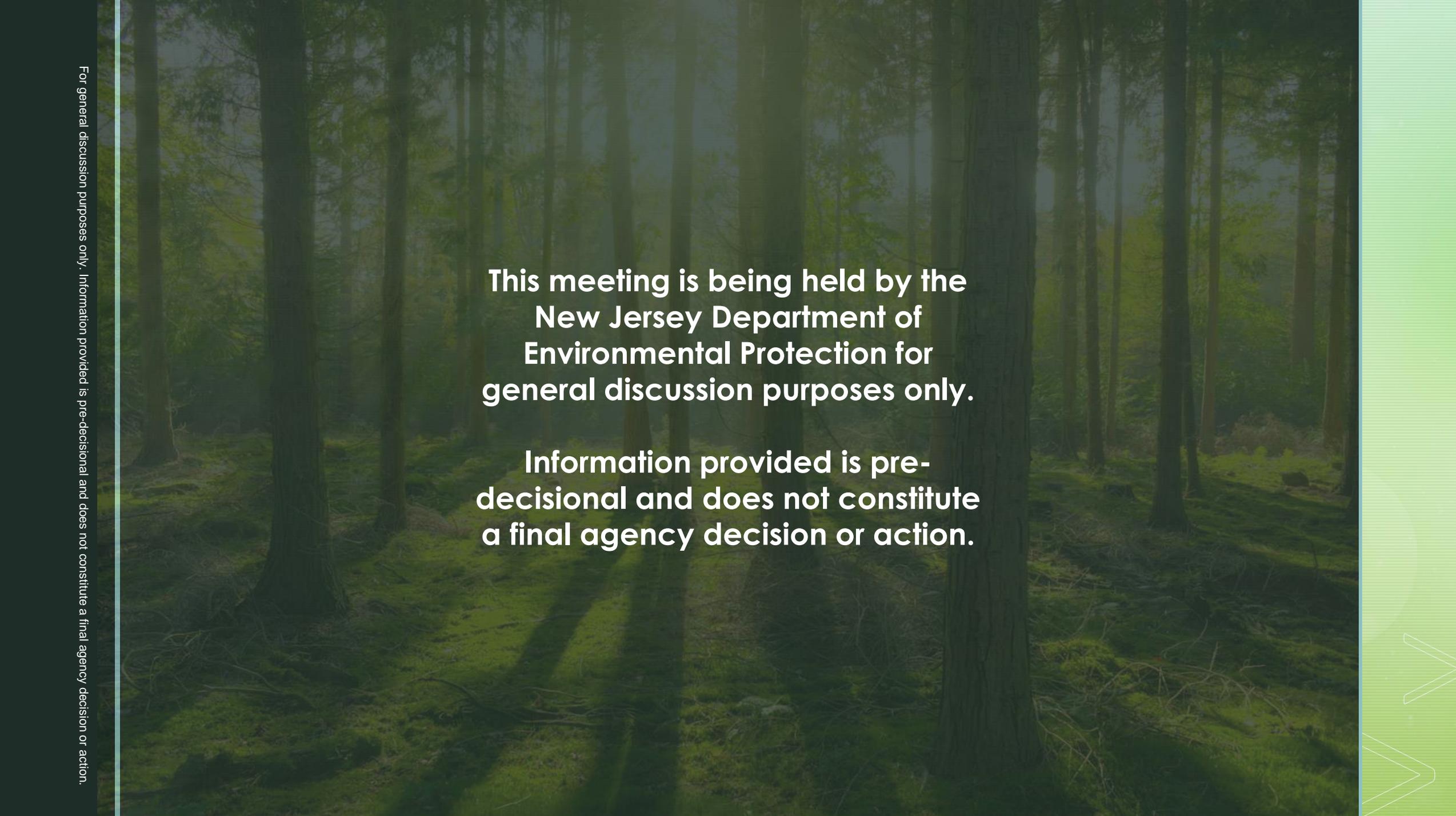


NJ Protecting Against Climate Threats Resilient Environment and Landscapes (REAL)

Framework of Potential Amendments to
Land Resource Protection Rules
New Jersey Department of Environmental Protection
22 December 2020





**This meeting is being held by the
New Jersey Department of
Environmental Protection for
general discussion purposes only.**

**Information provided is pre-
decisional and does not constitute
a final agency decision or action.**



A Watershed-Based Approach to Land Resource Protection



A Watershed-Based Approach to Land Resource Protection

1. Developing rules and policies that enhance and preserve water quality while protecting public health, safety, and welfare.
2. Monitoring environmental impacts and adapting our rules and policies to the unique needs of each watershed.
3. Taking a broad, holistic look at environmental protection rather than a site-by-site, incremental approach.





New Divisions

New Vision

Rulemaking Objective

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



Guiding Principles

- **Develop** regulatory standards that are commensurate with the anticipated level of risk.
- **Provide** tools to help homeowners, developers, and public entities make informed decisions about their investments.
- **Protect** public health and safety in consideration of climate threats both today and tomorrow.
- **Ensure** that DEP's land use rules reflect the current science and consider future conditions as informed by that science.
- **Encourage** development and redevelopment that is safe, sustainable, resilient, and that whenever possible reduces risk from and contribution to climate change.
- **Facilitate** the creation and restoration of natural systems that will assist in the mitigation of climate threats.



THEMES

1. Better protection against future inundation and flood damage
2. Protecting critical facilities and infrastructure
3. Increased protection of land and water resources
4. Stormwater
5. Planning for climate change
6. Nature-based solutions
7. Renewable energy and green building design
8. Process improvements



THEMES

1. **Better protection against future inundation and flood damage**
2. Protecting critical facilities and infrastructure
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Inundation & Flood Damage

1

Establish a new regulatory area known as the **inundation risk zone** to account for land inundated by SLR

2

Redefine the **tidal** flood hazard area to account for future expansion due to SLR

3

Redefine the **fluvial** flood hazard area to account for future expansion due to increased precipitation and runoff

Inundation & Flood Damage

Rutgers University's Science and Technical Advisory Panel (STAP) Report indicates a 50% probability that sea level rise will exceed 3.3 feet and a 17% probability that sea level rise will exceed 5.1 feet by 2100 assuming moderate emissions.

