine if more stringent criteria are necessary to protect certain T&E species. The Department's decision to provide additional protection for the seven selected T&E species is consistent with the USFWS 1996 Biological Opinion. Designating waterbodies as Category One based upon the presence of Threatened and Endangered species is intended to provide water quality protection to ensure species survival rather than protecting suitable habitat from development or illegal collection activities. One commenter suggested that warm water fisheries also be included. As indicated in Response to Comments 251 through 253, the Department is working to identify warm water fisheries that would qualify as an exceptional fisheries resource.

Documented occurrences of "supporting" species, such as wood turtles and longtail salamanders which are both State threatened and water dependent, without a documented occurrence of Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater, is not sufficient to justify Category One designation under the new definition. These species were noted when significant local populations occurred in waterbodies proposed for Category One designation in the summary of the rule proposal, if appropriate. However, a water body does not require the presence of "supporting" species to be upgraded to Category One designation. Waterbodies with the presence of supporting species can be designated as Category One if the waterbody meets one of the other definitions.

Documented occurrence information of threatened and endangered species is maintained in the Natural Heritage Database. The Department uses this information to develop its Landscape Project maps. The Department's regulatory programs use the information included in the Landscape Project to protect habitat for all T&E species. In addition, for waterbodies that are designated as Category One, the Department imposes additional requirements, including 300 foot buffers. These requirements apply upstream in the subwatershed (HUC14) to ensure that the downstream water quality is maintained.

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The Department may amend the definition of “exceptional ecological significance” to add additional aquatic dependent endangered or threatened species in the future through rulemaking.

Ecological

224. COMMENT: Changes to the “exceptional ecological significance” methodology are disturbing for a number of reasons. Not only will they immediately restrict and narrow the protection of aquatic species and their habitat but they will set a precedent that may be used to constrict the protections for flora and fauna in general and may likely make it more difficult to protect land habitats. Restricting protection to only a few species of mussel and one turtle leaves the field wide open for the loss or diminishing of many species that are not now State listed. This also contradicts the Clean Water Act, which to my understanding, protects all species that are aquatic or aquatic-dependent, whether or not they are Federally listed, as the presence of one of these constitutes an “existing use” under the CWA. It is overkill to require both suitable habitat and the presence of the few species included in the proposed changes. The commenter is also concerned that the data required for a waterbody to be classified an “exceptional aquatic community” are too narrow.

The Department’s ability to conduct site-specific analyses is important to ensure that all deserving waterbodies are protected, and from my reading, the proposed amendments would not allow for these site-specific biological analyses as does the methodology currently in use. For these reasons, the commenter strongly encourages the Department to withdraw its proposal. (47)

RESPONSE TO COMMENT 224: The CWA’s goal is to restore and maintain the chemical, physical, and biological integrity of the nation's waters so that they can support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. The designation of a waterbody as Category One based on the presence of Bog

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Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel and suitable habitat is intended to protect the species from changes in water quality that might affect viability.

The Department agrees with the commenter that site-specific analysis is important to ensure that all deserving waterbodies are protected. The new definition of exceptional ecological significance allows the Department to upgrade the antidegradation designation based upon an exceptional aquatic community which requires a variety of data that indicates the exceptional water quality or the presence of Bog Turtle, Dwarf Wedgemussel, Brook Floater, Triangle Floater, Green Floater, Eastern Pondmussel, and Eastern Lampmussel without any other data. The new definition requires an unimpaired benthic macroinvertebrate result and only two of the four possible lines of evidence to qualify for Category One. Therefore, the Department does not agree that the data requirements and/or threshold for determining eligibility for Category One based upon an exceptional aquatic community are too narrow.

225. COMMENT: Under the Department's proposed standards, nearly all brackish and saline waters will no longer be eligible for Category One status. All of the endangered or threatened species used as trigger points are freshwater species. The Department acknowledged that it has not yet developed a protocol for estuarine or brackish waters to support the alternative trigger of "nonimpaired benthic macroinvertebrate community as measured by the Department's Rapid Bioassessment Protocol." The only brackish/saline waters subject to Category One would be those "approved by the Department for unrestricted shellfish harvest pursuant to Shellfish Growing Water Classification rules at N.J.A.C. 7:12" under the definition for "exceptional fisheries resources." Most saline waters currently listed would not meet that narrow definition, yet are fully deserving of Category One protections for other reasons. It is incredible that a State with three estuaries recognized as of "national significance" would not attempt to protect the integrity of the surrounding watersheds that control the health of the estuaries. The

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commenter urges the Department to correct this significant omission and to re-adopt the current standards. (1, 219)

RESPONSE TO COMMENT 225: The Department does not have a benthic indicator for saline or brackish waters at this time. The Department is developing a benthic indicator that will provide the necessary factor for the exceptional aquatic community in coastal waters. However, it is often overlooked that close to 50 percent of the waters in South Jersey are already designated as either by Category One or Outstanding National Resource Waters (ONRW) which includes FW1 and PL waters. A significant portion of the Atlantic Ocean, Barnegat Bay, and other coastal bays have been designated as Category One. ONRW is the most protective tier of antidegradation designation and are set aside for posterity because of their unique significance. In addition, the Department is developing a Fish IBI for South Jersey. The FIBI along with the new benthic indicator coastal waters, will provide extra data sources to support upgrading coastal waters based on exceptional aquatic community.

226. COMMENT: The Rapid Bioassessment Protocols (RBP) methodology to collect benthic macroinvertebrates requires certain revisions to make it sufficiently reliable for use in the classification process. At a minimum, the number of sampling sites needs to be expanded and a standardized protocol governing the spatial distribution of sampling points must be promulgated. Such a protocol must require sampling stations at the boundaries of the modeled domain, with additional monitoring stations set equidistant from each other to provide data for model calibration and verification. (66, 165)

227. COMMENT: Proposed revisions to the New Jersey Impairment Score (NJIS) system have been promised for several years. The Department should commit to a production date, modify and publish the methodology to adapt this technique to warm water systems as soon as possible. Similar comments apply to the In-stream Habitat Assessment with regard to “a variety of velocities and stream depths”. Once these

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changes have been made, ANJEC might support the mandatory use of the “exceptional” benthic macroinvertebrate criterion to denote an Exceptional Aquatic Community. (16)

228. COMMENT: The commenter generally supports the use of RBP methodology to assess the condition of water quality. However, the current system still appears to be biased toward cold water, low-nutrient, high gradient oxygen rich environments typical of trout production waters (mayflies, stoneflies and caddisflies) and does not accurately assess the quality of warm water or brackish water systems present in much of the southern portion of the state and in some reaches in the north, characterized by low gradient conditions and/or wetland complexes. In its efforts to develop designation criteria for Statewide application, the Department must recognize that the current methodology does not adequately evaluate warm water or brackish water ecosystems. Until such time as the system is modified to address this problem, the mandatory use of the benthic macroinvertebrate community “exceptional” rating criterion should be avoided. (16)

RESPONSE TO COMMENTS 226 THROUGH 228: The sampling and assessment protocols are published at (http://www.state.nj.us/dep/wms/bfbm/download/AMNET_SOP.pdf) and can be utilized by an outside entity who wishes to generate benthic data at unmonitored locations. The Department currently has over 800 benthic monitoring sites throughout the state and the results of this monitoring is readily available. Locations are chosen using a variety of criteria aimed at gaining as complete coverage of the State as possible. The spatial extent for a monitoring station is very site-specific and based upon the impact of other factors such as tributaries and land use.

High and low gradient waters are sampled differently and the RBP for New Jersey was calibrated for use in *both* the high gradient cold water conditions of northern New Jersey and the low gradient waters in the coastal plain. The Department has developed three new genus based biological metrics for benthic macroinvertebrates, each specific to

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one of New Jersey's 3 ecoregions. These metrics are individually calibrated to the three main types of streams found in New Jersey; these being high gradient (north of the fall line), low gradient (coastal plain) and Pinelands waters. The habitat assessment, like the sampling collection methods depend on whether the sampling site is high gradient (above the fall line), on low gradient (below the fall line). Details regarding these metrics and the habitat assessment methods are published at http://www.state.nj.us/dep/wms/bfbm/download/AMNET_SOP.pdf. The Department is also working to develop a benthic macroinvertebrates index for estuarine and coastal water. Once this benthic index is established, the Department will be able to upgrade brackish waters to Category One based on an exceptional aquatic community.

229. COMMENT: The proposal indicates that any exceedance for dissolved oxygen, temperature, total suspended solids or total phosphorous will invalidate a waterbody for Category One designation based on Exceptional Aquatic Community. The very stringent approach advocated is simply not realistic, given the nature of New Jersey waterways, nor does the proposal clearly specify the sampling methodology to be used. (16)

RESPONSE TO COMMENT 229: The Department does not agree with the commenter that unimpaired water quality is too stringent an approach and not realistic. An exceedance of dissolved oxygen, temperature, total phosphorous or total suspended solids causes a waterbody to be listed as impaired for aquatic life use in the Integrated List. A waterbody that is impaired for aquatic life use can not be considered a waterbody of "exceptional ecological significance" based on its ability to support an exceptional aquatic community. The rule, however, provides for two different paths for Category One designation based on Exceptional ecological significance. Even if the water quality data does not demonstrate compliance with the aquatic life criteria at N.J.A.C. 7:9B-1.14(d), a waterbody may still be upgraded to Category One if it supports the listed endangered or threatened species (bog turtles or freshwater mussels). The Department recognizes that endangered or threatened species may exist in waterbodies that are impaired for aquatic life use.

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The sampling methods for chemical, physical, and certain biological analysis are documented in the Department's Field Sampling Procedures Manual which is available at <http://www.state.nj.us/dep/srp/guidance/fspm>. As indicated in the summary, any monitoring performed which may have regulatory impacts (Integrated Report, permit compliance, Category One upgraded) must be conducted in accordance with a Department approved Quality Assurance Project Plan. In addition, assessment methods used to generate the Integrated List are specified in the Integrated Water Quality Monitoring and Assessment Methods document. A TMDL is required to restore water quality where waters are impaired. See <http://www.state.nj.us/dep/wms/> more information on the Integrated Water Quality Monitoring and Assessment Methods and the Impaired Waters List.

Water Quality

230. COMMENT: The Department needs to reexamine the relevancy of using TSS as the parameter of choice to evaluate chemical water quality in streams in the Inner Coastal Plane being considered for Category One. Either the standard is set too high, or the TSS method, originally developed to measure sewer effluent, is inappropriate for surface water monitoring. The finer the soil particle that is eroded, the more the impairment to the aquatic biology and habitat. Turbidity is the conservative parameter for freshwater streams with soils with fine clay and silt sized particles, like glauconite. Using TSS in these streams will continue to underestimate impacts from runoff, because being weight based, it ignores the biological impacts of the finer soil sizes. Several years ago the USGS determined TSS was inappropriate and stopped using it in their surface water monitoring. (197)

RESPONSE TO COMMENT 230: The Department uses TSS in consultation with USGS because it believes it is the most cost effective method of assessing the potential impacts to biota from suspended particles in the water column. Turbidity, in contrast, is designed to measure light penetration only and is not as effective as TSS in assessing the potential

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impacts. The Department believes that although TSS is a mass-based measure, it represents a subsample with the heavier sands, etc. removed, thereby sensitizing the measurement to the finer silts and clays. TSS and turbidity are both still recorded by the USGS in New Jersey.

231. COMMENT: The Department has excluded, without explanation, other indicators (such as metals and nitrates) that it evaluates in other agency rules pertaining to water quality. The Department should explain its determination to exclude metals and nitrates from its assessment of chemical water quality in assessing a waterbody for reclassification. (66, 165)

RESPONSE TO COMMENT 231: The Department has adopted water quality criteria for metals and other toxics to protect the aquatic life use. Generally, if benthic macroinvertebrate data indicates an unimpaired condition, it is unlikely the metals concentrations are at levels that would exceed the water quality criteria. Therefore, due to the limited availability of metals data, the cost of metals sampling and the use of other types of data that assess aquatic life conditions, the Department decided that limiting mandatory monitoring to dissolved oxygen, temperature, total phosphorus, and total suspended solids was sufficient. The existing nitrate criterion protects drinking water use rather than aquatic life. Reservoirs and natural tributaries, which are eligible for Category One based on exceptional water supply significance, do not require water quality data.

232. COMMENT: The rule proposal indicates that the Department determined that criteria for dissolved oxygen, temperature, phosphorus and suspended solids must be met. The Department should explain the relationship among the factors, their associated criteria, and how they are to be applied. This should be done with sufficient detail to allow interested parties to conduct independent assessments using the Department's methods. The commenter recommends that the Department undertake rulemaking to this end. (66, 165)

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RESPONSE TO COMMENT 232: The Department has determined to consider the water quality parameters of dissolved oxygen, temperature, total phosphorus, and total suspended solids for purposes of determining whether a waterbody supports an exceptional aquatic community. These parameters are readily monitored and are important to maintain a healthy and balanced aquatic life. Because of their importance, the Department has determined that criteria for all of these parameters must be met for this data to serve as part of the basis for upgrading the waterbody to Category One status. To fulfill its obligation to identify water quality limited segments, the Department is required to publish a document known as the Integrated Water Quality Monitoring and Assessment Methods. This document includes the Department's methods for evaluating compliance with water quality criteria and determining whether the water quality supports the aquatic life use. In accordance with N.J.A.C. 7:15-6.2(e), the Department provides the opportunity for public comment. Therefore, rulemaking as suggested by the commenter is not needed. More information on other sources of data used to develop the Integrated Report, monitoring results and assessment decisions is available at <http://www.state.nj.us/dep/wms>.

233. COMMENT: New Jersey Farm Bureau is very concerned that there is an inconsistency in the categorization of surface water bodies. While there are numeric criteria used in these rules for surface water quality, some streams are classified only by subjective criteria like scenic setting. Streams that are considered for high water quality should be classified by specific measurable numeric criteria only. Therefore, New Jersey Farm Bureau suggest that all streams that receive Category One protection meet measurable criteria like the New Jersey Surface Water Quality Standards, for example, nutrients, metals, toxics, and physical properties like temperature and clarity. Therefore, the commenter believes no waterbody that is listed on New Jersey's 303 lists as "impaired" should be classified as FW1 and receive Category One protection. (72, 160)

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RESPONSE TO COMMENT 233: The Department determined that a waterbody must meet criteria for those critical water quality parameters (dissolved oxygen, temperature, total phosphorus, and total suspended solids) that are important to maintain a healthy and balanced aquatic life and are readily monitored as part of the exceptional ecological significance definition. In order to be designated as Category One a waterbody should meet an unimpaired macroinvertebrate community and also meet two of the four following data requirements: habitat, water quality criteria for the listed parameter, FIBI, and/or low impervious cover. It is possible for a waterbody that is listed on 303(d) list as impaired for bacterial indicators to be Category One or FW1. An FW1 is a better antidegradation designation than Category One. FW1 classification is part of a highest antidegradation designation of Outstanding National Resource Waters.

234. COMMENT: The rule proposal notes that “benthic macroinvertebrates have limited migration patterns, or a sessile mode of life” (39 N.J.R. 1848); in other words, benthic macroinvertebrates do not “move.” Yet the rule proposal, without scientific justification, would regulate the full length of the stream where nonimpaired benthic macroinvertebrates are found. There is no reason to regulate waters downstream from the organism; and doing so would not be reasonably related to the purpose of the rule. (66, 165)

RESPONSE TO COMMENT 234: Exceptional ecological significance based on an exceptional aquatic community will include stream and tributaries within the HUC 14 subwatershed. The Department has utilized the same approach documented in the Department’s Integrated Water Quality Monitoring and Assessment Methods Document. A waterbody being evaluated based upon the presence of an exceptional aquatic community is based upon several types of data. If a benthic macroinvertebrate monitoring station is impaired, the entire HUC 14 is listed as impaired. Similarly, if the benthic macroinvertebrate monitoring station is unimpaired and no other data indicates aquatic life impairments, then the HUC 14 is listed as fully attaining the aquatic life use. However, depending on the location of the monitoring station (for example, above a dam

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or a lake) the data may not be justified for the entire HUC 14 therefore, the designation of Category One also may be limited to a portion of the HUC 14. Also see response to comments 138 through 139 for more information.

235. COMMENT: The Department should standardize the approach for determining what would be deemed to be “optimal habitat” based upon defined measures of the key factors (for example, “variety of habitats”, degree of siltation or channelization, and variations in velocity/depth). Such specificity must demonstrate how a change in the waterbody’s designation would affect the habitat’s water quality. In this way, independent analysts will be able to replicate the analyses and assess how changes in any of the above factors would alter water quality. The commenter recommends that the Department undertake a new rulemaking to this end. (66, 165)

RESPONSE TO COMMENT 235: The Department does agree with the commenters’ suggestion to undertake a new rulemaking regarding habitat assessment measures. Optimal habitat is an indicator of biological integrity. A stream with a variety of habitats should support a diverse aquatic community. The habitat assessment is a standardized assessment method developed by USEPA and refined specifically to accurately characterize the habitat quality of New Jersey waters (see <http://www.state.nj.us/dep/wms/bfbm/rbpinfo.html>). As explained in the Summary of the rule proposal, optimal habitat is one of the four factors (instream habitat, fish community, water quality, or impervious surface) required in addition to an unimpaired benthic macroinvertebrate community to upgrade a waterbody to Category One designation. Habitat quality is independent of water quality. It is possible for a site to have optimal habitat but poor benthic macroinvertebrates which suggests a water quality related problem.

FIBI

236. COMMENT: The proposal does not explain the scientific basis for requiring a waterbody with an “excellent fish community” to have no measurable change in its water

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quality. As the FIBI is based upon a statistical analysis of ten metrics, the Department should publish the methodology it uses so that independent parties can evaluate the data and offer comments should discrepancies arise. To justify the fish community factor, the Department should make available the analysis that justifies this standard and afford interested parties a reasonable opportunity to supplement their comments. (66, 165)

237. COMMENT: The proposal notes that the Department's Water Monitoring and Standards Program has an established network of 100 fixed stations in Northern Jersey and intends to have 200 stations Statewide to monitor FIBI. The Department should make the locations of these stations and their data publicly available; it should also explain the bases for determining the placement of the stations. (66, 165)

238. COMMENT: The Department does not yet have in place an Index of Biotic Integrity ("IBI") monitoring network or standard for fish assemblages in South Jersey streams or for estuarine or brackish waters. The unique characteristics of South Jersey waters require some modification in the Department's approach so as not to render the IBI standard arbitrary when applied to South Jersey waters. The Department must adopt an interim standard for South Jersey streams so that petitioners or Department staff can rely on this criterion for listing South Jersey waters. (1, 219)

239. COMMENT: The commenter supports the use of the FIBI to support the designation of an "Exceptional Aquatic Community". However the commenter fails to see the direct relevance of the existing 100 station northern New Jersey network or the proposed expansion of the network to the evaluation process for particular streams or stream segments being proposed. The commenter acknowledges the importance of establishing "regionally expected species" however. (16)

RESPONSE TO COMMENTS 236 THROUGH 239: As indicated in the Summary of the rule proposal, the FIBI is an ecological indicator used by the Department to evaluate the environmental health of a waterbody. The principal evaluation mechanism utilizes

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the technical framework of the Index of Biotic Integrity (IBI), a fish assemblage approach developed by Karr, 1981 (Assessment of biotic integrity using fish communities. *Fisheries* 6(6):21-27). The IBI incorporates the zoogeographic, ecosystem, community and population aspects of the fish assemblage into a single ecologically based index. Calculation and interpretation of the IBI involves a sequence of activities including: fish sample collection; data tabulation; and regional modification and calibration of metrics and expectation values. This concept has provided the overall multimetric index framework for rapid bioassessment. Data are currently being collected for the planned expansion of the network to include both portions of southern New Jersey and the State's headwater streams with the goal of having a statewide 200 station network. For a current list of stations and a description of the FIBI evaluations and copies of reports visit the Department's website at <http://www.state.nj.us/dep/wms/bfbm/fishibi.html>.

Impervious surface

240. COMMENT: The Department includes impervious surface as an additional evaluation factor for "exceptional ecological significance - exceptional aquatic community", due to "a strong relationship between the percent impervious surface in a watershed and the watershed's overall health."

Based on the proposed criteria, more than 80% of the state's impervious surfaces would be eligible for Category One classification as "exceptional waters." This ignores reality and is untenable if the State's economy is to grow. However, if the Department is inclined to retain impervious coverage as a classification standard, it must develop criteria and administer them through a process that recognizes long standing State policies to encourage future development and redevelopment in areas of the State where people live and work (where impervious cover is already present). Rather than attempting to refine the impervious coverage standard, the Department should abandon impervious cover as an evaluation factor for exceptional aquatic community. (66, 165)

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241. COMMENT --: The concept that exceptional aquatic habitats should be based upon the amount of adjacent impervious surface sounds like an excuse for disqualifying an area that in reality is exceptional. (195)

RESPONSE TO COMMENTS 240 THROUGH 241: The Department does not agree with the commenter that impervious cover should not be considered as a factor in determining whether a waterbody qualified for Category One based on an exceptional aquatic community. A waterbody is not eligible for an upgrade to Category One based solely on impervious surface. Rather, as explained in the Summary of the rule proposal, in addition to meeting the impervious surface criteria, a waterbody with an unimpaired benthic macroinvertebrate community must also demonstrate exceptional ecological significance in one of the following factors: instream habitat, fish community, or water quality. The Department selected impervious surface as an alternate indicator of the aquatic community because watersheds with relatively low levels of impervious surfaces tend to reflect an intact biological community or unimpaired waterbodies.

242. COMMENT: The criteria for “exceptional” are too stringent. The impervious cover limit should be raised from 2% to 10% for a HUC 14 of five square miles or less. (64, 227)

243. COMMENT: The commenter is concerned about the exceptional aquatic communities, where the amount of impervious surface which would exclude a stream from consideration is defined as 2% for drainage areas under 5 square miles and 10% for drainage areas over 5 square miles. This does not seem to us to make any scientific sense, despite the reasons given for the proposal. The commenter notes that there are extensive habitats of endangered species in our watershed and surrounding areas and from local observations. Why would 2% be appropriate for smaller subwatersheds and 10% be suitable for larger subwatersheds. Smaller and larger subwatersheds may be and probably are adjacent to one another, and the creatures under consideration for protection don't know which subwatershed they are in and some of those creatures are quite capable

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of moving from one to the other and maybe back again. To exclude such habitats by setting such a low impervious surface limit as 2% for smaller subwatersheds is equivalent to a death sentence for those habitats. This doesn't sound like the way the habitat should be protected nor does it seem to be in keeping with the Clean Water Act.

The commenter questions whether 10% is an appropriate maximum for exceptional aquatic communities for a more than 5 square mile subwatershed. Again, this relates to whether the goal is to protect the status quo or to try to improve the health of the habitat. The commenter believes that it should be the latter. (65)

244. COMMENT: The 2% impervious surface threshold for subwatersheds less than 5 square miles, is based on only one general reference regarding trout, and is arbitrary and capricious when applied to the coastal plain and estuarine areas (non-trout) of the State. (5)

245. COMMENT: The proposed thresholds for percent of impervious surface for Category One do not take the concept of "Effective Impervious Area" into consideration. The prevailing assumption in this new rule proposal is that all impervious surfaces in a subwatershed are directly connected to surface water, and that no impervious surfaces are properly managed for runoff and therefore will automatically degrade surface water quality. These proposed standards are almost completely the opposite of development standards that permit development based on stormwater management measures that will disconnect stormwater from surface water as a condition of development approval. If none of these practices will work, and therefore any impervious surfaces over 10% will automatically degrade water quality, then perhaps no development over 10% of any subwatershed in the State should be permitted to protect water quality from certain degradation. (5)

246. COMMENT: The Department should refer more closely to the Impervious Cover Model (ICM) as developed and presented by Tom Schuler and the Center for Watershed Protection for guidance in setting impervious surface thresholds for Category One

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designation. Our interpretation of the ICM is that small subwatershed degradation tends to occur when impervious surfaces begin to exceed 10%. One reference recommended is “An Integrated Framework to Restore Small Urban Watersheds” from the Center for Watershed Protection’s Urban Subwatershed Restoration Manual Series. The Department might find the “Appendix A: Derivation of Predictions for the Impervious Cover Model” section of this reference especially pertinent to the establishment of impervious surface threshold limits that are more realistic than 2%. (5)

REPOSE TO COMMENTS 242 THROUGH 246: Impervious cover is a surrogate of the biological condition. Impervious cover is only used to qualify a waterbody as Category One based upon an exceptional aquatic community if benthic macroinvertebrate sampling indicates no impairment. The impervious cover thresholds in the definition of “Exceptional Ecological significance” are not development standards but an indicator of the current disturbance and potential impacts to the aquatic community. Any amount of impervious surface will begin to have some effect on a watershed, but the evidence of such impacts may be more subtle and initially much less noticeable in larger subwatersheds. A watershed’s overall “ecological infrastructure,” which includes waterways, would most likely still be intact when the impervious surface is relatively low, and therefore is expected to be of exceptional ecological value. Because of the relationship between the impacts of impervious surface and watershed size, the Department determined to establish two thresholds for impervious surface based on the watershed size. As indicated in the Summary of the rule proposal, when a watershed has more than 10% impervious surfaces, water quality impacts typically yields demonstrable loss of aquatic system function. Therefore, the Department selected 10% as the maximum level present that would still represent an exceptional aquatic community in a watershed with more than 5 square miles of drainage. Since headwater watersheds are more sensitive to impacts, a lower threshold for impervious surfaces was selected. However, since impervious cover is a surrogate of the biological condition, it is unlikely that an unimpaired benthic community would exist in headwaters watershed where the impervious cover exceeded 2%.

