

# NEW JERSEY'S REGULATORY RESPONSE TO A CHANGING CLIMATE

---

**NJPACT REAL**  
**NJ Protecting Against Climate Threats**  
**Resilient Environments and Landscapes**  
*22 May 2024*

## **WEBINAR 2: ENVIRONMENTAL ENHANCEMENTS**



## **NJPACT: Resilient Environment And Landscapes (REAL) Reforms**

To address the unavoidable impacts of climate change, such as sea-level rise, extreme weather, and chronic flooding, NJDEP is pursuing targeted regulatory reforms that will modernize the land use rules and focus on increased resilience throughout the State.

### **Quick Overview:**

- ▶ **Developed in response to Governor Murphy's 2020 EO**
- ▶ **50+ stakeholder sessions since 2020**
  - ▶ **Industry groups**
  - ▶ **Federal, State and local government agencies**
  - ▶ **Environmental groups**
  - ▶ **Insurance and investment agencies**
- ▶ **Proposal amends:**
  - ▶ FHACA Rules
  - ▶ Stormwater Management Rules
  - ▶ Coastal Zone Management Rules
  - ▶ Freshwater Wetlands Protection Act Rules
  - ▶ All other NJDEP rules that reference flooding
- ▶ **Purpose:**
  - ▶ Address impacts of sea level rise
  - ▶ Improve land and water resource protection





## **NJPACT: Resilient Environment And Landscapes (REAL) Reforms**

To address the unavoidable impacts of climate change, such as sea-level rise, extreme weather, and chronic flooding, NJDEP is pursuing targeted regulatory reforms that will modernize the land use rules and focus on increased resilience throughout the State.

### **Anticipated Schedule:**

- ▶ **5.2.24: Proposal filed with Office of Administrative Law**
  - ▶ Courtesy copy posted on DEP website
  
- ▶ **5.20.24 through 5.29.24: Webinars**
  - ▶ 5.20: Session 1: Sea Level Rise and Inundation Risk Zone
  - ▶ 5.22: Session 2: Environmental Enhancements
  - ▶ 5.23: Session 3: Coastal Climate Protection
  - ▶ 5.29: Session 4: Stormwater
  
- ▶ **July 2024: Anticipated Publication in New Jersey Register**
  - ▶ Three public hearings
  - ▶ 90-day comment period
  
- ▶ **Summer/Fall 2025: Anticipated Adoption**
  - ▶ Rule adoption documents must be filed with OAL within one year of New Jersey Register publication







# Scope of Rulemaking

- ▶ **New standards will apply only to:**
  - ▶ New development
  - ▶ Redevelopment
  - ▶ Substantial improvements to buildings
- ▶ **Rulemaking will not:**
  - ▶ Affect existing development
  - ▶ Create “no-build” zones
  - ▶ Require roads and buildings to be elevated when doing so is impracticable





## NJPACT: Resilient Environment And Landscapes (REAL) Reforms

To address the unavoidable impacts of climate change, such as sea-level rise, extreme weather, and chronic flooding, NJDEP is pursuing targeted regulatory reforms that will modernize the land use rules and focus on increased resilience throughout the State.



Protect against chronic inundation, sea-level rise, and flood damage



Protect critical facilities and infrastructure



Protect land and water resources



Improve stormwater management



Encourage nature-based solutions



Support renewable energy deployment



Improve DEP permitting processes







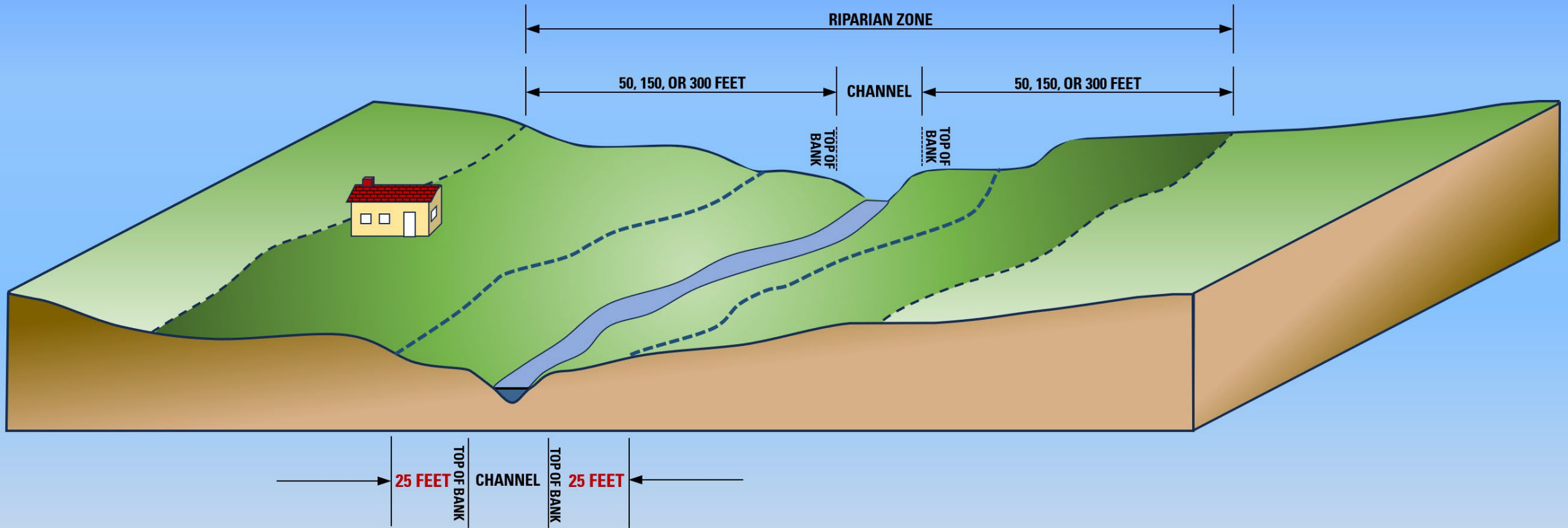
# Improve Protection of Land & Water Resources

