

APPENDIX

**Testimony of Prof. Anthony J. Broccoli to the Assembly Environment, Natural Resources,
and Solid Waste and Senate Environment and Energy Committees**

April 22, 2026

Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey

Good morning. My name is Anthony Broccoli, and I am a Distinguished Professor of Atmospheric Science in the Rutgers University Department of Environmental Sciences. Thank you for the invitation to talk about how climate change is affecting sea level and coastal flooding here in New Jersey.

My testimony will be based on the latest report by the New Jersey Science and Technical Advisory Panel on Sea-Level Rise and Coastal Storms. This panel, which was led by my colleague Robert Kopp, was convened by Rutgers on behalf of the NJDEP, and its report was completed in 2025. The report, which I will refer to as the 2025 STAP report, is intended to be policy-relevant, not policy-prescriptive, and it does not make recommendations about how decision makers should use sea-level projections. I will draw from the information in this report by discussing global average sea-level rise and its drivers before focusing more specifically on sea-level rise here in New Jersey.

Over the period from 1900 to 2018, global average sea level rose at a rate of 0.7 inches per decade, but this rate has increased over time. Tide gauges and satellite observations show that global average sea level rise has accelerated from 0.8 inches per decade in 1993 to 1.7 inches per decade in 2024. There are three major processes contributing to global sea-level rise.

First, as the ocean warms, the water expands, increasing the volume of the ocean. Thermal expansion has been responsible for just under half of the rise in sea level over the past several decades. A second driver of global sea-level rise is the melting of ice sheets and glaciers as the climate warms. During the past several decades, the great ice sheets that cover most of Greenland and Antarctica have been shrinking, as have almost all mountain glaciers throughout the world. The ice lost from these glaciers and ice sheets adds water to the ocean, which also accounts for just under half of the recent rise. The third driver of global sea-level rise involves changes in the amount of water stored on land, primarily in lakes, rivers, reservoirs, and groundwater, but this process accounts for only a relatively small portion of the total.

Turning our attention to New Jersey, sea-level rise along the New Jersey coast has been more rapid than the global average, primarily because the land is sinking while water levels are rising. Some of the sinking, or land subsidence, is a very slow response of the Earth's mantle to the disappearance of the massive ice sheets that covered much of North America during the last ice

age. Additional sinking results from the compaction of the sediments that make up New Jersey's coastal plain. The compaction is a combination of natural processes and the withdrawal of groundwater from wells. Other processes, including gravitational effects and changes in ocean currents, also cause sea-level rise in New Jersey to exceed its global average.

As a result of these processes, sea level at Atlantic City has risen by just over 1.5 feet since tide gauge records began in 1912. Among the effects of this rise in water levels has been an increase in the frequency of so-called "sunny-day flooding," in which flooding occurs even in the absence of coastal storms. During the 1950s, sunny-day flooding at Atlantic City averaged less than one day per year, but the average rate had increased to about 12 days per year for the period from 2007-2024, with an all-time high of 23 coastal flood days in 2024.

As the ocean continues to warm and glaciers and ice sheets continue to melt, the acceleration of sea level rise is expected to continue. The amount of sea-level rise that ultimately occurs in the latter half of this century depends, in part, on the magnitude of the future warming, which depends in turn on the future emissions of heat-trapping greenhouse gases. The 2025 STAP report focused on three emissions scenarios developed by the climate and integrated assessment communities: low, intermediate, and high. The implications for future sea levels of each of these scenarios are presented in the report, but I will focus on the intermediate scenario, which is most closely aligned with the projections of greenhouse gas emissions based on the policies that were current at the time of the report.

Relative to a 1995-2014, New Jersey coastal areas are likely to experience a sea-level rise of 0.7–1.3 feet by 2040 and by 0.9–1.7 feet by 2050. The panel uses ranges to represent the outcomes that have a 2 in 3 chance of occurring—smaller or larger increases are possible but less likely. By 2070, the likely range is projected to increase to 1.5-2.5 feet, with a further increase to 2.2-3.8 feet by 2100. These ranges do not include rapid ice-sheet loss processes involving Greenland and Antarctica that have potentially high impact, but whose likelihood is unknown because the current scientific understanding is not yet sufficient. If these potential rapid ice-sheet loss processes are included, the upper end of the likely range would increase to 1.9 feet in 2050, 2.8 feet in 2070, and 4.5 feet in 2100.

Although projections through 2050 show only minor sensitivity to different emissions scenarios, the amount of sea level rise during the second half of this century will depend on future greenhouse gas emissions. Higher emissions would lead to greater sea level rise and lower emissions would cause a smaller amount. A table including such information is included as an attachment to my written testimony.

Rising seas will dramatically increase the threat of coastal flooding, not only along our oceanfront beaches, but also along Delaware Bay, coastal back bays, and the estuaries of rivers such as the Delaware, Raritan, Passaic, and Hackensack, to name just a few. In a typical year around 2050, Atlantic City is projected to experience between 29 and 148 days of coastal

flooding. By 2100, the frequency would increase to between 227 and 359 days a year. But the most severe impacts will occur when high winds from coastal storms drive water toward the coast. These storm surge events can raise water levels several feet, and their effects will be added to the effects of rising seas. Hurricane Sandy was an extreme example, producing 5-9 feet of storm surge along much of the New Jersey coast, but even a strong winter storm such as this year's late February snowstorm can produce 2-3 feet of surge. Coupled with a three-foot rise in sea level, flooding approaching that caused by Hurricane Sandy would become a frequent occurrence.

How will climate change affect coastal storms? This is an important but challenging question that is the subject of ongoing research. There is good evidence that a warming climate will make hurricanes stronger, cause some of them to intensify more rapidly, and make them wetter. Whether they will change in frequency or if their typical tracks will change remains uncertain.

Winter storms, often called nor'easters, are a more common occurrence along the Jersey Shore. Such storms typically bring the threat of some coastal flooding several times each year. The relationship between warming and the intensity of winter storms is not as straightforward as it is for hurricanes, and continued research will be required to anticipate how they will change in the future.

Despite the uncertainties that I've just described, we can say something about the bottom line for communities that are exposed to coastal flooding. There is high confidence that coastal flooding from future storms will be more frequent and more severe, as rising sea levels raise the baseline for such flooding events. For example, some of my colleagues at Rutgers have estimated that the rise in sea level since 1880 caused about 38,000 more people in New Jersey to be affected by Hurricane Sandy's floodwaters. The future rise in sea level will likewise increase the areas at risk of coastal flooding.

Many of our traditional strategies for planning for future weather and climate events assume that they will look a lot like the events that we have experienced in the past. Climate change invalidates this assumption. Instead, we must prepare for and adapt to conditions that will likely be quite different from what we have seen in the past.

Furthermore, climate change will not "stop on a dime." To put it more scientifically, the greenhouse gases that are already in the atmosphere will eventually cause more warming than has been experienced so far. Climate change is more like a massive cargo ship that will keep going for some distance even if the engines are turned off. Sea level rise is particularly insidious, as the heat from global warming gradually accumulates in the ocean and causes glaciers and ice sheets to shrink. With that sobering fact in mind, we must prepare for the changes in climate that are already in the pipeline, even as we may hope that policies are implemented to reduce greenhouse gas emissions worldwide.

Adapting to a changing climate is a process that should be informed by the best available science. We can't adequately prepare if we don't know what impacts are coming. The work embodied in the STAP report is intended to inform policy makers and stakeholders as they wrestle with the difficult decisions about how to address the changes that lie ahead.

To the committee chairs and members, thank you again for the chance to talk with you today about this timely and important issue.

Table 5. New Jersey SLR estimates for Atlantic City, NJ above the 1995–2014 baseline (ft). SLR estimates are grouped by emissions scenario and year with rows corresponding to different SLR projection probabilities. Banners across the full width of the table indicate which SLR projections include or exclude unknown-likelihood, high-impact processes that are on the frontier of scientific understanding (i.e., potential rapid ice-sheet loss processes). Table footnotes provide additional information regarding how to interpret this table.

Degrees of Warming (°C)†	Low Emissions (SSP1-2.6)		Intermediate Emissions (SSP2-4.5)		High Emissions (SSP3-7.0)	
	2040	2050	2070	2100	2150	2100
> 95% Chance SLR Exceeds*	0.5	0.7	1.1	1.3	1.7	2.1
> 83% Chance SLR Exceeds*	0.7	0.9	1.3	1.8	2.3	2.6
~50% Chance SLR Exceeds	1.0	1.3	1.8	2.4	3.5	3.3
<17% Chance SLR Exceeds†	1.3	1.7	2.3	3.3	4.9	4.3
<17% Chance SLR Exceeds*	1.4	1.9	2.5	3.7	5.8	5.2
<5% Chance SLR Exceeds*	1.7	2.3	3.2	5.1	9.4	7.5

Likely Range, Excluding Potential Rapid Ice-Sheet Loss Processes						
> 95% Chance SLR Exceeds*	0.5	0.7	1.1	1.3	1.7	2.1
> 83% Chance SLR Exceeds*	0.7	0.9	1.3	1.8	2.3	2.6
~50% Chance SLR Exceeds	1.0	1.3	1.8	2.4	3.5	3.3
<17% Chance SLR Exceeds†	1.3	1.7	2.3	3.3	4.9	4.3

Extended Likely Range, Including Potential Rapid Ice-Sheet Loss Processes						
> 95% Chance SLR Exceeds*	0.5	0.7	1.1	1.3	1.7	2.1
> 83% Chance SLR Exceeds*	0.7	0.9	1.3	1.8	2.3	2.6
~50% Chance SLR Exceeds	1.0	1.3	1.8	2.4	3.5	3.3
<17% Chance SLR Exceeds†	1.3	1.7	2.3	3.3	4.9	4.3

* Projections that include unknown-likelihood, high-impact rapid ice-sheet loss processes in whose rate and magnitude there is low confidence are denoted with an asterisk (*). SLR projections with a >95% chance or >83% chance of being exceeded (i.e., the top two rows of SLR estimates) are the same regardless of whether these potential rapid ice-sheet loss processes are included or excluded. The ~50% and <17% chance likely range rows do not incorporate these rapid ice-sheet loss processes.

† The likelihood of potential rapid ice-sheet loss processes falls somewhere between zero and one, but different experts have different opinions on where it falls within that range. Thus, different experts will disagree on where they draw the "true" <17% chance SLR exceeds' bound, but would agree that it falls between the 83rd percentile of projections excluding potential rapid ice-sheet loss processes (i.e., the "<17% chance" values) and the 83rd percentile of projections that incorporate potential rapid ice-sheet loss processes (i.e., the "<17% chance*" values). As such the "<17% chance*" projections can be considered within the extended likely range projections.

‡ Estimated degrees of atmospheric warming relative to late nineteenth century (1850–1900) levels provided for each year and emissions scenario using the format "median (5th – 95th percentile range)." Values derived from the FAIR climate module within the FACTS 1.1. Estimated degrees of warming for 2040 and 2050 are reported using the format "median of the intermediate emissions scenario (5th percentile from SSP1-2.6 – 95th percentile from SSP3-7.0).

Additional Notes for Table E51:

- All SLR estimates are 19-year means of sea-level measured with respect to a 1995–2014 baseline centered on the year indicated in the third row of the table. Low (blue), intermediate (orange), and high (red) emissions scenarios above correspond to SSP1-2.6, SSP2-4.5, and SSP3-7.0, respectively.
- Near-term projections (through 2050) exhibit only minor sensitivity to different emissions scenarios (<0.1 feet for projections using medium-confidence processes [i.e., excluding rapid ice-sheet loss], <0.2 feet for projections using low-confidence processes [i.e., including rapid ice-sheet loss]). As such, these columns span the emissions scenarios used in the main body of this report (the low, intermediate, and high emissions scenarios).
- The STAP 2019 low scenario corresponds most closely to the 2025 STAP low scenario, the STAP 2019 moderate scenario corresponds most closely to the 2025 STAP high scenario, and the STAP 2019 high scenario corresponds most closely to the 2025 STAP very high scenario (found in Appendix B).
- Table 5 highlights: the extremely likely to be exceeded SLR to show the amount of SLR that is most likely to occur; the likely range to show what amount of SLR has at least a 66% chance of occurring consistent with AR6; the extended likely range to show the potential effects of rapid ice-sheet loss processes on SLR; and the extremely unlikely to be exceeded SLR to highlight the greatest SLR extent resulting from rapid ice-sheet loss processes.
- All SLR projections include the impact of ice-sheet loss (i.e., ice loss from melting ice sheets and calving). However, the projections designated to include rapid ice-sheet loss processes incorporate the potential impact of processes in Antarctica and Greenland that could further accelerate ice-sheet loss.

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New Jersey—Climate-Related Risk Mitigation

April 22, 2026

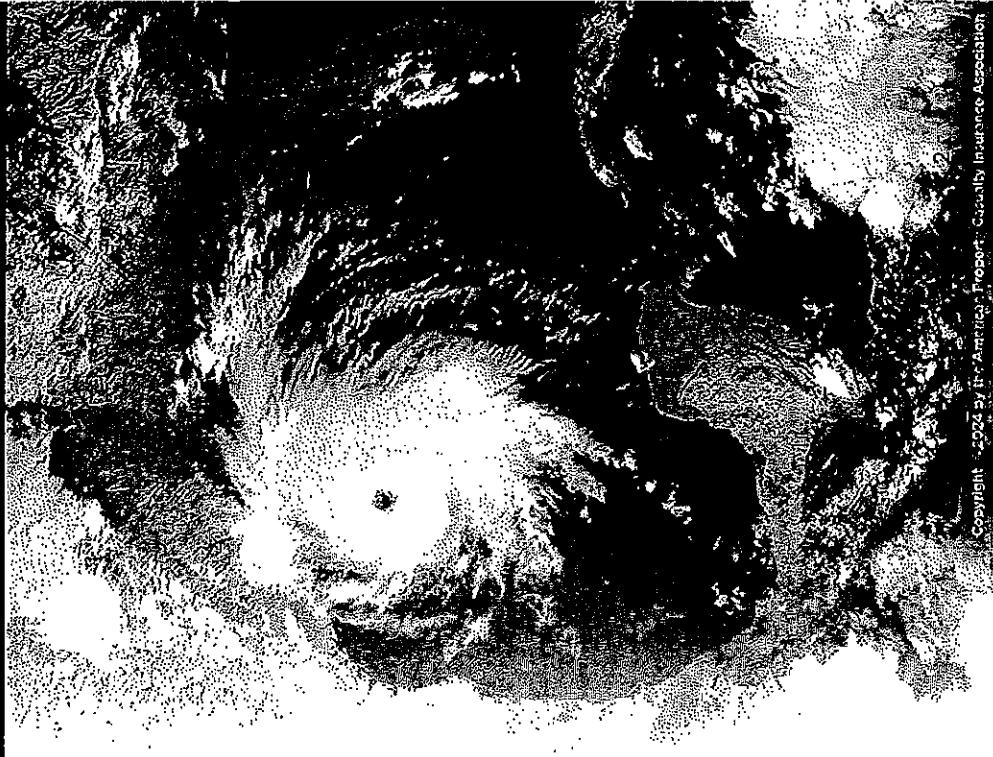
Dave Snyder,
APCIA

Disaster Costs by State (1980-2026)

CPI-Adjusted: All costs are adjusted for inflation to 2026 dollars using the U.S. Bureau of Labor Statistics' Consumer Price Index (CPI).



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What is Causing Increased HO Losses



MACROECONOMIC PRESSURES

- Economic growth
- 40-year record inflation
- More severe inflation for building materials/labor



CLIMATE

- Demographic shifts to disaster-prone regions
- Increasing weather severity

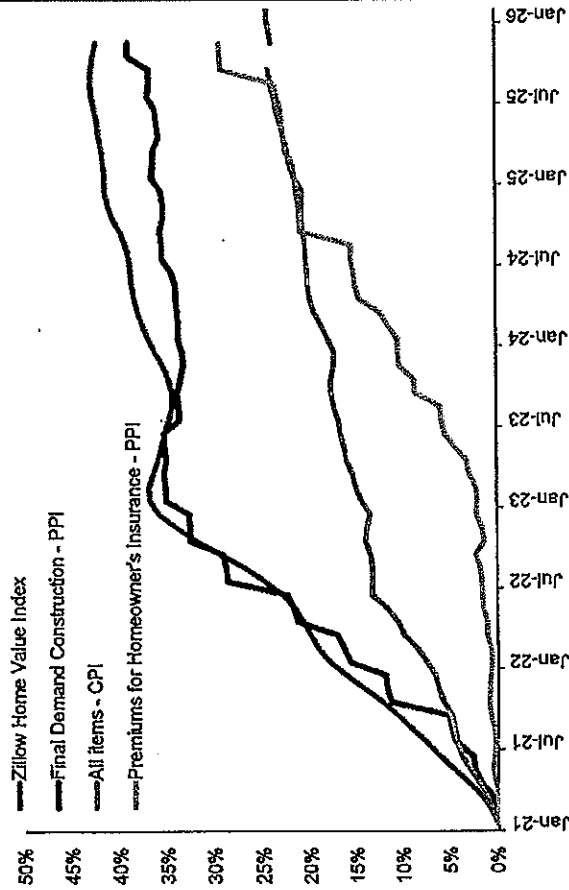


GOVERNMENT RISK

- State coverage mandates, rate suppression, legal system abuse, fraud

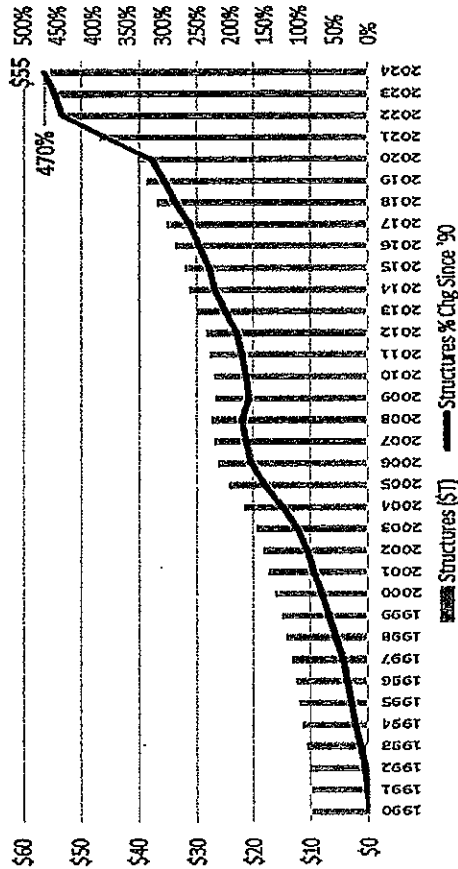
Inflation in Construction & Building Replacement

Cumulative Price Changes



Notes and Sources: Bureau of Labor Statistics. Missing data attributable to DOGE activity and Federal government shutdowns.

U.S. Replacement Cost of Structures
BEA Current-Cost Net Stock of Private Fixed Assets (\$T)

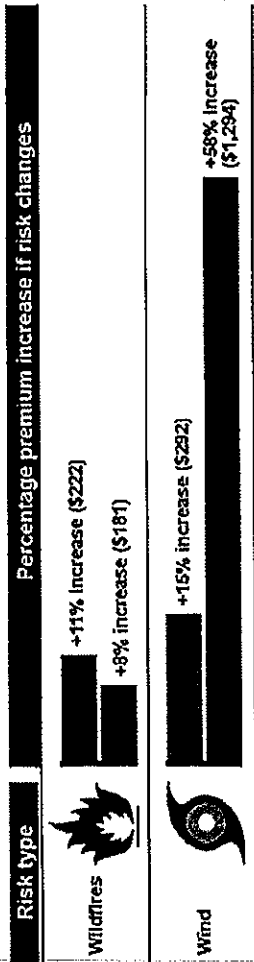


Source: IPCEI as of the U.S. Bureau of Economic Analysis. Fixed Assets Accounts Tables year-end estimates; Table 2.1. Current-Cost Net Stock of Private Fixed Assets, Equipment, Structures, and Intellectual Property Products by Type

GAO Report on Homeowners Insurance (2026)

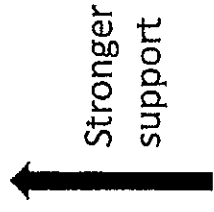
Premiums reflect hazard risk – especially wind exposure

- Premiums more strongly associated with wind exposure than wildfire risk
 - An estimated 58% increase for high wind exposure vs. 8% for wildfire



Area's risk changes from:
 Minor/moderate to major
 Major to severe/extreme

- Stakeholders expressed strong support for **mitigation-focused** policy options
 - Subsidies for improvements to building codes, risk mapping, and land-use planning
 - Funding for improving infrastructure
 - Means-based federal tax deduction or tax credit for mitigation expenses



Stronger support

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Solutions

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State/Local Solutions

- Grant programs and/or Low-interest loans for resilience
- National Council of Insurance Legislators Strengthen Homes Program Model Act
- Catastrophe savings accounts/ State-level consumer tax incentives to offset cost of mitigation and resiliency
- Adoption and enforcement of modern building codes and defensible space standards (e.g., Zone 0)
- Investment in infrastructure

Financial 'Return on Investment' from Resilience

- **Property Owners** – Increased property resale values, improved insurability, avoided loss costs, such as insurance deductibles or other loss related expenses that may occur following a disaster and reduced risk of mortgage delinquencies.
- **Financial Services Industry** – Increased property resale values, reduced risk of mortgage delinquencies and financial loss from pre-pays.
- **Governments** – Reduced state/federal disaster aid and impacts from potential loss of tax base or negative bond ratings (state/municipal)

Alabama FORTIFIED re-sale value study

2024 research from the Alabama Center for Insurance Information and Research at the University of Alabama indicated FORTIFIED designated homes sell for 7% higher on average and qualify for insurance discounts ranging between 20-60% on wind coverage, depending on the level of upgrades.

Mortgage delinquency study

June 2024 study from IBHS and CoreLogic indicated adopting and enforcing modern codes benefits all by reducing the risk of mortgage delinquencies for banks, investors, insurers and homeowners, as people are allowed to stay in their homes and avoids much of the damage, disruption and long-term displacement.

Louisiana FORTIFIED net benefit study

2025 Louisiana Legislative Auditor report concluded the "net benefit" of \$17.9k over the life of a roof exceeds the "cost" of \$17.0k to retrofit to an IBHS FORTIFIED roof, potentially higher benefit for homes at higher risk of hurricanes.

Florida 'Babcock Ranch'

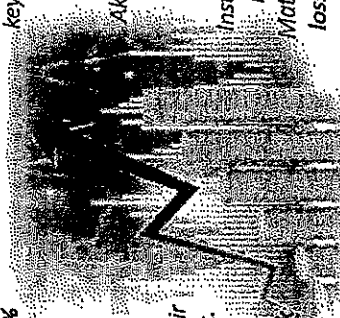
Touted as the first fully sustainable and "hurricane-proof" community, sustained no damage from Hurricanes Ian in 2022 and Milton in 2024, due to key design features such as structural hardening, flood control and resilient infrastructure.

Lahaina 'miracle house'

Aka the 'red roof home', survived the 2023 Lahaina fire unscathed, due to mitigation efforts that reduced the ignition risk of the home.

North Carolina FORTIFIED loss study

Institute for Advanced Analytics at North Carolina State University analyzed insurance claims from several hurricanes – including Dorian, Florence, Matthew and Isaias – and in 2024 reported that claims fell by 34.5% and the loss per storm declined by 22.7% for homes with IBHS FORTIFIED roofs and contributed to lower insurance costs.



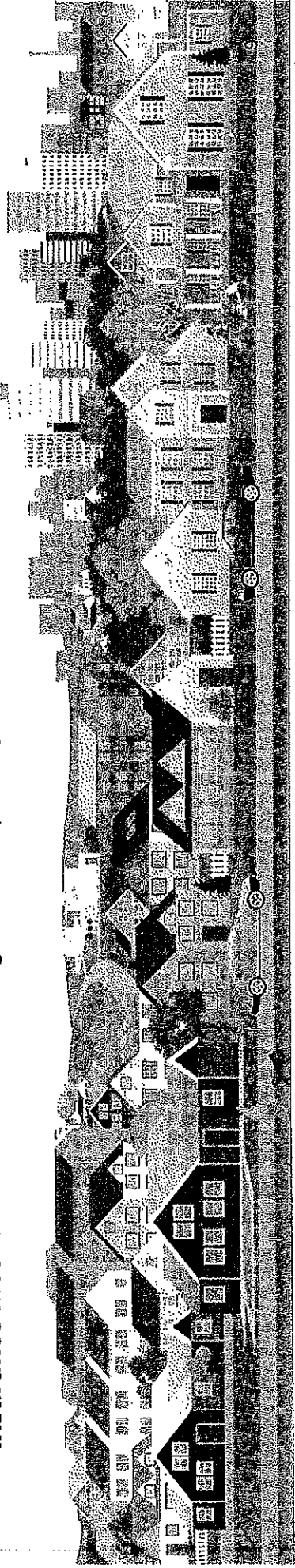
Alabama Hurricane Sally report

2025 report from the Alabama Center for Insurance Information and Research at the University of Alabama indicated FORTIFIED designated homes had 66-71% lower losses and performed over 50% better than houses built to similar code but not designated.

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Financial Incentives for Resilience

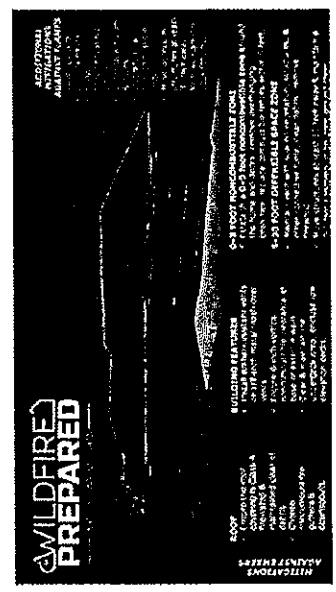
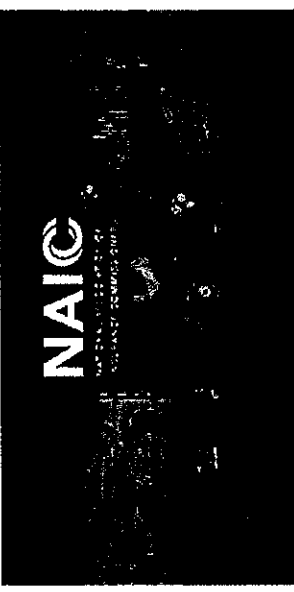
- ✓ **Grants** – States or local communities can establish resilience grant programs to help property owners. Programs could include a cost-share match from the property owner or through a public-private partnership.
- ✓ **Low interest loans** – States or local communities can establish a revolving fund that helps provide loan interest loans for resilience projects. Alternatively, incorporate funding for mitigation into mortgage costs, to spread over 20-30 years (i.e., points or better rates) or through home equity lines of credit (HELOC).
- ✓ **Waive/reduce fees** – Communities can provide a rebate, waive, or reduce building permit fees or the cost of designation program inspections, for properties that achieve a qualified resilience designation, such as IBHS FORTIFIED or IBHS Wildfire Prepared Home.
- ✓ **Tax credits** – States or local communities can provide a variety of tax credits, such as income tax credits for costs to retrofit homes or businesses, sales tax credits for materials purchased to retrofit, or property tax credits for properties that achieve and/or maintain a resilience designation, such as IBHS FORTIFIED or Wildfire Prepared Home.
- ✓ **Insurance Incentives** – States can encourage insurers to provide premium credits for resilience actions.



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Rebuilding With Wildfire Safety and Insurability

California Department of Insurance (CDI) – NAIC Study



- **Study scope and partners**
 - Joint analysis by CDI and the NAIC, conducted by NAIC’s Catastrophe Risk Management Center of Excellence, using Moody’s wildfire cat model
- **Real-world test case**
 - Focused on post-fire rebuilding scenarios following January 2025 Palisades and Eaton Fires in LA, which destroyed more than 16,000 structures
- **What was evaluated**
 - Modeled how rebuilding to IBHS Wildfire Prepared Home (WPH) and WPH+ affect Average Annual Loss (AAL)

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Benefits of Community-Scale Mitigation

Key Findings of CDI – NAIC Study

- **Substantial loss reduction from resilient rebuilding**
 - Rebuilding homes to IBHS WPH and WPH+ reduces AAL by **31%** and **35%**, respectively
- **Mitigation materially improves survival outcomes**
 - UC Berkeley research showing homes with key hardening, defensible space features survive at nearly **50%** compared to **20%** for unmitigated homes
- **Community-wide adoption amplifies benefits**
 - Wildfire losses escalate through structure-to-structure spread
 - Neighborhood-scale rebuilding produces greater benefits than isolated upgrades

+31%
fewer losses
compared to
previous
construction

Wildfire Prepared Home

+35%
fewer losses
compared to
previous
construction

Wildfire Prepared Home Plus

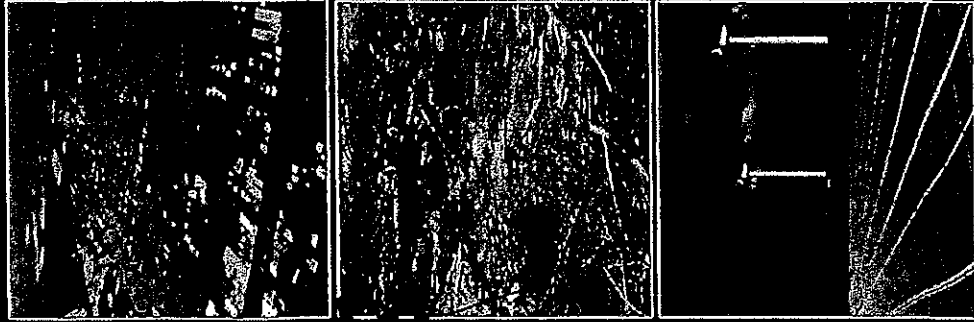
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Industry Led Solutions

- Provide educational materials, including toolkits, to housing groups, brokers and consumers on long-term insurance and finance risks and cost benefits of resilience
- Promote innovative, science-based resilient building products and solutions that strengthen homes and businesses against severe weather and natural hazards
- Modernize insurance regulation to support affordability and availability

Property Insurability Solutions – Mitigation and Resiliency

- Insurers are leading efforts to make communities more resilient and to mitigate risks
 - Working with federal & state policymakers
 - Supporting resiliency & mitigation programs, such as infrastructure improvements and wildfire solutions
 - Advocating for stronger building codes & land use policies
 - Funding science-based research into risk mitigation
 - Advocating for financial support to increase resilience for vulnerable populations
 - Investing/underwriting in climate and renewable technology



Insurance Institute for Business & Home Safety

(IBHS)

When severe weather strikes, FORTIFIED Roof keeps the roof on and the rain out. Stronger connections to hold the roof to the house.	FORTIFIED Silver includes all the protection of FORTIFIED Roof and adds additional protection to vulnerable and often overlooked components.	For ultimate protection choose FORTIFIED Gold . It includes all the protection of FORTIFIED Roof and Silver and requires that your home's entire structure be tied together.
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- **FORTIFIED Home program** — for hurricane-prone regions
- **FORTIFIED High Wind & Hail** — for the middle of the country where homeowners regularly face severe storms that produce powerful high winds, large hail, and dangerous tornadoes
- **FORTIFIED Multifamily** — for new and existing multifamily residential buildings
- **FORTIFIED Commercial** — for community-based and light to moderate commercial structures






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MITIGATION SAVES!

The nation faces the prospect of increased frequency and severity of major natural disasters including hurricanes, wildfires, earthquakes, and floods. However, research from the National Institute of Building Sciences has shown that natural hazard mitigation can protect lives, improve safety, prevent property loss, and decrease disruption of daily life – potentially saving **up to \$11 for every \$1 spent**.

	Overall Benefit:Cost Ratio	Cost (\$ Billion)	Benefit (\$ Billion)
 Riverine Flood	6:1	5:1	6:1
 Hurricane Surge	7:1	not applicable	not applicable
 Wind	10:1	5:1	6:1
 Earthquake	12:1	4:1	13:1
 Wildland-Urban Interface Fire	4:1	not applicable	2:1

	Overall Benefit:Cost Ratio	Cost (\$ Billion)	Benefit (\$ Billion)
 Riverine Flood	6:1	5:1	8:1
 Hurricane Surge	7:1	not applicable	not applicable
 Wind	10:1	5:1	7:1
 Earthquake	12:1	4:1	3:1
 Wildland-Urban Interface Fire	4:1	not applicable	3:1

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Consider a holistic strategy involving a variety of 'sticks' and 'carrots'

STICKS – i.e., enforcement actions

- **Adopt/enforce minimum codes** – States and local communities should adopt and enforce modern safety codes and ordinances specific to local hazard risks. FEMA provides various federal resources to assist, along with potential funding through their BRIC grant program.
- **Above code standards** – Communities at highest risk (e.g., counties, cities/towns, housing associations) should consider adopting and enforcing above code standards to make communities more resilient. The Insurance Institute for Business & Home Safety (IBHS) has developed scientifically proven standards that enable homes and businesses to withstand increasingly severe storms and wildfires, greatly improving survivability and minimizing loss.
- **Risk Disclosures** – Require hazard risk disclosures for all real estate transactions in high-risk regions, including enforcement of defensible space at change of ownership in wildfire-prone regions.

CARROTS – i.e., economic and non-economic incentives

- **Grants** – States or local communities can establish resilience grant programs to help property owners. Programs could include a cost-share match from the property owner or through a public-private partnership.
- **Low interest loans** – States or local communities can establish a revolving fund that helps provide loan interest loans for resilience projects. Alternatively, financial institutions may provide options to incorporate funding for mitigation into mortgage costs, to spread over 20-30 years, or through a home equity line of credit (HELOC).
- **Waive/reduce fees** – Communities can provide a rebate, waive, or reduce building permit fees or the cost of designation program inspections, for properties that achieve a qualified resilience designation, such as IBHS FORTIFIED or IBHS Wildfire Prepared Home.
- **Tax credits** – Similar to energy efficiency tax credits, states or local communities can provide a variety of resilience tax credits, such as income tax credits for costs to retrofit homes or businesses, sales tax credits for materials purchased to retrofit, or property tax credits for properties that achieve and/or maintain a resilience designation, such as IBHS FORTIFIED or Wildfire Prepared Home.
- **Insurance Incentives** – States can encourage insurers to provide premium credits for resilience actions.
- **Return on Investment** – States and local communities can promote potential return on investment (ROI) benefits from resilience, such as, for example, increased property resale values, improving insurability, and avoided loss costs, such as insurance deductibles or other loss related expenses that may occur following a disaster.
- **Protect the Irreplaceable** – States and local communities should also promote resilience benefits that cannot be quantified, or replaced (in some cases), following a loss, such as heirlooms, lives, and peace of mind.

Concluding Takeaways

Problem: Extreme Events and Losses Are Increasing

Solution: Governments Addressing Insurance Cost Drivers And Sustainability and Resilience Through Better Codes and Infrastructure and Mitigation Funding

Solution: Insurers Providing Science-based Research and Standards and Premiums that Reflect Improved Risk

Implications of Environmental Protection Actions for Public Finance

Daniel G Garrett

Wharton School of the University of Pennsylvania

April 22, 2024

*Prepared for the joint meeting of the NJ Senate and Assembly
Environment committees on “Protecting Against Climate Threats —
Resilient Environments and Landscapes”*

Thank you very much to Chairman Bob Smith of the Senate Environment and Energy Committee for hosting this session and for inviting my comment on the public finance implications of NJ Protecting Against Climate Threats – Resilient Environments and Landscapes (NJ PACT - REAL) rules and regulations. My name is Daniel Garrett and I am a scholar of public finance and an assistant professor of finance at the Wharton School at the University of Pennsylvania. I am speaking today in my capacity as a private citizen and researcher who has spent a lot of time thinking and writing about how expensive it is for public entities to borrow money and want to note that I am not speaking on behalf of my employer.

States and municipalities in the US raise over \$500 billion per year from investors to finance investments in durable infrastructure and ongoing operations, and these obligations total over \$4.2 trillion right now. This public finance market is vital to think about in discussions about environmental rules and regulations for two reasons (Mishra et al., 2026):

1. The fiscal well-being and long-run solvency of public borrowers is impacted by climate threats and other environmental phenomena, so investors require more compensation when issuers face unmitigated climate threats.
2. Most state and local climate adaption in the US is and will continue to be financed by municipal bonds, so the price paid for access to finance directly impacts our ability to mitigate emerging threats or disasters.

Let me add the following caveat: Any impact on state and local borrowing that follows from climate regulation is only part of the fiscal benefit that spills over to investors through credit risk. Other fiscal benefits of having less climate risk on the ledger of the state accrues to tax payers and won't be measured by the market.

My testimony delves into the fiscal benefits of responsible environmental protection

and abatement of environmental threats and how these actions can be reflected in municipal bond markets. I want to be clear about is the following: taking actions to mitigate large and correlated property destruction and losses due to climate change, sea level rise, and other environmental phenomena is valued in the municipal bond market and can have a sizable fiscal impact even though this is only part of the benefit.

1 New Jersey Public Finance

Let me begin with some basic facts about the state of public finance in general and in New Jersey specifically.

Public borrowing is expensive, by which I mean that state and local entities pay larger than expected interest payments to investors for each dollar borrowed (Schwert, 2017). Interest payments are about \$100 billion/year on the \$4.2 trillion in outstanding state and local debt.¹ Of that \$4.2 trillion total debt outstanding, \$41.5 billion is owed by the state of New Jersey itself (this is \$58.3 billion using the slightly broader Census definition), or about \$4,400 for each resident. State agencies and local entities in NJ owe another \$27.8 billion. Total interest payments reported in 2022 for NJ entities including the state amounted to almost \$3.4 billion, which is on the same order of magnitude as judicial and corrections (\$3.8 billion, variables E04, E05, E25, F04, F05, and F25) and 3 times larger than spending on fire departments (\$1.1 billion, E24 and F24). This is a relatively large debt burden per capita within the US before considering legacy pension obligations, but this outstanding debt also has financed lots of positive investments in durable public assets that residents and visitors value, like the Newark lead pipe replacement program, recent improvements at the Atlantic City International Airport, and the Sci Tech City initiative in Jersey City.

¹Numbers in this paragraph come from the Census of Governments, 2022, available at <https://www.census.gov/data/datasets/2022/econ/local/public-use-datasets.html>.

Borrowing is relatively more expensive when investors perceive that borrowing is risky, or if investors think there is a likelihood that they won't be paid back. Debt in New Jersey is a bit more expensive than in other states with less debt per capita or than other states that face less fiscal risks going forward despite the fact that NJ has never defaulted on a bond itself, unlike the neighbors to the west who defaulted in the panic of 1837.

Fiscal risks to a state, which I define as uncertain events that can lead to non-repayment events for investors, can manifest in many ways and unfortunately investors care more about the future than the past. The most obvious risk to investors is that the tax base repaying the state's debts, be it income earners, consumers, or property owners, can either leave or become unwilling or unable to pay for some reason. Investors often learn about risks in the public finance space through either their own due diligence, credit rating agencies, or both. Credit rating agencies are especially important given their regulatory role and changes in credit ratings generally lead to large changes in prices (Cornaggia et al., 2018).

So, what does a fiscal risk look like for a municipal entity that would lead to bond holders not being paid? For the state of New Jersey, the major sources of revenue are sales and income taxes, while property taxes are the major source for sub-jurisdictions and shocks to those revenue sources or necessary spending could be risks investors care about. Sometimes, things evolve slowly as in Detroit where residents, businesses, and investment left the city over several decades combined with fiscal mismanagement and pension promises that couldn't be met until there just isn't enough money to make payments. Other times, things fall apart quickly as in Orange County, CA, where investments in interest rate derivatives with public assets leads to failure when the market moved against those positions. The most famous environmentally precipitated financial crash of a municipal entity to my knowledge was Galveston, TX, which was

hit by a hurricane and tidal wave in September of 1900. Within two weeks, it was clear that the city government would no longer be able to pay their debts with the loss of infrastructure and tax base, so with the help of the state, the city underwent a massive debt restructuring.²

This last case in Galveston is related to a prominent risk for states: the risk that they will have to step in and fiscally support jurisdictions within the state. Gao et al. (2019) separate state policies on financial distress into two categories: “Chapter 9 states” who allow contained cities to go through the bankruptcy process on their own and “Proactive states” who take *proactive* roles in using state assistance and state-granted restructuring power to make sure that municipalities only use the bankruptcy code as a last resort. New Jersey is one of these proactive states. In general, these proactive states have a tradeoff that local municipalities are able to borrow more cheaply because they give less risk to investors, but states themselves may be riskier if they have to bail out or otherwise becoming fiscally entangled with many sub-jurisdictions at the same time.

2 Pricing of Sea Level Rise

The most prominent and studied risk that is newly being priced in the municipal market in the last few decades is that of sea level rise: places with the potential for more flooding or destroyed property if the sea level rises are facing higher borrowing costs and these costs have increased more over time as evidence for sea level rise has become more clear.

The most recent empirical exploration of whether sea level rise risk is priced is

²The full history with lots of narrative detail is described by <https://houstonhistorymagazine.org/wp-content/uploads/2014/02/10.2-I-H-Kempner-and-the-Galveston-Commission-Government-Harold-M-Hyman.pdf>.

Goldsmith-Pinkham et al. (2023). The basic quasi-experiment is the following: there are two school districts within the same county, and they both have similar spending per student and other characteristics except one has relatively more of its tax base in coastal flooding planes than the other. Around 2013, there was a large increase in many leading models for how much the sea level would rise with different warming scenarios. The author then compare the borrowing outcomes of the two school districts within each county before the SLR estimates increase and show that the two districts with different amounts of coastal flood plane exposure have similar bond pricing before 2013. After the projections of SLR impact were updated negatively, Goldsmith-Pinkham et al. (2023) show that bond spreads begin to separate—school districts with more of their tax base exposed to SLR have bond prices that decline and the interest payments that investors require to hold their bonds increases.

The paper argues that a district having one standard deviation more (approximately 10 percentage points) of its tax base in coastal flood planes leads to a roughly 5 basis points (0.05%) annually in higher yields, implying that investors expect a 2–6% reduction in the present value of a coastal government’s future cash flows.³ If you want to turn this into a dollar value of fiscal impact, one needs to make a few other assumptions. The easiest way to turn this into an interpretable dollar value is with the “modified duration” relationship, which is an approximation of how price and yield are related. Bonds in NJ have an average modified duration around 6, which means that a 0.05% increase in yields is equivalent to a 0.3% decrease in price. Said differently, when promising the same interest payments to investors, a borrower facing a 0.05% higher interest rate will raise 0.3% less funds when promising the same future interest payments to investors.

These papers jump through lots of hoops to try to show why state and local bor-

³Other published estimates in the literature, like Painter (2020), suggest even larger effects and Mishra et al. (2026) argue that the pricing of this risk is still increasing in later years.

rowing gets more expensive, and I distill the arguments in the following way: Investors demand higher interest rates from coastal school districts not primarily because properties are already losing value, but because the range of possible futures has widened—if worst-case sea level rise scenarios materialize, enough of the local tax base could be destroyed to threaten repayment, and it's really hard to know how likely that is.

3 Mitigating Climate Risks and Bond Pricing

Considering that market participants seem to be pricing sea level rise, and pricing it more over time, it should be no surprise that actions to mitigate the impacts of climate risks including investments in flood resistant buildings may lead to investors perceiving less risk and require lower returns. This is a very challenging hypothesis to test because of potential reverse causality: is it lower costs that allow more climate adaption, or is it climate adaption that leads to lower municipal borrowing costs? Empirically, borrowers in the US taking on more climate friendly investments have lower borrowing costs, but I don't know of ongoing work that disentangles causality from correlation.

Instead, I turn to information from the agents that the market leans on most to learn information about repayment risk of state and local borrowing: the credit rating agencies (mostly Moody's, S&P, and Fitch in this space). Insofar as taking active mitigation efforts causally leads to lower climate and environmental risks, one should expect the credit rating agencies to cite mitigation efforts as positive credit factors. This is exactly what credit rating agencies have been doing.

On August 11, 2025, S&P upgraded New Jersey's main General Obligation debt from A to A+, which is a one notch increase in credit rating. The following is how they defended their rating in the second paragraph:

Although physical risks are elevated given New Jersey's long coastal ex-

posure and comparatively higher levels of air pollution, in part due to emissions from other states, the state actively works to manage these risks through strategic infrastructure investments, including decarbonizing transportation in areas with poor air quality and partnering with local governments and leveraging federal funding for climate resiliency projects. As a result, we view environmental and social factors as neutral within our analysis.

S&P Global, August 11, 2025⁴

In my ongoing research (Garrett et al., 2025), neutral information can very much lead to positive pricing impact because it is a decrease in spread of potential things that investors are worried can happen. That is, neutral information is priced like one might imagine good information is priced: saying that there is potential for bad outcomes but there are actions being taken to avoid the worst of those bad outcomes better than having no information and investors simply speculating about a large range of good and bad outcomes.

This is not just one rogue credit analyst at a woke credit rating agency. In their guidance, Moody's has listed physical climate risk (i.e., potential for losses due to flooding, fires, famine, trade disruptions, etc.) as a credit factor for public borrowers in the US since 2017. In their 2020 credit rating report for NJ, "[Moody's] says New Jersey's adoption of stronger building codes, especially along the state's 130-mile coastline, is 'credit positive' because it will reduce communities' exposure to sea-level rise and other harmful climate."⁵ These are not agencies that make flippant statements nor that have political agendas, but they are cautious and reactive entities focused on

⁴<https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3422456>

⁵<https://subscriber.politicopro.com/article/eenews/2020/02/20/nj-climate-policies-get-a-thumbs-up-from-moodys-018766>.

predicting where investors face repayment risk and updating their models so issuers, investors, and regulators continue to trust them.

It's maybe worth noting that the difference of one rating notch is quite small in terms of expected default. For example, for Moody's between 1920 and 2008, bonds with a rating of A had average 5-year credit losses of 0.4% while going up 2 notches to AA, bonds had average 5-year credit losses of 0.14%. Both of these are ultimately very safe in the large scheme of the world, but two notches of ratings in the municipal space will lead to a annual pricing difference that is 19-33 basis points *per year* (Cornaggia et al., 2018). Said differently: very small changes in perceived risk can lead to much larger changes in pricing.

4 Concluding Remarks

Back to the issue at hand: is there any benefit to engaging in climate risk mitigation efforts like those included in the NJ PACT - REAL rules and regulations? There is a lot of nuance to comment on the costs, but there are some fiscal benefits.⁶

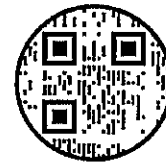
The physical risk associated with sea level rise is priced in the debts of coastal (and inland) communities, and that price makes it more expensive for the state to invest in other priorities or to make costly investments in mitigation. Any actions the state has to take to help mitigate risks in coastal communities (bailing out insurance companies, taking on municipal liabilities, etc.) leads to potential scenarios where repaying investors and maintaining safe and healthy communities are at odds and investors may

⁶An exact magnitude is hard to estimate and I have not done the math, but here's an example of how the math could work: if the state's 1-notch upgrade was marginally caused by ongoing climate risk mitigation efforts in the state, one simply needs to multiply (1) outstanding debt, (2) modified duration, and (3) the average pricing difference between A and A+ to estimate the fiscal benefit of these actions. That leads to \$58.3 billion \times 6 \times 0.001 = \$350 million. Of course, credit ratings are a confluence of many, many factors and the NJ PACT - REAL rules probably did not cause the recent credit rating increases on their own, so the fiscal benefit to the state through this borrowing cost channel on state debt would be below this number but greater than zero.

not be repaid. To that end, investors will require additional compensation to invest in the state's debt and thus borrowing for the state could be more expensive.

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To: Members of the Senate Environment and Energy Committee and Members of the Assembly Environment and Solid Waste Committee

From: Raymond Cantor, Deputy Chief Government Affairs Officer

Date: April 22, 2026

Re: NJBIA PACT REAL Rules Testimony

Thank you for this opportunity to testify before the Legislature's two environment committees on the issue of the PACT REAL rules. We have been deeply involved in discussions on this rule with the Department of Environmental Protection and the Legislature for much of the last six years. We welcome the Legislature's exercising its constitutional oversight authority on this very important rule. We also appreciate Senate President Scutari's introduction of SCR-106, which is on the agenda today for consideration only. SCR-106 would find that the PACT REAL rules are inconsistent with legislative intent. We agree with that legal conclusion and will discuss it in greater detail in our testimony today.

First, some introductions. My name is Ray Cantor, and I am the Deputy Chief Government Affairs Officer with the New Jersey Business & Industry Association. NJBIA is the state's largest association representing the business community. We have members of all sizes and from all areas of the state who are impacted by this rule. And, in full disclosure, we have recently filed a lawsuit challenging these regulations.

While I am here today representing the interests of our members, the business community of the State of New Jersey, I thought that given I will be speaking on legislative intent and the DEP's regulatory decision making, that a quick overview of my background would be in order. After law school, I started my career with the Environment and Energy Section of the New Jersey Office of Legislative Services sitting on the other side of this room as a committee aide for both the committees here today. I spent 12 years in senior positions with the Department of Environmental Protection where I was Assistant Commissioner in charge of the land use programs subject to the PACT REAL rules as well as the Chief Advisor to the Commissioner where I was responsible for all regulations of the department. Significantly, I was in DEP during and after Superstorm Sandy. I was in the room when the DEP last modified its coastal flood

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maps and determined to fortify the state by implementing a coast-wide, unbroken chain of engineered beaches and dunes. I bring legislative and regulatory expertise to my testimony today.

First, while I know the emphasis today is on the sea level rise projections and the changes to the flood maps, this rule is much more than that. It is 1,200 pages of detailed changes to nearly every aspect of our land use laws that will have a dramatic effect on development everywhere in the state, even in those areas not at all impacted by sea level rise or climate change considerations. If you took out every provision related to flooding, this would still be an unacceptable rule that will negatively impact our economy without commensurate environmental benefits and, in many instances, is contrary to law and legislative intent. I will address those other provisions toward the end of my testimony.

I want to start by stating what I will not be saying today. I will not be denying the reality of climate change nor the fact that sea levels are rising. These are undeniable facts that New Jersey policymakers need to address to ensure that our citizens and the business community are adequately protected. In fact, I offered to the former Commissioner of DEP that we would support a workable and scientifically based regulatory standard for flood maps based on projected sea level rise, which we believe would be 2' by the year 2100, and we would stand with the DEP to announce what would have been the most protective sea level rise standard of any state in the nation.

Unfortunately, the DEP went in a different direction and proposed, and adopted (I should mention, only hours before the new Administration took office) an unworkable, extreme sea level rise and flood regulatory standard that, if left in place, will harm our economy and our residents without providing any meaningful protection from rising sea levels.

We are also not criticizing the excellent work the scientists at Rutgers did in preparing the STAP reports, which served as the basis of the DEP's regulatory decision. When the 2019 STAP report first came out, we applauded that effort as it was initially intended by then-Commissioner McCabe to be a planning document, to help the state and local governments prepare for a wide range of possibilities on sea level rise. It was only when former Commissioner LaTourette decided to use that report for a regulatory standard that we objected.

We also note that in the fall, the STAP report was updated to include projections with and without low confidence assumptions on rapid Antarctic ice sheet collapse. While the DEP had this report in their hands and obviously relied on its updated projections for its substantive changes they proposed in August, the report was not released until *after* the comment period had closed, thus denying us and the public the ability to make fully informed comments on the substantive changes. There was also an interim 2023 STAP report that has never been released and that we only obtained after learning of it through a series of OPRA requests.

What this debate is all about is the question of what regulatory standard should the department adopt on future sea level rise given the enormous uncertainty, even deep uncertainty, in making such projections? As I will describe in more detail in my testimony, projecting sea level rise is far from a certain practice. There are significant areas of vagueness in science and uncertainty in outcomes. To get to a 5' (now 4') sea level rise standard, the department had to use a number of conservative assumptions. In doing so, it picked a regulatory standard that is very uncertain to occur but will certainly have a negative impact on the state's economy, especially in our coastal and river communities. It is important to note that this rule applies to all tidal waters, from the Hudson River, down the coast, along the bays, and including both the Delaware and Raritan Rivers and many smaller tidal streams. This rule impacts far more land areas than just the Shore.

DEP, under the previous administration, chose a regulatory standard that is going to cost people significant amounts of money and will likely drive some people from their long-held homes and businesses. The selection of such an extreme flood standard, far beyond what the federal government or any other state has proposed, seems intended to be the first step in DEP's previously announced desire to start a managed retreat from the Jersey Shore. Respectfully, we believe that such a major policy decision should be made by this body, by elected officials, not by a few regulators who sit in their offices on the seventh floor at 401 East State Street.

This is not the first time the Legislature has expressed concerns with the DEP going too far in setting regulatory standards. When the DEP set cleanup standards so stringent that it became economically impossible to clean up contaminated sites, the Legislature stepped in. It amended the Spill Compensation and Control Act to prohibit standards set using "redundant conservative assumptions." The PACT REAL rules are flawed because they ignored this prior legislative proscription. It is only through the use of multiple redundant conservative assumptions that the department selected the 5'4" flood regulatory standard. Like you did with the Spill Act, we call on this body to likewise reject this overly proscriptive standard in favor of a more realistic standard.

The STAP report itself cautions regulators in using the report in setting regulatory standards. The reports states:

"As with previous STAP reports, this report aims to be policy-relevant, not policy-prescriptive. The report does not make recommendations about how decision makers should use projections. Such selections depend upon value judgments, such as the level of risk decision makers and impacted communities are willing to accept when planning their long-term resilience goals, as well as how decision makers and impacted communities choose to trade off the near-term costs of risk reduction and long-term sea-level risk.

Additionally, while the STAP Report does not assess what (e.g., infrastructure, properties) or who (e.g., communities) are impacted by sea-level rise, readers may find the information in this STAP Report useful to inform such impacts assessments.

The STAP recommends that scientists and practitioners review the estimates and information herein on a regular basis, not to exceed five years, including after the publication of any major global (e.g., Intergovernmental Panel on Climate Change) or national (e.g., National Climate Assessment) assessments related to sea-level rise and coastal storms relevant to New Jersey."

So, what are these redundant conservative assumptions?

- The 2025 STAP report itself details the highly variable nature of projecting sea level rise. It contains three different emission scenarios, projections of likely, and less likely scenarios, and projections for five different time periods from 2040 to 2150. The "likely" range itself varies from 17% to 83% probability, hardly a statement of scientific certainty. In total, the 2025 STAP report presents 66 different sea level rise scenarios, 18 if we only want to focus on 2100. This is hardly a document based on firm scientific certainty justifying an onerous regulatory standard.
- The use of 2100 as the target year itself is highly uncertain. While a simple comparison, we can't even accurately predict the weather next week much less sea level rise 75 years from now. I am also not aware of any projections the DEP uses that seek to estimate an impact 75 years from now and apply

that regulatory standard to regulations being applied today. This rule is unprecedented from a regulatory and policy standpoint.

- Even if we accepted the use of a 2100 projection, the DEP chose the most conservative projection at a 17% confidence level.
- The adopted standard also incorporated the “low confidence” assumption of a rapid collapse of the West Antarctic ice sheet. This assumption added about 1 foot onto sea level rise projections. The department in its regulatory comments went to great lengths to claim that we can’t rule out the remote possibility of a rapid ice sheet collapse. That is true. A lot of things that are unlikely to happen can’t be ruled out. However, the department largely ignored the facts that there is no firm scientific evidence to support this collapse in the timeframe provided, there is significant scientific disagreement that it will happen, and there is no other jurisdiction in the world that incorporates this in a regulatory standard. But this is not how regulatory standards are or should be set. We cannot set standards to cover every possibility, even if we don’t have firm scientific evidence to support its occurrence. If we did this across regulatory programs, nothing would ever get done because the standards would be too stringent. Regulatory standards need to be reasonable, based on what is likely to happen, not on what can’t be ruled out. These types of projections are not what the Legislature intended when it passed the flood control act and CAFRA.
- The emission scenarios themselves are based on modeled projections of what emissions may look like in the future and how the climate and sea level will react. Needless to say, with complex systems such as climate, models, while of some use, are not great predictors of the future.
- The fact that the department lowered its expected projections of sea level rise by 20% in just one year itself speaks to the uncertainty of climate science projections.
- While I have great respect for the authors of the STAP report, we invited Bob Kopp to speak at our last Energy and Environment Policy Conference; there is far from certainty in the scientific community on the issue of sea level rise. For instance, while STAP is partially predicated on an acceleration of sea level rise and a projection that this will continue, I can point to a recent report that looked at actual tide gauges from around the world and found no acceleration in 95% of the measurements.

Even given all this uncertainty, NJBIA does support changing our tidal flood maps to reflect a 2-foot feet sea level rise. Why do we feel comfortable supporting a regulatory standard based on a projection to the end of the century?

First, New Jersey, and much of the Atlantic seaboard is subsiding due to geologic changes coming out of the last ice age. We have been “sinking” about 1 foot per year and have for the last thousand plus years and will continue to sink by that much for a thousand or more years to come. This is undeniable. The STAP report presents a “budget” for sea level rise laying out how much relative sea level rise we can attribute to various causes. Again, without delving into the science behind these projections, we recognize that some sea level rise is likely beyond the 1 foot already described. Looking at the projections of the Intergovernmental Panel on Climate Change in their most recent report (AR6) and in reliance on an analysis we commissioned with the Climate Forecast

Applications Network, we believe that an additional sea level rise of between 0-2 feet is likely to occur. We do not believe that using the low confidence projection of rapid ice sheet melt is warranted.

So, putting this all together, it is likely that New Jersey will have a relative sea level rise of 1-3 feet by 2100. Given the fact that we have 75-years to adjust these standards, and we have very accurate tidal gauges that can inform us if our projections are correct or not, we believe that 2 feet is an acceptable regulatory standard when considering all the scientific uncertainty, but certain economic impacts. A 2-foot sea level rise projection is also consistent with recent standards adopted by the DEP concerning in-land flooding.

So, why do we care so much about this rule? It is simple. Real people, real businesses, real communities will be impacted. There will be people who won't be able to build their homes, businesses who won't be able to locate down the Shore or rebuild to meet current economic needs. There will be businesses and homes that will need to buy flood insurance who never have before. Many of these properties are not currently in federal flood zones and likely will not flood this century. There will be families who have owned their homes for generations, who will find it impossible to raise their houses to meet the new regulatory standards. There will be elderly or disabled people who will not be able to access homes built an additional 4 feet above existing base flood elevations. This proposal will harm real people. It will harm real businesses. We all know that New Jersey is a high-cost state. We have an affordability crisis. We are also a highly regulated state.