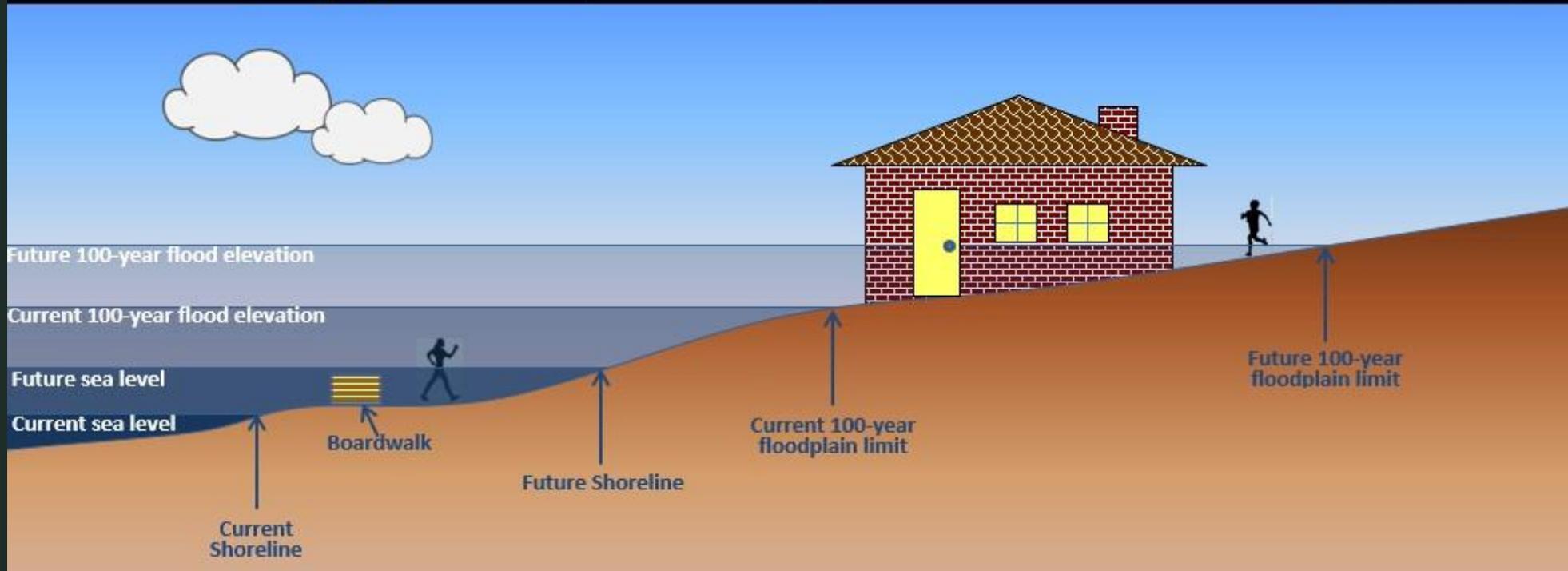
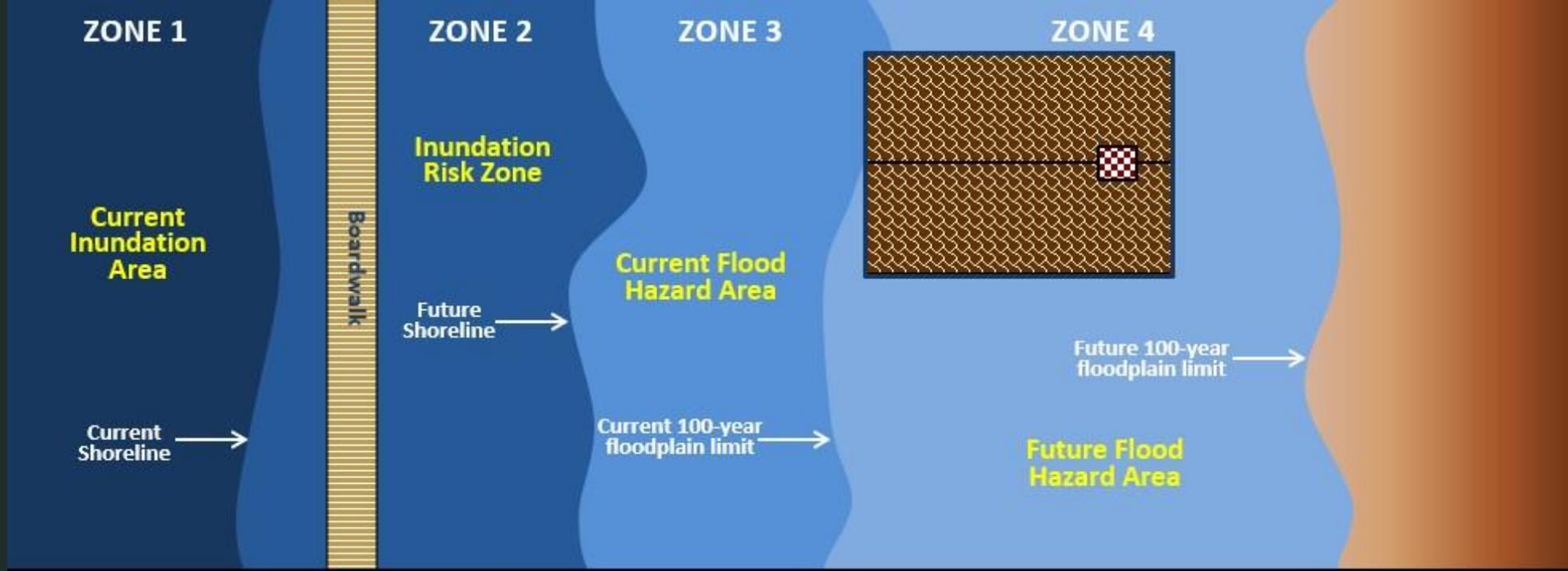
Sea-level rise:

Table ES-1: New Jersey Sea-Level Rise above the year 2000 (1991-2009 average) baseline (ft)*

		2030	2050	2070			2100			2150		
				Emissions								
Chance SLR Exceeds				Low	Mod.	High	Low	Mod.	High	Low	Mod.	High
Low End	> 95% chance	0.3	0.7	0.9	1	1.1	1.0	1.3	1.5	1.3	2.1	2.9
Likely Range	> 83% chance	0.5	0.9	1.3	1.4	1.5	1.7	2.0	2.3	2.4	3.1	3.8
	~50 % chance	0.8	1.4	1.9	2.2	2.4	2.8	3.3	3.9	4.2	5.2	6.2
	<17% chance	1.1	2.1	2.7	3.1	3.5	3.9	5.1	6.3	6.3	8.3	10.3
High End	< 5% chance	1.3	2.6	3.2	3.8	4.4	5.0	6.9	8.8	8.0	13.8	19.6

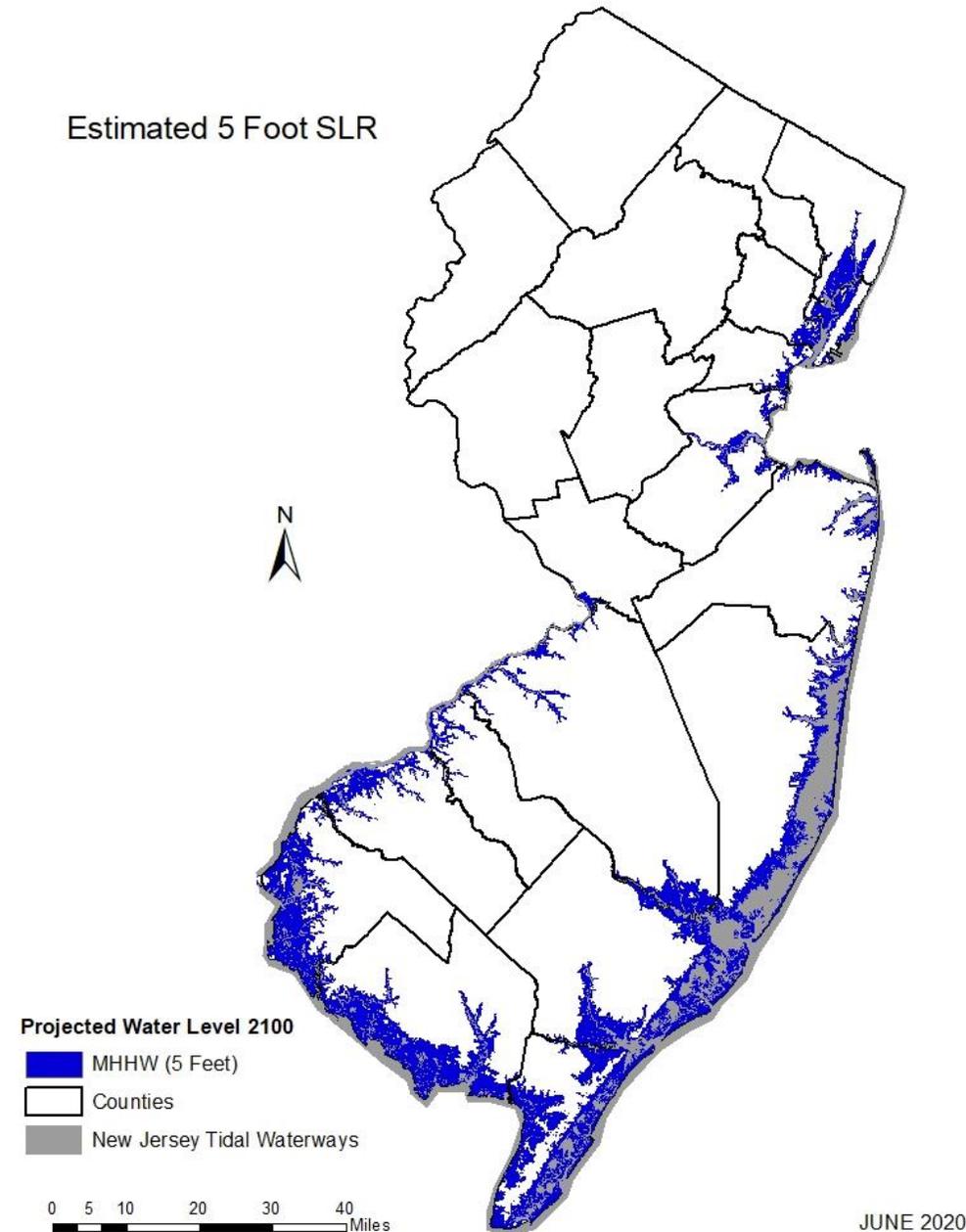
*2010 (2001-2019 average) Observed = 0.2 ft