## FHACA RULES

- Deleting the exception for work that lies within 25 feet of “a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water.”
  - Rules currently do not require a setback for riparian zone disturbance adjacent to these structures.
  - Proposal would require all future projects to be constructed greater than 25 feet from any top of bank, with limited exceptions.



## CROSS-SECTION OF A RIPARIAN ZONE





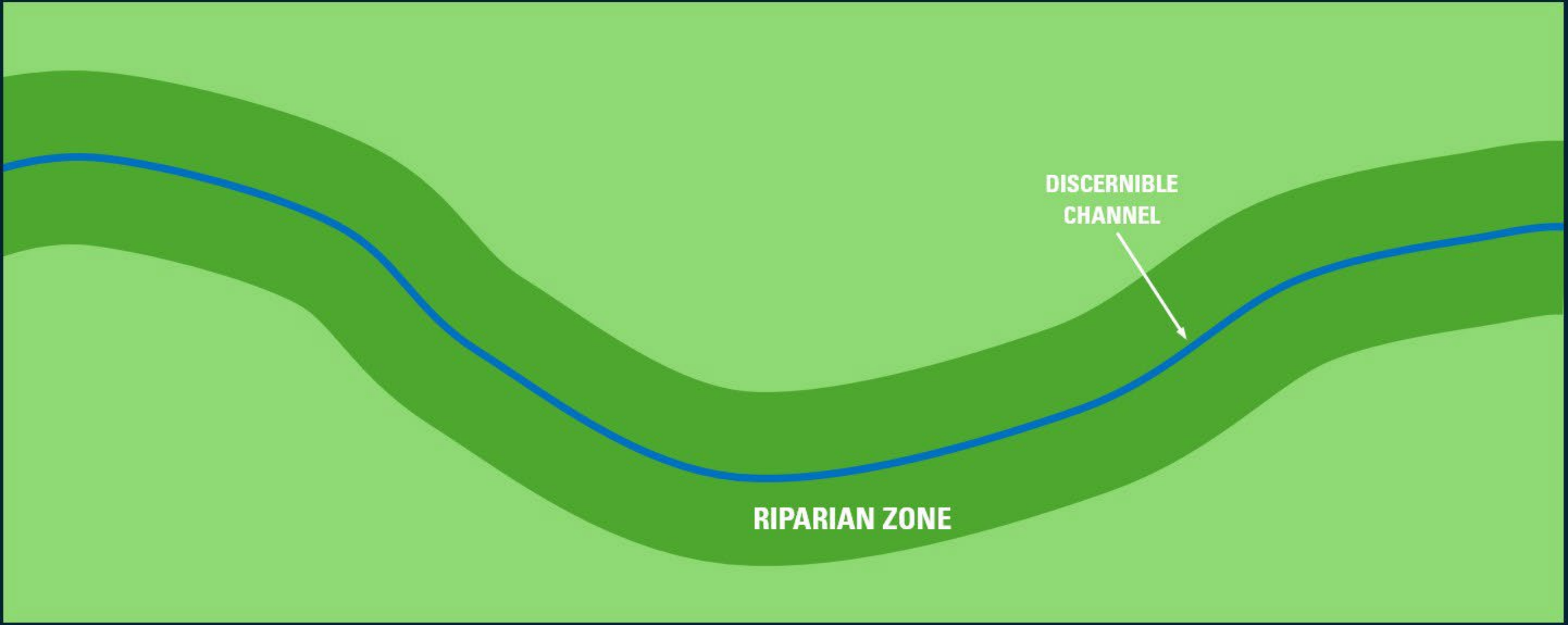
# Improve Protection of Land & Water Resources

## FHACA RULES

- Ensuring isolated waters draining less than 50 acres are regulated to better protect headwater areas.  
[N.J.A.C. 7:13-2.2\(a\)](#)
  - Delete current requirement that a surface water draining less than 50 acres must be connected to another regulated water in order to be regulated itself.
  - Will place riparian zones and protect the channel of all naturally occurring waters with a discernible channel regardless of drainage area.