These rules, especially along the shore and in our river communities, will damage their economies. It will drive a long-term negative perception that the Jersey Shore is no longer a driver of our economy but rather a signal that we need to retreat. Who is going to want to invest in our coastal economy when the department is clearly signaling that development should not locate there and what is there is vulnerable to being destroyed. These rules even require that properties that obtain permits put a deed notice on their properties stating that it is likely to flood. This alone will impact property values and cause chaos through tax appeals.

Rather than set up a system of retreat, we should focus on systems of resilience. Until this body determines we need to abandon the barrier islands, our coastal cities like Atlantic City, Long Branch and Asbury Park, our river communities like Camden, Hoboken, or Jersey City, the emphasis should be on making these areas resilient. If some areas can't or shouldn't be protected, we need to publicly have that conversation, and it should come from the Legislature, not DEP alone.

What the DEP needs to do, what this Legislature needs to do, is engage the public and determine how and where we are going to provide resiliency against the inevitable nor'easters and hurricanes that will come and the sea level rise that will occur.

The REAL rule, while professing to be about protecting the public, does not provide any real protection. Resiliency needs to be part of a comprehensive planning process, like what was done after Superstorm Sandy when the beach and dunes systems were totally rebuilt at the suggestion of the US Army Corps of Engineers. You need the public to understand and accept the risks and costs. What this rule does is impose extreme regulatory standards on the few projects that will come before the department for permits.

It is a piecemeal approach, and a bad one at that. The DEP has said that something like 95% of the lands in the newly created inundation risk zone are already either developed or undevelopable. So, this rule leaves the vast majority of the development needing protection unless they come in for a permit to rebuild or expand. That is not resilience. It is virtue signaling.

Before I turn to the rest of the rule, I want to first quickly address two inaccurate statements that have been made in support of this rule. One, it has been claimed that Moody's supports this rule. The fact is that in 2020, when this rule was being contemplated, Moody's issue a report that said, among other things, that rules to protect against climate threats are "credit positive." This is hardly a ringing endorsement of the specific standards the DEP adopted.

We also have heard, and surprisingly, from DEP as well, that money will be saved on flood insurance the higher up you go and that these savings will offset the costs of elevation. This claim is highly misleading. While going above the base flood elevation does save money, the prior regulatory standards already accomplished this by requiring an additional foot of freeboard above the BFE. Going up any higher does not produce significantly more savings, if any at all.

Now, let me turn to some of the other problematic provisions of this rule. As I stated in the beginning of my testimony, this 1,200-page rule covers a lot more than issues of sea level rise. If you stripped away all the sea level rise provisions from this rule, it would still be more than 1,000 pages of some of the most draconian provisions ever put into our land use rules. It is impossible to cover every problematic provision, so I will just touch upon some of the provisions of concern. I am sure other groups will have many additional concerns they will raise.

Wetland Changes: Under existing law, a developer has a "right" to fill in up to an acre of wetlands if the wetlands are isolated. This is written in the statute. These rules eliminate that statutory exemption for small impacts.

Recommendation: This provision should be removed.

Dry Access: Under existing regulations, a development cannot be approved if the roads leading to that development may be flooded. The developer needs to show there is "dry access" to evacuate the property if there is a flood. While this is problematic in and of itself, the regulations do not say how far away dry access must be provided, leaving the developer with no way to predict or know how to comply. At times, developers have been told they need to "raise" roads far from the property, which is costly and often impossible. While DEP has added language to give the DEP more discretion, it does not address the uncertainty or the long reach of the rule which is exacerbated by the new flood standards and other requirements.

Recommendation: Either allow evacuations in place where that can be done safely, defer to emergency plans of the municipality to ensure an appropriate evacuation response, or provide some measure of clarity on what will be required. As an alternative, the "dry access" provisions can be limited to vulnerable facilities like hospitals, nursing homes, day care facilities, and schools.

Trigger for Elevations: Under the building code, if a building has improvements done that equals or exceeds 50% of the building's value, it triggers a need to comply with all code requirements including the elevation standards now being adopted by the DEP. For small structures down the shore, like the bungalows in Seaside Park, a new kitchen and bath can easily trigger the 50% threshold and thus force the owners to elevate the structure. With small structures on small lots, this may not even be possible. On the business side, converting office space or remodeling an old shopping center can easily trigger the threshold.

Recommendation: The trigger for elevations should not include internal improvements to a building but should only apply to reconstructions or expansions.

Compliance with the NFIP: The rules would require that each permit contain a certification by an engineer that the project would be in compliance with the National Flood Insurance Program rules. The DEP added this, and other provisions, based on a report and recommendations by the

NFIP New Jersey Office. The NFIP flood manual is long, complicated, at times contradictory, and not implemented in much of the nation. New Jersey has one of the most, if not the most, stringent statewide flood rules in the nation. No other state implements the NFIP in the manner these rules would require. Due to the confusing and contradictory nature of the NFIP manual, it will be difficult if not impossible for an engineer to make that certification. If nothing else, it will drive up costs, create uncertainty, and delay projects.

Recommendation: Remove the requirement to certify compliance with the NFIP as part of a permit application.

Stormwater and Urban Redevelopment: Historically, DEP's stormwater regulations held urban redevelopment to a different, less strict standard than suburban, greenfield development. The idea was that urban redevelopment is already challenging and that we should not impose additional regulatory burdens that drive up costs and make redevelopment less likely to occur. These rules change it so that urban redevelopment must meet the same pollutant removal requirements as would a new, suburban development. This can only be done by expanding the size of the onsite stormwater basin, thus limiting the redevelopment potential on the site, or by costly underground stormwater storage.

Recommendation: This provision should be eliminated so that urban stormwater requirements have less onerous requirements. To the extent that the DEP wants to address water quality issues from existing urban development, they should do so through a regional stormwater plan and not site-by-site with redevelopers.

Coastal Centers: Under DEP's coastal rules, barrier islands are considered environmentally sensitive and subject to a 3% impervious cover standard, making most development infeasible. Recognizing that most barrier islands are already developed, the rules also designate most of the developed areas as "centers," thus allowing substantially more development of a site. These rules would remove all the barrier island center designations and subject them again to 3% impervious cover standards.

Recommendation: The barrier island centers where there is existing, and substantial development should be retained.

Barrier Island Buffers: DEP flood rules place a buffer on most water bodies to protect the environmental aspects of the adjacent land. No buffer has been required along the Atlantic Ocean, and no buffer has been required for the bay side of barrier islands in recognition that they are substantially developed. The regulations would place a buffer (*e.g.*, riparian zone) on the bay side of barrier islands thus subjecting homeowners, businesses, and public developments to strict flood zone requirements, even regulating the ability to remove vegetation.

Recommendation: There should be no buffer requirements on the bay side of barrier islands.

Changes to Permit Process: Existing rules allow minor activities to be conducted without a permit. This is called a Permit-by-Rule. You are allowed to do the activity without the need for a permit or approval, so long as you adhere to the regulatory standards. Most PBRs are being eliminated requiring these projects to register with the DEP before they take action. Some other minor permits, such as Permits-by-Certification, where all you have to do is submit a certification of compliance, are being changed to general permits which are harder to obtain. Some general permits are being changed to individual permits. While these changes will impact homeowners more than the business community, they will require more DEP resources to process, and thus this will slow down the entire permitting process which is already broken.

Recommendation: Permits-by-Rule, Permits-by-Certification, and General Permits should not be changed from their current standards.

Time Limit to Start Construction: The new rules would require that any project under a flood hazard permit be started within 180 days, or the permit needs to be reissued to show that conditions have not changed. Previously, developers were given 5 years to start a project due to potential delays with other permits, local approvals, and financing. A 180-day requirement to start construction turns these 5-year permits into a series of 6-month permits.

Recommendation: The requirement to recertify any permit if the development does not start in 180 days should be rescinded.

In-fill Rule: In the past, DEP was involved in extensive litigation because it routinely denied permits to build on dunes even if most of the beach area contained similar developments. It is important to note that a dune continues past the normal mound and stretches until the sand is gone. In order to avoid these conflicts, and the takings claims that would result from a denial of a permit, the DEP adopted the in-fill rule which said that if a person proposes to build on (behind) a dune and there is similar development on the adjacent lots on either side, they would be permitted to do so. This proposal would eliminate the in-fill rule and require the DEP to once again deny permits in areas where development already exists.

Recommendation: The in-fill rule should be restored.

In summary, these rules greatly exceed legislative intent by setting onerous and costly regulatory standards without firm scientific support. If unchanged, these rules will impact our coastal economy, costing jobs, and tax revenue. It is our recommendation that the Legislature needs to invalidate these rules as being inconsistent with legislative intent. The DEP should restart the stakeholder process to ensure that all voices are equally heard. We also encourage the Legislature to take up the issue of resilience on a holistic basis so that the conversation centers on what and how to protect our resources and the public, rather than a piecemeal approach that will drive residents from our cherished Jersey Shore.



**Keeping water clean, safe
and healthy since 1949.**

April 22, 2026

Senate Environment and Energy Committee

Assembly Environment and Solid Waste Committee

Dear Committee Members:

Please accept the following as my written testimony on behalf of The Watershed Institute. Since 1949, The Watershed Institute has worked to protect clean water and the environment in the region of central New Jersey drained by the Millstone River. We work closely with state agencies, municipal governments, non-profit organizations, and citizens to improve the policies upon which healthy watersheds depend. I am the policy director for The Watershed Institute, and a licensed attorney in New Jersey. I have been practicing since 1995 and have worked on environmental and land use matters and advocacy since 2003.

From the outset it is important to acknowledge what the REAL rule is and is not.

REAL stands for "Resilient Environments and Landscapes," regulatory amendments that modernize New Jersey environmental land use rules that have existed since the 1970s.

The REAL rules are mostly a public health and safety rule. REAL promotes resilient development to ensure economic prosperity and protect people and property from the increasing incidence of extreme weather, chronic coastal flooding, storm surge, and the rising sea-level.

The REAL rules DO NOT prevent development in flood-prone coastal areas. The rules better define the areas where coastal flooding and sea-level rise is already affecting our communities because existing federal flood maps are based on historical information and not current science. These federal flood maps do not incorporate



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41x

future sea level rise or flooding. In part the REAL Rules are doing for tidal waters, what the Inland Flood Protection Rule did for inland or fluvial waters in 2023. They updated outdated flood maps.

The REAL rules use current New Jersey-specific science and ensure that new development in the coastal area is constructed or flood-proofed 4 feet above the elevation identified by FEMA maps, which are inadequate, outdated, and do not include sea-level rise at all.

REAL is smart – as flood risks increase, we should increase the base elevation of the first habitable floor of a building so that people do not get flooded out of their homes. So people do not lose their lives.

Now that there has been a brief overview of REAL is, the various mistaken beliefs about REAL need to be addressed and dispelled.

REAL Does Not Create No-Build Zones

The Rule does not create no build zones. There is nothing in the rule that prohibits development. In situations where compliance with the applicable rules was impracticable on a particular property there are relief valves. For example, the Flood Hazard Area Control Act has the "Hardship Exception" at N.J.A.C. 7:13-15.1. The Freshwater Wetlands Protection rules also have transition area waivers. N.J.A.C. 7:7A-8. The Stormwater Management Rules provide for variances where compliance is technically impracticable. N.J.A.C. 7:8-4.6. This rule does not create no build zones.

REAL Does Not Prevent Renovations and Rehabs

The Rule also does not prevent maintenance and renovations of structures. Putting on a new roof will not require a homeowner to raise their structure. The original rule proposal explicitly excluded [i]improvements that are designed to maintain a building in a state of good repair, and which do not increase the habitable area of the building would not be associated with added risk. These types of repairs would likely increase the resilience of the building in question, having a positive effect." 56 N.J.R. 1282(a), 1311. See also N.J.A.C. 7:13:2.5(a)(2).

REAL Does Not Require Flood Insurance

The Rule will not require properties to obtain Flood Insurance that did not require it before the adoption of the REAL Rule. Flood Insurance requirements are tied to the FEMA flood hazard areas and are not tied to NJ DEP regulatory requirements. If this was not true, then NJ's more protective flood hazard areas would have triggered the need for flood insurance for years. When the Inland Flood Protection Rule was adopted in 2023 it did for inland waterways what the REAL rule has done for the coastal waters. . The IFP increased the flood hazard area by 3 feet from the FEMA 100-year flood plain. That did not result in property owners having to obtain flood insurance. The REAL rule is no different.

REAL Does Not Increase Flood Insurance Rates.

The REAL Rule will also not increase flood insurance rates. In fact, compliance with the rule will likely reduce property owner's flood insurance as it is reducing the risks. The FEMA's National Flood Insurance Program has a Community Rating System. The CRS provides reduction in participants premiums where communities implement standards that are in exceedance of federal minimums. Flood premiums could be reduced substantially. NJ's implementation of the REAL rules is such increased standards that will result in premium reductions. Therefore, implementing the REAL rules will not increase flood insurance costs. The opposite is true: reductions in flood insurance will result.

REAL Will Not Prevent Redevelopment in Urban or Suburban Areas

The REAL Rule's new stormwater management requirements will not prevent the redevelopment of our urban and older suburban areas. The REAL rules requirement to treat polluted runoff and reduce flooding are vital to sustainability of our communities. Most of our older communities developed without any meaningful stormwater management and reduction in flood volume. We pay for these unmanaged resources in flood damage, roads closed, increased commutes, cleanup after the flood, etc. We will not reduce flood volumes from our developed lands unless we take the opportunity to do so as re-invest by redeveloping. As we redevelop, we incorporate stormwater management, reducing flooding and improving water quality. We reduce the costs that communities pay. Incorporating

stormwater management in redevelopment is a practice that many other states and cities already incorporate. NJ cannot afford to continue this loophole.

REAL Uses the Best Available Science

Like the Inland Flood Protection Rule did in 2023, the REAL Rule acknowledges the climate is changing: Sea levels are rising, storms are increasing in amount and intensity. The standards by which we develop and redevelop cannot ignore that fact. Those standards must not only address the conditions of today but the conditions of tomorrow. We must build to the conditions of tomorrow because what we build today will be here for decades. Depending on the data source, our homes and buildings are an average of 60 years old. I know the house I lived in as an infant is still there some 50 plus years later. My sister-in-law lives in a home built in 1860. A barn on the Institute's property was built between the 1830-1850s. What we build will be with us for decades. We know some of the flooding from Ida was because the infrastructure was undersized to handle the storms. We should make sure that we minimize the chance of undersized infrastructure causing flooding and loss of life.

As reference above NJ is experiencing sea level rise more than the global average. We must use NJ specific data, where it is available, to inform regulatory decisions. According to the New Jersey's Rising Seas and Changing Coastal Storms Report of the 2025 Science and Technical Advisory Panel, NJ's sea level rise was approximately 1.7 inches a decade from 1912 to 2021. This is approximately 1.1 inches a decade more than global mean sea-level. Recently, sea level has accelerated. Between 1993 to 2021 sea level rise was 2.0 inches a decade showing an acceleration in recent years. Reports to the contrary have been refuted as not well grounded in the observed data.

While accepting sea level rise in NJ is more than the global average, the REAL rule does not take an extreme sea level rise scenario. The REAL rule uses a moderate emission standard when determining the projection of sea level rise. Those moderate emissions assumed "current global climate policies." These policies, in part, are based upon President Biden era initiatives. The current federal administration has largely abandoned those initiatives and put an emphasis on the development of oil and gas. While there may be questions of whether we can

achieve the moderate emissions scenario, that is what the rule is based upon. It also is not based upon an extremely unlikely chance of occurrence as some have suggested. The rule, assuming moderate emissions, requires anticipating sea level rise of up to 4 feet. The science anticipates an 83% chance that sea level rise will be up to 4.5 feet. REAL is not based upon extreme or unlikely conditions.

Incorporating a protective standard makes economic sense. As mentioned above, the revised standards will reduce flood insurance premiums for those that are required to obtain those policies. Reducing risks to infrastructure that is currently at risk from flooding just makes an economic sense. The recent study by Rebuild by Design reveals that about 25% of our public *facilities* are at risk of flooding. By 2050 over 33% of our public facilities are at risk. These numbers do not include our homes, businesses, etc. it only includes bridges, hospitals, parks, municipal buildings, etc. According to this study, in Ocean County, over 160,000 are currently at risk from flooding and that number rises to almost 220,000 residents. Not only are people's lives at risk but their property is also threatened by flooding. Property values and property taxes will be impacted as sea levels rise and flooding increases.

The impacts do not stop at our property values, tax rates, and most importantly to life. The cost of recovery is significant. NJ has ranked number three in FEMA claims for years. According to Rebuild By Design's study, \$7.9 billion dollars in federal relief between 2011 and 2024. That is relief that New Jersey has counted on in the past, but it is very unclear whether we can count on it in the near future. According to a November 2025 report, FEMA denied 12 state requests for aid and either delayed others or denied portions of other requests. A March 19, 2025, Presidential Executive Order specifically directs that "State and local government" take a primary role in resilience planning. A memo from FEMA in the spring of 2025 clearly set out a plan to reduce the amount of money that FEMA and the federal government will provide to the State's as a result of a natural disaster. That leads to the inescapable conclusion that New Jersey cannot count on speedy receipt of federal money nor as much as necessary to recover from natural disasters.

If we know that we cannot rely on the Federal government, NJ needs to take steps in anticipation. The most obvious is to build resiliency in our communities. That investment will be of significant benefit to NJ. Two recent reports demonstrated the prudence of incorporating resilience into our land use planning and permits. A

2024 Climate Resiliency Report from the U.S. Chamber of Commerce, Allstate, and the U.S. Chamber of Commerce Foundation, examined the economic impact of incorporating resilience actions before a natural disaster. The finding was that for every dollar invested in resilience and disaster preparedness a community reduces the economic impact of the storm by \$7 on top of \$6 in reduced damage and cleanup costs. A 2025 study from the same group demonstrated that investing reaffirmed that 2024 study. Investment today reduces the loss of people moving out of the area , loss of jobs, and GDP reduction.

In short, addressing resilience reduces the threat of damage and loss of life. It protects property values, ratables, and economic development. The REAL rule not only makes financial sense and moral sense in that it protects lives, but it is well grounded in legal authority.

The Legislature Has Always Empowered DEP to Enact Strong Environmental Protections

This Legislature has a long and bipartisan history of enacting strong laws to improve and protect public health, safety, and the environment. New Jersey's legacy of environmental degradation and unique vulnerability to environmental challenges, including flooding, have always resulted in NJ rising the challenge. NJ's environmental and public health and safety laws are in the forefront of this country.

New Jersey's Flood Hazard Area Control Act requires the Department to delineate areas where **"improper development and use would constitute a threat to the safety, healthy, and general welfare from flooding."** N.J.S.A. 58:16A-52 (emphasis added). The act further requires the Department to periodically update those delineations. Id. The act recognized that the flood hazard area would change over time and to protect people, the hazard areas had to be updated. The NJ Legislature was wise. It not only authorized DEP to identify flood risk areas and set safety standards; this Legislature required DEP to keep those standards current to best protect our residents and their homes and businesses.

These delineations were not tied to FEMA flood hazard areas. In 2015 when the legislature sought to amend the act, then Governor Christie vetoed the amendments because he was concerned the language might be interpreted to

prohibit the Department from using the “best available data” The veto then suggested language changes to make sure that the delineations were “at least as protective” as the FEMA maps. Veto 1726. This explicitly continued the Department’s long trend of enhanced protection over minimum federal standards.

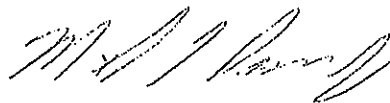
The theme of protecting the safety, health and general welfare of the communities of New Jersey are throughout NJ’s environmental laws. Again, the Freshwater Wetlands Protection Act acknowledges the benefits of wetlands in providing “natural means of flood and storm damage protection and thereby the loss of life and property.” N.J.S.A. 13: 9B-2. The Wetland Act of 1970 directs the state to protect the estuarine zone “in order to promote the public safety, health and welfare, and to protect public and private property.” N.J.S.A. 13:9A-1. Lastly, NJ’s Stormwater Management Act requires that stormwater regulations and ordinances “reduce flood damage including damage to life and property.” N.J.S.A. 40:55D-95.

These authorities that the Legislature has directed the DEP to implement clearly underpin all that is the Resilient Environments and Landscapes Rule. Much of REAL is a public health and safety rule.

I appreciate the opportunity to appear before you and provide this testimony. I am also providing a copy of the comments submitted on behalf of twenty-one organizations in support of the REAL Rule.

If you have any questions, I would be happy to address those questions.

Respectfully submitted,



Michael L. Pisauero, Jr., Esq.
Policy Director

Hansen, Eric

From: Dan Kennedy <kennedy@naiopnj.org>
Sent: Tuesday, April 28, 2026 10:30 AM
To: OLSaideSEN
Cc: Anthony Pizzutillo; Matt Schlindwein
Subject: SCR 106 - NAIOP NJ Comments - Supplement to In Person Testimony
Attachments: DEP - REAL Rule_FINALSUBMITTED.pdf; DEP - REAL Rule_Reproposal_FINAL9.19.25.pdf

You don't often get email from kennedy@naiopnj.org. [Learn why this is important](#)

Good morning -

To supplement my testimony on 4/22/26 to the Joint Senate / Assembly Committee, I submit the following on behalf of the NJ Chapter of NAIOP, the Commercial Real Estate Development Association.

Attached: Comment Letters Submitted by NAIOP NJ to NJDEP (Original Proposal + Substantial Changes)

We accept that conditions for development and redevelopment should be reconsidered due to climate change-related variables such as sea levels rising, temperatures increasing and changes in precipitation levels. Current projections from peer-reviewed studies show a wide range of potential outcomes. As such, New Jersey should have taken a measured approach that balances environmental concerns with economic growth and community-based issues. The last administration chose a different path.

The ability of New Jersey to add housing (affordable and market rate), add energy supply (renewable and improved existing fuel options) and increase the pace of redevelopment and remediation of contaminated properties is at stake. The REAL Rule, as it is currently designed, will also frustrate infrastructure investments related to public transportation, energy and other critical priorities.

Immediate Issue: "Legacy / Grandfathering" Provisions Are Insufficient & Deadline is Quickly Approaching

The upcoming "legacy/grandfathering" deadline is quickly approaching. While positive discussions related to DEP operational improvements have begun, improvements remain conceptual. The reforms the Governor supports are a longer-term play and will not come soon enough to fend off the intense pressure that will be focused on individual projects being deemed technically complete as the July 2026 effective date approaches.

DEP is not prepared to implement this rule. The additional work required of the DEP under the REAL rule was an issue raised by most stakeholders and was summarily rejected by the DEP. There is a tremendous amount of internal work that needs to be undertaken, past simply staffing up or empowering 3rd party consultants to supplement available resources. In addition, all municipalities will minimally have to update their land use and zoning codes. However, if municipalities want to approach this comprehensively, this will require costly master planning and reconsideration of redevelopment areas with no funding support from the state. None of this time and cost was fully considered prior to authorizing this final rule.

In addition, many technical reviews are based on site investigations that have seasonally based limitations. For example, vernal pool inspections, groundwater testing for stormwater, and habitat assessments (land and water) all have seasonal limitations that extend from late-winter into the spring. Which means if these tests are not completed and verified by DEP staff, the 6 month delayed operative date built into the final rule is rendered next to meaningless because not enough time is built in to get these required elements completed by applicants and affirmed by DEP due to staffing and the lack of priority DEP management has applied to helping applicants meet this deadline. This is not just unfair to the private sector, but also to the rank-and-file DEP staff who are on the front-lines with applicants.

At the very least, the application of the REAL Rule must be stayed past the current July 2026 effective date.

Top Technical Issues:

1. **Issue: Final Rule Maintains 2100 SLR/Precipitation Projections:** The NJDEP has publicly acknowledged that the 2019 Rutgers study and any projections of future risk are far less reliable beyond 2050. With this low level of certainty, we recommend that any projection on moderate sea level rise/precipitation be limited to +/- 2050.
2. **Issue: Final Flood Hazard Rules at N.J.A.C. 7:13-1.2 Maintains (with some exceptions) the Need for Owners of Existing Structures to Contend with DEP Review When “Substantial Improvements” Are Being Considered:** We recommend that this provision be either fully eliminated or significantly constrained to lessen the impact on property owners throughout the state.
3. **Issue: Final Flood Hazard Rules at NJAC 7:13-12.6 Maintains Dry Access Requirements That Provide NJDEP Staff Ultimate Discretion:** We recommend that this provision be significantly improved, by rule, to limit NJDEP staff discretion in cases where 1 ft over CAFÉ isn't feasible rather than forcing a hardship provision on applicants. A vast majority of DEP staff are not licensed professional engineers nor do they have the experience/training to make these discretionary decisions.
4. **Issue: Final Rule Locks in Various “Kitchen Sink” Items With No Rational Nexus to Increased Climate Change-Related Impacts:** We recommend that at least the following items be reconsidered (most should be fully eliminated) from relevant subchapters of DEP rules. If DEP believes these individual changes warrant consideration, individual targeted rules should be promulgated via the Administrative Procedures Act (APA) process and not hidden in +1,000-page proposal purportedly driven by climate-change impacts.

Regulatory Citation	What the Change Is	Impacts on
N.J.A.C. 7:7A – Freshwater Wetlands Protection Act Rules		
NJAC 7:7A-5.4 Use of more than one general permit on a single site		
7:7A-5.4(a)5	Requires mitigation for >0.1 acre combined disturbance under multiple general permits used on a site/project for wetland state open water AND wetland transition area disturbance	Mitigation threshold combining the need for GPs used and adding to Increase project costs, complexity
7:7A-5.7 Conditions Applicable to an Authorization Pursuant to a General Permit -by-Certification or a		
7:7A-5.7(b)1	Adds requirement that activities must be “necessary” for the project, introducing alternatives analysis	Makes general permit increases review time, redesigns, reducing pr
N.J.A.C. 7:7A-7.1 General Permit 1—Maintenance and Repair of Existing Features *		
7:7A-7.1(b)3	Limits modifications to existing stormwater basins for green infrastructure compliance	The Substantial Change this proposed change allow the modification made stormwater basins green infrastructure so that wetland loss is no
N.J.A.C. 7:7A-7.6 General Permit 6 — Non-Tributary Wetlands		
7:7A-7.6(a)4	Requires minimization of impacts to vernal habitat species when using FWW GP 6	Introduces subjectivity require alternatives and project scope

N.J.A.C. 7:7A-7.10A and 7.10B General Permits 10A (Very Minor Road Crossings) and 10B (Minor Road

7:7A-7.10A & 7.10B	Adds "linear access" language to road crossing permits	Lack of definition for "linear access" creates subjectivity in restricting internal access to wetlands, internal site circulation, and traffic flow
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7:7A-8.1 General Provisions for Transition Area Waivers

7:7A-8.1(b)5	Requires the removal of existing impervious cover within 25 feet of wetland boundary and that are to be replanted and put under a conservation restriction	Limits future redevelopment, stormwater design, and other site improvements
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7:7A-11.8 Mitigation for a Temporary Disturbance

7:7A-11.8(a)3, (b)	Requires detailed restoration plans and invasive species control for temporary transition area impacts	Adds review burden (if mitigation will require detailed plans), increases project costs, and imposes extra requirements on owners
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N.J.A.C. 7:7A-11.6 Basic Requirements for Mitigation Proposals

7:7A-11.6(h)15	Requires climate change impact assessment for mitigation proposals	Vague requirements and uncertainty for application
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N.J.A.C. 7:7 – Coastal Zone Management Rules

7:7-9.50 Inundation risk zone

7:7-9.50(2)	Inundation Risk Zone (IRZ) – New definition added to the coastal regulations. Based on tidal flood hazard areas projected to experience chronic inundation by 2100. Calculated by adding a CAFE elevation to Mean Higher High Water (MHHW). Must complete a site specific inundation risk assessment if located in IRZ zone and developer must sign formal acknowledgment recognizing the risk	Increased design requirements to changes, increase potential loss of and longer project
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7:7-27 - Conditions That Apply To All Permits

7:7-27.2(d)15	Requires permitted activities to commence within 180 days of permit issuance	Impractical for approvals, fine increases risk
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N.J.A.C. 7:8 – Stormwater Management Rules

7:8-1.2 (Major Development)	Expands definition of major development to include all projects in a common plan (phased development)	May inappropriately increasing regulatory
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7:8-5.2(d), (e)	Adds exemptions for utility, pedestrian, and public safety projects; waivers for public roadways	Should include improvements consistency and
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7:8-5.3(f)-(i)	Requires green infrastructure unless impracticable, with alternatives for public transportation entities	Should extend private application challenges
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7:8-5.2(i)5	Requires outlet designs to prevent clogging, referencing BMP Manual	BMP Manual's regulation, application
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7:8-5.5 Stormwater Runoff Water Quality Standards

7:8-5.5(a)	Adds "reconstruction" to water quality threshold, requires 80% TSS removal for all reconstructed impervious surfaces	Increases redevelopment yield, may decrease
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7:8-5.5(b)1.ii.: 95% TSS removal for sites that discharge to a municipal system that ultimately discharges into a 300' riparian zone. This will impact sites that are a significant distance away from the waterway and riparian zone.

7:8-5.6 Stormwater Runoff Water Quantity Standards

7:8-5.6(d) Requires additional volumetric reduction for the water quality design storm utilizing green infrastructure beyond the requirements already in place for major development projects. This increases redevelopment costs and may

discourage redevelopment of urban areas that are already impervious and would otherwise not require volumetric reductions

N.J.A.C. 7:13 – Flood Hazard Area Control Act Rules		
NJAC 7:13 Subchapter 3. Determining The Flood Hazard Area, Floodway, And Inundation Risk Zone		
7:13-4.1 The Riparian Zone		
7:13-4.1(c)2iii	Expands riparian zone protections for endangered species habitat for any segment of water flowing through a flood hazard area that contains a threatened and endangered species	Needs clarification of mapped flood riparian zones
7:13-11.2(b)6ii, iii	Lowers mitigation thresholds for riparian zone disturbance and requires mitigation for riparian zone disturbances individually or cumulatively for a site greater than 0.1 acres for 50-foot riparian zones and greater than 2,000 SF for 150-foot riparian zones	Increases mitigation project timing
7:13-11.2(f)7	Removes exemption for truncated riparian zones	Needs clarification of burden
7:13-11.2(z)1(i)	Requires native vegetation restoration plans for temporary riparian disturbance	Will require pre-restoration plan for zones using or published plant reviews. Adds cost
NJAC 7:13-22.2 Conditions that apply to all permits		
NJAC 7:13-22.2 (d) 14	Requires permitted activities to commence within 180 days of permit issuance	Impractical for many approvals, financial increases risk of cost

Thank you for the opportunity to submit these comments. We are available for any questions and can bring to the table the state's best development and redevelopment experts to discuss these matters further.

DK

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NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NEW JERSEY CHAPTER

November 7, 2024

VIA ELECTRONIC MAIL

Melissa P. Abatemarco, Esq.
Attention: DEP Docket Number: 05-24-05
Office of Legal Affairs

RE: New Jersey's Protecting Against Climate Threats (NJPACT)
Resilient Environments and Landscape (REAL) Rules
DEP Docket Number: 05-24-05

Dear Ms. Abatemarco:

NAIOP New Jersey, the Commercial Real Estate Association (NAIOP NJ), is grateful for the opportunity to provide comments in response to the New Jersey Department of Environmental Protection's New Jersey's Protecting Against Climate Threats (NJPACT), Resilient Environments and Landscape (REAL) rule proposal.

Background

Since our founding in 1970, NAIOP NJ has advocated for measures that accelerate development and redevelopment while embracing science-based approaches to development standards and regulations. While we recognize the need for prudent planning, we believe that extreme measures to address conditions related to climate change or any long-term risk will have unintended consequences.

We accept that conditions for development and redevelopment should be reconsidered due to climate change-related variables such as sea levels rising, temperatures increasing and changes in precipitation levels. Current projections from peer-reviewed studies show a wide range of potential outcomes. As such, we should take a measured approach that balances environmental concerns with economic growth and community-based issues.

Instead of drastic actions, we support targeted infrastructure improvements, incentivizing innovative building designs, and gradual policy changes that allows the commercial real estate industry (and society as a whole) to adapt over time. We must avoid overly restrictive proposals that could have the following negative impacts:

- **High Costs vs. Benefits:** Overly restrictive proposals can entail significant financial burdens without proportional benefits, delaying redevelopment opportunities and the economic impacts that follow.
- **Economic Displacement:** Restrictive measures can lead to economic displacement, affecting property values and development opportunities in coastal and tidally influenced areas.
- **Climate Gentrification:** Restrictive policies may lead to climate gentrification, where less vulnerable areas become more desirable, driving up real estate prices and pushing out lower-income communities.

These points highlight the need for balanced approaches that consider economic, social, and environmental factors while addressing changing temperatures, sea level rise, and changes in precipitation levels.

Comments on REAL Rule Proposal:

The commercial real estate industry is not opposed to reasonable, common-sense land use rules that will protect properties from flooding. The proposal in question does not match these characteristics. While we have listed specific technical concerns further below, there are critical aspects of the proposed regulations we would like to highlight at the onset:

- **Inadequate stakeholder process.** The stakeholder process may have led to a rule proposal, which contains many problems and unacceptable provisions. While the DEP claims to have engaged in a comprehensive stakeholder process during the four years leading up to the rule's proposal, from a business and development community perspective, we did not find that the DEP engaged in any serious discussions with us. In the fall of 2020, the DEP held a virtual meeting where we were shown a PowerPoint presentation generally highlighting the issues of sea level rise and some of the provisions to be in the rule, such as the inundation risk zone (IRZ). The meeting ended with no discussion allowed. Several months later we were afforded a short, virtual meeting to express our concerns. In that meeting several significant misrepresentations on the rule were made that needed to be corrected in a subsequent email. No other meetings were held with us until the rule was proposed.
- **Insufficient Technical Basis.** The proposal is based on outdated and low probability assumptions of sea level rise. The scientific basis being used by the DEP to support a five-foot sea-level rise projection is fundamentally flawed. The DEP is basing its sea level rise projection based on a now outdated 2019 report (STAP report) from Rutgers that was never intended to be used as a basis for regulatory standards. The STAP report says it should be updated when new studies are conducted, yet the DEP has purposefully ignored several major studies, including from the IPCC. DEP also ignored an updated review from the authors of the STAP report who now say the 5-foot projection is unlikely, and the initial assumptions are of "low confidence." Yet, the DEP decided to regulate homeowners and development today, based on modeled projections 75 years from now, with a 17% confidence level, using low confidence assumptions. All the recent studies project New Jersey's sea level rise by the turn of the century to be about 2 feet, not 5.
- **The REAL Rule will make countless development and redevelopment projects financially infeasible while severely impacting affordable housing calculations.** If adopted, DEP's REAL rule would have a wide ranging and devastating impact to the production of much-needed housing in New Jersey while simultaneously harming individual property owners. The rule makes wholesale changes to how DEP regulates land, such as incorporating 5 feet of sea level rise on top of existing flood hazard areas, the removal of non-mainland coastal centers, and further restrictions to the stormwater rules. The statewide changes will make it cost-prohibitive to build and redevelop, including in some of New Jersey's most in-demand urban communities such as Jersey City, Hoboken, Sayreville, and Atlantic City.
- **DEP's rule will limit development rights for countless job creators and homeowners, harming property values.** The true costs and impact of this rule have been severely underestimated as numerous proposals were not disclosed during the stakeholder process and are only now being understood. Various provisions in the proposal make getting any permit from the DEP, even for minor home projects, much more difficult and expensive. If your home is in an IRZ, you will be forced to put a deed notice on your property stating that the building will be flooded in the future. This will lower property values and ultimately will lead to tax appeals. Also, by expanding the current FEMA flood maps by a new Climate Adjusted Flood Elevation (CAFE), also based on the improbable 5-foot sea level rise assumption, more homeowners will be required to buy flood insurance.
- **Beyond the Jersey Shore, this rule will negatively impact property values, tax bases, affordable housing, redevelopment, infrastructure and tourism.** We are urging that the impact of this rule be understood before it is adopted. We are confident that it will have a large negative effect on property values, tax bases, affordable housing, redevelopment, infrastructure and tourism. These consequential impacts should receive scrutiny by the Legislature and public before adoption.
- **A "one size fits all" approach does not work.** Sea level rise impacts vary regionally, necessitating tailored Actions rather than "one size fits all" approaches. Local circumstances should guide adaptation strategies to ensure they are practical and effective.

- **DEP staffing limitations.** Not only is DEP woefully understaffed, but it is also facing a brain drain of experienced and knowledgeable leaders. This rule proposal brings much more work to an agency that can in no way handle the avalanche of new work at the scale required by the REAL proposal.
- **Major Federally Funded Infrastructure and New Jersey Economic Development Authority projects are being put in jeopardy.** Many EDA-financed and backed projects that are critical to New Jersey's economic future will be put in jeopardy.
- **New Jersey State Development & Redevelopment Plan.** Before considering any massive rule proposal such as this one, New Jersey first needs to update the State Development and Redevelopment Plan.

As such, NAIOP NJ has two primary, inter-connected recommendations:

Primary Recommendation #1, the NJDEP should take into consideration all the feedback from stakeholders that have commented and propose a more reasonable set of reforms. A matter like this deserves full vetting and should not be rushed to meet a politically motivated timeframe.

As part of the NJDEP agency response to public comments, NJDEP should compile all comments verbatim and provide an itemized response to each individual comment to allow for proper vetting. For instance, the final adoption document for the 2023 Inland Flood Protection rule failed to appropriately address many comments as NJDEP attempted to compile multiple comments into one (1) single response.

Primary Recommendation #2, the Preliminary NJ State Development & Redevelopment Plan should be released and go through the "cross-acceptance" process as per the State Planning Act. The NJDEP should consider input related to this document, which should be guiding proposals of this nature, and add balance to the proposal to address other crucial public policies like the critical need for market rate and affordable housing.

NAIOP NJ proposes that the NJDEP address the following comments related to the following **technical revisions** and submit a new regulatory proposal or proposals given the substantial nature of the changes we and others are recommending.

Revision #1 –Future Projections Regarding New CAFE and IRZ Standards

Comment 1: The NJDEP has publicly acknowledged through the PACT process that models that project conditions past 2050 have far less certainty. Therefore, we **recommend that the any projection on sea level rise or precipitation be limited to conditions up to 2050**. The NJDEP can and should update its standards over time as the accuracy of these models are tested against reality.

Comment 2: The NJDEP has stated that they are uncomfortable utilizing a projected sea level rise below the 83rd percentile outcome from the outdated STAP report. However, there are already many factors of safety built into the FHACA Rules, such as requiring the building finished floors and roadways to be 1' above the design flood elevation, which would be an additional 20% to a 5' increase. These redundant factors of safety should give the NJDEP the comfort level they need to utilize the median projection for sea level rise in lieu of the 83rd percentile projection.

Comment 3: The Proposed Rule does not provide options to address concerns relating to sea level rise and increased flooding through the use of new protective barriers, through new advances in technology, or construction techniques. Is it the Department's position that the use of new protective barriers or future advances in technology or construction techniques cannot address the sea level rise and increased flooding purported to the basis of the Rule Proposal?

Comment 4: The Proposed Rule appears to insinuate that structures in new CAFÉ adjusted FHA areas may need flood insurance. Please clarify whether or not it is the case that structures in these areas require flood insurance even if they are outside of a designated flood hazard area on the FIRM maps?

Revision #2 – Flood Hazard Rules

Description of Proposed Rule: *N.J.A.C. 7:13-1.2 Definitions - "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which, including the cumulative cost of all improvements made to the structure after (the effective date of this rulemaking), equals or exceeds 50 percent of the market value of the structure as determined before the start of construction of the improvement. This term includes structures that have sustained substantial damage regardless of the actual repair work performed.*

Comment 1: We seek clarification on the Department's intent of what constitutes a building improvement. It is unclear what, if any, interior remodeling or renovation would apply to the referenced cost, particularly where it is not impactful to the structure or its position relative to the flood hazard area. How does the Department intend to police the cumulative cost of building improvements that occur for every structure located in a flood hazard area across the State?

Comment 2: Is it the Department's intent for the Proposed Rule to apply to cosmetic changes, asbestos abatement, sustainability projects, changes to internal systems such as HVAC, elevators, water lines, wastewater lines, or other expensive improvement?

Description of Proposed Rule: *N.J.A.C. 7:13-2.2 (a)3ii – Regulated waters do not include 'Any segment of water that has a drainage area of less than 50 acres and is confined within a lawfully existing human created conveyance structure or drainage features such as a pipe, culvert, ditch, channel, artificial pond, or basin. This exemption does not apply to any segment of water that historically possessed a naturally occurring, discernible channel, which has been piped, culverted, ditched, or similarly modified through human activity.*

Comment 1: Historic waterways that have been piped, culverted, ditched, or similarly modified in many cases are undersized and in need of replacement with a larger pipe, culvert, or ditch. These upgrades help mitigate the risk of flooding, which is an overall goal of this rule proposal. Can such upgrade provisions to human-made structures that would have a beneficial effect on the environment (i.e. reducing localized flooding) be accommodated into this rule proposal?

Description of Proposed Rule: *N.J.A.C. 7:13-2.4 (a)10 – Exempt activities include placement of one or more utility poles, such as telephone and electric poles, or structures on poles intended to facilitate travel safety along a public roadway or railroad, such as overhead signs, variable message signs, streetlights, and traffic signal equipment, provided the conditions at (b) below are met and:*

- i. *No disturbance is located within 25 ft of any top of bank, except where the pole or structure replaces an existing pole or structure that cannot feasibly be relocated outside this area; and*
- ii. *No trees are cleared, cut, and or removed in a riparian zone.*

Comment 1: The installation of a utility pole typically includes associated wiring, and tree cutting is often necessary to ensure safe and continual operation of the utility. Can the proposed rules be amended to allow selective clearing of trees within the riparian zone that pose a threat to the safe and continual operation of the utility?

Description of Proposed Rule: *N.J.A.C. 7:13-2.6 - Applicability Determination (a) A person may request an applicability determination from the Department to determine the applicability of this chapter to [a segment of water or to] one or more proposed activities [, subject to the limitations in (b) below]. An applicability determination is optional, but the Department encourages persons to request one if there is uncertainty about whether a particular [water or] activity is regulated, since conducting unauthorized*

activities may result in enforcement action. Where the Department determines that a review of engineering calculations is necessary to make a determination pursuant to this section, or where the applicant's intent is for the Department to determine whether a water is regulated and/or to confirm one or more jurisdictional boundaries applicable to this chapter, the applicant shall apply for a flood hazard area verification pursuant to N.J.A.C. 7:13-5.

Comment 1: The Department proposes when an Applicability Determination cannot be rendered without calculations an application for a Flood Hazard Area Verification must be submitted. If an applicant seeks to confirm the absence of regulated areas onsite, which may include consideration or dismissal of a subject feature, what methodology and related fee will the Department require. Can a Verification of Absence be issued?

Description of Proposed Rule: N.J.A.C. 7:13-3.2 (b)1 – This requires the climate-adjusted flood hazard elevation along a tidal regulated water to be the greater of 5 feet above the 100-year elevation depicted on a Department delineation or 5 feet above the 100-year elevation depicted by FEMA flood mapping (using the higher of either the most recent effective map or any newer advisory, preliminary, or pending map).

Comment 1: The sea level projections provided in the Rutgers University's 2019 "New Jersey's Rising Seas and Changing Coastal Storms" report are substantially higher than those provided by the Intergovernmental Panel on Climate Change (IPCC). "The sea level rise projections provided in the Rutgers Report, if taken at face value, could lead to premature decisions related to coastal adaptation that are unnecessarily expensive and disruptive.

Comment 2: Please confirm that if, following the date of the adoption of this rule proposal, if the Department issues new maps it will supersede the requirement to use the greater of Department mapping or 5 feet above FEMA mapping (so if new Department mapping has a 100-year elevation of 12 and older FEMA mapping has an elevation of 10, the regulated FHA would be 12).

Comment 3: Please confirm that if, following the date of the adoption of this rule proposal, FEMA issues new maps, the new FEMA maps will supersede the requirement to add 5 feet to the FEMA mapping (since the revised FEMA mapping will presumably take into account the latest science/calculations).

Comment 4: This will significantly enlarge the extents of regulated areas across the state. Will the Department be able to keep up with the volume of applications since these rules will greatly increase the jurisdictional area of the Department?

Comment 5: The 5-foot flood hazard elevation increase will significantly encumber redevelopment of dilapidated industrial sites. Many of these sites are antiquated facilities no longer suitable or desirable in their current condition. These are prime areas for redevelopment rather than green field sites.

Not only will these sites need to accommodate an additional 5 feet of fill, but many of these industrial zones in which these properties are located have streets that are several feet below the current flood elevation. The 5 foot increase in site grades will result in longer driveways, which will reduce the building and parking areas, which are key metrics for a developer when they underwrite projects. These 'developable area' reductions combined with the cost of 5 more feet of fill, as well as the more stringent water quality rule changes, would likely cause developers to conclude that these sites are worth more 'as is', than under a redevelopment scenario.

Comment 6: Flood insurance companies provide insurance based on FEMA published floodplains. Lenders, title attorneys, real estate transaction teams, and others all use FEMA published flood plains as well. Has any consideration been given to carve out commercial uses from being subject to the five-foot raise in flood elevation? Commercial uses are not 'critical buildings', not residential buildings, and are instead large employers and tax ratables for municipalities.

Description of Proposed Rule: N.J.A.C. 7:13-4.1(c)2iii - Any segment of a water flowing through [an] a flood hazard area that contains a threatened or endangered species, which is critically dependent on the regulated water for survival, and/or present or documented habitat for those species, [which is critically dependent on the regulated water for survival,] and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water).

Comment 1: There is a significant number of streams in the state where a flood hazard area has not been determined. Clarification on how the Department is going to apply this rule along streams where a flood hazard area has not been determined should be provided. Is the expectation that it would only apply in areas where a FEMA or NJDEP Flood Map is available?

Description of Proposed Rule: N.J.A.C. 7:13-11.2(b)6ii - Where a regulated activity is located within a 150-foot riparian zone, and permitted activities conducted subsequent to (the effective date of this rulemaking) individually or cumulatively results in 2,000 square feet or greater of clearing, cutting, and/or removal of vegetation, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed pursuant to N.J.A.C. 7:13-13.4(b)2.

Comment 1: The 2,000 sf threshold for mitigation is inappropriate considering the obligations to meet NJDEP Stormwater Management Regulations and Soil Conservation District requirements. Most development and/or redevelopment projects require multiple stormwater management facilities which often require numerous stormwater outfalls discharging at or within close proximity to a receiving water based on soil erosion district requirements. Current regulations provide an allowance of up to 5,000 sf of riparian zone disturbance for each outfall and associated outlet protection in a 150-foot riparian zone, without a mitigation requirement. When considering a 150-foot riparian zone, the construction of just one outfall could exceed the proposed 2,000 sf mitigation threshold. The cost of mitigation is significant and will now be further exacerbated just to meet agency standards. This will put applicants in a position where it is not possible to satisfy two agencies having differing requirements (DEP allowing less disturbance vs SCD requirement to bring outfalls to the water body edge). Alternately can temporary impacts be exempt from the mitigation?

Description of Proposed Rule: N.J.A.C. 7:13-11.2(b)6iii - Where a regulated activity is located within a 50-foot riparian zone, and permitted activities conducted subsequent to (the effective date of this rulemaking) individually or cumulatively results in 0.1 acres or greater of clearing, cutting, and/or removal of vegetation, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed pursuant to N.J.A.C. 7:13-13.4(b)3.

Comment 1: The 0.1 acre threshold for mitigation is inappropriate considering the obligations to meet NJDEP Stormwater Management Regulations and Soil Conservation District requirements. Most development and/or redevelopment projects require multiple stormwater management facilities which often require numerous stormwater outfalls discharging at or within close proximity to a receiving water. Current regulations provide an allowance of up to 3,000 sf of riparian zone disturbance for each outfall and associated outlet protection in a 50-foot riparian zone, without a mitigation requirement. When considering a 50-foot riparian zone, the construction of just two outfalls could exceed the proposed 0.1 mitigation threshold. The cost of mitigation is significant and will now be further exacerbated just to meet agency standards.

Description of Proposed Rule: N.J.A.C. 7:13-11.2(f)7 - [7. Any clearing, cutting, and/or removal of riparian zone vegetation within a truncated portion of a riparian zone. For the purposes of this paragraph, an area is considered to be a truncated portion of a riparian zone 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.]

Comment 1: The Department proposes removal of the above-referenced clause which exempts the removal of vegetation within a truncated portion of a riparian zone from inclusion in quantified impacts. Is the Department's

intent to remove riparian zone truncation entirely, including those described at existing N.J.A.C. 7:13-4.1(e) and (f)? Clarification should be provided.

Description of Proposed Rule: N.J.A.C. 7:13-11.2(z)1(i) - A planting plan that consists of native vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed.

Comment 1: The proposed Rule change will require preparation and submission of a restoration plan for temporarily disturbed riparian zones using only native vegetation. Often the Department rejects the application or inclusion of several native plant species in restoration plans. The Department should publish a list of plants that they will not authorize when included in restoration plans to eliminate the subjective nature of the reviews.

Description of Proposed Rule: N.J.A.C. 7:13-11.4- Requirements for a regulated activity in a flood fringe

Comment 1: The proposed Rule elevates the regulatory flood elevation in many areas along the fluvial/tidal floodplain interface such that the controlling tidal floodplain elevation (CAFE) is significantly higher than the controlling fluvial floodplain elevation at the 10-year and 100-year elevations. As a result, buildings must be significantly elevated to meet NJDEP building standards; however, the required raise in grade must also account for NJDEP's zero net fill standard between the 100-year flood and the 10-year flood and between the 10-year flood and the ground. The controlling CAFE and fluvial elevations coupled with the more stringent NJDEP standards effectively eliminate many development/redevelopment possibilities from various municipalities across the state, presenting a significant burden for these areas.

Description of Proposed Rule: N.J.A.C. 7:13-11.4 (c)2 – Revisions to this rule add the requirement flood storage calculations between the climate-adjusted flood elevation and the 100-year flood to the existing required calculations (between the 100-year flood and the 10-year flood and between the 10-year flood and the ground).

Comment 1: Please advise of the rationale of separate volume calculations between the climate-adjusted flood elevation and 100-year and between the 100-year and 10-year instead of just calculating the storage volume between the climate-adjusted flood elevation and the 10-year flood elevation. This results in additional time being spent by both the applicant's consultants (during design and to calculate) to provide data to Department's reviewers without a discernable benefit or specific required outcome.

Comment 2: Please confirm that if new maps are adopted by the Department in the future and the regulated flood hazard elevation is derived directly from the 100-year elevation on the mapping (instead of requiring a climate-adjustment factor), then the requirement to prepare a volume calculation between the climate-adjusted flood elevation and the 100-year elevation would no longer apply.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(c) – The Department shall issue an individual permit to reconstruct, elevate, enlarge or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the applicable requirements of this section.

Comment 1: If an existing building requires reconstruction due to damage by fire, vandalism, or natural disaster, is it no longer permitted to be reconstructed in-kind?

Description of Proposed Rule: N.J.A.C. 7:13-12.5(d) – This section has been modified to require new buildings and building additions to be located at least 25 feet from any pipe, culvert or bridge that encloses a regulated water. This is in addition to the current requirement of at least 25 feet from the top of bank.

Comment 1: One of the requirements of this section, in cases where the compliance with this requirement is not feasible, is to provide an engineering certification confirming that the location of the proposed construction is stable and suitable for the proposed building and not subject to erosion or undermining due to its proximity to

the top of bank without the need to construct or reconstruct a bulkhead or retaining wall or otherwise armor the channel of the adjacent regulated water. "Pipe, culvert, or bridge" should be inserted in the regulation text after "proximity to the top of bank" for clarity. Additionally, please confirm that providing a building foundation or ground improvement design that does not result in the building placing additional loads on a pipe or culvert is an acceptable means to meet this certification requirement.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(j)2 – This section requires the lowest floor of any residential portion of a building, including any common area such as a lobby, to be set at least 1-foot above the climate-adjusted flood hazard area.

Comment 1: In many cases, it may not be feasible to construct the lobby above the climate-adjusted flood hazard area, particularly if the public access/adjacent roadway is below the climate-adjusted flood hazard area. Exceptions should be made to provide lobbies below the climate-adjusted flood hazard area where such locations are required for ADA access into the building from the public right-of-way.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(m)2 – This section requires critical and multi-residence buildings to be served by at least 1 access with the travel surface at least 1-foot above the climate adjusted flood elevation unless (i) the building is located in a tidal FHA not subject to both tidal and fluvial flooding, (ii) the applicant demonstrates that providing such access is not feasible in accordance with NJAC 7:13-12.6(d)2; and (iii) the applicant discloses with a deed notice the maximum depth of floodwaters through which motor-vehicles would be required to pass in order to access the site.

Comment 1: As written, the exceptions would only apply to sites within a tidal flood hazard area. There are many areas of the State where sites are located in fluvial flood hazard areas and it is not possible to serve the site via "dry access" due to the existing elevations of the adjacent public roadways and other items mentioned in 7:13-12.6(d)2. Suggest this be reworded so that this exemption can be applied to sites in fluvial flood hazard areas providing the required deed notice is placed on the property and infeasibility in accordance with 7:13-12.6(d)2 is demonstrated.

Comment 2: In recent years, NJDEP has told applicants that even if the roadway serving the project site is elevated 1 foot above the flood hazard area design flood elevation, if users of the building cannot get to a "safe haven" in the municipality on a route entirely 1 foot above the flood hazard area elevation, then the project is not viable. NJDEP has made these internal policies a requirement without being referenced anywhere in NJAC 7:13. "Safe haven" is not defined currently in the flood regulations and there is no addition of this term in the rule proposal. This internal policy impacts large urban areas, such as the City of Paterson where redevelopment will be precluded (e.g. 30 acres of existing development located outside of the flood hazard area would be precluded from being redeveloped) and will result in large negative economic consequences for these urban areas where redevelopment should be encouraged.



Comment 3: This "dry access" issue seemingly only affects projects that require DEP approval. You can have a project with no natural resource features or FHA on the property (and hence no DEP permit required), but down the road a quarter mile, there could be a mapped FHA, or unnamed tributary with no mapped FHA that cuts off dry access. This overarching "dry access" issue to a "safe haven" should mean that every project has to be reviewed by DEP but clearly they are not.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(m)3ii – This rule does not permit higher peak flow rates or higher volume of runoff to leave the site compared to existing conditions unless the project is a major development as defined in the Stormwater Management Rules and the project complies with the requirements in that chapter.

Comment 1: Exceptions should be made for projects that are not defined as major developments but still comply with the Stormwater Management Rules (as if they were a major development).

Description of Proposed Rule: N.J.A.C. 7:13-12.5(v) – This rule does not permit any below-ground enclosure beneath a building, including any basement or below-ground parking area, within a flood-hazard area. For purposes of this section, a below-ground enclosure is any portion of a building in which the floor of the enclosure is situated below the adjoining exterior grade along all exterior walls.

Comment 1: Exceptions should be made as long as there is one exterior wall with egress at or above ground. For instance, the lowest level of a multi-residential building where the entrance facade is located at-grade with the frontage (which is below the climate-adjusted flood hazard area) but the grades along the other 3 facades have been elevated above the FHA.

Description of Proposed Rule: N.J.A.C. 7:13-12.6(e) – This rule requires private roadways or parking areas serving critical and residential buildings in areas subject to fluvial flooding to be served by at least 1 existing or proposed roadway with a travel surface of at least 1-foot above the 100-year flood elevation.

Comment 1: Exceptions should be made for infeasibility, similar to the list provided in 7:13-12.6(d)2. This exception would often be applied in fluvial areas where the adjacent public roadways are below the 100-year flood elevation.

Description of Proposed Rule: N.J.A.C. 7:13-18.2(g)2 – This rule pertains to applications involving holder(s) of a right-of-way or easement and requires applicants to obtain written consent of the owner. In cases where the applicant cannot obtain written consent, the proposed changes allow the applicant to provide a copy of the certified mail receipt that the applicant requested documentation from the holder and a copy of the instrument establishing the right-of-way or easement.

Comment 1: We support these proposed changes as often it can be challenging to obtain written consent from easement holders, particularly on older easements and easements to utility companies, which can result in significant delays in being able to file a completed application.

Description of Proposed Rule: N.J.A.C. 7:13-22.2 (d)14 – This is a new regulation that would require the following: Permitted activities to commence within 180 days of the date of issuance of the authorization or permit.

Comment 1: It is often not feasible for an applicant to begin activities within 180 days of the date of issuance of the authorization or permit. This could be due to other required entitlements (such as municipal planning board approvals that require NJDEP approval as a prerequisite), financing obligations (getting approvals by lenders following receipt of all entitlements), contractor availability and/or seasonal constraints. This requirement places additional time pressures on the applicant to start construction within 180 days or face potential consequences of needing to redesign/re-permit a project. Additionally, FEMA's Flood Insurance Program is based on the elevations on the FEMA mapping, not the climate-adjusted flood elevation. As such, the standard permit expiration dates should apply and FEMA's timing requirements should stand on their own.

Revision #3 – Freshwater Wetlands Rules

Description of Proposed Rule: N.J.A.C. 7:7A-2.6 – Inclusion of new paragraph 4 which is inconsistent with the enabling legislation regarding "non-tributary wetlands." New paragraph 4 adds a new restriction to the issuance of a general permit for "non-tributary wetlands." However, the enabling legislation did not impose that restriction.

Comment 1: The Freshwater Wetlands Protection Act was the result of considerable debate and discussion. During the legislative process, the Legislature created additional detail and specifics in response to numerous concerns raised by multiple parties. The provision focusing on a general permit for isolated or non-tributary wetlands was one example. As the regulation of those wetlands is unique to New Jersey's program and not regulated under the federal programs, a general permit was established by the legislature with specific limitations. The proposed rule goes beyond those specific limitations and is violative of the Legislature's mandate.

Specifically, N.J.S.A 13:9B-23(b) provides that: "the department ***shall*** issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value." (Emphasis added). The legislation uses the word "shall" specifically as mandate as to when the general permit and does not provide for the Department's discretion to establish additional limitations or conditions.

Comment 2: If the proposed new limitation is not removed, the Department should clarify whether new paragraph 4 to N.J.S.A. 7:7A-2.6 would apply to wetlands that are not of exceptional resource value or designated as a priority wetlands by the United States Environmental Protection Agency.

Description of Proposed Rule: N.J.A.C. 7:7A-2.7; 8.1(j) - Requires compliance with the Stormwater Management rules if an entire project is a major development regardless of whether the impacts to wetlands/buffers are below major development thresholds will hold permit and transition area waiver applications to the same standards as wetland individual permits and exceeds the Department's jurisdiction under the Freshwater Wetland Protection Act, which only affords jurisdiction for activity in wetlands and transition area buffers.