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Inundation Risk Zone

- Consists of currently dry land that is expected to be inundated by tidal waters daily or permanently by 2100.
- Encompasses all land that lies below the IRZ elevation, which is calculated by adding five feet to the elevation of the mean higher high water (MHHW).
- See it today at www.njfloodmapper.org
- An applicant asserting that using a GIS layer to determine the IRZ results in an incorrect location can alternately determine the elevation of the ground at the MHHW line along the tidal waterway(s) in proximity to the site in question. Where multiple elevations determined in this manner are within proximity of the site, the highest ground elevation shall be selected. The IRZ encompasses all land within five feet vertically of the MHHW line.
- Development within the IRZ will be subject to more protective standards than the remainder of the floodplain beyond it.



JUNE 2020

This map is for information only, not for regulatory purposes.
FEMA Flood Zones not included in this review.



🔧 Total Water Levels Tool

🕒 Flood Hazards

📄 Map Layers

🗺️ Basemaps

📄 Save / Share / Print

☰ Legend





Total Water Levels Tool

Flood Hazards

Map Layers

Basemaps

Save / Share / Print

Legend

Layer Control

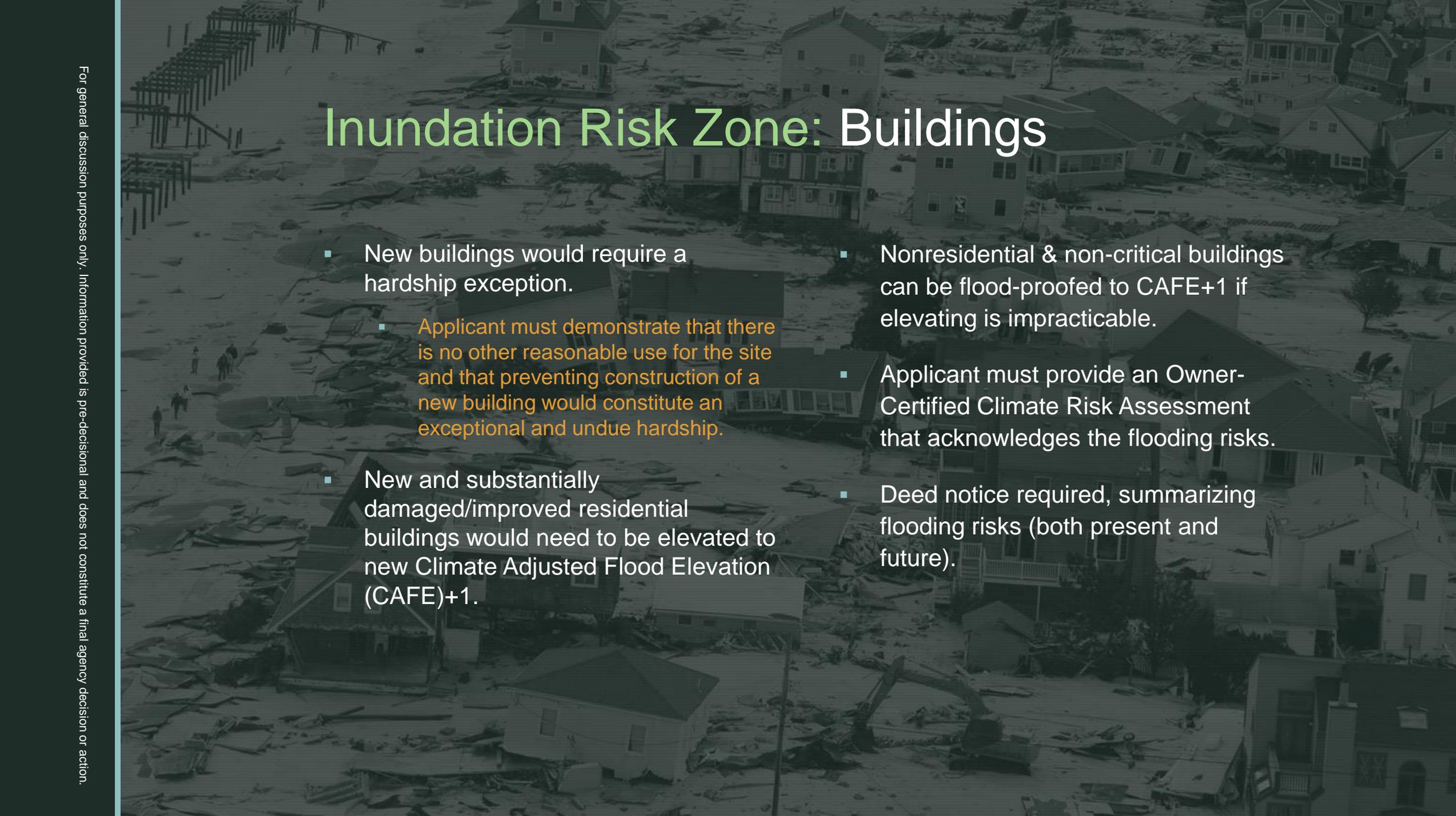
Show Legend Remove All Layers

Total Water Level (5 ft) Opacity: 100%

ON OFF Remove

0% 100%





Inundation Risk Zone: Buildings

- New buildings would require a hardship exception.
 - Applicant must demonstrate that there is no other reasonable use for the site and that preventing construction of a new building would constitute an exceptional and undue hardship.
- New and substantially damaged/improved residential buildings would need to be elevated to new Climate Adjusted Flood Elevation (CAFE)+1.
- Nonresidential & non-critical buildings can be flood-proofed to CAFE+1 if elevating is impracticable.
- Applicant must provide an Owner-Certified Climate Risk Assessment that acknowledges the flooding risks.
- Deed notice required, summarizing flooding risks (both present and future).

Inundation Risk Zone: Roads

Milling & repaving: Exempt

Drainage improvements (installing new drainage systems, inlets, or stormwater BMPs) and **simple intersection improvement** (no change in lane or shoulder width, minimal utility/right of way involvement):

- Permit-by-registration if work does not constitute a major development
- Individual permit w/hardship exception if work constitutes a major development:
 - Applicant must demonstrate that there is a compelling need for the project that cannot otherwise be achieved without the proposed improvements.



Inundation Risk Zone: Roads

Full depth reconstruction and new roads: Hardship exception required

- **Public roadway:**
 - Applicant must demonstrate that there is a compelling public need for the project that cannot otherwise be achieved.
 - Expenditure of public funds highly discouraged.
- **Private roadway:**
 - Applicant must demonstrate that the road is necessary to serve or access private property that cannot otherwise be accessed.
 - Provide notice summarizing flooding risks (both present and future) on each lot served by the roadway.
- Applicant must provide a climate impact statement and acknowledge the flooding risks to the proposed structure
- Signage required for roads constructed below the CAFE

DANGER
HIGH
WATER

Inundation Risk Zone: Bridges and Culverts

Simple culvert structural repair or bridge deck replacement: Permit-by-registration

- Applicant must identify areas where improvements could be made to address climate change impacts and take said measures where practicable.