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247. COMMENT: The commenter supports the use of impervious surface levels as a surrogate for assessing waterway condition. The commenter support and concur with the 10% impervious surface threshold as an indicator of overall watershed condition. However, cannot tell from the proposal information how the 2% criterion was selected for small (less than 5 sq. mi.) subwatersheds. Furthermore, it is unclear how the Department will apply these “bright line” indicators. Will they be applied on the basis of HUC 14 boundaries or some smaller, “or even smaller tributary”, watershed? The use of the term “headwaters” seems to be tied to subwatershed size. This is contrary to established practice of defining headwater based on stream order and results in not only semantic but administrative confusion. The Department should clarify both its rationale for selecting the 2% threshold and its application methodology. Finally, if the Department is to adopt these criteria, it should make clear mapping readily available to the public and municipalities. (16)

RESPONSE TO COMMENT 247: There are slightly less than 1,000 HUC14s in New Jersey which vary in size from 0.1 to 42 square miles and average about 8.5 square miles. In the Summary of the rule proposal, the Department explained that the scale to be used to assess impervious cover as a factor in qualifying a waterbody for Category One is a HUC 14 watershed. Subwatersheds less than five square miles in size are considered headwaters whose biological populations have been found to differ from those in larger (greater than five square miles) watersheds. Some of the biological populations in these smaller, headwater stream watersheds have been shown to be more sensitive to lower levels of impervious surface. Other research found that brook trout were not present when the watershed had greater than two percent impervious surface. (Boward, D., Kazyak, P., Stranko, S., Hurd, M., and Prochaska, A. 1999. *From the mountains to the sea: The state of Maryland’s freshwater streams*. U.S. Environmental Protection Agency. Office of Research and Development. EPA/903/R-99/023. 54pp).GIS coverage of HUC14s is readily available from the Department’s GIS website at <http://www.nj.gov/dep/gis/>. Although technically possible to calculate impervious cover

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at smaller tributary scale, the determination for Category One is based on the HUC 14 watersheds.

248. COMMENT: The commenter noted that on the State I-Map, impervious surface overlay, up to 20% is the first category. There is some difficulty in determining practically any subwatersheds which would be eligible under the proposed rule, unless much more data is available. Also, the commenter notes that there are many errors on I-Map. Many areas are shown as higher impervious surface than is known to be so in fact. For example, some large town parks which are almost totally natural. There are also many errors in showing the details of streams. Some streams are shown where they don't exist and some are not shown where they do exist. The commenter questions the practical implementation of the proposed rule in these types of cases. (65)

REPOSE TO COMMENT 248: The current version on NJ I-Map can not be used to determine impervious cover for a HUC 14. Impervious cover is only needed to support a Category One designation based on an exceptional aquatic community. The waterbody must have data that indicates the benthic macroinvertebrates are not impaired and at least two other indicator of exceptional ecological value. If other types of data are not available, the Department will calculate the impervious cover to determine if the waterbody would qualify for Category One designation based on 2002 Land Use Land Cover dataset available from the Department's GIS website.

249. COMMENT: Table A in the proposal is missing a threshold value at Impervious Surface, Exceptional Ecologic Value, HUC 14. The commenter assumes the value to be 5 sq. miles. The value should be provided. (16)

REPOSE TO COMMENT 249: As published at Table A in the New Jersey Register at 39 N.J.R. 1847, the impervious surface values recommended by the Department are shown in column 2 under the subtitle "Exceptional". These values are: nonimpaired benthic macroinvertebrates, optimal habitat, excellent fish community, meeting Water Quality

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criteria for dissolved oxygen, temperature, total phosphorus, and total suspended solids, and impervious surface that is less than equal to 2% for a HUC 14 less than or equal to 5 square miles drainage areas or less than 10% for a HUC 14 greater than 5 square miles.

Spatial extent

250. COMMENT: To assure that reclassifications which encumber the use of private property are justified, there must be an objectively determined relationship between the scope of the restrictions and a valid public purpose (in this instance, protection of a designated species). This can be accomplished only through rules that specify the procedures for calculating the size of the regulated area based on scientific data relating to the characteristics of the species, the waterbody and its drainage basin. The commenter recommends that the Department undertake rulemaking to this end. (66, 165)

RESPONSE TO COMMENT 250: The SWQS determines the spatial extent of the stream applicable to provide necessary protection to the exceptional waters based on exceptional ecological significance, exceptional fisheries resource, or exceptional water supply significance. Antidegradation policies for new and expanded discharges are required to demonstrate that the existing water quality is maintained at the Category One boundary. The Department uses the stream classifications and/or antidegradation designations to determine other permit requirements. Therefore, the size of the regulated area is determined pursuant to other regulatory programs of the Department that require buffers along Category One waters.

Exceptional Fisheries

251. COMMENT: The Department proposes to include within the definition of “exceptional fisheries resource(s)” those waterbodies approved by the Department for unrestricted shellfish harvest pursuant to Shellfish Growing Water Classification rules at N.J.A.C. 7:12.

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The shellfish harvest waters, and so the shellfish industry, are provided adequate regulatory protection under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19) and its associated program rules. The Department should not substitute its preferences for the policy determinations of the Legislature. For the reasons above, the commenter recommends that the definition of "exceptional fisheries resource(s)" should, if the Department decides to adopt it, be revised to reflect the comments above. (66, 165)

252. COMMENT: The Department proposes to designate as Category One waters those supporting trout production and classified as FW2-TP. FW2-TP waters are already afforded adequate protection under other regulations administered by the Department. The proposal offers no explanation or scientific evidence to support the potential reclassification of these waters. It should not be adopted. (66, 165)

253. COMMENT: The proposed "exceptional fisheries resources" standard is limited to trout and shellfish, but New Jersey anglers fish for more than trout or shellfish. The Department should return to a holistic standard or should adopt an interim standard for non-trout exceptional fisheries resources. Please explain the Department's interim approach for addressing this concern about regional imbalance. (1, 219)

RESPONSE TO COMMENTS 251 THROUGH 253: The Shellfish Growing Water Classification rules, N.J.A.C. 7:12, identify areas where unrestricted harvest is allowed based upon water quality assessment. N.J.A.C. 7:12 does not impose restrictions designed to maintain existing water quality so that unrestricted harvest may continue. Every year, the Department evaluates the existing water quality and determines whether these areas remain safe for shellfish harvesting. Including unrestricted shellfish harvest in the definition of exceptional fisheries resources will provide protections to maintain water quality. In addition, the Department includes streams classified as FW2-TP as an exceptional fisheries resource. The existing SWQS include more stringent water quality criteria for dissolved oxygen, temperature and total suspended solids. The Freshwater Wetlands Act rules and the Flood Hazard Area Control Act rules also include more

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stringent requirements for FW2-TP waterbodies including restrictions on when activities may occur. Since 1985, streams that were classified as trout production were also upgraded to Category One based on the existing definition for Category One.

The new definitions establish objective means for identifying exceptional waterbodies, regardless of location, which warrant additional protections afforded by Category One designation. This approach will not correct any perceived regional imbalance in the number of miles designated as Category One in South Jersey. As indicated in Response to Comment 50, waters within the boundaries of Pineland Protection and Preservation Area are designated as PL and can not be designated as Category One.

The Department is working with the Division of Fish and Wildlife to identify other fisheries resources that may benefit for additional water quality protections afforded by Category One designation. The Department may incorporate additional types of fisheries in the definition of exceptional fisheries resource in a future rulemaking.

Water Supply

254. COMMENT: Every waterway that is a source of drinking water should have a Category One designation. (98, 99, 150, 186, 187, 188, 268)

255. COMMENT: The Department should adopt the proposed new definition for “exceptional water supply significance” that includes water supply systems that serve a population greater than 100,000, including any reservoirs and their natural tributaries from the sources to the reservoirs. (43, 190, 117)

256. COMMENT: Since the development of new water supply reservoirs is unlikely, it is essential that in addition to protecting existing reservoirs, maximum protection should be provided to the natural tributaries and feeder streams of the reservoirs as well. (43, 190)

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257. COMMENT: The definition of “exceptional water supply significance” is currently applied only to waters supplying a population of greater than 100,000. Smaller communities that depend on surface water should also have their water supply intakes protected, so the criteria should be lowered to waters supplying populations over 10,000. (64, 227)

258. COMMENT: It is inappropriate to make a rule that all water supplies serving a population of 100,000 or less cannot be upgraded from the bottom tier of antidegradation protection to Category One. (260)

259. COMMENT: The commenter is concerned about the proposed definition of exceptional water supply significance which states, "Water supply systems that serve a population greater than 100,000." The commenter questions the number 100,000 as being excessively large. Smaller reservoirs in the Highlands which should be given equal protection. The recipients who depend on them for drinking water really should get the same level of protection. Especially since New Jersey's water supplies are finite and limited, all should be protected. These include the Butler Reservoir in Morris County, Butler-Kakeout Reservoir in Morris County, Mine Hill Reservoir in Morris County, Morris Lake, which the commenter believes is in Newton Reservoir in Sussex, and Clyde Potts Reservoir in Morris. (59)

260. COMMENT: The Department should continue to have the discretion to designate as Category One under the Exceptional Drinking Water Supplies criteria such water bodies that provide drinking water for fewer than 100,000 people. With our State continuing to grow, and legitimate concerns being raised about the future of our drinking water supplies, it does not make sense to limit which water bodies can be protected for their importance to drinking water supplies in this manner. (26, 175, 237, 244)

261. COMMENT: The Department is putting an artificial numeric cap on the size of water supplies, and proposes that only those waterbodies serving more than 100,000

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people should qualify for that category. This numerical restriction does not conform to the governing law or to the appropriate factual context for several reasons. The commenter notes that neither the Federal Clean Water Act rules for designated uses nor the governing State statutes include any population cut-off. See 40 C.F.R. 131.3 and 131.10. Please explain how the 100,000-person cutoff is consistent with Federal and State law. (1, 219)

262. COMMENT: The cap fails to account for systems that might serve smaller communities, and would preclude protecting such systems through the Category One program even if the waterbody in question is the sole source for a particular community. Small communities are even less able to bear the costs of end of pipe filtration solutions. The Category One program should not discriminate against such users or subject water protection to arbitrary municipal and water system boundaries. Moreover, the cap fails to consider that smaller systems may serve as a crucial backup to larger systems. Please explain how the 100,000-person cutoff is not arbitrary. (1, 219)

263. COMMENT: The 100,000-person cap for Water Supply Significance is measured by present use and therefore does not properly consider the importance of protecting surface waters with the potential to be future water supplies. The Department has to be proactive on this issue. Aquifers are overdrawn in many parts of the State. This manifests itself in declining yields or, along the coast, in saltwater intrusion. Just one example is that United Water Toms River has exceeded its 554 million gallons per month water allocation permit for 2001, 2002, 2004 and August 2005, and Department banned almost all new connections in September 2005. Although the Toms River itself is not currently used for drinking water, and certainly not for 100,000 people it is entirely foreseeable that it will be in the future. Please explain how the proposed standard is consistent with Department's mandate to protect future water supply resources. (1, 219)

264. COMMENT: Setting a minimum quantity of customers limit for Category One eligibility is irrational and does not relate to the quality of the drinking water, which

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should be the overriding concern. Also, the Department should be bearing in mind that all drinking water currently provided in the State is valuable, a larger population of the State is predicted and no more water supply is likely to be created. (65)

265. COMMENT: The commenter supports the concept of using the water supply significance of a water body as a criterion of Category One designation. However, the selection of the 100,000 population threshold is not sustained in the proposal. Determination of this threshold with the required degree of precision will prove extremely troubling for the Department. Exact “population served” numbers do not exist and cannot be rationally expected to ever exist. Alternatively, the Department could utilize allocation numbers, rather than population served as a basis. However, additional problems remain. Due to the interconnected nature of water supply systems it is difficult to determine what the service population from a discrete source is at any given time. “Population served” will rise or fall based on operational decisions. Small surface systems would seem to be ineligible for nomination under this criterion. From an equity standpoint, the water supplies of small populations are equally important as those for large populations. Additionally, small stream systems typical of smaller supplies are more sensitive to impact in their riparian areas than are larger streams. Both these factors argue for reducing the population served threshold. The application of this criterion literally would allow its use on the entire Delaware drainage upstream of Trenton, in the Raritan upstream of the Bound Brook intake and in most of the Passaic basin. While ANJEC strongly supports the protection of water supplies, the Department should be aware that the current threshold would render large portions of potable drainages eligible for Category One designation. (16)

266. COMMENT: The concept that a drinking water source should serve a population greater than 100,000 (Milltown, New Brunswick, and Franklin Township together exceed that) disregards how critical a source would be for the few it might serve, and also, the potential capacity of the water source to serve more. There appears to be no scientific basis for this criterion. (195)

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267. COMMENT: There are other interests who would not like to see further Category One rulings in our county and throughout the state. Developers, for instance, see such rulings as merely decreasing opportunities for them. However, profits that lead to degradation of the environment will lead to costs for all eventually. And with New Jersey likely to be the first state in the Union to be built out, the time for us all to pay may be sooner than some think. Plus the issue that potable water has already become such a valuable commodity in many places in our country, hemisphere, and on our earth in general. (195)

RESPONSE TO COMMENTS 254 THROUGH 267: All freshwaters are protected for drinking water use, whether part of an existing water supply system which services more than 100,000 people, less than 100,000 people or not used for water supply. The Department is extending additional protections to reservoirs and tributaries to reservoirs which provide drinking water to more than 100,000 by designation these waterbodies as Category One based upon exceptional water supply. Additional protection of reservoirs is necessary because they are a major source of drinking water for the State, demand for water will continue to increase, additional development and growth will have a negative impact on water quality, pumping from rivers with significant landscape alterations limits pumping opportunity, treatment technologies are becoming increasingly expensive, and opportunities for expanding reservoirs are limited. Supplying the reservoir with clean river water has become more challenging in recent years as growth and development continues in the watershed. It is imperative to protect all waters that supply and replenish the reservoir system. At this time, the Department is adopting the definition of exceptional water supply significance where the water supply system serves a population greater than 100,000 at this time. Based on this definition, the water intakes located on the Delaware River, Passaic River and Raritan River would not qualify a waterbody for Category One based on exceptional water supply significance. Any changes to the definition to reduce or eliminate the population factor or include waters that are not tributaries to a reservoir would require formal rulemaking.

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268. COMMENT: The Department should more precisely define what constitutes a “water supply system” in the context of this proposal, explain its choice of criteria as to the appropriate size of such systems in its classification regimen, and specify the procedures for calculating the size of the regulated area based upon scientific data relating the characteristics of individual water supply systems to their surface sources and the related drainage basins. The commenter recommends that the Department undertake rulemaking to this end. (66, 165)

RESPONSE TO COMMENT 268: The Department is adopting a definition for exceptional water supply significance. A water supply system includes the infrastructure (storage reservoirs, water treatment plants, and the pipes to deliver water as needed) to control and manage water supply to assure an adequate and safe supply under a variety of conditions. For the purpose of exceptional water supply, the water supply reservoirs and natural tributaries to water supply reservoirs qualify for Category One designation provided that the system serves a population greater than 100,000. The Department determined that it was appropriate to designate natural tributaries from the headwaters (source) downstream to the confluence with the reservoir since activities upstream of reservoirs can affect the water quality in the water supply reservoirs.

269. COMMENT: The proposal’s rationale for using “exceptional water supply significance” as a factor for surface water classifications ignores the water quality impacts of the Department’s numerous other development-restricting regulations; the enactment of regional development bans (for example, Highlands and Pinelands Preservation Areas) to protect water-supplies; and technological advances in protecting and augmenting water supplies. (66, 165)

RESPONSE TO COMMENT 269: While other Department rules may positively impact water quality, the Department believes that additional protections, provided for in the Department's land use regulations (Flood Hazard Area Control Act rules N.J.A.C. 7:13

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and the Stormwater Management rules N.J.A.C. 7:8), for Category One waters, are warranted in order to ensure that there is no measurable change in water quality. Where there is regulatory overlap, such as the Highlands Preservation Area, a Category One designation continues to be relevant for projects that are exempt from the Highlands Water Protection and Planning Act rules and yet may still impact water quality.

270. COMMENT: The Department should develop a method for protecting river intakes using a technique that is at least as protective as the Category One approach, if it itself is not used. An example of an alternative approach would be for the Department to adopt proactive Total Maximum Daily Loads for waters upstream of such intakes, where the target water quality is the more stringent of existing water quality or the Surface Water Quality criteria. Whichever method is selected, equal protection of the river intakes for public water supply systems is critical. (231)

271. COMMENT: “Run of the river” intakes require at least equally protective approaches to reservoir intakes, because river water quality is much more variable and vulnerable. The Department should clarify the definition of exceptional water supply significance so that the river intakes are given at least equal weight. (231)

272 COMMENT: Streams that have a direct influence on major well fields should be included under the water supply criteria since many of these wells are dug directly in the floodplain next to the stream and are pulling drinking water virtually directly out of the stream. (64, 227)

RESPONSE TO COMMENTS 270 THROUGH 272: The Department did not include “run of the river” water intakes or streams that are directly influenced by ground water wells in the definition of waterbodies that would qualify for Category One designation as exceptional water supplies. Pursuant to N.J.A.C. 7:9B-1.5(h)1.viii., regulatory mixing zones, are prohibited 1,500 feet upstream and 500 feet downstream of potable surface water intakes. Therefore, a NJPDES permit issued to a facility seeking a new or

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expanded discharge would receive effluent limitations that would maintain water quality upstream of the intake. This measure provides the same level of protection from point source dischargers as the designation of the waterbody as Category One. The new Flood Hazard Control Area rules require permittees to maintain the existing riparian zone. The size of the riparian zone is based on stream classification and ranges from 50 feet to 300 feet. Ground water used for water supply purposes is protected through the Ground Water Quality Standards and is not appropriate basis for designating a stream as Category One.

273. COMMENT: To not protect any current drinking water supply in the State by appropriate classification with appropriate buffers would seem to designate that water supply as second class and to permit it to degrade and eventually to disappear as a drinking water supply. Such an outcome would seem to be contrary to the need to provide more drinking water supplies for an increasing population and to also be contrary to the Clean Water Act's goal to "restore". It also would say that the customers of any drinking water supply without appropriate Category One protection are being treated as second class citizens and water customers. (65)

RESPONSE TO COMMENT 273: As indicated in response to comments 254 through 267, all freshwaters are protected as drinking water supplies. The antidegradation designation is a proactive measure that applies to new and expanded discharges and activities.

Exceptional Recreational Significance

274. COMMENT: The Sierra Club is concerned that there is no definition for "exceptional recreation value." The commenter believes that, at a minimum, the seven river systems that are designated "wild and scenic" in New Jersey should meet this standard automatically by virtue of the Federal designation. Areas that are already major access points for fishing, canoeing, and other water-dependent activities should also be

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included, as should those rivers on which the state is actively pursuing buying access points for recreational purposes should also be included. (64, 227)

275. COMMENT: Rivers that are Federally designated as "wild and scenic," by definition should meet the State's criteria for preservation due to scenic value. Streams in the Highlands and Pinelands regions are also both scenic and recreational; in fact, this is one of the major reasons why New Jersey passed legislation to preserve those regions. (64, 227)

276. COMMENT: Any rivers that are designated or about to be designated as wild and scenic or qualify for it should be also designated as Category One. (163)

277. COMMENT: The commenter urges the Department to rethink that part of the proposal and at least adopt an interim guideline while looking for a final definition. Lots of waterways will be lost if they are not protected now. Perhaps other statutes in the State can be considered. Green Acres uses actual use as one of their criteria for establishing open space. (105)

278. COMMENT: The commenter strongly urges the Department to propose a definition for exceptional recreational significance. The presence of protected open space, including all levels of government and non-profit lands and lands that are on the municipal Recreation and Open Space Inventory (ROSI) list, should qualify a water body for exceptional recreation significance. And obviously, designation as part of the National Wild Scenic River System should as well. (59)

279. COMMENT: All waters that meet the criteria for "wild" and "scenic" rivers under State and Federal law should be listed as Category One waters, regardless of whether the waters are not yet formally nominated to Wild and Scenic River status. "Wild" rivers are those that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. See N.J.S.A 13:8-

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48; 16 U.S.C. § 1271. "Scenic" waters are those that are readily accessible by road or railroad that may have some development along the shoreline or have undergone some impoundment or diversion. N.J.S.A 13:8-48; 16 U.S.C. § 1271.

The Department's determination of "exceptional recreational significance" should not follow any rigid formula. Rather, the Department should consider actual proven use, suitability for use, scenic and aesthetic value and other holistic concerns. The purpose of Category One protection is to protect the aesthetic value and ecological integrity of the waters. A standard that includes suitable use fulfills that purpose. If the Department were to wait for proven use figures, it is likely that the waterbody in question will no longer be appropriate for recreational purposes. The Department must leave open the possibility that waterbodies which are not presently in use may still be fit for use. (219)

280. COMMENT: The Department must adopt some working standard for exceptional recreational significance, even if it is interim or subject to later refinement because of the statutory mandate to protect recreational water resources. Otherwise, the Department will not list waters that are important recreational resources, and it will not protect the scenic, aesthetic and recreational attributes of rivers, in contravention of statutory standards. At an absolute minimum, the Department must employ an interim standard in the Category One program that reflects the standards that the Department uses in the Green Acres, New Jersey Wild Rivers and Scenic Act, and other statutory and regulatory programs that form its mandate to conserve recreational and scenic resources. Broadly defined, these standards include "actual use," "suitable," "wild" and "scenic" waters.

Actual use for recreation is the key to Green Acres and other recognition of candidate resources. In addition, actual use is the standard under the existing definition of Category One waters that the proposed rule would change. Neither program adopts any minimum threshold for exceptional use, and the new Category One rules should not either. For example, waters that are and should remain categorically eligible for Category One listing include:

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- waterbodies that provide a link to recreational areas and/or open spaces, including but not limited to parks, beaches, piers, fishing areas, etc. (see existing N.J.A.C. 7:9B-1.4, "Category One" definition, and New Jersey Green Acres Program, N.J.A.C. 7:36-7.1);
 - waterbodies exhibiting local public support as a recreational water that is actively used for recreation by the public, as demonstrated through letters from municipal and county planning boards, park agencies, recreation departments, user groups, and the general public (see New Jersey Green Acres Program, N.J.A.C. 7:36-7.1); and
 - waterbodies contributing to or promoting the biological integrity of a Natural Areas System, for example, where a conservation preserve or ecological preserve depends on the watershed surrounding the area, as listed in N.J.A.C. 7:5A-1.13.