Comment 1: Can the Department explain why it believes it has jurisdiction for this activity under the wetlands rules that exceeds the boundaries of wetlands and transition area buffers?

Description of Proposed Rule: N.J.A.C. 7A-5.4. - Requires mitigation for combined impacts under a general permit of 0.1 acres or greater.

Comment 1: To establish General Permits, the Freshwater Wetland Protection Act requires the Department to determine that categories of activities authorized under a General Permit have minimal adverse impacts when performed separately and will have only minimal cumulative adverse impacts and minor impacts on wetlands. The Department could not have issued a Statewide General Permit without having made such a determination. Requiring mitigation for an activity already determined to have only minimal impact is antithetical to statutory framework for General Permits. Rather than presupposing combined impacts will have a negative cumulative effect and requiring mitigation for such activity, the Department should fulfill its function stated in the rule of continuous monitoring to assess if combined impacts are having negative impacts, and only impose mitigation requirements after having completed that assessment and confirmed that cumulative negative impacts are occurring from the activities authorized under a Statewide General Permit. The rule changes will, due to the enhanced on-line functions, allow DEP to better monitor cumulative impacts. The Department should not require the proposed mitigation before using its new tools to perform a comprehensive analysis of cumulative impacts.

Comment 2: The proposal will also require mitigation for impacts to transition areas based on the argument that transition areas protect wetlands and impacts to transition areas have an indirect negative impact on an adjacent wetland. No supporting information was documented regarding any study by the Department of transition area impacts and what negative consequences have occurred to wetlands. The proposed mitigation requirements are unnecessary given the already rigorous requirements the Department imposes through its regulatory program to authorize transition area impacts, which exceed Federal requirements. Those same requirements must be met to demonstrate a proposed activity will not negatively affect wetlands. The proposed mitigation requirement is excessive and essentially acts as a land grab with respect to lands that are not wetlands.

Description of Proposed Rule: NJAC 7:7A-5.4(a)5 – This is a new regulation that would require the following: “If the total combined area of wetlands, State open waters, and transition areas disturbed or modified on the site pursuant to general permits 2, 6, 6A, 7, 8, 10A, 10B, 11, 12, 13, 14, 17, 17A, 18, 19, 21, 23, 24, and 25 exceeds 0.1 acre (excluding transition areas that are required for access to a general permit activity and transition areas that are part of an averaging plan) then mitigation in accordance with N.J.A.C. 7:7A-11 is required for all impacts authorized.”

Comment 1: We do not support the adoption of this requirement. The purpose of the Freshwater Wetland General Permit Program under the Freshwater Wetland Protection Act becomes ambiguous if mitigation is mandated for any wetland, wetland transition area, and state open water impacts exceeding 0.1 acre when aggregating impacts across various general permits.

Comment 2: It is unclear if this new requirement will be combined with previous general permits already issued for the site or subject to each specific project. Please clarify.

Comment 3: The rule proposal lacks information on the annual reporting of wetland general permit impacts statewide to the USEPA, and it does not clarify whether these impacts have been increasing or decreasing annually for the specified permits.

Comment 4: The rule proposal states that the Department assesses general permit impacts as part of its annual reporting requirements to the USEPA. However, the USEPA does not regulate impacts to wetland transition areas at the federal level under the 404 Program. Therefore, it is unclear whether the assessment that led to the requirement for mitigation, based on annual impact totals, included wetland transition area impacts. Could the Department please provide clarification on this matter?

Comment 5: If the Department intends to require mitigation for transition area impacts, it should only mandate mitigation for permanent impacts (i.e. pervious to impervious area). Temporary transition area impacts associated with general permits are often necessary for site grading, and these transition areas typically remain pervious and vegetated post-construction. As long as an area remains vegetated after project completion, it continues to function as a wetland transition area.

Comment 6: Mitigation for temporary impacts should not necessitate a formal submission to the NJDEP Mitigation Unit. A restoration plan included within the permitting plan set submitted as part of a NJDEP DLRP permit application should suffice and provide adequate protection to the wetlands. Introducing a separate review component for this activity would likely significantly extend the NJDEP review timeline, potentially adding several months, and adversely affect the project's entitlement and construction schedules.

Comment 7: It is unclear from the rule proposal how mitigation for permanent wetland transition area impacts that may be required pursuant to new NJAC 7:7A-5.4(a)5 could be accomplished if there is no available area on the project site. Will mitigation banks for wetland transition areas be an option?

Description of Proposed Rule: 7:7A-5.7(b)1- *This section specifies that the Department shall not authorize activities under a general permit by certification or a general permit if the purpose is to eliminate a natural resource to avoid regulation. The proposed rule adds language stating that "any activity authorized under either permit must be necessary for the conduct of the proposed project. For the purposes of this subsection, 'proposed project' encompasses the use and configuration of all buildings, pavements, roadways, storage areas, and structures, along with all associated activities. '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 impacts to wetlands or State open waters."*

Comment 1: We do not support the adoption of this alternatives analysis requirement. The addition of this language signifies a shift in the purpose of regulation under general permits, effectively transforming the regulatory review process into one akin to individual permits. Previously, general permits were straightforward, by-right permits for activities with limited impacts on regulated freshwater wetland features. The new language introduces a subjective review element of potential project alternatives, making general permits unpredictable and potentially requiring more review time and/or re-design to comply with a subjective standard. The proposed standard of "no other practicable onsite configuration for the proposed project that would avoid or reduce impacts to wetlands or State open waters" would suggest that an alternatives analysis is required for each minimal impact proposed to freshwater wetlands, State open waters, and transition areas, which would be subject to the individual NJDEP DLRP reviewer's discretion. Can the Department confirm that an alternatives analysis will not be required for each and every wetland impact, and this new assessment of alternatives will not require an evaluation of a reduced project size and scope if the project otherwise fits within the general permit parameters?

Comment 2: By using standards similar to an Individual Permit in the General Permit, applicants will be encouraged to simply default to an Individual Permit application to increase the amount of allowable impact. Has the Department considered that this could have the unintended consequence of increasing wetlands impacts? Has the Department considered that this proposal could lead to significantly increased staffing demands given the likely increase in Individual Permit applications?

Description of Proposed Rule: N.J.A.C. 7:7A-5.7(b)1. – Requires General Permit applicants to demonstrate "no other practicable configuration" that would avoid or reduce the impacts to wetlands is likely to result in disputes between applicants and Department staff over project layout and requests for redesign and avoidance of impacts.

Comment 1: This type of second guessing will make obtaining approval more challenging and stifle reliance on General Permits, which are supposed to be a more streamlined permitting approach. Applicants who satisfy the criteria of the Statewide General Permit should be afforded the presumption of validity based on the statutory requirement that Statewide General Permits can only be issued in the first instance after the Department determines that the category of General Permit activities will only have minimal impacts. The

proposal conflicts with the Freshwater Wetland Protection Act structure for General Permits and should not be adopted.

Description of Proposed Rule: N.J.A.C. 7:7A-7.2. - *Removes the exemption for horizontal directional drill under wetlands due to "potential" impacts usurp legislative authority and regulates based upon fear of potential impacts rather than demonstration of actual impacts to regulated areas.*

Comment 1: Under the Freshwater Wetland Protection Act, the Department only has jurisdiction to regulated impacts to wetland and transition area buffers. It does not have jurisdiction to regulate potential impacts. Jacking and Horizontal Direction Drilling are defined in the Flood Hazard Area Regulations; however, the Freshwater Wetlands Regulations also make reference to and note specific requirements for horizontal directional drilling. Will the Department be utilizing the definitions from the Flood Hazard Area Regulations when reviewing applications for Horizontal Directional Drilling and Jacking for the Freshwater Wetland Regulations?

Description of Proposed Rule: N.J.A.C. 7:7A-7.1(b)3 - *Relates to General Permit for ongoing maintenance of an off-stream stormwater management facility created in uplands, including a wetland constructed in uplands for stormwater management purposes has been proposed to be modified to delete this: "includes removal of sediment and debris and mowing of vegetation as necessary to ensure that the stormwater management facility will function as it was originally designed and/or permitted. Maintenance does not include enlargement of a stormwater management structure, excavation below the original bottom of a structure, or any other change in its design" and adds language instead that states that maintenance includes activities that satisfy the following:*

- i. All work occurs within, and is necessary for the continued functioning of, the stormwater management structure or conveyance;***
- ii. The existing stormwater management system is not expanded, enlarged, or otherwise modified to receive additional sources of stormwater runoff or include additional discharge points;***
- iii. The activities are limited to the removal of accumulated sediment, debris, or nuisance vegetation, or the stabilization of an eroded structure;***
- iv. No wetland or transition area vegetation is cleared, cut, and/or removed outside the structure or conveyance feature, unless such disturbance is unavoidable and necessary to gain access to the structure or conveyance feature and is minimized; and***
- v. No trees are cleared, cut, and/or removed in a wetland or transition area outside the structure or conveyance feature.***

Comment 1: We do not support the adoption of these modifications for Wetland General Permit No. 1. The proposed changes to N.J.A.C. 7:7A-7.1(b)3 are fundamentally at odds with the green infrastructure requirements outlined in the State Stormwater Management Rules at N.J.A.C. 7:8. Redevelopment projects frequently occur on properties with existing human-made stormwater basins that were designed to meet the state stormwater management standards in effect at the time of their original development. By prohibiting modifications to these existing human-made stormwater basins to align with the current green infrastructure requirements of N.J.A.C. 7:8, the Department will compel applicants to alter already paved areas to construct additional compliant stormwater basins. This mandate will impose significant economic burdens on redevelopment throughout the State.

Description of Proposed Rule: N.J.A.C. 7:7A-7.5, 7.5 - *Requirements of mitigation for permanent impacts to wetlands and forested transition areas if greater than 0.1 acres in the context of remedial investigation and landfill closures will discourage and delay remedial activity and landfill closure by adding time, burden and cost to the process.*

Comment #1: The Department should align its regulatory programs to facilitate, not discourage, remedial activity. Has the Department estimated how many remediation projects may not occur do to the difficulty of mitigation and weighed the harms against the benefits of this proposal? The Department should consider limiting the proposed mitigation requirement to those that caused the discharge that is the subject of the remediation and not apply this requirement to those conducting remediation.

Description of Proposed Rule: N.J.A.C. 7:7A-7.6. - Requires applicants to demonstrate minimization of impacts to vernal habitat if the impacts would extirpate a vernal population and could not otherwise be avoided through project redesign.

Comment 1: The proposal conflicts with the Freshwater Wetland Protection Act structure for General Permits and should not be adopted. Requiring minimization conflicts with the Statewide General Permit program under the Freshwater Wetland Protection Act since DEP must have already determined in adopting the Statewide General Permit for isolated that impacts are minimal. Applicants who satisfy the criteria of the Statewide General Permit should be afforded the presumption of validity based on the statutory requirement that Statewide General Permits can only be issued in the first instance after the Department determines that the category of General Permit activities will only have minimal impacts.

Description of Proposed Rule: N.J.A.C. 7:7A-7.6(a)4 – New section that states that “if the wetland for which the permit is requested is found to contain obligate or facultative vernal habitat species (see N.J.A.C. 7:7 Appendix 1: Obligate and facultative fauna species found in vernal habitats), and filling activities would extirpate a local population of such species, the applicant shall demonstrate that the proposed configuration will minimize the impacts to the species that could not be addressed with a different project design that still meets the project purposes”.

Comment 1: We do not support the adoption of these modifications for Wetland General Permit No. 6. This new section in NJAC 7:7A uses language, similarly to the new language proposed in:7A-5.7(1), as well as other sections that introduce subjectivity and uncertainty for developers in the State. Can the Department confirm that this new assessment of alternatives where an applicant must demonstrate that the proposed configuration will minimize the impacts to the species that could not be addressed with a different project design that still meets the project purposes will not require an evaluation of a reduced project size and scope?

N.J.A.C. 7:7A-7.10A and 7.10B General Permits 10A (Very Minor Road Crossings) and 10B (Minor Road Crossings)

Description of Proposed Rule: N.J.A.C. 7:7A-7.10A and 7.10B – Sections have been modified to include the phrase “linear access” before reference to road crossings so these sections of NJAC 7:7A regulate “linear access road crossings”.

Comment 1: The rule proposal does not include a definition of “linear access” which will introduce subjectivity to NJDEP DLRP reviewers when reviewing pending permit applications. A definition of linear access should be provided in the final rule adoption.

Comment 2: These two general permits for road crossings have been modified over the years for clarity to identify that they serve to provide access to “buildable areas that would otherwise be inaccessible without crossing through freshwater wetlands, transition areas, and/or State open waters.” We agree with the Department’s position that these permits should not be permitted for the construction of parking areas (stalls) associated with proposed projects; however, in many cases internal access roads are required to be constructed through a transition area to gain access to other upland areas onsite on the far side of the proposed buildings/structures. These internal access roads around a proposed building are required for fire access and safe traffic flow. If these permits are not available for internal access drives, upland areas bottlenecked by regulated areas will be undevelopable, which amounts to a taking of land, and/or building area will need to be reduced and projects may become unfeasible.

Comment 3: The NJPACT rule proposal mentions the 2001 revisions to NJAC 7:7A that added language regarding the prevention of the skirting of the wetland or wetland transition area to increase developable area. This concept of skirting adds further confusion to this general permit because it encourages developers to shift access roads directly into the wetland or State open water where it could often have been designed and constructed only in the wetland transition area.

Description of Proposed Rule: N.J.A.C. 7:7A-7.26 - *Reduces impact allowance to 0.5 acres for redevelopment of previously disturbed areas will discourage redevelopment and its associated remediation, which will have a corresponding negative consequence regarding wetland health.*

Comment 1: Has the Department conducted any analysis of whether this requirement will result in a net negative change to wetlands by discouraging redevelopment?

Description of Proposed Rule: N.J.A.C. 7:7A-8.1(b) 5 – *Added section to identify that “except as provided at (b)5i, ii, or iii below, all existing onsite impervious surface located within 25 feet of the freshwater wetland boundary is removed and the transition area is replanted with native vegetation beneficial to the wetland and protected from future development by a conservation restriction that meets the requirements at N.J.A.C. 7:7A-12.”*

Comment 1: We are generally in support of the requirement to remove the existing impervious surface within 25 feet of a freshwater wetland boundary and that this will be consistent with the similar requirements for impervious cover removal within riparian zones at NJAC 7:13-11.2. We also support the addition of the exception of the removal of impervious cover within 25 feet of the wetland boundary/riparian zone boundary associated with a lawfully existing railroad or public roadway. However, we do not support the requirement for the replanted transition area to be protected from future development by a conservation restriction. This is not a requirement of NJAC 7:13-11.2 and should not be a requirement for this wetland policy either. This is an egregious attempt to limit any future development/redevelopment or improvements on a project site. For example, if any future development or redevelopment activities on a site requires a revised stormwater design to comply with the State Stormwater Management Rules at the time of an application submission, a deed lifting (which is a long, arduous, and expensive process) could be required to construct any stormwater measures in this wetland transition area (stormwater outfalls are often require to be constructed at the lowest points on a site pursuant to the State Soil Erosion and Sediment Control Standards, which often means within or adjacent to wetlands or State open waters).

Description of Proposed Rule: N.J.A.C. 7:7A-8.1(b)5 – *Requires impervious surface within 25 feet of a wetland to be removed and the area replanted and put under a conservation restriction, with some limited exceptions to allow cover where removal would increase flooding or have negative consequences, or where removal would prevent reasonable use or access.*

Comment 1: The Department should clarify that the listed exceptions are illustrative and not exhaustive.

Description of Proposed Rule: N.J.A.C. 7:7A-8.2(f) - *Requires the entire transition area buffer and wetland complex to be deed restricted under a conservation restriction as a condition of a TAW-AP.*

Comment 1: The proposal is contrary to the Department's regulatory program that allows use of multiple, incremental General Permits over time subject to overall, cumulative disturbance limits for the site, and will lead to increased disturbance by encouraging parties to maximize impacts before a restriction is imposed under an Averaging Plan to avoid having to later come back for a conservation restriction modification or release. The wetland and buffer complex is already protected from future proposed activities through the permitting program, making the conservation restriction requirement merely a means of precluding future development that would otherwise be permissible under the regulatory program, rather than a valid, necessary regulatory initiative. The Department has not provided sufficient justification for implementation of the new rule in the Rule Summary. The Summary states that the conservation restriction is needed to ensure the modified buffer will continue to provide value and functions to protect the wetland. However, to approve the Averaging Plan, the Department would have had to have already determined that the modified buffer would continue to be protective of the wetlands, and the regulatory permitting program requires permits for future additional activities to afford necessary protection against future impacts. The conservation restriction requirement is simply a mechanism to provide roadblocks and largely prevent future permitting and development opportunities that are

expressly contemplated under the Freshwater Wetland Protection Act. Thus, the proposal is inconsistent with the Freshwater Wetland Protection Act.

Comment 2: Can the Department explain why a modified buffer approved by the Department would offer need greater protection than one that has not been subject to an averaging plan? Can the Department explain why Department approved modifications to a previously modified buffer would offer less protection to the wetlands?

Description of Proposed Rule: N.J.A.C. 7:7A-8.2(f) – *De minimis modification provisions relating to conservation restrictions afford only limited, nominal relief as the ability to secure such relief is uncertain and discretionary with the Department.*

Comment 1: The rules should include provisions that allow for automatic termination / modification of a conservation restriction in instances where wetland conditions change over time and an area under a conservation no longer constitutes regulated wetland or transition area buffer.

Description of Proposed Rule: 7:7A-11.8(a)3 and (b) – *Added section to wetland policy: “For a disturbance to transition areas, restoration of the area temporarily disturbed to a forested or non-forested transition area, as applicable. (b)Mitigation for a temporary disturbance requires the submission of the following: 1. A planting plan specifying the number, type, and quantity of each species to be planted; 2. A list identifying the components of any seed mixes proposed to be used; 3. A narrative description of the restoration plan; and 4. an invasive species control plan.”*

Comment 1: It is unclear if this new mitigation plan requirement will trigger a review of the mitigation plan by the NJDEP Mitigation Unit as part of the regular permit approval process or as a issued permit condition. Please clarify. We respectfully suggest that temporary wetland transition area impacts and restoration of those impact areas should not necessitate a formal review by the NJDEP Mitigation Unit. A restoration plan included within the permitting plan set submitted as part of a NJDEP DLRP permit application should suffice and provide adequate protection to the wetlands. Introducing a separate review component for this activity after permit issuance or during permit application review would significantly extend the NJDEP review timeline, potentially adding several months, and adversely affecting a project's entitlements and construction schedules.

Comment 2: Invasive species control and monitoring should not be a requirement of the restoration plan.

Description of Proposed Rule: N.J.A.C. 7:7A-11.6(h)15 - *New section in the rules requires “A discussion of the projected impact of climate change on the site in the future and any special considerations that may be necessary as part of the current mitigation project (for example, proposed site elevations and the type of plants selected for the site) to promote the immediate and long-term sustainability of the site. The discussion shall include all assessments applicable to the site under consideration, such as: an assessment of the site anticipating the effects of climate change and sea level rise by 2100, including five feet of sea level rise above the mean higher high water elevation as it exists on (the effective date of this rulemaking); an assessment of potential changes to precipitation, including an increase in the intensity and amount of precipitation, and a potential increase in summertime drought; and if proposing forested wetland mitigation, an assessment of the vigor of reference forested systems.*

Comment 1: The required assessments identified are vague with no clear direction on what an applicant must submit or what design standards a consulting firm must design their mitigation project to in order to be deemed successful. This new requirement for mitigation proposals will introduce subjectivity on the part of the reviewer within NJDEP's Mitigation Unit. We do not support the adoption of this requirement.

Description of Proposed Rule: N.J.A.C. 7:7A-12.2(b) - *Language allows conservation restrictions to be abandoned where project work has not commenced. Here, the Department acknowledges that the authorized project has commenced, affecting the ability to abandon the project and release the restriction as a matter of right, when any site disturbance, including pre-construction earth movement or vegetation removal occurs. This represents an inconsistency in the Department's rules relating to the duration of CAFRA permits and continuation rights based on regulated activities having commenced prior to permit expiration.*

Comment 1: NAIOP NJ supports this change

Description of Proposed Rule: N.J.A.C. 7:7A-20.2(c)27 – Requires notice of commencement be given by on-line electronic certified registration of the activity not more than 14 days in advance of the start of authorized work will lead to a reduced compliance rate for such required notifications.

Comment 1: Permit holders typically rely on their professionals to provide such notifications. Professionals who do not control when the permittee will actually begin work will likely be reluctant to provide the required certification, under penalty of fine and imprisonment (as stated in the required certification language), that work will commence within 14 days after the certification is made.

Comment 2: Is the requirement to remove all existing impervious surfaces within 25 feet of a wetlands boundary only triggered when proposing a transition area waiver or for any wetlands permit? Is the requirement to remove all existing impervious surfaces within 25 feet of a wetlands boundary applicable to all onsite wetlands or only the wetland where transition area disturbance is proposed?

Revision #4 – Coastal Rules

Description of Proposed Rule: N.J.A.C. 7:7-3-5 – Proposes to replace "Permits-by-Rule" with "Permits-by-Registration". 7:7-3.5 addresses the new procedure for processing Permits-by-Registration with the Department, whereas previously there was no procedure needed for Permits-By-Rule because they could be conducted without prior Department approval and/or notice.

Comment 1: The new requirement puts additional burden on the applicant to process an online registration (in some cases the applicant can do it themselves, however, in some cases a New Jersey Licensed professional engineer or registered architect must do it), submit proof of the online registration to the local construction official and floodplain administrator, and certify separately when the activities have commenced and when the activities are complete. Furthermore, if the activity does not commence within 180 days of the registration, the applicant must re-register. All of this is for activities which currently require no action beyond the applicant reviewing the Permit-By-Rule to confirm the proposed activity is within the requirements of the Permit-By-Rule. These additional requirements burden the applicant with additional time and cost spend. The Department generally rationalizes this additional procedure to allow tracking and inspection of activities by the Department. However, it is unrealistic the Department can effectively track and/or inspect Permits-By-Registration given the Department currently struggles to meet regulatory review deadlines associated with applications currently requiring submission to the Department.

Description of Proposed Rule N.J.A.C. 7:7-8.2(g)2 - The section describes the procedure for which the Department shall issue an individual permit to an applicant who is reapplying for the permit due to the expiration of an existing individual permit. The procedure varies based on whether the regulated activities subject of the permit had started or not. Depending on the status of the regulated activities (i.e. started or not started), different criteria are applied to determine the feasibility that the project can be redesigned as part of the re-application to comply with current standards of 7:7 (if standards have changed since the original permit).

The Department proposes to add language to the criteria applying to a project for which regulated activities have started. The current criteria takes into consideration the amount of reasonable financial investment that has been made based on the original design, however, the Department proposes to add language indicating the reasonable financial investment is measured "in proportion to the project, and as determined by the Department"

Comment 1: The additional language added by the Department gives the Department unilateral discretion over applying an undefined financial investment model to the determination of feasibility of revising the activities to meet current standards of 7:7 as part of a permit re-application process. This has the potential to render otherwise large financial commitments by applicants a waste of money. Furthermore, the ambiguous and open-ended criteria leaves opportunity (and as evidenced by current application of currently vague and undefined NJDEP land use rules, for example the "dry access" criteria in the Flood Hazard Control Act rules) for inconsistent application of the rule by the Department depending on which staff is assigned to a given project. If the Department is taking unilateral discretion over determining the proportion of reasonable financial

investment made in a project, the underlying financial models the Department proposes to use must be presented to the public for review and comment and also to allow for consistent application by Department staff.

Description of Proposed Rule N.J.A.C. 7:7-13.16 - *The section describes the boundaries for the subject CAFRA areas and how the boundaries are created and modified. Adds "Critical Environmental Sites", which come with strict new impervious cover limitations (3%). The boundaries of the Critical Environmental Sites are yet to be determined and approved by the State Planning Commission, so the final boundaries are not known during the public comment period of this rule proposal, but are anticipated to include special areas regulated under 7:7-9 such as flood hazard areas, riparian zones, wetlands, and the newly proposed inundation risk zone, among additional areas. The restrictions associated with Critical Environmental Sites will apply within designated centers, cores, and nodes, therefore overriding the coverage standards otherwise applicable to the designation.*

Comment 1: The creation of Critical Environmental Site boundaries has the effect of restricting development and redevelopment even further beyond the proposed restrictions in other rules (7:13, 7:7A, etc.). In other words, projects which may otherwise qualify for permits through other programs such as wetlands or flood hazard areas can be thwarted by the strict coverage requirements applicable to sites included in the Critical Environmental Site boundary. Since Critical Environmental Site standards would override underlying center, core, and node standards, land currently in centers, cores, and nodes which are reclassified by the State Planning Commission as Critical Environmental Sites would receive substantial restrictions on development and redevelopment as compared to what is currently permitted. Due to the final boundaries of the Critical Environmental Sites not being approved at the time of public comment period, it is difficult to fully understand the effects of the new area classification on property within the CAFRA jurisdiction.

Description of Proposed Rule N.J.A.C. 7:7-16.12.(d) - *The Department proposes to add additional language to the existing standard including specifying: 1. each turning movement must be analyzed against the Level D criteria (as opposed to the entirety of the "location" of a roadway), 2. the Level D criteria applies both during and post-construction, and 3. if the roadway is currently operating in excess (worse than) Level D, the applicant is responsible for maintaining the pre-development level of service.*

Comment 1: The additional requirements in this standard have the potential to make compliance with this standard much more difficult. For example, it is common for a given intersection (which is comprised of multiple turning movements within the overall intersection) to operate at Level D or better, however, a certain turning movement (for example a left turn from the side / minor street) may operate at less than Level D. The amended standard would not allow this common scenario, whereas the current standard would. Continuing the example, a general Action to allow the side / minor street turning movement to operation at Level D or better would be acquisition of additional right-of-way to add lanes / make the intersection more robust. Acquisition of additional right-of-way may not be practical at existing intersections due to existing adjacent development and/or other land constraints, particularly when the applicant's property doesn't immediately abut the intersection (it is common for intersections included in a traffic analysis to not be directly adjacent to the property on which development is proposed).

Comment 2: The Department adds language regarding compliance with Level D "during the construction of the proposed development". The Department must clarify what this means. For example, is the Department requiring two traffic studies (one during construction and one after construction)? A traffic study for "during construction" is rare if not unheard and it is unclear what this type of study would entail for a typical development. This would be an additional, unreasonable cost for the applicant. Another example, is the Department suggesting having one day of less than Level D during construction (for example during a day of temporary traffic restriction or detour associated with roadway improvements) is grounds for permit denial for an otherwise compliant project? This could potentially kill otherwise compliant projects based a temporary situation / effect and would completely disregard the fact temporary traffic control during construction is addressed via specific traffic control plans subject to review and approval by the agency with jurisdiction over the roadway.

Description of Proposed Rule N.J.A.C. 7:7-27.2.(d).15.- The Department proposes to require authorization / permits associated with habitable buildings, roadways, or railways within a flood hazard area to commence within 180 days of the date of issuance of the authorization / permit. Otherwise, activities are not permitted to commence unless and until the applicant re-registers the authorization or permit via 1. Certifying there has been no Department or FEMA amendment to the flood hazard area, floodway, and/or flood zone designation for the site; 2. If there have been amendments, demonstrating to the Department the amendments don't alter compliance with 7:7; or 3. If there have been amendments demonstrating the project has been revised to comply with the amendments. There is also criteria listed defining what "commencement" of the project is for each type of project. For a habitable building, customary site work needed to facilitate the building (i.e., clearing, grading, filling, etc.) does NOT qualify as commencement of construction.

Comment 1: The proposed standard puts an unreasonably short limit on the validity of a permit relative to the flood hazard area / floodway / flood zone designation aspects of the permit. The various permits issued under 7:7 are valid for 5 years (they currently are and would still be under the proposed rule amendment), however, the Department is now requiring re-registration (and potentially re-design of the project if amendments to the FHA, floodway, and/or flood zone designation dictate) if the project doesn't commence in 180-days. This is contradictory to the 5-year validity of the permit, which is a much more reasonable timeframe for allowing commencement of the project given, for example, the plethora of other permitting an applicant must obtain (e.g. local planning and zoning, county, soil erosion, other State permitting, utility service permitting, building code permitting, etc.) and time needed to mobilize a contractor and perform the pre-requisite construction tasks needed to achieve the Department's restrictive definition of "commencement" (among other factors dictating the ability of a development to progress in construction).

Comment 2: The Department is disregarding and/or discounting the substantial time and cost investments made in the pre-construction phase of a development or redevelopment project. Lastly, this short, 180-day (0.5 year) timeframe in which an Applicant must re-evaluate FHA / floodway / flood zone is orders of magnitude less than the Department projecting and regulating floodwater characteristics out over 75 years from now.

Description of Proposed Rule - Appendix H listed the boundaries of the non-mainland (barrier island) coastal centers in the CAFRA Area. Appendix H is deleted, which deletes the non-mainland coastal centers.

Comment 1: Deletion of the non-mainland coastal centers will result in strict new impervious cover limitations (3%) and vegetative preserve / planting requirements becoming applicable. This results in a sudden and substantial reduction in the ability to develop and redevelop property in the barrier islands and makes development or redevelopment in most of the barrier islands improbable. The only potential remedy for individual property owners (and municipalities) is for the municipality in which the property is located to pursue center designation through the State Planning Commission's plan endorsement process. Same process is very long and intensive with no guarantee of approval.

Revision #6 – Stormwater

Description of Proposed Rule: N.J.A.C. 7:8-1.2 Definitions - "Disturbance" – NJDEP has added maintenance activities that would not be considered disturbance. "Disturbance" means the placement or reconstruction of impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

The following maintenance activities are not considered disturbance for the purposes of this chapter:

- 1. Milling, repaving, or resurfacing pavement; patching broken pavement; sealing or filling roadway cracks or joints; repairing damaged concrete pavement joints; driveway repair; bridge or pipe/culvert patching; and bridge deck overlays;**
- 2. Repair or replacement of: median barriers; sidewalks (including installation of ramps pursuant to Americans with Disabilities Act on existing impervious surface); concrete curbs; inlets, manholes and catch basins; conduit outlet protection; and guiderail systems, including rails, posts, impact attenuators, and non-vegetated treatment surfaces consisting solely of permeable material;**

3. *Repair or replacement of traffic, utility, and ITS structures on poles including sign structures, such as traffic signs, dynamic variable message signs, cameras, radios, traffic signal equipment, and their supporting cabinets;*
4. *Repair or replacement of rail ties or sleepers; regrading track bed; resurfacing or reinstalling rail; repairing or replacing lineside signaling systems; and staging maintenance-of-way equipment on or adjacent to track;*
5. *Geotechnical and archeological investigation activities; installation of one or more monitoring wells; construction of a gauge, weir, or similar device; and*
6. *Removal of accumulated sediment and debris from a channel.*

Comment 1: Repair and/or replacement of existing storm pipes and utilities should be included in Item 2.

Comment 2: Item 6. should include maintenance activities for existing stormwater BMPs including but not limited to removal of sediment accumulation, repairing erosion at outfalls, side slopes, etc, and replacement of soils in infiltration basins and bioretention basins.

Description of Proposed Rule: N.J.A.C. 7:8-1.2 Definitions - "Major Development" – "...Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of paragraphs 1, 2, 3, [or] 4, or 5 above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval [under] pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development."

Comment 1: Golf course projects should not be included as part of a common plan of development or sale. Golf courses extend over several acres of land and include separate areas for the golf course, the club house, pool areas, tennis court areas, etc. Individual projects that occur on a golf course should only count individually for determining applicability of the stormwater regulations based on disturbance and proposed impervious areas, unlike phased residential developments they are typically part of a common plan.

Description of Proposed Rule: N.J.A.C 7:8-1.6 Applicability to Major Development – This section of the rules has been modified to simplify the legacy provisions by removing references to legacy provisions at the municipal level and MS4 permittees.

Comment 1: This section of the regulations refers to "complete application" and "technically complete application". Additional references to "administratively complete application" have been made for other applications. The Department should clarify the difference between phrases for determining legacy provisions for a project.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(d) – This section of the rule has been modified to include additional projects that would qualify for exemptions from strict compliance with the stormwater regulations. "(d) The following development projects are exempt from the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, provided that any vegetated areas temporarily disturbed to conduct the project are, to the maximum extent practicable, revegetated with native, noninvasive vegetation upon completion of the project:

1. *The construction, reconstruction, or repair of an underground utility line or cable, or its supporting infrastructure, such as conduit, junction boxes, and manholes;*
2. *The construction, reconstruction, or repair of an aboveground utility line or cable, or its supporting infrastructure, such as poles and towers;*
3. *The construction, reconstruction, or repair of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material;*

4. *The maintenance of a dam; and*
5. *Public safety improvements undertaken by a public transportation entity as set forth in this paragraph:*
 - i. *Installation of guiderail systems, such as rails, posts, impact attenuators, and nonvegetated treatment surfaces, provided that any pavement utilized consists solely of permeable material;*
 - ii. *Installation of traffic, utility, and ITS structures on poles including sign structures, such as traffic signs, dynamic variable message signs, cameras, radios, traffic signal equipment, and their supporting cabinets;*
 - iii. *Installation of railroad lineside signaling systems; and*
 - iv. *Rockfall mitigation activities that do not result in a net increase of regulated motor vehicle surface or impervious surface.”*

Comment 1: Items 1. and 2. should be clarified and/or modified to include storm pipes and sanitary pipes.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(e) – *This section of the rule has been modified and identifies additional projects that would be exempt from strict compliance with the stormwater regulations. “(e) A waiver from strict compliance from the green infrastructure, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements at N.J.A.C. 7:8- 5.3, 5.4, 5.5, and 5.6 may be obtained for the enlargement of an existing public roadway or railroad, or the construction or enlargement of a public pedestrian access, provided that the conditions at (e)1, 2, 3, and 4 below are met. The construction of a new public roadway or railroad is not eligible for a waiver pursuant to this subsection.”*

Comment 1: This section of the rule for exemption of strict compliance with the stormwater management rules should be revised to include airport runways and taxiways as well as linear public utility right-of -ways in the exemption.

Comment 2: Projects that require offsite improvements to public roadways should be eligible for the waiver request from strict compliance with the stormwater management rules. For similar reasons that public transportation entities are eligible for the waiver, the same type of unique technical and physical challenges to implement stormwater management measures would exist for owners/applicants that are required to expand, improve, etc. existing offsite public roadways, especially when the offsite improvements are remotely located from the main project site. It should not matter who pays for or constructs the improvements to the public roadways. The waiver should be available for the public roadway project irrespective of who is proposing the improvement.

Comment 3: Golf course irrigation pond projects should be exempt from strict compliance with the 5.3, 5.4, 5.5 and 5.6. Although the project may include disturbance of more than 1 acre, the project would have a de minimis impact to recharge, water quality or quantity since the goal of the project is to retain runoff, usually includes minimal or no regulated vehicular motor surfaces and is used to irrigate the golf course.

Comment 4: The nature of many utility projects mirror that of roadways with respect to long linear developments with limited areas of ROW and therefore should also be afforded the waiver of strict compliance from the stormwater management requirements. Linear public utility improvement projects present unique challenges for stormwater management, given their shape (long, linear, often narrow corridors) and the practical difficulties of implementing green infrastructure BMPs. Public utilities aren't positioned to, nor is it practical to, maintain traditional Green Infrastructure BMPs across utility corridors spanning tens of miles long.

Description of Proposed Rule: N.J.A.C. 7:8-5.3(f), (g), (h), and (i) – *This section of the rule is new and requires the implementation of green infrastructure measures to meet the stormwater regulations and*

also provides alternatives for projects that cannot implement green infrastructure measures due to unsuitable conditions at the site. **“(f) A public transportation entity proposing a public roadway or railroad project shall demonstrate compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 within the public roadway or railroad project limits, unless green infrastructure BMPs from Tables 5-1 or 5-2 cannot be utilized due to unsuitable hydrologic, hydraulic, or physical conditions. If green infrastructure BMPs from Tables 5-1 or 5-2 cannot be utilized within the public roadway or railroad project limits due to unsuitable hydrologic, hydraulic, or physical conditions, (g) below shall apply.**

(g) Where a public transportation entity demonstrates that it cannot achieve compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity within the public roadway or railroad project limits in accordance with (f) above, the following requirements shall apply:

- 1. The public transportation entity shall demonstrate compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 in disturbed lands immediately adjacent to the public roadway or railroad project limits.**
 - i. All disturbed lands adjacent to the public roadway or railroad project limits shall be investigated for achieving compliance with this paragraph regardless of whether the disturbed land is owned or controlled by the public transportation entity. For the purpose of this subparagraph, disturbed land includes lawn, farmland, or other disturbed areas, but excludes preserved farmland and wooded areas.**
 - ii. The public transportation entity's investigation shall include lands held for recreation and conservation purposes. However, such lands are not required to be utilized if the proposed green infrastructure solution would violate State or Federal law or be inconsistent with or require a release or modification of any recorded restrictions on the property.**
 - iii. Compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity shall be achieved within the disturbed lands immediately adjacent to the public roadway or railroad project limits, unless the public transportation entity demonstrates that compliance within this area cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions.**
- 2. If the public transportation entity has demonstrated that compliance with (g)1 above cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions, the public transportation entity shall demonstrate compliance with the minimum design and performance standards for groundwater recharge and stormwater runoff quality at N.J.A.C. 7:8-5.4 and 5.5, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 in the land owned or controlled by the public transportation entity, and the disturbed areas immediately adjacent thereto, located upstream of the project and within the same HUC-14 as the project.**
- 3. If the public transportation entity has demonstrated that compliance with groundwater recharge and stormwater runoff quality standards pursuant to both (g)1 and 2 above and/or stormwater runoff quantity standards pursuant to (g)1 above cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions, the public transportation entity may utilize stormwater BMPs from Table 5-3 to comply with the unmet standards that have been demonstrated to be not achieved pursuant to (g)1 and 2 above, as applicable, without the need to request a waiver from strict compliance pursuant to N.J.A.C. 7:8-5.2(e).**

(h) If the public transportation entity seeking to enlarge an existing public roadway or railroad demonstrates that compliance with the design and performance standards for stormwater runoff quality,

groundwater recharge, or stormwater runoff quantity cannot be achieved in accordance with (f) and (g) above, it shall request a waiver from strict compliance pursuant to N.J.A.C. 7:8-5.2(e). The construction of new public roadways or railroads are not eligible for the waiver from strict compliance at N.J.A.C. 7:8-5.2(e).

(i) For the purposes of (f) and (g) above, unsuitable hydrologic, hydraulic, or physical

conditions means any physical, hydrologic, or hydraulic impediment that prevents the installation of a functioning BMP on a particular area of land such as, but not limited to, high seasonal high water table elevation, slope steeper than the maximum slope allowable for a BMP, karst topography, shallow depth to bedrock, unavoidable adverse impact resulting from groundwater mounding, or physical impedances caused by existing structures. Additionally, an inability to retain safe pedestrian passage shall be considered an unsuitable physical condition. Demonstration of unsuitable hydrologic or hydraulic conditions shall be supported by appropriate documentation that complies with the requirements set forth in the applicable laws, rules, ordinances, and construction codes, such as soil testing reports, site plans, survey maps, geological investigation reports, geotechnical reports, and/or photos. The documents shall be submitted to the Department, along with the certification required at (j) below. Further, the public transportation entity shall retain copies of the documents. Installation of a stormwater BMP within the area of a sidewalk, whether within or outside the public roadway or railroad project limits, shall provide sufficient pedestrian passage in the remaining sidewalk.”

Comment 1: This waiver of strict compliance should be revised to include airport projects. Most airport properties exist in locations with unsuitable subsurface conditions (high groundwater, low infiltrating soils, etc.) and the use of the majority of green infrastructure best management practices (GI BMPs) are above ground and GI MTDs require plants/vegetation, which are both discouraged at airports for safety reasons because they attract wildlife.

Comment 2: Exemptions and/or deviations from the stormwater management regulations provided to public transportation entities should also be provided to owners/applicants proposing improvements in similar circumstances/locations. A private owner/applicant will have the same hardships as a public transportation entity when constructing offsite public roadway improvements, airport hangars, etc. whether it be challenging subsurface conditions, lack of available space and/or when improvements are proposed in remote locations from the main project site. Filling sites to raise grades to provide adequate separation from unsuitable subsurface conditions should not be required.

Comment 3: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are made by a private entity or a public transportation entity. Similarly, the provisions of these sections should apply to all off-site public roadway and railroad improvements required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(i)5 – Any flow control device, such as an orifice, weir, grate, or perforated pipe, at the outlet of the stormwater management measures shall be designed to prevent the clogging of the flow control device while achieving the design and performance standards at N.J.A.C. 7:8-5.4, 5.5, and 5.6.

Comment 1: The commentary on the rule indicates that the “Department will provide examples of acceptable outlet designs in the New Jersey Stormwater BMP Manual, which can be utilized by applicants without the need to provide additional proof of functionality. Applicants can also proposed alternative measures to the review agency, but any such application would require additional information to demonstrate that the alternative outlet design is sufficient to prevent clogging.” Often times reviewers view the BMP Manual as an extension of the

regulations and not a guidance document, so if an applicant proposes something that does not exactly align with the language in the BMP Manual, it gets flagged as non-compliant. The Department should clarify that the BMP Manual is a guidance document showing how the rules can be applied, but is by no means the only way to apply the rules. The public has not had the opportunity to comment on the BMP manual the same way as draft rule proposals can be commented on through a formal process through the NJ Register notification.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(a) – The Department has added “reconstruction” of one-quarter acre or more of regulated motor vehicle surface to the water quality threshold. Furthermore, the Department no longer intends to retain the reduced TSS removal requirement for redeveloped impervious surfaces, which was 50% TSS removal and intends to require 80 percent TSS removal for all new and redeveloped motor vehicle surfaces. “Stormwater runoff quality standards

(a) This section sets forth the minimum design and performance standards to control stormwater runoff quality impacts of major development. Stormwater runoff quality standards are applicable when the major development results in an increase or reconstruction of one-quarter acre or more of regulated motor vehicle surface.

Comment 1: Adding reconstruction of one-quarter acre or more to the major development will have significant impact on redevelopment projects. Incorporating above-ground small-scale GI BMPs to treat stormwater runoff will reduce yield (parking loss, building square footage loss, public amenities). This will likely result in some areas of the State designated as areas in need of redevelopment to remain in their current state.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b) – This section of the rule is new and requires 95% TSS removal rate for the water quality storm for projects that discharge within or to a 300-ft riparian zone. “(b) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm from all new and reconstructed motor vehicle surface as follows:

1. Ninety-five percent TSS removal of the anticipated load, expressed as an annual average, shall be achieved for stormwater runoff from any new or reconstructed motor vehicle surface that is proposed to be:

- i. Discharged within a 300-foot riparian zone (as established by the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1); or**
- ii. 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.**

Comment 1: In situations where 95% TSS removal is required and the stormwater water quality storm cannot be contained through infiltration/recharge, it should be acceptable to use a 50% TSS removal BMP/MTD in series with an 90% TSS small-scale GI BMP to achieve the 95% TSS removal target. This would still meet the intention of incorporating the use of small-scale GI BMPs in the stormwater design while allowing design engineers more practical options that meet the intent of the higher TSS removal rates. The downstream receiving water doesn't benefit from the use of two GI BMPs. Requiring use of only two small-scale GI BMPs in series in this situation will likely be technically impracticable due to the subsurface conditions (high groundwater, low permeable soils, etc.) and the vertical drop required across the two small-scale GI BMPs.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b)2.i. – This section of the rule is new and provides a reduced TSS removal rate for public transportation entities where the 80% TSS removal rate cannot be achieved. “2. Eighty percent TSS removal of the anticipated load, expressed as an annual average, shall be achieved for the stormwater runoff from [the net increase of] any new or reconstructed motor vehicle surface not covered at (b)1 above, except as follows:

i. Where a public transportation entity demonstrates that achieving 80 percent TSS removal pursuant to (b)2 above for a public roadway project would require acquisition of developed or otherwise encumbered land outside of the entity's existing right-of-way along the section of roadway being improved or constructed, the public transportation entity shall instead provide water quality treatment to the maximum extent practicable, with a minimum water quality treatment of 50 percent TSS removal for all new and reconstructed motor vehicle surface.

Comment 1: This section of the rule should be applicable to owners and/or applicants that are required to implement offsite public roadway improvements for their projects. Any applicant will have the same hardships as a public transportation entity when constructing offsite public roadway improvements whether it be challenging subsurface conditions, lack of available space and/or when improvements are proposed in remote locations from the main project site.

Comment 2: For owners/applicants looking to redevelop sites, the approach defined in this section of the rule should also be an acceptable approach for providing some level of water quality where none existed. Redeveloping sites and having to provide water quality measures using green infrastructure measures meeting the same criteria as undeveloped sites will reduce yield on the site (less parking, less building, etc.). Other states such as New York have implemented a redevelopment approach that offers multiple options to provide an appropriate level of water quality based on the extents and nature of the redevelopment project such as reducing impervious area, treating a smaller percentage of the site with standard BMP practices, treating a larger percentage of the site with an alternative BMP practice (such as a MTD) treating runoff at a 50% TSS removal rate, or a combination of the options.

Comment 3: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are completed by any applicant. Similarly, the provisions of this section should apply to all off-site public roadway and railroad improvements required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b)3.j. – This section of the rule is new and requires stormwater management measures to be designed to meet specific pollutants as defined in a TMDL or established by EPA. “(j) Stormwater management measures shall be designed to incorporate any additional measures specified in a TMDL(s) approved or established by the EPA, unless otherwise required pursuant to N.J.A.C. 7:14A-25.6(e).

Comment 1: The updated GI BMPs provided in the rule and the best management practices manual only list approved TSS removal rates. If projects will also be held to targeting specific pollutants based on an approved TMDL or established by EPA, can Table 4.2 be relied on for removal of specific nutrient removal rates since it is from the 2004 issuance of the BMP manual? An updated table considering small-scale GI BMPs nutrient removal rates should be provided, which would presumably have more effective removal rates because of reduced drainage areas than what is currently provided in the BMP manual.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(b)2.i. – If the analysis demonstrates that there is no increase in the volume or peak runoff rates of stormwater leaving the site, and the change in timing is solely a result of the proposed installation of BMPs to comply with N.J.A.C. 7:8-5.5 or (d) below, then no analysis of downstream flooding impacts shall be required, unless the review agency determines that the project will result in increased flood damages downstream of the site.

Comment 1: Please provide examples of instances that would cause the review agency to determine that the project will result in increased flood damages downstream of the site. Reducing both peak flows and volume should be sufficient to show no downstream impact. As written, the regulation is still very open ended and subjective to interpretation.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(d)1.i. – This section of the rule is new and describes methodologies to address retention of the water quality on-site. “(d) Except as provided at (d)3 below, the design engineer shall demonstrate that the major development meets the minimum volumetric reduction standard in accordance with (d)1 and/or 2 below.

1. Stormwater management measures shall be designed to achieve retention of the water quality design storm by incorporating green infrastructure BMPs from Table 5-1 and Table 5-2 unless (d)1i below applies:

iii. Where an applicant demonstrates that compliance with this paragraph is technically impracticable as set forth at N.J.A.C. 7:8-4.6(a)1, or the type of stormwater is subject to N.J.A.C. 7:8-5.4(b)3, a major development site shall instead meet the hydrograph requirements at (d)1i(1) and (2) below:

(1) The runoff peak flow rate of the water quality design storm from the site shall be less than the runoff peak flow rate of the water quality design storm from a drainage area equivalent to the size of the disturbed area of the major development, with a woods cover type, in good hydrologic condition and on Hydrologic Soil Group D soil; and

(2) The runoff hydrograph duration of the water quality design storm from the site shall be greater than the runoff hydrograph duration of the water quality design storm from a drainage area equivalent to the size of disturbed areas of the major development, with a woods cover type, in good hydrologic condition, and on Hydrologic Soil Group D soil. For the purposes of this subparagraph, “runoff hydrograph duration” means the duration between the time that the runoff flow rate starts to be greater than zero to the time that the runoff flow rate becomes zero.

Comment 1: Filling the site to provide required separation of proposed BMPs from unsuitable subsurface conditions (high groundwater, low permeable soils, etc.) should be included as one of the technically impracticable options for not being able to retain the water quality volume on site.

Comment 2: The rule is unclear in how this reduction can be met for options 1.i.(1) and (2). The rules should be clarified to indicate what means can be used to achieve the reduced rate and the release rate. BMPs listed in Table 5-3 should be included as options for meeting this condition and analysis examples for each BMP included in the BMP manual.

Comment 3: Where water quality is achieved via a BMP that cannot by itself meet the hydrograph duration requirement, such as a green MTD that does not have the capacity for volume storage, please advise if the hydrograph duration requirement could be met via a non-green MTD (such as an underground detention basin). This would be very helpful for situations such as a parking lot reconstruction project with a high groundwater table.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(d)3. – This section of the rule and removes the volume reduction for public transportation entities for projects that include upsizing of existing stormwater conveyance systems. “3. The volumetric reduction standards of this subsection shall not be applicable to projects that are undertaken by a public transportation entity in cases where the project meets the definition of major development solely because the project results in increased capacity of an existing stormwater conveyance system.”

Comment 1: This section of the rule should be applicable to owners and/or applicants that are required to implement offsite roadway improvements for their projects. A private owner/applicant will have the same hardships as a public transportation entity when constructing offsite roadway improvements that only include upsizing of existing stormwater infrastructure.

Comment 2: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are made by any applicant. Similarly, the provisions of this section should apply to all off-site public roadway and railroad improvements required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.9/10 – Section 5.9 and new section 5.10 of the rule addresses variance relief from the design and performance standards of the stormwater rules. “7:8-5.10 Departmental variance from the design and performance standards for stormwater management measures

(a) The Department may grant a variance from the design and performance standards at N.J.A.C. 7:8-5.3, 5.4, 5.5, and 5.6; provided the following conditions are met:

- 1. The applicant provides a written report, prepared by each MS4 permittee with postconstruction stormwater management review obligations for the project, which demonstrates how the requirements at N.J.A.C. 7:8-4.6(a)1, 2, and 3 and the Minimum Standards for Post Construction Stormwater Management in New Development and Redevelopment of the applicable MS4 permit(s) are met. At a minimum, this demonstration shall include an explanation as to why it is impracticable to accomplish the onsite stormwater management requirements of this chapter, and how the proposed offsite mitigation will ensure that the requirements at N.J.A.C. 7:8-5.3, 5.4, 5.5, and 5.6 are met.**
 - i. Where a project is not subject to municipal approval, the requirement at N.J.A.C. 7:8-4.6(a) referencing municipal approval or compliance with a municipal mitigation plan shall not apply;**
 - ii. If the variance that resulted in the mitigation project being required is from the green infrastructure standards at N.J.A.C. 7:8-5.3, then, notwithstanding the requirement at N.J.A.C. 7:8-4.6(a)3vi regarding the use of green infrastructure BMPs at Table 5-1, the mitigation project may use green infrastructure BMPs listed at either Table 5-1 or Table 5-2, provided the applicant is a public transportation entity proposing a public roadway or railroad project and all other requirements of this section are met;**
- 2. Except where a project is not subject to municipal approval, the applicant provides a preliminary or final site plan approval from the municipality, which includes a variance from the design and performance standards set forth in its municipal stormwater management plan and stormwater control ordinance(s);**
- 3. Except where a project is not subject to municipal approval, there is no deviation in the project design and performance standards as those approved in the municipal variance; and**
- 4. The Department determines the written report is prepared pursuant to (a)1, 2, and 3 above and demonstrates that:**
 - i. The requirements at N.J.A.C. 7:8-4.6(a)1, 2, and 3, as appropriate, are satisfied; and**
 - ii. There will be no adverse impacts to surrounding properties as a result of granting the variance pursuant to the standards in this subsection.**

(b) Within 30 calendar days of completion of the required stormwater mitigation project(s), the permittee shall provide documentation to the Department that the mitigation was accomplished.

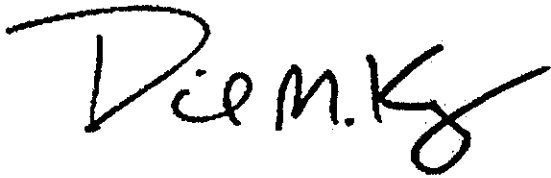
Comment 1: An applicant should have an option of requesting variance relief from the Department and/or a municipality from strict compliance with the requirements of N.J.A.C. 7:8-5.3, 5.4, 5.5 and/or 5.6 if an applicant can demonstrate meeting the requirements is technically impracticable due to existing subsurface conditions (high groundwater, low permeable soils, etc.) summarized by a detailed subsurface investigation corroborated by a licensed geotechnical professional. Raising sites by several feet should not be considered an acceptable approach to meeting the requirements. Currently, the existing rule and proposed amendment, still requires some sort of offsite mitigation project.

Comment 2: There should be a similar administrative waiver process in NJAC 7:8 as the hardship waiver process in NJAC 7:13 (FHA Rules) to grant relief from strict compliance with the stormwater management rules.

Comment 3: Dual approval from two or more agencies on the same regulation does not result in any benefit to the environment. A hierarchy of agency approval should apply and be accepted by the other reviewing agencies.

Thank you for the opportunity to submit these comments. We welcome a discussion on any and all points at any time.

Sincerely,

A handwritten signature in black ink that reads "Dan M. Kennedy". The signature is written in a cursive, slightly slanted style.

Dan Kennedy
CEO, NAIOP NJ Chapter



September 19, 2025

VIA ELECTRONIC MAIL

Chris Segal, Esq.
Attention: DEP Docket No. 05-24-05
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

RE: **Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments and New Rules: DEP Docket Number: 05-24-05**

Dear Mr. Segal:

NAIOP New Jersey, the Commercial Real Estate Association (NAIOP NJ), is grateful for the opportunity to provide comments in response to the New Jersey Department of Environmental Protection's (NJDEP) Protecting Against Climate Threats (NJPACT), Resilient Environments and Landscape (REAL) notice of proposed substantial changes to the proposal released last year.

Background

In our original comment letter dated November 4, 2024, we reinforced that NAIOP recognizes the need for prudent planning but believe that extreme measures to address conditions related to climate change or any long-term risk will have unintended consequences.

We accept that conditions for development and redevelopment should be reconsidered due to climate change-related variables such as sea levels rising, temperatures increasing and changes in precipitation levels. Current projections from peer-reviewed studies still show a wide range of potential outcomes. As such, we continue to argue for a measured approach that balances environmental concerns with economic growth and community-based issues.

We continue to believe that the original proposal was fatally flawed. We do not believe that the proposed amendments are sufficient to overcome the critical errors made by the Department from the start of this process.

NAIOP NJ made two primary, inter-connected recommendations in its original comment letter:

Primary Recommendation #1, the NJDEP should take into consideration all the feedback from stakeholders that have commented and propose a more reasonable set of reforms. A matter like this deserves full vetting and should not be rushed to meet a politically motivated timeframe.

As part of the NJDEP agency response to public comments, NJDEP should compile all comments verbatim and provide an itemized response to each individual comment to allow for proper vetting. For instance, the final adoption document for the 2023 Inland Flood Protection rule failed to appropriately address many comments as NJDEP attempted to compile multiple comments into one (1) single response.

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Response: The NJDEP only compiled comments and provided a response to specific aspects of the proposal where substantial amendments are being proposed. In any final action, all comments received should be itemized and addressed.

Primary Recommendation #2, the Preliminary NJ State Development & Redevelopment Plan should be released and go through the “cross-acceptance” process as per the State Planning Act. The NJDEP should consider input related to this document, which should be guiding proposals of this nature, and add balance to the proposal to address other crucial public policies like the critical need for market rate and affordable housing.

Response: The NJ State Development & Redevelopment Plan has yet to be finalized and the NJDEP has failed to consider the input from local governments and the private sector received during the “cross acceptance” process except for some limited allowance for affordable housing within a proposed substantial change.

Comments on Substantial Changes (SC) Proposed by the Department

SC#1: N.J.A.C. 7:7-9.50 Inundation Risk Zone, N.J.A.C. 7:7-17.7 Basic Requirements for Mitigation Proposals, N.J.A.C. 7:7A-11.6 Basic Requirements for Mitigation Proposals, N.J.A.C. 7:8-5.7(e) Calculation of Stormwater Runoff and Groundwater Recharge, N.J.A.C. 7:13-3.1 General Provisions for Determining the Flood Hazard Area, Floodway, and Inundation Risk Zone Along a Regulated Water, N.J.A.C. 7:13-3.2 Determining the Flood Hazard Area Along a Regulated Water, N.J.A.C. 7:13-3.4 Determining the Inundation Risk Zone Along a Regulated Water, N.J.A.C. 7:13-3.8 Determining the Flood Hazard Area and Floodway Determined by Calculation, N.J.A.C. 7:13-11.5 Requirements for a Regulated Activity in an Inundation Risk Zone, N.J.A.C. 7:13-13.7 Basic Requirements for Mitigation Proposals - Revised Sea Level Rise Projections, Reflecting Four Feet of Sea Level Rise, Adding a Provision for the Department to Take Action Every Five Years to Review Updated New Jersey Sea Level Rise and Precipitation Data, and Removing Provisions Related to Sea Level Rise Signage

Comment 1: The NJDEP has publicly acknowledged through the PACT process that models projecting conditions past 2050 have far less certainty. Nevertheless, the REAL proposal relies on projections out to 2100. Given any change in the elevation of the flood hazard area will have a substantial impact on both new development and redevelopment of existing sites, we recommend that any projection on sea level rise (SLR) or precipitation be limited to 2050, to ensure that regulation is based on the most accurate data projections, and not speculation. We also note that in addition to adopting an SLR projection based on admittedly less reliable data, NJPACT-REAL also adopted an SLR projection which STAP identified as being less than 17% likely to occur.

NJDEP has not provided any rationalization for proposing regulations based on projections with such a low confidence, giving the appearance that the CAFE levels proposed are arbitrary and capricious. As such, we disagree with the NJDEP proposal to change to reflect four feet of SLR rather than five feet. To the extent the 2019 STAP report represents the “best available science,” **projected SLR should be set based on a projection no further out than 2050 (DEP’s admitted threshold of accuracy), using a projection with a 50% likelihood given all the additional risk factors built into NJDEP’s existing land use paradigm.**

Comment 2: In the NJDEP's response in the "The Department Continues to Follow the Best Available Science" section it states that it only considered assessments of the "trajectory of global temperature increases that were not available at the time of the REAL notice of proposal." It was simply the change in this one variable that generated a lesser SLR projection while the many other variables in the model were not reassessed at all. This is not "following the best available science" by any objective scientific standard.