In-kind replacement: General permit or individual permit depending on the scope of work

- Applicant must identify areas where improvements could be made to address climate change impacts and take said measures where practicable.



Inundation Risk Zone: Bridges and Culverts

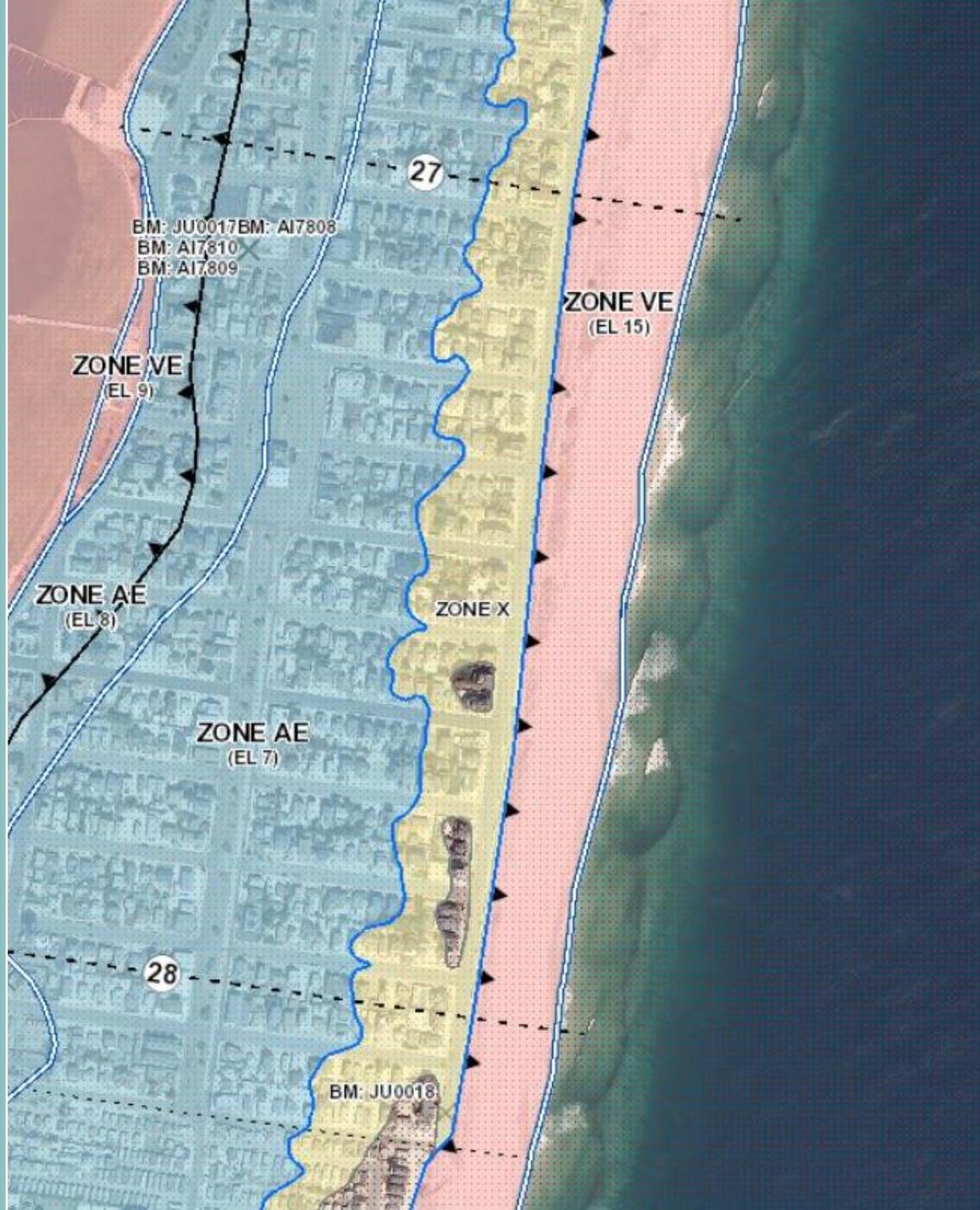
Modification of shape/size/length: General permit or individual permit based on new climate adjusted flood elevation depending on the scope of work

- Applicant must identify areas where improvements could be made to address climate change impacts and take said measures where practicable.
- Expenditure of public funds highly discouraged.

New structure: Individual permit with a hardship exception

- Applicant must identify areas where improvements could be made to address climate change impacts and take said measures where practicable.
- Expenditure of public funds highly discouraged.



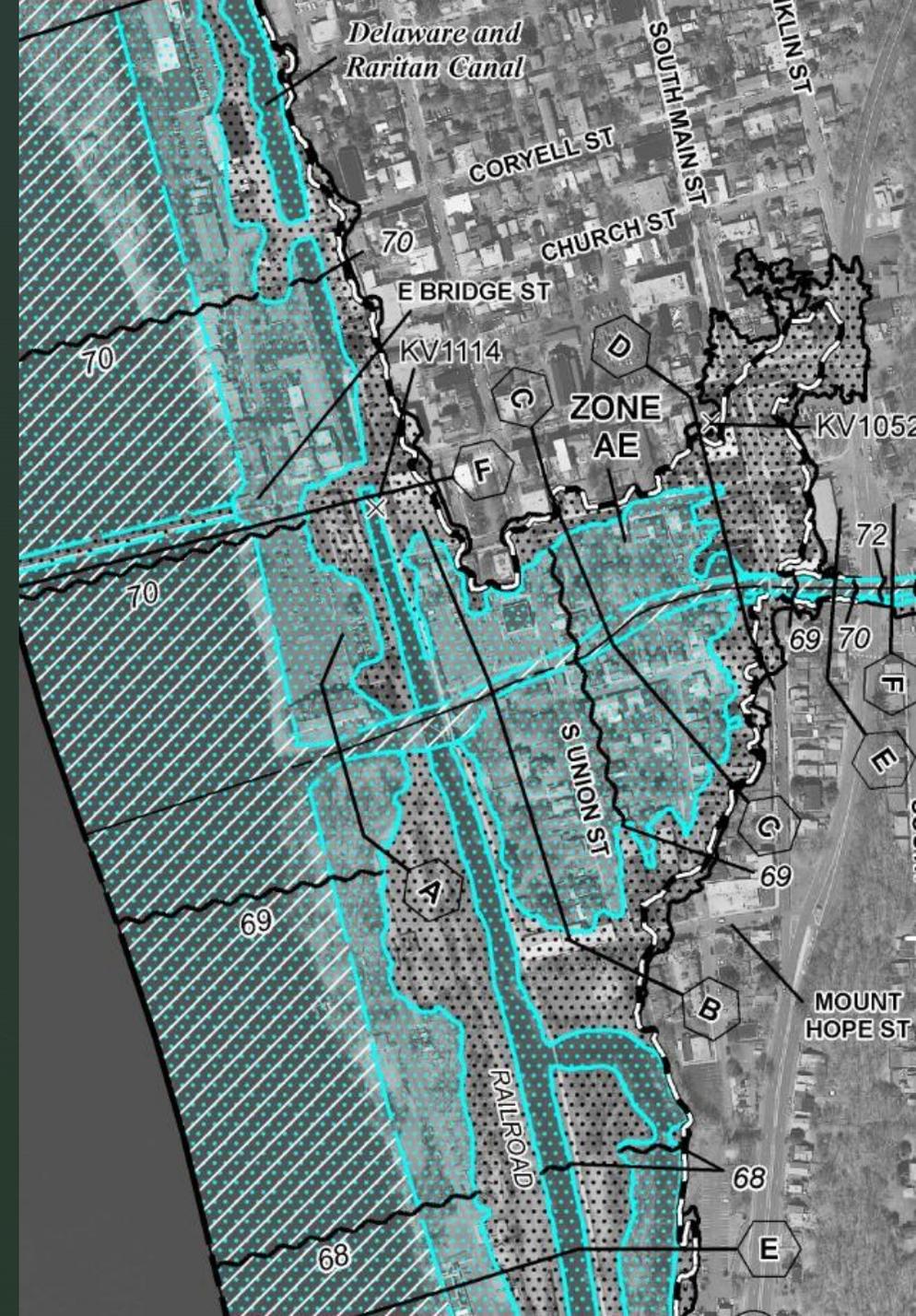


Tidal Flood Hazard Areas

- Existing tidal floodplain is based on the higher of FEMA's effective or preliminary 100-year flood elevation.
- FEMA mapping is based on data that considers only past flood events and does not anticipate a changing climate.
- The proposed **Climate Adjusted Flood Elevation (CAFE)** in tidal areas is five feet above FEMA's 100-year flood elevation to account for expected rises in sea level.