DISCERNIBLE  
CHANNEL

RIPARIAN ZONE



**CURRENT FHACA RULES DO NOT APPLY  
RIPARIAN ZONE PROTECTIONS OR  
REGULATE CHANNELS THAT DRAIN LESS  
THAN 50 ACRES WHICH ARE ISOLATED  
FROM ANOTHER REGULATED WATER.**

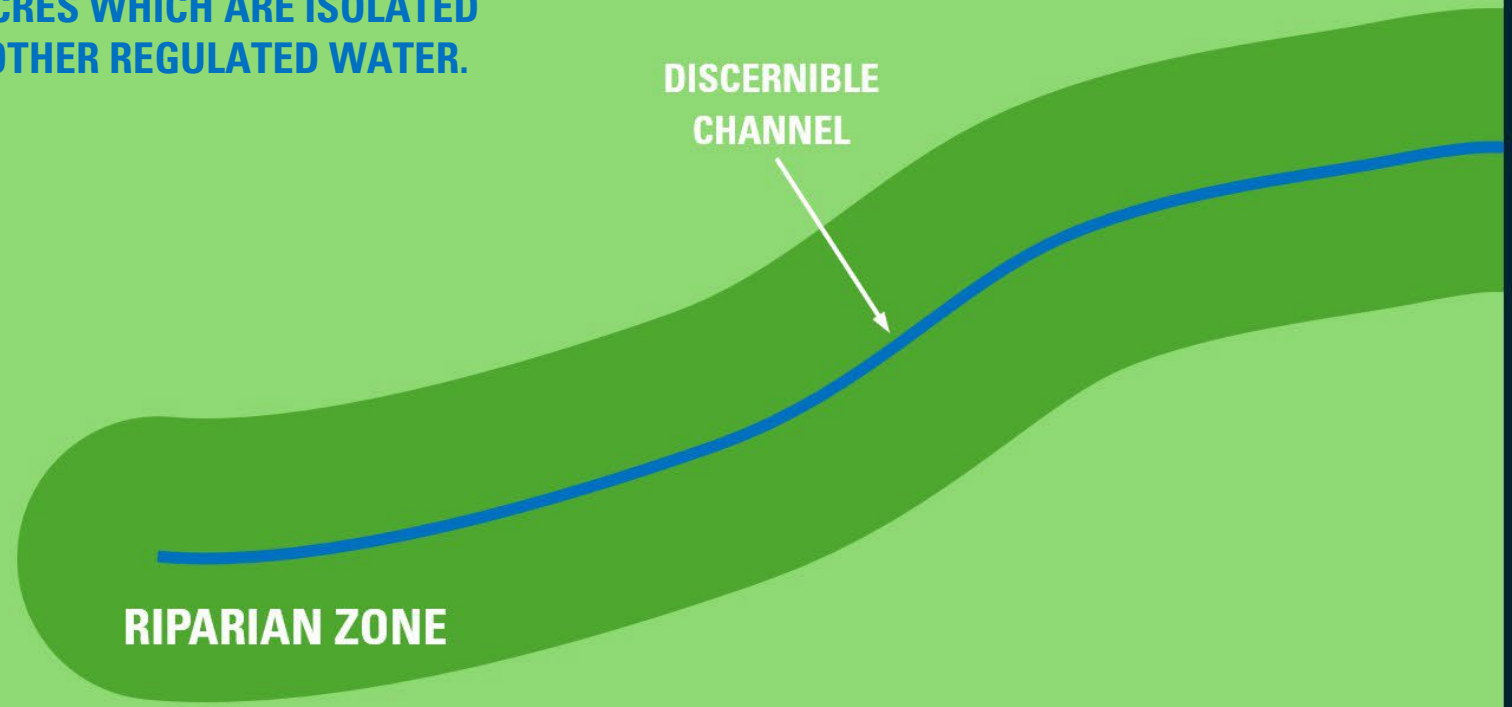
**ISOLATED  
CHANNEL**



**DISCERNIBLE  
CHANNEL**



**RIPARIAN ZONE**







ISOLATED  
CHANNEL

The diagram shows a green, irregularly shaped area representing a riparian zone. Inside this area, a dashed blue line represents an isolated channel. A white arrow points from the text 'ISOLATED CHANNEL' to the dashed line.

**PROPOSAL APPLIES RIPARIAN ZONE PROTECTIONS  
ALONG ISOLATED WATERS (WATERS NOT  
CONNECTED TO ANOTHER REGULATED WATER)  
REGARDLESS OF DRAINAGE AREA, PROVIDED THE  
FEATURE HAS A DISCERNIBLE CHANNEL.**



DISCERNIBLE  
CHANNEL

The diagram shows a green, irregularly shaped area representing a riparian zone. Inside this area, a solid blue line represents a discernible channel. A white arrow points from the text 'DISCERNIBLE CHANNEL' to the solid line.