Comment 3 [Focused on Proposed Changes @ N.J.A.C. 7:8-5.7 and N.J.A.C. 7:13-3.1(e)]:

The NJDEP can and should update its standards over time as the accuracy of these SLR models are tested against reality. However, regular, mandated updates to the rules every five years injects a high degree of uncertainty for property owners, developers, and investors for large, planned projects in the State such as large residential projects, movie studios, airport improvement projects, hospitals/healthcare projects, large data centers, etc. The rules may change multiple times over the course of a project's planning or lifespan. This instability makes long-term projects a moving target and undermines confidence in the predictability of regulation. Basing a critical zone on projections for a distant target like 2100, while regularly amending the underlying data, forces current decisions to be based on an ever-changing future risk assessment. As climate models evolve, the five-year review could lead to the expansion or contraction of the IRZ, significantly altering property rights and values with little warning. Further:

- The proposed language is too open ended and requires clarification and confirmation on how this applies to the "current" and "projected" precipitation data. Please consider amending the language to outline the data sources that will be used to reevaluate every five years. Provide clarification on how the five-year evaluation will impact the precipitation rate "multipliers" for the projected storm events.
- This amendment to the proposed rule was made in response to commenter concerns that exist in a scenario where the actual increase in rainfall and sea level rise do not keep up with the pace that is currently projected within the various DEP rules. Please consider adding provisions to analyze the effectiveness of previous rule changes and how new development has been successfully implemented.
- The five-year reevaluation should be subject to public comment to ensure the evaluation is properly vetted. This would be consistent with NJDEP past practices for previous Rule amendments.
- The rules should include a six (6) month "legacy" period if/when the sea level rise and precipitation data is amended. The development community and regulatory enforcement community need consistency and advanced knowledge of data sources to properly design and regulate. The legacy period provision would be consistent with NJDEP past practices for previous amendments.

We request that the NJDEP formally clarifies:

- Will the language in the rules be amended such that they automatically incorporate updates to external data sources into the rules? For example, NOAA Atlas 15 is anticipated to be released in 2026. Will New Jersey still be applying multipliers to outdated data sources until the next 5-year interval in 2031 arrives?
- Provide clarification on which specific aspects of the various rules are subject to change pending each five-year reevaluation.

- Provide clarification on what happens if the Department does not take action within a particular five-year cycle.

Comment 3: We support removing provisions related to SLR signage on any new or substantially improved building that is habitable in an IRZ.

SC#2: N.J.A.C. 7:7-9.50 Inundation Risk Zone, N.J.A.C. 7:13-8.1 Reconstruction, Relocation, Expansion, and/or Elevation of a Building Outside a Floodway and an Inundation Risk Zone, N.J.A.C. 7:13-11.5 Requirements for a Regulated Activity in an Inundation Risk Zone, and N.J.A.C. 7:13-12.5 Requirements for a Building

Comment: While we are in support of these changes to the rule proposal in general, we note that we are not in support overall of the basis of the IRZ zone using year 2100 models. This conservative IRZ designation for the year 2100, and its associated building restrictions and elevation requirements, will impose significant financial burdens on property owners and developers. The increased costs may reduce property values and hinder economic development in coastal communities, which could disproportionately affect businesses.

SC#3: N.J.A.C. 7:7-12.21 Submerged Cables--Changing Provisions Regarding Burial Depth

Comment: No Comment

SC#4: N.J.A.C. 7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, CAFRA Nodes, and CAFRA Critical Environmental Sites--Clarifying Inundation Risk Zone as Exclusion From or Designated as a CAFRA/Critical Environmental Site Within Areas Designated as a CAFRA Core, Node, or Center

Comment: NAIOP NJ supports this substantial change to address the deficiency in the original proposal which would have had the IRZ subject to a three-percent cover limit. The NJDEP's clarification and associated explanation regarding the process will serve to avoid confusion and minimize unintended consequences.

SC#5: N.J.A.C. 7:7-23.2 , 7:7A-16.2 , 7:13-18.2 General Application Requirements--Clarifying Scope of Written Consent for an Activity from the Holder(s) of the Right-of-Way or Easement

Comment: It is our position that there is ambiguity with this amendment as proposed and improperly calls for the reviewer to interpret this requirement on a case-by-case basis and without clear criteria to guide the applicant. Additionally, with not all easements and rights of way are the subject of specific writing let alone a recording. The inability to locate such writings may delay critical infrastructure or resilience projects unnecessarily.

SC#6: N.J.A.C. 7:7-26.1 , 7:7A-19.1 , and 7:13-21.1 General Application Review Provisions, N.J.A.C.7:8-1.6 Applicability to Major Development--Applying Standards Prior to REAL for Projects Obtaining Certain Approvals

Comment 1: NAIOP NJ supports this substantial change to allow 180 days of time before permits are subjects to any new standards and/or approvals resulting from this proposal. That said, we remain

concerned about the NJDEP's capacity to handle the extraordinary changes to a wide range of regulatory programs with current staffing levels and challenges with internal management succession.

Comment 2: The Department has correctly recognized that projects that have receive approvals based on economic benefits from government incentive programs prior to the effective date of this rule proposal should not be subject to the new requirements imposed under the proposed rules. However, the limitation of that recognition to only "New Jersey studio partner" or "New Jersey film-lease partner, is arbitrary, capricious, and unreasonable insufficient given the breadth of the various economic incentive programs that have been authorized to support specific projects. The Department has not identified any analysis, study, legislative authority, or other objectively supportable basis for not recognizing that all projects that are the subject of economic incentives based on that project's design or parameters prior to the effective date should receive the same consideration. Such economic incentive programs include, by way of example, all project-specific incentive programs administered by the New Jersey Economic Development Authority, all Payment-In-Lieu-of-Taxes (PILOT) or other project-specific property tax relief provided by municipal, county, or State agencies, Brownfield Redevelopment Agreements, projects that include work funded by the Infrastructure Bank among other local, county, state, and federal economic incentive programs.

SC#7: N.J.A.C. 7:7-27.9 and 7:13-22.3 Deed Notice Requirement for an Authorization Pursuant to a General Permit-By-Certification, General Permit, or an Individual Permit--Exempting the Installation, Replacement, or Repair of Underground Utility Lines Constructed Within a Previously Recorded Easement

Comment: We support adding an additional exemption under the deed notice requirements for the installation, replacement, or repair or underground utility lines constructed within a previously recorded easement. Additional exemptions should be considered if these rules are put into practice.

SC#8: N.J.A.C. 7:7A-7.1 General Permit--Maintenance and Repair of Existing Features--Changing Permit Criteria for Stormwater Basins

Comment 1: We are in full support of the Department recognizing the importance of developers/redevelopers being permitted to modify and reconfigure existing human-made stormwater management basins where wetlands have formed to comply with the current stormwater regulations at the time of a new permit application for changes proposed on a property.

Comment 2: We respectfully request that this proposal be revised to explicitly allow disturbance and removal of wetlands within human-made stormwater basins, provided the basin is replaced or retrofitted with a compliant green infrastructure (GI) stormwater management facility. Alternatively, the rule could be modified to require no net loss of vegetation within the stormwater management feature, allowing for replanting with appropriate GI vegetation such as bioretention plantings or other vegetated systems.

Wetlands often form within human-made stormwater basins as a result of sediment accumulation and basin bottoms can be ever changing based on routine maintenance activities. As such, requiring applicants to demonstrate no net loss of wetlands – and more critically, no net loss of their functions and values – may be impractical and overly burdensome, especially when the proposed modifications are intended to improve water quality and comply with the current stormwater regulations.

We respectfully request the Department to strongly consider the above amendments to the proposed rule. Should the Department decide to not amend the proposed rule, we respectfully request that the

Department clarify how applicants are expected to demonstrate compliance with the “no net loss of wetlands, or their functions or values” standard in these contexts.

SC#9: N.J.A.C. 7:8-1.2 Definitions--"Major Development" and N.J.A.C. 7:8-5.5 Stormwater Runoff Quality Standards--Regulation of Reconstruction of a Motor Vehicle Surface

Comment 1: The proposed amendment to the definition of “major development” to include the reconstruction of one-quarter acre or more of motor vehicle surface or impervious surface introduces ambiguity when considered alongside the other definitions of “reconstruction” and “disturbance” that are proposed under this current rule amendment.

The current NJDEP rule amendment proposes:

- “Reconstruction” is defined as the replacement, rebuilding, or restoration of a lawfully existing structure.
- “Disturbance” includes the placement or reconstruction of impervious surface or motor vehicle surface, as well as activities such as soil movement and vegetation clearing.
- Importantly, maintenance activities such as milling, repaving, and resurfacing are explicitly excluded from the definition of disturbance.

By using the term “reconstruction” in the revised definition of “major development,” the Department may unintentionally create confusion regarding the applicability of stormwater review. The term “reconstruction,” as the definition is currently proposed, does not explicitly exclude the maintenance activities that are identified in the proposed definition of “disturbance”.

Given the Department’s stated intent to regulate stormwater impacts from the disturbance of one-quarter acre or more of existing motor vehicle and impervious surfaces, but not activities that are not considered disturbance per the proposed definition, it would be more appropriate and consistent to revise the definition of “major development” to refer to “the disturbance of one-quarter acre or more of motor vehicle surface or impervious surface since (the effective date of this rulemaking).”

We respectfully request that the Department clarify the language in the final rule to reflect this intent and avoid regulatory confusion.

Comment 2: The proposed amendment to include “reconstruction of one-quarter acre or more of motor vehicle surfaces” under the stormwater runoff quality standards removes a key incentive for redevelopment projects. Historically, redevelopment has been subject to a reduced total suspended solids (TSS) removal requirement of 50%, recognizing the inherent challenges and costs associated with redeveloping previously disturbed sites—such as demolition, disposal, and retrofitting existing infrastructure.

Eliminating this reduced standard and requiring 80% TSS removal for both new and redeveloped motor vehicle surfaces may discourage redevelopment in favor of greenfield development. This shift could undermine smart growth principles and contradict broader environmental goals, particularly in areas where redevelopment is essential for revitalization, resilience, and sustainable land use.

We respectfully request that the Department reconsider retaining the 50% TSS removal standard for redeveloped motor vehicle surfaces. Maintaining this distinction would continue to support redevelopment as a preferred strategy, balancing environmental protection with practical feasibility and cost-effectiveness.

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SC#10: N.J.A.C. 7:13-2.2 Regulated Waters--Changing Exemption Regarding Hydrologic Connection with Other Surface Waters

Comment 1: As we stated in our original comment letter, historic waterways that have been piped, culverted, ditched, or similarly modified in many cases are undersized and in need of replacement with a larger pipe, culvert, or ditch. These upgrades help mitigate the risk of flooding, which is an overall goal of this rule proposal. We continue to seek clarity on how deleting this exemption will impact the improvement to human-made structures that would have a clear beneficial effect on the environment (i.e. reducing localized flooding).

Comment 2 The Department has mentioned that there have been observations where a naturally occurring surface water may form, dissolve, and reform, carrying surface runoff and eventually discharge to other surface waters. Are there specific examples of this instance? Provide specific examples of where these conditions occur throughout the state to justify its implementation on a statewide scale.

Comment 3: The Department should remove the “subsurface hydrologic connection” requirement of this rule change. The isolated nature of ponds or depressions should simply be based on surface hydrology as the Flood Hazard Area Control Act rules do not regulate groundwater and subsurface connections.

Comment 4: What demonstration(s) will be required for applicants and/or the state to prove whether an isolated water is or is not hydrologically connected to a regulated water via subsurface interactions? The Department should provide specific instructions on how to determine surface connection to a regulated water. For instance, the storm event(s) that need to be analyzed to determine “overtopping” of the isolated pond or depression to prove surface connection.

Comment 5: Does the department have qualified reviewers that can determine if a water body is truly isolated? Performing the correct analyses to prove whether waters are isolated could introduce immense additional expenses to developments. The Department should provide more guidance on how the isolated nature of waters will be reviewed.

SC#11: N.J.A.C. 7:13-2.5 Exempt Activities--Regarding Limited Placement or Underground Jacking of One or More Underground Utility Lines

Comment: No comment

SC#12: N.J.A.C. 7:13-7.8 Permit-By-Registration 8--Construction of a Deck, 7:13-7.11 Permit-By-Registration 11--Construction of a Fence, 7:13-7.14 Permit-By-Registration 14--Construction of a Footbridge, 7:13-7.17 Permit-By-Registration 17--Forest Management Activities, 7:13-7.26 Permit-By-Registration 26--Construction of a Fence Along and/or Across a Regulated Water to Manage Livestock, 7:13-8.4 General Permit-By-Certification 4--Construction of a Footbridge, 7:13-8.11 General Permit-By-Certification 11--Construction of Barrier-Free Access to a Building in a Floodway, 7:13-9.4 General Permit 4--Creation, Restoration, and Enhancement of Habitat and Water Quality Values and Functions, and 7:13-9.8 General Permit 8--Construction of a Footbridge--Minimum Opening Size of Various Structures

Comment: We support the NJDEP amending the proposed requirements to better align with building codes under the UCC and remove the ambiguous language (“sufficiently large openings”) as originally proposed.

SC#13: N.J.A.C. 7:13-12.5 Requirements for a Building and N.J.A.C. 7:13-12.6 Requirements for a Railroad, Roadway, Parking Area, or Airport Runway or Taxiway--Changes to Standards for Dry Access and Dry Floodproofing

Comment: We feel the substantial amendments do not go far enough. We feel that if an applicant establishes that the project falls within meets one of the provisions of N.J.A.C. 7:13-12.6(c)2, the applicant should then be exempt from requirements of N.J.A.C. 7:13-12.5 as having demonstrated a basis not to require off-site dry access.

Requiring off-site dry access should not be required for public roadways that already are use for access by those traveling to or from other properties. The potential for access issues on those public roadways is already an issue of which governmental entities with jurisdiction are obviously already aware of such access issues and have made policy-based issues on the priority to which such access issues are given. The absence of resolution of those off-site site access issues should not preclude any individual property from being developed.

The requirement to provide off-site dry access presumes that there are no plans, protocols or approaches by the governmental entity with jurisdiction over that area to provide relief and/or emergency responses. The Department has not identified any peer-reviewed study or analysis for that presumption and the Legislature has not vested the Department with determining whether such relief or emergency response is adequate.

The Department should not require additional burden by the applicant if the occupied spaces (building) are above the flood hazard elevation (FHE) and the adjacent roadway network is within the flood hazard and is not within control of the applicant. The applicant should not have to demonstrate dry access if the FHE is beyond the roadways immediately adjacent to the project.

We request clarification on if the requirement is to go beyond the subject site, then what is the distance from the site for which dry access must be established?

SC#14: N.J.A.C. 7:13-12.5 Requirements for a Building – Dry Floodproofing

Comment: We support the NJDEP amending its proposal to better align with the National Flood Insurance Program (standards), the UCC and ASCE 24-24 by removing the prohibition on floodproofing in the future IRZ or withing floor prone areas where velocity is unknown.

SC#15: N.J.A.C. 7:13-15.1 Hardship Exception for an Individual Permit and N.J.A.C. 7:13-1.2 Definitions

Comment 1: We recognize that the existing rules provide for hardship exemption, where there is a compelling public need for the project or regulated activity. We support the clarification that a compelling public need is inclusive of the need to provide affordable housing.

That said, the reality is that most affordable housing is delivered in concert with market rate housing in one project. Ideally, projects that include affordable housing will have a mix of uses. There are very few stand alone 100% affordable housing projects proposed in the state.

As such, we request that the NJDEP provide clarity on how mixed-use projects and/or blended affordable and market rate residential projects will be handed.

Comment 2: To successfully achieve a hardship waiver, an applicant must demonstrate they satisfy the criteria at NJAC 7:23-15.1(c) and that “a hardship exception shall only be issued if they regulated activities would not pose a threat to public health, safety, and welfare. We struggle to see how the NJDEP could issue any hardship waiver in any areas projected by the REAL rules to have additional

risk. Preliminarily, this proposal appears to disingenuously address the comments and concerns related to the delivery of affordable housing in a state where we are in a housing crisis.

As such, we request the NJDEP to provide examples of projects or scenarios where a hardship waiver would be successful.

SC#16: N.J.A.C. 7:7-9.26 Riparian Zones--Changes to Exemptions

Comment: No comment

SC#17: N.J.A.C. 7:7A-7.15 General Permit 15--Mosquito Control Activities--Change Regarding Thin Layer Placement

Comment: No comment

SC#18: N.J.A.C. 7:13-9.2 Mosquito Control Water Management Activities--Removing Requirement for Certification for Site-Specific Project Proposals

Comment: No comment

SC#19: N.J.A.C. 7:13-12.5 Requirements for a Building

Comment: It is our position that man-made features should not possess a riparian zone. N.J.S.A.58 – 16(A)51 refers to definition of floodway references a channel which is defined as a natural stream and portions of the FHA joining that natural stream channel. Man made channels are not naturally occurring features. Former streams that have been enclosed underground (i.e., piped or culverted former watercourses) do not fall within the statutory definition of a natural stream channel and the Department should not equate an underground man-made underground pipe or culvert as a “channel.”

The regulation of vegetated features that are not the directly supported by a nearby man-made watercourse is beyond the scope of the Flood Hazard Control Act. Further, the placement of any riparian buffer on a man-made feature regardless of whether the adjacent areas are supported by waters from that man-made feature (i.e., the water in the man-made feature does not provide water to support vegetation in those adjacent areas is inappropriate and beyond the enabling legislation. By way of example, planted areas that happened to be next to a man-made water conduit and would exist regardless of the water conduit, do not provide a basis for imposing a riparian zone in that area.

ORIGINAL COMMENTS MADE BY NAIOP NJ THAT REMAIN UNNADDRESSED BY NJDEP

The following comments were made by NAIOP NJ in its original comment letter have not been addressed. We are resubmitting them again on the record to ensure they are properly reviewed and addressed by the Department.

Description of Proposed Rule: N.J.A.C. 7:13-2.4 (a)10 – Exempt activities include placement of one or more utility poles, such as telephone and electric poles, or structures on poles intended to facilitate travel safety along a public roadway or railroad, such as overhead signs, variable message signs, streetlights, and traffic signal equipment, provided the conditions at (b) below are met and:

- i. No disturbance is located within 25 ft of any top of bank, except where the pole or structure replaces an existing pole or structure that cannot feasibly be relocated outside this area; and ii. No trees are cleared, cut, and or removed in a riparian zone.***

Comment 1: The installation of a utility pole typically includes associated wiring, and tree cutting is often necessary to ensure safe and continual operation of the utility. Can the proposed rules be amended to allow selective clearing of trees within the riparian zone that pose a threat to the safe and continual operation of the utility?

Description of Proposed Rule: N.J.A.C. 7:13-2.6 - Applicability Determination (a) A person may request an applicability determination from the Department to determine the applicability of this chapter to [a segment of water or to] one or more proposed activities [, subject to the limitations in (b) below]. An applicability determination is optional, but the Department encourages persons to request one if there is uncertainty about whether a particular [water or] activity is regulated, since conducting unauthorized activities may result in enforcement action. Where the Department determines that a review of engineering calculations is necessary to make a determination pursuant to this section, or where the applicant's intent is for the Department to determine whether a water is regulated and/or to confirm one or more jurisdictional boundaries applicable to this chapter, the applicant shall apply for a flood hazard area verification pursuant to N.J.A.C. 7:13-5.

Comment 1: The Department proposes when an Applicability Determination cannot be rendered without calculations an application for a Flood Hazard Area Verification must be submitted. If an applicant seeks to confirm the absence of regulated areas onsite, which may include consideration or dismissal of a subject feature, what methodology and related fee will the Department require. Can a Verification of Absence be issued?

Description of Proposed Rule: N.J.A.C. 7:13-4.1(c)2iii - Any segment of a water flowing through [an] a flood hazard area that contains a threatened or endangered species, which is critically dependent on the regulated water for survival, and/or present or documented habitat for those species, [which is critically dependent on the regulated water for survival,] and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water).

Comment 1: There is a significant number of streams in the state where a flood hazard area has not been determined. Clarification on how the Department is going to apply this rule along streams where

a flood hazard area has not been determined should be provided. Is the expectation that it would only apply in areas where a FEMA or NJDEP Flood Map is available?

Description of Proposed Rule: N.J.A.C. 7:13-11.2(b)6ii - *Where a regulated activity is located within a 150-foot riparian zone, and permitted activities conducted subsequent to (the effective date of this rulemaking) individually or cumulatively results in 2,000 square feet or greater of clearing, cutting, and/or removal of vegetation, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed pursuant to N.J.A.C. 7:13-13.4(b)2.*

Comment 1: The 2,000 sf threshold for mitigation is inappropriate considering the obligations to meet NJDEP Stormwater Management Regulations and Soil Conservation District requirements. Most development and/or redevelopment projects require multiple stormwater management facilities which often require numerous stormwater outfalls discharging at or within close proximity to a receiving water based on soil erosion district requirements. Current regulations provide an allowance of up to 5,000 sf of riparian zone disturbance for each outfall and associated outlet protection in a 150-foot riparian zone, without a mitigation requirement. When considering a 150-foot riparian zone, the construction of just one outfall could exceed the proposed 2,000 sf mitigation threshold. The cost of mitigation is significant and will now be further exacerbated just to meet agency standards. This will put applicants in a position where it is not possible to satisfy two agencies having differing requirements (DEP allowing less disturbance vs SCD requirement to bring outfalls to the water body edge). Alternately can temporary impacts be exempt from the mitigation?

Description of Proposed Rule: N.J.A.C. 7:13-11.2(b)6iii - *Where a regulated activity is located within a 50-foot riparian zone, and permitted activities conducted subsequent to (the effective date of this rulemaking) individually or cumulatively results in 0.1 acres or greater of clearing, cutting, and/or removal of vegetation, mitigation is required for the total area of vegetation that is cleared, cut, and/or removed pursuant to N.J.A.C. 7:13-13.4(b)3.*

Comment 1: The 0.1 acre threshold for mitigation is inappropriate considering the obligations to meet NJDEP Stormwater Management Regulations and Soil Conservation District requirements. Most development and/or redevelopment projects require multiple stormwater management facilities which often require numerous stormwater outfalls discharging at or within close proximity to a receiving water. Current regulations provide an allowance of up to 3,000 sf of riparian zone disturbance for each outfall and associated outlet protection in a 50-foot riparian zone, without a mitigation requirement. When considering a 50-foot riparian zone, the construction of just two outfalls could exceed the proposed 0.1 mitigation threshold. The cost of mitigation is significant and will now be further exacerbated just to meet agency standards.

Description of Proposed Rule: N.J.A.C. 7:13-11.2(f)7 - *[7. Any clearing, cutting, and/or removal of riparian zone vegetation within a truncated portion of a riparian zone. For the purposes of this paragraph, an area is considered to be a truncated portion of a riparian zone 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.]*

Comment 1: The Department proposes removal of the above-referenced clause which exempts the removal of vegetation within a truncated portion of a riparian zone from inclusion in quantified impacts. Is the Department's intent to remove riparian zone truncation entirely, including those described at existing N.J.A.C. 7:13-4.1(e) and (f)? Clarification should be provided.

Description of Proposed Rule: *N.J.A.C. 7:13-11.2(z)1(i) - A planting plan that consists of native vegetation of equal or greater ecological function and value as the vegetation that was cleared, cut, or removed.*

Comment 1: The proposed Rule change will require preparation and submission of a restoration plan for temporarily disturbed riparian zones using only native vegetation. Often the Department rejects the application or inclusion of several native plant species in restoration plans. The Department should publish a list of plants that they will not authorize when included in restoration plans to eliminate the subjective nature of the reviews.

Description of Proposed Rule: *N.J.A.C. 7:13-11.4- Requirements for a regulated activity in a flood fringe*

Comment 1: The proposed Rule elevates the regulatory flood elevation in many areas along the fluvial/tidal floodplain interface such that the controlling tidal floodplain elevation (CAFE) is significantly higher than the controlling fluvial floodplain elevation at the 10-year and 100-year elevations. As a result, buildings must be significantly elevated to meet NJDEP building standards; however, the required raise in grade must also account for NJDEP's zero net fill standard between the 100-year flood and the 10-year flood and between the 10-year flood and the ground. The controlling CAFE and fluvial elevations coupled with the more stringent NJDEP standards effectively eliminate many development/redevelopment possibilities from various municipalities across the state, presenting a significant burden for these areas.

Description of Proposed Rule: *N.J.A.C. 7:13-11.4 (c)2 – Revisions to this rule add the requirement flood storage calculations between the climate-adjusted flood elevation and the 100-year flood to the existing required calculations (between the 100-year flood and the 10-year flood and between the 10-year flood and the ground).*

Comment 1: Please advise of the rational of separate volume calculations between the climate-adjusted flood elevation and 100-year and between the 100-year and 10-year instead of just calculating the storage volume between the climate-adjusted flood elevation and the 10-year flood elevation. This results in additional time being spent by both the applicant's consultants (during design and to calculate) to provide data to Department's reviewers without a discernable benefit or specific required outcome.

Comment 2: Please confirm that if new maps are adopted by the Department in the future and the regulated flood hazard elevation is derived directly from the 100-year elevation on the mapping (instead of requiring a climate-adjustment factor), then the requirement to prepare a volume calculation between the climate-adjusted flood elevation and the 100-year elevation would no longer apply.

Description of Proposed Rule: *N.J.A.C. 7:13-12.5(c) – The Department shall issue an individual permit to reconstruct, elevate, enlarge or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the applicable requirements of this section.*

Comment 1: If an existing building requires reconstruction due to damage by fire, vandalism, or natural disaster, is it no longer permitted to be reconstructed in-kind?

Description of Proposed Rule: *N.J.A.C. 7:13-12.5(d) – This section has been modified to require new buildings and building additions to be located at least 25 feet from any pipe, culvert or bridge that encloses a regulated water. This is in addition to the current requirement of at least 25 feet from the top of bank.*

Comment 1: One of the requirements of this section, in cases where the compliance with this requirement is not feasible, is to provide an engineering certification confirming that the location of the proposed construction is stable and suitable for the proposed building and not subject to erosion or undermining due to its proximity to the top of bank without the need to construct or reconstruct a bulkhead or retaining wall or otherwise armor the channel of the adjacent regulated water. "Pipe, culvert, or bridge" should be inserted in the regulation text after "proximity to the top of bank" for clarity. Additionally, please confirm that providing a building foundation or ground improvement design that does not result in the building placing additional loads on a pipe or culvert is an acceptable means to meet this certification requirement.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(j)2 – This section requires the lowest floor of any residential portion of a building, including any common area such as a lobby, to be set at least 1-foot above the climate-adjusted flood hazard area.

Comment 1: In many cases, it may not be feasible to construct the lobby above the climate-adjusted flood hazard area, particularly if the public access/adjacent roadway is below the climate-adjusted flood hazard area. Exceptions should be made to provide lobbies below the climate-adjusted flood hazard area where such locations are required for ADA access into the building from the public right-of-way.

Description of Proposed Rule: N.J.A.C. 7:13-12.5(m)3ii – This rule does not permit higher peak flow rates or higher volume of runoff to leave the site compared to existing conditions unless the project is a major development as defined in the Stormwater Management Rules and the project complies with the requirements in that chapter.

Comment 1: Exceptions should be made for projects that are not defined as major developments but still comply with the Stormwater Management Rules (as if they were a major development).

Description of Proposed Rule: N.J.A.C. 7:13-12.5(v) – This rule does not permit any below-ground enclosure beneath a building, including any basement or below-ground parking area, within a flood-hazard area. For purposes of this section, a below-ground enclosure is any portion of a building in which the floor of the enclosure is situated below the adjoining exterior grade along all exterior walls.

Comment 1: Exceptions should be made as long as there is one exterior wall with egress at or above ground. For instance, the lowest level of a multi-residential building where the entrance facade is located at-grade with the frontage (which is below the climate-adjusted flood hazard area) but the grades along the other 3 facades have been elevated above the FHA.

Description of Proposed Rule: N.J.A.C. 7:13-12.6(e) – This rule requires private roadways or parking areas serving critical and residential buildings in areas subject to fluvial flooding to be served by at least 1 existing or proposed roadway with a travel surface of at least 1-foot above the 100-year flood elevation.

Comment 1: Exceptions should be made for infeasibility, similar to the list provided in 7:13-12.6(d)2. This exception would often be applied in fluvial areas where the adjacent public roadways are below the 100-year flood elevation.

Description of Proposed Rule: N.J.A.C. 7:13-18.2(g)2 – This rule pertains to applications involving holder(s) of a right-of-way or easement and requires applicants to obtain written consent of the owner. In cases where the applicant cannot obtain written consent, the proposed changes allow the applicant to provide a copy of the certified mail receipt that the applicant requested documentation from the holder and a copy of the instrument establishing the right-of-way or easement.

Comment 1: We support these proposed changes as often it can be challenging to obtain written consent from easement holders, particularly on older easements and easements to utility companies, which can result in significant delays in being able to file a completed application.

Description of Proposed Rule: N.J.A.C. 7:13-22.2 (d)14 – This is a new regulation that would require the following: Permitted activities to commence within 180 days of the date of issuance of the authorization or permit.

Comment 1: It is often not feasible for an applicant to begin activities within 180 days of the date of issuance of the authorization or permit. This could be due to other required entitlements (such as municipal planning board approvals that require NJDEP approval as a prerequisite), financing obligations (getting approvals by lenders following receipt of all entitlements), contractor availability and/or seasonal constraints. This requirement places additional time pressures on the applicant to start construction within 180 days or face potential consequences of needing to redesign/re-permit a project. Additionally, FEMA's Flood Insurance Program is based on the elevations on the FEMA mapping, not the climate-adjusted flood elevation. As such, the standard permit expiration dates should apply and FEMA's timing requirements should stand on their own.

Description of Proposed Rule: N.J.A.C. 7:7A-2.6 – Inclusion of new paragraph 4 which is inconsistent with the enabling legislation regarding "non-tributary wetlands." New paragraph 4 adds a new restriction to the issuance of a general permit for "non-tributary wetlands." However, the enabling legislation did not impose that restriction.

Comment 1: The Freshwater Wetlands Protection Act was the result of considerable debate and discussion. During the legislative process, the Legislature created additional detail and specifics in response to numerous concerns raised by multiple parties. The provision focusing on a general permit for isolated or non-tributary wetlands was one example. As the regulation of those wetlands is unique to New Jersey's program and not regulated under the federal programs, a general permit was established by the legislature with specific limitations. The proposed rule goes beyond those specific limitations and is violative of the Legislature's mandate.

Specifically, N.J.S.A 13:9B-23(b) provides that: "the department ***shall*** issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value." (Emphasis added). The legislation uses the word "shall" specifically as mandate as to when the general permit and does not provide for the Department's discretion to establish additional limitations or conditions.

Comment 2: If the proposed new limitation is not removed, the Department should clarify whether new paragraph 4 to N.J.S.A. 7:7A-2.6 would apply to wetlands that are not of exceptional resource value or designated as a priority wetlands by the United States Environmental Protection Agency.

Description of Proposed Rule: N.J.A.C. 7:7A-2.7; 8.1(j) - *Requires compliance with the Stormwater Management rules if an entire project is a major development regardless of whether the impacts to wetlands/buffers are below major development thresholds will hold permit and transition area waiver applications to the same standards as wetland individual permits and exceeds the Department's jurisdiction under the Freshwater Wetland Protection Act, which only affords jurisdiction for activity in wetlands and transition area buffers.*

Comment 1: Can the Department explain why it believes it has jurisdiction for this activity under the wetlands rules that exceeds the boundaries of wetlands and transition area buffers?

Description of Proposed Rule: N.J.A.C. 7A-5.4. - *Requires mitigation for combined impacts under a general permit of 0.1 acres or greater.*

Comment 1: To establish General Permits, the Freshwater Wetland Protection Act requires the Department to determine that categories of activities authorized under a General Permit have minimal adverse impacts when performed separately and will have only minimal cumulative adverse impacts and minor impacts on wetlands. The Department could not have issued a Statewide General Permit without having made such a determination. Requiring mitigation for an activity already determined to have only minimal impact is antithetical to statutory framework for General Permits. Rather than presupposing combined impacts will have a negative cumulative effect and requiring mitigation for such activity, the Department should fulfill its function stated in the rule of continuous monitoring to assess if combined impacts are having negative impacts, and only impose mitigation requirements after having completed that assessment and confirmed that cumulative negative impacts are occurring from the activities authorized under a Statewide General Permit. The rule changes will, due to the enhanced on-line functions, allow DEP to better monitor cumulative impacts. The Department should not require the proposed mitigation before using its new tools to perform a comprehensive analysis of cumulative impacts.

Comment 2: The proposal will also require mitigation for impacts to transition areas based on the argument that transition areas protect wetlands and impacts to transition areas have an indirect negative impact on an adjacent wetland. No supporting information was documented regarding any study by the Department of transition area impacts and what negative consequences have occurred to wetlands. The proposed mitigation requirements are unnecessary given the already rigorous requirements the Department imposes through its regulatory program to authorize transition area impacts, which exceed Federal requirements. Those same requirements must be met to demonstrate a proposed activity will not negatively affect wetlands. The proposed mitigation requirement is excessive and essentially acts as a land grab with respect to lands that are not wetlands.

Description of Proposed Rule: NJAC 7:7A-5.4(a)5 – *This is a new regulation that would require the following: "If the total combined area of wetlands, State open waters, and transition areas disturbed or modified on the site pursuant to general permits 2, 6, 6A, 7, 8, 10A, 10B, 11, 12, 13, 14, 17, 17A, 18, 19, 21, 23, 24, and 25 exceeds 0.1 acre (excluding transition areas that are required for access to a general permit activity and transition areas that are part of an averaging plan) then mitigation in accordance with N.J.A.C. 7:7A-11 is required for all impacts authorized."*

Comment 1: We do not support the adoption of this requirement. The purpose of the Freshwater Wetland General Permit Program under the Freshwater Wetland Protection Act becomes ambiguous if mitigation is mandated for any wetland, wetland transition area, and state open water impacts exceeding 0.1 acre when aggregating impacts across various general permits.

Comment 2: It is unclear if this new requirement will be combined with previous general permits already issued for the site or subject to each specific project. Please clarify.

Comment 3: The rule proposal lacks information on the annual reporting of wetland general permit impacts statewide to the USEPA, and it does not clarify whether these impacts have been increasing or decreasing annually for the specified permits.

Comment 4: The rule proposal states that the Department assesses general permit impacts as part of its annual reporting requirements to the USEPA. However, the USEPA does not regulate impacts to wetland transition areas at the federal level under the 404 Program. Therefore, it is unclear whether the assessment that led to the requirement for mitigation, based on annual impact totals, included wetland transition area impacts. Could the Department please provide clarification on this matter?

Comment 5: If the Department intends to require mitigation for transition area impacts, it should only mandate mitigation for permanent impacts (i.e. pervious to impervious area). Temporary transition area impacts associated with general permits are often necessary for site grading, and these transition areas typically remain pervious and vegetated post-construction. As long as an area remains vegetated after project completion, it continues to function as a wetland transition area.

Comment 6: Mitigation for temporary impacts should not necessitate a formal submission to the NJDEP Mitigation Unit. A restoration plan included within the permitting plan set submitted as part of a NJDEP DLRP permit application should suffice and provide adequate protection to the wetlands. Introducing a separate review component for this activity would likely significantly extend the NJDEP review timeline, potentially adding several months, and adversely affect the project's entitlement and construction schedules.

Comment 7: It is unclear from the rule proposal how mitigation for permanent wetland transition area impacts that may be required pursuant to new NJAC 7:7A-5.4(a)5 could be accomplished if there is no available area on the project site. Will mitigation banks for wetland transition areas be an option?

Description of Proposed Rule: 7:7A-5.7(b)1- *This section specifies that the Department shall not authorize activities under a general permit by certification or a general permit if the purpose is to eliminate a natural resource to avoid regulation. The proposed rule adds language stating that "any activity authorized under either permit must be necessary for the conduct of the proposed project. For the purposes of this subsection, 'proposed project' encompasses the use and configuration of all buildings, pavements, roadways, storage areas, and structures, along with all associated activities. '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 impacts to wetlands or State open waters."*

Comment 1: We do not support the adoption of this alternatives analysis requirement. The addition of this language signifies a shift in the purpose of regulation under general permits, effectively transforming the regulatory review process into one akin to individual permits. Previously, general permits were straightforward, by-right permits for activities with limited impacts on regulated freshwater wetland features. The new language introduces a subjective review element of potential project alternatives, making general permits unpredictable and potentially requiring more review time and/or re-design to comply with a subjective standard. The proposed standard of "no other practicable onsite configuration for the proposed project that would avoid or reduce impacts to wetlands or State open waters" would suggest that an alternatives analysis is required for each minimal impact proposed to freshwater wetlands, State open waters, and transition areas, which would be subject to the individual NJDEP DLRP reviewer's discretion. Can the Department confirm that an alternatives analysis will not be required for each and every wetland impact, and this new assessment of alternatives will not require an evaluation of a reduced project size and scope if the project otherwise fits within the general permit parameters?

Comment 2: By using standards similar to an Individual Permit in the General Permit, applicants will be encouraged to simply default to an Individual Permit application to increase the amount of allowable impact. Has the Department considered that this could have the unintended consequence of increasing wetlands impacts? Has the Department considered that this proposal could lead to significantly increased staffing demands given the likely increase in Individual Permit applications?

Description of Proposed Rule: N.J.A.C. 7:7A-5.7(b)1. – Requires General Permit applicants to demonstrate “no other practicable configuration” that would avoid or reduce the impacts to wetlands is likely to result in disputes between applicants and Department staff over project layout and requests for redesign and avoidance of impacts.

Comment 1: This type of second guessing will make obtaining approval more challenging and stifle reliance on General Permits, which are supposed to be a more streamlined permitting approach. Applicants who satisfy the criteria of the Statewide General Permit should be afforded the presumption of validity based on the statutory requirement that Statewide General Permits can only be issued in the first instance after the Department determines that the category of General Permit activities will only have minimal impacts. The proposal conflicts with the Freshwater Wetland Protection Act structure for General Permits and should not be adopted.

Description of Proposed Rule: N.J.A.C. 7:7A-7.2. - Removes the exemption for horizontal directional drill under wetlands due to “potential” impacts usurp legislative authority and regulates based upon fear of potential impacts rather than demonstration of actual impacts to regulated areas.

Comment 1: Under the Freshwater Wetland Protection Act, the Department only has jurisdiction to regulated impacts to wetland and transition area buffers. It does not have jurisdiction to regulate potential impacts. Jacking and Horizontal Direction Drilling are defined in the Flood Hazard Area Regulations; however, the Freshwater Wetlands Regulations also make reference to and note specific requirements for horizontal directional drilling. Will the Department be utilizing the definitions from the Flood Hazard Area Regulations when reviewing applications for Horizontal Directional Drilling and Jacking for the Freshwater Wetland Regulations?

Description of Proposed Rule: N.J.A.C. 7:7A-7.1(b)3 - Relates to General Permit for ongoing maintenance of an off-stream stormwater management facility created in uplands, including a wetland constructed in uplands for stormwater management purposes has been proposed to be modified to delete this: “includes removal of sediment and debris and mowing of vegetation as necessary to ensure that the stormwater management facility will function as it was originally designed and/or permitted. Maintenance does not include enlargement of a stormwater management structure, excavation below the original bottom of a structure, or any other change in its design” and adds language instead that states that maintenance includes activities that satisfy the following:

- i. All work occurs within, and is necessary for the continued functioning of, the stormwater management structure or conveyance;**
- ii. The existing stormwater management system is not expanded, enlarged, or otherwise modified to receive additional sources of stormwater runoff or include additional discharge points;**
- iii. The activities are limited to the removal of accumulated sediment, debris, or nuisance vegetation, or the stabilization of an eroded structure;**
- iv. No wetland or transition area vegetation is cleared, cut, and/or removed outside the structure or conveyance feature, unless such disturbance is unavoidable and necessary to gain access to the structure or conveyance feature and is minimized; and**

v. ***No trees are cleared, cut, and/or removed in a wetland or transition area outside the structure or conveyance feature.***

Comment 1: We do not support the adoption of these modifications for Wetland General Permit No. 1. The proposed changes to N.J.A.C. 7:7A-7.1(b)3 are fundamentally at odds with the green infrastructure requirements outlined in the State Stormwater Management Rules at N.J.A.C. 7:8. Redevelopment projects frequently occur on properties with existing human-made stormwater basins that were designed to meet the state stormwater management standards in effect at the time of their original development. By prohibiting modifications to these existing human-made stormwater basins to align with the current green infrastructure requirements of N.J.A.C. 7:8, the Department will compel applicants to alter already paved areas to construct additional compliant stormwater basins. This mandate will impose significant economic burdens on redevelopment throughout the State.

Description of Proposed Rule: N.J.A.C. 7:7A-7.5, 7.5 - Requirements of mitigation for permanent impacts to wetlands and forested transition areas if greater than 0.1 acres in the context of remedial investigation and landfill closures will discourage and delay remedial activity and landfill closure by adding time, burden and cost to the process.

Comment #1: The Department should align its regulatory programs to facilitate, not discourage, remedial activity. Has the Department estimated how many remediation projects may not occur do to the difficulty of mitigation and weighed the harms against the benefits of this proposal? The Department should consider limiting the proposed mitigation requirement to those that caused the discharge that is the subject of the remediation and not apply this requirement to those conducting remediation.

Description of Proposed Rule: N.J.A.C. 7:7A-7.6. - Requires applicants to demonstrate minimization of impacts to vernal habitat if the impacts would extirpate a vernal population and could not otherwise be avoided through project redesign.

Comment 1: The proposal conflicts with the Freshwater Wetland Protection Act structure for General Permits and should not be adopted. Requiring minimization conflicts with the Statewide General Permit program under the Freshwater Wetland Protection Act since DEP must have already determined in adopting the Statewide General Permit for isolated that impacts are minimal. Applicants who satisfy the criteria of the Statewide General Permit should be afforded the presumption of validity based on the statutory requirement that Statewide General Permits can only be issued in the first instance after the Department determines that the category of General Permit activities will only have minimal impacts.

Description of Proposed Rule: N.J.A.C. 7:7A-7.6(a)4 – New section that states that “if the wetland for which the permit is requested is found to contain obligate or facultative vernal habitat species (see N.J.A.C. 7:7 Appendix 1: Obligate and facultative fauna species found in vernal habitats), and filling activities would extirpate a local population of such species, the applicant shall demonstrate that the proposed configuration will minimize the impacts to the species that could not be addressed with a different project design that still meets the project purposes”.

Comment 1: We do not support the adoption of these modifications for Wetland General Permit No. 6. This new section in NJAC 7:7A uses language, similarly to the new language proposed in:7A-5.7(1), as well as other sections that introduce subjectivity and uncertainty for developers in the State. Can the Department confirm that this new assessment of alternatives where an applicant must demonstrate that the proposed configuration will minimize the impacts to the species that could not be addressed with a different project design that still meets the project purposes will not require an evaluation of a reduced project size and scope?

N.J.A.C. 7:7A-7.10A and 7.10B General Permits 10A (Very Minor Road Crossings) and 10B (Minor Road Crossings)

Description of Proposed Rule: N.J.A.C. 7:7A-7.10A and 7.10B – Sections have been modified to include the phrase “linear access” before reference to road crossings so these sections of NJAC 7:7A regulate “linear access road crossings”.

Comment 1: The rule proposal does not include a definition of “linear access” which will introduce subjectivity to NJDEP DLRP reviewers when reviewing pending permit applications. A definition of linear access should be provided in the final rule adoption.

Comment 2: These two general permits for road crossings have been modified over the years for clarity to identify that they serve to provide access to “buildable areas that would otherwise be inaccessible without crossing through freshwater wetlands, transition areas, and/or State open waters.” We agree with the Department’s position that these permits should not be permitted for the construction of parking areas (stalls) associated with proposed projects; however, in many cases internal access roads are required to be constructed through a transition area to gain access to other upland areas onsite on the far side of the proposed buildings/structures. These internal access roads around a proposed building are required for fire access and safe traffic flow. If these permits are not available for internal access drives, upland areas bottlenecked by regulated areas will be undevelopable, which amounts to a taking of land, and/or building area will need to be reduced and projects may become unfeasible.

Comment 3: The NJPACT rule proposal mentions the 2001 revisions to NJAC 7:7A that added language regarding the prevention of the skirting of the wetland or wetland transition area to increase developable area. This concept of skirting adds further confusion to this general permit because it encourages developers to shift access roads directly into the wetland or State open water where it could often have been designed and constructed only in the wetland transition area.

Description of Proposed Rule: N.J.A.C. 7:7A-8.1(b)5 – Requires impervious surface within 25 feet of a wetland to be removed and the area replanted and put under a conservation restriction, with some limited exceptions to allow cover where removal would increase flooding or have negative consequences, or where removal would prevent reasonable use or access.

Comment 1: The Department should clarify that the listed exceptions are illustrative and not exhaustive.

Description of Proposed Rule: N.J.A.C. 7:7A-8.2(f) - Requires the entire transition area buffer and wetland complex to be deed restricted under a conservation restriction as a condition of a TAW-AP.

Comment 1: The proposal is contrary to the Department’s regulatory program that allows use of multiple, incremental General Permits over time subject to overall, cumulative disturbance limits for the site, and will lead to increased disturbance by encouraging parties to maximize impacts before a restriction is imposed under an Averaging Plan to avoid having to later come back for a conservation restriction modification or release. The wetland and buffer complex is already protected from future proposed activities through the permitting program, making the conservation restriction requirement merely a means of precluding future development that would otherwise be permissible under the regulatory program, rather than a valid, necessary regulatory initiative. The Department has not provided sufficient justification for implementation of the new rule in the Rule Summary. The Summary states that the conservation restriction is needed to ensure the modified buffer will continue to provide value and functions to protect the wetland. However, to approve the Averaging Plan, the Department would have had to have already determined that the modified buffer would continue to be protective of the wetlands, and the regulatory permitting program requires permits for future additional activities

to afford necessary protection against future impacts. The conservation restriction requirement is simply a mechanism to provide roadblocks and largely prevent future permitting and development opportunities that are expressly contemplated under the Freshwater Wetland Protection Act. Thus, the proposal is inconsistent with the Freshwater Wetland Protection Act.

Comment 2: Can the Department explain why a modified buffer approved by the Department would offer need greater protection than one that has not been subject to an averaging plan? Can the Department explain why Department approved modifications to a previously modified buffer would offer less protection to the wetlands?

Description of Proposed Rule: N.J.A.C. 7:7A-8.2(f) – *De minimis modification provisions relating to conservation restrictions afford only limited, nominal relief as the ability to secure such relief is uncertain and discretionary with the Department.*

Comment 1: The rules should include provisions that allow for automatic termination / modification of a conservation restriction in instances where wetland conditions change over time and an area under a conservation no longer constitutes regulated wetland or transition area buffer.

Description of Proposed Rule: 7:7A-11.8(a)3 and (b) – *Added section to wetland policy: “For a disturbance to transition areas, restoration of the area temporarily disturbed to a forested or non-forested transition area, as applicable. (b)Mitigation for a temporary disturbance requires the submission of the following: 1. A planting plan specifying the number, type, and quantity of each species to be planted; 2. A list identifying the components of any seed mixes proposed to be used; 3. A narrative description of the restoration plan; and 4. an invasive species control plan.”*

Comment 1: It is unclear if this new mitigation plan requirement will trigger a review of the mitigation plan by the NJDEP Mitigation Unit as part of the regular permit approval process or as a issued permit condition. Please clarify. We respectfully suggest that temporary wetland transition area impacts and restoration of those impact areas should not necessitate a formal review by the NJDEP Mitigation Unit. A restoration plan included within the permitting plan set submitted as part of a NJDEP DLRP permit application should suffice and provide adequate protection to the wetlands. Introducing a separate review component for this activity after permit issuance or during permit application review would significantly extend the NJDEP review timeline, potentially adding several months, and adversely affecting a project's entitlements and construction schedules.

Comment 2: Invasive species control and monitoring should not be a requirement of the restoration plan.

Description of Proposed Rule: N.J.A.C. 7:7A-11.6(h)15 - *New section in the rules requires “A discussion of the projected impact of climate change on the site in the future and any special considerations that may be necessary as part of the current mitigation project (for example, proposed site elevations and the type of plants selected for the site) to promote the immediate and long-term sustainability of the site. The discussion shall include all assessments applicable to the site under consideration, such as: an assessment of the site anticipating the effects of climate change and sea level rise by 2100, including five feet of sea level rise above the mean higher high water elevation as it exists on (the effective date of this rulemaking); an assessment of potential changes to precipitation, including an increase in the intensity and amount of precipitation, and a potential increase in summertime drought; and if proposing forested wetland mitigation, an assessment of the vigor of reference forested systems.*

Comment 1: The required assessments identified are vague with no clear direction on what an applicant must submit or what design standards a consulting firm must design their mitigation project to in order to be deemed successful. This new requirement for mitigation proposals will introduce subjectivity on the part of the reviewer within NJDEP's Mitigation Unit. We do not support the adoption of this requirement.

Description of Proposed Rule: N.J.A.C. 7:7A-12.2(b) - *Language allows conservation restrictions to be abandoned where project work has not commenced. Here, the Department acknowledges that the authorized project has commenced, affecting the ability to abandon the project and release the restriction as a matter of right, when any site disturbance, including pre-construction earth movement or vegetation removal occurs. This represents an inconsistency in the Department's rules relating to the duration of CAFRA permits and continuation rights based on regulated activities having commenced prior to permit expiration.*

Comment 1: NAIOP NJ supports this change

Description of Proposed Rule: N.J.A.C. 7:7A-20.2(c)27 – *Requires notice of commencement be given by on-line electronic certified registration of the activity not more than 14 days in advance of the start of authorized work will lead to a reduced compliance rate for such required notifications.*

Comment 1: Permit holders typically rely on their professionals to provide such notifications. Professionals who do not control when the permittee will actually begin work will likely be reluctant to provide the required certification, under penalty of fine and imprisonment (as stated in the required certification language), that work will commence within 14 days after the certification is made.

Comment 2: Is the requirement to remove all existing impervious surfaces within 25 feet of a wetlands boundary only triggered when proposing a transition area waiver or for any wetlands permit? Is the requirement to remove all existing impervious surfaces within 25 feet of a wetlands boundary applicable to all onsite wetlands or only the wetland where transition area disturbance is proposed?

Description of Proposed Rule: N.J.A.C. 7:7-3-5 – *Proposes to replace "Permits-by-Rule" with "Permits-by-Registration". 7:7-3.5 addresses the new procedure for processing Permits-by-Registration with the Department, whereas previously there was no procedure needed for Permits-By-Rule because they could be conducted without prior Department approval and/or notice.*

Comment 1: The new requirement puts additional burden on the applicant to process an online registration (in some cases the applicant can do it themselves, however, in some cases a New Jersey Licensed professional engineer or registered architect must do it), submit proof of the online registration to the local construction official and floodplain administrator, and certify separately when the activities have commenced and when the activities are complete. Furthermore, if the activity does not commence within 180 days of the registration, the applicant must re-register. All of this is for activities which currently require no action beyond the applicant reviewing the Permit-By-Rule to confirm the proposed activity is within the requirements of the Permit-By-Rule. These additional requirements burden the applicant with additional time and cost spend. The Department generally rationalizes this additional procedure to allow tracking and inspection of activities by the Department. However, it is unrealistic the Department can effectively track and/or inspect Permits-By-Registration given the Department currently struggles to meet regulatory review deadlines associated with applications currently requiring submission to the Department.

Description of Proposed Rule N.J.A.C. 7:7-8.2(g)2 - *The section describes the procedure for which the Department shall issue an individual permit to an applicant who is reapplying for the permit due to the expiration of an existing individual permit. The procedure varies based on whether the regulated activities subject of the permit had started or not. Depending on the status of the regulated activities (i.e. started or not started), different criteria are applied to determine the feasibility that the project can be redesigned as part of the re-application to comply with current standards of 7:7 (if standards have changed since the original permit).*

The Department proposes to add language to the criteria applying to a project for which regulated activities have started. The current criteria takes into consideration the amount of reasonable financial investment that has been made based on the original design, however, the Department proposes to add language indicating the reasonable financial investment is measured "in proportion to the project, and as determined by the Department"

Comment 1: The additional language added by the Department gives the Department unilateral discretion over applying an undefined financial investment model to the determination of feasibility of revising the activities to meet current standards of 7:7 as part of a permit re-application process. This has the potential to render otherwise large financial commitments by applicants a waste of money. Furthermore, the ambiguous and open-ended criteria leaves opportunity (and as evidenced by current application of currently vague and undefined NJDEP land use rules, for example the "dry access" criteria in the Flood Hazard Control Act rules) for inconsistent application of the rule by the Department depending on which staff is assigned to a given project. If the Department is taking unilateral discretion over determining the proportion of reasonable financial investment made in a project, the underlying financial models the Department proposes to use must be presented to the public for review and comment and also to allow for consistent application by Department staff.

Description of Proposed Rule N.J.A.C. 7:7-16.12.(d) - *The Department proposes to add additional language to the existing standard including specifying: 1. each turning movement must be analyzed against the Level D criteria (as opposed to the entirety of the "location" of a roadway), 2. the Level D criteria applies both during and post-construction, and 3. if the roadway is currently operating in excess (worse than) Level D, the applicant is responsible for maintaining the pre-development level of service.*

Comment 1: The additional requirements in this standard have the potential to make compliance with this standard much more difficult. For example, it is common for a given intersection (which is comprised of multiple turning movements within the overall intersection) to operate at Level D or better, however, a certain turning movement (for example a left turn from the side / minor street) may operate at less than Level D. The amended standard would not allow this common scenario, whereas the current standard would. Continuing the example, a general Action to allow the side / minor street turning movement to operation at Level D or better would be acquisition of additional right-of-way to add lanes / make the intersection more robust. Acquisition of additional right-of-way may not be practical at existing intersections due to existing adjacent development and/or other land constraints, particularly when the applicant's property doesn't immediately abut the intersection (it is common for intersections included in a traffic analysis to not be directly adjacent to the property on which development is proposed).

Comment 2: The Department adds language regarding compliance with Level D "during the construction of the proposed development". The Department must clarify what this means. For example, is the Department requiring two traffic studies (one during construction and one after construction)? A traffic study for "during construction" is rare if not unheard and it is unclear what this type of study would entail for a typical development. This would be an additional, unreasonable cost for the applicant. Another example, is the Department suggesting having one day of less than Level D

during construction (for example during a day of temporary traffic restriction or detour associated with roadway improvements) is grounds for permit denial for an otherwise compliant project? This could potentially kill otherwise compliant projects based a temporary situation / effect and would completely disregard the fact temporary traffic control during construction is addressed via specific traffic control plans subject to review and approval by the agency with jurisdiction over the roadway.

Description of Proposed Rule N.J.A.C. 7:7-27.2.(d).15.- *The Department proposes to require authorization / permits associated with habitable buildings, roadways, or railways within a flood hazard area to commence within 180 days of the date of issuance of the authorization / permit. Otherwise, activities are not permitted to commence unless and until the applicant re-registers the authorization or permit via 1. Certifying there has been no Department or FEMA amendment to the flood hazard area, floodway, and/or flood zone designation for the site; 2. If there have been amendments, demonstrating to the Department the amendments don't alter compliance with 7:7; or 3. If there have been amendments demonstrating the project has been revised to comply with the amendments. There is also criteria listed defining what "commencement" of the project is for each type of project. For a habitable building, customary site work needed to facilitate the building (i.e., clearing, grading, filling, etc.) does NOT qualify as commencement of construction.*

Comment 1: The proposed standard puts an unreasonably short limit on the validity of a permit relative to the flood hazard area / floodway / flood zone designation aspects of the permit. The various permits issued under 7:7 are valid for 5 years (they currently are and would still be under the proposed rule amendment), however, the Department is now requiring re-registration (and potentially re-design of the project if amendments to the FHA, floodway, and/or flood zone designation dictate) if the project doesn't commence in 180-days. This is contradictory to the 5-year validity of the permit, which is a much more reasonable timeframe for allowing commencement of the project given, for example, the plethora of other permitting an applicant must obtain (e.g. local planning and zoning, county, soil erosion, other State permitting, utility service permitting, building code permitting, etc.) and time needed to mobilize a contractor and perform the pre-requisite construction tasks needed to achieve the Department's restrictive definition of "commencement" (among other factors dictating the ability of a development to progress in construction).

Comment 2: The Department is disregarding and/or discounting the substantial time and cost investments made in the pre-construction phase of a development or redevelopment project. Lastly, this short, 180-day (0.5 year) timeframe in which an Applicant must re-evaluate FHA / floodway / flood zone is orders of magnitude less than the Department projecting and regulating floodwater characteristics out over 75 years from now.

Description of Proposed Rule - Appendix H listed the boundaries of the non-mainland (barrier island) coastal centers in the CAFRA Area. Appendix H is deleted, which deletes the non-mainland coastal centers.

Comment 1: Deletion of the non-mainland coastal centers will result in strict new impervious cover limitations (3%) and vegetative preserve / planting requirements becoming applicable. This results in a sudden and substantial reduction in the ability to develop and redevelop property in the barrier islands and makes development or redevelopment in most of the barrier islands improbable. The only potential remedy for individual property owners (and municipalities) is for the municipality in which the property is located to pursue center designation through the State Planning Commission's plan endorsement process. Same process is very long and intensive with no guarantee of approval.

Description of Proposed Rule: N.J.A.C. 7:8-1.2 Definitions - "Major Development" – "...Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of paragraphs 1, 2, 3, [or] 4, or 5 above. Projects undertaken by any government agency that otherwise meet the definition of "major development" but which do not require approval [under] pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development."

Comment 1: Golf course projects should not be included as part of a common plan of development or sale. Golf courses extend over several acres of land and include separate areas for the golf course, the club house, pool areas, tennis court areas, etc. Individual projects that occur on a golf course should only count individually for determining applicability of the stormwater regulations based on disturbance and proposed impervious areas, unlike phased residential developments they are typically part of a common plan.

Description of Proposed Rule: N.J.A.C 7:8-1.6 Applicability to Major Development – This section of the rules has been modified to simplify the legacy provisions by removing references to legacy provisions at the municipal level and MS4 permittees.