Fluvial Flood Hazard Areas

- Recent climate change models predict increases in atmospheric temperatures that will lead to greater precipitation amounts and intensities. NJDEP continues to work with educational institutions to provide the best available Statewide precipitation projections.
- One recent study concludes that precipitation intensities in New Jersey are likely to increase by as much as 35% by 2100.
 - For reference, NOAA's current 500-year 24-hour storm is roughly 38% more precipitation than today's 100-year 24-hour storm.
 - Today's 500-year flood limits may therefore be a good approximation of the future 100-year flood limits.



Fluvial Flood Hazard Areas

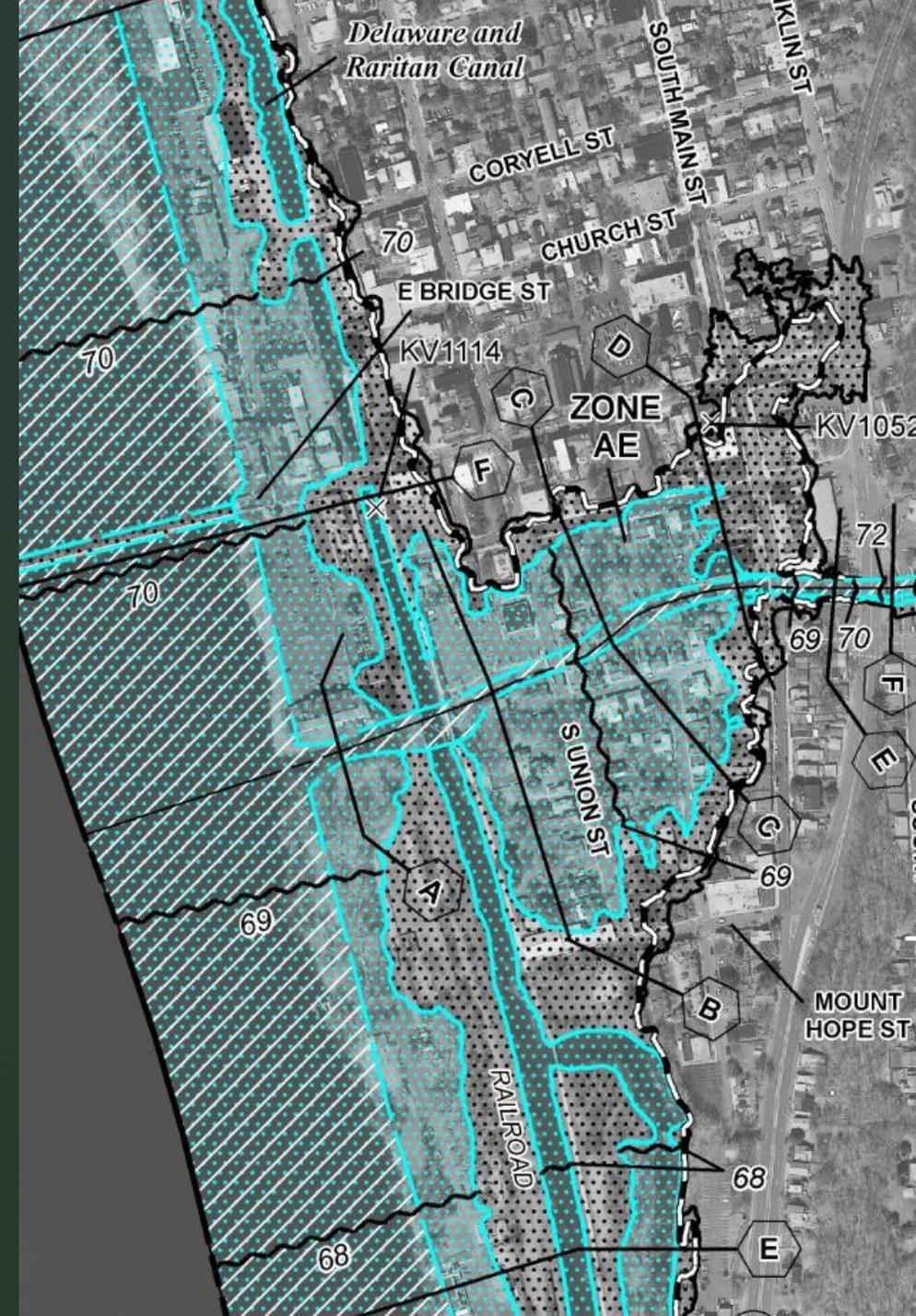
Two options for the Climate Adjusted Flood Elevation:

Option 1: The CAFE is the highest of the following:

- FEMA's 500-year flood + 1 ft
- DEP's flood hazard area design flood elevation + 2 ft
- FEMA's 100-year + 3 ft