**RIPARIAN ZONE**



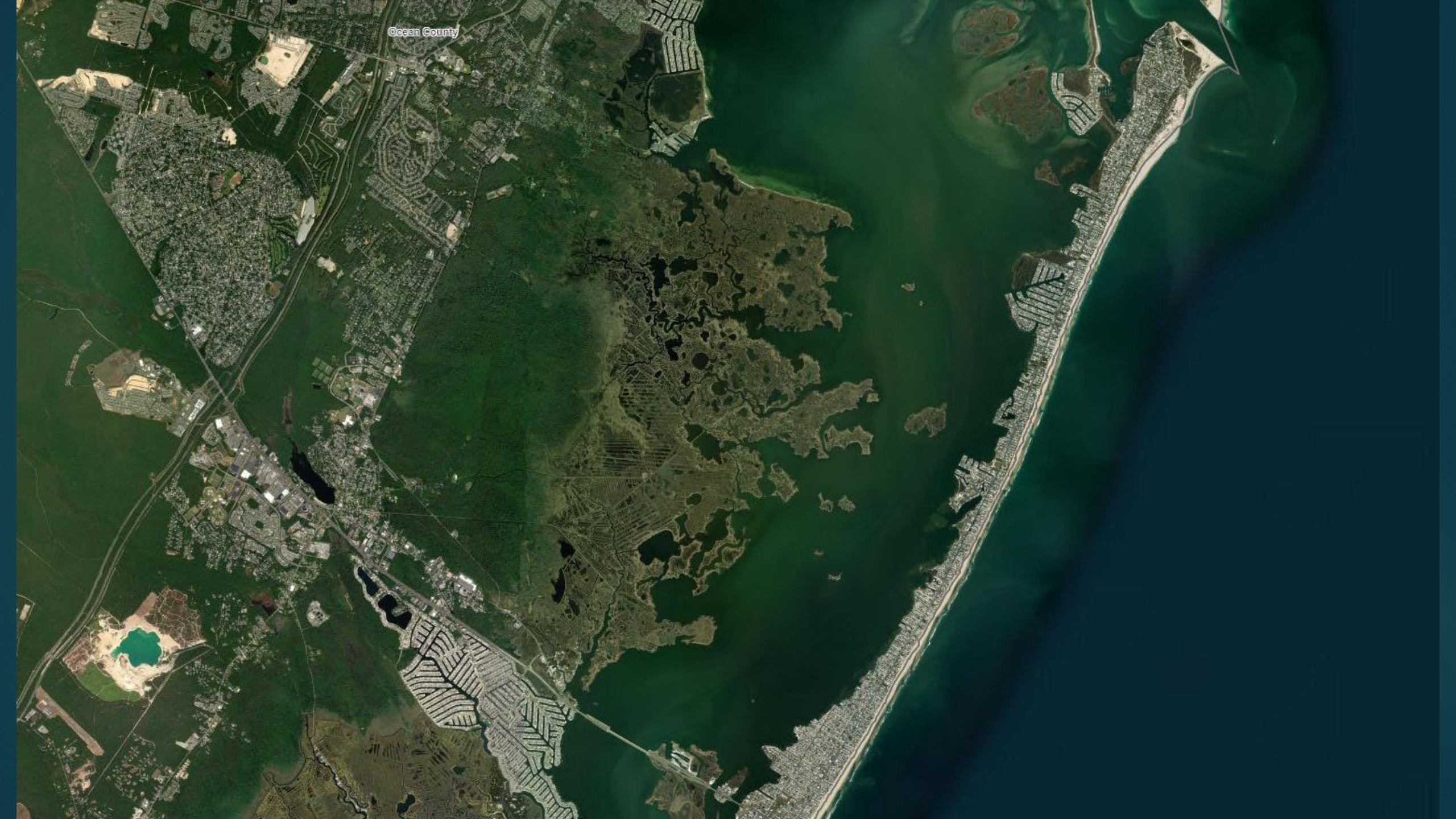
# Improve Protection of Land & Water Resources

## FHACA RULES

- Placing riparian zones on the non-oceanfront side of barrier island complexes. [N.J.A.C. 7:13-2.3\(c\)](#)
  - Riparian zones currently do not exist on barrier islands.
  - This has led to the unusual circumstance that the “mainland” side of bays has a riparian zone, but the barrier island side does not.
  - Will afford better water quality protection along our tidal waterways.









# Improve Protection of Land & Water Resources

## FHACA RULES

- Removing current exemption from riparian zone standards along certain human-altered water features. [N.J.A.C. 7:13-2.3\(c\)1vi](#)
  - Riparian zones currently do not exist along any “lawfully existing, manmade open channel that was created to convey stormwater, provided the channel is fully lined with manmade impervious material, such as a concrete low-flow channel within a stormwater basin or a ditch completely lined with concrete or asphalt.”
  - This exemption has prevented the protection of proximate vegetation, which is essential for maintaining water quality.
  - Proposal will afford better water quality protection along our tidal waterways.





# Improve Protection of Land & Water Resources

## FHACA RULES

- Applying a 150-foot riparian zone to regulated waters based upon defined criteria for endangered or threatened species that are considered “critically dependent on the regulated water for survival.”  
N.J.A.C. 7:13-4.1(c)2
  - Would apply to waters flowing through a flood hazard area that contain critically dependent species.
- As proposed, “critically dependent species” means an “endangered or threatened fauna or flora species that breeds, rests, or feeds within a regulated water or its associated flood hazard area and which is dependent on the maintenance of specific stream flows, water quality, and/or hydrologic and flooding regimes for their continued existence and propagation.”