Comment 1: This section of the regulations refers to "complete application" and "technically complete application". Additional references to "administratively complete application" have been made for other applications. The Department should clarify the difference between phrases for determining legacy provisions for a project.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(d) – This section of the rule has been modified to include additional projects that would qualify for exemptions from strict compliance with the stormwater regulations. "(d) The following development projects are exempt from the groundwater recharge, stormwater runoff quality, and stormwater runoff quantity requirements at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, provided that any vegetated areas temporarily disturbed to conduct the project are, to the maximum extent practicable, revegetated with native, noninvasive vegetation upon completion of the project:

- 1. The construction, reconstruction, or repair of an underground utility line or cable, or its supporting infrastructure, such as conduit, junction boxes, and manholes;**
- 2. The construction, reconstruction, or repair of an aboveground utility line or cable, or its supporting infrastructure, such as poles and towers;**
- 3. The construction, reconstruction, or repair of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material;**
- 4. The maintenance of a dam; and**
- 5. Public safety improvements undertaken by a public transportation entity as set forth in this paragraph:**
 - i. Installation of guiderail systems, such as rails, posts, impact attenuators, and nonvegetated treatment surfaces, provided that any pavement utilized consists solely of permeable material;**
 - ii. Installation of traffic, utility, and ITS structures on poles including sign structures, such as traffic signs, dynamic variable message signs, cameras, radios, traffic signal equipment, and their supporting cabinets;**

iii. Installation of railroad lineside signaling systems; and

iv. Rockfall mitigation activities that do not result in a net increase of regulated motor vehicle surface or impervious surface.”

Comment 1: Items 1. and 2. should be clarified and/or modified to include storm pipes and sanitary pipes.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(e) – *This section of the rule has been modified and identifies additional projects that would be exempt from strict compliance with the stormwater regulations. “(e) A waiver from strict compliance from the green infrastructure, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements at N.J.A.C. 7:8- 5.3, 5.4, 5.5, and 5.6 may be obtained for the enlargement of an existing public roadway or railroad, or the construction or enlargement of a public pedestrian access, provided that the conditions at (e)1, 2, 3, and 4 below are met. The construction of a new public roadway or railroad is not eligible for a waiver pursuant to this subsection.”*

Comment 1: This section of the rule for exemption of strict compliance with the stormwater management rules should be revised to include airport runways and taxiways as well as linear public utility right-of -ways in the exemption.

Comment 2: Projects that require offsite improvements to public roadways should be eligible for the waiver request from strict compliance with the stormwater management rules. For similar reasons that public transportation entities are eligible for the waiver, the same type of unique technical and physical challenges to implement stormwater management measures would exist for owners/applicants that are required to expand, improve, etc. existing offsite public roadways, especially when the offsite improvements are remotely located from the main project site. It should not matter who pays for or constructs the improvements to the public roadways. The waiver should be available for the public roadway project irrespective of who is proposing the improvement.

Comment 3: Golf course irrigation pond projects should be exempt from strict compliance with the 5.3, 5.4, 5.5 and 5.6. Although the project may include disturbance of more than 1 acre, the project would have a de minimis impact to recharge, water quality or quantity since the goal of the project is to retain runoff, usually includes minimal or no regulated vehicular motor surfaces and is used to irrigate the golf course.

Comment 4: The nature of many utility projects mirror that of roadways with respect to long linear developments with limited areas of ROW and therefore should also be afforded the waiver of strict compliance from the stormwater management requirements. Linear public utility improvement projects present unique challenges for stormwater management, given their shape (long, linear, often narrow corridors) and the practical difficulties of implementing green infrastructure BMPs. Public utilities aren't positioned to, nor is it practical to, maintain traditional Green Infrastructure BMPs across utility corridors spanning tens of miles long.

Description of Proposed Rule: N.J.A.C. 7:8-5.3(f), (g), (h), and (i) – *This section of the rule is new and requires the implementation of green infrastructure measures to meet the stormwater regulations and also provides alternatives for projects that cannot implement green infrastructure measures due to unsuitable conditions at the site. “(f) A public transportation entity proposing a public roadway or railroad project shall demonstrate compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff*

quality, and stormwater runoff quantity at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 within the public roadway or railroad project limits, unless green infrastructure BMPs from Tables 5-1 or 5-2 cannot be utilized due to unsuitable hydrologic, hydraulic, or physical conditions. If green infrastructure BMPs from Tables 5-1 or 5-2 cannot be utilized within the public roadway or railroad project limits due to unsuitable hydrologic, hydraulic, or physical conditions, (g) below shall apply.

(g) Where a public transportation entity demonstrates that it cannot achieve compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity within the public roadway or railroad project limits in accordance with (f) above, the following requirements shall apply:

- 1. The public transportation entity shall demonstrate compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity at N.J.A.C. 7:8-5.4, 5.5, and 5.6, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 in disturbed lands immediately adjacent to the public roadway or railroad project limits.**
 - i. All disturbed lands adjacent to the public roadway or railroad project limits shall be investigated for achieving compliance with this paragraph regardless of whether the disturbed land is owned or controlled by the public transportation entity. For the purpose of this subparagraph, disturbed land includes lawn, farmland, or other disturbed areas, but excludes preserved farmland and wooded areas.**
 - ii. The public transportation entity's investigation shall include lands held for recreation and conservation purposes. However, such lands are not required to be utilized if the proposed green infrastructure solution would violate State or Federal law or be inconsistent with or require a release or modification of any recorded restrictions on the property.**
 - iii. Compliance with the minimum design and performance standards for groundwater recharge, stormwater runoff quality, and stormwater runoff quantity shall be achieved within the disturbed lands immediately adjacent to the public roadway or railroad project limits, unless the public transportation entity demonstrates that compliance within this area cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions.**
- 2. If the public transportation entity has demonstrated that compliance with (g)1 above cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions, the public transportation entity shall demonstrate compliance with the minimum design and performance standards for groundwater recharge and stormwater runoff quality at N.J.A.C. 7:8-5.4 and 5.5, respectively, by utilizing green infrastructure BMPs from Tables 5-1 or 5-2 in the land owned or controlled by the public transportation entity, and the disturbed areas immediately adjacent thereto, located upstream of the project and within the same HUC-14 as the project.**
- 3. If the public transportation entity has demonstrated that compliance with groundwater recharge and stormwater runoff quality standards pursuant to both (g)1 and 2 above and/or stormwater runoff quantity standards pursuant to (g)1 above cannot be achieved due to unsuitable hydrologic, hydraulic, or physical conditions, the public transportation entity may utilize stormwater BMPs from Table 5-3 to comply with the unmet standards that have been demonstrated to be not achieved pursuant to (g)1 and 2 above, as applicable, without the need to request a waiver from strict compliance pursuant to N.J.A.C. 7:8-5.2(e).**

(h) If the public transportation entity seeking to enlarge an existing public roadway or railroad demonstrates that compliance with the design and performance standards for stormwater runoff quality, groundwater recharge, or stormwater runoff quantity cannot be achieved in accordance with (f) and (g) above, it shall request a waiver from strict compliance pursuant to N.J.A.C. 7:8-5.2(e). The construction of new public roadways or railroads are not eligible for the waiver from strict compliance at N.J.A.C. 7:8-5.2(e).

(i) For the purposes of (f) and (g) above, unsuitable hydrologic, hydraulic, or physical conditions means any physical, hydrologic, or hydraulic impediment that prevents the installation of a functioning BMP on a particular area of land such as, but not limited to, high seasonal high water table elevation, slope steeper than the maximum slope allowable for a BMP, karst topography, shallow depth to bedrock, unavoidable adverse impact resulting from groundwater mounding, or physical impedances caused by existing structures. Additionally, an inability to retain safe pedestrian passage shall be considered an unsuitable physical condition. Demonstration of unsuitable hydrologic or hydraulic conditions shall be supported by appropriate documentation that complies with the requirements set forth in the applicable laws, rules, ordinances, and construction codes, such as soil testing reports, site plans, survey maps, geological investigation reports, geotechnical reports, and/or photos. The documents shall be submitted to the Department, along with the certification required at (j) below. Further, the public transportation entity shall retain copies of the documents. Installation of a stormwater BMP within the area of a sidewalk, whether within or outside the public roadway or railroad project limits, shall provide sufficient pedestrian passage in the remaining sidewalk.”

Comment 1: This waiver of strict compliance should be revised to include airport projects. Most airport properties exist in locations with unsuitable subsurface conditions (high groundwater, low infiltrating soils, etc.) and the use of the majority of green infrastructure best management practices (GI BMPs) are above ground and GI MTDs require plants/vegetation, which are both discouraged at airports for safety reasons because they attract wildlife.

Comment 2: Exemptions and/or deviations from the stormwater management regulations provided to public transportation entities should also be provided to owners/applicants proposing improvements in similar circumstances/locations. A private owner/applicant will have the same hardships as a public transportation entity when constructing offsite public roadway improvements, airport hangars, etc. whether it be challenging subsurface conditions, lack of available space and/or when improvements are proposed in remote locations from the main project site. Filling sites to raise grades to provide adequate separation from unsuitable subsurface conditions should not be required.

Comment 3: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are made by a private entity or a public transportation entity. Similarly, the provisions of these sections should apply to all off-site public roadway and railroad improvements required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.2(i)5 – Any flow control device, such as an orifice, weir, grate, or perforated pipe, at the outlet of the stormwater management measures shall be designed to prevent the clogging of the flow control device while achieving the design and performance standards at N.J.A.C. 7:8-5.4, 5.5, and 5.6.

Comment 1: The commentary on the rule indicates that the “Department will provide examples of acceptable outlet designs in the New Jersey Stormwater BMP Manual, which can be utilized by applicants without the need to provide additional proof of functionality. Applicants can also propose alternative measures to the review agency, but any such application would require additional information to demonstrate that the alternative outlet design is sufficient to prevent clogging.” Often times reviewers view the BMP Manual as an extension of the regulations and not a guidance document, so if an applicant proposes something that does not exactly align with the language in the BMP Manual, it gets flagged as non-compliant. The Department should clarify that the BMP Manual is a guidance document showing how the rules can be applied, but is by no means the only way to apply the rules. The public has not had the opportunity to comment on the BMP manual the same way as draft rule proposals can be commented on through a formal process through the NJ Register notification.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(a) – The Department has added “reconstruction” of one-quarter acre or more of regulated motor vehicle surface to the water quality threshold. Furthermore, the Department no longer intends to retain the reduced TSS removal requirement for redeveloped impervious surfaces, which was 50% TSS removal and intends to require 80 percent TSS removal for all new and redeveloped motor vehicle surfaces. “Stormwater runoff quality standards

(a) This section sets forth the minimum design and performance standards to control stormwater runoff quality impacts of major development. Stormwater runoff quality standards are applicable when the major development results in an increase or reconstruction of one-quarter acre or more of regulated motor vehicle surface.

Comment 1: Adding reconstruction of one-quarter acre or more to the major development will have significant impact on redevelopment projects. Incorporating above-ground small-scale GI BMPs to treat stormwater runoff will reduce yield (parking loss, building square footage loss, public amenities). This will likely result in some areas of the State designated as areas in need of redevelopment to remain in their current state.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b) – This section of the rule is new and requires 95% TSS removal rate for the water quality storm for projects that discharge within or to a 300-ft riparian zone. “(b) Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff generated from the water quality design storm from all new and reconstructed motor vehicle surface as follows:

1. Ninety-five percent TSS removal of the anticipated load, expressed as an annual average, shall be achieved for stormwater runoff from any new or reconstructed motor vehicle surface that is proposed to be:

i. Discharged within a 300-foot riparian zone (as established by the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1); or

- ii. ***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.***

Comment 1: In situations where 95% TSS removal is required and the stormwater water quality storm cannot be contained through infiltration/recharge, it should be acceptable to use a 50% TSS removal BMP/MTD in series with an 90% TSS small-scale GI BMP to achieve the 95% TSS removal target. This would still meet the intention of incorporating the use of small-scale GI BMPs in the stormwater design while allowing design engineers more practical options that meet the intent of the higher TSS removal rates. The downstream receiving water doesn't benefit from the use of two GI BMPs. Requiring use of only two small-scale GI BMPs in series in this situation will likely be technically impracticable due to the subsurface conditions (high groundwater, low permeable soils, etc.) and the vertical drop required across the two small-scale GI BMPs.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b)2.i. – This section of the rule is new and provides a reduced TSS removal rate for public transportation entities where the 80% TSS removal rate cannot be achieved. “2. Eighty percent TSS removal of the anticipated load, expressed as an annual average, shall be achieved for the stormwater runoff from [the net increase of] any new or reconstructed motor vehicle surface not covered at (b)1 above, except as follows:

- i. Where a public transportation entity demonstrates that achieving 80 percent TSS removal pursuant to (b)2 above for a public roadway project would require acquisition of developed or otherwise encumbered land outside of the entity's existing right-of-way along the section of roadway being improved or constructed, the public transportation entity shall instead provide water quality treatment to the maximum extent practicable, with a minimum water quality treatment of 50 percent TSS removal for all new and reconstructed motor vehicle surface.***

Comment 1: This section of the rule should be applicable to owners and/or applicants that are required to implement offsite public roadway improvements for their projects. Any applicant will have the same hardships as a public transportation entity when constructing offsite public roadway improvements whether it be challenging subsurface conditions, lack of available space and/or when improvements are proposed in remote locations from the main project site.

Comment 2: For owners/applicants looking to redevelop sites, the approach defined in this section of the rule should also be an acceptable approach for providing some level of water quality where none existed. Redeveloping sites and having to provide water quality measures using green infrastructure measures meeting the same criteria as undeveloped sites will reduce yield on the site (less parking, less building, etc.). Other states such as New York have implemented a redevelopment approach that offers multiple options to provide an appropriate level of water quality based on the extents and nature of the redevelopment project such as reducing impervious area, treating a smaller percentage of the site with standard BMP practices, treating a larger percentage of the site with an alternative BMP practice (such as a MTD) treating runoff at a 50% TSS removal rate, or a combination of the options.

Comment 3: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are completed by any applicant. Similarly, the provisions of this section should apply to all off-site public roadway and railroad improvements

required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.5(b)3.j. – This section of the rule is new and requires stormwater management measures to be designed to meet specific pollutants as defined in a TMDL or established by EPA. “(j) Stormwater management measures shall be designed to incorporate any additional measures specified in a TMDL(s) approved or established by the EPA, unless otherwise required pursuant to N.J.A.C. 7:14A-25.6(e).

Comment 1: The updated GI BMPs provided in the rule and the best management practices manual only list approved TSS removal rates. If projects will also be held to targeting specific pollutants based on an approved TMDL or established by EPA, can Table 4.2 be relied on for removal of specific nutrient removal rates since it is from the 2004 issuance of the BMP manual? An updated table considering small-scale GI BMPs nutrient removal rates should be provided, which would presumably have more effective removal rates because of reduced drainage areas than what is currently provided in the BMP manual.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(b)2.i. – If the analysis demonstrates that there is no increase in the volume or peak runoff rates of stormwater leaving the site, and the change in timing is solely a result of the proposed installation of BMPs to comply with N.J.A.C. 7:8-5.5 or (d) below, then no analysis of downstream flooding impacts shall be required, unless the review agency determines that the project will result in increased flood damages downstream of the site.

Comment 1: Please provide examples of instances that would cause the review agency to determine that the project will result in increased flood damages downstream of the site. Reducing both peak flows and volume should be sufficient to show no downstream impact. As written, the regulation is still very open ended and subjective to interpretation.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(d)1.i. – This section of the rule is new and describes methodologies to address retention of the water quality on-site. “(d) Except as provided at (d)3 below, the design engineer shall demonstrate that the major development meets the minimum volumetric reduction standard in accordance with (d)1 and/or 2 below.

1. Stormwater management measures shall be designed to achieve retention of the water quality design storm by incorporating green infrastructure BMPs from Table 5-1 and Table 5-2 unless (d)1i below applies:

iii. Where an applicant demonstrates that compliance with this paragraph is technically impracticable as set forth at N.J.A.C. 7:8-4.6(a)1, or the type of stormwater is subject to N.J.A.C. 7:8-5.4(b)3, a major development site shall instead meet the hydrograph requirements at (d)1i(1) and (2) below:

(1) The runoff peak flow rate of the water quality design storm from the site shall be less than the runoff peak flow rate of the water quality design storm from a drainage area equivalent to the size of the disturbed area of the major development, with a woods cover type, in good hydrologic condition and on Hydrologic Soil Group D soil; and

- (2) *The runoff hydrograph duration of the water quality design storm from the site shall be greater than the runoff hydrograph duration of the water quality design storm from a drainage area equivalent to the size of disturbed areas of the major development, with a woods cover type, in good hydrologic condition, and on Hydrologic Soil Group D soil. For the purposes of this subparagraph, "runoff hydrograph duration" means the duration between the time that the runoff flow rate starts to be greater than zero to the time that the runoff flow rate becomes zero.*

Comment 1: Filling the site to provide required separation of proposed BMPs from unsuitable subsurface conditions (high groundwater, low permeable soils, etc.) should be included as one of the technically impracticable options for not being able to retain the water quality volume on site.

Comment 2: The rule is unclear in how this reduction can be met for options 1.i.(1) and (2). The rules should be clarified to indicate what means can be used to achieve the reduced rate and the release rate. BMPs listed in Table 5-3 should be included as options for meeting this condition and analysis examples for each BMP included in the BMP manual.

Comment 3: Where water quality is achieved via a BMP that cannot by itself meet the hydrograph duration requirement, such as a green MTD that does not have the capacity for volume storage, please advise if the hydrograph duration requirement could be met via a non-green MTD (such as an underground detention basin). This would be very helpful for situations such as a parking lot reconstruction project with a high groundwater table.

Description of Proposed Rule: N.J.A.C. 7:8-5.6(d)3. – *This section of the rule and removes the volume reduction for public transportation entities for projects that include upsizing of existing stormwater conveyance systems. "3. The volumetric reduction standards of this subsection shall not be applicable to projects that are undertaken by a public transportation entity in cases where the project meets the definition of major development solely because the project results in increased capacity of an existing stormwater conveyance system."*

Comment 1: This section of the rule should be applicable to owners and/or applicants that are required to implement offsite roadway improvements for their projects. A private owner/applicant will have the same hardships as a public transportation entity when constructing offsite roadway improvements that only include upsizing of existing stormwater infrastructure.

Comment 2: It should be confirmed or clarified that exemptions for improvements to existing public roadways apply regardless of whether these improvements are made by any applicant. Similarly, the provisions of this section should apply to all off-site public roadway and railroad improvements required by a public transportation entity, irrespective of who constructs them. If this is not currently the case, the proposed rules should be adjusted to ensure consistent treatment of all such public infrastructure projects, as there is no difference in stormwater impact based on the entity performing the construction.

Description of Proposed Rule: N.J.A.C. 7:8-5.9/10 – *Section 5.9 and new section 5.10 of the rule addresses variance relief from the design and performance standards of the stormwater rules. "7:8-5.10 Departmental variance from the design and performance standards for stormwater management measures*

(a) The Department may grant a variance from the design and performance standards at N.J.A.C. 7:8-5.3, 5.4, 5.5, and 5.6; provided the following conditions are met:

- 1. The applicant provides a written report, prepared by each MS4 permittee with postconstruction stormwater management review obligations for the project, which demonstrates how the requirements at N.J.A.C. 7:8-4.6(a)1, 2, and 3 and the Minimum Standards for Post Construction Stormwater Management in New Development and Redevelopment of the applicable MS4 permit(s) are met. At a minimum, this demonstration shall include an explanation as to why it is impracticable to accomplish the onsite stormwater management requirements of this chapter, and how the proposed offsite mitigation will ensure that the requirements at N.J.A.C. 7:8-5.3, 5.4, 5.5, and 5.6 are met.**
 - i. Where a project is not subject to municipal approval, the requirement at N.J.A.C. 7:8-4.6(a) referencing municipal approval or compliance with a municipal mitigation plan shall not apply;**
 - ii. If the variance that resulted in the mitigation project being required is from the green infrastructure standards at N.J.A.C. 7:8-5.3, then, notwithstanding the requirement at N.J.A.C. 7:8-4.6(a)3vi regarding the use of green infrastructure BMPs at Table 5-1, the mitigation project may use green infrastructure BMPs listed at either Table 5-1 or Table 5-2, provided the applicant is a public transportation entity proposing a public roadway or railroad project and all other requirements of this section are met;**
- 2. Except where a project is not subject to municipal approval, the applicant provides a preliminary or final site plan approval from the municipality, which includes a variance from the design and performance standards set forth in its municipal stormwater management plan and stormwater control ordinance(s);**
- 3. Except where a project is not subject to municipal approval, there is no deviation in the project design and performance standards as those approved in the municipal variance; and**
- 4. The Department determines the written report is prepared pursuant to (a)1, 2, and 3 above and demonstrates that:**
 - i. The requirements at N.J.A.C. 7:8-4.6(a)1, 2, and 3, as appropriate, are satisfied; and**
 - ii. There will be no adverse impacts to surrounding properties as a result of granting the variance pursuant to the standards in this subsection.**

(b) Within 30 calendar days of completion of the required stormwater mitigation project(s), the permittee shall provide documentation to the Department that the mitigation was accomplished.

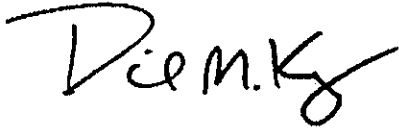
Comment 1: An applicant should have an option of requesting variance relief from the Department and/or a municipality from strict compliance with the requirements of N.J.A.C. 7:8-5.3, 5.4, 5.5 and/or 5.6 if an applicant can demonstrate meeting the requirements is technically impracticable due to existing subsurface conditions (high groundwater, low permeable soils, etc.) summarized by a detailed subsurface investigation corroborated by a licensed geotechnical professional. Raising sites by several feet should not be considered an acceptable approach to meeting the requirements. Currently, the existing rule and proposed amendment, still requires some sort of offsite mitigation project.

Comment 2: There should be a similar administrative waiver process in NJAC 7:8 as the hardship waiver process in NJAC 7:13 (FHA Rules) to grant relief from strict compliance with the stormwater management rules.

Comment 3: Dual approval from two or more agencies on the same regulation does not result in any benefit to the environment. A hierarchy of agency approval should apply and be accepted by the other reviewing agencies.

Thank you for the opportunity to submit these comments. We welcome a discussion on any and all points at any time.

Sincerely,

A handwritten signature in black ink that reads "Dan M. Kennedy". The signature is written in a cursive style with a large, sweeping "D" and "K".

Dan Kennedy
CEO, NAIOP NJ Chapter

Joint Meeting of NJ Senate Environment and Energy Committee
and NJ Assembly Environment and Solid Waste Committee

April 22, 2026

Good morning. My name is Dennis Toft, and I am here this morning in my capacity as the Environment and Energy Initiative Chair of the Executive Committee of the NJ State Chamber of Commerce. I am also Chair of the Environmental Department at Chiesa Shahinian Giantomasi PC. In that role I represent a number of developers and others who are impacted by the NJDEP REAL rules.

In their book "Abundance" Ezra Klein and Derek Thompson write about the current state of the regulatory environment in this country. The authors, both self-proclaimed liberals, make the point that regulatory system in this country has become so complex, it is preventing us from moving forward with needed projects like green energy infrastructure and affordable housing. As the authors state "Laws meant to ensure that government considers the consequences of its actions have made it too difficult for government to act consequentially." The REAL rules are perhaps the latest manifestation of this problem.

No one can reasonably argue that climate change and sea level rise is not occurring. Although there are still disputes about whether it is anthropogenic or a natural phenomenon, temperature data, and clear documentation of shrinking polar ice and reduced size glaciers belies any claim that climate change is not happening. Similarly, it is not disputable that government needs to be prepared for the impacts of climate change including both current and future flooding. However, the REAL rules do not effectively address these problems and create additional barriers to achieving the

State's goals of promoting redevelopment, affordable housing, and inexpensive green energy.

The REAL rules do not address the existing flooding problems in the State. The way to address these issues is to ensure that existing storm water infrastructure is maintained and to invest in new infrastructure to address future flooding. As we learned from past tragedies, existing storm water systems are not maintained well and when they are blocked during a significant storm, catastrophic results occur. The legislature created the ability for municipalities to create stormwater utilities to address this problem; but only a handful of stormwater utilities have been created. Further use of this approach should be encouraged. Similarly, NJDEP is to be commended for its Resilient NJ Program which encourages municipalities to work together to plan regionally for flood protection. Notably NJDEP announced yesterday that two more regions have joined this program bringing the total to six. The Legislature should support this program, and I am sure that the business community would be interested in how it can support this effort as well.

On the other hand, NJDEP rules governing stream cleaning should also be revamped; although there are some simplified permits for limited stream clearing or desnagging by a municipal government, the limitations in these permits make significant projects more difficult than they should be.

Investing in flood prevention infrastructure will also be more effective to address sea level rise in the long term than elevating new structures on a site-by-site basis as contemplated in the REAL rules. These projects will include nature-based solutions like

enhancing salt marshes or creating new wetlands to absorb flooding. Infrastructure projects should take advantage of planned federal dredging in New York harbor and elsewhere. Army Corps of Engineers policy requires the beneficial reuse of dredged material, and this creates an opportunity both for salt marsh restoration and to create artificial habitat islands that in addition to supporting wildlife, can provide flood protection. Projects like this have been successful in other states and should be encouraged in New Jersey. The Poplar Island project in Maryland is good example of how these projects can work. There is a very similar project proposed at the Bayonne Golf Club which will beneficially reuse dredge material from New York Harbor to create a new habitat island while providing flood protection for the City of Bayonne. If anyone from the Committees is interested, I can provide more information about this project and invite you to come visit the site.

With respect to the REAL rules, much of the criticism about the rules has focused on the provisions that require new development sites to be elevated by four feet above the FEMA flood elevation. This amount is based upon the projected sea level rise between now and the year 2100. Without engaging in a scientific debate about the details of this, it is fair to say that any projection of what will happen seventy-five years from now is questionable at best and may not be the best scientific basis for making a significant policy decision.

There are other obstacles in trying to build new developments at this increased elevation. First, existing infrastructure is not also being elevated creating access problems and significant perhaps insurmountable obstacles with NJDEP's dry access requirements. Second, other recent changes to NJDEP site remediation and potential

pending changes to NJDEP solid waste regulations will make it extremely difficult and expensive, if not impossible to reuse soil to elevate sites to meet the new requirements. These regulations limit reuse of contaminated soil, even on a brownfield site. The “Dirty Dirt” rules, which are pending proposal after the legislature amended the “Dirty Dirt” law, could also create an impediment to elevating sites. When NJDEP was adopting the REAL rules, there seemed to be a lack of coordination among the programs at NJDEP, and a lack of recognition that there is a lack of affordable clean fill to achieve the elevations the rules would require. Third, it is not clear how increased impacts to neighboring properties will be minimized or avoided once one redevelopment site is elevated. In places like Bayonne or Jersey City, elevating one property to meet the new standards would likely force more flood water onto other nearby sites during a flood event. This is another reason the sea level rise issue should be addressed as an infrastructure problem first.

The exemption for affordable housing projects in the REAL rules is contrary to environmental justice principles. Again, taking environmental justice into consideration calls for infrastructure investment in EJ communities to both address current flooding concerns and to protect these areas from future events.

There are numerous other changes that were made as part of the REAL rules that add layers of regulatory requirements having nothing directly to do with sea level rise, but which will hamper and increase the cost of redevelopment. There are more than a dozen of these additional changes in various NJDEP rules including Flood Hazard, Coastal Development, wetlands, and stormwater. Two are of particular note. Under the amended stormwater rules, if an existing impervious surface is to be reconstructed, the

redeveloper will need to meet the updated TSS removal requirements for all reconstructed surfaces. This will increase the cost of and discourage brownfields redevelopment. Under all the rules, a new provision will require that projects receiving an NJDEP permit commence construction within 180 days of permit issuance. As a practical matter this is unworkable. Projects require approvals not only from the NJDEP but also from other State and local agencies. NJDEP frequently urges developers to come to NJDEP first. The process of obtaining local approvals and satisfying the conditions of these approvals can itself take more than 180 days. Moreover, it is not clear how this requirement benefits the environment.

NJDEP's prior answer to concerns like this was that these types of concerns can be addressed through the hardship exception process in the Flood Hazard rules. This process is far from certain, and it does not apply to wetlands or coastal permits. It is not an effective solution to the concerns of the development community.

Based upon this, in order to meet the intent of both the legislature and Governor Sherill's Executive Orders, we urge that the REAL rules be withdrawn or stayed and substantially revised. These revisions should be based upon a robust stakeholder process with emphasis on addressing the infrastructure requirements that are the key to addressing existing and future flooding risks. The NJ State Chamber of Commerce will gladly participate in such a process.

Thank you.

Sen. Amato Remarks for Senate Environment & Energy Committee – April 22, 2026

Thank you, Mr. Chairman.

Since its adoption in January, Shore communities in my district have dealt with the uncertainty created by NJDEP's NJ REAL regulations. Rules that were misguided and, in their current form, would drive up costs for families, retirees, and small businesses.

That's why this legislation matters.

It begins the process of undoing regulations that were imposed without proper collaboration with local officials and coastal residents.

Several months ago, my colleagues and I in the 9th Legislative District raised concerns about how these regulations impact our Shore communities and urged the Murphy administration to work with our local governments and planning authorities.

Unfortunately, the previous administration ignored these concerns, and the REAL regulations were implemented anyway.

For the communities that I represent, these were not abstract policy discussions. These were real concerns from local officials and residents who would be responsible for navigating these rules every day.

This legislation is about getting it right and working together to fix a policy that didn't work for our communities.

We all share the goal and the immense responsibility of protecting the environment and our coastline. But we must do it together—both here in Trenton and with the people who live and work in our coastal communities every day.

Thank you.

120x

Asm. Scharfenberger

The NJ PACT rule change would be disastrous for the Jersey shore on several levels. The impetus for this rule stems from a 2019 Rutgers Science and Technical Advisory Panel (STAP) study from Rutgers University speculating that sea levels around the world would rise by more than five feet within 75 years. In reality, no one on the planet believes this to be accurate. This rule was written as if those conditions were here now. As a result, these rule changes are designed to force residents and businesses to move away from the shore areas to places well inland deemed "safe" by the NJDEP.

The first and most visible negative will impact flood insurance. If it can even be secured, it will be prohibitively expensive. Insurance companies, like most businesses, plan their future business models on projections that take into account anticipated changes to legislation, demographics, economic conditions and so on.

Next will be the impact on schools, counties and local municipalities. The loss of ratables because of severely diminished land values will result in falling revenues, which can only be made up by increased taxes for the remaining residents and businesses.

Finally, the storied Jersey shore and other similar areas generate billions of dollars in economic activity through tourism. The NJ PACT rules will devastate these economies and create a ripple effect across the state.

Clearly, everyone wants sound policy that will protect the environment and the people who live, work and recreate in these areas. That can only be achieved by using reliable data and including everyone who will be impacted in the discussion. Having been concerned with the NJ PACT rule change since its inception, I am encouraged by this proposed resolution to bring a reasonable solution that will not devastate the coastal and riverine communities of New Jersey.

Thank you, Chair Kennedy

124x



Rahway River Watershed Association
Protecting and Restoring The Rahway River & Its Watershed

April 29, 2026

RE: REAL Rules (Resilient Environments and Landscapes)

Dear NJ Legislature,

On behalf of the Rahway River Watershed Association, I am writing to express support for the recently adopted NJ PACT Resilient Environments and Landscapes Rules and, in particular, the revisions to the NJ Flood Hazard Area (FHA) Control Act Rules. These revisions are well within the authority of the NJ Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), which explicitly states that NJDEP is allowed to revise the Rules. The revised FHA Rules in no way regulate the emissions of carbon dioxide or other greenhouse gases. The revision relates to the expected increase in the elevation of floods and is wholly consistent with the intent of the Act.

By requiring forward-looking flood and climate standards, the REAL Rules reduce the likelihood that the State and its taxpayers will repeatedly bear the costs of preventable flood damage. Upfront risk reduction is significantly more efficient than repeated disaster recovery spending, infrastructure replacement, and emergency response.

In this way, the REAL Rules represent sound fiscal management and long-term cost containment. Properly implemented, the REAL Rules not only protect our communities and their flood-buffering environment, but also reduce future taxpayer liabilities.

The REAL rules are important for the protection of New Jersey communities and their environment. The storms last summer and fall and the damaging flooding they brought clearly demonstrate that New Jersey is experiencing a wide range of impacts from climate change. Extreme storms this summer resulted in two deaths and extensive flooding in New Jersey. Coastal storms last fall, while not hurricane level, resulted in significant flooding in our coastal communities.

We know that the Federal government is reducing its role in disaster preparedness and recovery. The federal administration has stated that the states should be primarily responsible for preventing and responding to natural disasters. The REAL rules do just that: setting standards that reduce the risk of storms.

Please discontinue all efforts to repeal the REAL rules. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Kirk R. Barrett". The signature is written in a cursive, slightly slanted style.

Dr. Kirk Barrett, President
president@rahwayriver.org
973-313-1218

122x

Hansen, Eric

From: Rahway River Watershed Assoc. <president@rahwayriver.org>
Sent: Wednesday, April 29, 2026 9:16 AM
To: OLSaideSEN
Subject: Please discontinue all efforts to repeal the REAL rules

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from president@rahwayriver.org. [Learn why this is important](#)

On behalf of the Rahway River Watershed Association, I am writing to express support for the recently adopted NJ PACT Resilient Environments and Landscapes Rules and, in particular, the revisions to the NJ Flood Hazard Area (FHA) Control Act Rules. These revisions are well within the authority of the NJ Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), which explicitly states that NJDEP is allowed to revise the Rules. The revised FHA Rules in no way regulate the emissions of carbon dioxide or other greenhouse gases. The revision relates to the expected increase in the elevation of floods and is wholly consistent with the intent of the Act.

See full letter attached.

Please discontinue all efforts to repeal the REAL rules.

Thank you for your consideration.

Regards,
Kirk Barrett, PhD, PE
President, Rahway River Watershed Association
www.rahwayriver.org and www.facebook.com/rahwayriverassociation
president@rahwayriver.org 973-313-1218
<https://www.linkedin.com/in/kirk-barrett/>

EDWARD R. BONANNO, MAYOR
DIRECTOR OF PUBLIC AFFAIRS & SAFETY

JOHN B. MAGRINI, COMMISSIONER
DIRECTOR OF REVENUE & FINANCE

MICHELLE DEVOY, COMMISSIONER
DIRECTOR OF PUBLIC WORKS



PHONE: 732-502-4510

FAX: 732-774-0605

E-MAIL: avonboro@avonbytheseanj.com

WEB: www.avonbytheseanj.com

KERRY McGUIGAN
ADMINISTRATOR / TAX COLLECTOR

ANNA BONGIORNO, RMG
BOROUGH CLERK

301 Main Street • New Jersey, 07717

Ed Potosnak, Acting Commissioner
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625

Re: NJ REAL Rules

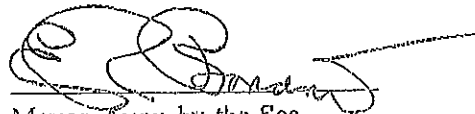
Dear Commissioner Potosnak:

Our coastal communities of Southern Monmouth County urge the New Jersey Department of Environmental Protection (NJDEP) to withdraw and suspend the implementation of the recently promulgated Resilient Environments and Landscapes (REAL) rules. This will allow our communities, which will be directly and severely impacted by these regulations, to work with the Legislature and NJDEP to revise them to balance the goals that they seek to promote with the significant concerns and interests of our communities.

We recognize the NJ DEP's goal of addressing climate resilience through resilient construction. However, the NJ REAL rules approach, based upon long-term projections rather than present near-term conditions in our area, fails to reflect the typical lifecycle of residential structures, infrastructure investments, and property ownership in established communities such as ours. The NJ REAL rules will substantially expand the areas treated as flood-regulated in our communities, and based upon preliminary maps and analyses, may affect a substantial majority of properties within our municipalities. We are concerned that these expanded regulatory designations will trigger required building elevations above FEMA Base Flood Elevations, restrictions on basements and sub-grade improvements, increased construction costs and higher insurance premiums for homeowners. In addition, these expanded designations will adversely affect property values, marketability, and long-term ownership costs for property owners, many of whom are seniors.

In light of the enormous impact that the NJ REAL regulations will have on our communities, we believe that it is critical for NJ DEP to withdraw these rules and suspend their implementation to provide our communities with an opportunity to work with the Legislature and NJDEP to develop an approach that meets the goals that NJ DEP is seeking with these rules in a manner that has the least possible impact on our communities. We look forward to hearing from you and working with you.

124x




Mayor, Avon-by-the-Sea

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners
assembly rep. Paul Kintra.


Mayor, Belmar

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Dunlon, Kean, Peterpaul, and Schmall
Monmouth County Board of Commissioners




Mayor, Bradley Beach

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners


Mayor, Brielle

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners



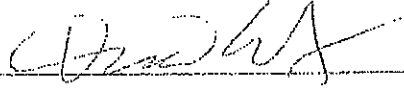
Mayor, Lake Como

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners

Wendell M....
Wendell M. ...

CC: Office of the Governor
Secretary of State
Assembly Representative ...
Minnesota County Board of Commissioners

130x



Mayor, Sea Girt

Cc: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpual, and Schnall
Monmouth County Board of Commissioners
Assembly Paul Kanitra

131x



Mayor, Spring Lake

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners

132x

Christopher M. Campion, Jr
Mayor, Spring Lake Heights

CC: Office of the Governor
Senators Gopal and Singer
Assembly Representatives Donlon, Kean, Peterpaul, and Schnall
Monmouth County Board of Commissioners

133x



April 22, 2026

Honorable Bob Smith, Chair Senate Environment & Energy Committee & committee members
Honorable James Kennedy, Chair Assembly Environment & Solid Waste Committee & committee members

Dear Senator Smith, Assemblyman Kennedy, and committee members:

Thank you for the opportunity to submit written testimony to the joint Senate Environment & Energy Committee and Assembly Environment & Solid Waste Committee on Earth Day 2026. The Association of New Jersey Environmental Commissions (ANJEC) has grave concerns about the legal accuracy and potential damage to human health, safety, and the environment posed by Senate Concurrent Resolution No. 106/Assembly Concurrent Resolution No. 59, which "*determines that DEP's "Protecting Against Climate Threats" rules, adopted January 20, 2026, are inconsistent with legislative intent.*" It is our position that SC-106/ACR-59 is factually incorrect and that the NJPACT REAL rules indeed implement legislative intent, specifically as identified with statutory reference in the NJPACT REAL rules cited in the NJ Register in the August 5, 2024 proposal, July 21, 2025 notice of substantial changes, and January 20, 2026 adoption notice.

The New Jersey Protecting Against Climate Threats Resilient Environment and Landscapes (NJPACT REAL) rules were adopted by the New Jersey Department of Environmental Protection (NJDEP) upon publication in the New Jersey Register on January 20, 2026. While these rules are referred to as a package of regulations using the phrase "NJPACT REAL," functionally, they are updates informed by the best available science and management techniques to existing regulations that have been adopted over the due course of time to implement various laws passed by the NJ Legislature. The updates to the existing regulations and their underlying statutory authority are cited in the NJ Register in the August 5, 2024 proposal, July 21, 2025 notice of substantial changes, and January 20, 2026 adoption notice. Moreover, the updates to existing regulations are consistent with the Administrative Procedures Act.

Furthermore, SCR106/ACR59 inaccurately assesses the rule updates of "limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments." The NPACT REAL rule regulatory updates in no way limit development rights. The NJDEP and other agencies have long regulated development and redevelopment to protect public health and safety; the NJPACT REAL rules are consistent with this tradition and statutory authority provided by the NJ Legislature and cited in the NJ Register in the August 5, 2024 proposal, July 21, 2025 notice of substantial changes and January 20, 2026 adoption notice. In addition, the NJDEP emphasized, in the notice of substantial changes, that it explicitly was not limiting development rights. The department stated that it:

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has provided an exception to the requirement to meet these standards in cases where the proposed improvements consist solely of “repair and maintenance activities that do not alter the building’s height, footprint area, or habitable area.” It is not the Department’s intention to discourage homeowners, for example, from undertaking necessary improvements to their home that do not alter the building’s height, footprint area, or habitable area. (57 N.J.R. 1547(a)).

Additionally, SCR106/ACR59 inaccurately assesses the rule updates of “greatly restricting development in large areas of the State and increasing regulatory costs.” The NPACT REAL rule regulatory updates in no way restrict development in new areas. The NPACT REAL rules provide conditions for how development and redevelopment projects must be built to protect public health and safety. NPACT REAL rules are consistent with this tradition and statutory authority provided by the NJ Legislature and cited in the NJ Register in the August 5, 2024 proposal, July 21, 2025 notice of substantial change and January 20, 2026 adoption notice. **New Jersey’s Flood Hazard Area Control Act explicitly directs the Department to “adopt rules and regulations which delineate as flood hazard areas such areas as, in the judgment of the department, the improper development and use of which would constitute a threat to the safety, health, and general welfare from flooding.” N.J.S.A. 58:16A-52.**

Moreover, the rules provide a 180-day grace period for development projects that have not yet received permits. The adopted rules, in the Department’s response to comments, state:

The Department received comments indicating that many prospective development projects have proceeded to a point in planning and design such that, while permit applications have not yet been submitted to the Department, major resources have been expended based upon the existing rules, and, thus, being required to comply with the new standards may create significant delays for those projects. The commenters requested a grace period to allow projects to proceed to Department review pursuant to the existing rules before the REAL rules are implemented. After careful consideration of these comments, and in recognition of the substantial time and resources invested in development projects before DEP applications are submitted, the Department is making substantial changes to REAL’s “legacy” provisions in the FHACA, CZM, FWPA, and Stormwater Management rules to address these concerns. Generally, these amendments provide that the current rules, meaning those in effect immediately prior to the effective date of REAL, will be applied to all projects for which the applicant submits an administratively and technically complete application to the Department for the required permits within 180 days of REAL’s effective date. (58 N.J.R. 247(a)).

Additionally, SCR106/ACR59 misleadingly states that the “DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the “Global Warming Response Act,” P.L.2007, c.112 (C.26:2C-37 et 20 seq.)” The Global Warming Response Act specifically addresses greenhouse gas emissions. The NPACT REAL rules do NOT address greenhouse gas emissions and therefore appropriately do not rely on P.L.2007, c.112 (C.26:2C-37 et 20 seq.)



The SCR106/ACR59 incorrectly claims that the REAL Rules used authority from N.J.S.A. 26:2D-1 et seq. for the various changes to the Flood Hazard Area Control Act Rules, Freshwater Wetlands Protection Act rules, and the Stormwater Management Control Act rules. The reference to such authority was solely to update the Radiation Protection Act rules to correct a reference from the 100-year flood plain, a term that New Jersey Regulations do not define, to the term used by New Jersey—"flood hazard area as defined by N.J.A.C. 7:13. N.J.A.C. 7:28-59.1.

Likewise, the claim that reference to N.J.S.A. 58:10-35.1 (underground storage of natural gas and petroleum) authorized the entire REAL Rule is incorrect. N.J.S.A. 58:10-35.1 was referenced as authority to amend the Underground Storage Caverns. The reference to N.J.S.A. 58:10-35.1 was to amend the Underground Storage Caverns Regulations at N.J.A.C. 7:1F-2.4 to change the required inventory items from "floodway and flood fringe areas" to "regulated areas," and incorporate the required 100-year storm event analysis to "climate-adjusted flood elevation"

Neither N.J.S.A. 26:2D-1 et. seq. nor N.J.S.A. 58:10-35.1 et seq. are used by the Department to justify anything more than amendments to the regulations implementing those statutes.

Furthermore, SCR106/ACR59 refers to definitions pertaining to expanded flood hazard areas in the NJPACT REAL rules that simply do not exist.

Furthermore, it should be noted that the NJDEP has held more than 50 stakeholder meetings about the NJPACT rules over the course of more than five years beginning in 2020 wherein feedback from developers was solicited and incorporated into the original rule proposal in August 2024 and in the substantial rule amendments published in July 2025.

I have personally worked with NJDEP staff for more than 17 years on developing policies that will create safer New Jersey communities that are more resilient to climate change and protect the lives of residents and their homes from the increasing impacts of flooding. ANJEC is in full support of the NJPACT REAL and supports their implementation on July 20, 2026 as adopted in the NJ Register.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Coffey". The signature is fluid and cursive, with a large initial "J" and "C".

Jennifer M. Coffey, Executive Director
Association of New Jersey Environmental Commissions (ANJEC)

136x

Elissa C. Commins, PE, PP, CME, CFM, CPWM

April 20, 2026

Senator Bob Smith
New Jersey Legislature District 17
216 Stelton Road, Suite 5E
Piscataway, NJ 08854

RE: REAL People with REAL Struggles Implementing the REAL Regulations

Dear Senator Smith:

Over the past two years, I have had the opportunity to thoroughly review the REAL regulations. I have examined both the proposals and the finalized rules multiple times and in several distinct capacities: on behalf of the NJ Coastal Resilience Collaborative Policy Workgroup; as Past Chair of the NJ Association for Floodplain Management; as the Township Engineer and Floodplain Manager for the Township of Brick in Ocean County; and as a resident of a back-bay community within the northern reaches of Barnegat Bay. Each of these roles has provided a different perspective, requiring careful consideration before offering comments.

I firmly believe in climate change and have a strong understanding of the risks associated with living, working, and recreating in New Jersey's coastal flood hazard areas. I recognize that requirements for higher elevations and stricter construction standards will have meaningful, positive impacts by reducing those risks and promoting sound floodplain management to protect people, property, and critical infrastructure. Overall, I believe the REAL rules represent a significant step toward a more resilient coast.

I take no issue with the elevation requirements imposed by the REAL rules and recognize their importance in reducing flood risk and improving long-term resilience. I am not writing to challenge the underlying science, but to highlight practical implementation issues within the regulations that may create unintended hardships for those who live, work, and recreate along the Jersey Shore. Based on my experience enforcing these rules, I have identified several implementation concerns. I have attempted to present these issues clearly and accessibly so that they can be understood without specialized expertise in engineering, floodplain management, or permitting. However, I would be glad to provide further clarification if needed.

These concerns have been shared with Vince Mazzei, State Floodplain Administrator, and Colleen Keller of the NJDEP Division of Land Resource Protection.

I thank you for your time and consideration with respect to these matters and for doing what is best for New Jersey, every day.

Sincerely,



Elissa C. Commins, PE, PP, CME, CFM, CPWM
Township Engineer & Floodplain Manager, Township of Brick
New Jersey Association for Floodplain Management, Past Chair
New Jersey Coastal Resilience Collaborative, Board Member

137x

THE REAL REGULATIONS ARE OVERREACHING WITH RESPECT TO ADDITIONS AND ALTERATIONS:

7:13-2.4 Regulated activities

(a) Except where exempted from this chapter pursuant to N.J.A.C. 7:13-2.5, any action that includes or results in one or more of the following constitutes a regulated activity pursuant to this chapter if undertaken in a regulated area, as described at N.J.A.C. 7:13-2.3:1.

5. The construction, reconstruction, repair, alteration, enlargement, elevation, or removal of a structure; and
6. The conversion of a building into a single-family home or duplex, multi-residence building, or critical building.

There is no definition of "Alteration" in the regulations. Without a definition, the REAL regulations default the Uniform Construction Code (UCC) definition:

"Alteration" means the rearrangement of any space by the construction of walls or partitions, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any additional equipment or fixtures and any work which affects a primary structural component.

This is a very broad definition. Similarly, enlargement is not defined either. By using the definitions in the UCC, the floodplain manager must assume all alterations and enlargement are regulated, regardless of how minor in scope. Every new window, deck, covered porch, generator, AC condenser, remodeled bath, etc....

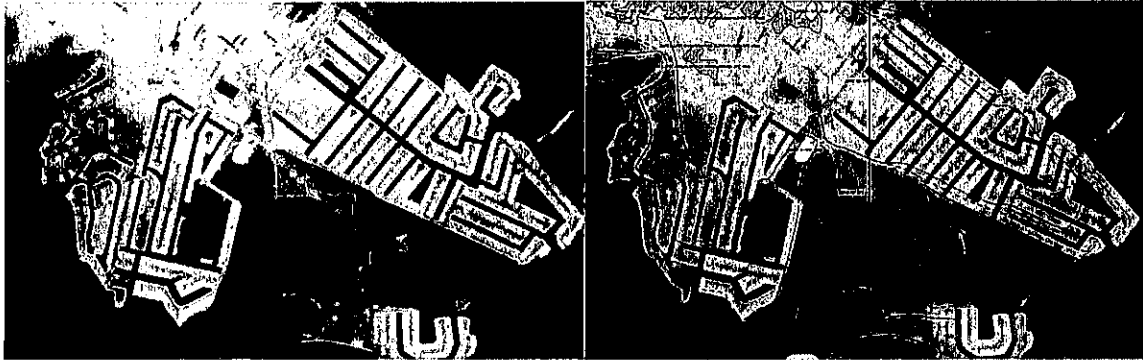
LACK OF MAPPING/INACCURATE MAPPING

The Department has not provided actual mapping for the new Flood Hazard Areas designated as the Inundation Risk Zone or the Climate Adjusted Flood Elevation. They are using approximate delineations with no information provided on the source of the existing topographic elevations. When I compare the elevations approximated on these maps to surveyed properties in the Township of Brick, I see discrepancies of several feet. Several feet of elevation change in NJ's coastal plan can equate to acres upon acres of land being inadequately mapped into or out of a Special Flood Hazard Area; however, people are being regulated based upon these maps.

THE INUNDATION RISK ZONE

The Department has The Inundation Risk Zone is not a small subset of the flood zone in the back bay communities of northern Ocean County. The IRZ can be estimated by using the Sea Level Rise 4 ft. Layer available in the NJ GeoWeb. (Essentially, everything below elevation 6.22 in Brick's Metedeconk watershed) Once compared with the 2015 Preliminary Flood Insurance Rate Maps, the areas prove to be nearly congruent, as our lowest flood elevation is 7.0. Nearly every property that was in a preliminary flood zone on 1/19/2026 is located in the IRZ as of 1/20/2026.

Structures within the IRZ are not eligible for permits by registration, general permits by certification or general permits. Each one of these structures would be required to get an FHA Individual Permit for every single improvement they propose.



For a single-family homeowner, the costs associated with making application for an individual permit are easily between an additional \$8,000 - \$25,000, depending on the nature of the project. Additionally, full architectural plans may be required to review and provide the substantial improvement determination prior to even making application to the DEP. That is an additional cost a homeowner must invest for a project that may get denied at the state level.

WHO IS RESPONSIBLE FOR MAKING SURE PEOPLE HAVE THE RIGHT PERMIT?

People are now allowed to register their activity online and they receive a permit from the NJDEP instantly. With respect to Permits by Registration and General Permits by Certification, who is supposed to be keeping track that people are actually applying for the correct permit? That people are not just registering for one thing, getting a DEP authorization and constructing something different?

When reviewing applications, I ask for a copy of an applicant's DEP permit when one is required. With your new system, who is making sure people are actually applying for and receiving the permits that they are supposed to be getting? Please do not try to make this the "local official's" responsibility.

CAFRA GENERAL PERMITS BY CERTIFICATION V. FLOOD HAZARD AREA INDIVIDUAL PERMIT

Let's assume that every house in the snip provided below wants to put on the same addition.

The ones that are on the water qualify for a CAFRA General Permit by Certification No. 6. They can apply (through their engineer) online and have a permit the same day for a \$1,000 application fee.

The houses across from the water are not regulated by CAFRA. As they are in the Inundation Risk Zone, they do not qualify for any general permits or permit by registration. They have to apply for an individual permit from Flood Hazard Area. That's about \$10,000 in engineering plus application fees and the wait time for a review. And those houses are not on the water.

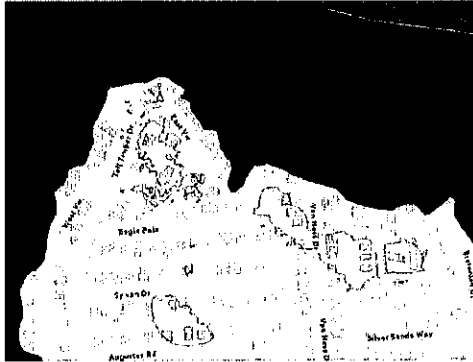
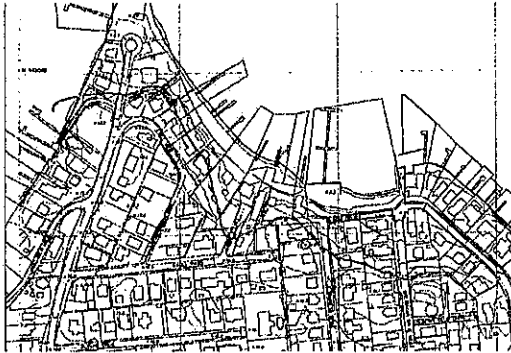
How is this fair? How does this even make sense?



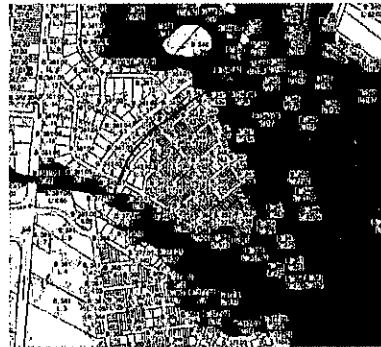
THE NEW CAFÉ AREAS:

In general, the Mean High Higher Water Elevation of the Barnegat Bay is 2.12 (Let's just use round numbers). The IRZ is elevation 6 and the CAFÉ Elevation should be approximately 11. The CAFÉ mapping provided on the NJ GeoWeb seems to extend well past that in areas. Some Examples where I tried to sketch elevation 11-12 in pink:

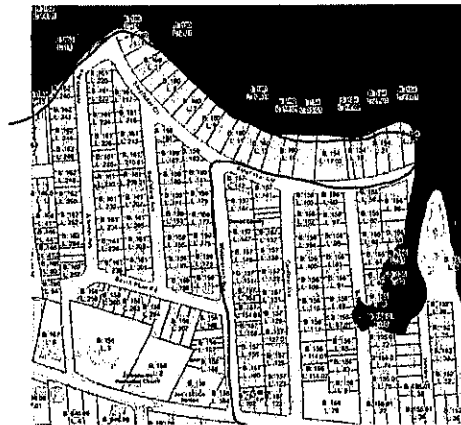
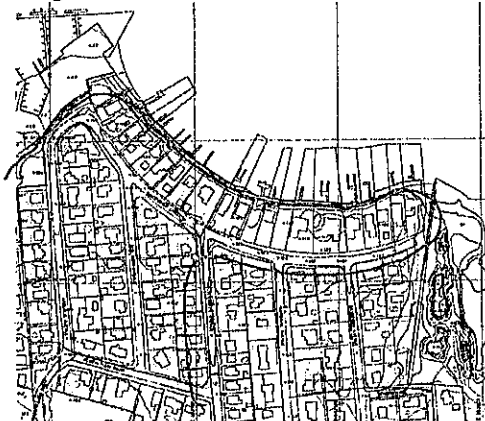
Eagle Point:



Kettle Creek:



Kingfisher Cove:



If a property is mapped into the CAFÉ on NJ GeoWeb, but a property owner demonstrates through topography that their property is above elevation 11, am I allowed to treat them as though they are outside of the State's Special Flood Hazard Area?

FLOOD ELEVATION VERIFICATIONS IN THE CLIMATE ADJUSTED FLOOD ELEVATION

The person at the very tip of this peninsula, in the IRZ and in the Coastal A Zone, can apply for a CAFRA GP to build a home; however, the person in the newly mapped CAFÉ needs to have the CAFÉ elevation calculated by a surveyor and make application for a verification to the DEP prior to even starting the planning of their project.

How is this fair? How does this make sense?



THE CAFRA CHECKLIST

Here is a link to the CAFRA Application Checklist for permits by certification:

https://dep.nj.gov/wp-content/uploads/wlm/downloads/eservices/cp_pbc05.pdf

No 12. Requires a no-rise certification/CLOMR.

If the CAFRA Area is tidal, and the tide is going to rise 4-feet, how is any engineer going to certify that there will be no rise greater than 0.2-feet when combined with all other development within the flood hazard area? I thought that the certification was not required for tidal areas, but it is listed on the CAFRA checklist.

10. The PIN that was issued to the applicant upon registering with the Department's online permitting system.
11. The \$1,000.00 application fee for a general permit-by-certification, set forth at N.J.A.C. 7:7-25.1. No fee is required for general permits-by-certification 3, 4, 11, and 12.
12. National Flood Insurance Program:
 - i. The applicant must submit one of the following, as appropriate:
 - For activities proposed within a FEMA-adopted regulatory floodway, where the proposed activities would result in no net increase (0.00 feet) to the 100-year flood elevation as depicted on FEMA flood mapping, the applicant shall provide an engineering certification to the local floodplain administrator having jurisdiction over the site confirming that the project will meet FEMA's no rise criteria;
 - For activities proposed within a FEMA-adopted regulatory floodway, where the proposed activities would result in no net increase (0.00 feet) to the 100-year flood elevation as depicted on FEMA flood mapping, the applicant shall provide an engineering certification to the local floodplain administrator having jurisdiction over the site confirming that the project will meet FEMA's no rise criteria; or
 - For activities proposed within a FEMA-adopted special flood hazard area with no designated regulatory floodway, where the proposed activities would, when combined with all other existing and anticipated development within the flood hazard area, result in a cumulative increase of greater than 0.20 feet in the 100-year flood elevation depicted on FEMA flood mapping, the applicant shall apply for and obtain a Conditional Letter of Map Revision (CLOMR) from FEMA.
 - ii. Hydraulic calculations must be rounded to the nearest one-hundredth of a foot.
 - iii. The applicant must upload a copy of FEMA's no rise certification or approved CLOMR at <https://www.nj.gov/dep/online>.

To obtain an authorization under general permit-by-certification 5 for the expansion of a single-family home or duplex, it will be necessary to certify to the following concerning the proposed activity:

1 Provide a list of the 5 most important points

Summarize ...



April 28, 2026

Senator Bob Smith, Chair
Senate Environment Committee
216 Stelton Rd, Suite E-5
Piscataway, NJ 08854

Re: NJDEP PACT - REAL Rules Adopted January 20, 2026

Dear Senator Smith,

The following comments are being submitted on behalf of the Marine Trades Association of New Jersey (MTA/NJ). The MTA/NJ, established in 1972, is a non-profit trade organization representing hundreds of marine-related businesses committed to advancing, promoting, and safeguarding the boating industry and waterways in NJ. The state is home to 150,000 boaters, vital to its economy and identity, with recreational boating generating a \$6.6 billion-dollar economic impact, supporting over 20,000 jobs, and sustaining more than 1,100 marine businesses, including the nation's leading boat manufacturers.

Beyond its economic contributions, boating is a fulfilling and rewarding activity that enhances mental well-being, reduces stress, and fosters memorable moments with friends and loved ones. Access to open waters and water-dependent activities is vital to New Jersey's quality of life. Yet, despite all of this, the state continues to do nothing to support the boating industry in New Jersey or understand the detrimental impacts of these new rules.