The Department should consider suitability for recreation sufficient for exceptional recreational significance. Hard data and information on the recreational use of waterbodies are either unavailable or unreliable. Moreover, the lack of recreational use may be due to poor advertisement, lack of public access, lack of knowledge, low population density and other reasons unrelated to the characteristics of the waterbody itself. The Department should consider future recreational use, even if waters are not well used for such purposes at present. Recreational usage of all resources will tend to increase due to population growth, and increased usage is even more likely for those resources identified as significant assets, such as Category One waters. (219)

281. COMMENT: The Department should remove the term "exceptional recreational significance" from the definition of "Category One waters." While the proposal implies that "recreational activities" are equivalent to the other bases (ecological, water supply, fisheries), they may be antithetical to them. Recreational activities could in fact have an adverse effect on the water quality of that waterbody. By way of example, the rule proposal lists "factors that might be utilized to identify waterbodies for Category One designation based on exceptional recreation significance could include the presence of

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open space, designated bathing beaches, water quality fish stocking events, canoe, kayak and/or boat rentals, fishing piers, boat launches, and designation as a National Wild and Scenic River.” 39 N.J.R. 1850. It is conceivable that an oil spill accident may occur from boating activities which would cause a direct negative effect on the quality of that waterbody. Similarly, identifying a protected waterbody as suitable for a bathing beach, canoeing or kayaking activities would also undoubtedly lead to a reduction of water quality of that waterbody. Given the probable detrimental consequences of identifying waterbodies as Category One on the basis of “exceptional recreational significance”, the commenter emphasizes that this is entirely at odds with the underlying purpose of Category One designation provided by the Surface Water Quality Standards. (66, 165)

RESPONSE TO COMMENTS 274 THROUGH 281: As indicated in the summary, the Department is retaining exceptional recreational significance in the Category One definition. The commenters suggested that the Department consider at a minimum waters that qualify under the federal Wild and Scenic program as Category One. The Department evaluated this suggestion and determined that almost all the Wild and Scenic waterbodies are already designated as Category One or ONRW. The commenters also suggested that the Department consider waterbodies that flow through open space be considered as exceptional recreational significance. Open space includes athletic fields, golf courses, campgrounds as well as unique natural areas. However, not all open space need enhanced water quality protection. Further evaluation is needed to select the appropriate types of open space that do warrant the type of water quality protection afforded by Category One designation. Another commenter indicated that exceptional recreational significance should be removed as a basis for Category One designation because the recreational activities could degrade water quality. The Department will review these comments and may determine to propose a new definition as part of future rule revisions. As indicated in the summary, until a definition is proposed, the Department will not use exceptional recreational significance as a basis for upgrading a waterbody to Category One.

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282. COMMENT: The wildlife prong of the Category One listing process also overlaps with the recreational and scenic prong, as the presence of protected species will indicate a waterbody with “exceptional recreation significance” that will attract birders and others who will want to see all protected species that use a riparian area, not just “water dependent” species. (219)

283. COMMENT: There appears to be a complete lack of consideration for other important measures, including recreational significance and aesthetic character. (84, 113, 219, 248, 252)

284. COMMENT: The Department states that “[u]ntil a definition is adopted for waters that qualify for Category One based on exceptional recreational significance, the Department will not upgrade waters based on this basis.” Clean Ocean Action finds this inaction unacceptable. Category One waters have been defined for over two decades. “Exceptional recreational significance” is a part of that definition and has remained undefined. The other “exceptional” bases are also undefined. A lack of definitions for the “exceptional” bases has not limited the Department in the past from using them. For example, the Department has used both “exceptional ecological significance” and “exceptional water supply significance” to upgrade waters to Category One.

Waters are to be upgraded under the definition of “Category One waters,” which is defined. The “exceptional” bases are “characteristics delineated in the definition.” The bases do not need to be defined for the Department to take action. It is inappropriate for the Department to no longer consider a part of the definition for “Category One waters.” To do so is an abdication of the Department’s duty to consider recreational use and value in adopting and revising water quality standards, as required by the Federal Clean Water Act, 33 U.S.C. 1313(c). (260)

285. COMMENT: The Department's stewardship mandate requires that it take proactive steps to protect and develop recreational resources in the State in anticipation of future

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needs of a growing population and dwindling natural recreational resources. Such efforts would be consistent with the restorative principles behind the SWQS in general and the Category One program in particular. (219)

RESPONSE TO COMMENTS 282 THROUGH 285: As indicated in response to comments 274 through 281, the Department believes that it is appropriate to retain exceptional recreational significance as a basis for identifying waterbodies for Category One designation. The Department plans to evaluate the comments received and propose a definition in a future rulemaking. Until a definition is proposed, the Department will not propose a waterbody for Category One designation based on exceptional recreational significance.

Upgraded waterbodies

286. COMMENT: Implement the Category One upgrades currently proposed and change the criteria for, and expedite future upgrades. (242, 243)

287. COMMENT: The commenters are in support of N.J.A.C. 7:9B-1.4 & 1.15 relating to Category One waterways in New Jersey. (5, 12, 15, 17, 20, 25, 28, 35, 42, 47, 60, 90, 91, 2, 101, 112, 117, 120, 145, 149, 164, 167, 183, 191, 192, 193, 211, 214, 226, 232, 256)

288. COMMENT: Clean Ocean Action supports the proposed upgrades of approximately 910 river miles. (260)

289. COMMENT: The commenter agrees with these nominations being based in part on the presence of aquatic-dependent endangered or threatened species and encourages the Department to expand the Category One designations beyond the nominated segments to include more of the waterways and their tributaries. The benefits of Category One designation far outweigh any perceived or real negative impact. (42)

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290. COMMENT: The proposed portions of Pequest River, and the Musconetcong River are tributaries that flow to the lower Delaware Wild and Scenic River therefore, there is a compelling need to upgrade these waterways to Category One. The Pequest River provides for endangered or threatened species as listed in the proposal and also supports species that utilize the Delaware Water Gap National Recreation Area, including bald eagle. Further, Congress has designated the Musconetcong River Wild and Scenic and the river has consistently demonstrated exceptional quality of aquatic habitat as well as a well protected riparian corridor in many areas. The proposed rivers, Maurice River, Oldmans Creek, Pompeston River, and Salem River that flow to the Delaware River downstream of the Lower Delaware Wild and Scenic River and Study Area also meet the requirement for Category One, both in the existing as well as the proposed definitions and criteria. (35, 232)

291. COMMENT: The commenter strongly support the proposed Category One designation of approximately 910 river miles in this rule. The commenter also supports and complete endorses the upgrading of the Highlands streams and the watersheds of the Musconetcong, Wallkill, Pequest, Ramapo, Lamington, Rockaway and Pequannock Rivers. The commenter strongly supports the Category One upgrade of Split Rock Reservoir, which is part of Jersey City water supply system; Oak Ridge and Canistear Reservoirs, which are part of the Newark's water supply; as well as the tributaries to the Wanaque Reservoir which was identified in Forest Service study as the Highlands reservoir that was most threatened by development. (59)

292. COMMENT: The commenter expresses strong support for the proposed designation of the Kymer Brook Lubbers Run, Black Creek, Wallkill River, Pequannock River and Maple Lake. (204)

293. COMMENT: The commenter support the adoption of the proposed amendments and urge the adoption of proposed regulatory changes and their implementation in terms of extended Category One designations in all areas of exceptional water supply

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significance. New Jersey's rising population will increase the demand for safe and plentiful drinking water supplies, and it will bring with it increases in point and non-point pollution to the rivers and streams that provide our drinking water. Since the development of new water supply reservoirs is unlikely, it is essential that in addition to protecting existing reservoirs, maximum protection be provided to the natural tributaries and feeder streams of the reservoirs as well. It makes economic sense for the rate payers, and is critical to the health and well-being of hundreds of thousands of current and future residents of Monmouth County. (43, 190)

294. COMMENT: The commenter expresses support for the proposal to protect the Toms River and other South Jersey streams by designating them as Category One waterways. Protection of our waterways, particularly those included in and adjacent to the Pine Barrens, is important to our entire State. The fragility of the Pine Barrens warrants as much protection as possible from development that would compromise its effectiveness as a drainage basin, not to mention home to rare animal and plant life. (85)

295. COMMENT: The commenter would like to thank the Department for proposing stronger protection for South Jersey's rivers, creeks and streams. Category One protection would help ensure that those waterways will not succumb to the degradation associated with encroaching development. (212)

296. COMMENT: The commenter supports upgrading to Category One designation the portion of the Lamington River from its confluence with Cold Brook to North Branch, Raritan River. The feeders to the Lamington River from the Cold Brook to the Rockaway are exceptionally high quality waters. There are no known contaminants except for elevated nitrogen from some farm animals along the reaches. The commenter strongly endorse Category One designation based on the tested quality of the waters entering the stretch under consideration and the fact that several hundred acres of headwaters of the feeder streams are protected from future development. (223)

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297. COMMENT: The New Jersey Sierra Club strongly supports all the waterbodies the Department has proposed for upgrade to Category One waters. All the 910 miles that have been proposed should be adopted. The Sierra Club is extremely pleased by the inclusion of the Rockaway, the Musconetcong, and the Wallkill in the list of proposed new Category One waterways, especially the Wallkill, where politics has held up the upgrading of that river system for years. The commenter is also very supportive of the use of endangered or threatened species as a criterion for the upgrades, along with the protection of water supply. The commenter applauds the addition of streams in the Highlands Preservation Area to the list, as this will help limit the impact of development on properties that have been grandfathered or excluded from the Highlands Act, and we are glad to see more than 200 miles of streams in the Highlands Planning Area being upgraded as well. (64, 227)

298. COMMENT: The Salem County Watershed Task Force strongly supports the Department's nomination of portions of the Salem County waterways, Maurice River, Oldmans Creek, and Salem River. The nominations are based in large part upon the presence of aquatic dependent endangered or threatened species habitat, and fully agree the identified species habitat are present in the waterways. (148)

299. COMMENT: The commenter strongly support the Category One rule proposal for Toms River, Maurice River, Pompeston Creek, Salem River, Oldmans Creek, Maurice River, and others. New Jersey needs to protect our waterways from pollution and development. (42, 111, South Jersey Bay Shore Coalition)

300. COMMENT: The commenter supports the Category One designation for the Hibernia Brook, Beaver Brook, and Green Pond Brook. (169)

RESPONSE TO COMMENTS 286 THROUGH 300: The Department acknowledges the commenters' support.

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Musconetcong River

301. COMMENT: The commenter is gratified to see that the Department has listed the Musconetcong River for Category One designation. (166)

302. COMMENT: The Musconetcong Watershed Association in support of the proposed amendments to the Surface Water Quality Standards at N.J.A.C. 7:9B-1.4 and 1.15. These amendments would protect the Musconetcong River and its tributaries and help maintain or improve water quality. The commenter strongly support and endorse the upgrading of the Musconetcong River to Category One, as proposed in the rule. (61, 220, 256)

303. COMMENT: The commenters express their support and endorse the upgrading of the Musconetcong River to Category One. The Musconetcong River has recently been added to the National Wild and Scenic River System and is the only river entirely within New Jersey's Highlands region. Increased protection of the river under these amendments will protect the drinking water for watershed residents.

The Musconetcong watershed is experiencing intense development pressure, and protective regulatory mechanisms are essential to protect its exceptional water resources from degradation by residential, commercial, or other development. (12, 15, 20, 25, 28, 90, 91, 112, 123, 145, 177, 211, 214, 226, 256)

304. COMMENT: The commenter supports and endorses the upgrading of the Musconetcong River to Category One. The Musconetcong River has recently been added to the National Wild and Scenic River System and is the only river entirely within New Jersey's Highlands region. The proposed Category One designation is a critical tool that, coupled with the Federal designation of the river, further protects the river's sensitive riparian habitat, plant and animal species and residential drinking water. (107)

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RESPONSE TO COMMENTS 301 THROUGH 304: The Department acknowledges the commenters' support.

305. COMMENT: A review of Table C on page 1856 of the May 21, 2007 edition of the New Jersey Register revealed that there is no data in the last six (6) columns relative to Bowers Brook and Hatchery Brook that support the Category One redesignation under the exceptional ecological significance based on a waterbody's ability to support an exceptional aquatic community. In fact, there does not appear to be any water quality data on the Department website for these waterbodies that support the new Category One status. Since there is no site specific scientific evidence to support the redesignation, the proposed surface water quality classification changes for Bowers Brook and Hatchery Brook should be removed from the amendment altogether. (210)

306. COMMENT: Despite all the development activity that has occurred within the watershed tributary to the segment of the Musconetcong River between Saxton Lake and Hances Brook, and the existence of the Town of Hackettstown, Table C on page 1856 of the New Jersey Register shows that the aforementioned segment is not impaired and the various water quality parameters (DO, temperature, TP, and TSS) comply with SWQC. Thus, there is no reason in our opinion for the State to designate Bowers Brook and Hatchery as Category One waters. Current local, county and State land use regulations, particularly as it relates to stormwater, are sufficient in our opinion to address potential development impacts. (210)

RESPONSE TO COMMENTS 305 THROUGH 306: As explained in the Summary of the rule proposal all chemical water quality parameters within the proposed segment of Musconetcong River from Saxton Lake to Hances Brook are meeting water quality standards and all data applicable to Musconetcong River is shown in Table C. The available data identified for Musconetcong River in Table C for AMNET and habitat at stations AN0069 and AN0069H, and FIBI station 058 also represent the two tributaries, Bowers Brook and Hatchery Brook. The Department believes that tributaries would

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exhibit similar qualities as the mainstem they are flowing into therefore, the unmonitored tributaries are assumed to have the same water quality as the monitored mainstem. As explained in response to comments 138 through 139, exceptional ecological significance under exceptional aquatic community may cover broader area (HUC 14 or subwatershed) than the sampled location.

Category One designation maintains the water quality from further degradation. The fact that the segment of the Musconetcong River between Saxton Lake and Hances Brook meets the benthic macroinvertebrates, habitat, and required water quality parameters makes this portion of Musconetcong River an ideal waterbody for Category One designation.

307. COMMENT: The Mars Hackettstown facility is situated adjacent to the Bowers Brook, a tributary to the Musconetcong River, and thus, the proposed reclassification of Bowers Brook may impair future infrastructure development and expansion plans for the facility and similarly restrict Mars' use of its existing vacant land in the same area. The resulting practical impact of the proposed re-classification may directly impact whether Mars can continue to house its existing manufacturing facility and National headquarters here in New Jersey. This new regulatory barrier may operate with existing physical barriers (the New Jersey Transit railroad line to the south of the existing manufacturing facility and natural embankments to the north and east) to prevent any cost effective expansion of the existing infrastructure. The extension of the buffers to 300 feet could also impact a great portion of Mars' parking areas and prevent any expansion or landscape changes to accommodate the future needs of the facility and its associates. The proposed reclassification of Bowers Brook to a Category One water body could effectively eliminate any possibility for growth at the Hackettstown manufacturing facility. The Department should allow Bowers Brook to remain classified and regulated as a Category Two water body under the Department's rules and regulations. (74)

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308. COMMENT: The change of designation to Category One for Musconetcong River, Bowers Brook, and Hatchery Brook has potential negative impacts to three critical commercial areas in Hackettstown. Impacts to these areas will lessen redevelopment/development opportunities, make it more difficult to obtain the required approvals to construct projects, hamper efforts to improve certain key transportation routes, and impact upon the Town's ability to maintain or improve upon its ratable base. For these reasons, the Town strenuously objects to the amendments proposed by the Department to N.J.A.C. 7:9B – 1.4 and 1.15. (210)

309. COMMENT: The Department's policy of crafting "one size fits all" regulations without adequate case by case assessments of different parcels of property is unfair and short-sighted. The negative impact this proposed rule will have, if approved on Hackettstown is an excellent example of how the Department's current system of drafting broad based rules is failing New Jersey.

To designate Bowers Brook, which flows through the middle of downtown Hackettstown, as Category One would have a devastating effect on Hackettstown's business district and its revitalization goals. Hackettstown is committed to preserving the environment and protecting Bowers Brook. The town is also in the process of developing and implementing plans to address the invasive species and vegetation surrounding the stream's banks and replace it with native plants.

The Department should reconsider this proposed rule, and, detail how this rule will disproportionately harm the town of Hackettstown and limit practically any and all opportunities it has for economic development. (102)

310. COMMENT: The proposed rules in the very least will make it more difficult for such redevelopment to occur. More than likely, certain projects that qualify as "major" developments will no longer be possible. The township of Hackettstown is very

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concerned for whether the unfinished mall which has sat for over 20 years will be able to be redeveloped with the proposed rules. (210)

311. COMMENT: The new designation for the Musconetcong River will make it difficult, if not impossible, to construct improvements to Mountain Avenue, Route 57, and East Avenue in the eastern sector of Hackettstown. All of these roadways contain segments that would be situated within the 300 foot Special Water Resources Protection Area buffer and 300 foot Riparian Zone that would be triggered by the amendment. The inability to construct transportation improvements will inhibit the Town's ability to relieve traffic congestion in this sector of the municipality, which affects the quality of life for area residents and has ramifications on our business community. (210)

312. COMMENT: The new designation of Bowers Brook has the potential for inhibiting development/redevelopment due to the 300 foot wide Special Water Resource Protection Area buffer and 300 foot riparian zone within the Masterfoods tract. Impacts to the site are of particular concern to the Town and the Region since the Masterfoods tract is one of the largest tracts of land left in the Limited Manufacturing District and offers expansion potential to the corporation. An expansion of this tract would increase the Town's ratable base and potentially add jobs (Note: Masterfoods is reported to be Warren County's largest employer). The proposed rule works against the Town and its economy and is clearly a negative impact. (210)

313. COMMENT: Hatchery Brook is within Limited Manufacturing and Community Commercial Districts that are situated along or adjacent to Stiger Street. Many of these properties have been identified as properties in need of redevelopment by Hackettstown. The proposed Category One designation will inhibit development/redevelopment within the older commercial areas that exist along Stiger Street including the municipal complex and livestock auction properties. The Town is very concerned that the 300 foot Special Water Resource Protection Area buffer and 300 foot Riparian Zone will impact

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development/redevelopment potential in an area of the community that surely needs investment at this time. (210)

314. COMMENT: The redesignation of the Bowers Brook and Hatchery Brook stream corridor to Category One runs counter to the State Development and Redevelopment Plan (SDRP), the Highlands Act, and other regional planning initiatives of the State. The proposed regulations have the potential for regulating large swaths of property along these stream corridors in several core areas of the community where development/redevelopment is desirable. (210)

315. COMMENT: Bowers Brook located in the middle of downtown Hackettstown proposed to be Category One is contrary to the revitalization goals of the Town. Currently the town is examining ways to create a pedestrian walkway along the brook as a way to complement the downtown businesses. Construction of the walkway and subsequent use would help clean up the brook and ensure that it does not continue to be a dumping ground as it is now. The stream banks are also full of invasive vegetation. These efforts would also remove the invasive species and replace with native plants. Category One status could stifle these positive town initiatives. (44)

RESPONSE TO COMMENTS 307 THROUGH 315: The comments describe specific development and redevelopment projects that may be impacted by Category One designation in the Musconetcong River because of additional protections provided for Category One waters in other Department land use regulations, such as the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules N.J.A.C. 7:13. These rules implement 300 foot buffers/riparian zones on Category One waters (see response to comments 66 through 67 for more information). The impacts to each project will vary based on the scope of the project and the associated proposed activities, which cannot be ascertained accurately from the submitted comments. As such, commentors should see response to comments 89 through 98 for further information on grandfathering and implementation. It should also be noted that the Category One designation does not

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affect existing development and is not expected to impact redevelopment of existing impervious areas.

316. COMMENT: The Mars Hackettstown facility includes a wastewater treatment plant that was constructed adjacent to the eastern shore of Bowers Brook. The Mars Hackettstown manufacturing and wastewater treatment facilities may be effectively "boxed in" with little to no room for expansion and facility upgrades. The required buffers may prevent further expansion of the plant or upgrade of its treatment capabilities, which may be necessary in the future given the increasing demands of the manufacturing facility and the demands of the expanding community. The proposed reclassification of Bowers Brook to a Category One stream could eliminate any genuine possibility for expansion for the wastewater treatment plant, despite the anticipated needs of the facility in the future. (74)

317. COMMENT: Musconetcong River proposed designation would require that the Hackettstown Municipal Utilities Authority treatment plant meet the antidegradation standards of the SWQS if it is ever expanded. Because the plant is located in the Highlands Preservation Area and along the Musconetcong River, the ability for the Town of Hackettstown and surrounding areas to implement smart growth strategies and improve the economic well-being of the town will be hindered by the costly improvements to the treatment plant in order to meet water quality standards. While protecting the River's water quality is important, the costs of implementing the goals may be too prohibitive leaving the Hackettstown area in an economic disadvantage. (44)

RESPONSE TO COMMENTS 316 THROUGH 317: Unless additional flow or loading is requested as part of the renewal of existing NJPDES permit, an antidegradation analysis is not required. As indicated in the summary of the rule proposal any NJPDES permit issued to a facility for a new or expanded wastewater discharge to a Category One stream must include effluent limitations that will ensure that existing water quality will be maintained. In calculating effluent limitations, the Department considers the size of

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the receiving stream, the volume of wastewater, current levels of pollutants in the receiving stream, and effluent characteristics. The permittee would be required to determine existing water quality of the receiving stream as part of their NJPDES application. The Department would issue a NJPDES permit for the new or expanded discharge with water quality based effluent limits that maintain the existing water quality.

The Hackettstown Municipal Utilities Authority is permitted to discharge up to 3.39 MGD and is currently discharging only 2.08 MGD. The Department does not believe that the upgrade will impact Hackettstown Municipal Utilities Authority. The Department is unable to determine if the upgrade to Category One would impact the Mars Hackettstown facility, as the facility has not described its future plans or submitted an application for an expansion.

318. COMMENT: Byram Township is a Designated Town Center and the remainder is within the Highlands Preservation Area. Lubbers Run, proposed for the Category One, runs through the proposed center and the buffer will eliminate this center as an option for the entire Township.

In Stanhope Borough, a Designated Town Center, redevelopment is the principal element in its revitalization, adjacent to the Netcong Transit Village. The efforts will be hampered by Category One of the Musconetcong and its tributaries.

Countywide, imposition of water quality rules and Category One designations for unverified habitat will make new centers a nearly impossible uphill battle, eliminating the ability of many municipalities to redirect growth to compact centers requiring sewer and water supply infrastructure. (153, 184, 203)

RESPONSE TO COMMENT 318: The portion of Lubbers Run being adopted as Category One is located upstream of the proposed designated centers of Byram, and Netcong Townships; and Stanhope Borough. These proposed designated centers will not

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be impacted by the Category One designation. However, due to the fact that there are trout maintenance waters flowing through these townships, 150 foot riparian zones may apply pursuant to Flood Hazard Area Control Act rules at N.J.A.C. 7:13, published November 5, 2007.

Pequest River

319. COMMENT: The commenters strongly believe that the Kymer Brook and its tributaries as well as other waterways in Sussex County are of such exceptional value as to warrant the protection from measurable change in water quality provided by a Category One designation. The Sussex County waterbodies identified in the Department's proposed rule exhibit exceptional ecological significance that very clearly meet the existing and proposed standards for Category One designation by providing critical habitat for the Federally endangered bog turtle and the state threatened triangle floater. In addition, lands surrounding the Kymer Brook and its tributaries provide habitat for a variety of endangered or threatened species not specified in the Department's proposed rule, including the wood turtle, cooper's hawk, red headed woodpecker, red shouldered hawk, long-eared owl and the blue spotted salamander. Areas adjacent to other Sussex County streams designated in this proposal provide habitat for wood turtle, vesper sparrow, cooper's hawk, savannah sparrow, northern harrier, red shouldered hawk, northern goshawk, bobolink, grasshopper sparrow, barred owl, long eared owl and the timber rattlesnake. Many of these species are highly dependent on clean water of sufficient flow to breed and survive. Category One designation will provide protections that help ensure their continued existence as well as the preservation of the clean water upon which they depend. (204)

RESPONSE TO COMMENT 319: The Department acknowledges the commenters' support.

320. COMMENT: The commenters oppose a large development plan that would have serious adverse impacts on the Kymer Brook and destroy large areas of endangered or

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threatened species habitat. The commenters believe that throughout Sussex County, developments similar to this threaten to destroy the rural character of many of the established hamlets and neighborhoods while creating irrevocable adverse environmental impacts. (204)

321. COMMENT: The commenter is extremely disappointed that the Pequest River in Warren County, yet again, did not receive the upgrade designation. The Pequest River in Warren County had already been identified as a candidate for Category One designation, as documented by the Department in the March 2003 New Jersey Register publication listing approximately 1,600 “candidate waters” that Department staff determined met the existing Category One criteria. However, portions of the Pequest in Warren County have not been nominated even in this most recent round of nominations. (166)

RESPONSE TO COMMENTS 320 THROUGH 321: As part this proposal the Department assessed portions of Pequest River that were not already FW1 or Category One to identify portions that would qualify for Category One upgrade based on exceptional ecological significance - endangered and threatened species. Waterbodies which were listed on the DEP candidate list based on Open Space which did not qualify for Category One based on exceptional ecological significance were not proposed for Category One designation.

The Landscape Maps identify habitat patches for certain species, including endangered or threatened species, using documented occurrences and peer-reviewed species models. The maps identify patches of habitat but do not provide specific species occurrence information. For more information on the Landscape Maps, see the “Landscape Project Report” which is available at <http://www.njfishandwildlife.com/ensphome.htm>. The Landscape Project maps can be viewed through the Department’s interactive mapping tool or they can be downloaded as GIS data layers at <http://www.nj.gov/dep/gis/>. Specific sighting information and occurrence data is maintained in Natural Heritage Database. Documented occurrence

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information in the Natural Heritage Database is used to generate the Landscape Project maps.