# Improve Protection of Land & Water Resources

## FHACA RULES

- ▶ Repeal existing general permits for “in-kind” replacement of bridge and culverts.  
[Existing N.J.A.C. 7:13-9.9 and 9.10](#)
  - ▶ Many bridges and culverts were constructed years ago without full regard for their impact on flooding, or aquatic and terrestrial species.
  - ▶ When a bridge or culvert is scheduled for replacement, this is an opportunity to ameliorate the adverse impacts of the existing structure.
  - ▶ Presenting an easy path to replace these structures “in-kind” simply maintains the status quo and misses out on the opportunity to improve environmental conditions and public safety.







# Improve Protection of Land & Water Resources **FHACA RULES**

- Requiring an individual permit for bridge/culvert replacements will:
  - Encourage reduction in flooding caused by undersized structures.
  - Ameliorate threatened or endangered species habitat fragmentation.
  - Remove obstacles to low-flow aquatic passage.





# Improve Protection of Land & Water Resources **FHACA RULES**

- Requiring authorization under a general permit for horizontal directional drilling to protect against accidental release of contaminants. [N.J.A.C. 7:13-9.12.](#)
  - Currently authorized under permit-by-rule 36.
  - Necessary to regulate these activities to ensure stream corridors are not adversely impacted.





# Improve Protection of Land & Water Resources

## FHACA RULES

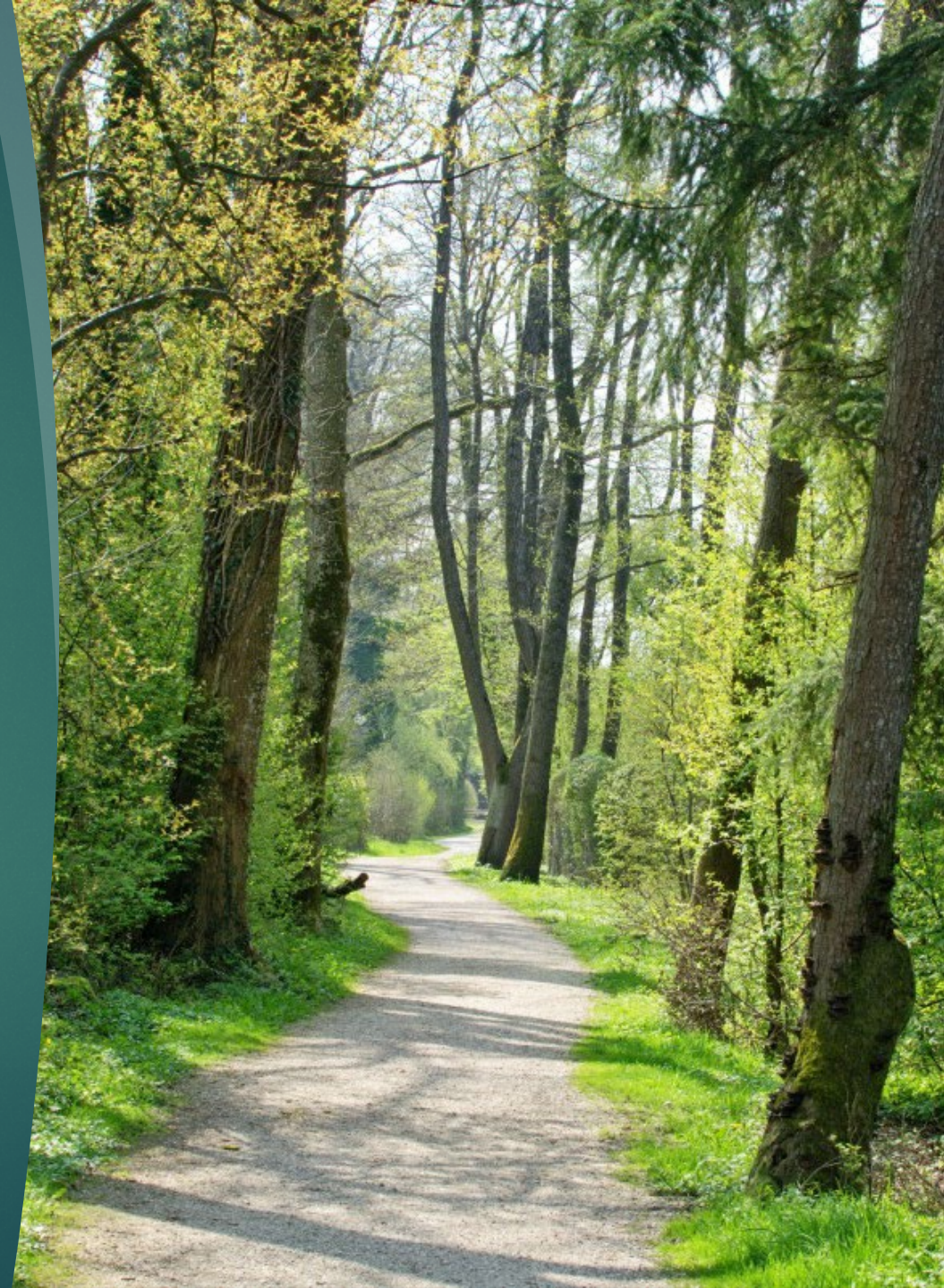
- Delete existing exemption for riparian zone disturbance within a “truncated” portion of a riparian zone. [Existing N.J.A.C. 7:13-11.2\(f\)7](#)
- Under existing rules, a riparian zone is “truncated” if:
  - i. The area is separated from a regulated water by a lawfully existing railroad or public roadway;
  - ii. The area does not slope toward the regulated water; and
  - iii. Stormwater runoff from the area does not drain into the regulated water.
- Deleting this exemption will better protect riparian zone vegetation and improve water quality.