Marinas and marine support businesses are water-dependent businesses that are not only tied to the water but exist to provide access to our waterways and important boating infrastructure and services. They provide slips, public boat ramps, fuel, fishing supplies, boat maintenance and service, boat building, manufacturing and more. Our marinas provide the most meaningful public access by the nature of their businesses.

Environmentally, marinas play a key role in coastal ecosystems when managed sustainably. These facilities are highly regulated and are required to not only ensure 100% compliance with all environmental rules and regulations but implement many best management practices that go above and beyond to protect our waterways, marine life and habitats. Preserving marinas ensures these standards are upheld, preventing degradation from neglect or development pressures. The effects of these recently adopted rules will prohibit upkeep, maintenance of aging infrastructure and expansion of these facilities which will lead to their eventual demise and conversion of these valuable resources to private development.

The Department has recognized, as written in the original proposal and recent adoption, the importance of marinas, yet has not yet taken sufficient action to protect them. In fact, removing

the IRZ from the list of special coastal areas does nothing to address the restrictions for these businesses. The 3% impervious cover limit will continue to be applied to projects in environmentally sensitive planning areas, such as on barrier islands. Marinas on the barrier islands, for example, will not be able to conduct any site development that triggers a CAFRA Individual Permit.

Additionally, the reduction in the Climate Adjusted Flood Elevation from 5 feet to 4 feet does not adequately address the practical challenges posed by the current FEMA tidal base flood elevation mapping. Elevating structures to this height remains infeasible for boat repair shops, manufacturing facilities, and boat showrooms. Essential equipment, such as boats on travel lifts, boat trailers, or forklifts, cannot be maneuvered into elevated structures for repairs or storage, rendering compliance with these elevation requirements impractical.

The effects of these rules will prohibit or, at best, severely curtail upkeep, maintenance and expansion of these facilities which will lead to the eventual demise and conversion of many of these valuable resources to private development. This would be a devastating loss of water dependent uses, and contrary to the stated goal expressed in part of the proposed regulations to maintain marina access. Oppressive regulations based on aggressive speculation with maximized projections will devastate the very family run small businesses the state purports to support.

Without these businesses, there will be no infrastructure, services or supplies for people to get out onto our waterways and go boating and fishing. While we do appreciate that the importance of marinas and the need to preserve them is stated, the additional regulatory requirements in the rule will severely and negatively impact these businesses. The parts of these rules that apply to marinas threaten the fabric and viability of the marine community. If the state's goal is to eventually displace many marinas for high-end residential development, these rules will go a long way towards accomplishing that goal.

Therefore, we are strongly requesting that marinas and marine service and support businesses be exempted from the requirements in these rules.

Given the enormity of these recent rule changes, it is nearly impossible to fully grasp the far-reaching impact they will have on the entire industry now and for many years to come. We cannot state strongly enough that these requirements will lead to the eventual demise of many marinas in New Jersey. We have outlined some of our key concerns below.

Impervious Cover - Marinas, especially those with primarily gravel or crushed shell ground cover, are significantly impacted by the adoption of the REAL Rules for projects requiring a CAFRA Individual Permit. Marinas are located primarily (if not entirely) within Flood hazard areas, at N.J.A.C. 7:7-9.25 and Riparian zones, types of CAFRA critical environmental sites. The adoption of CAFRA critical environmental sites (disproportionately) adversely affects marinas. While we understand that marinas will not be required to reduce existing impervious cover in CAFRA critical environmental sites, any marina that had not already maxed out their impervious cover cannot expand as they will be restricted to the existing impervious cover areas. For example, if a marina was formerly in a CAFRA Regional Center, up to 80% of the net land area or the acreage of legal, existing impervious cover, could have been approved under a CAFRA

Individual Permit. Prior to the adoption of the REAL Rules, if less than 80% of the net land area had impervious cover, some expansion could have been approved up to 80% the net land area. That is no longer the case since the center designations are no longer applicable. Rather, the existing impervious cover cannot be expanded since the limit is the acreage of existing impervious cover or 3% of the net land area, whichever is higher. Additionally, the adoption of CAFRA critical environmental sites prohibits the establishment of new marinas in CAFRA critical environmental sites except in rare circumstances where impervious cover is present on most of the property.

This is an onerous restriction, and these new requirements would severely restrict marinas and their support operations from upgrades and enhancements necessary to continue their services to the public and their viability and virtually eliminate any opportunity to develop a new marina to provide access to the water.

Riparian Zones - We continue to object to placement of a riparian zone on the bay side of barrier islands. These areas are largely developed, and the imposition of riparian zones will do nothing to protect vegetation but will rather merely be an impediment to critical infrastructure improvements. The marinas fronting Barnegat Bay on LBI (north of the causeway), for example, would be assigned a 300-foot riparian zone, essentially eliminating any development potential in the area within 150 feet of the MHWL of the bay.

Stormwater Management Rules - We continue to object to the additional trigger that was added to the definition of "major development" under the Stormwater Management Rules that will also severely impact a marina's ability to maintain their property. The new trigger is the reconstruction of ¼ acre or more of "regulated motor vehicle surface" or "regulated impervious surface". For example, if ¼ acre (10,890 SF) of parking lot is proposed to be milled and repaved, that activity in and of itself will be considered a "major development" even if there is zero net increase in regulated motor vehicle surface or impervious surface. Water quality treatment will be required not only for new motor vehicle surfaces, but also for reconstructed motor vehicle surfaces (even if there is zero net increase in regulated motor vehicle surface or impervious surface). Water quality requirements will be enhanced, such as to require 80% TSS removal for stormwater runoff for new and redeveloped motor vehicle surfaces (whereas 50% TSS removal is currently required for redeveloped impervious surfaces). All of this increases operating costs and restricts a marina's ability to operate, maintain, and upgrade existing facilities, never mind ever expanding. Similar to certain other provisions of the rules, very few marina owners and operators, generally small businesses, will be able to afford this.

Shellfish Habitat - We recommend the elimination of the 25-slip threshold. Dredging should be based upon the need for dredging and not penalize small marinas and small businesses. This section specifically referred to the need to preserve existing marinas and the necessary services they provide, encourage new marinas and ensure there is a sufficient amount of boat slips available to the public, as well as the expansion of existing commercial marinas and construction of new marinas.

Elevation Requirements - As stated above, the reduction in the Climate Adjusted Flood Elevation from 5 feet to 4 feet does not adequately address the practical challenges posed by the

current FEMA tidal base flood elevation mapping. It is simply not feasible for boat repair shops, manufacturing buildings, and boat show rooms to be raised four feet. A boat on a travel lift, a boat trailer, or forklift cannot be driven into an elevated structure for repair. Moreover, the CAFE requires that access roads be raised 6 feet above the current base flood elevation (CAFE + 1) or an engineering statement provided explaining why that is not feasible. The state can notice that most marina infrastructure in this state cannot meet this criteria. Retention of an engineer alone for this purpose adds a substantial cost and even if a particular project may be feasible in the structural sense, it may not be in the financial sense.

Freshwater Wetlands - We continue to object to the various updates to the Freshwater Wetlands Protection Act Rules that will severely impact marinas and marine support facilities with wetlands/wetlands buffers. These onerous conditions include the reduced disturbance limits and mitigation triggers and new and enhanced alternatives analysis and restoration requirements. Particularly problematic is the requirement to remove all existing impervious surfaces located within 25 feet of the wetlands boundary and replant with native vegetation. Many marinas, especially smaller ones, cannot do that without surrendering land needed for vessel storage or other operations. When working on a small financial margin, that can make the difference between staying in business or going under.

These rule changes and many others included in the final adoption will severely restrict marinas and marine support businesses needing to obtain permits for construction, redevelopment or expansion. The rules do not adequately address these potential needs or the operation of these water-dependent businesses.

Therefore, considering the potential to drastically impact the recreational boating industry, the businesses and infrastructure that support this industry, we strongly recommend exempting marinas and marine service and support businesses from these requirements. It is stated in the adoption that there is a need to preserve existing marinas and the necessary services they provide, encourage new marinas and ensure there is a sufficient amount of boat slips available to the public, as well as the expansion of existing commercial marinas and construction of new marinas. However, under these rules, marinas will not be preserved, boat slips and services will decrease and the opposite of this stated goal will occur. The stated goal of preserving marinas strongly supports our request for an exemption.

In closing, we believe the state should be actively seeking ways to support the recreational boating industry and not proceed with the adoption of this proposal as written. We need to work together to provide more opportunities to protect these businesses and working waterfronts. The sale of marinas to private development and the loss of critical infrastructure is only getting worse year after year. We are continuing to lose access to our waterways each year. These rules will exacerbate that problem. We must work together to preserve and protect our marinas and support businesses and not implement costly and burdensome regulations that will force more businesses to forgo improvements and deteriorate or sell to private developers when they can no longer operate.

New Jersey needs more marinas and marine support businesses to provide the access, resources and infrastructure that is needed to enjoy our beautiful waterways. Access to the water to

recreate and enjoy time with family and friends is extremely important to the quality of life in New Jersey. If you have any questions or need additional information, please feel free to contact me at 732-292-1051.

Sincerely,



Melissa Danko
Executive Director

c: Governor Mikie Sherrill
Senator Nicholas Scutari
Senator Anthony Bucco
Assemblyman Craig Coughlin
Assemblyman John DiMaio
Ed Potosnak, NJDEP Acting Commissioner



TESTIMONY

Testimony in Support of the REAL Rules

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p: (609) 393-0008
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w: njfuture.org

**Attn: Senate Environment and Energy Committee &
Assembly Environment and Solid Waste Committee**

**Submitted via email to Celia Smits, New Jersey Senate
Environment and Energy Committee Aide. CSmits@njleg.org**

April 22nd, 2026

Contact: *Pete Kasabach, Executive Director*
pkasabach@njfuture.org, 609-393-0008

New Jersey Future submits this written testimony to members of Senate Environment and Energy Committee & Assembly Environment and Solid Waste Committee in support of the Department of Environmental Protection's Resilient Environments and Landscapes (REAL) Rules.

Finalized in January 2026, the REAL Rules update flood standards to reflect growing risk. They are not perfect, but they are a necessary and long-overdue step toward managing costs and impacts New Jersey can no longer afford to ignore.

It's important to note that these rules were not adopted unilaterally. They are the result of a multi-year NJ PACT process, beginning with a 2024 proposal, followed by extensive public engagement and a 2025 Notice of Substantial Change before finalization. NJF participated throughout and appreciated the opportunity to share concerns via written comments and testimony during both the initial 2024 public comment period and the 2025 Notice.

Outdated Standards Are Driving Real Costs

Across New Jersey, flooding is becoming more frequent and more severe. Heavy rainfall is increasing, high tides are pushing further inland, and sea-level rise is raising the baseline for future storm surge. Research from Rutgers University projects significant sea-level rise along the New Jersey coast this century.[1]

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Communities across the state are already feeling the consequences. Homes are damaged, stormwater systems are overwhelmed, and infrastructure built for past conditions is being pushed beyond its limits. Insurance costs are rising as risk becomes more apparent.

These climate stressors are further exacerbating long-standing infrastructure challenges. Many of New Jersey's stormwater and drainage systems were not designed for current conditions, creating compounding risk as heavier rainfall interacts with aging systems.

Flood risk is also being intensified by land subsidence. Portions of the Jersey Shore are physically sinking due to sediment compaction and groundwater withdrawal, increasing relative sea-level rise and contributing to more frequent nuisance flooding.[2] In northern New Jersey, legacy mining activity creates additional localized subsidence risks.

Importantly, these impacts are no longer limited to major storms. In 2025, New Jersey residents lost their lives in flash flooding events outside of named storms, underscoring how more frequent and intense rainfall is making everyday conditions more dangerous.

Against this backdrop, maintaining outdated flood standards is neither neutral nor responsible. It only shifts growing costs onto homeowners, municipalities, and taxpayers.

REAL Updates Existing Practice; It Does Not Break from It

SCR 106 suggests that the REAL Rules represent a departure from legislative intent. In our opinion, they are a continuation of long-standing policy.

For decades, New Jersey as well as the federal government has required homes in flood-prone areas to be elevated and commercial buildings to be flood-proofed. Programs like Blue Acres, administered by the New Jersey Department of Environmental Protection, have helped families move out of repeatedly flooded areas while restoring natural floodplains. As flood maps and risk projections evolve, updating these standards is both expected and necessary.

FEMA Maps Alone Are Not Enough

SCR 106 implicitly relies on existing federal flood maps. Flood Insurance Rate Maps (FIRMs) developed by the Federal Emergency Management Agency (FEMA) present flood risk in broad categories, indicating whether a property falls within the 100-year floodplain, the 500-year floodplain, or outside both. This can create the impression that flood risk changes abruptly at these boundaries, when in reality risk varies continuously and can differ significantly within each zone.

In addition, these maps are often outdated. Under federal law, FEMA is required to assess the need to revise and update flood maps every five years, but chronic underfunding from Congress has limited the agency's ability to do so. As a result, roughly 75% of FIRMs are considered out of date, with about 11% dating back to the 1970s and 1980s.[3]

In New Jersey, this challenge is particularly evident. Many inland areas have not been comprehensively remapped in decades. Even in coastal regions that were updated following Superstorm Sandy, maps are now more than a decade old and are often based on outdated rainfall data or limited assumptions about future conditions. As a result, FEMA maps often do not reflect current precipitation patterns, sea-level rise, or evolving flood risks.

The REAL rules close these gaps by using current, New Jersey-specific climate data and forward-looking conditions to guide proactive, rather than reactive, planning. Rather than relying solely on backward-looking FEMA maps, REAL incorporates updated rainfall data, sea level rise projections, and other climate-informed inputs to better reflect how flood risk is changing over time. This approach moves beyond binary floodplain boundaries and toward a more accurate understanding of risk, helping communities make better-informed decisions about where and how to build.

This Is Not a Choice Between Resilience and Growth

SCR 106 echoes concerns about housing costs, property values, and economic impacts. We agree with the sentiment that advancing the REAL Rules must not inadvertently suppress housing production. These concerns should not be dismissed, but they should be understood in context.

Failing to account for flood risk does not preserve affordability or economic growth. It defers costs and amplifies them over time. Rising insurance premiums, repeated property damage, and increased public spending on disaster recovery are already reflecting this reality.

Additional concerns raised by municipalities, builders, and property owners regarding implementation timelines, administrative complexity, and feasibility in certain contexts also require workable solutions, and it is our position that New Jersey's resilience and housing goals must move forward together.

It's no secret that a longstanding barrier to housing production in New Jersey is exclusionary zoning practices. Fortunately, there are several bills aimed at zoning reform that the Legislature is already considering, such as permitting accessory dwelling units (A2792/S2347), supporting stranded asset redevelopment (A2757/S1408), revising parking reform minimums (A3043/S2974), and encouraging more transit-oriented development (A1210/S4037).

Allowing REAL to move forward alongside these zoning reforms creates an opportunity to address New Jersey's housing shortage in a more holistic way. Aligning housing policy with REAL standards would help direct growth toward safer, less flood-prone areas while ensuring that new housing is built to withstand current and future flood conditions.

This approach also requires alignment with Fair Share Housing obligations and the State Development and Redevelopment Plan, along with clear guidance to municipalities on how to plan for growth in climate-resilient locations.

Focus on Implementation, Not Delay

The REAL rules are the product of extensive technical analysis, scientific research, and sustained stakeholder engagement. We now face the prospect of repeal or delay without a viable alternative, which risks undermining that work and leaving the state without an adequate framework to manage growing flood risk.

Delaying implementation will not resolve these issues. It will defer necessary decisions, increase exposure to risk, and shift higher costs onto taxpayers. The path forward is clear: New Jersey must advance forward-looking flood standards under the REAL rules while ensuring practical, well-supported implementation for communities.

Addressing implementation challenges requires moving forward with an iterative approach, informed by experience and further stakeholder engagement as part of the process. This means developing clear municipal guidance, ensuring predictable permitting pathways, streamlining compliance for risk-reducing and redevelopment projects, and offering targeted technical and financial support. This “soft launch” approach will allow projects to move through the process with intentional flexibility while pinpointing areas in the rules that may be troublesome or require future modifications.

Conclusion

SCR 106 frames this issue as one of regulatory overreach. In our opinion, the more relevant question is: *if flooding risks and impacts are growing, shouldn't we start planning and building differently?*

It is our position that the REAL Rules are a rational response to this question and within the Department's scope of authority. The task now is to ensure that implementation supports communities, markets, and local governments through the transition.

While the Rules are not the final word on flood resilience policy, they are an essential step toward aligning how we build with the risks we face and will continue to face. At a time when federal disaster support is increasingly uncertain, the state must take responsibility for managing its own risk. New Jersey has a long history of successfully implementing pragmatic, forward-looking policy, and the Legislature should honor that tradition by allowing the REAL Rules to move forward and focus on troubleshooting the implementation process.

Endnotes

[1] Rutgers University Climate Change Resource Center. *Sea-Level Rise Projections for New Jersey*.

[2] Rutgers University & U.S. Geological Survey. *Research on land subsidence and relative sea-level rise along the Mid-Atlantic coast*.

[3] Understand the differences between FEMA flood zones – First Street™



Pinelands Alliance

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April 22, 2026

Honorable Bob Smith
Senator and Chair
Senate Environment and Energy Committee
Trenton, New Jersey 08625

Honorable James J. Kennedy
Assemblyman and Chair
Assembly Environment & Solid Waste Committee
Trenton, NJ 08625

Dear Chairmen Smith and Kennedy, and members of the Senate Environment and Energy Committee and Assembly Environment & Solid Waste Committee:

The Pinelands Alliance strongly supports the Department of Environmental Protection's Resilient Environments and Landscapes (REAL) regulations, and we oppose Senate Concurrent Resolution No. 106 (SCR-106), which would invalidate the rules.

Contrary to the language of SCR-106, the REAL rules fall squarely within NJDEP's statutory authority to take a science-backed approach to factor the impacts of our changing climate into amendments to regulations regarding flood hazards, stormwater, coastal zones, and freshwater wetlands, while improving water quality and flood protections. NJDEP's legal authority rests on laws including the Flood Hazard Area Control Act, the Stormwater Management Act, and the Global Warming Response Act.

The REAL rules are New Jersey's best policies to make the changes we need to protect public health and safety during this era of climate change. From 1980 to 2024, New Jersey experienced 75 weather/climate disasters that each caused losses exceeding \$1 billion. These events included four flooding events, 32 severe storms, and 13 tropical storms and hurricanes. Superstorm Sandy claimed 30 lives in 2012, Hurricane Ida caused at least 21 deaths in 2021, and two people died in Plainfield on July 14, 2025 when their car was swept away by a flash flood during torrential rains.

The REAL rules are especially important to preserve and protect the Pinelands. The 17-trillion-gallon Kirkwood-Cohansey aquifer underlying the Pinelands provides drinking water for about one million people and irrigation for 200,000 acres of farmland. Flooding threatens the quality of this vital water supply. In addition, rising sea water and storm surges are forcing saltwater upstream into the Pinelands' forests, killing trees at the root and creating "ghost forests": extensive stands of dead trees inside the Pinelands. The long-awaited adoption of the REAL rules will help save these precious resources.

Thank you for considering our comments opposing Senate Concurrent Resolution No. 106 and for your careful deliberation of this legislation.

Sincerely,

Michael W. Klein, JD, PhD
Director of Government Relations

154x



Atlantic County

Executive Office

DL-171-25

Dennis Levinson
County Executive

September 16, 2025

609/348-2201 FAX: 348-2194
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Melissa Abatemarco, Esq.
NJDEP Office of Legal Affairs
401 East State Street, 7th Floor
PO Box 402
Trenton, NJ 08625-0402

ATTN: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05

Dear Ms. Abatemarco:

Atlantic County would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We oppose the adoption of the revised NJPACT REAL Rule Proposal and have concerns based on speculative, long-range projections that lack scientific certainty and policy justification required for such a sweeping mandate.

The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated and have not been provided with a detailed economic impact analysis. We would request that before these significant regulations are considered for adoption, a meeting be held with the coastal municipalities and counties to fully inform elected officials and the public of the content of the 1,000+ page rule.

We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, thoughtful, incremental approach. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over 20 years, let alone 75 years. Due to uncertainties, municipal master planning efforts project only 20 years in the future.

An additional reason for utilizing a more incremental approach is the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures and more. In Atlantic County, we have invested millions on bulkheads, seawalls, living shorelines, and pump stations, none of which is taken into account by the NJPACT regulations.

The NJPACT regulations also fail to consider the massive resiliency efforts underway by the Army Corps of Engineers, the Federal Infrastructure Act and the Inflation Reduction Act. We strongly recommend the state wait until the new FEMA maps are available in 2025 before adopting any new coastal regulations. Moreover, applying uniform, statewide standards without accommodating regional variations imposes a one-size-fits-all framework that would not accurately reflect real world conditions.

Another concern is that by reducing or prohibiting development on private lands without compensatory measures, the proposed rules would discourage investment, lower property values, and amount to a regulatory "taking" with far-reaching consequences for key coastal industries, including tourism, commercial fishing, construction, and real estate. This could ultimately strain employment, housing affordability and overall economic growth.



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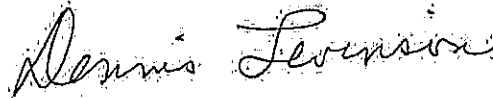
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Meeting new Climate Adjusted Flood Elevation standards that may exceed true flood elevation will impose unjustified costs and burdens on cash-strapped homeowners, businesses and developers. Municipal floodplain administrators will have to review the work of hired surveyors, engineers, design professionals, and/or property owners to assure compliance with local/state/federal floodplain management regulations. State funding should be provided to offset these additional administrative costs.

In 2013, the Coastal Commission was proposed as legislation. The NJPACT regulations are proposed to be implemented through the rulemaking process. Something this significant which will have profound economic effects should be achieved through the deliberation process of legislation rather than regulation.

I strongly support abandoning the NJPACT REAL RULE proposal in favor of a more inclusive and transparent process. The redrafting of these regulations should involve a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a 20-year timeline.

Sincerely,



Dennis Levinson
County Executive

cc: Governor Phil Murphy
Lieutenant Governor Tahesha Way
Diane Gutierrez-Scaccetti, Senior Advisor
Jacqueline Suarez, NJDCA Commissioner
Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair: Energy & Environment
Senator Vince Polistina
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Atlantic County Mayors

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**Attn: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05**

Dear Ms. Abatemarco:

The City of Atlantic City would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We appreciate the revisions to the initial proposal, however; we oppose the adoption of the revised NJPACT REAL Rule Proposal. The City remains deeply concerned that the revised rules are premature, inequitable, and based on speculative long-range projections that lack the scientific certainty and policy justification required for such a sweeping mandate.

We are extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public. Before these significant regulations are considered for adoption, we respectfully request that meeting be held with the coastal municipalities and counties to fully inform the elected officials and the public of the content of this 1,000+ page rule.

The rulemaking process lacked adequate stakeholder engagement and transparency. By excluding meaningful consultation with local governments and industry experts before proposing such comprehensive changes, the proposed rules overlook practical land use needs and the flexibility required to balance resilience with economic viability. Additional concerns included the increased regulatory complexity, further delays in an already

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burdensome permitting process, absence of legacy exemptions, imposition of premature permit expirations, and a lack of commensurate technical assistance and financial resources to satisfy elevated regulatory standards, all of which would jeopardize projects already in the pipeline and for which substantial investments have already been made.

We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, well-thought-out, incremental approach. Specifically, we believe the proposed rules would have the following negative impacts on the state:

75-year vs. 20-year Timeframe & Sea Level Rise Projections

NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. It is strongly recommended that the State gradually implement coastal regulations on a twenty year horizon, not based on what might happen in the year 2100.

While scientific consensus exists that climate change is occurring, divergence in modeling occurs frequently and is especially dependent on future emissions.¹ As noted by the 2020 New Jersey Scientific Report on Climate Change, by DEP, "there are difficulties in predicting whether annual precipitation or the number of extreme precipitation events will increase because of the various meteorological interactions that drive precipitation patterns (Marquardt Collow et al. 2016)." The report continues, "Climate projections predict that the total annual precipitation in the Northeast region of the United States will remain relatively consistent with the current conditions" (Hayhoe et al. 2007). Data produced by AdaptWest to develop resources for climate adaptation planning shows that annual precipitation in New Jersey may increase by 2.3 inches to 3.5 inches (5.8 cm to 8.9 cm) above the 1980-2010 average (46.7 inches [118.6 cm]) by the 2080s based on mid (RCP 4.5) and high (RCP 8.5) emission scenarios, respectively (Horton et al. 2015). Such increases reflect a 4.9% and 7.5% increase in annual precipitation by the end of the century.

A recent study by the New York City Panel on Climate Change estimates that annual precipitation in the area could increase between 4% and 11% by 2050 (Horton et al. 2015)." This uncertainty is also reflected in State of the Climate New Jersey 2021, by Rutgers University, "the possible range of projected changes in annual rainfall is wide but much smaller than the year-to-year precipitation variability in New Jersey. Therefore, projected changes in future rainfall are illustrative of a small increasing trend, but the exact amounts are uncertain."²

To further illustrate divergent modeling, several models in Projected Changes in Extreme Rainfall in New Jersey based on an Ensemble of Downscaled Climate Model Projections by Art DeGaetano ("Cornell Study"), which is utilized as a basis for much of this rule proposal,

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² <https://niclimateresourcecenter.rutgers.edu/wp-content/uploads/2022/04/State-of-the-Climate-Report-NJ-2021-4-18.pdf>

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The New Jersey Builders Association retained a meteorological firm, Applied Weather Associates (AWA), to review the Cornell Study. AWA has performed work for numerous government agencies including DEP and specializes in Probable Maximum Precipitation and rainfall analysis, and its studies have been accepted by state and Federal dam regulatory agencies, including the Federal Energy Regulatory Commission, National Resources Conservation Service, Bureau of Reclamation, numerous state dam regulatory offices and many are under review by the Nuclear Regulatory Commission. AWA's summary of the Cornell Study, which was shared with DEP, noted that the divergence in modeling and the large spatial differences in the study's precipitation ranges speak to the inherent uncertainty of climate modeling and therefore, utilizing the median outcomes instead of the 83rd percentile better captures the overall range of outcomes.⁴

Even Dr. Robert Kopp, the Rutgers Professor who prepared the report that DEP relied on to sea level rise projection of 5 ft. by 2100, is now projecting a 1 to 2 ft rise. Here is the link to Dr. Kopp's latest webinar and PowerPoint. <https://protect-slr.eu/events/>

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Considering the large variances in precipitation forecasts, those contained in just the median outcomes in the Cornell Study, and the analysis performed by AWA, we believe that median projections from the year 2050 must be utilized, with updates performed every 10 years as climate science evolves. The Cornell Study would additionally validate this approach; "Future updates to these CFs (change factors) are indicated to assure that the most relevant

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and reliable climate data are being used in design and resiliency planning." The Cornell report additionally notes, "...it will be prudent to reevaluate the CFs once multiple sets of downscaled CMIP6 model projections become available."

Reevaluation the Basis of Proposed Coastal Regulations

An additional reason for utilizing a more incremental approach is that the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures, etc. NJDEP uses very basis flood mapping to define the Inundation Risk Zones. This is inappropriate and the State should follow the same process as FEMA.

Historically, FEMA has overseen issues of floodplain mapping and regulation. FEMA plans to release new FIRM maps next year. Once they are released, they will be shared with the affected municipalities and public meetings will be held to alert property owners of any proposed changes. This is the proper way to define regulated floodplains. The NJ PACT policies are being proposed without this detailed mapping process.

When FEMA proposes flood hazard area map changes, they survey new coastal protection structures, dune systems, and other resiliency efforts to incorporate them into their mapping. The NJPACT REAL regulations do not take this efforts into account. The NJPACT REAL regulations also do not take into account the massive resiliency efforts underway by the Army Corps of Engineer, the Federal Infrastructure Act, and the Inflation Reduction Act. We strongly recommend that the State wait until the new FEMA maps are available in 2025 before adopting any new coastal regulations.

Here in Atlantic County, we have invested millions on bulkheads, seawalls, living shorelines, and pump stations. None of this is taken into account by the NJ PACT regulations.

The reliance on broad assumptions about sea level rise and storm-related flooding, without due consideration for site-specific factors such as existing flood protection infrastructure, drainage patterns, or localized topography, would create regulatory overreach. Using least-likely probability to define risk is overly conservative and would lead to unnecessarily restrictive outcomes. Moreover, applying uniform, statewide standards without accommodating regional variations imposes a one-size-fits-all framework that would fail to reflect real-world conditions.

Similarly, Green Energy improvements being implemented in Atlantic County have the potential to contribute to reduced climate impacts going forward. Future climate impacts can be reduced from the trajectory set by our reliance on fossil fuels up to this point.

A recent report by Professor Jesse Jenkins of Princeton University provides an analysis of the impact that the federal Inflation Reduction Act will have on greenhouse gas emissions and investments in electricity capacity in the PJM region thru 2035 and what additional investments and resources would be needed to deeply decarbonize the PJM region by 2035 while maintaining affordable and reliable electricity in the PJM region. The REPEAT Project⁵ led by Professor Jenkins (Princeton University Department of Mechanical & Aerospace

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By reducing or effectively prohibiting development on private lands without compensatory measures, the proposed rules would discourage investment, lower property values, and amount to a regulatory "taking." This would have far-reaching consequences for key coastal industries, including tourism, commercial fishing, construction, and real estate, ultimately straining employment, housing affordability, and economic growth.

As documented in the State's annual tourism report, Atlantic County generates over \$8 billion in tourism revenue annually. This economic engine impacts all of South Jersey. An in-depth, independent economic impact study prepared by a qualified economist is imperative prior to adopting the NJPACT REAL regulations.

Many already economically burdened communities will be faced with new land use regulations that may significantly devalue land and property. DEP's published regulatory realignment is expected to result in extensive and immediate economic impacts, which may include impacts to Atlantic City's tax base.

Further complicating this issue, raising homes costs from \$150,000 to \$300,000, but the National Flood Insurance Program (NFIP) Increased Cost of Compliance (ICC) Coverage only provides up to \$30,000 for raising eligible homes to comply with State guidelines.⁶ Most property owners in Atlantic City cannot afford to raise their homes, a fact which must be recognized by the State in rolling out the updated rules. The Atlantic County coastal communities apply for FEMA assistance to raise homes each year, but many homeowners cannot afford to cover the cost while waiting for FEMA to provide reimbursement. The FEMA process is complicated, takes years to obtain approval, and is very competitive. In addition, in 2025 the federal government has stopping providing funding for home elevation, leaving no options. Will the State of New Jersey be providing funding for home elevations? To assume that federal funding is the answer to elevating home is misleading. An improved,

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effective State program that provides funding at various stages of development is warranted but is not even being considered in this rule making process.

Forcing homeowners to rebuild to a new Climate Adjusted Flood Elevation (CAFE) which may exceed the true flood elevation will impose unjustified burdens and costs on cash-strapped homeowners. Before the REAL rules are adopted, detailed mapping must be made available to inform property owners of the new CAFE standards for their properties.

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Municipal floodplain administrators will have to review the work of hired surveyors, engineers, design professionals and/or the property owner to assure compliance with local/state/federal floodplain management regulations. State funding should be provided to offset these added administrative costs.

DEP has indicated that costs associated with floodproofing will be minor. However, no evidence has been provided to support this claim. These costs on smaller projects may not be minimal relative to the potential benefit. Again, for properties that are reasonably expected to flood based on valid methodology, the benefits may exceed the costs. However, if properties are included that are not actually in a flood risk area with a reasonable recurrence interval, there will likely be no benefit.

The Inundation Risk Zones rules will add to the cost and discourage redevelopment and new development in Atlantic County. New homes and home additions will be required to meet onerous risk assessment criteria including an alternative analysis, a deed notice, and other stringent requirements designed to discourage building.

The fiscal impact on the real-estate market must be analyzed prior to adoption. Poor and middle-class year-round residents will likely be disproportionately impacted by these rules. DEP should provide information to explain likely impacts to poor and middle-class community members. The economic analysis should reflect the true cost and burden on existing homes, businesses, property owners, other structures, and municipalities, within the expanded Flood Hazard Area, with a realistic assessment of flood risk.

Legislation vs. Rulemaking

The NJPACT REAL rule changes are significantly more far reaching than the changes proposed in 2013 to establish a New Jersey Coastal Commission. In 2013, the Coastal Commission was proposed as legislation, the NJ PACT regulations are proposed to be

implemented through the rulemaking process. Something this significant which will have profound economic effects should be achieved through the deliberation process of legislation rather than regulation.

In the State of Maine, Governor Janet Mills has established an Infrastructure and Rebuilding Commission to identify crucial areas for near-term investment and policy needs and developing the state's first long-term infrastructure plan to ensure that Maine is ready for the harsh storms ahead. The Commission includes local officials, and they will develop recommendations for funding and legislation for their communities. An inclusive process is required to address this issue. Again, the State should follow a more inclusive and transparent process to redraft these regulations.

Affordability

The NJPACT REAL rule proposal contains hundreds of new requirements on all developments, even on small "backyard" projects for homeowners, which will drive up the cost of all new development and redevelopment. It will even drive up the costs of building roads and other infrastructure projects. These new requirements will make New Jersey even more unaffordable.

The timing of this rule adoption and the impact to developable land will throw the 4th Round Affordable Housing process into chaos while significantly increasing the cost of development to all housing amidst a housing affordability crisis. Decreasing developable land will also drive the already high cost of land acquisition in our State even higher, further exacerbating one of the most significant barriers to achieving our housing goals.

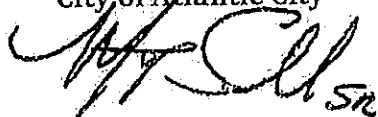
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With the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance that they do not need.

I am asking that the State abandon the NJPACT REAL rule process and start anew with a process that includes the legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.

I look forward to your timely response and to collaborating with you to develop a reasonable path forward.

Regards,
City of Atlantic City



Marty Small
Mayor

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cc: Governor Phil Murphy
Lieutenant Governor Tahesha Way
Diane Gutierrez-Scaccetti, Senior Advisor
Jacqueline Swarez, NJDCA Commissioner
Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair, Energy & Environment
Assemblyman Jim Kennedy, Chair, Environment
Senator Vince Polistina
Assemblyman Don Guardian
Assemblywomen Claire Swift
New Jersey Business and Industry Association
New Jersey Association of Counties
New Jersey League of Municipalities
New Jersey Business & Industry Association
Atlantic County Executive Dennis Levinson
Atlantic County Board of Commissioners
Atlantic County Mayors

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City of Ventnor

City Hall
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Maria K Mento

Mayor
Tim Kriebel

Commissioner
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Melissa Abatemarco, Esq.
NJDEP, Office of Legal Affairs
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

**Attn: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05**

Dear Ms. Abatemarco:

The City of Ventnor would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We appreciate the revisions to the initial proposal, however; we oppose the adoption of the revised NJPACT REAL Rule Proposal. The City remains deeply concerned that the revised rules are premature, inequitable, and based on speculative long-range projections that lack the scientific certainty and policy justification required for such a sweeping mandate.

We are extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public. Before these significant regulations are considered for adoption, we respectfully request that meeting be held with the coastal municipalities and counties to fully inform the elected officials and the public of the content of this 1,000+ page rule.

The rulemaking process lacked adequate stakeholder engagement and transparency. By excluding meaningful consultation with local governments and industry experts before proposing such comprehensive changes, the proposed rules overlook practical land use needs and the flexibility required to balance resilience with economic viability. Additional concerns included the increased regulatory complexity, further delays in an already burdensome permitting process, absence of legacy exemptions, imposition of premature

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permit expirations, and a lack of commensurate technical assistance and financial resources to satisfy elevated regulatory standards, all of which would jeopardize projects already in the pipeline and for which substantial investments have already been made.

We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, well-thought-out, incremental approach. Specifically, we believe the proposed rules would have the following negative impacts on the state:

75-year vs. 20-year Timeframe & Sea Level Rise Projections

NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. It is strongly recommended that the State gradually implement coastal regulations on a twenty year horizon, not based on what might happen in the year 2100.

While scientific consensus exists that climate change is occurring, divergence in modeling occurs frequently and is especially dependent on future emissions.¹ As noted by the 2020 New Jersey Scientific Report on Climate Change, by DEP, "there are difficulties in predicting whether annual precipitation or the number of extreme precipitation events will increase because of the various meteorological interactions that drive precipitation patterns (Marquardt Collow et al. 2016)." The report continues, "Climate projections predict that the total annual precipitation in the Northeast region of the United States will remain relatively consistent with the current conditions" (Hayhoe et al. 2007). Data produced by AdaptWest to develop resources for climate adaptation planning shows that annual precipitation in New Jersey may increase by 2.3 inches to 3.5 inches (5.8 cm to 8.9 cm) above the 1980-2010 average (46.7 inches [118.6 cm]) by the 2080s based on mid (RCP 4.5) and high (RCP 8.5) emission scenarios, respectively (Horton et al. 2015). Such increases reflect a 4.9% and 7.5% increase in annual precipitation by the end of the century.

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An additional reason for utilizing a more incremental approach is that the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures, etc. NJDEP uses very basis flood mapping to define the Inundation Risk Zones. This is inappropriate and the State should follow the same process as FEMA.

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Further complicating this issue, raising homes costs from \$150,000 to \$300,000, but the National Flood Insurance Program (NFIP) Increased Cost of Compliance (ICC) Coverage only provides up to \$30,000 for raising eligible homes to comply with State guidelines.⁶ The Atlantic County coastal communities apply for FEMA assistance to raise homes each year, but many homeowners cannot afford to cover the cost while waiting for FEMA to provide reimbursement. The FEMA process is complicated, takes years to obtain approval, and is very competitive. In addition, in 2025 the federal government has stopping providing funding for home elevation, leaving no options. Will the State of New Jersey be providing funding for home elevations? To assume that federal funding is the answer to elevating home

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Regards,
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Mayor

171x

cc: Governor Phil Murphy
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Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair, Energy & Environment
Assemblyman Jim Kennedy, Chair, Environment
Senator Vince Polistina
Assemblyman Don Guardian
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New Jersey Business and Industry Association
New Jersey Association of Counties
New Jersey League of Municipalities
New Jersey Business & Industry Association
Atlantic County Executive Dennis Levinson
Atlantic County Board of Commissioners
Atlantic County Mayors

CITY OF MARGATE CITY

RESOLUTION #239-2025

RESOLUTION OPPOSING THE PROPOSED "PROTECTING AGAINST CLIMATE THREAT (PACT)/RESILIENT ENVIRONMENTS AND LANDSCAPE (REAL)" RULES

WHEREAS, City of Margate City opposes the coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

WHEREAS, City of Margate City acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring thoughtful and well-reasoned response from all levels of government; and

WHEREAS, City of Margate City continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all County critical infrastructure and building projects, while also providing the necessary support to our local communities in the approach, duration, and wake of major coastal storms through our Office of Emergency Management and Public Safety Departments; and

WHEREAS, initiated through Governor Murphy's Executive Order 100, the New Jersey Department of Environmental Protection (NJDEP) has produced a 1,057-page rule proposal policy document known as NJ PACT (Protection Against Climate Threats)/ REAL (Resilient Environments and Landscape) to expand flood hazard areas (FHAs) statewide and implement higher floodplain management regulatory standards beyond the local and existing FEMA standards; and

WHEREAS, these rules establish expansive inundation risk zones that the State is claiming will be under water in 75 years. Not only would development there, including redevelopment, expansions, and substantial reconstructions, be subject to elevation (six foot above base flood elevation), more stringent building requirements, alternatives analysis, and deed notices, but they would be subject to a 3% impervious cover standard for the site in most communities. Impervious cover includes the building, parking, driveways, and sidewalks. The imposition of these stringent limitations, especially the 3% impervious cover standard, effectively makes the IRZs "no build" zones. Cumulatively, along with other requirements on infrastructure, these rules will have the effect of requiring, or at least driving a retreat; and

WHEREAS, historically, new rules issued by the NJDEP have always been promulgated pursuant to legislation through the typical legislative process; and

WHEREAS, in this case, like the NJDEP's recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

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WHEREAS, these rules as currently written do not consider the economic impact these new standards may have on the ratables, real-estate values, development, and redevelopment statewide, but especially in Atlantic County where we have greater than \$30 billion in net-ratables and greater than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is the largest industry in Atlantic County; and

WHEREAS, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts in (name of municipality), throughout Atlantic County, and State of New Jersey; and

WHEREAS, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

WHEREAS, these rules will also increase construction costs and impact the feasibility for public infrastructure projects with the minimum construction height requirements for new roads in excess of Base Flood Elevation (BFE) plus six feet freeboard, will be infeasible and unachievable given the path and location of the project; and

WHEREAS, despite the burden these rules will inevitably play on our coastal towns, the State of New Jersey has not mentioned any plan for a State budget appropriation to assist coastal towns statewide with the additional duties and functions imposed through the proposed NJPACT/REAL rules; and

WHEREAS, the proposed expansion of flood hazard areas will also create additional financial burdens for lower and middle class property owners living in (name of municipality) by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within the newly expanded regulated areas and may also potentially result in higher insurance premiums given the expansion of the inundation risk zone and increase of the regulated flood hazard area limits by 5 feet vertically; and

WHEREAS, the proposed NJPACT/REAL regulations are based Science and Technical Advisory Panel Report (2019 STAP Report) entitled, "New Jersey Rising Seas and Changing Coastal Storms," projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

WHEREAS, since the 2019 STAP Report several key studies on sea level rise were issued as was the International Panel on Climate Change (IPCC) Assessment that addressed sea level rise. Professor Bob Kopp, the primary author of the 2019 STAP Report, was an author of one of the more recent studies as well as the IPCC report. The more recent studies do not support the idea of a 5.1 foot sea level rise as being likely; and

WHEREAS, The IPCC and all the newer scientific reports predict that worldwide sea level rise this century will be 0-2 feet; and

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WHEREAS, potentially pushing fixed income residents out of their homes based on the 17% probability of an 80-year sea level rise projection should be taken more gradually with a higher percentage of probability and likelihood of occurring; and

WHEREAS, municipalities are required to prepare Master Plans for a 20- or 30-year planning horizon, and (name of municipality) strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, City of Margate City, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirements will significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region's workforce; and

WHEREAS, the NJDEP's proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

WHEREAS, the proposed coastal regulations will create an Environmental Justice issue since local residents will be deterred from improving their homes because they will have to elevate 6 feet above BFE which they cannot afford when they improve their homes above 50 percent of its value, hence those in most need of shelter will witness the deterioration of their homes and be forced to relocate; and

WHEREAS, the Federal Emergency Management Agency (FEMA) is also in the process of preparing detailed updates to the flood insurance rate maps (FIRMS) that take into account many factors of risk including sea level rise; and

WHEREAS, the State of New Jersey has historically used these maps to guide public policy, and therefore, City of Margate City urges the State to defer to the superseding governing body, in this instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

WHEREAS, while recognizing the importance of addressing climate change, as stated previously, City of Margate City believes that a more gradual and balanced approach is necessary to target incremental adjustments over time in order to mitigate the potential negative impacts that these radically changing rules will have on the coastal towns of New Jersey; and

WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones.

NOW, THEREFORE, BE IT RESOLVED, the City of Margate City strongly recommends the following:

1. City of Margate City requests a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations, including a focus on protecting the interests of low and moderate income families.
2. City of Margate City requests that the State of New Jersey engage the Legislature and enact these rules through the typical legislative process, in order to give the people of New Jersey a voice, rather than through an Executive Order with limited public engagement.
3. City of Margate City requests that these regulations be based on a 20- or 30-year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on an 80-year projection.
4. City of Margate City requests that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that includes significantly higher elevation requirements for new roads.
5. In advance of these Rules potentially being voted into law, City of Margate City requests that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. City of Margate City hereby orders copies of this Resolution, attached Analysis Study, and Maps be transmitted to Governor Phil Murphy; Lieutenant Governor Tahesha Way; Chief of Staff to Governor Murphy Diane Gutierrez-Scaccetti; Senate President Nicholas P. Scutari; Assembly Speaker Craig J. Coughlin; Senate Environment Committee Chair Bob Smith; Assembly Environment Committee Chair James J. Kennedy; the Office of Legislative District 1's Senator Michael Testa, Assemblyman Antwan McClellan, and Assemblyman Erik Simonsen; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the New Jersey League of Municipalities (NJLM) to convey City of Margate City's concerns and recommendations.
7. City of Margate City hereby orders copies of this Resolution be submitted as public comment on the NJ Register to serve as the municipality's official comments to the NJDEP's proposed NJPACT/REAL rules.

ROLL CALL:

NAME	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Collins		X	X			
Blumberg			X			
Horn	X		X			

DATE: September 4, 2025

CERTIFICATION

I, Johanna Casey, Clerk of Margate City, Atlantic County, do hereby certify the foregoing to be a true and correct copy of a resolution adopted by the Commissioners of the City of Margate City at a meeting of said Commission held on September 4, 2025 and said resolution was adopted by not less than a two-thirds vote of the members of the Commission.

Johanna Casey

Johanna Casey, RMC, City Clerk



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Borough of Longport

Patrick Armstrong
Mayor

Daniel J. Lawler
Commissioner

Jim Ulmer
Commissioner

Melissa Abatemarco, Esq.
NJDEP, Office of Legal Affairs
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

**Attn: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05**

Dear Ms. Abatemarco:

The Borough of Longport would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We appreciate the revisions to the initial proposal, however; we oppose the adoption of the revised NJPACT REAL Rule Proposal. The Borough remains deeply concerned that the revised rules are premature, inequitable, and based on speculative long-range projections that lack the scientific certainty and policy justification required for such a sweeping mandate.

We are extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public. Before these significant regulations are considered for adoption, we respectfully request that a meeting be held with the coastal municipalities and counties to fully inform the elected officials and the public of the content of this 1,000+ page rule.

The rulemaking process lacked adequate stakeholder engagement and transparency. By excluding meaningful consultation with local governments and industry experts before proposing such comprehensive changes, the proposed rules overlook practical land use needs and the flexibility required to balance resilience with economic viability. Additional concerns included the increased regulatory complexity, further delays in an already burdensome permitting process, absence of legacy exemptions, imposition of premature permit expirations, and a lack of commensurate technical assistance and financial resources to satisfy elevated regulatory standards, all of which would

jeopardize projects already in the pipeline and for which substantial investments have already been made.

We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, well-thought-out, incremental approach. Specifically, we believe the proposed rules would have the following negative impacts on the state:

75-year vs. 20-year Timeframe & Sea Level Rise Projections

NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. It is strongly recommended that the State gradually implement coastal regulations on a twenty year horizon, not based on what might happen in the year 2100.

While scientific consensus exists that climate change is occurring, divergence in modeling occurs frequently and is especially dependent on future emissions.¹ As noted by the 2020 New Jersey Scientific Report on Climate Change, by DEP, "there are difficulties in predicting whether annual precipitation or the number of extreme precipitation events will increase because of the various meteorological interactions that drive precipitation patterns (Marquardt Collow et al. 2016)." The report continues, "Climate projections predict that the total annual precipitation in the Northeast region of the United States will remain relatively consistent with the current conditions" (Hayhoe et al. 2007). Data produced by AdaptWest to develop resources for climate adaptation planning shows that annual precipitation in New Jersey may increase by 2.3 inches to 3.5 inches (5.8 cm to 8.9 cm) above the 1980-2010 average (46.7 inches [118.6 cm]) by the 2080s based on mid (RCP 4.5) and high (RCP 8.5) emission scenarios, respectively (Horton et al. 2015). Such increases reflect a 4.9% and 7.5% increase in annual precipitation by the end of the century.

A recent study by the New York City Panel on Climate Change estimates that annual precipitation in the area could increase between 4% and 11% by 2050 (Horton et al. 2015)." This uncertainty is also reflected in State of the Climate New Jersey 2021, by Rutgers University, "the possible range of projected changes in annual rainfall is wide but much smaller than the year-to-year precipitation variability in New Jersey. Therefore, projected changes in future rainfall are illustrative of a small increasing trend, but the exact amounts are uncertain."²

To further illustrate divergent modeling, several models in Projected Changes in Extreme Rainfall in New Jersey based on an Ensemble of Downscaled Climate Model Projections by Art DeGaetano ("Cornell Study"), which is utilized as a basis for much of this rule proposal, show that rainfall will actually decrease in areas of the state by 2100, "Grids in the vicinity of New York City and in central New Jersey show small (<5%) decreases in 100-ARI rainfall (Fig. 17). In northern parts of the state increases in the 25-35% range are common. In two models (CMCC-CMS) and (GFDL-CM3) decreases in 100-yr ARI precipitation are indicated at more than half of the grid points in the domain, while in several models 100-yr ARI precipitation increases at nearly all grids."³

¹ <https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>

² <https://niclimateresourcecenter.rutgers.edu/wp-content/uploads/2022/04/State-of-the-Climate-Report-NJ-2021-4-18.pdf>

³ <https://www.nj.gov/dep/dsr/publications/projected-changes-rainfall-model.pdf>

The New Jersey Builders Association retained a meteorological firm, Applied Weather Associates (AWA), to review the Cornell Study. AWA has performed work for numerous government agencies including DEP and specializes in Probable Maximum Precipitation and rainfall analysis, and its studies have been accepted by state and Federal dam regulatory agencies, including the Federal Energy Regulatory Commission, National Resources Conservation Service, Bureau of Reclamation, numerous state dam regulatory offices and many are under review by the Nuclear Regulatory Commission. AWA's summary of the Cornell Study, which was shared with DEP, noted that the divergence in modeling and the large spatial differences in the study's precipitation ranges speak to the inherent uncertainty of climate modeling and therefore, utilizing the median outcomes instead of the 83rd percentile better captures the overall range of outcomes.⁴

Even Dr. Robert Kopp, the Rutgers Professor who prepared the report that DEP relied on to sea level rise projection of 5 ft. by 2100, is now projecting a 1 to 2 ft rise. Here is the link to Dr. Kopp's latest webinar and PowerPoint. <https://protect.slr.eu/events/>

- The Rutgers STAP report predicted 5' sea level rise by 2100 based on the assumption that the West Antarctic Icesheet will collapse this century. If it does not collapse sea level rise would be 1-2 feet worldwide;
 - Dr. Kopp does predict that sea level rise caused by the icesheet melt will happen eventually, but it may take thousands of years.
- Since the Rutgers STAP report, every report that has been published, including the IPCC AR 6 report and NOAA, both of which had Dr. Kopp as the lead author, no longer predicts the ice sheet collapse this century;
- DEP is using a "moderate emissions" scenario and predicting to 2100. Under these scenarios sea level rise is not anywhere near 5' under current scientific understanding;
- Dr. Kopp is now predicting under those scenarios a worldwide sea level rise of 1-2 feet (30-60 cm). Since New Jersey is "sinking" you need to add an additional foot for a prediction of 2-3 feet.

Considering the large variances in precipitation forecasts, those contained in just the median outcomes in the Cornell Study, and the analysis performed by AWA, we believe that median projections from the year 2050 must be utilized, with updates performed every 10 years as climate science evolves. The Cornell Study would additionally validate this approach: "Future updates to these CFs (change factors) are indicated to assure that the most relevant and reliable climate data are being used in design and resiliency planning." The Cornell report additionally notes, "...it will be prudent to reevaluate the CFs once multiple sets of downscaled CMIP6 model projections become available."

Reevaluation the Basis of Proposed Coastal Regulations

An additional reason for utilizing a more incremental approach is that the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures, etc. NJDEP uses very basis flood mapping to define the Inundation Risk Zones. This is inappropriate and the State should follow the same process as FEMA.

Historically, FEMA has overseen issues of floodplain mapping and regulation. FEMA plans to release new FIRM maps next year. Once they are released, they will be shared with the affected municipalities and public meetings will be held to alert property owners of any proposed changes. This is the proper

⁴ <http://niba.org/wp-content/uploads/2023/02/AWA-Response-to-NJ-DEP-Rainfall-Regulations83.docx>

way to define regulated floodplains. The NJ PACT policies are being proposed without this detailed mapping process.

When FEMA proposes flood hazard area map changes, they survey new coastal protection structures, dune systems, and other resiliency efforts to incorporate them into their mapping. The NJPACT REAL regulations do not take this efforts into account. The NJPACT REAL regulations also do not take into account the massive resiliency efforts underway by the Army Corps of Engineer, the Federal Infrastructure Act, and the Inflation Reduction Act. We strongly recommend that the State wait until the new FEMA maps are available in 2025 before adopting any new coastal regulations.

Here in Atlantic County, we have invested millions on bulkheads, seawalls, living shorelines, and pump stations. None of this is taken into account by the NJ PACT regulations.

The reliance on broad assumptions about sea level rise and storm-related flooding, without due consideration for site-specific factors such as existing flood protection infrastructure, drainage patterns, or localized topography, would create regulatory overreach. Using least-likely probability to define risk is overly conservative and would lead to unnecessarily restrictive outcomes. Moreover, applying uniform, statewide standards without accommodating regional variations imposes a one-size-fits-all framework that would fail to reflect real-world conditions.

Similarly, Green Energy improvements being implemented in Atlantic County have the potential to contribute to reduced climate impacts going forward. Future climate impacts can be reduced from the trajectory set by our reliance on fossil fuels up to this point.

A recent report by Professor Jesse Jenkins of Princeton University provides an analysis of the impact that the federal Inflation Reduction Act will have on greenhouse gas emissions and investments in electricity capacity in the PJM region thru 2035 and what additional investments and resources would be needed to deeply decarbonize the PJM region by 2035 while maintaining affordable and reliable electricity in the PJM region. The REPEAT Project⁵ led by Professor Jenkins (Princeton University Department of Mechanical & Aerospace Engineering and the Andlinger Center for Energy & the Environment), has used a suite of macro-energy system modeling tools to rapidly analyze the impacts of these new laws and provide a detailed look at the United States' evolving policy environment. Drawing on REPEAT Project findings, this report summarizes the major components of the Inflation Reduction Act and Infrastructure Law, their impacts, and current progress on the road to net-zero greenhouse gas emissions. Dr. Jenkins' findings are that the Inflation Reduction Act is already reducing Greenhouse Gas emissions.

Economic Impacts

The creation of the Inundation Risk Zone (IRZ) and expanded Climate Adjusted Flood Elevation (CAFE) restrictions would impose significant economic hardship on coastal communities by adversely affecting property rights, property values, ADA accessibility, and economic development. Severe limitations on development, even for properties critical to sustaining a municipality's market-rate tax base or meeting State-mandated affordable housing obligations, would exacerbate local budget challenges.

By reducing or effectively prohibiting development on private lands without compensatory measures, the proposed rules would discourage investment, lower property values, and amount to a regulatory "taking." This would have far-reaching consequences for key coastal industries, including tourism,

⁵ www.repeatproject.org

commercial fishing, construction, and real estate, ultimately straining employment, housing affordability, and economic growth.

As documented in the State's annual tourism report, Atlantic County generates over \$8 billion in tourism revenue annually. This economic engine impacts all of South Jersey. An in-depth, independent economic impact study prepared by a qualified economist is imperative prior to adopting the NJPACT REAL regulations.

Many already economically burdened communities will be faced with new land use regulations that may significantly devalue land and property. DEP's published regulatory re-alignment is expected to result in extensive and immediate economic impacts, which may include impacts to the Borough of Longport's tax base.

Further complicating this issue, raising homes costs from \$150,000 to \$300,000, but the National Flood Insurance Program (NFIP) Increased Cost of Compliance (ICC) Coverage only provides up to \$30,000 for raising eligible homes to comply with State guidelines.⁶ The Atlantic County coastal communities apply for FEMA assistance to raise homes each year, but many homeowners cannot afford to cover the cost while waiting for FEMA to provide reimbursement. The FEMA process is complicated, takes years to obtain approval, and is very competitive. In addition, in 2025 the federal government has stopping providing funding for home elevation, leaving no options. Will the State of New Jersey be providing funding for home elevations? To assume that federal funding is the answer to elevating home is misleading. An improved, effective State program that provides funding at various stages of development is warranted but is not even being considered in this rule making process.

Forcing homeowners to rebuild to a new Climate Adjusted Flood Elevation (CAFE) which may exceed the true flood elevation will impose unjustified burdens and costs on cash-strapped homeowners. Before the REAL rules are adopted, detailed mapping must be made available to inform property owners of the new CAFE standards for their properties.

In addition to moderate to large developers, small-scale developers, individual homeowners, and small businesses will be required to determine if they are affected by the new CAFE standards. As many applicants do not have the ability or data to conduct such studies, municipalities will have to assist and evaluate the regulatory status of many more properties. Some municipalities will have to regulate hundreds more homes, businesses, and vacant lands, for a variety of proposed construction, including both major and relatively minor work. This may require additional staff, which could translate into the need for additional taxes, while the tax base may be reduced due to reduced property values in the expanded flood zones. An analysis of the impact of the REAL rules on municipalities must be completed prior to adoption.

Municipal floodplain administrators will have to review the work of hired surveyors, engineers, design professionals and/or the property owner to assure compliance with local/state/federal floodplain management regulations. State funding should be provided to offset these added administrative costs.

DEP has indicated that costs associated with floodproofing will be minor. However, no evidence has been provided to support this claim. These costs on smaller projects may not be minimal relative to

⁶ https://www.fema.gov/sites/default/files/2020-08/fema_increased-cost-of-compliance_fact-sheet.pdf

the potential benefit. Again, for properties that are reasonably expected to flood based on valid methodology, the benefits may exceed the costs. However, if properties are included that are not actually in a flood risk area with a reasonable recurrence interval, there will likely be no benefit.

The Inundation Risk Zones rules will add to the cost and discourage redevelopment and new development in Atlantic County. New homes and home additions will be required to meet onerous risk assessment criteria including an alternative analysis, a deed notice, and other stringent requirements designed to discourage building.

The fiscal impact on the real-estate market must be analyzed prior to adoption. Poor and middle-class year-round residents will likely be disproportionately impacted by these rules. DEP should provide information to explain likely impacts to poor and middle-class community members. The economic analysis should reflect the true cost and burden on existing homes, businesses, property owners, other structures, and municipalities, within the expanded Flood Hazard Area, with a realistic assessment of flood risk.

Legislation vs. Rulemaking

The NJPACT REAL rule changes are significantly more far reaching than the changes proposed in 2013 to establish a New Jersey Coastal Commission. In 2013, the Coastal Commission was proposed as legislation, the NJ PACT regulations are proposed to be implemented through the rulemaking process. Something this significant which will have profound economic effects should be achieved through the deliberation process of legislation rather than regulation.