The bog turtle occupies wetlands that meet certain characteristics of vegetation, soils, and, most importantly, hydrology. The life history of bog turtle is somewhat unique in that it spends the majority of the year within the wetland complex and often does not venture for great periods of time into the adjacent uplands and therefore the identification of wetlands occupied by the bog turtle is critical to the recovery of this species. A percentage of wetlands with bog turtles are of a small enough size that they are not currently identified as Wetlands in the 2002 Land Use/Land Cover data layer so therefore polygons are hand digitized to reduce the chance of not capturing core habitat. An additional 200 meters is generated around the Bog Turtle Colony polygons to account for turtle movements not identified during fieldwork as well as habitat that is valuable to the colony, but was not identified by the biologists. For more information, please see the Landscape Project at <http://www.state.nj.us/dep/fgw/ensp/landscape/index.htm>.

In consideration of comments received, the Department reevaluated the habitat mapped as suitable for bog turtle in the Landscape Project to determine whether a stream intersected with documented, occupied habitat and where a stream's water quality may impact the documented, occupied habitat. While suitable habitat exists throughout the Pequest River watershed, the Department determined that waterbodies that did not intersect with suitable habitat for bog turtle did not qualify for Category One based upon exceptional ecological significance. Based on this evaluation, the Department determined that only portions of the Pequest River segments proposed for upgrade, including Andover Junction Brook, Andover Pond, Bear Creek, Gardners Pond, Hidden Valley Lake, Iliff Lake, Kymer Brook, Lenape Lake, New Wawayanda Lake, Trout Brook, Tarhill Brook, and Valentines pond qualify for Category One upgrade. As a result, the Department is not adopting the Category One designation for the Pequest River from source to Conrail railway tracks south of Turtle Pond, including all unnamed and unlisted tributaries that are not currently designated as FW1 or Category One, portions of

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Andover Junction Brook above Valentine Pond, Kymer Brook tributaries immediately north and immediately south of Clearwater, and the entire Trout Brook. These changes are made on adoption at N.J.A.C. 7:9B-1.15(d). The Department is adopting Category One designation as proposed for the rest of the Pequest River tributaries including Kymer Brook. A Category One designation was warranted based on the documented occurrences and suitable habitat of the State endangered bog turtle for Kymer Brook.

The SWQS rules ensure that appropriate protection is afforded to a waterbody through Category One designation. In addition to a no measurable change in water quality in Category One waters, other regulatory programs in the Department implement a 300 feet buffer requirement on Category One waters through application of the Stormwater Management rules and the Flood Hazard Area Control Act rules to provide additional protection.

Pompeston Creek

322. COMMENT: The buffer provided for Pompeston Creek under Category One is badly needed to prevent further deterioration of the stream corridor due to development. (180)

323. COMMENT: The commenter would like to thank the Department for designating the Pompeston Creek as Category One. (172)

324. COMMENT: Pompeston Creek Watershed Association is in full support of the Category One designation proposed for a portion of the Pompeston Creek from the Route 130 to the Broad Street Bridge, including unnamed tributaries. Pompeston Creek Watershed Association applauds the Department's wisdom in proposing to designate this portion of the Pompeston Creek for Category One protection. It is our sincere hope that through the combined efforts of the Department, the municipalities, County, and Pompeston Creek Watershed Association, we will be successful in improving water quality in the Creek and protecting habitats for the Eastern Pondmussel, bog turtles, and the myriad of other species that depend on the Pompeston Creek. (131)

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325. COMMENT: The Environmental Commission of the Borough of Riverton is pleased regarding the change in the definition of Category One waterways and its effect upon the Pompeston Creek in Burlington County. The commenter have long thought it is ironic that the Category One protection was applicable only to less-endangered streams with relatively good water quality, while waterways like the Pompeston, with rich habitat but under pressure for development, were excluded in part because of damage already done. The new rule seems to redress this imbalance. (180)

326. COMMENT: The Category One measure will lend support to the Environmental Commission of Riverton, the Pompeston Creek Watershed Association, and the participants in the recently published Pompeston Creek Regional Stormwater Management Plan, including the municipal governments of Moorestown, Cinnaminson, Delran, and Riverton. All of which are actively engaged in efforts at preserving the Pompeston, as Category One status will give a big push to our hopes for long-term improvement in water quality and preservation of habitat in the Pompeston. (180)

327. COMMENT: The commenter supports the Category One designation of the Pompeston Creek and pleased that the State is preserving this waterway. (36)

RESPONSE TO COMMENTS 322 THROUGH 327: The Department acknowledges the commenters' support.

Rockaway River

328. COMMENT: The commenter is in full support for the Category One proposal, particularly as it relates to protection of the entire length of the Rockaway River. (191, 192, 193)

RESPONSE TO COMMENT 328: The Department acknowledges the commenter's support.

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329. COMMENT: The proposed designation of the Rockaway River illustrates the new problems created by this criterion. Since the Rockaway is the major source for the Boonton Reservoir, there is little doubt that it possesses “exceptional water supply significance”. However, the Rockaway flows through developed areas of a quite different character than the traditional Category One designated streams. There is already considerable misunderstanding of the impact of the designation on urbanized areas, including Dover and Boonton. To address these concerns the Department should provide local municipalities with education and guidance detailing all of the regulatory implications of the Category One designation. (16)

RESPONSE TO COMMENT 329: The Department has partnered with the Rutgers University New Jersey Agricultural Extension Service – Office of Continuing Professional Education to provide extensive training opportunities. A training session on the new Flood Hazard Area Control Act rules was last held on March 6, 2008. A session on Stormwater Management was offered on March 12-13, 2008. A general session on Environmental Law and Regulation was February 26-27, 2008. In addition, the Department has developed extensive training materials for implementing the requirements for Municipal Stormwater Permits. For additional information, visit http://www.state.nj.us/dep/dwq/msrp_home.htm

330. COMMENT: Picatinny Arsenal is the only military installation that is significantly impacted by these pending amendments. The Green Pond Brook and tributaries at Picatinny Arsenal is a Category One stream and may need to have additional measures imposed to protect it that would include new best management practices for non-point sources. These special Water Resource Protection Areas (buffers) extend 300 feet from the top of the stream bank, or center channel if the stream has no defined banks. The commenter would like to discuss their unique stream requirements in a meeting with the Department in the near future. (55)

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331. COMMENT: The proposal to upgrade Green Pond Brook, Burnt Meadow Brook, and Beaver Brook and their tributaries at Picatinny Arsenal as Category One stream will impact 10 of 25 new proposed projects with a projected value of \$147.7 million. There are approximately 24 miles of streams, 1250 acres of wetlands and 282 acres of water bodies. Implementation of the proposal as written with the Special Water Resource Protection Areas required for Category One waters would impose developmental restrictions on 1,475 of the 5,853 acres that constitute Picatinny Arsenal. That is 25% of the installation's total acreage. The proposed Category One designations would have a significant adverse impact on the Army's Enhanced Use Leasing (EUL) at Picatinny. This project calls for 120 acres of land in the southern portion of the installation to be developed and leased to mission-related sector.

In recognition of Picatinny Arsenal's vital role in the national defense as well as its leadership role in Highlands preservation, the Commissioner of Department worked with the New Jersey Legislature to insure that Federal military installation existing on August 10, 2004 were excluded from coverage of the Highlands Act (PL 2004, c. 120). This was to avoid regulatory requirements that might impinge on the arsenal's ability to continue operation or its operational flexibility to meet new national defense and security challenges. Consequently the commenter requests the Department to exempt Picatinny Arsenal from coverage of the proposed amendment to N.J.A.C. 7:9B. (81)

RESPONSE TO COMMENTS 330 THROUGH 331: The comments describe specific projects that may be impacted by Category One designation because of additional protections provided for Category One waters in other Department land use regulations, such as the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules N.J.A.C. 7:13. These rules implement 300 foot buffers/riparian zones on Category One waters. The impacts to each project will vary based on the scope of the project and the associated proposed activities, which cannot be ascertained accurately from the submitted comments. As such, commentors should see response to comments 89 through 98 for further information on grandfathering and implementation. The

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commenter is encouraged to schedule a preapplication meeting with the Department to discuss the impact of the new designations as it affects individual permit applications.

Salem River

332. COMMENT: The commenter supports the designation of all of the Salem River. The Salem River provides rare and diverse habitat that supports aquatic life, birds, other wildlife and plants that require protection and qualify as Category One waters. Two designated Salem River Wildlife Management Areas, a State Park and the National Wildlife Refuge (NWR) distinguish the Salem River. The Supawna Meadows NWR according to the FWS is “dominated by brackish tidal marshes that make up nearly 80% of its surface area includes refuge tidal marsh [that] may be the largest brackish marsh in the State and is listed as a habitat type of special concern. The refuge provides habitat for 14 State-listed endangered or threatened species of birds and 21 bird species of special concern. The tidal marsh and tidal mud flats provide feeding and resting areas for shorebirds and waterfowl during their migrations. The refuge provides important foraging and forage areas for heron and egret rookeries located on Pea Patch Island, which is designated as an Important Bird Area. The refuge provides habitat for 24 species of reptiles and amphibians of which four are species of special concern. Wetlands within Supawna Meadows NWR are part of the Delaware Bay Wetland of International Importance under the Ramsar Convention” (FWS letter to NJDEP from Clifford G. Day dated 4-9-03, page 4). (35, 232)

333. COMMENT: The Salem County Watershed Task Force supports the proposed deletion of the SE1 classification assigned to the nominated portion of the Salem River, from its source to Major Run, and its re-classification as FW2-NT. The commenter looks forward to future action by the Department, addressing the remaining nominated waterways, Alloways Creek and Stow Creek. The present rule proposal addresses only one of the three waterways, namely the Salem River. (148)

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334. COMMENT: The entire Salem River should be designated as Category One waterway. To designate just portions totally jeopardizes the health of the entire Salem River. Development pressure has come to Salem County within the last year. In Pilesgrove Township over the last three years close to 2,000 applications come in. As we try to preserve agriculture and protect our water supply for agriculture, we need the Category One designation. Without it, within 10 years Salem County would most likely be built out. Salem Creek hosts a variety Federally endangered species. Large bog turtle colonies in New Jersey lie in this area. And the development pressures along Oldmans Creek are very high. (176, 163)

RESPONSE TO COMMENT 332 THROUGH 334: The Department is adopting Salem River from source to Slabtown Road, including all tributaries to that segment, and a portion from Nichomus Run to Major Run, including both Nichomus and Major Runs as Category One based on Exceptional Ecological Significance. While development pressure may exist, it is not a basis for upgrading the antidegradation designation to Category One.

Sidney Brook

335. COMMENT: The commenter supports the upgrade of Sidney Brook from non-trout waters to trout maintenance from its headwaters downstream to the Route 513 Bridge, by all project partners involved with the Sidney Brook Watershed Protection Plan, as well as Union Township. This designation occurs within the municipal jurisdiction of Union Township, and the Township supports the trout maintenance designation of Sidney Brook. The commenter hopes that this proposal is approved and will assist in maintaining the quality of Sidney Brook for aquatic life, and benefit residents and increase the recreational enjoyment of local fishermen. The presence of State-threatened wood turtle and the occurrence of Federally and State endangered bog turtle habitat is another factor that makes Sidney Brook's natural resource one that needs attention and protection. (159)

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336. COMMENT: Extensive water quality monitoring including surveys for fish and benthic macro-invertebrates and analysis for nutrients, chemicals and bacteria will be performed in addition to in-depth visual assessments. Since there is little existing water quality data characterizing Sidney Brook and its tributaries, it is anticipated that the data collected through the 319(h) funding will provide a baseline in which antidegradation statutes can be enforced. The planning efforts that will result from the accumulation data will guide the selection of measures that will be needed to reduce non-point source pollution in the watershed and improve the water quality of Sidney Brook. (159)

RESPONSE TO COMMENTS 335 THROUGH 336: The Department acknowledges the commenters' support.

Stony Brook

337. COMMENT: The commenter supports the proposed additional protection for the Stony Brook corridor and appreciates the vigorous support of the Department's irreplaceable local natural resources. (130)

338. COMMENT: The commenter would like to thank the Department for proposing portions of the Stony Brook and its tributaries be designated as Category One under the Surface Water Quality Standards and to urge the Department to promptly adopt this proposal. (17, 22, 26, 30, 37, 41, 57, 60, 67, 68, 71, 80, 88, 103, 124, 125, 126, 135, 136, 161, 175, 178, 187, 188, 198, 213, 230, 237, 238, 244)

RESPONSE TO COMMENTS 337 THROUGH 338: The Department acknowledges the commenters' support.

339. COMMENT: The Department offers no evidence that Category One designation, specifically the "no measurable change" requirement, will offer any additional protection for these freshwater mussels. The Department should retain the existing Category Two designation for the Stony Brook rather than upgrading to Category One. (8)

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RESPONSE TO COMMENT 339: The Department is upgrading Stony Brook from Old Mill Road to Quaker Road as Category One. As indicated in response to comments 185 through 186, the Department determined that additional level of water quality protection is appropriate for the listed freshwater mussels. These endangered or threatened mussel species selected by the Department to get the additional protection through the Category One designation are critical, water-dependant, extremely rare species in New Jersey and are incapable of relocating. Maintaining the existing water quality would provide appropriate protection while the USFWS and the USEPA evaluate the adequacy of the existing aquatic life criteria.

340. COMMENT: The Department has not provided any basis for establishing the upstream starting point and downstream end point for the segment of the Stony Brook, and its tributaries, proposed for designation as Category One.

It is apparent that the downstream end point was arbitrarily selected by the Department since the habitat and water quality at the downstream end point do not support the characteristics of “exceptional ecological significance” as defined by the Department. Further, the downstream end point of the proposed segment of Stony Brook extends well into the impoundment zone of Carnegie Lake which does not provide suitable habitat for the listed species. The habitat conditions identified by the Department for the green floater, the eastern pondmussel, and the triangle floater do not exist in Stony Brook at the locations surveyed by Princeton Hydro. For the reasons set forth above, until the Department provides such documentation with time to review and comment, the adoption of the proposed amendment as to that segment of Stony Brook within the limits of Princeton Township and its tributaries is unlawful. Even if the Department provides such documentation to demonstrate that certain segments of Stony Brook should be categorized as Category One, the segment of Stony Brook surveyed by Princeton Hydro does not meet the criteria for Category One and the Department has provided no scientific basis to designate such segment as Category One. Therefore, the segment of

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Stony Brook proposed for designation as Category One is arbitrary and capricious and should not be adopted. (140)

341. COMMENT: The Department, in error, has identified two different downstream end points for the segment of Stony Brook proposed for designation as Category One in the proposed rule amendment.

The preamble or “Summary” provides two inconsistent downstream end points in the same paragraph. In the first instance, the preamble indicates that the downstream end point is the “pumping station south of West Road”; however, at the end of that same paragraph, the downstream end point is stated as the “Delaware and Raritan Canal”. Further, there is nothing in the rule or the public record demonstrating why either the Canal or the pumping station should be the downstream limit of the Category One designation. For this reason, the record upon which the Department is proposing to amend the rules lacks the standard of clarity necessary for interested and affected persons to understand the Department’s analysis. Therefore, the segment of Stony Brook proposed for designation as Category One is arbitrary and capricious and should not be adopted. (140)

RESPONSE TO COMMENTS 340 THROUGH 341: The Department must provide a narrative description of the waterbody segment proposed for Category One designation. Typically, designations start and end at a road crossings or a named tributary. It was extremely difficult to select a lower boundary for the Stony Brook Category One designation. There are no road crossings or named tributaries between Quaker Road and West Road. Therefore, the rule text indicated Pumping Station south of West Road, while the summary stated Pumping Station south of West Road and also referenced the Delaware and Raritan Canal.

Based on the comments received the Department conducted additional field visits to verify sightings and confirm that the suitable habitat was still present in the portion of

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the Stony Brook proposed for Category One designation. The Department determined that some of the endangered or threatened species sightings data used to upgrade Stony Brook to Category One was more than 10 years old. As a result, the Stony Brook was reevaluated to confirm the extent of Category One designation through field visits and it was determined that Stony Brook from Pennington Hopewell Road to Old Mill Road that was proposed for Category One showed less suitable habitat and no documented sightings. Therefore, the Department is not adopting Stony Brook from Hopewell Pennington Road to Old Mill Road as Category One at this time. The Department is adopting the Stony Brook, from Old Mill Road to Quaker Road as Category One. At N.J.A.C. 7:9B-1.15(f) the Department is revising the description for Stony Brook based on endangered or threatened species reevaluation.

342. COMMENT: Stony Brook does not qualify to Category One based on the benchmarks proposed by the Department for an exceptional aquatic community. The two macro-invertebrate stations within the segment of the Stony Brook proposed to be upgraded to Category One were sampled three times by the Department (Round 1, Round 2, Round 3). Five out of six samples were moderately impaired. Only during the latest Round Three macro-invertebrate sampling was one of the stations classified as biologically non-impaired. In addition to being biologically non-impaired based on macro-invertebrate data, an exceptional aquatic community must exhibit two of the following four characteristics according to the Department's proposed definition: optimal in-stream habitat, excellent fishery community, excellent water quality, and low imperviousness. The Stony Brook fails all four criteria. One of the biological stations exhibits Sub-Optimal habitat. The fish community was last assessed in 2003 as "Good." Of the four constituents proposed by the Department to assess excellent water quality, the Department lists the Stony Brook as impaired for two of them (total phosphorus and total suspended solids). Finally, more than ten percent of the Stony Brook watershed is impervious. The Department lacks the technical basis to upgrade the Stony Brook to Category One based on an exceptional aquatic community. Therefore, Stony Brook

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Regional Sewerage Authority requests that the Department retain the existing Category Two designation for the Stony Brook rather than upgrading to Category One. (8)

RESPONSE TO COMMENT 342: As indicated in the proposal (36 N.J.R. 1845(a)) the Department based its decision on the presences of endangered or threatened species and not benthic macroinvertebrates, habitat, Fish IBI or water quality data. The Department did not review any water quality related data to designate Stony Brook based on exceptional ecological significance-exceptional aquatic community due to the overriding endangered or threatened species sightings and habitat information that was available. As explained in response to comment 143, a waterbody should have either endangered or threatened species sightings and habitat information or meet the necessary requirements for exceptional ecological significance-exceptional aquatic community to be designated as Category One. However, as indicated in response to comments 340 through 341, the Department has reevaluated the spatial extent and determined that portions of Stony Brook as proposed in the May 21, 2007 proposal do not support the Category One designation. Therefore, the Department is adopting Stony Brook from Old Mill Road to Quaker Road.

The Department may rely on exceptional ecological significance – exceptional aquatic community to make any Category One designation recommendations for the rest of the Stony Brook that is not being adopted as Category One at this time. In addition, should the Department document sightings of the listed endangered or threatened species in other sections or tributaries of the Stony Brook, the Department may initiate rulemaking to upgrade the antidegradation designation to Category One as appropriate.

343. COMMENT: The headwaters of Stony Brook are not included for Category One designation. (78, 79)

344. COMMENT: The Department should expand the proposal to protect the headwaters of Stony Brook. The clean water, extensive forests, and abundant wildlife of that area

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would all benefit from such a designation, as would the endangered or threatened species in the lower Stony Brook for which the Department's proposal is intended to protect. (17, 22, 26, 30, 37, 41, 57, 60, 67, 68, 71, 80, 88, 103, 124, 125, 126, 135, 136, 161, 175, 178, 187, 188, 198, 213, 230, 237, 238, 244)

RESPONSE TO COMMENTS 343 THROUGH 344: As indicated in response to comments 340 through 341, the Department reevaluated the spatial extent for Brook Floater, Triangle Floater, Eastern Pondmussel, and Green Floater and determined that only those sections with documented sightings and habitat to support these listed endangered or threatened freshwater mussels qualified for Category One designation.

345. COMMENT: Stony Brook Regional Sewerage Authority's (SBRSA) Pennington Sewage Treatment Plant (STP) discharges to the portion of the Stony Brook that the Department proposes to upgrade to Category One. Moreover, SBRSA is in the process of performing an antidegradation study for an expansion of the plant from 0.3 MGD to 0.5 MGD. The SBRSA – Pennington STP provides wastewater treatment for the growing communities of Pennington Borough and portions of Hopewell Township. Because Department has not established exactly how it plans to enforce the “no measurable change” requirement for point source antidegradation analyses in Category One waters, it is not possible to determine the impact on SBRSA or the communities within its wastewater service area. SBRSA therefore requests that Department refrain from changing the antidegradation classification of the Stony Brook until the impact on SBRSA can be assessed.

There are many technical issues that remain unresolved with regard to making a demonstration of “no measurable change in water quality.” For Category Two antidegradation analyses, the Department policy has defined existing water quality by using a 95% confidence interval about the mean. As a result, streams with less data end up with broader definitions of existing water quality and, therefore, less restrictive antidegradation analyses. For Category One antidegradation analyses, the Department

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has not indicated how existing water quality will be defined, the parameters that will be used to establish “no measurable change,” the statistical tests that might be applied, or the applicable flow conditions. There are many technical issues that remain unresolved, making it impossible to predict the impact to a point source discharger of Category One designation of its receiving water. Until the Department establishes a technically sound protocol for point source antidegradation analyses to make a determination of “no measurable change in water quality” for Category One waters, SBRSA cannot evaluate the impact of the classification upgrade on its expansion plans. It is not possible for SBRSA to meaningfully comment on the proposed upgrade without being able to properly assess the impact. Similarly, the Department should not propose a regulatory action without being able to assess its impact on permittees. (8)

RESPONSE TO COMMENT 345: Any NJPDES permit issued for a new or expanded discharge after a waterbody has been designated as Category One must include effluent limitations that will maintain the existing water quality. The same requirements for determining no measurable change to the “existing water quality” apply in both Category One waters and Category Two waters. A new and/or expanded discharge that maintains the existing water quality meets the antidegradation policy in both Category One and Category Two waters. In Category One waters, no change from existing water quality is allowed. Therefore, a discharge that cannot maintain existing water quality cannot be authorized. As indicated in response to comment 60, if the facility has applied for a new discharge or an expanded discharge but does not have an effective permit with effluent limits that will maintain existing water quality once the Category One designation is adopted, the Department will have to issue or reissue the NJPDES permit to comply with the antidegradation policy. The only way a NJPDES permit for new or expanded discharge to a Category One waterbody can be issued that does not maintain existing water quality, is for the facility to qualify for a variance in accordance with N.J.A.C. 7:9B-1.8.

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346. COMMENT: The Department has not provided the locations of the documented occurrences of such species or suitable habitat in Stony Brook and its tributaries. The Department's proposal to categorize this segment of Stony Brook, together with its tributaries, as Category One without providing affected and interested persons the opportunity to review the record which it contends supports the proposed amendment is in violation of law. Unless the Department provides such documentation and provides adequate time to review and comment upon it, the adoption of the proposed amendment as to that segment of Stony Brook within the limits of Princeton Township and its tributaries is unlawful and the proposal should not be adopted. (Masten)

RESPONSE TO COMMENT 346: Specific sighting information and occurrence data is maintained in Natural Heritage Database. Documented occurrence information in the Natural Heritage Database is used to develop the Landscape Project maps. The Landscape Maps identify habitat patches for certain species, including endangered and threatened species, using documented occurrences and peer-reviewed species models. The maps identify patches of habitat but do not provide specific species siting locations. For more information on the Landscape Maps, see the "Landscape Project Report" which is available at <http://www.njfishandwildlife.com/ensphome.htm>. The Landscape Project maps can be viewed through the Department's interactive mapping tool or they can be downloaded as GIS data layers at <http://www.nj.gov/dep/gis/>. As part of the Department's proposal to upgrade portions of the Stony Brook, the Department provided notice to the public of the selected waterbodies designated for Category One based on endangered or threatened species, and the public was given an opportunity to comment on the Department's bases. In fact, based upon public comments on this rule proposal, the Department determined that changes to the spatial extent of the Category One designation of the Stony Brook were warranted. See response to comments 340 through 341.

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347. COMMENT: The commenter supports conservation and protection of water resources and believes that the Department evaluation process leading to Category One designation proposals should be open and transparent.

As directed by the Department, BMS relied on information concerning habitat and endangered or threatened species that was provided by the Department during the planning and permitting phase of the Hopewell Campus project. Information that BMS obtained from Department during the planning and permitting the Hopewell Campus included Landscape Maps. The Landscape Maps that were provided by the Department and used by BMS as a basis for the planning and permitting activities described above – not to mention the digital Geographic Information System (GIS) data layers that are available from the website referenced in the SWQS rule proposal -- do not indicate the presence of suitable habitat within the Stony Brook for any freshwater mussel species. Moreover, Appendix IV of the report describing New Jersey Landscape Project, Version 2.0 (NJDEP, 2004) indicates that the species that now are alleged to qualify the Stony Brook for Category One designation were not used when preparing data layers for the Landscape Maps. Clearly, the process for proposing to designate the Stony Brook as a Category One waterbody has not been open and transparent. (114)

348. COMMENT: If adopted, the proposed designation of the Stony Brook as a Category One waterbody will nullify a decade of planning and permitting approvals that the Bristol Myers Squibb (BMS) Hopewell Campus sustainable build-out project has received from state, county, and local agencies and result in unintended consequences of sprawl, reduction of open space, and increased impervious surfaces.