# Improve Protection of Land & Water Resources

## FHACA RULES

- Improving riparian zone mitigation standards. [N.J.A.C. 7:13-11.2 and 13.4](#).
  - Requiring riparian zone mitigation for all impacts within 150-foot riparian zones that individually or cumulatively exceed 2,000 square feet.
  - Requiring riparian zone mitigation in a 50-ft riparian zone when onsite impacts cumulatively exceed 0.1 acres.
  - Requiring mitigation projects to consider the effects of climate change.
  - Standardizing mitigation ratios so that:
    - Riparian zone creation provides 1:1 mitigation
    - Riparian zone restoration provides 2:1 mitigation
    - Riparian zone enhancement provides 3:1 mitigation

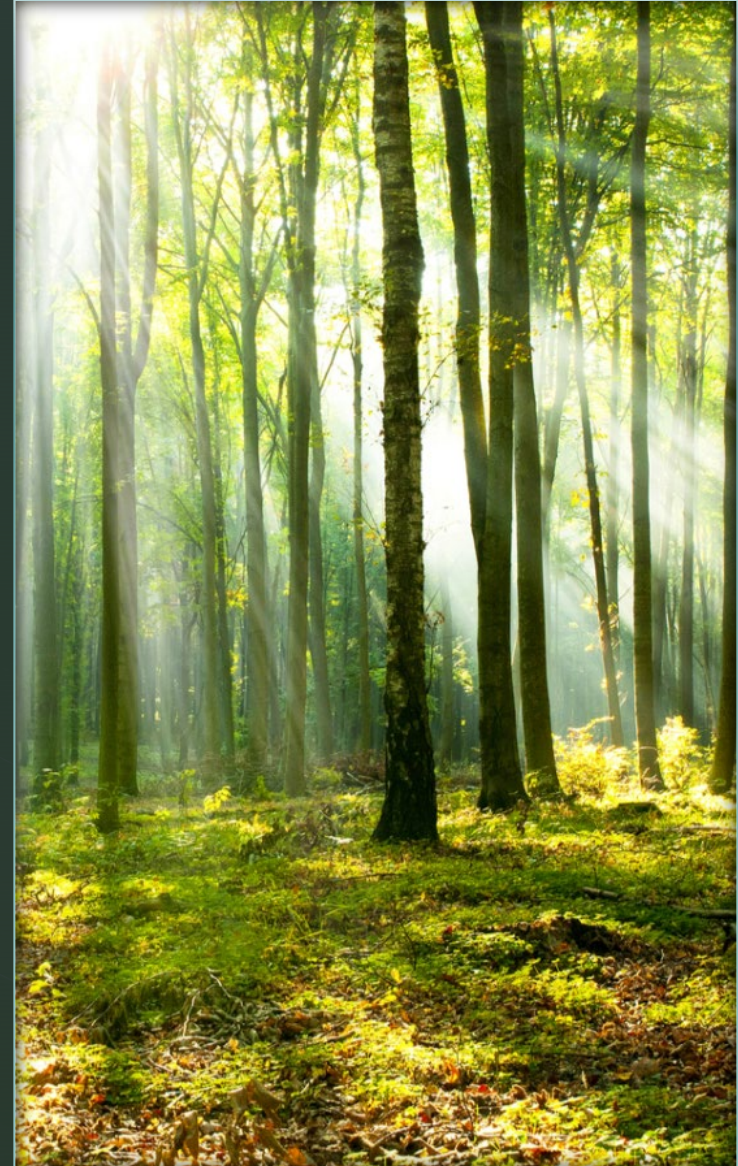




# Improve Protection of Land & Water Resources

## FWPA RULES

- Requiring applicants to demonstrate compliance with the Stormwater Management rules for any project impacting wetlands or transition areas, which is associated with, or part of, a major development. [N.J.A.C. 7:7A-2.7](#)
  - Under existing rules, stormwater management review is triggered only for individual permits, and for other authorizations only if the applicant proposes to place the major development within the freshwater wetlands or transition areas themselves.