In the State of Maine, Governor Janet Mills has established an Infrastructure and Rebuilding Commission to identify crucial areas for near-term investment and policy needs and developing the state's first long-term infrastructure plan to ensure that Maine is ready for the harsh storms ahead. The Commission includes local officials, and they will develop recommendations for funding and legislation for their communities. An inclusive process is required to address this issue. Again, the State should follow a more inclusive and transparent process to redraft these regulations.

Affordability

The NJPACT REAL rule proposal contains hundreds of new requirements on all developments, even on small "backyard" projects for homeowners, which will drive up the cost of all new development and redevelopment. It will even drive up the costs of building roads and other infrastructure projects. These new requirements will make New Jersey even more unaffordable.

The timing of this rule adoption and the impact to developable land will throw the 4th Round Affordable Housing process into chaos while significantly increasing the cost of development to all housing amidst a housing affordability crisis. Decreasing developable land will also drive the already high cost of land acquisition in our State even higher, further exacerbating one of the most significant barriers to achieving our housing goals.

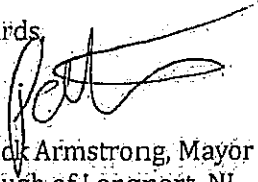
Flood Insurance Expansion

With the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance that they do not need.

I am asking that the State abandon the NJPACT REAL rule process and start anew with a process that includes the legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.

I look forward to your timely response and to collaborating with you to develop a reasonable path forward.

Regards,



Patrick Armstrong, Mayor
Borough of Longport, NJ

cc: Governor Phil Murphy
Lieutenant Governor Tahesha Way
Diane Gutierrez-Scaccetti, Senior Advisor
Jacqueline Swarez, NJDCA Commissioner
Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair, Energy & Environment
Assemblyman Jim Kennedy, Chair, Environment
Senator Vince Polistina
Assemblyman Don Guardian
Assemblywomen Claire Swift
New Jersey Business and Industry Association
New Jersey Association of Counties
New Jersey League of Municipalities
New Jersey Business & Industry Association
Atlantic County Executive Dennis Levinson
Atlantic County Board of Commissioners
Atlantic County Mayors

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City of Somers Point

SOMERS POINT

NEW JERSEY

"the shore starts here!"

Dennis Tapp
MAYOR

Melissa Abatemarco, Esq.
NJDEP, Office of Legal Affairs
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

**Attn: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05**

Dear Ms. Abatemarco:

The City of Somers Point would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We appreciate the revisions to the initial proposal, however; we oppose the adoption of the revised NJPACT REAL Rule Proposal. The City remains deeply concerned that the revised rules are premature, inequitable, and based on speculative long-range projections that lack the scientific certainty and policy justification required for such a sweeping mandate.

We are extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public. Before these significant regulations are considered for adoption, we respectfully request that meeting be held with the coastal municipalities and counties to fully inform the elected officials and the public of the content of this 1,000+ page rule.

We believe that this proposal is extreme and will harm homeowners, workers, and the economy of the state. We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, well-thought-out, incremental approach.

Specifically, we believe the proposed rules would have the following negative impacts on the state:

75-year vs. 20-year Timeframe & Sea Level Rise Projections

NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. It is strongly recommended that the State gradually implement coastal regulations on a twenty year horizon, not based on what might happen in the year 2100.

While scientific consensus exists that climate change is occurring, divergence in modeling occurs frequently and is especially dependent on future emissions.¹ As noted by the 2020 New Jersey Scientific Report on Climate Change, by DEP, "there are difficulties in predicting whether annual precipitation or the number of extreme precipitation events will increase because of the various meteorological interactions that drive precipitation patterns (Marquardt Collow et al. 2016)." The report continues, "Climate projections predict that the total annual precipitation in the Northeast region of the United States will remain relatively consistent with the current conditions" (Hayhoe et al. 2007). Data produced by AdaptWest to develop resources for climate adaptation planning shows that annual precipitation in New Jersey may increase by 2.3 inches to 3.5 inches (5.8 cm to 8.9 cm) above the 1980-2010 average (46.7 inches [118.6 cm]) by the 2080s based on mid (RCP 4.5) and high (RCP 8.5) emission scenarios, respectively (Horton et al. 2015). Such increases reflect a 4.9% and 7.5% increase in annual precipitation by the end of the century.

A recent study by the New York City Panel on Climate Change estimates that annual precipitation in the area could increase between 4% and 11% by 2050 (Horton et al. 2015)." This uncertainty is also reflected in State of the Climate New Jersey 2021, by Rutgers University, "the possible range of projected changes in annual rainfall is wide but much smaller than the year-to-year precipitation variability in New Jersey. Therefore, projected changes in future rainfall are illustrative of a small increasing trend, but the exact amounts are uncertain."²

To further illustrate divergent modeling, several models in Projected Changes in Extreme Rainfall in New Jersey based on an Ensemble of Downscaled Climate Model Projections by Art DeGaetano ("Cornell Study"), which is utilized as a basis for much of this rule proposal, show that rainfall will actually decrease in areas of the state by 2100, "Grids in the vicinity of New York City and in central New Jersey show small (<5%) decreases in 100-ARI rainfall (Fig. 17). In northern parts of the state increases in the 25-35% range are common. In two models (CMCC-CMS) and (GFDLCM3) decreases in 100-yr ARI precipitation are indicated at more than half of the grid points in the domain, while in several models 100-yr ARI precipitation increases at nearly all grids."³

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² <https://njclimateresourcecenter.rutgers.edu/wp-content/uploads/2022/04/State-of-the-Climate-Report-NJ-2021-4-18.pdf>

³ <https://www.nj.gov/dep/dsr/publications/projected-changes-rainfall-model.pdf>

The New Jersey Builders Association retained a meteorological firm, Applied Weather Associates (AWA), to review the Cornell Study. AWA has performed work for numerous government agencies including DEP and specializes in Probable Maximum Precipitation and rainfall analysis, and its studies have been accepted by state and Federal dam regulatory agencies, including the Federal Energy Regulatory Commission, National Resources Conservation Service, Bureau of Reclamation, numerous state dam regulatory offices and many are under review by the Nuclear Regulatory Commission. AWA's summary of the Cornell Study, which was shared with DEP, noted that the divergence in modeling and the large spatial differences in the study's precipitation ranges speak to the inherent uncertainty of climate modeling and therefore, utilizing the median outcomes instead of the 83rd percentile better captures the overall range of outcomes.⁴

Even Dr. Robert Kopp, the Rutgers Professor who prepared the report that DEP relied on to sea level rise projection of 5 ft. by 2100, is now projecting a 1 to 2 ft rise. Here is the link to Dr. Kopp's latest webinar and PowerPoint. <https://protect-sl.reu/events/>

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 - Dr. Kopp does predict that sea level rise caused by the icesheet melt will happen eventually, but it may take thousands of years.
- Since the Rutgers STAP report, every report that has been published, including the IPCC AR 6 report and NOAA, both of which had Dr. Kopp as the lead author, no longer predicts the ice sheet collapse this century;
- DEP is using a "moderate emissions" scenario and predicting to 2100. Under these scenarios sea level rise is not anywhere near 5' under current scientific understanding;
- Dr. Kopp is now predicting under those scenarios a worldwide sea level rise of 1-2 feet (30-60 cm). Since New Jersey is "sinking" you need to add an additional foot for a prediction of 2-3 feet.

Considering the large variances in precipitation forecasts, those contained in just the median outcomes in the Cornell Study, and the analysis performed by AWA, we believe that median projections from the year 2050 must be utilized, with updates performed every 10 years as climate science evolves. The Cornell Study would additionally validate this approach: "Future updates to these CFs (change factors) are indicated to assure that the most relevant and reliable climate data are being used in design and resiliency planning." The Cornell report additionally notes, "...it will be prudent to reevaluate the CFs once multiple sets of downscaled CMIP6 model projections become available."

Reevaluation the Basis of Proposed Coastal Regulations

An additional reason for utilizing a more incremental approach is that the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures, etc.

⁴ <http://njba.org/wp-content/uploads/2023/02/AWA-Response-to-NJ-DEP-Rainfall-Regulations83.docx>

NJDEP uses very basis flood mapping to define the Inundation Risk Zones. This is inappropriate and the State should follow the same process as FEMA.

Historically, FEMA has overseen issues of floodplain mapping and regulation. FEMA plans to release new FIRM maps next year. Once they are released, they will be shared with the affected municipalities and public meetings will be held to alert property owners of any proposed changes. This is the proper way to define regulated floodplains. The NJ PACT policies are being proposed without this detailed mapping process.

When FEMA proposes flood hazard area map changes, they survey new coastal protection structures, dune systems, and other resiliency efforts to incorporate them into their mapping. The NJPACT REAL regulations do not take this efforts into account. The NJPACT REAL regulations also do not take into account the massive resiliency efforts underway by the Army Corps of Engineer, the Federal Infrastructure Act, and the Inflation Reduction Act. We strongly recommend that the State wait until the new FEMA maps are available in 2025 before adopting any new coastal regulations.

Here in Atlantic County, we have invested millions on bulkheads, seawalls, living shorelines, and pump stations. None of this is taken into account by the NJ PACT regulations.

Similarly, Green Energy improvements being implemented in Atlantic County have the potential to contribute to reduced climate impacts going forward. Future climate impacts can be reduced from the trajectory set by our reliance on fossil fuels up to this point.

A recent report by Professor Jesse Jenkins of Princeton University provides an analysis of the impact that the federal Inflation Reduction Act will have on greenhouse gas emissions and investments in electricity capacity in the PJM region thru 2035 and what additional investments and resources would be needed to deeply decarbonize the PJM region by 2035 while maintaining affordable and reliable electricity in the PJM region. The REPEAT Project⁵ led by Professor Jenkins (Princeton University Department of Mechanical & Aerospace Engineering and the Andlinger Center for Energy & the Environment), has used a suite of macro-energy system modeling tools to rapidly analyze the impacts of these new laws and provide a detailed look at the United States' evolving policy environment. Drawing on REPEAT Project findings, this report summarizes the major components of the Inflation Reduction Act and Infrastructure Law, their impacts, and current progress on the road to net-zero greenhouse gas emissions. Dr. Jenkins' findings are that the Inflation Reduction Act is already reducing Greenhouse Gas emissions.

Economic Impacts

By creating a new flood zone (inundation risk zone or IRZ) with strict development standards, expanding existing flood zones (climate adjusted flood elevation or CAFE), and creating new 3 percent impervious coverage limits (CAFRA Critical Environmental Areas), thousands of prime developable acres of land will be either undevelopable or much harder to develop. This will impact major projects and hurt rateables. Given that the most restrictive

⁵ www.repeatproject.org

development limits are on lands closer to the water; the rule would impact some of the state's most valuable lands.

As documented in the State's annual tourism report, Atlantic County generates over \$8 billion in tourism revenue annually. This economic engine impacts all of South Jersey. An in-depth, independent economic impact study prepared by a qualified economist is imperative prior to adopting the NJPACT REAL regulations.

Many already economically burdened communities will be faced with new land use regulations that may significantly devalue land and property. DEP's published regulatory realignment is expected to result in extensive and immediate economic impacts, which may include impacts to Somers Point's tax base.

Further complicating this issue, raising homes costs from \$150,000 to \$300,000, but the National Flood Insurance Program (NFIP) Increased Cost of Compliance (ICC) Coverage only provides up to \$30,000 for raising eligible homes to comply with State guidelines.⁶ Most property owners in Somers Point cannot afford to raise their homes, a fact which must be recognized by the State in rolling out the updated rules. The Atlantic County coastal communities apply for FEMA assistance to raise homes each year, but many homeowners cannot afford to cover the cost while waiting for FEMA to provide reimbursement. The FEMA process is complicated, takes years to obtain approval, and is very competitive. In addition, in 2025 the federal government has stopping providing funding for home elevation, leaving no options. Will the State of New Jersey be providing funding for home elevations? To assume that federal funding is the answer to elevating home is misleading. An improved, effective State program that provides funding at various stages of development is warranted but is not even being considered in this rule making process.

Forcing homeowners to rebuild to a new Climate Adjusted Flood Elevation (CAFE) which may exceed the true flood elevation will impose unjustified burdens and costs on cash-strapped homeowners. Before the REAL rules are adopted, detailed mapping must be made available to inform property owners of the new CAFE standards for their properties.

In addition to moderate to large developers, small-scale developers, individual homeowners, and small businesses will be required to determine if they are affected by the new CAFE standards. As many applicants do not have the ability or data to conduct such studies, municipalities will have to assist and evaluate the regulatory status of many more properties. Some municipalities will have to regulate hundreds more homes, businesses, and vacant lands, for a variety of proposed construction, including both major and relatively minor work. This may require additional staff, which could translate into the need for additional taxes, while the tax base may be reduced due to reduced property values in the expanded flood zones. An analysis of the impact of the REAL rules on municipalities must be completed prior to adoption.

⁶ https://www.fema.gov/sites/default/files/2020-08/fema_increased-cost-of-compliance_fact-sheet.pdf

Municipal floodplain administrators will have to review the work of hired surveyors, engineers, design professionals and/or the property owner to assure compliance with local/state/federal floodplain management regulations. State funding should be provided to offset these added administrative costs.

DEP has indicated that costs associated with floodproofing will be minor. However, no evidence has been provided to support this claim. These costs on smaller projects may not be minimal relative to the potential benefit. Again, for properties that are reasonably expected to flood based on valid methodology, the benefits may exceed the costs. However, if properties are included that are not actually in a flood risk area with a reasonable recurrence interval, there will likely be no benefit.

The Inundation Risk Zones rules will add to the cost and discourage redevelopment and new development in Atlantic County. New homes and home additions will be required to meet onerous risk assessment criteria including an alternative analysis, a deed notice, and other stringent requirements designed to discourage building.

The fiscal impact on the real-estate market must be analyzed prior to adoption. Poor and middle-class year-round residents will likely be disproportionately impacted by these rules. DEP should provide information to explain likely impacts to poor and middle-class community members. The economic analysis should reflect the true cost and burden on existing homes, businesses, property owners, other structures, and municipalities, within the expanded Flood Hazard Area, with a realistic assessment of flood risk.

Legislation vs. Rulemaking

The NJPACT REAL rule changes are significantly more far reaching than the changes proposed in 2013 to establish a New Jersey Coastal Commission. In 2013, the Coastal Commission was proposed as legislation, the NJ PACT regulations are proposed to be implemented through the rulemaking process. Something this significant which will have profound economic effects should be achieved through the deliberation process of legislation rather than regulation.

In the State of Maine, Governor Janet Mills has established an Infrastructure and Rebuilding Commission to identify crucial areas for near-term investment and policy needs and developing the state's first long-term infrastructure plan to ensure that Maine is ready for the harsh storms ahead. The Commission includes local officials, and they will develop recommendations for funding and legislation for their communities. An inclusive process is required to address this issue. Again, the State should follow a more inclusive and transparent process to redraft these regulations.

Affordability

The NJPACT REAL rule proposal contains hundreds of new requirements on all developments, even on small "backyard" projects for homeowners, which will drive up the cost of all new development and redevelopment. It will even drive up the costs of building roads and other infrastructure projects. These new requirements will make New Jersey even more unaffordable.

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The timing of this rule adoption and the impact to developable land will throw the 4th Round Affordable Housing process into chaos while significantly increasing the cost of development to all housing amidst a housing affordability crisis. Decreasing developable land will also drive the already high cost of land acquisition in our State even higher, further exacerbating one of the most significant barriers to achieving our housing goals.

Flood Insurance Expansion

With the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance that they do not need.

I am asking that the State abandon the NJPACT REAL rule process and start anew with a process that includes the legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.

I look forward to your timely response and to collaborating with you to develop a reasonable path forward.

Regards,

City of Somers Point



Dennis Tapp

Mayor

cc: Governor Phil Murphy
Lieutenant Governor Tahesha Way
Diane Gutierrez-Scaccetti, Senior Advisor
Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair, Energy & Environment
Assemblyman Jim Kennedy, Chair, Environment
Senator Vince Polistina
Assemblyman Don Guardian
Assemblywomen Claire Swift
New Jersey Business and Industry Association
New Jersey Association of Counties
New Jersey League of Municipalities
New Jersey Business & Industry Association
Atlantic County Executive Dennis Levinson
Atlantic County Board of Commissioners
Atlantic County Mayors

City of Somers Point

Resolution

No. 195 of 2025

Subject: Resolution Opposing the Proposed “Protecting Against Climate Threat (Pact)/Resilient Environments and Landscape (Real)” Rules

Introduced By: Council President Haberkorn

WHEREAS, on July 14, 2025, the New Jersey Department of Environmental Protection announced intent to amend the NJ PACT REAL regulations; and

WHEREAS, on July 21, 2025, the changes to the NJ PACT REAL regulations were published in the New Jersey Register and a 60-day comment period commenced; and

WHEREAS, the City of Somers Point opposes the amended coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

WHEREAS, the City of Somers Point acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring thoughtful and well-reasoned response from all levels of government; and

WHEREAS, the City of Somers Point continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all critical infrastructure and building projects, while also providing the necessary support to our local communities in the approach, duration, and wake of major coastal storms; and

WHEREAS, the City of Somers Point is extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public; and

WHEREAS, historically, new rules issued by the NJDEP have always been promulgated pursuant to legislation through the typical legislative process; and

WHEREAS, in this case, like the NJDEP’s recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

WHEREAS, NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. These regulations should be applied incrementally based on twenty year projects; and

WHEREAS, by creating a new flood zone (inundation risk zone or IRZ) with strict development standards, expanding existing flood zones (climate adjusted flood elevation or CAFE), and creating new 3 percent impervious coverage limits (CAFRA Critical Environmental Areas), thousands of prime developable acres of land will be either undevelopable or much harder to develop. This will impact major projects and hurt rateables. Given that the most restrictive development limits are on lands closer to the water, the rule would impact some of the state’s most valuable lands; and

WHEREAS, these rules as currently written do not consider the economic impact these new standards may have on the rateables, real-estate values, development, and redevelopment statewide, but

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City of Somers Point Resolution

especially in Atlantic County where we have more than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is the largest industry in Atlantic County; and

WHEREAS, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts in the City of Somers Point, throughout Atlantic County, and State of New Jersey; and

WHEREAS, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

WHEREAS, these rules will also increase construction costs and impact the feasibility for public infrastructure projects with the minimum construction height requirements for new roads in excess of Base Flood Elevation, will be infeasible and unachievable given the path and location of the project; and

WHEREAS, despite the burden these rules will inevitably play on our coastal towns, the State of New Jersey has not mentioned any plan for a State budget appropriation to assist coastal towns statewide with the additional duties and functions imposed through the proposed NJPACT REAL regulations; and

WHEREAS, the proposed expansion of flood hazard areas will also create additional financial burdens for lower and middle class property owners living in the City of Somers Point by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within the newly expanded regulated areas and may also potentially result in higher insurance premiums given the expansion of the inundation risk zone and increase of the regulated flood hazard area limits by 4 feet vertically; and

WHEREAS, the proposed NJPACT REAL regulations are based Science and Technical Advisory Panel Report (2019 STAP Report) entitled, "New Jersey Rising Seas and Changing Coastal Storms," projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

WHEREAS, since the 2019 STAP Report several key studies on sea level rise were issued as was the International Panel on Climate Change (IPCC) Assessment that addressed sea level rise. The more recent studies do not support the idea of a 5.1 foot sea level rise as being likely. The IPCC and all the newer scientific reports predict that worldwide sea level rise this century will be 0-2 feet; and

WHEREAS, municipalities are required to prepare Master Plans for a 20-year planning horizon, and the City of Somers Point strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, the City of Somers Point, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirement will significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region's workforce; and

WHEREAS, the NJDEP's proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

WHEREAS, the proposed coastal regulations will create an Environmental Justice issue since local residents will be deterred from improving their homes because they will have to elevate 6 feet above BFE which they cannot afford when they improve their homes above 50 percent of its value, hence those in most need of shelter will witness the deterioration of their homes and be forced to relocate; and

WHEREAS, the Federal Emergency Management Agency is also in the process of preparing detailed updates to the flood insurance rate maps (FIRMS) that take into account many factors of risk including sea level rise; and

WHEREAS, the State of New Jersey has historically used these maps to guide public policy, and therefore, the City of Somers Point urges the State to differ to the superseding governing body, in this

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City of Somers Point Resolution

instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

WHEREAS, with the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance; and

WHEREAS, while recognizing the importance of addressing climate change, as stated previously, the City of Somers Point believes that a more gradual and balanced approach is necessary to target incremental adjustments over time in order to mitigate the potential negative impacts that these radically changing rules will have on the coastal towns of New Jersey; and

WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones.

NOW, THEREFORE, **BE IT RESOLVED**, the City of Somers Point strongly recommends the following:

1. The City of Somers Point recommends that the State abandon the NJPACT REAL rule making process and start anew with a process that includes the Legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory chances based on a twenty year time horizon.
2. The City of Somers Point recommends a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations.
3. The City of Somers Point recommends that these regulations be based on a 20- year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on a 75-year projection.
4. The City of Somers Point recommends that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that include significantly higher elevation requirements for new roads.
5. The City of Somers Point recommends that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. The City of Somers Point hereby orders copies of this Resolution, attached Analysis Study, and Maps be transmitted to Governor Phil Murphy; Lieutenant Governor Tahesha Way; Chief of Staff to Governor Murphy Diane Gutierrez-Scaccetti; Senate President Nicholas P. Scutari; Assembly Speaker Craig J. Coughlin; Senate Environment Committee Chair Bob Smith; Assembly Environment Committee Chair James J. Kennedy; the Office of Legislative District 2's Senator Vince Polistina, Assemblyman Don Guardian, and Assemblywomen Claire Swift; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the

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City of Somers Point Resolution

New Jersey League of Municipalities (NJLM) to convey the City of Somers Point's concerns and recommendations.

7. The City of Somers Point hereby orders copies of this Resolution be submitted as public comment on the NJ Register to serve as the municipality's official comments to the NJDEP's proposed NJPACT REAL rules.

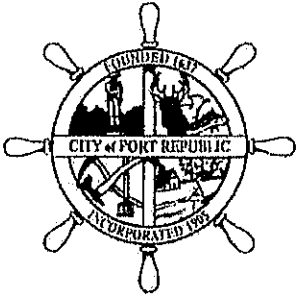
	MOTIONS	YES	NO	ABSTAIN	ABSENT	RECUSE
DePamphilis						
Dill	1					
Gerety						
Johnston	2					
McGuigan						
Owen						
Haberkom						
Consent Agenda		X				

I, Shelby Heath, City Clerk of the City of Somers Point, New Jersey, hereby certify that the foregoing Resolution is a true copy, duly adopted by the City Council of said City at a Regular meeting held on the 14th day of August 2025. In witness whereof, I have hereunto set my hand and seal of the Office on the 14th day of August 2025.

Shelby Heath

Shelby Heath, RMC, City Clerk

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OFFICE OF THE MAYOR
CITY OF PORT REPUBLIC
143 MAIN STREET
NEW JERSEY 08241

MONICA GIBERSON
MAYOR
(609) 652-1501
mayor@portrepublicnj.org

September 10, 2025

Melissa Abatemarco, Esq.
NJDEP, Office of Legal Affairs
401 East State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

**Attn: Public Comments on NJDEP NJPACT REAL Rule Proposal
DEP Docket No. 05-24-05**

Dear Ms. Abatemarco:

The City of Port Republic would like to submit comments in response to the New Jersey Department of Environmental Protection's proposed amendments, changing our flood hazard and land use rules statewide. We appreciate the revisions to the initial proposal, however; we oppose the adoption of the revised NJPACT REAL Rule Proposal. The City remains deeply concerned that the revised rules are premature, inequitable, and based on speculative long-range projections that lack the scientific certainty and policy justification required for such a sweeping mandate.

We are extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public. Before these significant regulations are considered for adoption, we respectfully request that meeting be held with the coastal municipalities and counties to fully inform the elected officials and the public of the content of this 1,000+ page rule.

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The rulemaking process lacked adequate stakeholder engagement and transparency. By excluding meaningful consultation with local governments and industry experts before proposing such comprehensive changes, the proposed rules overlook practical land use needs and the flexibility required to balance resilience with economic viability. Additional concerns included the increased regulatory complexity, further delays in an already burdensome permitting process, absence of legacy exemptions, imposition of premature permit expirations, and a lack of commensurate technical assistance and financial resources to satisfy elevated regulatory standards, all of which would jeopardize projects already in the pipeline and for which substantial investments have already been made.

We believe we can accomplish the goals of protecting our residents from the impacts of a changing climate through a more balanced, well-thought-out, incremental approach. Specifically, we believe the proposed rules would have the following negative impacts on the state:

75-year vs. 20-year Timeframe & Sea Level Rise Projections

NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. It is strongly recommended that the State gradually implement coastal regulations on a twenty year horizon, not based on what might happen in the year 2100.

While scientific consensus exists that climate change is occurring, divergence in modeling occurs frequently and is especially dependent on future emissions.¹ As noted by the 2020 New Jersey Scientific Report on Climate Change, by DEP, "there are difficulties in predicting whether annual precipitation or the number of extreme precipitation events will increase because of the various meteorological interactions that drive precipitation patterns (Marquardt Collow et al. 2016)." The report continues, "Climate projections predict that the total annual precipitation in the Northeast region of the United States will remain relatively consistent with the current conditions" (Hayhoe et al. 2007). Data produced by AdaptWest to develop resources for climate adaptation planning shows that annual precipitation in New Jersey may increase by 2.3 inches to 3.5 inches (5.8 cm to 8.9 cm) above the 1980-2010 average (46.7 inches [118.6 cm]) by the 2080s based on mid (RCP 4.5) and high (RCP 8.5) emission scenarios, respectively (Horton et al. 2015). Such increases reflect a 4.9% and 7.5% increase in annual precipitation by the end of the century.

A recent study by the New York City Panel on Climate Change estimates that annual precipitation in the area could increase between 4% and 11% by 2050 (Horton et al. 2015)." This uncertainty is also reflected in State of the Climate New Jersey 2021, by

¹ <https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>

Rutgers University, "the possible range of projected changes in annual rainfall is wide but much smaller than the year-to-year precipitation variability in New Jersey. Therefore, projected changes in future rainfall are illustrative of a small increasing trend, but the exact amounts are uncertain."²

To further illustrate divergent modeling, several models in Projected Changes in Extreme Rainfall in New Jersey based on an Ensemble of Downscaled Climate Model Projections by Art DeGaetano ("Cornell Study"), which is utilized as a basis for much of this rule proposal, show that rainfall will actually decrease in areas of the state by 2100, "Grids in the vicinity of New York City and in central New Jersey show small (<5%) decreases in 100-ARI rainfall (Fig. 17). In northern parts of the state increases in the 25-35% range are common. In two models (CMCC-CMS) and (GFDLCM3) decreases in 100-yr ARI precipitation are indicated at more than half of the grid points in the domain, while in several models 100-yr ARI precipitation increases at nearly all grids."³

The New Jersey Builders Association retained a meteorological firm, Applied Weather Associates (AWA), to review the Cornell Study. AWA has performed work for numerous government agencies including DEP and specializes in Probable Maximum Precipitation and rainfall analysis, and its studies have been accepted by state and Federal dam regulatory agencies, including the Federal Energy Regulatory Commission, National Resources Conservation Service, Bureau of Reclamation, numerous state dam regulatory offices and many are under review by the Nuclear Regulatory Commission. AWA's summary of the Cornell Study, which was shared with DEP, noted that the divergence in modeling and the large spatial differences in the study's precipitation ranges speak to the inherent uncertainty of climate modeling and therefore, utilizing the median outcomes instead of the 83rd percentile better captures the overall range of outcomes.⁴

Even Dr. Robert Kopp, the Rutgers Professor who prepared the report that DEP relied on to sea level rise projection of 5 ft. by 2100, is now projecting a 1 to 2 ft rise. Here is the link to Dr. Kopp's latest webinar and PowerPoint. <https://protect-sl.rutgers.edu/events/>

- The Rutgers STAP report predicted 5' sea level rise by 2100 based on the assumption that the West Antarctic Icesheet will collapse this century. If it does not collapse sea level rise would be 1-2 feet worldwide;
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- DEP is using a "moderate emissions" scenario and predicting to 2100. Under these scenarios sea level rise is not anywhere near 5' under current scientific understanding;
- Dr. Kopp is now predicting under those scenarios a worldwide sea level rise of 1-2 feet (30-60 cm). Since New Jersey is "sinking" you need to add an additional foot for a prediction of 2-3 feet.

Considering the large variances in precipitation forecasts, those contained in just the median outcomes in the Cornell Study; and the analysis performed by AWA, we believe that median projections from the year 2050 must be utilized, with updates performed every 10 years as climate science evolves. The Cornell Study would additionally validate this approach: "Future updates to these CFs (change factors) are indicated to assure that the most relevant and reliable climate data are being used in design and resiliency planning." The Cornell report additionally notes, "...it will be prudent to reevaluate the CFs once multiple sets of downscaled CMIP6 model projections become available."

Reevaluation the Basis of Proposed Coastal Regulations

An additional reason for utilizing a more incremental approach is that the new rules assume there will be no resilience efforts taken to reduce flooding such as protective structures, etc. NJDEP uses very basis flood mapping to define the Inundation Risk Zones. This is inappropriate and the State should follow the same process as FEMA.

Historically, FEMA has overseen issues of floodplain mapping and regulation. FEMA plans to release new FIRM maps next year. Once they are released, they will be shared with the affected municipalities and public meetings will be held to alert property owners of any proposed changes. This is the proper way to define regulated floodplains. The NJ PACT policies are being proposed without this detailed mapping process.

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Here in Atlantic County, we have invested millions on bulkheads, seawalls, living shorelines, and pump stations. None of this is taken into account by the NJ PACT regulations.

The reliance on broad assumptions about sea level rise and storm-related flooding, without due consideration for site-specific factors such as existing flood protection infrastructure, drainage patterns, or localized topography, would create regulatory overreach. Using least-likely probability to define risk is overly conservative and would lead to unnecessarily restrictive outcomes. Moreover, applying uniform, statewide

standards without accommodating regional variations imposes a one-size-fits-all framework that would fail to reflect real-world conditions.

Similarly, Green Energy improvements being implemented in Atlantic County have the potential to contribute to reduced climate impacts going forward. Future climate impacts can be reduced from the trajectory set by our reliance on fossil fuels up to this point.

A recent report by Professor Jesse Jenkins of Princeton University provides an analysis of the impact that the federal Inflation Reduction Act will have on greenhouse gas emissions and investments in electricity capacity in the PJM region thru 2035 and what additional investments and resources would be needed to deeply decarbonize the PJM region by 2035 while maintaining affordable and reliable electricity in the PJM region. The REPEAT Project⁵ led by Professor Jenkins (Princeton University Department of Mechanical & Aerospace Engineering and the Andlinger Center for Energy & the Environment), has used a suite of macro-energy system modeling tools to rapidly analyze the impacts of these new laws and provide a detailed look at the United States' evolving policy environment. Drawing on REPEAT Project findings, this report summarizes the major components of the Inflation Reduction Act and Infrastructure Law, their impacts, and current progress on the road to net-zero greenhouse gas emissions. Dr. Jenkins' findings are that the Inflation Reduction Act is already reducing Greenhouse Gas emissions.

Economic Impacts

The creation of the Inundation Risk Zone (IRZ) and expanded Climate Adjusted Flood Elevation (CAFE) restrictions would impose significant economic hardship on coastal communities by adversely affecting property rights, property values, ADA accessibility, and economic development. Severe limitations on development, even for properties critical to sustaining a municipality's market-rate tax base or meeting State-mandated affordable housing obligations, would exacerbate local budget challenges.

By reducing or effectively prohibiting development on private lands without compensatory measures, the proposed rules would discourage investment, lower property values, and amount to a regulatory "taking." This would have far-reaching consequences for key coastal industries, including tourism, commercial fishing, construction, and real estate, ultimately straining employment, housing affordability, and economic growth.

As documented in the State's annual tourism report, Atlantic County generates over \$8 billion in tourism revenue annually. This economic engine impacts all of South Jersey. An in-depth, independent economic impact study prepared by a qualified economist is imperative prior to adopting the NJPACT REAL regulations.

⁵ www.repeatproject.org

Many already economically burdened communities will be faced with new land use regulations that may significantly devalue land and property. DEP's published regulatory re-alignment is expected to result in extensive and immediate economic impacts, which may include impacts to (name of government agency)'s tax base.

Further complicating this issue, raising homes costs from \$150,000 to \$300,000, but the National Flood Insurance Program (NFIP) Increased Cost of Compliance (ICC) Coverage only provides up to \$30,000 for raising eligible homes to comply with State guidelines.⁶ The Atlantic County coastal communities apply for FEMA assistance to raise homes each year, but many homeowners cannot afford to cover the cost while waiting for FEMA to provide reimbursement. The FEMA process is complicated, takes years to obtain approval, and is very competitive. In addition, in 2025 the federal government has stopping providing funding for home elevation, leaving no options. Will the State of New Jersey be providing funding for home elevations? To assume that federal funding is the answer to elevating home is misleading. An improved, effective State program that provides funding at various stages of development is warranted but is not even being considered in this rule making process.

Forcing homeowners to rebuild to a new Climate Adjusted Flood Elevation (CAFE) which may exceed the true flood elevation will impose unjustified burdens and costs on cash-strapped homeowners. Before the REAL rules are adopted, detailed mapping must be made available to inform property owners of the new CAFE standards for their properties.

In addition to moderate to large developers, small-scale developers, individual homeowners, and small businesses will be required to determine if they are affected by the new CAFE standards. As many applicants do not have the ability or data to conduct such studies, municipalities will have to assist and evaluate the regulatory status of many more properties. Some municipalities will have to regulate hundreds more homes, businesses, and vacant lands, for a variety of proposed construction, including both major and relatively minor work. This may require additional staff, which could translate into the need for additional taxes, while the tax base may be reduced due to reduced property values in the expanded flood zones. An analysis of the impact of the REAL rules on municipalities must be completed prior to adoption.

Municipal floodplain administrators will have to review the work of hired surveyors, engineers, design professionals and/or the property owner to assure compliance with local/state/federal floodplain management regulations. State funding should be provided to offset these added administrative costs.

⁶ https://www.fema.gov/sites/default/files/2020-08/fema_increased-cost-of-compliance_fact-sheet.pdf

DEP has indicated that costs associated with floodproofing will be minor. However, no evidence has been provided to support this claim. These costs on smaller projects may not be minimal relative to the potential benefit. Again, for properties that are reasonably expected to flood based on valid methodology, the benefits may exceed the costs. However, if properties are included that are not actually in a flood risk area with a reasonable recurrence interval, there will likely be no benefit.

The Inundation Risk Zones rules will add to the cost and discourage redevelopment and new development in Atlantic County. New homes and home additions will be required to meet onerous risk assessment criteria including an alternative analysis, a deed notice, and other stringent requirements designed to discourage building.

The fiscal impact on the real-estate market must be analyzed prior to adoption. Poor and middle-class year-round residents will likely be disproportionately impacted by these rules. DEP should provide information to explain likely impacts to poor and middle-class community members. The economic analysis should reflect the true cost and burden on existing homes, businesses, property owners, other structures, and municipalities, within the expanded Flood Hazard Area, with a realistic assessment of flood risk.

Legislation vs. Rulemaking

The NJPACT REAL rule changes are significantly more far reaching than the changes proposed in 2013 to establish a New Jersey Coastal Commission. In 2013, the Coastal Commission was proposed as legislation, the NJ PACT regulations are proposed to be implemented through the rulemaking process. Something this significant which will have profound economic effects should be achieved through the deliberation process of legislation rather than regulation.

In the State of Maine, Governor Janet Mills has established an Infrastructure and Rebuilding Commission to identify crucial areas for near-term investment and policy needs and developing the state's first long-term infrastructure plan to ensure that Maine is ready for the harsh storms ahead. The Commission includes local officials, and they will develop recommendations for funding and legislation for their communities. An inclusive process is required to address this issue. Again, the State should follow a more inclusive and transparent process to redraft these regulations.

Affordability

The NJPACT REAL rule proposal contains hundreds of new requirements on all developments, even on small "backyard" projects for homeowners, which will drive up the cost of all new development and redevelopment. It will even drive up the costs of building roads and other infrastructure projects. These new requirements will make New Jersey even more unaffordable.

The timing of this rule adoption and the impact to developable land will throw the 4th Round Affordable Housing process into chaos while significantly increasing the cost of

development to all housing amidst a housing affordability crisis. Decreasing developable land will also drive the already high cost of land acquisition in our State even higher, further exacerbating one of the most significant barriers to achieving our housing goals.

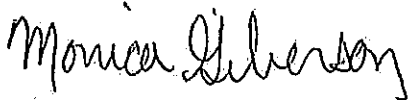
Flood Insurance Expansion

With the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance that they do not need.

I am asking that the State abandon the NJPACT REAL rule process and start anew with a process that includes the legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.

I look forward to your timely response and to collaborating with you to develop a reasonable path forward.

Regards,



Monica Giberson
Mayor

cc: Governor Phil Murphy
Lieutenant Governor Tahesha Way
Diane Gutierrez-Scaccetti, Senior Advisor
Jacqueline Swarez, NJDCA Commissioner
Congressman Jeff Van Drew
Senate President Nicholas P. Scutari
Assembly Speaker Craig Coughlin
Senator Bob Smith, Chair, Energy & Environment
Assemblyman Jim Kennedy, Chair, Environment
Senator Vince Polistina
Assemblyman Don Guardian
Assemblywomen Claire Swift
New Jersey Business and Industry Association
New Jersey Association of Counties
New Jersey League of Municipalities
New Jersey Business & Industry Association
Atlantic County Executive Dennis Levinson
Atlantic County Board of Commissioners
Atlantic County Mayors

203x

CITY OF PORT REPUBLIC
ATLANTIC COUNTY, NEW JERSEY

RESOLUTION #74-2025

RESOLUTION OPPOSING THE PROPOSED "PROTECTING AGAINST CLIMATE THREAT (PACT)/RESILIENT ENVIRONMENTS AND LANDSCAPE (REAL)" RULES

WHEREAS, on July 14, 2025, the New Jersey Department of Environmental Protection announced intent to amend the NJ PACT REAL regulations; and

WHEREAS, on July 21, 2025, the changes to the NJ PACT REAL regulations were published in the New Jersey Register and a 60-day comment period commenced; and

WHEREAS, the City of Port Republic opposes the amended coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

WHEREAS, the City of Port Republic acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring thoughtful and well-reasoned response from all levels of government; and

WHEREAS, the City of Port Republic continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all critical infrastructure and building projects, while also providing the necessary support to our local communities in the approach, duration, and wake of major coastal storms; and

WHEREAS, the City of Port Republic is extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public; and

WHEREAS, historically, new rules issued by the NJDEP have always been promulgated pursuant to legislation through the typical legislative process; and

WHEREAS, in this case, like the NJDEP's recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

WHEREAS, NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that

CITY OF PORT REPUBLIC
ATLANTIC COUNTY, NEW JERSEY

RESOLUTION #74-2025

municipal master planning efforts project twenty years in the future due to uncertainties. These regulations should be applied incrementally based on twenty year projects; and

WHEREAS, by creating a new flood zone (inundation risk zone or IRZ) with strict development standards, expanding existing flood zones (climate adjusted flood elevation or CAFE), and creating new 3 percent impervious coverage limits (CAFRA Critical Environmental Areas), thousands of prime developable acres of land will be either undevelopable or much harder to develop. This will impact major projects and hurt rateables. Given that the most restrictive development limits are on lands closer to the water, the rule would impact some of the state's most valuable lands; and

WHEREAS, these rules as currently written do not consider the economic impact these new standards may have on the ratables, real-estate values, development, and redevelopment statewide, but especially in Atlantic County where we have more than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is the largest industry in Atlantic County; and

WHEREAS, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts in the City of Port Republic, throughout Atlantic County, and State of New Jersey; and

WHEREAS, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

WHEREAS, these rules will also increase construction costs and impact the feasibility for public infrastructure projects with the minimum construction height requirements for new roads in excess of Base Flood Elevation, will be infeasible and unachievable given the path and location of the project; and

WHEREAS, despite the burden these rules will inevitably play on our coastal towns, the State of New Jersey has not mentioned any plan for a State budget appropriation to assist coastal towns statewide with the additional duties and functions imposed through the proposed NJPACT REAL regulations; and

WHEREAS, the proposed expansion of flood hazard areas will also create additional financial burdens for lower and middle class property owners living in the City of Port Republic by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within the newly expanded regulated areas and may also potentially result in higher insurance premiums given the expansion of the inundation risk zone and increase of the regulated flood hazard area limits by 4 feet vertically; and

WHEREAS, the proposed NJPACT REAL regulations are based Science and Technical Advisory Panel Report (2019 STAP Report) entitled, "New Jersey Rising Seas and

CITY OF PORT REPUBLIC

ATLANTIC COUNTY, NEW JERSEY

RESOLUTION #74-2025

Changing Coastal Storms,” projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

WHEREAS, since the 2019 STAP Report several key studies on sea level rise were issued as was the International Panel on Climate Change (IPCC) Assessment that addressed sea level rise. The more recent studies do not support the idea of a 5.1 foot sea level rise as being likely. The IPCC and all the newer scientific reports predict that worldwide sea level rise this century will be 0-2 feet; and

WHEREAS, municipalities are required to prepare Master Plans for a 20-year planning horizon, and the City of Port Republic strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, the City of Port Republic, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirement will significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region’s workforce; and

WHEREAS, the NJDEP’s proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

WHEREAS, the proposed coastal regulations will create an Environmental Justice issue since local residents will be deterred from improving their homes because they will have to elevate 6 feet above BFE which they cannot afford when they improve their homes above 50 percent of its value, hence those in most need of shelter will witness the deterioration of their homes and be forced to relocate; and

WHEREAS, the Federal Emergency Management Agency is also in the process of preparing detailed updates to the flood insurance rate maps (FIRMS) that take into account many factors of risk including sea level rise; and

WHEREAS, the State of New Jersey has historically used these maps to guide public policy, and therefore, the City of Port Republic urges the State to differ to the superseding governing body, in this instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

WHEREAS, with the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance; and

CITY OF PORT REPUBLIC

ATLANTIC COUNTY, NEW JERSEY

RESOLUTION #74-2025

WHEREAS, while recognizing the importance of addressing climate change, as stated previously, the City of Port Republic believes that a more gradual and balanced approach is necessary to target incremental adjustments over time in order to mitigate the potential negative impacts that these radically changing rules will have on the coastal towns of New Jersey; and

WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones.

NOW, THEREFORE, BE IT RESOLVED, the City of Port Republic strongly recommends the following:

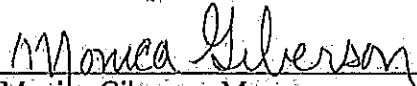
1. The City of Port Republic recommends that the State abandon the NJPACT REAL rule making process and start anew with a process that includes the Legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.
2. The City of Pot Republic recommends a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations.
3. The City of Port Republic recommends that these regulations be based on a 20- year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on a 75-year projection.
4. The City of Port Republic recommends that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that include significantly higher elevation requirements for new roads.
5. The City of Port Republic recommends that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. The City of Port Republic hereby orders copies of this Resolution, be transmitted to Governor Phil Murphy; Lieutenant Governor Tahesha Way; Advisor to Governor Murphy Diane Gutierrez-Scaccetti; Senate President Nicholas P. Scutari; Assembly Speaker Craig J. Coughlin; Senate Environment Committee Chair Bob Smith; Assembly Environment Committee Chair James J. Kennedy; the Office of Legislative District 2's Senator Vince Polistina, Assemblyman Don Guardian, and Assemblywomen Claire Swift; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the New Jersey League of Municipalities (NJLM) to convey the City of Port Republic's concerns and recommendations.

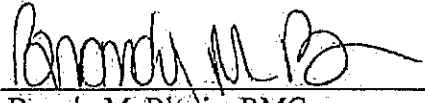
CITY OF PORT REPUBLIC
ATLANTIC COUNTY, NEW JERSEY

RESOLUTION #74-2025

7. The City of Port Republic hereby orders copies of this Resolution be submitted as public comment on the NJ Register to serve as the municipality's official comments to the NJDEP's proposed NJPACT REAL rules.

Date: September 9, 2025


Monica Giberson, Mayor

Attest: 
Brandy M. Blévin, RMC
Municipal Clerk

Councilmember	Offered	Seconded	Yes	No	Abstain	Absent
Allgeyer						✓
Crawford		✓	✓			
Giberson			✓			
Hawn			✓			
Riegel	✓		✓			
Ropiécki			✓			
Turner						✓

**BOROUGH OF LONGPORT
COUNTY OF ATLANTIC
STATE OF NEW JERSEY**

RESOLUTION2025-138

**RESOLUTION OPPOSING THE PROPOSED “PROTECTING AGAINST
CLIMATE THREAT (PACT)/RESILIENT ENVIRONMENTS AND LANDSCAPE
(REAL)” RULES**

WHEREAS, on July 14, 2025, the New Jersey Department of Environmental Protection announced intent to amend the NJ PACT REAL regulations; and

WHEREAS, on July 21, 2025, the changes to the NJ PACT REAL regulations were published in the New Jersey Register and a 60-day comment period commenced; and

WHEREAS, the Board of Commissioners of the Borough of Longport opposes the amended coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

WHEREAS, the Board of Commissioners of the Borough of Longport acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring thoughtful and well-reasoned response from all levels of government; and

WHEREAS, the Board of Commissioners of the Borough of Longport continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all critical infrastructure and building projects, while also providing the necessary support to our local communities in the approach, duration, and wake of major coastal storms; and

WHEREAS, the Board of Commissioners of the Borough of Longport is extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public; and

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WHEREAS, in this case, like the NJDEP's recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

WHEREAS, NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. These regulations should be applied incrementally based on twenty year projects; and

WHEREAS, by creating a new flood zone (inundation risk zone or IRZ) with strict development standards, expanding existing flood zones (climate adjusted flood elevation or CAFE), and creating new 3 percent impervious coverage limits (CAFRA Critical Environmental Areas), thousands of prime developable acres of land will be either undevelopable or much harder to develop. This will impact major projects and hurt rateables. Given that the most restrictive development limits are on lands closer to the water, the rule would impact some of the state's most valuable lands; and

WHEREAS, these rules as currently written do not consider the economic impact these new standards may have on the ratables, real-estate values, development, and redevelopment statewide, but especially in Atlantic County where we have more than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is the largest industry in Atlantic County; and

WHEREAS, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts in the Borough of Longport, throughout Atlantic County, and State of New Jersey; and

WHEREAS, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

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WHEREAS, the proposed NJPACT REAL regulations are based Science and Technical Advisory Panel Report (2019 STAP Report) entitled, "New Jersey Rising Seas and Changing Coastal Storms," projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

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WHEREAS, municipalities are required to prepare Master Plans for a 20-year planning horizon, and the Board of Commissioners of the Borough of Longport strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, the Borough of Longport, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirement will significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region's workforce; and

WHEREAS, the NJDEP's proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

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WHEREAS, the State of New Jersey has historically used these maps to guide public policy, and therefore, the Board of Commissioners of the Borough of Longport urges the State to defer to the superseding governing body, in this instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

WHEREAS, with the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance; and

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WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones.

NOW, THEREFORE, BE IT RESOLVED, the Board of Commissioners of the Borough of Longport strongly recommends the following:

1. The Board of Commissioners of the Borough of Longport recommends that the State abandon the NJPACT REAL rule making process and start anew with a process that includes the Legislature and local officials and focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.
2. The Board of Commissioners of the Borough of Longport recommends a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations.
3. The Board of Commissioners of the Borough of Longport recommends that these regulations be based on a 20- year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on a 75- year projection.

4. The Board of Commissioners of the Borough of Longport recommends that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that include significantly higher elevation requirements for new roads.
5. The Board of Commissioners of the Borough of Longport recommends that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. The Board of Commissioners of the Borough of Longport hereby orders copies of this Resolution, be transmitted to Governor Phil Murphy; Lieutenant Governor Tahesha Way; Advisor to Governor Murphy Diane Gutierrez-Scaccetti; Senate President Nicholas P. Scutari; Assembly Speaker Craig J. Coughlin; Senate Environment Committee Chair Bob Smith; Assembly Environment Committee Chair James J. Kennedy; the Office of Legislative District 2's Senator Vince Polistina, Assemblyman Don Guardian, and Assemblywomen Claire Swift; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the New Jersey League of Municipalities (NJLM) to convey the (name of government agency)'s concerns and recommendations.
7. The Board of Commissioners of the Borough of Longport hereby orders copies of this Resolution be submitted as public comment on the NJ Register to serve as the municipality's official comments to the NJDEP's proposed NJPACT REAL rules.

RECORD OF GOVERNING BODY VOTE ON FINAL PASSAGE						
COMMISSION	AYE	NAY	N.V.	AB.	MOT.	SEC.
ARMSTRONG	X					X
LAWLER	X				X	
ULMER	X					

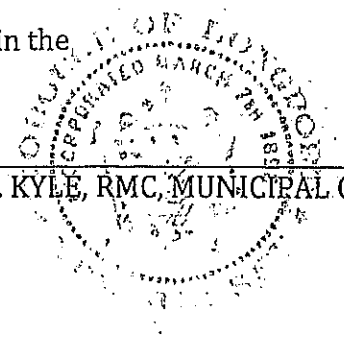
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

This is a Certified True copy of the Original Resolution on file in the Municipal Clerk's Office.

DATE OF ADOPTION:
9/17/2025

Monica A. Kyle

/s/ MONICA A. KYLE, RMC, MUNICIPAL CLERK



213x

JOSEPH H. MANCINI
MAYOR
DIRECTOR OF PUBLIC AFFAIRS & SAFETY

JOSEPH P. LAITANZI
COMMISSIONER
DIRECTOR OF REVENUE & FINANCE

ALEXANDER L. MEEHAN
COMMISSIONER
DIRECTOR OF PUBLIC WORKS, WATER/SEWER



DANIELLE LA VALLE
MUNICIPAL CLERK
6805 LONG BEACH BOULEVARD
BRANT BEACH, NEW JERSEY 08008

WEBSITE:
www.longbeachtownship.com

Phone: 609.361.7000
Fax: 609.494.5421

NJPACT PROPOSED RULE COMMENTS

September 22, 2024

Melissa Abatemarco, Esq.
Attention: DEP Docket No. 05-24-05
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor, P.O. Box 402
Trenton, New Jersey 08625-0402

Dear Ms. Abatemarco,

Thank you for the opportunity to submit comments on behalf of Long Beach Township in response to the NJDEP's Protecting Against Climate Threats proposed rules ("NJPACT"): Located on an eighteen-mile-long barrier island, the Township is acutely aware of the risks posed by and the impacts of climate change. Indeed, the Township is on the proverbial front line of the risks and impacts, and, therefore, has been proactive and aggressive in its approach by addressing stormwater and resilience challenges and protecting and mitigating such risks to the environment, residents, residential and commercial properties, utilities, and infrastructure. As set forth at greater length herein, the Township's knowledge and experience guide its approach to the actual risk probabilities and what is practical, effective, and balanced with the real world effects upon the environment, economy, and residents. Ultimately, the Township contends the facts and law establish the NJDEP should amend NJPACT in accordance with the comments set forth herein and follow the Township's lead of a common-sense, practical, and measured approach which respects the actual risks, the rights of the people, the economic impact, and the resources required to address these important issues.

I. THE TOWNSHIP'S AGGRESSIVE AND PRACTICAL APPROACH

The Township has aggressively addressed climate change through the preparation of its Resilient LBI Action Plan, which meets the most stringent versions of FEMA flood maps (including freeboard) to account for future climate conditions, natural hazards, and innovative climate mitigation and adaptation strategies. In addition, the wastewater and water treatment infrastructure has been designed to withstand a 500-year flood event.¹ Moreover, the Township has hosted 7 engagement workshops regarding the Resilient LBI Action Plan, both in person and virtually. The Township undertook such necessary and common-sense planning exercises because it is aware sea levels are rising and storms are worsening; it does not deny the reality. However, crafting policy based on the most unlikely climate scenario, as NJPACT does, defies established climate science and places unnecessary burdens on residents, businesses, and municipalities.

¹ Resilient NJ – Long Beach Island. New Jersey Department of Environmental Protection. April 15, 2025.
<https://stormmaps.arcgis.com/stories/8270c8d6d42f4783b0a4fe1530a866a3>

214x

II. UNFUNDED MANDATE WITH EXTREME ECONOMIC CONSEQUENCES

The costs of remaining resilient in highly dynamic coastal environments exposed to severe weather challenges are significant even without the added and extraordinary unfunded mandate NJPACT would create. Without adequate funding assistance, few of the necessary improvements to combat climate change are possible for the average resident. Mandating new rules and requirements without financial assistance for implementation will spell economic disaster for seasonal economies that rely on tourism and recreation. The accelerated approach will result in unintended consequences for the Township's economy, real estate, and related cascading effects on tourism and recreation. Accordingly, the NJDEP must amend NJPACT to a more gradual approach for implementing regulations to adapt to climate change.

III. FOLLOWING ESTABLISHED CLIMATE SCIENCE

NJPACT begins with a climate change introduction and acknowledgement that leading universities have determined sea levels are rising and annual precipitation and extreme storm events are increasing. Again, the Township is aware of the existential threat these issues pose to all Jersey Shore communities, as coastal flooding is an intrinsic quality of barrier island communities, but it should not be conflated with fear and unlikely statistics to promote unsound policy. The NJDEP's use of a sea level rise metric that has only a 17% chance of occurring 76 years from now is both a scare tactic and unsound policy. The Township is aware that sea levels are rising and that streets are flooding in greater frequency, but this issue must be addressed incrementally through adaptive management rather than an across-the-board overhaul which is unaffordable.

IV. RULEMAKING ISSUES

The use of an uncertain sea level rise metric projected 76 years from now is unwisely deemed as the "established climate science," which is then used to craft 8 principles of NJPACT. Several of those principles are of special concern to the Township, including the following: (A) Increased Protection Against Flood Inundation; (B) Protecting Critical Facilities and Infrastructure; (C) Increased Protection of Land and Water Resources; and (D) Encouraging Renewable Energy.

A. Increased Protection Against Flood Inundation

The establishment of an Inundation Risk Zone ("IRZ") is a forward-looking approach; however, it is overly prescriptive and far too extreme for the foreseeable flood issues facing coastal communities. The Township is supportive of policies which provide resilience against hazardous events that have reasonable statistical likelihood of occurring. From the Township's point of view, there must be a sound basis for mandating requirements to avoid hazards that may occur during the lifetime of the structures being protected.

According to a 2023 study by the Massachusetts Institute of Technology, the design life of most residential homes is 50-63 years.³ However, according to local builders and real estate professionals, homes along the Jersey Shore are often replaced more frequently, roughly every 25-30 years or less. That means homes built today to the NJPACT standard would be overbuilt by 25 years or more beyond the actual expected risks they will face. This imposes unnecessary costs on homeowners which could be mitigated simply by selecting a lower value for the IRZ and updating the NJPACT rules again in 2049 (25 years) or 2074 (50 years).

Most property owners hold flood insurance policies through the National Flood Insurance Program (NFIP) due to the prohibitive cost of flood insurance in the private market. The NFIP's Community Rating System is a voluntary incentive program that encourages communities to implement floodplain management activities that exceed the minimum NFIP requirements. This program rewards communities with discounts

³ A new exhibition at MIT Wiesner Student Art Gallery explores the practicalities and play of architectural aging, Matilda Bathurst. <https://arts.mit.edu/mit-architectural-longevity-exhibition/#carousel-example-generic>

on flood insurance premiums, ranging from 5% to 45%, based on their level of floodplain management activities. NJPACT specifically states the NJDEP's goal of "aligning the State's floodplain management efforts with the NFIP's minimum standards." However, exceeding these minimum standards to adhere to NJPACT provides no reward to policyholders. The requirement to raise homes 4 feet + 1 is an unfunded mandate that will have cascading effects on Jersey Shore economies by restricting the ability to make timely and necessary improvements, modifications, or repairs to homes and buildings.

The rule is as restrictive for current owners as it is prohibitive for future owners. Current owners may never be able to afford to implement NJPACT to their existing homes or future renovations. Future owners may find that purchasing an existing property is prohibitively expensive due to the necessary renovations to remain compliant under the proposed rule. Both of these scenarios produce an economic situation where ordinary hardworking homeowners on the Jersey Shore can no longer afford to remain where they are, ultimately resulting in a retreat from the coast by middle class populations and an expansion of ultra-wealthy homeowners with extraordinary disposable income they can use to adapt their homes to NJDEP's costly and unnecessary proposed rule. This transition of wealth is facilitated by this Department's proposed rule.

A reduced IRZ that is proportionate to the statistical likelihood of weather events occurring within the life of the structure is required. The current proposal is far too extreme unless the NJDEP provides communities or individual homeowners adequate funding to undertake improvements for the well-intentioned purpose of flood protection. If property owners are going to exceed national flood standards, they must be rewarded incrementally as the CRS provides for, rather than punished for lacking capital to implement an unfunded mandate.

B. Protecting Critical Facilities and Infrastructure

The NJDEP believes the rulemaking proposes more stringent design and construction standards that are "commensurate with the level of anticipated risk." To reiterate, however, the level of anticipated risk described by the Department is a 17% chance of sea levels rising 5 feet 76 years from now. Regardless of the accuracy of this statistic, if the focus is to ensure the resilience of public facilities and infrastructure, it is appropriate to expend public funds to improve services and connectivity through raising roads and protecting critical public utilities and without requiring municipalities to foot the entire bill. Leaving municipalities solely responsible for funding such upgrades could lead to inconsistent levels of protection across regions, disproportionately impacting smaller communities with limited resources. A more balanced approach, where the State shares in the financial responsibility, would ensure all communities, regardless of size or wealth, are protected from the anticipated risks posed by sea level rise and other climate-related challenges. This would also promote uniformity in the resilience of critical infrastructure across the State.

C. Increased Protection of Land and Water Resources

The State spends approximately \$50 million annually on beach replenishment⁴, while the coastal communities contribute \$16 billion to the State's economy⁵ and generate around \$5.2 billion in state and local taxes annually.⁶ The proposed rule claims that more intense coastal storms are eroding the State's beaches and dunes, putting coastal communities at increased risk and creating "an economic burden upon government entities to continually replenish and restore these invaluable assets." However, based on the State's own economic data, it is simply wrong to claim beach replenishment imposes an economic burden on the State. Coastal tourism and recreation, which are entirely dependent upon the beaches, generate substantial tax and economic revenue. Visitor activity also supports 501,014 jobs (or 1 in 12 jobs in NJ), accounting for 8.3% of all jobs in the State. Given these facts, it is entirely inaccurate for the State to claim that beach nourishment is hindering the economy.