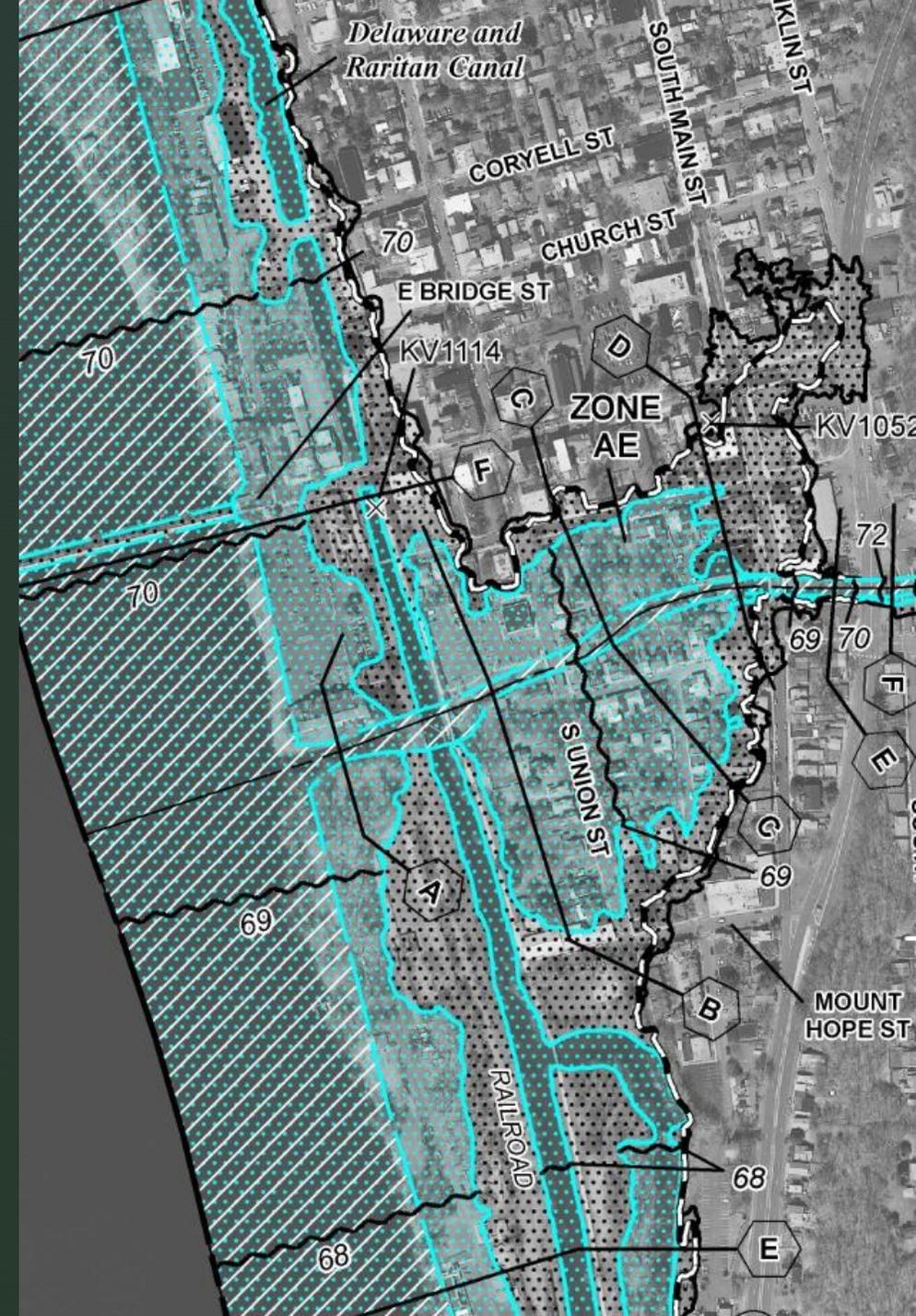
Option 2: Calculate the CAFE

- Calculate the flood hazard area limits using hydrologic and hydraulic calculations based on 125% of the future 100-year discharge



Calculating Flood Hazard Areas

- Discontinue use of the “Rational Method” and “Modified Rational Method” for floodplain delineations to match proposed SWM rulemaking.
- Require use of standard unit hydrograph to calculate flood flows unless applicant can demonstrate in the coastal plain that the watershed is undeveloped and cannot be appreciably developed in the future based on existing zoning or land restrictions.
- Require applicants who assert FEMA flood mapping is inaccurate to seek appropriate map change document from FEMA.
- Where applicant self-calculates the flood hazard area, it cannot be lower than minimum NFIP standards.
- Approximation method will be adjusted to account for higher flood elevations due to climate change by increasing flood depths by one additional foot.

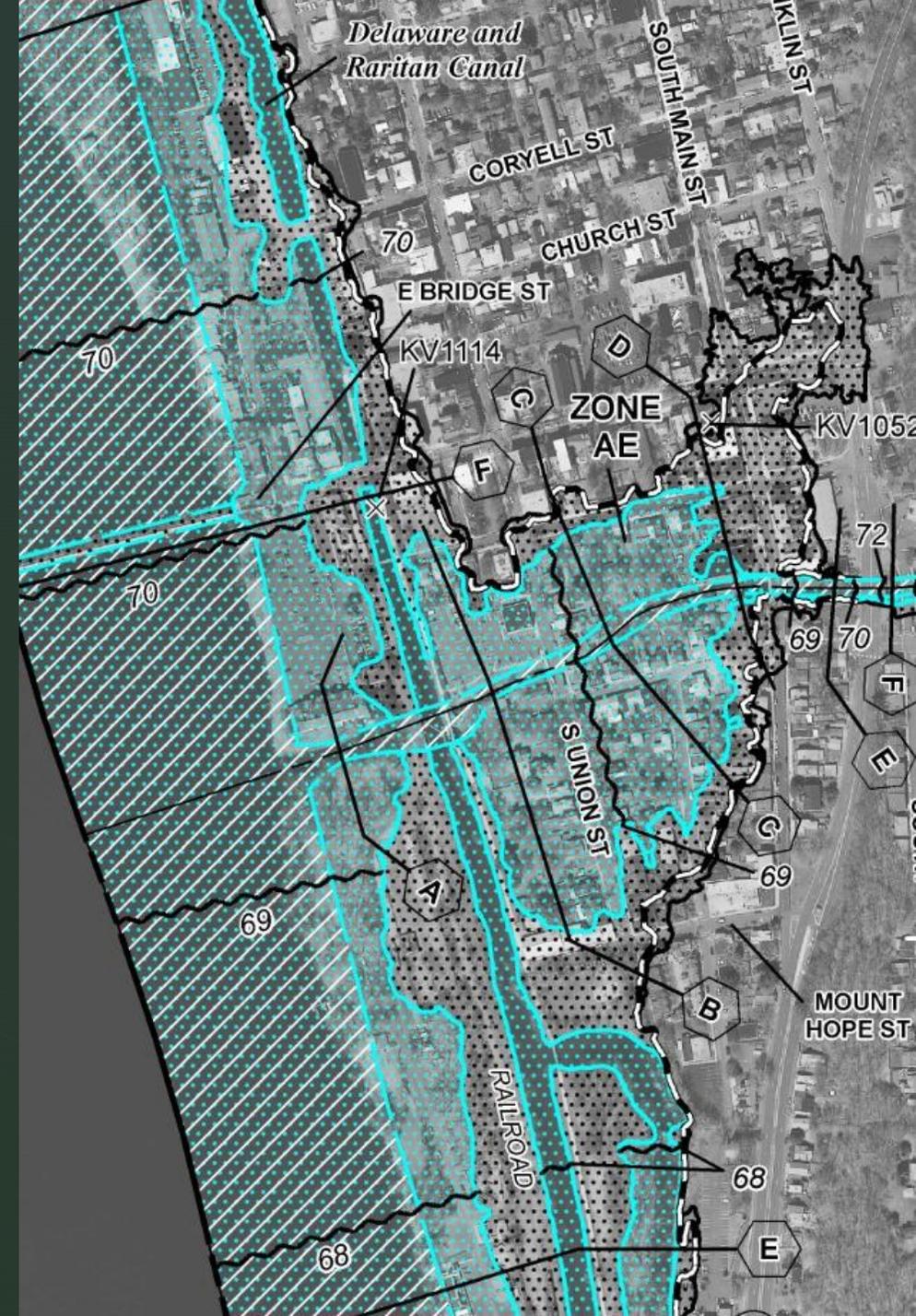


Flood Storage Displacement Calculations

Flood storage displacement calculations (a.k.a. net fill calculations) should be computed for three horizontal slices of the flood fringe:

- Between the ground and the 10-year elevation
- Between the 10-year elevation and the 100-year elevation
- Between the 100-year elevation and the CAFE

Note: in cases where the existing floodplain is fluvial, but the future flood hazard is tidal, net-fill calculations would still need to be performed.



FEMA: National Flood Insurance Program

Amendments necessary to better align FHACA Rules with minimum NFIP standards

- Add a new provision that if work within a flood hazard area is not commenced within 180 days of approval, the permit will be automatically “paused” and work cannot commence until permittee reinstates the approval by registering online.
- Clarify that DEP will not issue a permit for a building that violates minimum NFIP standards.
- Ensure that flood hazard area delineations based on calculations are not less protective than minimum NFIP standards.
- Amend hardship exception provisions to ensure that buildings approved under a hardship either meet minimum NFIP standards or comport with FEMA’s prescribed waiver process that is effectuated by participating local communities. (Note: FEMA does not consider economic factors in determining whether a building standard should be waived.)



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Protecting Critical Facilities and Infrastructure



- Create a new definition for critical facilities and critical infrastructure as informed by the NFIP and Office of Emergency Management definitions.
- Amend the definition of critical building to be more in line with the Flood Design Classes published by the American Society of Civil Engineers.
- Placing restrictions on construction of facilities in the inundation risk zone.
- Applicant must provide an **Owner-Certified Climate Risk Assessment** that acknowledges the flooding risks.