# Improve Protection of Land & Water Resources

## FWPA RULES

- Clarifying that applicants must justify that wetland impacts are necessary for conducting a project regardless of whether the impacts meet other criteria established in the rules. [N.J.A.C. 7:7A-5.7](#)
  - Rules already ensure that there must be a project and that a GP cannot simply be used to eliminate the resource.
  - The proposal explains that “necessary for the conduct of the proposed project” means there is no other practicable onsite configuration for the proposed project that would avoid or reduce the impacts to wetlands or State open waters.
  - This will ensure that practicable onsite options that avoid or further minimize wetland impacts are used, regardless of whether the activity meets the criteria for a general permit.

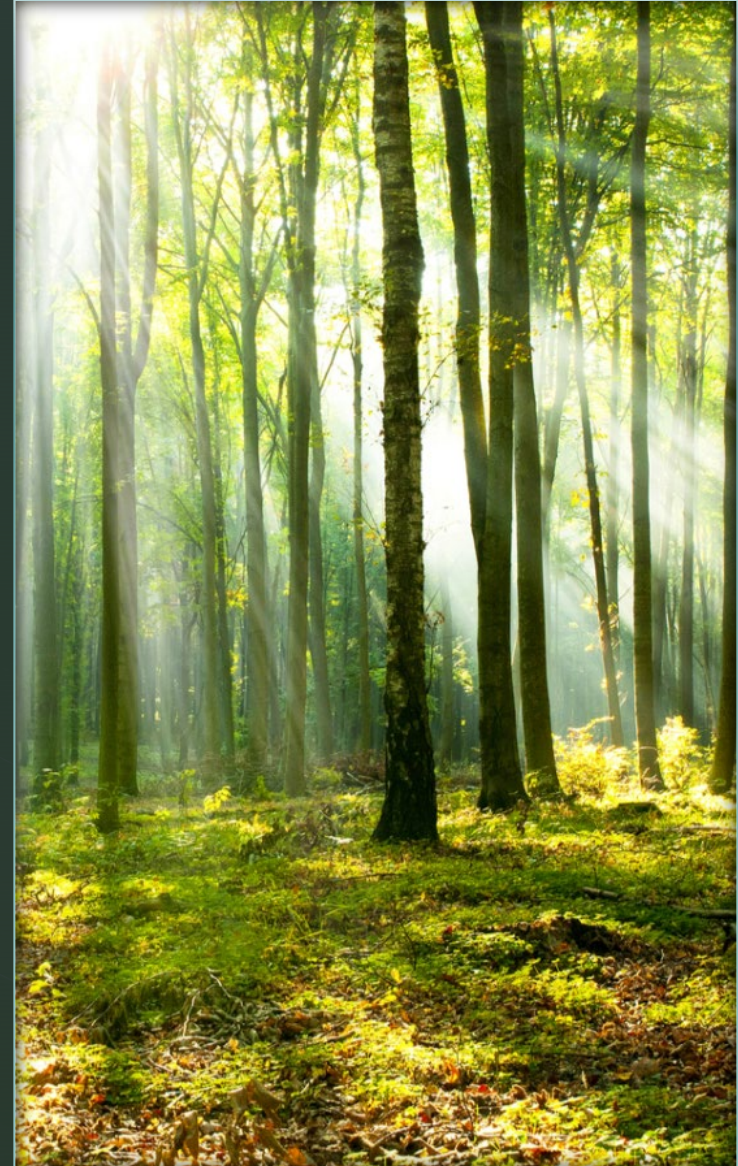




# Improve Protection of Land & Water Resources

## FWPA RULES

- Requiring authorization under general permit 2 for horizontal directional drilling to protect against accidental release of contaminants. [N.J.A.C. 7:7A-7.2](#)
- In non-surface water connected wetlands, requiring onsite assessment when impacts are proposed in vernal habitats under general permit 6. [N.J.A.C. 7:7A-7.6](#)