It is unfortunate that all of BMS's efforts to protect the environment along the Stony Brook will be nullified if the proposal to designate the Stony Brook as a Category One water is adopted. Indeed, what surely must be an unintended consequence of the proposed amendment to the SWQS rule, designation of the Stony Brook as a Category One water may cause BMS to have to revert to the previously-approved plan for the build

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out of the property in order to preserve its investment in the Hopewell Campus. Remarkably, adoption of the proposed revisions to the SWQS will translate to: (a) rather than eliminating sprawl, sprawl will be increased; (b) rather than increasing open space, open space will be reduced; (c) rather than preserving existing views and character, existing views and character will be eliminated; (d) rather than reducing impervious surfaces, impervious surfaces will be increased; (e) rather than enhancing watershed protection, watershed protection will remain at the status quo; (f) rather than fostering pedestrian activity, pedestrian activity will be discouraged; and, (g) incremental growth will increase rather than decrease.

In short, it is misguided to designate the Stony Brook as a Category One water because existing planning and permitting approvals for the development of the Hopewell Campus would provide greater protection for the Stony Brook than would the Category One designation. (114)

RESPONSE TO COMMENTS 347 THROUGH 348: As explained earlier in the response to comments 340 through 341, the Department reevaluated the extent of Stony Brook proposed for Category One designation and were unable to verify at this time that the mussel species were present. Thus, the Department is not adopting the Category One designation in the area of the referenced project and therefore it is not likely to be affected by this rule.

349. COMMENT: The buffer restrictions along the Stony Brook and all upstream tributaries within the same watershed will substantially impact Educational Testing Service's (ETS) ability to execute on proposed long-term construction projects. By disruption close to 900,000 square feet of proposed building expansion and necessary facilities and disruption the ability to discharge from the sewage treatment plant, adoption of these proposed amendments poses a serious threat to ETS' enormous investment in the headquarters site potentially threatens its institutional future at the Lawrenceville

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Township location. Several other large employers are also impacted and are threatening to leave the area. (262)

RESPONSE TO COMMENT 349: The Department proposed the portion of Stony Brook in the proximity of the Educational Testing Service's for Category One. This Category One designation for Stony Brook will be adopted with changes as identified in response to comments 340 through 341. The comments describe a specific project that may be impacted by Category One designation of the Stony Brook because of additional protections provided for Category One waters in other Department land use regulations, such as the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules N.J.A.C. 7:13. These rules implement 300 feet buffers/riparian zones on Category One waters (see response to comments 66 through 67 for more information). The impacts to each project will vary based on the scope of the project and the associated proposed activities, which cannot be ascertained accurately from the submitted comments. As such, commenter should see response to comments 89 through 98 for further information on grandfathering and implementation.

350. COMMENT: The Green Floater should not be included in the definition of "exceptional ecological significance" since the last known sighting of the Green Floater occurred more than 10 years ago at an undisclosed location. Based on information provided by the Department, the last occurrence of the Green Floater was identified on August 28, 1996, more than 10 years ago. It is well settled in other areas of environmental law that there is a presumption of habitat abandonment and/or species demise in a particular habitat after time frames that are substantially less than 10 years. Absent any documentation confirming the location that the species was identified, and any additional documentation that any Green Floater presently exists in New Jersey, the inclusion of the Green Floater in the proposed definition is arbitrary and capricious. The amendment should not be adopted. (140)

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RESPONSE TO COMMENT 350: The Department has identified several freshwater endangered or threatened mussels in the definition for “exceptional ecological significance”. While last known sighting of the Green Floater was in Stony Brook in 1996, this was not the only qualifying endangered or threatened species used to justify Category One designation for Stony Brook. These species require clean, well oxygenated water, and are susceptible to infrequent periods of low flow, especially during the summer. As indicated in response to comments 340 through 341, the Department revisited the proposed Stony Brook segment to confirm the sightings and habitat for Brook Floater, Triangle Floater, Eastern Pondmussel, and Green Floater and determined that only the portion of Stony Brook from Old Mill Road to Quaker Road qualifies for Category One at this time.

351. COMMENT: The Department provides no definition for “tributary” in the proposed rule amendment. The Department could classify anything that is capable of conveying water to Stony Brook as a tributary. This could include not only unnamed and unlisted streams but ditches and pipes that may, at times, convey water that ultimately may reach the Stony Brook. It could include fields and roads from which water may ultimately reach Stony Brook. It could include roofs, gutters and leaders from which water may ultimately may reach Stony Brook. The regulated community also has no basis to understand how and whether the Department evaluates certain hydrological parameters such as rate, volume, and frequency into its analysis of whether something is or is not a “tributary.” Without a definition of tributary, the proposed amendment lacks a standard of clarity, fails to provide adequate notice to affected and interested persons, and is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. Without a definition of tributary, the proposal is arbitrary and capricious and should not be adopted. (114, 140, 205)

352. COMMENT: The Department’s proposal to designate all tributaries to the referenced segment of Stony Brook as being of exceptional ecological significance is arbitrary and capricious without having established that such tributaries independently are

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of exceptional ecological significance (i.e., that there has been a documented occurrence of an endangered or threatened species in such tributary and that such tributary provides the necessary habitat to support such species). Further, as indicated in the preamble or “Summary” to the proposed rule amendment, the Department indicates that unnamed and unlisted tributaries would be included based on recommendations of the Endangered and Nongame Species Program (ENSP) and no such recommendations have been provided to the public for review. Finally, if the Department has a different set of scientific or technical criteria which it used to designate tributaries to be regulated under the proposed amendment, such criteria were not made available to the public for review and comment. To include all unnamed and unlisted tributaries is overbroad and arbitrary and capricious and for these reasons the proposed rule amendments should not be adopted. (140)

RESPONSE TO COMMENTS 351 THROUGH 352: Tributaries are included in certain designations as described in response to comments 138 through 139. There are no separate criteria for these areas because the Department considers them to be critical and a part of the overall ecological significance of the resource. With respect to the Stony Brook, based on the reevaluation conducted, the Department determined that the tributaries to Stony Brook did not qualify for Category One designation.

Swimming River Reservoir tribs.

353. COMMENT: The Swimming River Reservoir is a vital drinking water source for the people of Monmouth County, and it is predominantly dependent on the stream systems that are tributary to it for sustaining that water supply. The protection of this water supply system has long been a fundamental commitment of the Township of Colts Neck, reflected in municipal planning and zoning documents and practices. The Department has formally proposed, in the New Jersey Register of May 21, 2007, the addition of the stream systems supporting the Swimming River Reservoir, inclusive of both named and unnamed tributaries, to the list of Category One designated waters in the Surface Water Quality Standards. This designation will thereby extend the highest level of regulatory protection to these waters, and this is consistent with the land use policies and practices of the Township of Colts Neck, and will provide the Township with a

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beneficial complimentary planning and zoning tool. This will also provide an enduring benefit to the people of Monmouth County who are dependent on this drinking water supply. The Township Committee of the Township of Colts Neck offers its wholehearted support to the proposed designation of the stream systems tributary to the Swimming River Reservoir as Category One waters in the Surface Water Quality Standards. (19)

354. COMMENT: The commenter supports the Category One amendment for Swimming River and Yellow Brook and its tributaries (49)

RESPONSE TO COMMENTS 353 THROUGH 354: The Department acknowledges the commenters' support.

Toms River

355. COMMENT: The commenters support the Category One protection for the Toms River. (27, 31, 33, 51, 86, 105, 106, 138, 147, 257,)

356 COMMENT: The Jackson Township Environmental Commission unanimously agreed to support the designation of Toms River as a Category One waterbody. (58)

357. COMMENT: The commenter thanks the Department for the announcement of increased protections for the Toms River. We need to do everything we can to protect our pristine rivers from the impacts of sprawl. Please finalize these protections as soon as possible and consider this as official public comment. (258)

358. COMMENT: The commenter is in complete agreement with the Category One designation of New Jersey waterways, especially the Toms River, Mirey Run and Dove Mill branches. The commenter is very pleased to hear of someone trying to protect New Jersey's water quality. (118, 119)

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359. COMMENT: Toms River is an important recreational and ecologically vital habitat. It needs to be protected from further encroachment and pollution. Please protect it for us. (263)

360. COMMENT: The commenter strongly supports the proposal to give Category One designation to considerable portions of the Toms River, particularly the Union branch in Manchester, as well as the headwaters of the Toms River in Jackson and Millstone. (10)

361. COMMENT: The commenter is concerned about the impact such large scale housing will have on the quality of the water in this community and in the adjacent communities, which rely on the tributaries that originate here. The commenter urges you to support the proposal which would designate the Toms River a Category One waterway, as it would protect a significant amount of land as well as the waterways. (236)

362. COMMENT: The commenter urges the Department for the sake of future generations to approve the Category one application for the Upper Toms River, and believe it is important to take action now to prevent further pollution of our water, land and air. (31)

363. COMMENT: The commenter strongly supports the upgrade of the Toms River to Category One in order to protect its amazing assemblage of native flora and fauna as well as to protect its present natural water quality level. Failure to capitalize on the momentum in place will result in loss of water quality, degradation of a vital and vibrant fishing and other water recreational resource, and loss of an aesthetically beautiful natural resource and wildlife habitat. The region may never recover from the attack on the Toms River that will certainly ensue if the reclassification does not take place as proposed. (120)

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364. COMMENT: The commenter expresses his support to grant Toms River and its tributaries Category One protection. The Toms River system is the largest river draining into Barnegat Bay, and supplies about 24% of the Bay's freshwater. If the proposed regulations are enacted the 300 foot buffers would limit the size of development in Jackson, Manchester, Toms River townships and thereby help protect water quality. (138)

RESPONSE TO COMMENTS 355 THROUGH 364: The Department acknowledges the commenter's support.

365. COMMENT: Existing Surface Water Quality Standards applicable to Category Two waters are adequately protective of all existing uses in the Toms River. The assumption that a Category Two designation is the equivalent of something less than clean, protected waters is patently wrong. Upgrading the antidegradation designation of Toms River is not needed to protect existing water quality. The data presented in the petition indicates good water quality under the existing designation and therefore the conclusion that it is inevitable that water quality will be degraded if the Category Two segments are not upgraded to Category One is specious. The water quality data presented in the petition suggests that larger buffers are not needed to protect water quality. (87)

RESPONSE TO COMMENT 365: As indicated in the summary at 39 N.J.R. 1845(a), the Department assigns waterbodies to one of three tiers of antidegradation protection. In both Category One and Category Two waters, the same water quality criteria protect designated uses, and where water quality does not meet standards, actions are needed to restore water quality. Category One waters are protected from measurable changes in water quality. The Department's Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, require additional best management practices be implemented maintain water quality in waters designated as Category One. Category Two waters are protected from any measurable change in existing water quality; however, some lowering of existing water quality may be allowed by the Department based on a social or economic justification. The Department agrees

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that the existing criteria are adequately protective of the existing uses. Designating the waterbody as Category One provides additional protections and avoids lowering water quality from new and/or expanded activities.

366. COMMENT: Category One protection is appropriate to preserve pristine streams and to restore the water quality of streams that used to be or could be pristine or otherwise “exceptional.” Category One designation is exactly what the Department needs to help protect and reverse the trend towards degradation of the waters of the Toms River. Waters that are showing some signs of stress could never qualify for the additional protection afforded by the Category One designation. Waters that show no stress would not qualify because they could be presumed protected by other designations. The Department should not require a petition demonstrate that there has been a decline in water quality to qualify for Category One designation. (219)

RESPONSE TO COMMENT 366: The Department has clarified the definitions associated with Category One and agrees with the commenter that this designation should be used to protect streams that display “exceptional” qualities. Antidegradation is a “proactive” step to minimize the impact of new activities. The additional levels of protection afforded by Category One designation are not designed to “restore” an already impaired waterbody. Other regulatory programs exist to address waters that do not meet Surface Water Quality Standards. The Department does not require a demonstration that there is a decline in water quality. Rather, waters that meet the new definitions for Category One can be designated. Under “exceptional ecological significance” waters impaired for aquatic life use are not eligible for Category One designation, unless the waterbody supports documented sightings and suitable habitat for certain endangered or threatened species. However, if actions are taken to restore water quality and it can be demonstrated that aquatic life use is no longer impaired and two of the other factors also indicate exceptional ecological value, the waterbody can qualify for Category One designation to protect the investments made.

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367. COMMENT: The antidegradation designation for the Toms River should not be upgraded. The possibility that Toms River could be used as a future drinking water supply is pure speculation. No data or water quality studies in the Barnegat Bay to establish negative impacts on water quality are occurring or are related to the existing water quality designation of the Toms River have been presented. The claim that the upgrade in antidegradation designation is necessary to protect 6,536 acres of Threatened and Endangered species habitat ignores the Department's existing regulatory protections for species and habitat. There is no need for duplicative buffers. No evidence was presented to demonstrate how reclassifying the entire Toms River and its tributaries to Category One would result in an increase for use for recreational purposes. The petition to upgrade the antidegradation designation is a blatant appeal for a land grab rather than a reclassification of a waterbody based on water quality concerns. (87)

368. COMMENT: The proposed rule purport to base the redesignation of the Toms River main stem and tributaries on the presence of endangered or threatened species habitat as shown on the landscape maps. The landscape maps are very subjective, and appear to show only the information that is supportive of the redesignation, not all the information available. There are numerous wetland delineations that have been approved by the Department and are in direct conflict with the wetland limits shown in the landscape map database. Yet, the rule proposal presents the out of date, general information derived from the Landscape maps as the only evidence to support the redesignation. A valid scientific analysis should consider all of the available information before making any conclusions. (189)

RESPONSE TO COMMENTS 367 THROUGH 368: The Department reviewed the most recent data available on ecological factors for Toms River and its tributaries that are not currently designated as Category One or Pinelands waters to determine if any waterbodies requested by the petitioner qualify for Category One. The Department determined that based upon the new definitions proposed on May 21, 2007 some portions of the main stem of Toms River, and portions of Dove Mill Branch, Wrangel Brook, and

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tributary west of Pleasant Grove qualified for Category One based upon “exceptional ecological significance” because of their exceptional aquatic community. The Department determined that these waters did not qualify for Category One based on the new definitions for “exceptional water supply significance”, or “exceptional fisheries resources” or “exceptional recreational resource” as the Department did not propose a definition in this rulemaking. Each portion proposed for Category One upgrade was discussed in the Summary of the rule proposal at 39 N.J.R. 1845(a).

369. COMMENT: The classification system should focus on the specific features of the waterbody to determine whether a change in antidegradation designation is justified. The Department should avoid making decisions based on political or popular view points. An upgrade should not be based on some fabricated requirement for apportionment or quota for the number of streams in different regions of the state. Decisions to upgrade antidegradation designations should be based on science. (87)

370. COMMENT: The current applicable and published regulations for Category One selection should only be changed through notice and comment rulemaking. The requested upgrade in the antidegradation designation for Toms River is consistent with prior upgrades and there is no reason to deviate from the prevailing time of application or the time of decision rule. Therefore, if the Department does propose changes to the rules related to Category One, the petition to upgrade Toms River should be grandfathered and not subject to the new rules. (219)

371. COMMENT: The Department should make explicit findings of fact that the Toms River qualifies for Category One status under either the new or the existing standards. (1, 219)

RESPONSE TO COMMENTS 369 THROUGH 371: The Department agrees with the commenters that rulemaking is needed to define the data and criteria utilized to identify waterbodies that qualify for consideration for upgrade to Category One designation and

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to ensure that the process is data driven. The new definitions for “exceptional water supply significance”, “exceptional ecological significance” and “exceptional fisheries resources” were proposed on May 21, 2007 and are now being adopted. The Department expects that these new definitions are data driven and will better serve to identify waters that are truly exceptional. Based upon the comments received that rulemaking was necessary, the Department determined that the petition to upgrade the antidegradation designation for the Toms River had to be denied and evaluated based upon the new definitions. The Department reviewed the most recent data available on ecological factors for Toms River and its tributaries that are not currently designated as Category One or Pinelands waters to determine if any waterbodies requested by the petitioner qualify for Category One based on exceptional ecological significance. The Department determined that some portions of the main stem of Toms River, and portions of Dove Mill Branch, Wrangel Brook, and tributary west of Pleasant Grove qualify for Category One. As indicated in the summary, these waters qualified for Category One designation based upon “exceptional ecological significance” and are being upgraded in this adoption.

372. COMMENT: The requirement for a 300 foot buffer is redundant. Most streams within the Toms River watershed are protected by wetlands and wetlands buffers. In addition, much of the area within Toms River Township is located within the proposed Coastal Area Facility Review Act (CAFRA) Center and that a requirement of stream buffers will obviate advances provided by CAFRA Center designations. (264)

RESPONSE TO COMMENT 372: Upgrading the antidegradation designation of a waterbody to Category One is based on the determination that the waterbody warrants additional protections because of its “exceptional ecological significance”, “exceptional water supply significance” or its “exceptional fisheries resources”. The Department’s regulatory programs consider the stream classification and antidegradation designation when establishing the regulatory requirements. While other Department rules may positively impact water quality, and in some cases may overlap, the Department believes

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that additional protections, provided for in the Department's land use regulations (Flood Hazard Area Control Act rules N.J.A.C. 7:13 and the Stormwater Management rules N.J.A.C. 7:8), for Category One waters, are warranted in order to ensure that there is no measurable change in water quality. See response to comments 66 through 67, for more information on the 300 foot buffer requirements.

373. COMMENT: There is room for constructive dialogue about the pace of Category One designations and the need for the Department to conserve its resources for implementing the program. This conversation can not take place without some indication of the Department support for the Category One program or for alternative ways of reducing pollutant loads under the Federal Clean Water Act such as the Total Maximum Daily Load (TMDL) program. (219)

RESPONSE TO COMMENT 373: As indicated in response to comments 173 through 176, Category One designation is not the appropriate Clean Water Act program to restore impaired waters. Category One is intended limit the impact of pollution from new activities on a waterbody, while the TMDL program is designed to reduce the pollutant loadings from existing sources to levels result in the attainment of water quality standards. Waters do not need to be designated as Category One to be scheduled for TMDL development. In accordance with Section 303(d) of the Federal Clean Water Act, waters must be listed as impaired and scheduled for TMDL, if water quality standards are not met. The antidegradation designation of a waterbody is not a factor considered in ranking and prioritizing waterbodies for TMDL development.

374. COMMENT: To the extent that the Department proposed an upgrade in 2003 as asserted in the Petition, the Department's decision not to act on that proposal demonstrates that there is no major or any threat to the Toms River. (87)

RESPONSE TO COMMENT 374: The Department did not propose to upgrade the Toms River to Category One in 2003. To the extent that the commenter is referring to any

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action taken on the list of waterbodies generated from the March 3, 2003 Notice of Opportunity for Public Comment on both the Blueprint for Intelligent Growth (BIG) Map and potential candidate waterbodies for Category One antidegradation designation, see the response to comments 36 through 42.

375. COMMENT: The commenter backs stronger protection of the waterways, and urges the Department to include the Union Branch in Manchester Township, and the headwaters of the Toms River in Millstone and Jackson Townships. (82, 97, 105, 106, 138, 239)

376. COMMENT: The commenter urges the Department to please save the headwaters in Jackson Township from the attack of builders. These are the Wetlands, and desperately need to have the Category One designation for the north, south, Mirey Run and Dove Mill branches of the Toms River. (137)

377. COMMENT: The commenter urges the Department to include Union Branch in Manchester Township and the headwaters of the Toms River in Millstone and Jackson Townships for Category One protection. (85, 138)

378. COMMENT: The commenter strongly urges the Department to extend the Category One designation to the Toms River and all its tributaries. Too much development in recent years has adversely impacted New Jersey's waterways. Fresh, clean, safe water supplies are an invaluable resource and asset to our state. Extending the buffers on the Toms River will greatly protect one of our most precious and valuable resources, the Barnegat Bay Watershed. Point source run-off from development has contributed to the degradation of this beautiful river, and human activities greatly impair the environs and result in degradation of our water quality. (54)

379. COMMENT: The Toms River supplies much of Ocean County with its drinking water, and it is an important resource that must be protected. Leaving these lands

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undeveloped and in a natural state encourages the growth of wildlife, provides valuable wetlands for water storage during unusually high periods of precipitation, and affords critical habitat to many species that may soon be lost due to the inability of the human population to co-exist with native wildlife. It is imperative that we protect clean water sources in New Jersey, as it will be our legacy and it is our responsibility to ourselves and to future generations. The State will not be diminished, even if development in and around the Toms River is limited by a 300 foot buffer, but it will be diminished if its watersheds and its fresh water supplies are compromised for the sake of development. (264)

380. COMMENT: Jackson Township Environmental Commission requests that the Department consider the upgrade to protect the entire length of the Dove Mill Branch and the Mirey Run, because of the pristine surface water quality. It is imperative that the water quality of these waterways does not diminish from the headwaters all the way to the confluence with the main stem of the Toms River. Furthermore, the 300-foot buffer zones should be measured from the center of the proposed Category One waterbodies.

Jackson Township is the headwater for the Toms River and all projected development in these areas will have a major impact to the surface water quality of the Toms River and the Barnegat Bay. By designating the river branch and the tributaries that feed into the Toms River as Category One status, it would enable future generations to share this wonderful natural resource.

Finally, there are many unnamed tributaries in the headwaters area that originate in Colliers Mills and run through the northwest corner of Jackson Township on both sides of Prospertown Road. This area is just outside of the Colliers Mills Wildlife Management Area and the Pinelands National Reserve. There are two tributaries, the Pole Brook and Cedar Branch that also run through this area and are presently designated as Category One waterways. (58)

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RESPONSE TO COMMENTS 375 THROUGH 380: As indicated in response to comment 367 through 368, the Department evaluated whether some or all of the waterbodies in the Toms River watershed which are not currently designated as PL or Category One qualified as Category One under the new definitions. The Department is upgrading the antidegradation designations for portions of the main stem of Toms River, a portion of Dove Mill Branch, a portion of Wrangel Brook, and a tributary west of Pleasant Grove to Category One designation based on exceptional ecological significance. These portions are being adopted without change from the proposal at this time. The other waterbodies listed above were determined not to qualify for Category One based upon the new definitions.

381. COMMENT: Category One waters are supposed to be of extraordinary quality. How can the CIBA-GEIGY site in Toms River be termed of extraordinary quality and a Category One water? The presence of Super Fund site, blight or brownfields should render waters ineligible for Category One designation. If the definition of extraordinary quality includes a Super Fund site, the definition is flawed. (141, 146)

RESPONSE TO COMMENT 381: The presence of a Superfund site does not automatically preclude a waterbody from supporting an exceptional aquatic community. As indicated at 39 N.J.R. 1845(a), Toms River from the New Jersey Central Railroad tracks to the Route 37 Bridge has unimpaired benthic macroinvertebrate community, optimal habitat, and good water quality. This indicates that this stretch of Toms River is of exceptional ecological significance.

382. COMMENT: The commenters reiterate that the existing Category Two designations (FW2-NT and FW2-TM Category Two) adequately protect existing and potential uses of the Toms River. The Department has not demonstrated in this rule proposal that the portions of the Toms River proposed for reclassification (portions of the main stem Dove Mill Branch, Wrangel Brook, and a tributary west of Pleasant Grove) require the proposed upgrade to protect water quality. Instead, the Department states that it reviewed

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“the most recent data available on ecological factors” to determine if any of the petitioned waterbodies met the proposed standard outlined for the newly proposed definition of “exceptional ecological significance.” This new methodology requires different data than needed previously for requesting upgrades. Not only is it unclear what this “most recent data” is, this data should be made available to the public for comment and review.

Also, the AMNET Data for the Dove’s Mill Branch and Wrangel Brook reflect high water quality notwithstanding their current classifications (FW2-TM and FW2-NT respectively). (66, 165)

RESPONSE TO COMMENTS 382: As explained in response to comment 143, the Department did not propose a new methodology to upgrade waters to Category One rather clarified the existing definition by including additional definitions to incorporate and provide factors necessary to identify and designate a waterbody for a Category One designation. All the data reviewed and used for Category One upgrade of the Toms River segments are identified in the Summary of the rule proposal. Due to the fact that outdated data was provided as part of the petition, the Department stated that it reviewed the most recent data available on ecological factors. The Department believes that the Category One designation to portions of the main stem Toms River, Dove Mill Branch, Wrangel Brook, and a tributary west of Pleasant Grove will provide the protection needed to maintain existing water quality and prevent further degradation.