Elevation Standards: Buildings

- Residential and critical buildings: lowest floor must be constructed at CAFE+1
- All other buildings: option to construct lowest floor to CAFE+1 or floodproof to CAFE+1
- Dry access:
 - Depth of flooding and velocity of flow over roadway will be used as an indicator of how safe the roadway would be during a flood event.
 - Fluvial flood hazard area: dry access must be provided to all new or substantially damaged/improved multi-residence and critical buildings.
 - New projects: road surface must be set at CAFE+1
 - Redevelopment projects: road surface cannot be greater than 1 foot below CAFE
 - Tidal flood hazard area: dry access must be provided to all new or substantially damaged/improved multi-residence and critical buildings to the maximum extent practicable.



Elevation Standards: Roads

- **Designated evacuation routes:** must be elevated to CAFE+1 or applicant must seek a hardship exception.
- **Other new and full-depth reconstructed roads:** must be elevated as close to CAFE+1 **as practicable**, recognizing that existing grades, intersecting roads and driveways, and drainage patterns may often present a significant obstacle to elevating.
- **Other roadway improvements:** applicant must identify areas where improvements could be made to address climate change impacts and take said measures where practicable. Even raising the road surface by 6-12 inches would make the roadway more resilient to flooding and climate change.



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Increased Protection of Land and Water Resources

CZM Rules

- Clarify that the presence of engineered dunes created for the purpose of shore protection does not diminish the importance of any other dune areas.
- Revise Erosion Hazard Rule to complement the inundation risk zone.
- Add standards for pre-storm activities on beaches and dunes.
- Modify traffic rule to ensure that any permitted development meets Traffic Level D.
- Require applicants and permittees who are proposing mitigation projects to contemplate the impacts of a changing climate on the viability of said projects.



Increased Protection of Land and Water Resources

FHACA Rules

- Expanding definition of regulated water to include isolated waters draining less than 50 acres.
- Placing riparian zones on the non-oceanfront side of barrier island complexes.
- Increasing riparian zone widths to 150 feet for all T&E species and requiring mitigation for all impacts.
- Requiring RZ mitigation in a 50-ft riparian zone when onsite impacts cumulatively exceed specified limits.
- Requiring an IP for bridge and culvert replacements in order to reduce species fragmentation.
- Requiring an IP for horizontal directional drilling to account for accidental release of contaminants.
- Require applicants and permittees who are proposing mitigation projects to contemplate the impacts of a changing climate on the viability of said projects.

Increased Protection of Land and Water Resources

Freshwater Wetland Rules

- Clarifying that wetland impacts must be necessary for the conduct of a project regardless of whether the impacts meet general permit criteria.
- Require 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
- In non-surface water connected wetlands, requiring onsite assessment when impacts are proposed in vernal habitats.
- Requiring a general permit for horizontal directional drilling and limiting the size and scope of drilling activities that may qualify for a general permit.

Increased Protection of Land and Water Resources

Freshwater Wetland Rules

- Adding more comprehensive cumulative mitigation requirements.
- Require the removal of existing pavement, where practicable, within 25 feet of the wetlands under a special activity transition area waiver for redevelopment of a significantly disturbed area
- Requiring that all activities in the transition area stay at least 25 feet from the wetlands.
- Requiring the entire transition area to be protected by a conservation restriction once modified through averaging.
- Require applicants and permittees who are proposing mitigation projects to contemplate the impacts of a changing climate on the viability of said projects.



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Stormwater Management

- Require onsite retention of the water quality storm to reduce offsite pollution and flooding impacts.
- Require 80% TSS removal for redeveloped/reconstructed motor vehicle surfaces.
- Require projects that require a freshwater wetlands permit to meet the Stormwater Management rules if the authorized activities a part of a major development.



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Planning for Climate Change

- Add standards to CZM rules regarding the minimum criteria for determining consistency of a SPC approved center, core, or node with the purposes of the rules and the requirement in CAFRA that it will not result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment.
- Delete Department-delineated coastal centers from the CZM Rules (currently codified in Appendix H).
- Centers that wish to be designated as a center will be required to go through the formal SPC plan endorsement process in order to receive a higher impervious cover limit.



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Nature-based Solutions

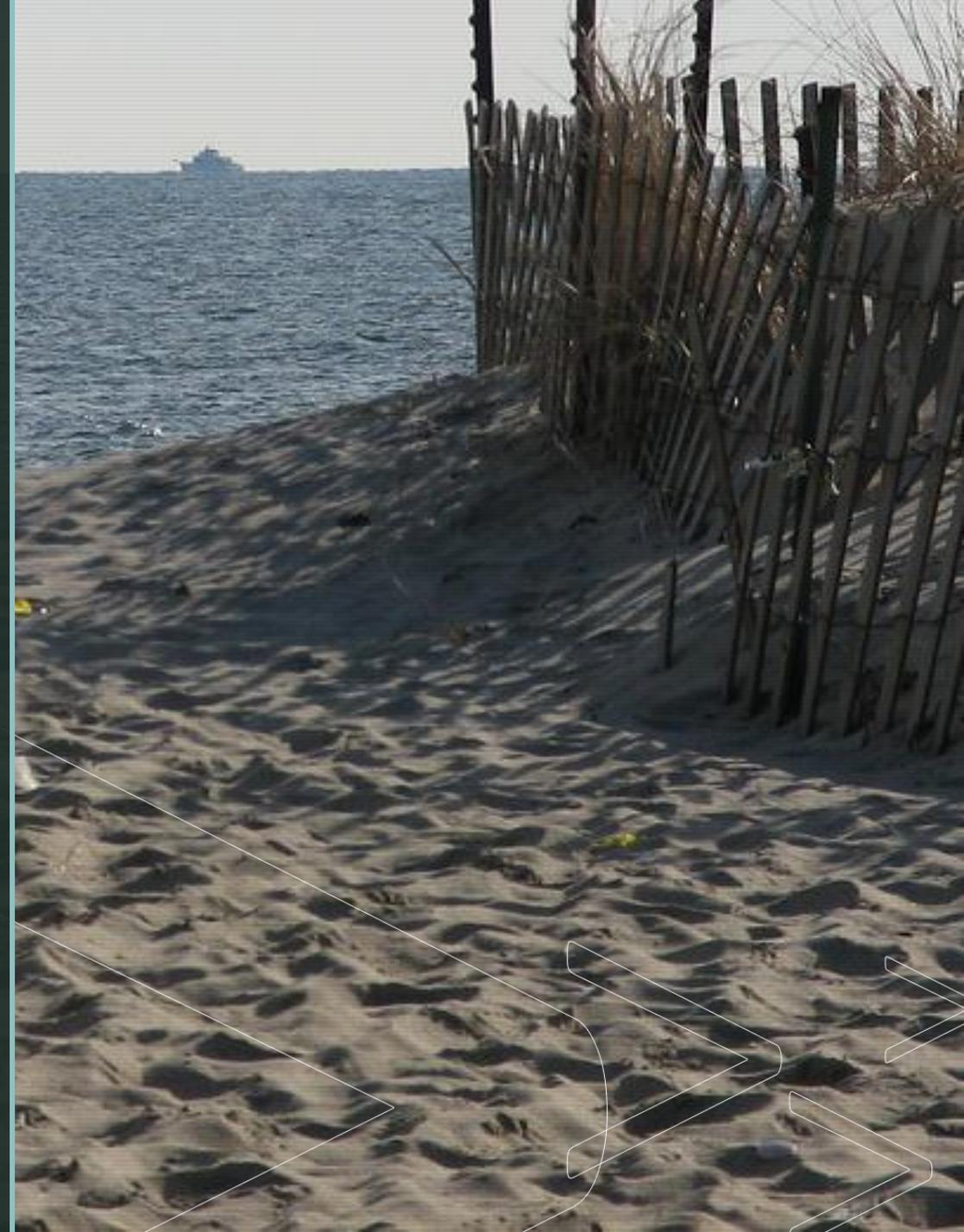
Encourage use of nature-based solutions, such as living shorelines, when stabilizing the shoreline and wetland edge through the addition of new permits-by-certification and general permits.

Address elevation of the wetland platform through the beneficial use of dredged material to enhance the resiliency of the wetland in response to sea level rise.