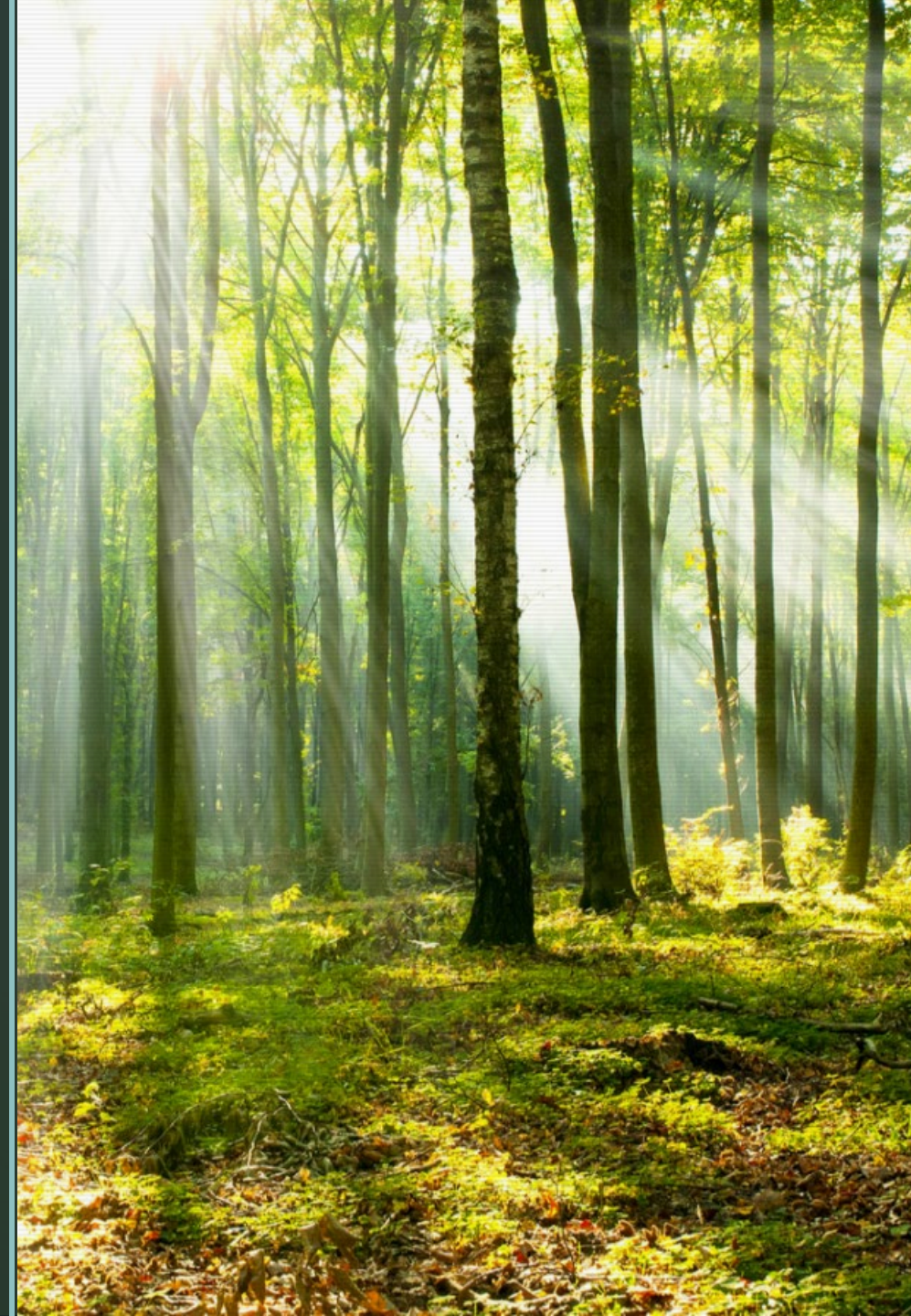




# Improve Protection of Land & Water Resources

## FWPA RULES

- Improving protections of transition areas. [N.J.A.C. 7:7A-8.1 and 8.2](#)
  - Requiring removal of existing impervious surface, where practicable, within 25 feet of wetlands under a special activity transition area waiver for redevelopment of a significantly disturbed area to promote restoration and more closely align with the FHACA rules.
  - Ensuring all activities in transition areas are situated at least 25 feet from freshwater wetlands.
  - Requiring the entire transition area to be protected by a conservation restriction once modified through an averaging plan.
- Requiring mitigation projects to consider the effects of climate change. [N.J.A.C. 7:7A-11.6](#)





# Improve Protection of Land & Water Resources

## CZM RULES

- Clarifying that the presence of engineered dunes created for the purpose of shore protection does not diminish the importance of any other dune areas.
- Amend various timing restrictions placed on permitting decisions to better protect important seasonal wildlife activities.





A silhouette of a person stands on the left side of the frame, pointing their right arm towards a large, textured wall of water. The person is wearing a dress and has their hair tied back. The background is a dark, textured wall of water, and the floor is a dark, textured surface. The overall scene is dimly lit, with the person's silhouette being the primary light source.

# Improve Protection of Land & Water Resources

## SWM RULES

- Require water quality treatment for redeveloped motor vehicle surface, even if there is not a net increase of  $\frac{1}{4}$  acre.
  - Currently no water quality treatment is required unless impervious surface or motor vehicle surface is increased by  $\frac{1}{4}$  acre.
  - Missed opportunity to improve water quality and undo impairments caused by historic development.
  - This is of particular importance given the State's commitment to environmental justice.
  - Many overburdened communities have developed along with motor vehicle surfaces and have experienced degraded water quality from unmanaged runoff because of these motor vehicle surfaces.



A silhouette of a person stands on the left side of the frame, pointing their right arm towards a large, curved screen that displays a city skyline at night. The person is standing on a surface that reflects the light from the screen. The background is dark, and the overall scene is dimly lit, with the primary light source being the screen itself.

# Improve Protection of Land & Water Resources

## **SWM RULES**

- Clarify that the 95% TSS removal rate requirement along Category One waters and tributaries applies to runoff discharged into an existing or proposed stormwater conveyance system that ultimately discharges within a 300-foot riparian zone located within the same HUC14 as the major development.





# QUESTIONS?

---