383. COMMENT: Hovsons, Inc. entered into a Stipulation of Settlement resolving numerous issues with the Department on May 14, 2004. Pursuant to that Stipulation of Settlement, land owned by Hovsons in Manchester Township, known as the former Heritage Minerals site, has been re-designated as Planning Area Two, and Hovsons is able to construct up to 2,450 residential units and 20,000 sq. ft. of commercial space in this area. The land is within the area affected by the proposed rulemaking. The Department is required to provide that the 2,450 residential units and 20,000 sq. ft. of

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commercial space can continue to be constructed in accordance with the criteria set forth in the Stipulation of Settlement regardless of any subsequently adopted regulations. (87)

RESPONSE TO COMMENT 383: The comment describes a specific project that may be impacted by Category One designation because of additional protections provided for Category One waters in other Department land use regulations, such as the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules N.J.A.C. 7:13. These rules implement 300 foot buffers/riparian zones on Category One waters (see response to comments 66 through 67 for more information). The impact to this project is dependent upon on the scope of the project and the associated proposed activities, which cannot be ascertained accurately from the submitted comment. As such, the commentor should see response to comments 89 through 98 for further information on grandfathering and implementation.

384. COMMENT: The commenter requests to put a hold on the proposed property developments in Jackson, Cassville Townships. At least limit substantially the number of homes on these Category One waters. There needs to be a full and impartial study on these lands. (137)

RESPONSE TO COMMENT 384: Designating a waterbody as Category One in the SWQS does not restrict development. The Department's regulatory programs impose a variety of restrictions including 300 foot buffers for new development in Category One watersheds. This may limit the number of housing units that can be constructed.

Wallkill River

385. COMMENT: The proposed Category One designation for the Wallkill River basin which includes White Lake, and Lake Grinnell, the western headwaters of the river should be put into effect in its entirety. (46, 149, 157, 158)

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386. COMMENT: Category One designation will protect Lake Grinnell against pending threats that accompany inappropriate development and further protect the groundwater supply from discharge of pollutants. Protecting the lakes, rivers and tributaries within the Wallkill River Watershed (WMA 2) is essential to sustaining the availability of drinking water and wildlife habitat. (144)

387. COMMENT: The commenter supports the inclusion of these Wallkill River Basin waters not only for the purpose of listed species that are present but also because these waters overlap with real property of the Wallkill River National Wildlife Refuge. The Category One designation allows refuge managers to more fully address and achieve management objectives much as the State of New Jersey does with its Wildlife Management Areas. (133)

RESPONSE TO COMMENTS 385 THROUGH 387: The Department acknowledges the commenters support. The Department is adopting a Category One designation to White Lake and Lake Grinnell through this rulemaking based on Bog turtle occurrence and its habitat.

388. COMMENT: The commenter is especially eager to see the streams, rivers, reservoirs, and lakes in Sussex County (including but not limited to the Wallkill River and its tributaries, Black Creek and its tributaries, Pacock Brook, and Russia Brook and all its tributaries, as well as Silver Lake, Summit Lake, Lake Tamarack, Franklin Pond and Franklin Pond Creek and all their tributaries, Lake Mohawk, and Canister Reservoir) listed in the proposed amendment upgraded at the earliest possible time. (47)

389. COMMENT: According to the regulatory proposal, approximately 250 miles of these waterways are located in the Highlands Preservation Area. This area is already heavily regulated by the Department as a result of the enactment of the "Highlands Water Protection and Planning Act." Sussex County is a large part of the Highlands area, with many State parks, forests and protected lands. Protecting our State's watershed is vitally

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important, but it must be balanced with the economic interests of the State and region. Regretfully, these newly proposed Category One water regulations will effectively stifle economic growth in Sussex County and surrounding areas. (127, 128)

390. COMMENT: The commenter opposes the Category One regulations for Sparta, Sussex County. (78, 79, 142, 143, 156, 173, 182, 215, 216, 217)

391. COMMENT: Assembly woman Alison McHose and Freeholder candidates Steve Oroho and Gary Chiusano have personally expressed to the Department their extreme disappointment in the new Category One rule proposal that would affect their towns. It is their strong desire for the Department to carve out an exception for the tourism centers in Hardyston and Vernon, which is the primary economic engine for Sussex County. The Department should take the advice of senators Littell and McHose; freeholders Oroho and Chiusano who know the area of Sussex County and know the people that would be hurt by the new Category One rules. The Department should hold more meetings with these senators and freeholders and work out a compromise that will protect the economic viability. (265)

392. COMMENT: The Department has listed Bog Turtles, Eastern Lampmussel, and Triangle Floater (being endangered or threatened species) as the basis for Category One designation in the Wallkill River. Please provide verification of the necessary and required documented occurrence(s) and location and spatial extent for the Bog Turtle, Eastern Lampmussel and Triangle floater. (233)

393. COMMENT: The proposal has inadequate support as the Wallkill and Black Creek redesignations are based on the endangered or threatened Landscape Project. There appears to have been a targeted assessment of these waterbodies; while other State open waters with similar attributes were overlooked. The Department's action is arbitrary and capricious in targeting certain waterbodies. (155)

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394. COMMENT: It appears that the Landscape Maps identify areas within the watershed as Bog Turtle Habitat but do not designate the specific location of the Black Creek as such habitat.

It appears that the Landscape Maps do not identify any areas within the Black Creek watershed as documented habitat for the Triangle Floater.

The existing Black Creek Sanctuary Development has preserved and in fact created habitat for the bog turtle to ensure its continued existence in the area. There is no need to add additional regulatory restrictions to the redevelopment project area to ensure preservation of bog turtle habitat and the existence of Bog Turtles in the area. (48)

395. COMMENT: The regulations assume, in the absence of proof, that endangered or threatened species habitat exists throughout the county. If the State is looking to protect overall water quality there must be a provision in the rules for verification of habitat. (95)

396. COMMENT: The proposed regulations designate the Wallkill River as a Category One waterway based on the fact the river is considered to be a "suitable" habitat for eastern lampmussels, triangle floaters, and bog turtles. However, while the science may find that there is suitable habitat for the above species there is no science or documentation available that verifies that there are actual occurrences of the species within these areas. The rules as proposed require both criteria to qualify for Category One designation; and due to the fact that there are no documented occurrences of endangered or threatened species, the Wallkill River should not be a Category One waterway. (199, 201)

397. COMMENT: While there may be portions of the Wallkill River that possess exceptional water quality or habitat the broad application of the Category One designation to the entire river and all its tributaries is unwarranted. By designating waters that are less than pristine in character the significance of more deserving waters

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such as the Flat Brook, located in northwestern Sussex County may be lost. Previously the Department used scientific data that allowed for specific sections or segments of rivers and streams to be designated as Category One while maintaining the other portions as Category Two. This approach would likely be more effective and generate less resistance from both municipalities and property owners throughout Sussex County and may be the more appropriate approach to take in seeking to protect those portions of the Wallkill River that are found to have the exceptional qualities suitable for classification as Category One waters. (199, 201)

RESPONSE TO COMMENTS 388 THROUGH 397: The Landscape Maps identify habitat patches for certain species, including endangered or threatened species, using documented occurrences and peer-reviewed species models. The maps identify patches of habitat but do not provide specific species occurrence information. For more information on the Landscape Maps, see the “Landscape Project Report” which is available at <http://www.njfishandwildlife.com/ensphome.htm>. The Landscape Project maps can be viewed through the Department’s interactive mapping tool or they can be downloaded as GIS data layers at <http://www.nj.gov/dep/gis/>. Specific sighting information and occurrence data is maintained in Natural Heritage Database. Documented occurrence information in the Natural Heritage Database is used to generate the Landscape Project maps.

The bog turtle occupies wetlands that meet certain characteristics of vegetation, soils, and, most importantly, hydrology. The life history of bog turtle is somewhat unique in that it spends the majority of the year within the wetland complex and often does not venture for great periods of time into the adjacent uplands and therefore the identification of wetlands occupied by the bog turtle is critical to the recovery of this species. A percentage of wetlands with bog turtles are of a small enough size that they are not currently identified as Wetlands in the 2002 Land Use/Land Cover data layer so therefore polygons are hand digitized to reduce the chance of not capturing core habitat. An additional 200 meters is generated around the Bog Turtle Colony polygons to account

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for turtle movements not identified during fieldwork as well as habitat that is valuable to the colony, but was not identified by the biologists. For more information, please see the Landscape Project at <http://www.state.nj.us/dep/fgw/ensp/landscape/index.htm>

In consideration of comments received, the Department reevaluated the habitat mapped as suitable for bog turtle in the Landscape Project to determine whether a stream intersected with documented, occupied habitat and where a stream's water quality may impact the documented, occupied habitat. While suitable habitat exists throughout the Wallkill River watershed, the Department determined that waterbodies that did not intersect with suitable habitat for bog turtle did not qualify for Category One based upon exceptional ecological significance. Based on this reevaluation, the Department determined that only portions of the Wallkill River qualify for Category One designation. This reevaluation affected other waters in the Wallkill River basin. At N.J.A.C. 7:9B-1.15(g) the Department is making revisions based on endangered or threatened species reevaluation.

Tributaries or portions of tributaries to the Wallkill River that did not intersect with bog turtle habitat are not being adopted as Category One at this time. Based on the reevaluation the Department is not adopting the proposed Beaver Run tributaries that originate in Wantage Township, Clove Brook, Franklin Pond, proposed portions of Franklin Pond Creek, Mohawk Lake, Papakating Creek from Lehigh and New England railroad crossing in Wantage Township including tributary east of Roys, Lake Windsor tributary, and the tributary that drains into Papakating Creek immediately upstream of the Lehigh and New England railroad crossing in Wantage Township, West Branch Papakating Creek from the confluence with Libertyville tributary including two tributaries immediately west of Plumbsock, Town Brook, Silver Lake, Summit Lake, Tamaracks Lake, Wantage Brook, Wallkill River from confluence with Beaver Run to State line, and Willow Brook. Because the Department is only adopting portions of some tributaries, few segments of the streams that were covered under the proposal as unnamed and unlisted tributaries are newly identified in the rule text upon adoption. At the same

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time rule text also reflects changes as a result of not adopting portions of proposed Wallkill River and its tributaries.

The Department inadvertently included the eastern lampmussel and triangle floater as the basis for the proposed portion of the Black Creek. The eastern lampmussel and triangle floater are found in the existing Category One portion of Pochuck Creek downstream of the proposed Black Creek segment. Therefore, Black Creek is not being adopted as Category One at this time.

398. COMMENT: On February 1, 1993, the Department initially proposed designating the Wallkill River Category One, however it was subsequently agreed between the Sussex County Municipal Utilities Authority and Department that the development of a Wallkill River Watershed Management Plan would provide a holistic and more appropriate approach to the protection of the Wallkill River and its tributaries.

Since that time, the SCMUA submitted a Scope of Work which was accepted by the Department. A contract was executed and grant funds were provided to develop a Wallkill River Watershed Management Plan. The Wallkill River Watershed Management Group (WRWMG) was formed which has been very active in conducting water quality studies of the Wallkill River, providing active public education and outreach, spearheading and assisting in restoration projects and development of a comprehensive GIS program. The WRWMG successes have been recognized by the Department on numerous occasions, indeed, the Department is providing funding for the WRWMG to perform work in the neighboring Paulins Kill Basin (WMA 01). To date, over one million dollars has been spent/earmarked for Wallkill Watershed Management Planning efforts. The proposal to designate the Wallkill River as Category One violates the spirit of the NJDEP/SCMUA agreement dated March 6, 2000, and should not be implemented. (233)

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RESPONSE TO COMMENT 398: The Department agrees with the commenter that the Department previously proposed an upgrade of the Wallkill River, but did not adopt that proposal. 26 N.J.R. 1126 (February 22, 1994). In 1994 the Department decided not to designate the Wallkill River as Category One and agreed to be involved in ongoing discussions with the SCMUA concerning development and implementation of a watershed management approach within the Wallkill River watershed that was intended to provide a level of protection equal to or better than that which would be provided by the Category One designation. At that time, the Department stated that, "If progress in developing a watershed management approach slows down unacceptably the DEPE will repropose and adopt designation these waters as C1 in order to protect the NWR." The Department proposed to designate the entire Wallkill River as Category One in May 2007. However, as indicated in response to comments 388 through 397, the Department reevaluated the spatial extent of Wallkill River and adopting only a portion of the mainstem of Wallkill River from Lake Mohawk to the confluence with Beaver Run at this time. As a result, only a small portion of the Wallkill River NWR from the upstream boundary of the NWR to Beaver Run will be designated as Category One. To date, the Department has not received any Wallkill River Watershed Management Plan as indicated by the commenter. As a result of this adoption the SCMUA will discharge to a section of the Wallkill River that is being adopted as Category One. However, the SCMUA will not be affected by this designation unless the SCMUA proposes an expansion in excess of their current NJPDES permit.

399. COMMENT: The Category One designation method demonstrates that the redesignation of the Wallkill River is not supported by the habitat and water quality data available. According to the biomonitoring data used to determine water quality provided by the Department the Wallkill River is presently scored as moderately impaired. The habitat quality was determined to be within the optimal to suboptimal range. The data also found the Wallkill River to have a suboptimal habitat rating for fish. The Wallkill River and its tributaries typically exhibit some level of impairment whether it is in water quality or suitable fish habitat that does not meet the criteria for Category One

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designation as defined by the current rule proposal. The data used by the Department clearly demonstrates that the Wallkill River cannot be considered “exceptional” as a Category One waterway. (199, 201)

400. COMMENT: The Wallkill River is a waterbody with differing water quality and habitat. It is inappropriate to impose Category One as a broad brush approach to the entire Wallkill River watershed without care or concern regarding proper evaluation per Department’s complete criteria. The Department has readily embraced HUC 14 methodology for identifying and assessing stream segments and watersheds for its own (Departmental) purposes of environmental protection. If no endangered or threatened species are documented to occur within that HUC 14 segment, then the Department should rely on its proposed criteria for Exceptional Ecological Significance – Exceptional Aquatic Community to make any Category One designation recommendations. (233)

401. COMMENT: The Wallkill and Black Creek do not exhibit attributes to qualify as Category One. Moreover, there are numerous means to enhance water quality through enhanced BMPs. (155)

RESPONSE TO COMMENTS 399 THROUGH 401: As indicated in the proposal (39 N.J.R. 1845(a)) the Department based its decision to upgrade Wallkill River and its tributaries on the presences of endangered or threatened species and not benthic macroinvertebrates, habitat, Fish IBI or water quality data. The presence of the Federally Threatened and State Endangered bog turtle does qualify the Wallkill for designation as a Category one waterbody.

However, as indicated in response to comments 388 through 397, the Department is not adopting Lake Mohawk, lower portions of Wallkill River, and Black Creek included in the May 21, 2007 proposal based on the reevaluation of spatial extent. As suggested by one commenter, the Department may in the future seek to upgrade those

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portions of Wallkill River that are not being adopted as Category One at this time based on Exceptional Ecological Significance – Exceptional Aquatic Community.

402 COMMENT: The proposed rules do not provide a clear list of exemptions and leaves many issues up to the interpretation of the Department review person. Questions abound throughout the community: Can I fix my septic? Can I put an addition on my house? Will I still be able to use my motorboat? Will sea walls and docks be regulated? Can we treat our lake for weed growth? What permits will be required and how long and how much will it cost before I can build? Four existing public school facilities in Sparta Township will be impacted, limiting future expansion for student growth and special needs. Our children's education is being threatened, while the Department protects some obscure reptile or insect. Equity issues for my property, other property owners and the Township through lost tax revenue and jobs. Our public park and recreational facilities at Ungerman Field, White Lake, and Station Park will be greatly impacted. Our quality of life and the health of our children appear to be taking a back seat to turtles and insects. How does the Department justify this? I am opposed to the new rules that the Department has proposed. You have failed to include the citizens of New Jersey in the open public discussion, which we are directly affected by these sweeping changes. (3, 4, 13, 40, 129, 194, 199, 201, 209, 235, 245, 246, 254)

403. COMMENT: The Wallkill River runs through the middle of Franklin and Hamburg Boroughs, two municipalities working towards revitalization through center based development and redevelopment. The resulting fragmentation of the existing centers through the 600-foot buffer will require the abandonment of these plans. The municipality of Hardyston Township, with the Boroughs of Ogdensburg, Franklin and Hamburg, filed for Regional Center Designation more than ten years ago. The designation of existing drainage facilities and golf course elements as protected waters will foreclose the proposed Village Center. In Vernon, redevelopment and center planning efforts within the Wallkill watershed will be frustrated by Category One designation. (153, 184, 203)

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404. COMMENT: The proposed Category One designations would appear to be more about curbing development than enhancing water quality standards. Unfortunately, this new regulatory proposal tips the balance even more against the economic prosperity of the areas, district 24 and 3. (127, 221)

405. COMMENT: The regulations give little consideration to the fact that much of Hardyston and many other municipalities' development potentially has already been severely limited by the Highlands Act and various other Department regulations. The reclassification of the Wallkill River and its tributaries as a Category One waterway will effectively eliminate the development potential of a majority of the only remaining land in Hardyston that can accommodate the higher density, village center type of development that is proposed for the Township and supported by the planning principles of the State Development and Redevelopment Plan.

The regulations as they are currently proposed do not clearly outline exemptions for specific land use activities, nor do they accommodate for the type of development that is consistent with center orientated growth advocated by the State Plan. The lack of specific provisions to accommodate for both designated and proposed centers, such as Hardyston's Village Center jeopardizes the economic future of the Township. The economic impact that will occur as a result of the adoption of the Category One regulations is not only an issue because of the potential loss in tax revenue but also because of the potential loss of future jobs and investment dollars.

The proposed regulations will effectively eliminate the potential to build the proposed Village Center and an additional 484 residential units along Route 94. The loss of this proposed development would result in the loss of an estimated 310 jobs that would be created by the proposed hotel and retail establishments in the Village Center. The loss of these potential jobs would significantly impact both Hardyston and surrounding municipalities. (199, 201)

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406. COMMENT: The Hardyston Township has serious concerns regarding the loss of the potential tax revenue that would be generated from these projects. Over the past ten years, Hardyston has been able to maintain a relatively stable tax rate while providing exceptional municipal services despite the fact that the majority of the State has been faced with skyrocketing property taxes. The proposed Village Center alone would help to ensure that the Township's tax rate remains stable as it is expected to generate approximately \$1,486,738 in annual municipal tax revenue alone. (199, 201)

407. COMMENT: The economic impact of the proposed regulations would even be felt at the state level. Hardyston Township has adopted a local hotel tax ordinance. If the proposed hotel in the Village Center was to be constructed the potential hotel tax revenue would be approximately \$191,625 a year for the Township and \$95,812 a year for the State of New Jersey. This potential revenue would be a valuable resource for promoting tourism and economic development in both Hardyston and throughout the State. (199, 201)

408. COMMENT: Currently 2% of the Borough of Franklin's total acreage is affected by existing Category One streams. Under the proposed rule, this number will increase to 26%. With more than one quarter of total area impacted, the proposed rules will adversely affect the Borough's efforts to advance its center based on development and redevelopment. Without verification of appropriate buffers, the blanket application of these new rules has the effect of imposing unreasonable restrictions that substantially inhibit the Borough's opportunities for development and redevelopment. (109)

409. COMMENT: Under the proposed regulations both Lake Tamarack and Summit Lake would be reclassified as Category One waterways due to their exceptional ecological significance as a habitat for Federal and State endangered or threatened species. The Category One designation raises a number of concerns for both the Township of Hardyston and the private homeowners who live along the lakes. For many

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of the homeowners these communities are year-round residences and not just summer vacation homes. The homes are a valuable investment and provide a source of equity for many of the residents. The proposed limitations resulting from the imposition of the 300 foot buffers threatens to depreciate the value of the land surrounding the lakes; jeopardizing the residents' financial security. Due to the fact that there are numerous lake communities throughout Sussex County, the Township believes that the economic impact many homeowners will be faced with as a result of the Category One designation is an important issue that must be addressed in the regulations before they are adopted. (199, 201)

410. COMMENT: Hardyston Township also has concerns regarding the effect of the Category One regulations on the Township's efforts to make improvements to the stormwater management systems in the lake communities. As the regulations are currently proposed there is no clarification as to whether or not expansion of the systems will be permitted. If the municipalities are not permitted to make improvements to their stormwater management systems the amount of runoff and pollution into the lakes may in fact result in a degradation of the water quality, which would be contradictory to the goals of the regulations. Furthermore, if the regulations create a permitting process that is so complex and costly, the ability for municipalities to take proactive steps in controlling stormwater will become economically impossible. (199, 201)

411. COMMENT: The proposed Category One rules cause significant harm to efforts to build affordable housing in Hardyston and Vernon. Close to 130 units of affordable housing will no be constructed if the Category One rules go into effect. If the affordable housing project in Hardyston, is derailed because of the Category One rules, the township will incur a burden of over \$6,000,000, which causes irreparable damage to the already strained pocketbooks of the residents. (266)

412. COMMENT: The proposed Category One designation of streams and lakes would affect 280 stream miles in Sussex County and restrict development on approximately

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15,000 additional acres. If implemented, it will cause considerable negative consequences on designated and existing town centers and municipal, county, regional, and state planning. Towns, which have waited years for approvals of their town centers and plans will need to start over again and substantial costs will be incurred and hundreds, perhaps thousands, of hours of work lost. (95)

RESPONSE TO COMMENTS 402 THROUGH 412: The SWQS rules do not regulate development or establish buffers. The comments describe specific projects that may be impacted by Category One designation because of additional protections provided for Category One waters, such as buffers, in other Department land use regulations, such as the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. For information regarding the 300 foot buffers and the rules that implement them see response to comments 66 through 67. As explained in response to comments 66 through 67, these rules limit but do not prohibit development within the 300 foot buffer. Potential impacts to each project will vary based on the scope of the project and the associated proposed activities, which cannot be ascertained accurately from the submitted comments. Commentors can see response to comments 89 through 98 for further information on grandfathering and implementation. It should also be noted that the Category One designation does not affect existing development.

As noted above, the Stormwater Management rules at N.J.A.C. 7:8 and the Flood Hazard Area Control Act rules at N.J.A.C. 7:13 allow some encroachment into the 300 foot buffer in certain circumstances. Such provisions may apply to some center-based development. The State Development and Redevelopment Plan (SDRP), and associated State Plan centers are adopted by the State Planning Commission (Commission). The Commission, which includes representation by the Department, is an interagency body that brings a wealth of expertise and perspectives to the process including housing, transportation, education and other services, as valued considerations in addition to the environmental protection mandates of the Department. However, the Surface Water Quality Standards must concern themselves foremost with the protection of water quality

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and the SDRP cannot be considered exclusive of that goal. As such, center designation by the Commission, in this and most other Department rules, does not modify or alter the existing regulatory requirements.

413. COMMENT: The Department should not designate any portion of the Black Creek as Category One in any areas that have been deemed in need of redevelopment. It seems clear that the environment will benefit greatly from the redevelopment of property under existing regulations rather than the regulations which existed at the time of the original development. In the case of Mountain Creek, the original development occurred under the rules and regulations in place in the 1960's and 70's. (48)

RESPONSE TO COMMENT 413: The Department is not adopting the proposed Category One designation for Black Creek. Therefore, this project is not expected to be affected.

414. COMMENT: Elevated temperature, fecal contamination and suspended solids are key pollution factors for the Black Creek and its tributaries. An arbitrary 300 foot buffer without using BMP's will not have any impact on reducing these pollutants. The measures which will be included in the Black Creek Watershed Restoration and Protection Plan will be scientifically based. Implementation of these measures in a 75 foot to 100 foot buffer will reduce the targeted pollutants. (154)

RESPONSE TO COMMENT 414: The Department agrees that the buffers imposed to protect Category One waters will not improve the existing impaired conditions. The Category One designation and the associated BMPs are intended to protect high quality waters but not to restore water quality. The Department uses other tools such as TMDLs to restore impaired waters.