- Add definitions for non-governmental organization “NGO,” nature-based solution
- Modify definition of “living shoreline”
- Add permits-by-certification for:
 - Shoreline stabilization using suitable native vegetation
 - Shoreline stabilization using oysters, marine mussels and/or shell bags

Nature-based Solutions

- Replace existing general permit for stabilization of eroded shorelines with general permit for shoreline stabilization using suitable native vegetation.
 - Requires construction completion report.
- New general permit for the establishment of a living shoreline for stabilization.
 - Requires construction completion report and adaptive management plan.
- New general permit for nature-based solution research.
 - Requires construction completion report and restoration of the site where project fails to meet stated project objective.



Nature-based Solutions

- **Modify general permit for habitat creation, restoration, and enhancement**
 - Removes living shorelines from general permit
 - Removes sponsorship requirement
 - Allows elevation of wetland platform through beneficial use of dredged material
 - Requires use of sediment from the same regulated water, estuary, or ecosystem to maximum extent practicable
 - Requires construction complete report
 - Modifies Wetlands rule, N.J.A.C. 7:7-9.27
- **Clarify living shoreline activities are adjacent to wetlands and intended to stabilize the shoreline**
 - Encourages habitat creation, restoration, or enhancement projects that use nature-based solutions
 - Encourages beneficial reuse of sediment from the same regulated water, estuary, or ecosystem



Nature-based Solutions

- **Modify living shorelines rule, N.J.A.C. 7:7-12.23**
 - Removes limitation on placement of fill within
 - Addresses ecological risk
 - Encourages beneficial reuse of sediment from the same regulated water, estuary, or ecosystem
 - Requires submission of a construction completion report, monitoring for five years, an adaptive management plan
- **Restriction on installation of new bulkheads can allow for marsh migration**
- **Require better assessment of stream systems, and establish clear hierarchy prioritizing vegetative mechanisms for stream bank stabilization**





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Renewable Energy

OFFSHORE WIND

Striking a balance between maintaining habitat while encouraging renewable energy such as offshore wind

- Amend the CZM Rules to address the installation of electric transmission cables associated with offshore wind energy facilities
- Modify shellfish habitat rule to allow, with appropriate mitigation and monitoring to protect both habitat and the public safety of users, installation of submerged cables
- Modify submerged cable rule to include electric cables and add standards for electric cable installation



Renewable Energy

OFFSHORE WIND (continued)

- Modify marine fish and fisheries rule to include provision that finds the installation of electric cables and associated infrastructure to service energy facilities conditionally acceptable provided measures are implemented to minimize and compensate for impacts to marine fish and fisheries
- Add public notice requirements for electric transmission cables located in the ocean



Renewable Energy

SOLAR

- Address appropriate siting for solar panel installation
- Ensure one resource does not come at the expense of another





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Permits-by-Registration

- New type of authorization that replaces most permits-by-rule.
- Parties intending to undertake an authorized activity would be required to log on to NJDEP's online permitting portal, enter basic information (such as the location and type of activity being undertaken and appropriate contact information).
- Registration would enable WLM to track cumulative impacts on a watershed-wide basis and adjust standards to address 303(d) impaired waters and TMDLs and/or to reflect the State's planning goals.
- Allows more accurate tracking of regulated activities and better aligns with FEMA's requirement to record and track approvals under the NFIP.
- Existing flood hazard and coastal permits-by-rule would be converted to one of the following: limited categorical exemptions; permits-by-registration, general permits or individual permits.



Permits-by-Certification

- Many are rarely used; some will be folded into general permits so that range of activities can be broadened.
- Proposal would require a NJ licensed professional engineer to apply for and certify each item in an FHA permit-by-certification since most include a requirement that certain information be provided or that engineering certifications are necessary.
 - Same for CZM permits-by-certification where compliance with the flood hazard area rule at N.J.A.C. 7:7-9.25 is required.

Anticipated changes to existing permits-by-rule, general permits-by-certification and general permits: **CZM Rules**

- Modify permit-by-rule (PBR) for the construction of a swimming pool, spa, or hot tub and associated decking on a bulkheaded lot without wetlands to not apply to sites located along the Atlantic Ocean or Delaware Bay.
- Modify general permit-by-certification (PBC) for reconstruction of a legally existing bulkhead in-place or upland of a legally existing functioning bulkhead to not apply to bulkheads located along Atlantic Ocean or Delaware Bay.
- Clarify PBC for construction of piers, docks, including jet ski ramps, pilings and boatlifts in man-made lagoons.

Anticipated changes to existing permits-by-rule, general permits-by-certification and general permits: **CZM Rules (continued)**

- Covert existing PBRs for the below listed activities to PBCs:
 - At grade dune walkover at a commercial development
 - Expansion of a single-family home or duplex on the non-waterward side of the single-family home or duplex
 - Development of a single-family home or duplex and/or accessory development on a bulkheaded lagoon lot
 - Reconstruction of a residential or commercial development within the same footprint
 - Expansion or relocation (with or without expansion) landward or parallel to the mean high water line of the footprint of a residential or commercial development
 - Reconfiguration of any legally existing dock, wharf, or pier at a legally existing marina

Anticipated changes to existing permits-by-rule, general permits-by-certification and general permits: **CZM Rules (continued)**

- Modify general permit (GP) for expansion, reconstruction (with or without expansion) of a single-family home to require that for sites located on the Delaware Bay or Atlantic Ocean, development under the general permit cannot be located waterward of the waterward side of development
- Modify GP for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments, and multi-family residential developments over 75 units to:
 - Not authorize the construction of cabanas or installation of sewer lines
 - Structures located on a beach cannot unreasonably conflict with public access
 - Require the plans submitted on an annual basis include the location of where structures will be relocated in cases where a Severe Weather Alert requires removal of the structure from the beach
 - New definitions of cabana, temporary equipment storage container and sun shelter are added to facilitate changes to this general permit

Anticipated changes to existing permits-by-rule, general permits-by-certification and general permits: **FHACA Rules**

- Convert all 63 permits-by-rule to exemptions, permit-by-registration or permit-by-certification.
- Delete the permit-by-rule for horizontal directional drilling and require an individual permit just as any other pipeline installation in a flood hazard area or riparian zone.
- General permit-by-certification for construction of homes in tidal areas to be deleted in favor of a general permit.
- General permits-by-certification for agricultural roadways and culvert replacements, as well as general permit for culvert replacement to be deleted in favor of an individual permit.
 - In order to facilitate wildlife crossings in cases where bridges and culverts are being replaced in areas with documented habitat fragmentation.
 - Recognition that in some cases hydraulic conditions and/or the geometry of the structure or channel may preclude significant modifications to the shape or size of a bridge or culvert.

Anticipated changes to existing permits-by-rule, general permits-by-certification and general permits: **FWPA Rules**

- Make clear that wetland impacts must be necessary for the conduct of a project regardless of whether the impacts meet general permit criteria.
- Modify GP2 for underground utility lines to require a permit for directional drilling under a freshwater wetland and add general permit criteria for some activities.
- Modify GP6 for non-surface water connected wetlands to delete references to Waters of the United States. Also require onsite assessment when impacts are proposed in vernal habitats.
- Modify GP10 for minor road crossings to make clear that it is intended for access to developable uplands and not internal roadways.
- Modify GP20 for bank stabilization to require better assessment of stream systems and establish clear hierarchy prioritizing vegetative mechanisms for stream bank stabilization.

For All Permits

Establish improved noticing requirements such as:

- Online notice of start of construction.
- Online notice of deed restriction filing (permittee can upload a copy of modified deed).
- Online notice of completion (permittee can upload photos and as-built drawings as available).
- Automatic response from online system if the above aren't received in a timely manner.



For general discussion purposes only. Information provided is pre-decisional and does not constitute a final agency decision or action.

THANK YOU

Please contact us to share additional comments at:

jill.aspinwall@dep.nj.gov

You may also submit comments to the NJPACT webpage
through the survey tab at:

<https://www.surveymonkey.com/r/b8fqgdw>