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Lake Mohawk

415. COMMENT: The Department's upgrade of Lake Mohawk to Category One status is based on the lake's exceptional ecological significance, as determined by the presence of Bog Turtle, Triangle Floater, and Eastern Lampmussel, or habitat recognized and documented as suitable for the support of these species. As of yet none of these species has been confirmed by the ENSP as occurring in Lake Mohawk. The Bog Turtle is both a Federal and State listed species. It occurs almost exclusively in bogs, fens, and wetlands, not large eutrophic lakes such as Lake Mohawk. Both mussels are more commonly encountered in streams and slow moving rivers, not large eutrophic lakes such as Lake Mohawk. In addition, the mussel prefers a solid, gravel, and stone substrate, not the typical soft, muddy bottom characteristic of Lake Mohawk. The ENSP has yet to conduct a survey of the lake for any of the above species. The Department has not provided any data that supports the occurrence of these species in Lake Mohawk or the lake's ability to provide the habitat needed for the Bog Turtle, Eastern Lampmussel or the Triangle Floater. Therefore, none of the species identified by the Department as support for the lake's categorization as an Exceptional Ecological Significance are confirmed to occur in the lake. (89, 200, 202, 206)

416. COMMENT: The habitat surrounding Lake Mohawk is not and probably never will be suitable for the various species listed in the proposed set of regulations. This limitation exists due to extensive stormwater flows experienced during wet periods, and dry periods experienced during drought conditions. Despite the use of approximately 20 sedimentation basins around the perimeter of the lake, the shoreline habitat is not supportive of the specified species stated within the Category One proposed document. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

RESPONSE TO COMMENTS 415 THROUGH 416: The Department proposed to upgrade Lake Mohawk to Category One under the exceptional ecological significance based on the sightings and habitat of bog turtle, eastern lampmussel, and triangle floater which is part of the exceptional ecological significance. A waterbody can be upgraded

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based on exceptional ecological significance based on the documented occurrence of Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater or exceptional aquatic community. As explained in response to comments 388 through 397, based on the reevaluation of bog turtle, the Department determined that Lake Mohawk does not support bog turtle, eastern lampmussel, and triangle floater and therefore, Category One designation is not being adopted for Lake Mohawk.

417. COMMENT: The current water quality of Lake Mohawk is recognized by the Department to be impaired due to periodic elevated concentrations of total phosphorus depression of the lake's deep-water concentrations of dissolved oxygen. This impaired condition is not consistent with a water body deemed to be of Exceptional Ecological Significance. The lake's watershed is characterized (as documented in past studies of the lake) as having over 10% impervious (paved or otherwise impermeable) cover. As a result of the extensive development of the lake's near shore areas and its watershed in general, and the recognized impairments due to phosphorus and dissolved oxygen, Lake Mohawk fails to meet the Department's minimum standard for an Exceptional Aquatic Community, another means by which Department evaluates the suitability of a waterbody for Category One status. (89, 200, 202, 206)

418. COMMENT: Lake Mohawk and the downstream waters are not a source of drinking water for New Jersey residents and therefore should be excluded from the legislation. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

419. COMMENT: Due to Lake Mohawk's current level of development and use, there is simply no factual or legal basis for the lake to be designated as Category One. The Department's proposed action was based on some undisclosed rationale and/or on the mistaken conclusion that it would provide protection for endangered or threatened species. To the extent that the Department has failed to disclose the basis for its action,

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the proposal is a violation of the APA and contrary to fundamental principles of administrative law. (66)

RESPONSE TO COMMENTS 417 THROUGH 419: A waterbody may qualify for Category One designation based on exceptional ecological significance if the waterbody supports Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel, Green Floater, and/or Triangle Floater or an exceptional aquatic community. The proposed designation for Lake Mohawk was based on bog turtles therefore; impairments of water quality in Lake Mohawk were not considered. It is not necessary for a waterbody to meet all the definitions to qualify for Category One designation. These three ways used to designate Category One waters are independent factors and do not overlap with each other.

The Department disclosed necessary information pertaining to Category One upgrades in the Summary of the rule proposal, in accordance with the APA. However, as explained in response to comments 388 through 397, based on the reevaluation of bog turtle habitat, the Department determined not to adopt Category One designation for Lake Mohawk.

420. COMMENT: The commenter would like the confirmation that power boating will be permitted under a Category One classification, both now and in the future. If power boating is not to be permitted, the economic fallout to Lake Mohawk and to Sparta Township will be enormous. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

421. COMMENT: The proposed regulations would destroy the way of life and ruin many financially. The residents have chosen to live at Lake Mohawk as it is a thriving and active lake community. Eliminating power boat usage will severely hurt home values and eliminate the reason many people have chosen to live at the Lake. Property values will plummet and many will end up going from a high equity position in their homes to the opposite. (62)

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RESPONSE TO COMMENTS 420 THROUGH 421: Category One designation affects new or expanded discharges, new major development, and activities regulated by the Flood Hazard Area Control Act rules. Boating would therefore not be impacted.

422. COMMENT: The designation of Lake Tamarack and Summit Lake as Category One waters also raises questions about future dam repairs, dredging projects, and other infrastructure projects that are necessary to maintain the lakes. The community associations and the Township have continually taken an active role in performing the necessary maintenance to improve both lakes. However, the proposed regulations are not clear as to whether or not we will be able to continue to complete such projects in light of the fact that the 300 foot buffers prevent any new disturbances that would result in a measurable change in water quality. Currently, Summit Lake is in need of major dam repairs as per the recommendations made by the Department. The Summit Lake Homeowner's Association along with the Township have entered into an agreement to proceed with the repairs which will be funded by a loan from the Department. If the adoption of the proposed Category One regulations will prohibit the dam repair from taking place, the regulations would seemingly be in direct contradiction to the efforts being made by other Department Programs. (199, 201)

RESPONSE TO COMMENT 422: Category One designation does not preclude reconstructing an existing dam. Dam reconstruction is regulated by the Flood Hazard Area Control Act rules. Mitigation could be required to address disturbances in the riparian zone.

423. COMMENT: For what purpose does the Department want to reclassify our lake Mohawk? What will it mean to our lifestyle? Although our property is outside the 300-foot buffer, we will still be affected. With open lands essentially nonexistent within the proposed 300' buffer, will the proposed regulations permit the use of structural methods

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within the 300' buffer? The Department should not designate Lake Mohawk as Category One. (259, 267)

424. COMMENT: Lake Mohawk has a long standing history of maintaining beautiful waters and has been cited the last five years for its outstanding ability and efforts in providing a clean and beautiful environment. Many of these awards have come from the Department. The board of trustees has worked tirelessly and at great cost to the residents to find and implement the most current and best methods of lake maintenance. Many of the stipulations that are outlined in the Category One regulation would prevent them from continuing this process with a very adverse effect on our lake. The commenter strongly believes that the private community is proving to be better than one governed by the State. Therefore, the Department should not designate Lake Mohawk as Category One and allow our lake community to continue its outstanding and highly awarded program of lake maintenance. (83, 259)

425. COMMENT: Lake Mohawk will be subjected to having more than 300 acres fall within the proposed 300' buffer without benefit of realizing any water quality enhancement. Present build-out of Lake Mohawk within the proposed buffer, as well as within the entire reservation, is already at 98+%. The use of the land is also covered by many of the water quality ordinances recommended by the Department. Sparta Township has taken the initiative to protect our ground water through the development of a well-head protection ordinance. Our position is that the proposed Category One offers absolutely no added benefit, either within the buffer or for the remainder of Lake Mohawk since Lake Mohawk is already 98+% at build-out. This is further justification that the proposed Category One is unwarranted. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

426. COMMENT: Lake Mohawk is located at the southern end of Sparta with 1,400 property lots within the 300-foot buffer proposed. Tributaries feeding the southern end of Lake Mohawk (10% of the properties) are within the Highlands Preservation Area and,

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therefore, already protected. In fact, the entire Lake Mohawk reservation is presently the most protected water quality lake within the State. It is not clear to us why Department is focusing on Lake Mohawk when other streams and lakes within the State desperately call for protection as well as state funding. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

427. COMMENT: The 5,000 residents of Lake Mohawk are very concerned about the reclassification of Lake Mohawk and the Wallkill River to Category One. The residents have continually improved the water quality of the lake on their own and are now being squeezed with this and previous Highlands laws out of a way of life and pleasure. (115, 116)

428. COMMENT: Lake Mohawk is a recreational lake that has 2600 homeowners and 8000 residents who will be negatively affected by the proposed changes. Was a cost-benefit analysis conducted, as proscribed within the present Department regulations? If not, why not? Will such a study be done? (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 253, 259)

429. COMMENT: The commenters request exemption of Lake Mohawk from the proposed Category One changes. Lake Mohawk residents have been proactive in the stewardship of lake water quality for over 12 years. Lake Mohawk has the most comprehensive lake water quality restoration, protection, and monitoring plan within the State and has been recognized by the Department, USEPA and others for the success of their efforts. Residents have voluntarily supported/installed detention basins, water and land protective ordinances, and evaluated state-of-the-art water quality enhancement approaches that have resulted in a protection level that far exceeds State requirements. Lake Mohawk is a recreational lake that has 2600 homeowners and 8000 residents who will be negatively affected by the proposed changes. These changes will have a major impact on the residents within the proposed 300 foot buffer, within the Lake Mohawk Watershed, and within Sparta Township. Even a 10% drop in local real estate values

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results in a \$6 million loss of taxes to Sparta Township, at the present base tax rate. Local real estate agents advise that a forecast decrease in residential housing values could be 10-15 percent of present values. The decrease depends on the regulations that are ultimately imposed, which have not been clearly and adequately communicated to us. (259)

430. COMMENT: The Department should reconsider its designation of Lake Mohawk as a Category One waterbody. There is no evidence that there is a problem or that the redesignation will lead to any improvement in water quality that cannot be achieved by less intrusive, less expensive means. At a minimum, Lake Mohawk should be advised of any specific problems with the quality of water in the lake and should then be given a reasonable period of time to remediate any problem that can be remediated using reasonable measures. If the Department can't articulate a problem with Lake Mohawk, there is no justification for applying a draconian solution. (11)

431. COMMENT: Sparta Township and Lake Mohawk Country Club are providing extensive water quality improvements to the lake, headwaters of the Wallkill River. Further efforts require disturbance within 100 feet of the lake, to say nothing of 300 feet as would be the case if the Category One designation were to be applied. This will hamper voluntary efforts to meet or exceed the results at the foundation of the proposed rules. (153, 184, 203)

432. COMMENT: The commenter is concerned about the negative economic impact such new regulations would have on this town and the surrounding area, as well as the serious repercussions to the quality of life for everyone in Lake Mohawk. Limiting construction or motorboats on Lake Mohawk will not serve the people or environment of the State. In fact drop in real estate value, decline in business, and all other economic and social ramifications will devastate an already struggling Sussex County. The attempt to fix a water quality problem that does not presently exist at the expense of tens of thousands of homeowners is both irresponsible and superfluous. (216)

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433. COMMENT: Lake Mohawk is incredibly well maintained and has received numerous State honors in the past years for our efforts to keep the water and environment safe and clean. Please urge those with the power to stop this to look else where, this is the wrong place to target. (250)

434. COMMENT: Lake Mohawk which is the headwaters of the Wallkill River should be exempt from the proposed rule. As the lake is privately owned and has had power boats on it since it was created in 1929. Country Club contracts to have the lake water quality maintained, and except for geese droppings, would meet class one standards. (259)

435. COMMENT: The proposed changes in the law have been poorly communicated and defined to homeowners and taxpayers. (18, 32, 52, 56, 75, 92, 93, 96, 196, 224, 225, 241, 249, 259)

436. COMMENT: Economic effect is significant to Lake Mohawk, White Deer Plaza businesses, and to Sparta Township. Proposed Category One nomination for Lake Mohawk should be abandoned until a complete socioeconomic assessment can be made by the Department, as required, in partnership with affected stakeholders. The same conclusion applies even if motor boating is permitted. (89, 200, 202, 206)

437. COMMENT: It should be noted that with the elevation of the lake to Category One status, a 300' buffer would be applied around the entire lake. The Department strictly limits what can be done with the 300' buffer. This includes the construction of new homes, the remodeling or redevelopment of existing homes, the construction of new stormwater outfalls and even the clearing of land. These restrictions would actually inhibit many of the efforts being implemented by the LMCC, Sparta Township and Sussex County to reduce stormwater related pollutant loading to the lake (for example the various recently constructed sedimentation basins). Thus the reclassification of the lake

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to Category One status would actually impede the LMCC's future efforts to reduce pollutant loading and improve the lake's water quality and impact the quality of life of the lake community. This could have serious economic ramifications, none of which the Department has taken into consideration. The Department should clarify the impact of Category One designation on the following activities: dredging, recreation and construction activities in and around Lake Mohawk. (89, 200, 202, 206)

RESPONSE TO COMMENTS 423 THROUGH 437: The Department had proposed to designate Lake Mohawk as Category One to protect bog turtles. The designation would affect new major development and activities regulated by the Flood Hazard Area Control Act rules. Since there is little available developable land around Lake Mohawk, the effect of the designation would have minor impact. However, the Department reevaluated the extent of the proposed Category One designations based on endangered or threatened species sightings and their habitat as explained in response to comments 388 through 397. Based on the evaluation, it was determined that Lake Mohawk and its inlet tributaries do not qualify for Category One designation. Therefore, the Department is not adopting the Category One designation proposed for Lake Mohawk.

438. COMMENT: Lake Mohawk recently obtained a copy of Department Administrative Order NO. 2007-01 that addresses the subject of Category One waivers and variances for existing Category One waterbodies. Do the rules become effective for the nominated streams and lakes on the date when Department publishes the list of newly approved Category One waterbodies in the New Jersey Register? (89, 200, 202, 206)

RESPONSE TO COMMENT 438: The new Category One designations proposed in this rule become effective upon publication of their adoption in the New Jersey Register.

Additional nominations

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439. COMMENT: The commenter recommends that the Rancocas Creek, Cooper River, Mullica River, the Egg Harbor River, and Pennsauken Creek be added to the nomination list for Category One waterways. (163)

440. COMMENT: In review of these Category One waters additions, the commenter re-evaluated the real property of other National Wildlife Refuges within New Jersey whose waters are covered by previous Category One designation. The following surface waters of the Delaware River Basin pass through or form boundaries of the Supawna Meadows National Wildlife Refuge, Salem County, and accordingly should be designated as Category One: Miles Creek, Mill Creek, Mud Creek. Surface waters of the Delaware River Basin that pass through or form boundaries of the Delaware River Division of the Cape May National Wildlife Refuge, Cape May County, and accordingly should be designated as Category One are listed below, from north to south: Dennis Creek, Bidwell's Creek, Dias Creek, Fishing Creek, Green Creek. Cedar Swamp Creek, within the Atlantic Coastal Basin, passes through and partially originates within the Cedar Swamp Division of the Cape May National Wildlife Refuge, Cape May County. Moreover, this stream length is within the Pinelands Management Area boundary, and meets the definition of Outstanding National Resource Waters, but has not been designated as Category One or Pinelands Waters. (133)

RESPONSE TO COMMENTS 439 THROUGH 440: The Department acknowledges the commenters interest in upgrading several waters to Category One. All waters may not qualify under the definition of Category One at N.J.A.C. 7:9B-1.4. The Department periodically reviews waterbodies that may qualify for Category One. It has been and continues to be the Department's intention to identify all appropriate waters for Category One protection and to assure that the State's water resources are protected. However, not every waterbody was reviewed as part of the proposal. The waterbodies identified by the commenters were not considered for Category One designation because these waterbodies did not meet the new definitions for Category One. The Department is

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required to propose these upgrades through rulemaking process. Therefore, no action is being taken on these additional nominations at this time.

According to the definition at N.J.A.C. 7:9B-1.4, "Pinelands waters means all waters within the boundaries of the Pinelands Area, except those waters designated as FW1." All waters within the boundaries of Pinelands Protection and Preservation Area are classified as Pineland (PL) waters and designated as Outstanding National Resource Waters (ONRW). Cedar Swamp Creek from source to Route 610 is within the Pinelands Protection and Preservation Area and is classified as PL. The classification table at N.J.A.C. 7:9B-1.15(c) for Atlantic Coastal basin identifies a portion of Cedar Swamp Creek within the MacNamara Wildlife Management Area as Category One but does not identify the PL portion of the stream. The stream classifications identified on the GIS maps reflect all the different classifications and antidegradation designations for Cedar Swamp Creek correctly.

441. COMMENT: Clyde Potts feeds its water into the Southeast Morris Utility Authority along with nine wells. It is not separately providing water, but the Utility Authority provides water for about 60,000 people. The reservoir by itself could serve perhaps 20 to 25 percent, so maybe 10,000 people. But it is a reservoir and its providing drinking water, therefore, deserves the same protection. (59)

442. COMMENT: The commenter requests the Department to close the gap in the Category One that exists in Manasquan River. The Category Two designation goes from Turkey Swamp State Park to West Farms Road. In addition, the Long Brook which flows into the Manasquan with lot of tributaries need to be protected. There is a lot of development going on and being proposed to go on in this area and along Route 33, which is mainly undeveloped, but it's going to be very soon. There is a lot of wetlands that are going to be filled in. Unfortunately, a lot a damage going to be done. (49)

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443. COMMENT: The Manasquan River Watershed Association is seeking Category One designation for all remaining Category Two waters upstream of current Category One waters because they serve as a water supply source for the Manasquan Reservoir and are thus of exceptional water supply significance. (2)

444. COMMENT: The New Jersey American Water Company, which serves of 250,000 customers in Monmouth County, draws drinking water from a blend of sources that include surface water from the Manasquan River and Swimming River Reservoirs. Source water protection is critical to the continued supply of clean and safe drinking water. Furthermore, it is more cost effective to prevent contamination than to try to remove it after the fact. The Department should extend the Category-1 designation to all of the feeder rivers and streams in the Manasquan and Swimming River watersheds. It makes economic sense for the rate payers, and is critical to the health and well-being of hundreds of thousands of current and future residents of Monmouth County. (43, 190)

445. COMMENT: The Manasquan River Watershed Association is seeking Category One designation for all remaining waters upstream of current Category One waters because they serve as a water supply source for the Manasquan Reservoir and are thus of exceptional water supply significance. The Manasquan River is the sole source of water supply for the Manasquan Reservoir, serves the region as a trout maintenance river, has headwaters that originate in Monmouth County's Turkey Swamp Park, and currently has seven waterways with known impairments that are listed on the State's impaired waters list. Designation of the River as Category One is essential to ensure adequate protection of the region's drinking water supply. (222)

446. COMMENT: There are numerous streams that have been left off the list entirely and other streams where some of the critical portions have been nominated and others excluded. One such example is the Ramapo, where only a small segment has been upgraded when the entire Ramapo should have been added because of its exceptional water supply significance up to 64 mgd, enough water to sustain a population of over

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600,000 people, can be taken out of the intakes on the river and Pompton Lake. Another example is the Toms River, where again only a small portion has been included, even though that river is critical for water supply and has important ecological significance. (64, 227)

447. COMMENT: Lawrence Brook and Mill Pond should be classified as a Category One waterway. This will ensure the existence of a pristine waterway in Central New Jersey, continue a source of pure water to area residents, provide a recreational area for the citizens and continue a habitat for wildlife. (29, 98, 99, 134, 150, 186, 186)

448. COMMENT: Lawrence Brook is distinguished as being a regional drinking water source. It has been used by New Brunswick Water Utility for this purpose since the 1920's when Mayor Farrington saw fit to secure an 800 million gallon watersource for the city by the construction of Farrington Dam. Water is now drawn below Weston's Mill Pond and mixed with a feed from the Delaware and Raritan Canal to provide potable water for New Brunswick and Milltown in Middlesex County, as well as Franklin Township in Somerset County. The Lawrence Brook is also a back-up watersource for the Township of North Brunswick.

In April of 2003, the NJ Public Interest Research Group released a report entitled: "Rivers in Danger." This report documented how New Jersey's most pristine waterways face the risk of contamination from rapidly expanding development. Many of the waterways mentioned provide clean drinking water for millions of New Jersey residents. The Lawrence Brook was included in this survey. The report was based upon land use and water quality data collected by the Department. Declining water quality was associated with increasingly urban land use. For instance, between 1986 and 1995, an increase in urban area claimed 6.6 percent of the Lawrence Brook watershed, leading to a 12 percent water quality decline in the 1990s. (195)

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449. COMMENT: Lawrence Brook Watershed is in Central Middlesex County, is a tributary of the Raritan River and is part of Region 9. This Watershed is a drinking water supply for Milltown, New Brunswick and Franklin, some other small communities and a backup supply for other communities such as North Brunswick. It has been a drinking water supply since the 1860's. The commenter applied for Category One designation for the watershed 4 1/2 years ago, with two subsequent letters to the Department's Assistant Commissioners with no result thus far. (65)

450. COMMENT: Maurice River, Oldmans Creek, and Pompeston River are vitally important tributaries with exceptional ecological significance. The Maurice River is already Category One in portions and Federally recognized. It merits compete upgrade even though only part is proposed. Key habitat is provided for migratory birds and as documented by the Department, contains exceptional value habitat for species. Oldmans Creek is partly Category One already as well and merits compete upgrade. These rivers flow into the Delaware River Estuary, which is rich in tidal wetlands, upland forests, grasslands. Within the estuary, the horseshoe crab is a critical species that supports the second largest population of migrating shorebirds in North America, including endangered or threatened species such as the Red Knot. The horseshoe crab is presently in danger of collapse in the Delaware Bay, which would have devastation ecological impact. The Bay is home to the world's largest population of these crabs worldwide but the population is precipitously falling, especially in the last year. Blue crab, experiencing crashing populations, is found throughout the Estuary. (35, 232)

451. COMMENT: The commenter would like to recognize that Alloway Creek, Stow Creek and all of the tributaries need to be recognized and given Category One designations. (176, 163)

RESPONSE TO COMMENT 441 THROUGH 451: The waterbodies identified by the commenters were not considered for designation as Category One because the waterbody did not meet the new definitions for exceptional water supply or did not provide suitable

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habitat and documented occurrences for one or more of the seven listed Threatened or Endangered Species. It has been and continues to be the Department's intention to identify all appropriate waters for Category One protection and to assure that the State's water resources are protected. The Department is required to propose these upgrades through rulemaking process. Therefore, no action is being taken on these additional nominations at this time.

452. COMMENT: The Metedeconk River and its headwaters need to have the Category One status. The largest development in Jackson history will be before the planners shortly, with the plan to build 2,531 homes on this environmentally sensitive land. The land in the vicinity of the headwaters for Metedeconk River, and Cedar Swamp Road, Routes 527 and 526, is wet year round, even in times of drought. When another 6,000 or more people draw from this ground water daily, the water supply for over 150,000 people downstream in Howell and Brick will be in serious Jeopardy. (137)

RESPONSE TO COMMENT 452: The entire length of Metedeconk River was upgraded to Category One designation as part of the rule amendments to Surface Water Quality Standards in August 2004. See 36 N.J.R. 3565(c).

453. COMMENT: Some confusion exists whether Fox Hollow Lake and the Lake Mohawk Upper Lake (both located within Sparta Township) are presently classified as Category One lakes? Please note: Fox Hollow Lake drains to Paulins Kill waterbody and the Lake Mohawk Upper Lake drains to Fox Hollow Lake; also as far as we can ascertain, both lakes are within the same HUC 14 subwatershed. (89, 200, 202, 206)

RESPONSE TO COMMENT 453: Fox Hollow Lake and Upper Mohawk Lake are currently designated as Category One and drain to East Branch Paulins Kill.

BEYOND THE SCOPE

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454. COMMENT: The language for the protection of Pinelands waters is weak at N.J.A.C. 7:9B- 1.15(d)6ii, especially when compared to N.J.A.C. 7:9B- 1.15(d)6iii, Category One Waters. The specific reference to the “Department” is good, but the wording “shall not approve any activity” is not as protective as “shall be protected from any measurable change” as for Category One Waters. The word “approve” is often used in terms of “permit approval”, and this existing language confuses and disconnects the permit approval role of local municipalities and the Pinelands Commission with the Clean Water act regulation and enforcement responsibilities of the “Department”.

(Note: No recommendation is being made here to remove the “Dischargers” existing use disclaimers at 6ii(1),(2), and (3), at this time). (5)

RESPONSE TO COMMENT 454: The Department did not propose amendments to antidegradation policies at N.J.A.C. 7:9B- 1.15(d). The Department may review and revise these policies if necessary, in the future rulemakings.

455. COMMENT: The proposed Category One designation for tributary waterbodies that have previously been designated as “Ordinary” or “Intermediate” resource value wetlands by the Department is arbitrary and capricious. It is arbitrary and capricious to upgrade the wetlands resource value of such waterbody merely on the basis that it is tributary to a Category One waterbody. The amendments should exclude such waterbodies. (140)

RESPONSE TO COMMENT 455: Resource Values are assigned to freshwater wetlands pursuant to the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-2.4 and do not relate to Category One classification. This analysis is separate and apart from the analysis that the Department undergoes to designate waters as Category One. While it is possible that there may be data that would both inform the designation of a Category One waterbody and the classification of a freshwater wetland as exceptional resource value (for example, presence of a certain endangered or threatened species or classification of a water as trout production), the designation of a waterbody as Category One will not in and of itself change the resource classification of a freshwater wetland.

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456. COMMENT: The wildlife criteria, derived in Buchanan et al., (2001) have not been implemented by the State of New Jersey and have not been promulgated by the USEPA. The Department should address this protection deficiency, since existing numeric State of New Jersey Water Quality Standards remain unprotected for mercury and DDT. Total PCB criteria adopted in 2006 have closed the gap from previously unprotected criteria and while this new human health-based criterion is less a concern today than previously, regarding wildlife protection, attainment of New Jersey's numeric PCB standard is stalled due to implementation issues that need clear and decisive resolution, regardless of the actual numeric criterion. The commenter recognizes that every Federally listed and de-listed wildlife species may or may not be afforded Category One protections outside of currently designated or proposed water bodies. That remains a State prerogative that we support. However, numeric criteria associated with the above derivation document was a requirement of a legally binding and preexisting section 7 consultation, which is not preempted by the ongoing National Water Quality Criteria Consultation. The USEPA and the State continue to be in non-compliance with the Service's Biological Opinion and may be vulnerable to legal challenges. The Federal delisting of the bald eagle (effective August. 8, 2007), and similarly the past delisting of the peregrine falcon, does not mean species are no longer susceptible to historic and current pollution and hazardous substance releases, including sediment contamination of major ecosystems within New Jersey (for example, Hackensack Meadowlands, New York / New Jersey Harbor, Delaware River and Bay). The commenter recommends Department and USEPA coordinate with us to resolve the outstanding issues addressed above. (133)

RESPONSE TO COMMENT 456: The Department concurs with the USFWS that the numeric criteria developed to protect the bald eagle and peregrine falcon are not subject to the National Water Quality Criteria Consultation. The Department plans to work with the USEPA and USFWS to update these criteria and will then evaluate whether these criteria necessary.

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457. COMMENT: Given the extensive research on, and application of, specific conductance as a Pinelands water quality indicator by the Pinelands Commission Staff, it would be beneficial to protecting and restoring Pinelands water quality to have a specific conductance value included in the Pinelands Waters (PL) surface water quality criteria along with nitrate and pH. In the recently published Great Egg Harbor Watershed Management Area report, the following conclusion can be found on page 11; "In the Pinelands, water-quality degradation, represented by changes in pH and specific conductance, has ecological consequences". Since the PL waters are Outstanding National Resource Waters, and have antidegradation status under 7:9B-1.5(d), adding additional surface water quality criteria should serve to help to prevent and reverse degradation. The establishment of an appropriate specific conductance criteria or range as a surface water quality criterion under 7:9B for Pinelands Waters would be best recommended by Bob Zampella of the Pinelands Commission Science Department. For a general suggestion, the range of 41-80 microseimens per centimeter, as recently collected in the 5 least-altered sites in the Great Egg Harbor Watershed, could serve as a starting point reference. (5)

RESPONSE TO COMMENT 457: The Department has not proposed any new water quality criteria for PL waters in this proposal. While specific conductance may be a good indicator of water quality changes, water quality criteria must be set at levels that protect specific uses such as aquatic life. Therefore additional information is necessary before the Department would consider proposing a new criterion for specific conductance.

458. COMMENT: The commenter is currently preparing the first comprehensive review of the status of swamp pink since 1991. This review will be repeated every 5 years. Based on current priorities and the known threats to swamp pink, the commenter anticipates that one outcome of this first 5-year review will be a new focus on protection and recovery of swamp pink at the watershed level. The commenter requests full partnership of the Department over the next 5 years in evaluating where existing water quality impairments are causing the degradation of swamp pink populations, and

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determining how the SWQS can be further modified to avoid, minimize, and reverse the adverse effects of non-point source pollution (for example, sediment and nutrients) on swamp pink populations. (133)

RESPONSE TO COMMENT 458: The SWQS do not establish regulatory requirements to avoid, minimize, or reverse adverse effects of nonpoint source of pollution. BMPs already address impacts on Swamp Pinks therefore, the commenter is encouraged to assist the Department in developing additional measures to improve these BMP. The commenter is encouraged to work with the Division of Watershed Management to incorporate additional BMPs.

459. COMMENT: The Department's "one size fits all" standards for stream protection differs from the already adopted policy of off-site mitigation incorporated in the Department Stormwater Management Rules and in the Sussex County endorsed Strategic Growth Plan. There are no specific standards which we can judge the acceptable level of impact and the achievable degree of mitigation through such approaches as habitat management, beneficial reuse of water or expansion of sewerage treatment plant (STP) capacity through pretreatment and ground water discharge. (153, 184, 203)

RESPONSE TO COMMENT 459: Habitat management, beneficial reuse of water, or expansion of sewerage treatment plant are not regulated by the SWQS program. New Jersey's Stormwater Management rules, N.J.A.C. 7:8, allows municipalities the freedom to implement regional stormwater management plans, with Department approval and adoption, as the basis for reviewing the stormwater management aspects of projects or activities regulated pursuant to Coastal Permit Program rules, N.J.A.C. 7:7; the Freshwater Wetland Protection Act rules, N.J.A.C. 7:7A; the Coastal Zone Management rules, N.J.A.C. 7:7E; the Flood Hazard Area Control Act rules, N.J.A.C. 7:13; the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A; and the Dam Safety Standards, N.J.A.C. 7:20. The adopted regional stormwater management plan would then become an amendment to the areawide water quality management plan(s) in

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accordance with the WQMP rules. In addition, the Stormwater Management rule allows for municipalities to prepare and adopt Stream Corridor Protection Plans as part of their Stormwater Management Plan. Per the rule at N.J.A.C. 7:8-4.2(c)13, Stream Corridor Protection Plans may “address protection of areas adjacent to waterbodies.” These provisions allow municipalities the freedom to implement specific protections such as “habitat management, beneficial reuse of water or expansion of sewerage treatment plant capacity through pretreatment and ground water discharge.

460. COMMENT: The commenter is concerned that Beiser’s Pond, located on personal property, has been misused by the Township of Sparta by diverting stormwater as a low cost alternative. The Township of Sparta has blatantly ignored proper stewardship in managing their storm water runoff.

The Township of Sparta needs to be concerned about the Category One designation, water quality, protecting the Wallkill River through land use in the vicinity of lakes, ponds, and streams. It also needs to forget the economic growth and lost revenues that will impact the community. The Township of Sparta needs to address stormwater issues that have such serious environmentally negative impact as described.

(7)

461. COMMENT: We need to ban use of all fertilizers and other chemicals on lawns. We need to get a handle on these endless pesticide applicators that don’t even get licenses to apply. We know nothing about them or what they are doing to our environment. It is strange that some politicians don’t seem to appreciate the value of clean water in the health of New Jersey citizens. (183)

462. COMMENT: The commenter is questioning the Department regarding:

- how, when, and where the Uranium and Radon contamination from Sparta Water Utility be disposed,

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-
- which schools received the Uranium and Radon contaminated water from Sparta Water Utility, and
 - What were the 1980 to present levels of Uranium and Radon from Sparta Water Utility in the Lake Mohawk area of Sparta, specifically West Shore Trail, Manitou Island, and Lake Mohawk itself? (218)

463. COMMENT: "Pollutant" cannot be defined by the source of runoff. Again numeric criteria must be set to define such. Pollutant specifically relies on the amount or concentration of a substance before it can be considered a pollutant. Runoff cannot be considered polluted just because it flows through agricultural field. (72, 160)

464. COMMENT: The Concrete Pipe Association's members provide over 90% of the conduit pipe currently used for stormwater transport and detention throughout New Jersey, with the Department of Transportation being our largest customer. The commenter recognizes that there are other materials in the marketplace that can be used in drainage, conduit, detention and retention construction, but none possess the environmental friendliness and longevity of concrete. The Department should consider the role conduit pipe plays in New Jersey's water supply and address the quality of materials utilized in drainage systems. Last year, a Princeton report addressed the issue of volatile organic carbon diffusion from high density polyethylene pipe, and reported parts per million levels of diffusion from both old and new material at temperatures of 4, 40, and 65 degrees Celsius. These levels were shown to increase with increasing temperature, but even at the lowest temperature, the level was in an unhealthy range. A copy of the report is enclosed. We are friends of the Department and support the New Jersey Mentor Power Program, building for New Jersey's future, and are stewards for of the environment and market an environmentally friendly product. The commenter hopes the Department will consider these comments and report in your deliberation of the proposed rules and related actions, and would be happy to meet with the Department to highlight the benefits of using reinforced concrete pipe. (117)

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RESPONSE TO COMMENTS 460 THROUGH 464: The commenters' concerns are beyond the scope of this proposal.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:9B-1.4 the Department is replacing 'an' with 'a' as an editorial change in the part 2 section of the definition of exceptional ecological significance.

At N.J.A.C. 7:9B-1.15(c) under Toms River tributary of Wrangel Brook, the Manchester listing, is being corrected to replace Michaels Brook with Michaels Branch to reflect the name listed on the United States Geological Survey maps.

At N.J.A.C. 7:9B-1.15(d) The Department is correcting the spelling of Illiff Lake, Byram and Lackawanna in the description of Lubbers Run

At N.J.A.C. 7:9B-1.15(d) The Department's intention is to include Saxton Lake but the proposed rule language was not clear. Therefore, the Department is including Saxton Lake under Musconetcong River listing of Hackettstown.

At N.J.A.C. 7:9B-1.15(e) –Canistear Reservoir was listed in the summary under “Proposed Category One Waters Based on Exceptional Water Supply Significance” for Peqonnock River to be upgraded to Category One but inadvertently omitted from the rule text, therefore it is being included upon adoption.

At N.J.A.C. 7:9B-1.15(f) the Department is revising the description of Oldwick and Burnt Mills listed under Lamington River to include all tributaries. The tributaries to Lamington River were discussed to be included in the summary under Exceptional Ecological Significance – Endangered and Threatened Species but inadvertently omitted from the rule text, therefore it is being included upon adoption.

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At N.J.A.C. 7:9B-1.15(f) the Department is correcting the spelling of Raminessin (Hop) Brook and Snyderstown under Stony Brook.

The Department did not identify in the summary or the rule text changes to Wildcat Brook. However, Wildcat Brook was considered an unnamed tributary under the description of the segment of Wallkill River from outlet of Franklin Pond to State line. The Department is revising the listing for the Wildcat Brook to FW2-NT(C1).

At N.J.A.C. 7:9B-1.15(g) the Department is correcting the spelling of Hawthorne Lake.

Federal Standards Analysis

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require that State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements include in the rulemaking document a Federal standards analysis.

The Federal Clean Water Act (CWA), 33 U.S.C. 1251 et seq., as amended by the Water Quality Act of 1987 (PL 100-4) requires the establishment of water quality standards for all surface waters of the United States. (The Water Quality Act of 1987 amended the CWA to require the adoption of criteria for toxic pollutants identified as causing or contributing to an impairment of a waterbody's designated use(s).) Individual states are given the primary responsibility for developing and adopting surface water quality standards applicable to their waters. The USEPA is given responsibility to oversee and approve state water quality standards, provide guidance on the content of the standards and to develop water quality criteria guidance documents. Key elements of the surface water quality standards program required under the CWA are: a classification system establishing designated beneficial uses of the waters; ambient water quality

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criteria necessary to protect those uses; minimum uses to be attained, which reflect the fishable and swimmable goals of the CWA; and antidegradation policies and implementation procedures to prevent water quality from deteriorating. Furthermore, the CWA includes provisions requiring the USEPA to promulgate superseding Federal standards where the USEPA concludes that a State's standards are not consistent with the requirements of the CWA or where Federal requirements are necessary to meet the requirements of the CWA.

The SWQS amendments being adopted are required by and consistent with the Federal statutes, regulations and guidance. The Department has prepared the following sectional analyses of the SWQS, which compares each section with the applicable Federal law, regulations and guidance, as required under Executive Order 27 (1994) and P.L. 1995, c. 65.

N.J.A.C. 7:9B-1.4 contains definitions of terms used within the SWQS. Most of these definitions are the same as those used by the Federal government in either the Federal Water Quality Standards Regulation at 40 CFR 131.3 or in the glossary of a guidance document for states entitled *Water Quality Standards Handbook: Second Edition* (August 1994, EPA-823-B-94-005a) (Handbook). There are a few definitions that can not be found in the Federal regulations or guidance documents however, each one of them are consistent with the Federal policies. For example, the proposed definition of "exceptional ecological significance" is not defined in the Federal regulations however, the concept is from the Federal Water Quality Standards Regulation at 40 CFR 131.12

N.J.A.C. 7:9B-1.15 contains specific waterbody classification listings and antidegradation designations, arranged by major drainage basin, and instructions for the use of the classification tables. The Federal water quality regulations at 40 CFR Part

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131.10 require that states specify appropriate water uses to be achieved and protected. The Department's SWQS waterbody classification listing is a tool to identify these designated uses such as protection and propagation of fish, shellfish, and wildlife, recreation in and on water, public water supplies, agricultural, industrial, etc. Therefore, these waterbody classifications are consistent with the Federal regulations.

In addition, 40 CFR Part 131.12 establishes requirements for the states to develop and adopt antidegradation policies and implementation procedures to ensure that the level of water quality needed to protect existing uses is maintained, and that water quality better than necessary to protect existing uses is maintained and protected unless demonstrations are made in support of lowering the water quality. The adopted changes in antidegradation designation identify the level of protection and implementation procedures that must be followed. The antidegradation designations are consistent with and do not exceed Federal standards, therefore, no further analysis is required.

Full text of the adopted amendments follows (additions indicated in boldface ***thus***; deletions indicated in brackets *[thus]*):

N.J.A.C. 7:9B-1.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Category one waters" (No change from proposal.)

...

"Exceptional ecological significance" means:

1. Waterbodies with suitable habitat verified by the Department to support Bog Turtle, Brook Floater, Dwarf Wedgemussel, Eastern Pondmussel, Eastern Lampmussel,

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Green Floater, and/or Triangle Floater and documented occurrence(s) of at least one of these species verified by the Department for inclusion in the Natural Heritage Program;
or

2. A waterbody supporting an exceptional aquatic community as demonstrated by *[an]* ***a*** nonimpaired benthic macroinvertebrate community as measured by the Department's Rapid Bioassessment Protocol (see <http://www.state.nj.us/dep/wms/bfbm/rbpinfo.html>) and at least two of the following factors:

i. - iv. (No change from proposal.)

“Exceptional fisheries resource(s)” (No change from proposal.)

“Exceptional water supply significance” (No change from proposal.)

...

HUC 14” or “hydrologic unit code 14” (No change from proposal.)

...

N.J.A.C. 7:9B-1.15 Surface water classifications for the waters of the State of New Jersey

(a) – (No change.)

(b) The following are instructions for the use of Tables 1 through 5 found in N.J.A.C. 7:9B-1.15(c) through (g) respectively:

(No change from proposal.)

(c) The surface water classifications in Table 1 are for waters of the Atlantic Coastal Basin:

...

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TOMS RIVER

MAIN STEM

(No change from proposal)

TRIBUTARIES, TOMS RIVER

(No change from proposal)

DOVE'S MILL BRANCH

(No change from proposal)

WRANGEL BROOK

(Whiting) – (No change from proposal.)

(Manchester) – Green Branch to the confluence

with Michaels *[Brook]* ***Branch***

FW2-NT

(Berkeley) – Michaels *[Brook]* ***Branch*** to

Toms River, except portions within the boundaries of the Pinelands Protection and

Preservation Area

FW2-NT/SE1

...

(d) The surface water classifications in Table 2 are for waters of the Delaware River Basin:

TABLE 2

Waterbody

Classification

AMWELL LAKES (Lambertville)
(proposal)

(No change from

...

ANDOVER JUNCTION BROOK

(Andover) - *[Entire length, including all tributaries]* ***Source to Valentines Pond***

FW2-TM*

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*(Andover) - Valentines Pond to Kymer

Brook*

FW2-TM(C1)

ANDOVER JUNCTION BROOK LAKES – (No change from proposal.)

...

BEAR CREEK

(Johnsonburg) – (No change.)

(Frelinghuysen) - Erie-Lackawanna Railroad trestle

to confluence with *Trout Brook*

[Pequest River], including all unnamed

and unlisted tributaries

FW2-TM(C1)

*(Frelinghuysen) - Confluence with Trout Brook

to Pequest River

FW2-TM*

...

BOWERS BROOK – HIDDEN VALLEY LAKE (No change from proposal.)

...

[ILLIF] ILLIFF, LAKE (Andover)

FW2-TM(C1)

...

KYMER BROOK (Andover) - Entire length, including all

tributaries*, except tributaries

immediately north and immediately south

of Clearwater*

FW2-NT(C1)

...

LUBBERS RUN

(Byram) (No change from proposal.)

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([Byrum] **Byram**) – *[Luckawanna]*

Luckawanna Lake downstream to the
confluence with the Cowboy Creek

FW2-TM(C1)

...

MAURICE RIVER (No change from proposal.)

...

MUSCONETCONG RIVER

(Hackettstown) – Lake Hopatcong dam to ***and
including*** Saxton Lake, except tributaries
described separately

FW2-TM

(Saxton Falls) (No change from proposal.)

TRIBUTARIES (No change.)

...

NEW WAWAYANDA LAKE - OLDMANS CREEK (No change from proposal.)

...

PEQUEST RIVER

(Springdale) - Source to Tranquility bridge
*[Conrail railway tracks south of Turtle
Pond, including all unnamed and unlisted
tributaries]*, except FW1 segments
described below

FW2-TM*[(C1)]*

(Whittingham) – (No change.)

***Whittingham – Stream and tributaries within
the Whittingham Wildlife Management
Area, except those classified as FW1,
above**

FW2-TM(C1)*

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*[(Tranquility) - Conrail railway tracks south of
Turtle Pond to Tranquility bridge FW2-TM]*
(Vienna) (No change.)
(Townsbury) (No change.)
(Townsbury) (No change.)
(Townsbury) (No change.)
TRIBUTARIES (No change.)

...

POMPESTON CREEK

(Cinnaminson)(No change from proposal.)
(Riverton) - Route 130 bridge to Broad Street
bridge FW2-NT(C1)

...

SALEM RIVER - TAR HILL BROOK (No change from proposal.)

...

TROUT BROOK (Allamuchy) - Entire length, including all
tributaries FW2-NT*[(C1)]*

...

(e) The surface water classifications in Table 3 are for waters of the Passaic, Hackensack and New York Harbor Complex Basin:

TABLE 3

...

CANISTEAR RESERVOIR (Vernon) FW2-
TM*(C1)*

...

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(f) The surface water classifications in Table 4 are for waters of the Raritan River and Raritan Bay Basin:

TABLE 4

Waterbody	Classification
...	
BIG BROOK – (No change from proposal.)	
LAMINGTON RIVER (BLACK RIVER)	
(Succasunna) (No change.)	
(Milltown) (No change.)	
(Pottersville) (No change.)	
(Vlietown) - (No change from proposal.)	
(Oldwick) – Confluence with Cold Brook to the Route 523 bridge*, <u>including all tributaries*</u>	FW2-TM(C1)
(Burnt Mills) –Route 523 bridge to North Branch, Raritan River*, <u>including all tributaries*</u>	FW2-NT(C1)
TRIBUTARY (No change.)	
...	
MINE BROOK (No change from proposal.)	
...	
[RAMANESSIN] <u>RAMINESSIN</u> (HOP) BROOK	
(Holmdel) - Entire length, <u>including all tributaries</u>	FW2-TM(C1)
...	
SIDNEY BROOK (No change from proposal.)	

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...

STONY BROOK

(Hopewell) –Source to *[Pennington Hopewell]*

Old Mill Road, except that segment described below

FW2-NT

(Hopewell) – *[Pennington Hopewell]* ***Old Mill***

Road to ***Quaker Road*** *[the pumping station south of West Road, including all unnamed and unlisted tributaries]*

FW2-NT(C1)

([Syndertown] **Snydertown**) – (No change.)

...

SWIMMING RIVER RESERVOIR - YELLOW BROOK (No change from proposal.)

(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin:

TABLE 5

Waterbody	Classification
-----------	----------------

...

BEAVER RUN (Wantage) - Entire length, *[including

all]* ***except tributaries that originate in Wantage Township***

FW2-NT(C1)

BLACK CREEK

(McAfee) – (No change.)

(Vernon) – Route 94 bridge to ***Pochuck Creek***

[confluence with tributary at McAfee]

FW2-NT

*[(Vernon) - Confluence with tributary at McAfee to Pochuck Creek, including all unnamed and unlisted tributaries

FW2-NT(C1)]*

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TRIBUTARIES

(Hamburg) – (No change.)

(Rudeville) – (No change.)

(McAfee) – (No change.)

(Vernon Valley) - Entire length

FW2-

NT*[(C1)]*

BLUE HERON LAKE (No change from proposal.)

...

CLOVE BROOK

(Wantage) - Source to, but not including, Clove Acres Lake, except those tributaries described separately below

FW2-TM*[(C1)]*

(Sussex) - Clove Acres Lake to Papakating Creek

FW2-NT*[(C1)]*

(High Point) – (No change.)

FRANKLIN POND (Hamburg Mtn.) *[Pond and its unnamed and unlisted tributaries]*

FW2-NT*[(C1)]*

***TRIBUTARY (Franklin) – Southeastern tributary to Franklin Pond**

FW2-NT(C1)*

FRANKLIN POND CREEK

(Hardyston) - Source to, but not including, Franklin Pond*[, including all unnamed and unlisted tributaries]*

FW2-TP(C1)

(Hamburg Mtn.) – (No change.)

TRIBUTARY (Hamburg Mtn.) – (No change.)

...

HAMBURG CREEK (No change from proposal.)

...

[HAWTHONE] ***HAWTHORNE*** LAKE (Sparta)

FW2-NT(C1)

HEATERS POND (No change from proposal.)

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...

MOHAWK LAKE (Sparta) – Lake and its tributaries
NT*[(C1)]*

FW2-

MORRIS LAKE - MUD POND (No change from
proposal.)

...

PAPAKATING CREEK

MAIN STEM

(Frankford) (No change from proposal.)

(Wantage) – Route 629 bridge to *[Wallkill River]*

Lehigh and New England railroad crossing in Wantage Township, including all tributaries*, **except tributary east of Roys, Lake Windsor tributary, and the tributary that drains into Papakating Creek immediately upstream of the Lehigh and New England railroad crossing in Wantage Township**

FW2-NT(C1)

***(Lewisburg) - Lehigh and New England railroad crossing in Wantage Township to Wallkill River**

FW2-NT*

WEST BRANCH

(Wantage) – *[Entire length, including all tributaries]* ***Source to the confluence with Libertyville tributary, including all tributaries except the two tributaries immediately west of Plumbsock***

FW2-NT(C1)

***LIBERTYVILLE TRIBUTARY (Libertyville) – Entire length, except Herzenberg Lake**

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tributary and the tributary south of

Herzenberg Lake

FW2-NT(C1)*

...

SAGINAW, LAKE (No change from proposal.)

...

SILVER LAKE (Hamburg Mtn.) FW2-NT*[(C1)]*

...

SUMMIT LAKE (Hardyston)FW2-NT*[(C1)]*

SUNSET LAKE (No change from proposal.)

TAMARACKS LAKE (Hardyston) FW2-NT*[(C1)]*

TOWN BROOK (Vernon) - Entire length*[, including all tributaries]*

FW2-TM*[(C1)]*

...

WALLKILL RIVER

(Sparta) (No change from proposal.)

(Franklin) (No change from proposal.)

(Wantage) - Outlet of Franklin Pond to *[State line]* *confluence with Beaver Run*, including all unnamed and unlisted tributaries

FW2-NT(C1)

*(Wantage) - Confluence with Beaver Run to State line

FW2-NT*

TRIBUTARIES

(Sparta) (No change from proposal.)

(Ogdensburg) (No change from proposal.)

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<u>*(East of Quarryville) – Unnamed standalone stream segment east of Willow (Quarryville) Brook</u>	<u>FW2-NT(C1)*</u>
WANTAGE BROOK (Wantage) - Entire length, including all tributaries	FW2-NT*[(C1)]*
...	
WHITE LAKE - WILDWOOD LAKE (No change from proposal.)	
WILDCAT BROOK (Franklin) - Entire length*, <u>including all tributaries*</u>	FW2-NT* <u>(C1)*</u>
...	
WILLOW (QUARRYVILLE) BROOK (Wantage) - Entire length, including all tributaries	FW2-TM*[(C1)]*
(h) – (i) (No change.)	

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Based on consultation with staff, I hereby certify that the above statements, including the Federal standards analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these adopted amendments. I hereby authorize this adoption.

Date: _____

Lisa P. Jackson, Commissioner
Department of Environmental Protection