⁴ More Sand, Please! A Record-Setting \$50M Will go to Keeping Jersey Shore Beaches Sandy, <https://www.nj.com/news/2023/07/more-sand-please-a-record-setting-50m-will-go-to-keeping-jersey-shore-beaches-sandy.html#:~:text=Although%20New%20Jersey%20has%20poured.Click%20here>

⁵ Ocean Resources Management in New Jersey <https://www.nj.gov/dcp/cmp/fact3.pdf>

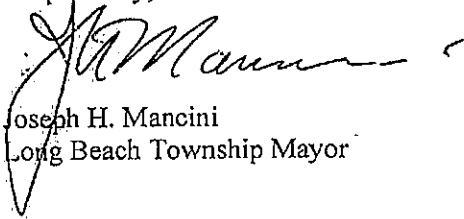
D. Encouraging Renewable Energy

The Township has long expressed concerns regarding the State's irresponsible approach to offshore wind development. While the Township fully supports renewable energy initiatives, it favors proposals that respect the historic, economic, environmental, social, and cultural importance of maintaining visually appealing beaches and unobstructed horizons. The Township opposes projects that harm the natural environment, impose significant visual impacts, or increase costs for residents without providing a meaningful boost in energy production or reliability. Moreover, the Township is troubled by the State's decision to overlook disturbances to shellfish and marine fish habitats caused by offshore wind projects in exchange for financial compensation, referred to as "mitigation standards." The NJDEP appears to tolerate significant environmental impacts from renewable energy projects as long as sufficient monetary compensation is provided, raising concerns about the prioritization of economic considerations over environmental preservation.

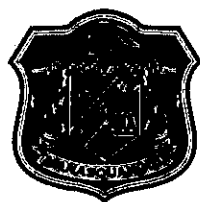
V. CONCLUSION

The Township supports reasonable climate adaptation policies and requests that the NJDEP take a more measured approach in implementing NJPACT. The Township shares concerns with other communities about the impact on local economies and residents who may face significant challenges to meet even basic compliance. While the Township acknowledges the importance of climate adaptation, it urges the Governor and the State to adopt a more gradual, science-based, and common-sense approach to NJPACT.

Respectfully,



Joseph H. Mancini
Long Beach Township Mayor



Borough of Manasquan
Office of the Mayor

Date: April 21, 2026

To: Assembly and Senate Environment Committees
State House Annex - Trenton, NJ

Re: Request for Immediate Pause of NJ PACT-REAL Rules

Executive Summary

- The REAL rules are based on a misapplication of the State's own scientific projections, relying on low-probability scenarios rather than median outcomes.
- Historical data shows that over 85–95% of housing stock in Monmouth and Ocean Counties is replaced over a 70-year period, meaning the vast majority of structures being regulated today will not exist within the time horizons driving these projections.
- Flooding in built-out coastal towns is driven primarily by infrastructure failure, not individual building elevation.
- Manasquan has developed a funded, engineered alternative that reduces flooding from over 100 events per year to less than one through coordinated public and private investment.
- An 18-month pause is necessary to evaluate performance-based, town-by-town solutions that can achieve real resilience.

Dear Chairman and Members of the Committees,

My name is Mike Mangan, and I serve as the Mayor of the Borough of Manasquan. I am writing on behalf of our residents and Borough Council, who stand united in strong opposition to the NJ PACT-REAL rules as currently adopted.

Let me be clear: we support coastal resilience. We do not support policies that are unworkable, misaligned, and ultimately ineffective in achieving that goal.

We respectfully request an immediate 18-month pause on implementation of the REAL rules to allow for a practical, town-by-town approach that reflects the realities of New Jersey's fully developed coastal communities.

Misalignment with the State's Own Science

The most concerning aspect of the REAL rules is that they reflect a misapplication of the State's own scientific guidance. The State's 2025 Science and Technical Advisory Panel report projects approximately 1.0–1.5 feet of sea-level rise by 2050 under median scenarios, while projections approaching or exceeding 4 feet are tied to low-probability ranges and incorporate uncertain, high-impact processes. Yet the REAL rules effectively regulate as if those upper-bound scenarios are the baseline.

We do not question the good faith of the scientists or policymakers involved—there is no doubt they are acting with the sincere goal of protecting our communities. However, good intentions cannot substitute for correct application. As written, the rule does not reflect the intent, balance, or probabilistic framework of the State's own Science and Technical Advisory Panel report.

Compounding this issue, the rule does not account for the rate at which coastal communities naturally evolve. Historical data shows that over 85–95% of housing stock in Monmouth and Ocean Counties is replaced over a 70-year period, meaning the vast majority of structures being regulated today will not exist within the time horizons driving these projections.

Median projections show approximately 1 to 1.5 feet of sea-level rise by 2050, while the much higher projections approaching or exceeding 4 feet are tied to low-probability scenarios and include high-impact processes with acknowledged uncertainty.

Yet the current rule effectively regulates as if those worst-case scenarios are certain.

At the same time, the rule ignores a critical reality: coastal housing stock turns over rapidly. Historical data shows that the vast majority of structures will be replaced within the timeframe used to justify these regulations.

This creates a fundamental mismatch between policy and reality.

219x

We are imposing immediate and significant costs on today's residents based on projections for buildings that will not exist when those conditions occur.

Good policy prepares for the future. It does not ignore how the present actually works.

Premature and Misaligned Timing

Updated FEMA flood maps are still pending. Moving forward with state-imposed standards ahead of federal alignment creates unnecessary uncertainty and risk of duplication.

A more rational approach would focus on public infrastructure first, allowing future private requirements to align with updated federal standards and coordinated local planning.

Public Infrastructure Must Come First

Flooding in Manasquan is not primarily a building-height issue—it is a failure of public infrastructure. Roads, drainage systems, utilities, and evacuation routes are what fail during storm events. When they do, entire neighborhoods become inaccessible.

Elevating homes while leaving roads underwater is not resilience. It is regulatory compliance without real-world functionality.

Without coordinated upgrades to public infrastructure, private elevation requirements will not ensure safe access for residents, emergency responders, or evacuation during storm events.

One-Size-Fits-All Does Not Work

The blanket 4-foot increase in base flood elevation does not account for the physical and economic realities of built-out coastal communities.

In practice, this requirement is often infeasible and does not produce meaningful resilience when surrounding infrastructure remains below that elevation.

Instead of creating comprehensive protection, it risks producing isolated compliance while leaving systemic flooding conditions unchanged.

A Better, Proven Approach Exists

Manasquan is not simply opposing this rule—we are actively implementing a better solution.

Through our "Save the Shore" initiative, we have developed a comprehensive, phased flood mitigation plan that addresses the actual drivers of flooding: infrastructure failure.

This plan includes elevating roadways, upgrading drainage systems, improving utilities, and protecting evacuation routes in a coordinated manner.

It also incorporates zoning changes requiring private properties to raise grade elevations over time in alignment with municipal infrastructure, along with engineered transition standards to prevent impacts to neighboring properties.

Where immediate improvements are required, homeowners participate through cost-sharing mechanisms, ensuring shared responsibility while maintaining economic feasibility.

This is not avoidance of elevation—it is coordinated elevation.

Most importantly, this approach delivers measurable results. It reduces flooding from over 100 events per year to less than one, while maintaining access, functionality, and long-term sustainability.

Resilience should be measured by performance—not by isolated compliance.

The Path Forward

We are not asking to avoid responsibility. We are asking for policies that actually work.

We urge the Legislature to support SCR-106 and require a pause in implementation so that:

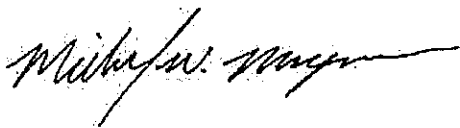
- A town-by-town, performance-based approach can be evaluated
- Public infrastructure feasibility can be addressed first
- State, federal, and local standards can be aligned
- Proven, engineered solutions can be implemented

If the goal is resilient communities, then policy must support solutions that keep those communities functional, accessible, and economically viable.

New Jersey's coastal communities are ready to lead—but we need the flexibility to implement solutions that reflect reality, not assumptions.

Thank you for your consideration.

Respectfully submitted,



Mike Mangan

Mayor, Borough of Manasquan

4-Foot Raise in Base Flood Elevation covers probabilities that most of this chart do not predict.

The Year 2100

Degrees of Warming (°C)†	Across Emissions Scenarios		Low Emissions (SSP1-2.6)		Intermediate Emissions (SSP2-4.5)		High Emissions (SSP3-7.0)	
	2040	2050	2070	2100	2070	2100	2070	2100
> 17% Chance SLR Exceeds*	1.7 (1.3-2.4)	1.9 (1.3-3.0)	1.7 (1.3-2.4)	1.6 (1.2-2.3)	2.3 (1.8-3.0)	2.6 (2.0-3.6)	2.8 (2.2-3.5)	3.8 (3.0-5.0)
> 15% Chance SLR Exceeds*	0.5	0.7	1.1	1.3	1.2	1.8	1.3	2.1
> 83% Chance SLR Exceeds*	0.7	0.9	1.3	1.8	1.5	2.2	1.6	2.6
> 50% Chance SLR Exceeds	1.0	1.3	1.8	2.4	1.9	2.9	2.0	3.3
< 17% Chance SLR Exceeds†	1.3	1.7	2.3	3.3	2.5	3.8	2.6	4.3
< 17% Chance SLR Exceeds*	1.4	1.9	2.5	3.7	2.8	4.5	3.0	5.2
< 5% Chance SLR Exceeds*	1.7	2.3	3.2	5.1	3.5	6.2	3.9	7.5

17% Chance

x2222

According to the New Jersey Department of Health

2070 is 44 Years From Now

In the previous 44 years, over HALF of the housing stock turned over to new homes.

2100 is 74 years from now

In the last 74 years, 95.8% of the housing stock was replaced in Ocean County, and 86.6% in Monmouth County

An infinitesimally small percentage of homes built in the next 30 years will still be around in the year 2100 or anywhere close to it. This rule is premature and does not align with the science – even the worst projections.



AMERICAN LITTORAL SOCIETY

18 HARTSHORNE DR., Suite 1, HIGHLANDS, NJ 07732

4/21/2026

Re: SCR-106 – Opposition/Support to Resolution Concerning NJPACT REAL Rules

Dear Senator Bob Smith & Assmlyman James Kennedy,
CC: Assembly and Senate Environment Committee

On behalf of the American Littoral Society, I respectfully submit testimony in support of the NJPACT REAL Rules and in opposition to SCR-106. The NJPACT REAL Rules are consistent with legislative intent and fall squarely within the authority granted to the New Jersey Department of Environmental Protection (NJDEP). Additionally, **passing SCR-106 would create legal, practical, financial, and policy risks for New Jersey.** For these reasons, the Assembly and Senate Environment Committees should act in support of the NJPACT REAL rules.

On January 27, 2020, Governor Phil Murphy signed **Executive Order No. 100**, directing the New Jersey Department of Environmental Protection (NJDEP) to address climate change by modernizing the State's land use regulations using the best available information and science. The NJPACT REAL Rules are a direct and appropriate implementation of that directive. In updating its existing rules to reflect climate-related threats, the NJDEP acted fully within its lawful authority.

The **Flood Hazard Area Control Act** explicitly authorizes the NJDEP to delineate flood hazard areas and to regulate development within those areas to reduce risks to public safety, property, and natural resources and to prevent and mitigate flood damage. The Act also requires the Department to rely on the best available data and to amend regulations as necessary to protect public safety, property, and the environment. The NJPACT REAL Rules fulfill this statutory responsibility.

Similarly, the **Coastal Area Facilities Review Act (CAFRA)** directs the NJDEP to evaluate the ecological integrity of coastal resources, safeguard public health and safety, and consider the cumulative impacts of development when reviewing coastal projects. These statutory objectives necessitate regular updates to standards and maps as scientific understanding of coastal and flood risks evolves.

Taken together, Executive Order No. 100, the Flood Hazard Area Control Act, and CAFRA clearly demonstrate that the NJDEP is operating well within the scope of its authority and in accordance with legislative intent as defined by law. The Legislature established the framework for floodplain and coastal regulation, while tasking the NJDEP with developing and adjusting specific standards based on the best available science. Updating flood maps and design standards is not a departure from legislative intent; rather, it is the precise mechanism created to protect lives, property, and critical natural resources, using the best available information and science to do so.

The continuing resolution also raises concerns that the NJPACT REAL Rules may impose burdens on property owners and the economy. While those concerns deserve consideration, NJDEP's statutory responsibility when regulating flood hazard and coastal development is to protect public safety, natural resources, and environmental integrity. Failing to

Phone: 732-291-0055 www.littoralsociety.org

223x

account for known flood risks shifts long-term costs onto taxpayers statewide through disaster recovery expenditures, infrastructure repair, insurance impacts, and emergency response. Incorporating future flood risk into planning decisions helps reduce those shared costs over time.

Finally, adoption of this resolution would create uncertainty regarding NJDEP's ability to continue updating flood hazard and coastal regulations using the best available science, as contemplated under existing law. Maintaining the Department's ability to adjust standards as conditions change is essential for protecting New Jersey communities from increasing flood risk.

The NJPACT REAL Rules directly respond to the increasingly severe climate-driven risks acknowledged in the continuing resolution itself (page 3, line 17). The impacts of sea level rise and intensifying storms in New Jersey are well documented and already affecting communities across the state. It would be inconsistent with legislative intent for NJDEP to rely on outdated flood risk assumptions when more accurate science is available.

For all these reasons, the American Littoral Society respectfully urges the Committees to reject SCR-106 and support continued implementation of the NJPACT REAL Rules.

Thank you for your consideration.

Danielle McCulloch



Executive Director, American Littoral Society

Written Testimony Submitted for the Record New Jersey Senate Environment and Energy Committee Assembly Environment and Solid Waste Committee April 22, 2026

Submitted by Dan Rizza, Climate Central

Chairman Smith, Chair Kennedy, and members of the committees:

Thank you for the opportunity to submit written testimony for the record.

My name is Dan Rizza, and I lead Climate Central's Program on Sea Level Rise. Climate Central is a Princeton, New Jersey-based, non-partisan, non-advocacy climate science research and communications organization. Our role is to translate climate science into localized, decision-useful information for local governments, planners, practitioners, and communities. We provide public screening-level tools and resources to help people assess and communicate risk from coastal flooding and sea level rise.

We understand the committees are interested in lessons from North Carolina's policy experience, as well as the current and projected impacts of climate change and sea level rise in New Jersey. In that spirit, I offer the following points from Climate Central's work.

Sea level rise raises the baseline for coastal flooding

The most important point is simple: sea level rise raises the baseline. When coastal storms, high tides, and other flood drivers arrive, they begin from a higher water level. Floodwaters reach farther inland, get deeper faster, and cause more damage. Storms do not need to become stronger to become more destructive. A higher ocean gives every coastal flood a higher starting point.

Flood damage is also not linear. A few inches of additional water can make the difference between water staying in the street and water entering basements, first floors, electrical systems, transit infrastructure, hospitals, and other critical facilities. In dense coastal communities, that difference can be extremely costly. In many places, coastal flood risk is also compounded when storm surge, high tide, heavy rainfall, and drainage constraints overlap.

Hurricane Sandy shows why a few inches matter

Climate Central's Sandy attribution study found that human-caused sea level rise added roughly four inches to water levels in the New York area before the storm. Those added inches helped drive approximately \$8.1 billion in additional damages across New York, New Jersey, and Connecticut, exposed about 36,000 more housing units to flooding, and affected about 71,000

225x

more people. In New Jersey alone, the study attributed about \$3.7 billion in damages, approximately 24,500 additional people exposed to flooding, and about 16,700 additional housing units affected.¹

Sandy shows that climate change does not have to "cause" every aspect of a storm to substantially worsen its flood impacts. The higher sea level allowed storm surge to penetrate farther inland and deepen floodwaters, increasing losses and harm across the region. For policymakers, the takeaway is practical: a few inches of sea level rise can translate into billions of dollars in additional damage.

This is directly relevant to New Jersey

New Jersey already faces significant coastal flood risk, and sea level rise is increasing that risk by making flood events deeper, broader, and more damaging. In New Jersey, these risks affect not only shore communities, but also inland-connected infrastructure, including transportation corridors and public facilities, emergency access, and public investments tied to the state's dense coastal development pattern. New Jersey's challenge is not only future-oriented: communities already face higher baseline water, more frequent nuisance flooding, and greater storm risk, with implications for homes, roads, utilities, schools, emergency access, public budgets, and insurance affordability.

Climate Central's Coastal Risk Finder illustrates how sharply this risk grows over time in New Jersey. Using IPCC 2021 projections, a scenario reflecting current global commitments, and annual flood levels combined with sea level rise, the tool shows about 68,000 people, 61,000 homes, and 310,000 acres in areas at risk in New Jersey by 2050. Under that same scenario, those figures rise to about 196,000 people, 158,000 homes, and 360,000 acres by 2100. The same scenario shows the height of an annual flood in New Jersey increasing from about 3.2 feet by 2050 to about 4.8 feet by 2100.² These screening-level projections are intended to illustrate the scale and trajectory of risk, not to substitute for site-specific engineering analysis. New Jersey decision-makers also have access to other valuable state-specific resources, including the Rutgers/NJDEP Science and Technical Advisory Panel (STAP) sea-level-rise reports³ and Rutgers' NJFloodMapper. The STAP reports are especially important because Rutgers periodically updates them on behalf of NJDEP to synthesize the best available New Jersey-specific science on sea-level rise and coastal storms for state resilience planning and decision-making.

Climate Central's public tools are designed to help make these risks concrete and useful for local decision-making. Our Coastal Risk Finder allows users to explore sea level rise and

¹ <https://www.climatecentral.org/press-release-sandy-attribution>

<https://pmc.ncbi.nlm.nih.gov/articles/PMC8131618/>

² <https://app.climatecentral.org/coastal-risk-finder>

³

<https://njclimateresourcecenter.rutgers.edu/wp-content/uploads/2025/11/NJ-Rising-Seas-and-Changing-Coastal-Storms-11-2025.pdf>

coastal flood projections, examine impacts on people, land, and homes at the state, county, municipal, congressional-district, and state-legislative-district level, and download graphics and data for planning and communications. Government officials use Climate Central resources for planning, communications, education, vulnerability assessments, hazard mitigation efforts, and grant applications.

Our goal is not to replace engineers, regulators, or local planners, but to provide accessible, science-based information that communities can use as they prepare for worsening coastal flood risk.

A planning lesson from North Carolina

The lesson from North Carolina is not partisan. It is a planning lesson. North Carolina limited the use of up-to-date sea level rise projections in planning decisions, a choice that illustrates the risks of planning with outdated or narrowed projections.⁴ Whatever one's politics, the practical result is that communities are less prepared when planning relies on outdated science or artificially shortened planning horizons. Ignoring risk does not remove it. It shifts costs and consequences onto residents, businesses, and public infrastructure later.

That matters for New Jersey because coastal decisions involve long-lived infrastructure and investments. Roads, utilities, housing, and flood-protection choices made today shape risk for decades. Better information does not create flood risk. It helps communities understand and manage it.

Policy decisions are stronger when grounded in the best available science

Climate Central is not submitting this testimony to endorse or oppose any particular legal or regulatory proposal. Our role is to speak to the underlying flood-risk problem and to the value of clear, science-based information.

New Jersey is already grappling with these questions through the Department of Environmental Protection's recently adopted Resilient Environments and Landscapes amendments, often referred to as NJPACT-REAL. Climate Central is not taking a position on those rules; our point is simply that decisions about development, redevelopment, and infrastructure are increasingly being made in the context of rising coastal flood risk, and that policymakers benefit from using the best available science to understand future exposure. More protective floodplain standards can also have practical benefits for communities: FEMA and NJDEP note that higher standards

4

<https://www.wired.com/story/north-carolina-chose-to-ignore-its-dangerous-sea-levels-years-before-hurricane-florence-hit/?ref=levernews.com>

such as freeboard can support Community Rating System (CRS) credit and help reduce flood insurance costs by lowering risk⁵.

Policymakers, local officials, and residents are best served when decisions are informed by the best available science about current and future flood conditions. Sea level rise is changing the starting line for coastal flooding in New Jersey. Treating flood-risk information as an input to smarter and more durable decisions can help communities prepare more effectively.

Closing

Thank you for the opportunity to submit testimony for the record. Climate Central's goal is to help officials and communities access localized, credible information about what is at risk. Because the best decisions for communities across New Jersey must be rooted in science.

⁵ <https://dep.nj.gov/wlm/drec/flood-engineering/nfip/>

Hansen, Eric

From: Jim Rutala <jmrutala@comcast.net>
Sent: Wednesday, April 29, 2026 4:55 PM
To: OLSaideAEN; OLSaideSEN
Cc: ppenna@njlm.org; Ray Cantor; Berg, Joe; Barbin, Brett; Testa, Sen. D.O.; Rowan, Asw.
Subject: Opposition to REAL PACT Rules
Attachments: Res. #122-3-26 Supporting Senate Resolution No. 106 (SCUTARI D-22) NJDEP'S Proposed Coastal Regulations are inconsistent with Legislative Intent.pdf; LONGPORT R2026-35 Supporting Sen. Resolution No. 106 3.25.2026.pdf; 179 NJ PACT REAL Atlantic City.pdf; Cape May Chamber - Support SC Resolution No. 106.pdf; Wildwood - Support SC Resolution No. 106.pdf; Upper Township 080-2026 Support SC Resolution No. 106.pdf; res 76.2026 Somers Point Opposition to NJPACT.pdf; Atlantic County & Municipalities Public Comment NJPACT Rules 20250918.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from jmrutala@comcast.net. [Learn why this is important](#)

Good Afternoon,

Municipalities in Atlantic and Cape May Counties opposes the REAL PACT Rules as documented by the attached resolutions and letters. Our concerns include the impacts on the economy, affordability, flood insurance rates, and development and redevelopment. The rules unnecessarily exceed local and existing FEMA standards, and the scope and impact of this proposal also cannot be understated. The rules make drastic and significant modifications to multiple sets of regulations outside of the legislative process and without explicit authority from the legislature. Given the significance of the PACT REAL rules, it is more appropriate to achieve these changes through the deliberative process of legislation. We appreciate this opportunity to provide comments and ask that you notify us when future public meetings are scheduled.

Regards,
Jim

James M. Rutala, PP, AICP, MBA
Rutala Associates, LLC
Linwood, New Jersey 08221-1226
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609.743.0354



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April 22, 2026

**Written testimony submitted in person to the Joint Senate Environment & Energy and
Assembly Environment & Solid Waste Committee**

Dear Senators and Assemblypersons,

Permit me to introduce myself: I am Robin Suydam and, based on my lifetime of experience in insurance in NJ, I am writing to urge you to retain the NJPACT REAL regulations.

For 45 years I worked in and then ran our mid-size family-owned insurance agency serving NJ personal, commercial and nonprofit clients across the size spectrum. In 1986, I served as the first President of the Young Insurance Professionals. And in 1991 I became the first female President of the Professional Insurance Agents of NJ. And for the last 32 years, I have continuously served on the board of directors of one of NJ's finest insurance companies, Franklin Mutual, based in Branchville.

NJ's Insurance Market Disruptions over my time:

I have lived and worked through the great disruption of NJ's auto insurance Joint Underwriting Association – the JUA – of the early 70's in NJ – when so many companies left NJ, not to come back for 40 years – and some, like Safeco – never to come back. I've lived and worked through the hard market of the early 80's when entire school districts, not to mention average businesses, could not buy insurance. It was just too expensive. And the Take All Corners era of the early 90's when companies had very little auto insurance underwriting discretion in accepting insureds – and looked to leave NJ.

Today's Industry Disruptions:

Now we are facing a new kind of disruption with increasingly severe perils, coming from weather and climate. Try to find a company to insure a house you just bought that has a 16-year-old roof. If that roof is not 15 years old or newer, its extremely difficult to get traditional Replacement Cost coverage. You can likely only get 'Actual Cash Value' – so you are left with a small check at the time of a loss, based on the depreciated value of the roof. The insured has to pick up the difference. Add that to the price of the policy. Hailstorms – and all manner of Severe Convective Storms make this a new insurance reality.

Both agents and individuals are struggling to find a standard homeowners carrier that will write at the coast. We are left with mostly 'markets of last resort', the 'excess market', to cover these homes. California, Oregon, Louisiana, Florida and Texas already are watching insurance companies leave, where even the State Plans are unable to take on full risks as they once did.

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In order to retain the Insurance Industry as an active partner in the financial security and stability of NJ property owners and residents, we need a viable, healthy insurance industry that is willing to take on a modest risk for a modest profit.

The question before the industry, our regulators and our legislature is how do we accomplish that in NJ?

We live and work in a state that is, due to its geography and density:

increasingly in harms way of sea level rise, Inland flooding, increasing severe convective storms, increasing participation. And these pressures are now coming even faster than we have anticipated. Add fewer options in the marketplace – along side the pressure for additional housing and continuing new construction.

The insurance industry, nation wide is recommending resilience at every turn.

Insurance pricing simply follows the cost of risk, if we want lower prices, we need to find ways to lower the relative risk of loss. The industry is encouraging stronger efforts of mitigation and loss prevention. The National Association of Mutual Insurance Companies recently wrote an extensive letter to the administration in Washington outlining this need.

That's why I am writing to you in support of the NJPACT REAL regulations as they stand on the books now. These regulations bring increased resiliency and an increased ability to withstand loss, to minimize loss. Which means lower costs of the loss itself, which leads to lower insurance costs.

Resiliency comes with effective building codes.

We are living in an era with building codes based on yesterday's losses, the losses of the last decades. However, today's science points us to the fact that we can't use data from the past decades to predict tomorrow's losses. There is an 83% chance that sea level rise in NJ will be up to 4 feet higher by 2100. That is the data – and its many particulars – that is informing the NJPACT REAL regulations.

Building homes that are prepared for what is coming in the next 70 years is a major step toward resilience.

Better building codes are incentives to insurance companies.

When you get a quote for insurance coverage for a new home, the discounts are substantial, the coverage options broader and the choice of companies are multiple - compared to getting a quote for coverage on an older home.

Stronger building codes strengthen the marketplace in several ways. They provide incentives for companies to write new properties. They can lead to lower premiums for homes that are better prepared to withstand a storm. They can result in broader coverages and more companies in the marketplace willing to write those homes.

So while the construction of a new home will cost a bit more to meet those codes, that homeowner will be much more likely to be able to *find* insurance and be able to afford the insurance. And critically, if that home is financed, without insurance, the homeowner can't get a mortgage.

So you see the ripple effect.

How do these regs affect homes undergoing repairs or upgrades and what does that do to insurance?

These new regs require meeting the new standards only if a) the damage is to 50% or more to the structure or the work creates 50% more habitable space.

Some clarifications – exception is made for repair or maintenance activities that do not change the building's footprint or height, nor those in which the habitable area is not increased

How does that affect insurance? It does modestly increase the exposure to the 'ordinance and law' portion of a homeowners policy – the coverage that provides additional limits if the loss triggers an ordinance or law requiring the homeowner repair or rebuild, after a loss, with additional specifications that were not part of the home when it was originally insured. And to be prepared to pay that additional benefit – to meet these regs - the insurance companies will need to charge a bit more premium.

However, after a loss, once the home is rebuilt in compliance with these regs, the homeowner will have a home that is more resilient, more protected from the next storm – and likely eligible for better insurance and/or more discounts *because* those improvements will have been made.

Relying on science is a much firmer footing on which an insurance company can develop its rates.

Science tells us that NJ development and redevelopment, whether at the shore or inland, will be subject to greater weather/climate/heat related exposures and losses. NJPACT REAL regs are built on the best of science and its tools over the last several years.

For those who are thinking that this science is a step too far – just take into account the latest science in the last 2 months. A study, published March 6 by the journal Geophysics Research Letters, documents that the rate of global warming is accelerating much faster than anticipated – it appears to have doubled in the last decade. And the effects of the intensification are in the news almost daily.

We cannot enter into the next decades ignoring this information, nor the science that resulted in the NJPACT REAL regs. To do so, puts so much of what we have achieved, built, enjoyed in peril. That includes financing systems.

Two years ago, I testified at a joint committee hearing on the Clean Energy Bill and I quoted Mark Carney, who at the time was head of the Bank of England and is now the Canadian Prime Minister. Mr. Carney said, in 2014, that Climate Policy is Monetary Policy. Insurance is a key part of our monetary policy system.

We need to attract and keep the viable insurance marketplace in our state, so that it can bear a substantial portion of the financial stability for property owners.

Most NJ Homeowners alone can't budget sufficiently to handle the next Sandy, the next Irene, the next Ida. Insurance is the 3rd party, that for a small sum, will take on a large portion of that risk. That's just what insurance is – a mechanism to help make us as close to 'whole' again after a loss. Not to enrich us – but to put us back to the 'square one' we have all achieved in owning the great American dream – a home.

I thank you all for your service to NJ – you are the wise ones we select through our voting every few years to guide our vibrant, diverse, successful and tough small state into our future. I encourage you to rely on your wisdom and the best science to keep NJ an attractive place for the widest number of participants in risk-bearing, the insurance marketplace.

Your maintenance of these regulations will make NJ as resilient as possible, to make it as successfully as possible, through the years ahead.

Sincerely,



Robin Suydam

54 Skillmans Lane, Somerset, NJ 08873

robin.suydam@suydamassociates.com

Subject: Opposition to SCR106 – Protecting Against Climate Threats Rules Dear Senate Environment & Energy Committee and Assembly Environment & Solid Waste Committee

As I may not be able to join the meeting on Wednesday, I wanted to provide the following comments as a certified Climate Change Professional, a past chair of the Princeton Environmental Commission, and a concerned citizen. I am writing to express strong opposition to Senate Concurrent Resolution No. 106, which seeks to invalidate the New Jersey Department of Environmental Protection’s “Protecting Against Climate Threats” (NJPACT–REAL) rules. While the resolution frames these rules as economically burdensome and restrictive to development, it fails to account for a more fundamental economic reality: the costs of inadequate climate resilience are not avoided, they are simply shifted. At its core, this issue is about externalities. When development is permitted in high-risk flood zones without appropriate safeguards, the financial benefits are captured privately by developers, property owners, and in some cases municipalities through short-term tax revenue. However, the risks associated with that development, flood damage, infrastructure strain, emergency response costs, and long-term insurance losses, are broadly distributed across society. This creates a classic and deeply problematic dynamic: the privatization of profits and the socialization of losses. We are already seeing the consequences of this imbalance here in state and nationwide:

- Rising insurance premiums across entire regions, not just for those in high-risk areas
- Increased strain on public disaster recovery funds
- Repetitive loss properties requiring ongoing taxpayer-supported interventions
- Market instability as insurers retreat from high-risk geographies

Invalidating NJPACT–REAL would reinforce this misalignment. It would allow continued development patterns that do not fully internalize climate risk, effectively subsidizing risky behavior at the expense of all New Jersey residents. From a purely economic standpoint, the DEP’s rules represent a necessary market correction. By incorporating forward-looking flood risk into land use and development decisions, they help ensure that:

- Risk is more accurately priced
- Development decisions are more rational and durable
- Long-term public costs are reduced

While concerns about housing affordability and property rights deserve thoughtful consideration, weakening climate resilience standards will not solve these challenges. Instead, it risks amplifying long-term costs that will ultimately be borne by homeowners, taxpayers, and businesses statewide. If the Legislature believes refinements are needed, the appropriate path is targeted improvement, not wholesale

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invalidation of rules designed to protect lives, property, and the State's fiscal stability. New Jersey has an opportunity to lead with a pragmatic, economically sound approach to climate adaptation, one that aligns incentives rather than distorting them. I respectfully urge you to oppose SCR106.

Sincerely,

Matthew Wasserman,
MPA, CC-P Climate Change Professional
Princeton, NJ

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In listening to the testimony, Legislators and witnesses have erroneously stated that the Legislature was cut out of the rule making process until today.

Under the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), **an agency is required to notify the Legislature** (specifically the Senate President and Assembly Speaker) **prior to or upon filing a notice of proposed rule adoption**. This notification allows for legislative review of proposed regulations to ensure they align with legislative intent, typically occurring during the initial proposal phase before the rule is finalized.

Someone please advise those persons that made these errors.

Bill Wolfe

Dear Chairman Smith -

It is absolutely shocking that you would post SCR106, which recklessly ignores climate impacts and also would strip DEP's legislative authority to regulate both greenhouse gas emissions and adaptation to climate impacts, see:
<https://bwolfe.substack.com/p/nj-legislatures-proposed-veto-of>.

Shocking and totally unacceptable.

What the hell are you thinking?

Wolfe

Dear Chairman Smith - I am writing to provide testimony on SCR 106 for the joint hearing of the Senate and Assembly Environment Committees on Earth Day, April 22, 2026.

While purportedly focused on the DEP's recently adopted REAL regulations, as summarized below, the broad language and legal arguments set forth in SCR 106 **would strip the NJ Department Of Environmental Protection (DEP) of the legal authority to regulate greenhouse gas emissions and to consider "the effects of climate change" as a basis for regulation (i.e. "adaptation").**

The legislation also would veto recently adopted DEP coastal flood regulations designed to respond to the sea level rise impacts of climate change.

First of all, I strenuously object to the prohibition on public testimony on this critical SCR. The limitation on testimony to "invited speakers" is a misguided assault on democracy. That restriction is counterproductive and it will only serve to further undermine public trust and confidence in the integrity of the Legislature.

Second, the SCR is an expression of the Constitutional power to declare regulations "inconsistent with legislative intent". However, the text of the SCR is far broader than legislative intent and includes "*ultra vires*" arguments based on legislative authority.

Accordingly, the legal implications of the SCR are far broader in scope than the single DEP REAL rule, and extend to the legal viability of all other DEP regulations that **consider "the effects of climate change" as a basis for regulation or that regulate the emissions of greenhouse gases (e.g. the DEP's CO2 power plant rule).**

DEP's current regulatory consideration of the phrase "the effects of climate change" include more than sea level rise, storm surge and flooding under the REAL rule, and also include precipitation, stormwater runoff, air quality, water quality, forestry, extreme heat and environmental justice, among other things.

The SCR would prohibit DEP regulatory consideration all of those activities and this have broad impacts across virtually every DEP regulatory program.

Third, the legal reasoning in the SCR "looks back" to assess legislative intent and legislative authority. The SCR expressly finds that State legislation enacted in **1951 and 1958** could not possibly have intended to authorize DEP to regulate GHG emissions or the effects of climate change, allegedly "***since (sic) the issue of climate change was not salient at that time***".

By that reasoning, the DEP's current regulatory definition of air pollution and the CO2 power plant emissions rules indirectly would be deemed "*ultra vires*" and made extremely vulnerable to legal challenge. Those DEP rules were

adopted pursuant to the NJ Air Pollution Control Act, which was **enacted in 1954**, as P.L.1954, c.212.

Fourth, the SCR is not merely an application of the Constitutional Veto power based on legislative intent and to a specific regulation. As noted above, it makes sweeping "*ultra vires*" arguments and would apply to and make vulnerable numerous DEP regulations and cripple DEP's ability to respond to the climate emergency.

But equally serious, is the legal theory of the SCR. This theory is based on a radical and flawed understanding of the separation of powers and delegation doctrines. Instead of accepting these longstanding post New Deal modern theories of "the administrative State", the SCR invokes a radical new "major questions doctrine" and extreme revival of the pre-New Deal non-delegation doctrine.

Under these radical theories, the SCR finds that an "explicit" legislative authorization is required to empower executive branch rulemaking. This false notion ignores implicit and broad delegations and the reasonable exercise of executive agency discretion.

A prior Legislature attempted to enact this theory into law and failed. Specifically, I direct your attention to the 2011 session and **(A2486 2R)** (sponsor by then Assemblyman Burzichelli, D-Oil). That bill would have **prohibited proposal of rules "not specifically authorized" by the legislature. That bill failed. Senator Burzichelli is seeking to revive that failed bill in this SCR.**

Finally, the bill puts a final nail in the coffin of the toothless 2007 Global Warming Response Act and its aspirational emissions reduction goals:

"WHEREAS, In addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law."

Since before the law was passed, I have argued that the GWRA was toothless (see: Sunday *Star Ledger* Op-Ed (October 7, 2007): "**No Teeth In "Tough" Pollution Law**" - screenshot attached)

But I did so while advocating for broader Legislation with regulatory teeth and supporting DEP's regulatory authority under the NJ Air Pollution Control Act.

The SCR does exactly the opposite: it dismantles DEP climate programs and does nothing to strengthen them.

The SCR would do more damage than the Trump EPA's revocation of the Endangerment Finding.

Remarkably, the SCR opens brags about this reckless neglect, celebrates "inaction" and scolds DEP for:

"ignoring the fact that inaction can also be an expression of the Legislature's will".

Inaction indeed.

And on Earth Day.

Wolfe

LEONARD C. DESIDERIO
Commissioner Director

ANDREW BULAKOWSKI
Commissioner Vice-Director

WILL MOREY
Commissioner

PATRICK ROSENELLO
Commissioner



CAPE MAY COUNTY
BOARD OF COUNTY COMMISSIONERS

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Assistant Administrator

Page: 1

NJPACT REAL Rules
Implications, Concerns, and Policy Considerations

1. Overview and Purpose

The NJPACT REAL rules integrate predicted climate conditions 75 years into the future into current land use regulations across multiple NJDEP programs, including the Coastal Zone Management Rules, Freshwater Wetlands Protection Act Rules, Flood Hazard Area Control Act Rules, and Stormwater Management Rules, which significantly impact coastal communities. This regulatory expansion, when proposed, received nearly 3,000 public comments, with roughly two-thirds in opposition, indicating widespread stakeholder concern regarding feasibility, cost, and implementation. In response, minor changes to the rules were made but few that addressed the overwhelming concerns and impacts.

2. Key Regulatory Concerns

Sea Level Rise (SLR) Standard

- 4 ft SLR based on <17% exceedance probability (low likelihood scenario)
- Median projections (~50% probability) are closer to ~2.5–3.1 ft by 2100
- Results in elevation increases of +5 ft above FEMA requirements (4 ft SLR + 1 ft freeboard)
Concern: Using a low-probability scenario inflates design elevations by approximately 1–2 feet beyond median projections, significantly increasing construction costs.

Inundation Risk Zone (IRZ)

- Represents predicted permanent inundation by 2100
- Construction activities in the IRZ require impact assessment, alternatives analysis, and deed notice
- In Cape May County, IRZ affects ~39.25% (61,813 acres) of land
Concern: The scale of IRZ mapping introduces regulatory oversight across large portions of developable land, including areas not currently experiencing flooding.

Climate Adjusted Flood Elevation (CAFE)

- Expands flood hazard areas by +4 ft vertically above FEMA flood elevations
- In Cape May County, expands regulated area from 70,176 acres to 91,563 acres (+13.58%)
Concern: The horizontal expansion of flood hazard areas significantly exceeds current floodplain boundaries, affecting infrastructure corridors and redevelopment zones.

Expanded Stormwater Regulation

- 80% Total Suspended Solids (TSS) removal required
- Applies to redevelopment projects, including <1 acre sites
- Many urban parcels lack sufficient land area for BMPs
Concern: For sites without net impervious increase, water quality improvements are marginal while costs for underground systems can exceed \$50,000–\$250,000 per project.

Dry Access Requirements

- Requires access road elevation ≥ 1 ft above design flood elevation
- Requires modeling of depth, velocity, duration, and frequency of flooding

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Commissioner Director

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Page: 2

Concern: Access roads are often outside applicant control; compliance may require regional infrastructure upgrades rather than site-specific solutions.

Affordable Housing Provision

- Discretionary relief allowed under "compelling public need"
- Must still demonstrate no threat to public safety

Concern: Elevation requirements (often >5 ft above base flood) increase construction costs significantly, reducing feasibility of affordable housing projects.

Flood Hazard Area Permit 180-day Expiration

- Premature permit expiration trigger and the expiration of a critical "legacy" window for projects already having received authorization given that the Flood Hazard Permit automatically expires if the authorized project has not commenced construction 180 days (6 months) after having been issued
- Contradicts the concept of "legacy protection"

Concern: In complex construction, securing all necessary local approvals and financing often takes much longer than six months, meaning developers effectively lose their state flood permits before they even have the chance to break ground.

3. Regional and Economic Impacts

Cape May County Case Study

- Total land: 157,481 acres
- IRZ: 61,813 acres (39.25%) encumbered
- CAFE: 91,563 acres (58.14%) encumbered

Economic Impacts

- "Substantial Improvement": major cost driver and burden for homeowners, especially when routine home investments can trigger full compliance with modern flood design standards, dramatically increasing costs.
- Increased foundation costs: +\$30,000-\$100,000 per structure (typical elevation increase)
- Infrastructure upgrades (roads/utilities): millions per project corridor
- Loss of developable land reduces municipal ratables
- Municipal tax bases are heavily dependent on developable land; widespread constraints shift fiscal burdens to residents.

4. Technical Considerations

Climate Science & Modeling

- NJDEP selected <17% exceedance scenario (~4 ft SLR) vs. median scenario (~50%) closer to ~2.5-3 ft
- Regulating to low-probability scenarios increases costs without proportional risk reduction

Temporal Disconnect

- Rules apply 2100 projections (~75-year horizon) vs. typical infrastructure lifecycle: 30-50 years
- No phased adaptation or trigger-based updates tied to observed conditions

Regulatory Overexpansion

- Combined IRZ + CAFE affects majority of coastal land areas (e.g., >58% of Cape May County under CAFÉ)
- Layered mapping creates overlapping regulatory triggers and redundancy

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Engineering Feasibility

- Constrained lots (<0.25 acre typical urban parcels), utility conflicts, and limited infiltration capacity
- Standards assume available land for relocation yet flexibility is not present in built environments

Stormwater Effectiveness

- Minimal pollutant reduction where no new impervious surface is added
- Diminishing returns for small sites and high costs for minimal environmental gain

Permitting Capacity

- NJDEP review timelines already extended (months to years) with insufficient regulatory staff to address existing application backlog
- Additional requirements increase application complexity and result in longer delays increase project risk and financing uncertainty.

Economic Analysis Gaps

- No quantified statewide cost estimate provided
- No modeling of housing supply impacts
- Policymakers lack full understanding of economic trade-offs.

Federal Consistency

- CZM program changes require federal consistency review, delegated wetland regulation subject to USEPA oversight
- Potential legal challenges and delays in implementation

5. Policy Considerations

Legislators should evaluate:

- Use of median vs. low-probability climate projections
- Phased or adaptive regulatory approaches
- Economic impact analysis requirements
- Premature permit expirations voiding legacy periods
- Adequate staffing to meet increased workflow demands
- Coordination with municipal planning frameworks
- Federal consistency compliance

6. Conclusion

The NJPACT REAL rules impose large-scale regulatory changes based on uncertain long-term projections, with measurable impacts including:

- >50% land area regulation in some counties
- Increased construction and infrastructure costs
- Reduced housing feasibility
- Expanded permitting complexity

A more balanced, adaptive, and economically grounded framework is necessary.

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NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

JAMES. R. KERN III
NJAC President
Warren County Commissioner

JOHN G. DONNADIO, ESQ.
Executive Director

MEMORANDUM

TO: Senate Environment and Energy Committee
Assembly Environment and Solid Waste Committee
FROM: New Jersey Association of Counties
DATE: April 22, 2026
RE: **SCR-106** (*Scutari D-22*)

The New Jersey Association of Counties (NJAC) strongly supports SCR-106, which would determine that the New Jersey Protection Against Climate Threat (PACT)/Resilient Environmental and Landscape (REAL) rules are inconsistent with legislative intent.

As committee members are well aware, earlier this year, the New Jersey Department of Environmental Protection (DEP) adopted the NJ PACT/REAL rules and created a new area known as the Climate Adjusted Flood Extension Elevation (CAFÉ) along with sweeping changes to stormwater management, wetlands conservation, and coastal area protection. NJAC continues to oppose these rules as written and remains alarmed with the long-term consequences the NJ PACT/REAL rules will inflict on new development, redevelopment, and the renovation of existing development. The rules also fail to address how the new standards will increase the State's cost of living, devalue property, and diminish county governments ratable base of which is critical for delivering essential services to those in need.

Moreover, DEP neglected to conduct a comprehensive and independent fiscal analysis of the NJ PACT/REAL rules to determine how the rules will affect businesses, local governments, and residents. Additionally, DEP circumvented the State Legislature by enacting the rules and rejected the opportunity to adopt a more measured and reasonable approach to effectively balance the risks imposed by climate change and sea level rise with the long-term economic and social needs of the Garden State. For the reasons set forth above, NJAC again strongly supports SCR-106 and has attached additional documentation for your consideration that we hope you find helpful. Thank you for your time and consideration, and please do not hesitate to contact us at 908-963-7777 with any questions or concerns.

Encls: Cape May County Policy Considerations
NJ PACT/REAL Rules Maps

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CAMDEN CITY
 NJDEP PROPOSED CLIMATE ADJUSTED
 FLOOD ELEVATION (CAFE) LAND COVER ANALYSIS
 CAMDEN, CAMDEN COUNTY, NEW JERSEY

SCALE: 1 inch = 1,000 feet
 DATE: 1/11/2016
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT # [Number]
 DATE [Date]



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NEWARK CITY
 NJDEP PROPOSED CLIMATE ADJUSTED
 FLOOD ELEVATION (CAFE) LAND COVER ANALYSIS
 NEWARK, ESSEX COUNTY, NEW JERSEY

SCALE: 1" = 100' (JOB FILE)
 DATE: 10/15/2014
 DRAWN: JAMES P. HARRIS
 CHECKED: JAMES P. HARRIS
 PROJECT: NEWARK CITY FLOOD ELEVATION ANALYSIS



Maplewood Township
 Mt. Burn Township
 Irvington Township
 Union Township
 Kenilworth Borough

Maplewood Township, Mt. Burn Township, Irvington Township, Union Township, Kenilworth Borough



DATE BY	DATE
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JERSEY CITY
NIDER PROPOSED CLIMATE ADJUSTED
FLOOD ELEVATION (CAFE) LAND COVER ANALYSIS
JERSEY CITY, HUDSON COUNTY, NEW JERSEY

SCALE: 1"=50' (GRAPHIC)
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PROJECT LOCATION: JERSEY CITY, HUDSON COUNTY, NEW JERSEY
 DATE: 2015.06
 DRAWN BY: [Name]
 CHECKED BY: [Name]
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LEGISLATIVE VIEWPOINT

New Jersey State League
of Municipalities

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Erin Knoedler
LEGISLATIVE ANALYST

Chanelle Kouyate
LEGISLATIVE ADMINISTRATOR

Prepared Testimony for Joint Senate and Assembly Environment Committee on NJ DEP PACT REAL Rules

April 22, 2026

The New Jersey State League of Municipalities has serious concerns regarding the New Jersey Department of Environmental Protection's (DEP) PACT REAL rules and its impacts on the economy, flood insurance rates, and development and redevelopment throughout the state.

Not only do the rules unnecessarily exceed local and existing FEMA standards, but the scope and impact of this proposal also cannot be understated. At 1,044 pages, this is the longest rule the DEP has ever proposed and adopted.

The proposal makes drastic and significant modifications to multiple sets of regulations outside of the legislative process and without explicit authority from the legislature. Given the significance of the PACT REAL rules, it is more appropriate to achieve these changes through the deliberative process of legislation.

We believe that the shared goal of protecting the state's residents from the impacts of climate change can be achieved through a more balanced and gradual approach.

As adopted, these rules will have an impact on development and redevelopment in many areas within the state. The PACT REAL rules will cause economic hardship for local governments and homeowners.

For the reasons detailed below, the League opposed the adoption of the revised PACT REAL rules, and these concerns were submitted throughout the public comment periods.

Undue Burden/Economic Impact

The PACT REAL rules create an undue burden on the state's municipalities, especially in the coastal regions. Aside from a single sweeping mandate to multiple sets of regulations, the DEP still has not addressed the economic impact that these rules will have on the state's municipalities.

The PACT REAL rules will deter economic development in the state. Creating a new flood zone or inundation risk zone, expanding existing flood zones through climate

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adjusted flood elevation, and creating new 3% impervious coverage limits will deter or halt development altogether in some regions. The new land use regulations will cause real estate values to depreciate. A decline in economic development and increased construction costs will create financial burdens for lower- and middle-class property owners who are unable to afford to elevate their homes. The need to hire additional staff and enter additional public and private contracts in coastal municipalities' construction offices to enforce the additional duties and responsibilities imposed in these higher regulatory standards will result in a significant additional cost for local governments and residents.

The cost of higher regulatory standards on historic structures and historic districts should also be considered. The financial impact on rateables and tourism are also costly factors. Federal funding is uncertain and competitive. Municipalities will inherit the burden of evaluating homes and buildings for Climate Adjusted Flood Elevation and regulating them, which could translate into a need to hire additional staff and increase taxes for municipal residents. The DEP has made no mention of an economic impact analysis or a plan for a state budget appropriation to assist affected municipalities with these exorbitant costs.

Many of the PACT REAL rules' requirements on municipalities and private homeowners remain unclear. What is abundantly clear and undisputed is that these changes, if adopted, will be costly and burdensome. While we share the DEP's commitment to addressing climate change and protecting our communities from sea-level rise, we believe that the solution should provide an avenue for some financial relief for municipalities directly affected by these costly changes.

Impact on Flood Insurance Rates

The DEP should have waited until the new flood insurance maps have been released before adopting the PACT REAL rules. The increased cost of flood insurance that will likely occur as a result of the expansion of flood zones has not been addressed. Homeowners currently outside of the federal flood zone will be bound and burdened by the state's expanded flood zone, potentially requiring them to purchase additional flood insurance.

The state should follow the same process as FEMA in regard to flood insurance maps which is expected to be updated in 2026. The state has historically used FEMA's maps to guide public policy on this topic. FEMA's current flood maps are outdated and the agency is in the process of preparing detailed updates to the flood insurance maps that take into account many factors of risk, including sea level rise. Also, the PACT REAL rules fail to take into account that some homeowners with private flood insurance carriers that do not necessarily use FEMA's maps may incur increased rates as a result of the 4-foot flood elevation standard.

The cost of this significant regulation will have a detrimental effect on municipalities and their residents. Therefore, the DEP's goals to protect the state's residents from the impact of climate change is best achieved gradually and carefully, rather than the adopted approach, which is extensive and based on its estimated 17th percentile chance of occurrence.

Impact on Development/Redevelopment and Affordable Housing

The restrictions imposed by the PACT REAL rules, such as an expansive inundation risk zone, stringent building requirements, deed notices requirements, and a 3% impervious cover standard on development, redevelopment, expansions, and substantial reconstructions in these zones, will lead to a decrease in new development and will make redevelopment more difficult.

Also, the expansion of flood hazard areas limits the potential capacity of mixed-income housing development and even prohibits development in most coastal areas where there are already statutory affordable housing obligations.

While the DEP responded to concerns about the rules' negative impact on the availability of affordable housing, these rules will still significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing to residents of affected areas.

Conclusion

The League believes that the PACT REAL Rules as proposed by the DEP should not have been adopted and should be repealed.

Aside from the lack of clarity, premature nature, and uncertainty surrounding the basis for which these rules are being implemented, the changes will have a significant deleterious impact on municipalities.

It is clear that, to some degree, this economic burden will be eventually transferred to our members' residents in the form of decreased property values, higher taxes, and increased construction costs, to name a few predictable outcomes. Not only will these restrictions deter development in coastal communities, but they will also add to the current affordable housing crisis in the state.

The PACT REAL rules impose an unnecessary layer of state regulation and should instead be handled through a more methodical approach that includes deliberation and inclusiveness through the legislative process. We support a full repeal and thorough process that is more gradual in implementing additional requirements.

Thank you for your consideration of the concerns of New Jersey's municipalities. We are eager and willing to answer any questions.

November 7, 2024

Melissa Abatemarco, Esq.
Attention: DEP Docket No 05-24-05
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

RE: Resilient Environments and Landscapes Rule Proposal
DEP Docket Number: 05-24-05
Proposal Number: PRN-2024-073

Dear Ms. Abatemarco:

Please accept the following comments on the above referenced rules. These comments are submitted on behalf of the following organizations: The Watershed Institute, Raritan Headwaters, NY/NJ Baykeeper, Hackensack Riverkeeper, Great Egg Harbor Watershed Association, Lower Raritan Watershed Partnership, New Jersey Highlands Coalition, Association of New Jersey Environmental Commissions, Pinelands Preservation Alliance, New Jersey Environmental Education Fund, New Jersey Environmental Lobby, Cooper River Watershed Association, Trout Unlimited New Jersey, The Passaic River Coalition, Deal Lake Watershed Alliance, American Littoral Society, , New Jersey Sierra Club, New Jersey Conservation Foundation, Clean Ocean Action, New Jersey League of Conservation Voters, and Environment New Jersey.

Overall, we are supportive of the Department's proposal and urge the Department to adopt these rules as quickly as possible. As noted below there are instances where we do not support the proposal. We urge the Department to adopt these rules in totality and very quickly propose amendments to address the concerns outlined below.

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General Comments:

The basis of most of New Jersey's regulations and statutes is found in the policy statement of the Clean Water Act. The Act sets the main objective of "restore and maintain the chemical and physical, and biological integrity of the Nation's waters." To achieve that objective the act sets out goals:

- elimination of discharges into navigable waters by 1985.
- to achieve an interim goal of water quality that provides for protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983.
- prohibit the discharge of toxic pollutants¹

New Jersey's Water Pollution Control Act incorporates these goals into New Jersey law where it declared "[I]t is the policy of this State 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."² This requirement is echoed in several additional statutes or regulations. The Freshwater Wetlands Protection Act asserts that wetlands "purify surface water and groundwater resources..."³ It is through these lens that our comments on the REAL rules are based.

In addition to the "environmental" requirements of these statutes, there is a public health and safety requirement. The Flood Hazard Area Control Act requires the Department to adopt rules "to minimize the threat to the public safety, health and general welfare."⁴ The FWPA notes wetlands function in providing natural means of

¹ 33 U.S.C. 1251(a).

² N.J.S.A. 58:10A-2.

³ N.J.S.A. 13:9B-2.

⁴ N.J.S.A. 58:16A-55(a).

flood absorption and storage of water during high runoff periods and the reduction of flood crests.”⁵ Thus the FWPA also looks to public health and safety.

We support the Department’s decisions on the science of climate change. We recognize that the Department chose to use a moderate emissions scenario when calculating the impacts of sea level rise as opposed to a more protective approach of using high emissions scenarios. While we would have preferred the high emission scenario as that provides even more protection to the residents and communities of New Jersey we understand the Department was balancing competing concerns. The Department is empowered to determine those areas of the state which are subject to flooding and which “the improper development and use of which would constitute a threat to the safety, health and general welfare.”⁶

We believe a higher emission scenario would provide more protection and given recent trends a higher emission scenario may be more likely. In addition to the projected trends, we are currently experiencing more significant impacts from climate change than were anticipated.⁷ Not only are the impacts more significant but the likelihood of reaching 1.5° C or 2.0° C is questionable. The scientific community is extremely skeptical that we will be able to meet the goals of keeping global warming below the 2° C by 2100.⁸ In fact recent studies question whether we can keep global warming below 3° C by 2100.⁹ Therefore it is highly likely we will reach if not exceed the moderate emissions scenario. Therefore, it would be irresponsible to plan using lower emissions scenarios that are extremely unlikely we will be able to achieve.

⁵ Supra Footnote 3.

⁶ N.J.S.A. 58:16A-52(a).

⁷ 10 Big Findings from the 2023 IPCC Report on Climate Change, Boehm and Schumer, <https://www.wri.org/insights/2023-ipcc-ar6-synthesis-report-climate-change-findings>, last visited Oct. 28, 2024.

⁸ Wynes, S., Davis, S.J., Dickau, M et al, “Perceptions of carbon dioxide emissions reductions and future warming among climate experts”, 5 *Commun Earth Environ* 498 (2022) <https://www.nature.com/articles/s43247-024-01661-8>

⁹ Hanson, James, et al., “Global Warming In the Pipeline” *Oxford Open Climate Change*, 2023 Vol 3, No. 1 and Ripple, Jame J. et al., “World Scientists’ Warning of a Climate Emergency 2022”, *BioScience* Vol 72 No. 12, 1149 (Dec. 2022).

Likewise, we strongly support the Department's use of the 83% chance of experiencing versus the 50% chance as advocated by some. The Department's position greatly increases the chances that the proposed rules will be protective of life and communities, while the 50% chance is a mere toss up placing billions in investment and thousands of lives at risk for damage from storms. Again, rolling the dice and hoping is irresponsible.

While New Jersey is leading the nation in addressing the implications of climate change, it is not alone. Other jurisdictions are referencing and utilizing over 5 feet of sea level rise. New York City's Mayor's Office of Climate & Environmental Justice provides on their website: "[s]ince 1900, sea level in New York City has risen by about 12 inches and is projected to continue to increase as much as 5.4 feet by 2100, leading to increased frequency and intensity of coastal flooding."¹⁰ That position was derived from New York City Panel on Climate Change.¹¹ In that report the authors noted "[t]he collapse of Thwaites Glacier, which holds the equivalent of more than half a meter of global sea level rise potential, could also destabilize neighboring glaciers that hold another 3 m of sea level rise potential."¹² Importantly the report stated that "[g]laciers and ice sheets combined are now the dominant contributors to global mean sea level rise with very high confidence."¹³

The 2022 National Oceanic and Atmospheric Administration's "Global and Regional Sea Level Rise Scenarios for the United State," also references five feet of sea level rise. NOAA indicates in an intermediate high emission scenario that sea level rise along the contiguous United States is 1.7 meters or 5 feet 6.9 inches.¹⁴ This projection does not include ice-sheet melting which could add a significant amount of additional warming.¹⁵ Given that we may see more warming than we have

¹⁰ "Coastal Surge Flooding." NYC Mayor's Office of Climate Change and Environmental Justice, 13 Feb. 2024, <https://climate.cityofnewyork.us/challenges/coastal/-surge-flooding/> last visited on October 25, 2024.

¹¹ New York City Panel on Climate Change 4th Assessment Climate Risk and Equity: Advancing Knowledge Toward a Sustainable Future – Introduction, 2024.

¹² Id.

¹³ Id. at 27.

¹⁴ "Global and Regional Sea Level Rise scenarios for the United States", National Oceanic and Atmospheric Administration, Feb. 2022, at 20. It should be noted this projected does not provide a level of certainty on either achieving the SLV or exceeding it.

¹⁵ Id. at 21

targeted, closer to 3°C instead of 2°C or 1.5°C, it is prudent to plan for higher sea level rise.

In this case the Department has correctly used its discretion to develop policies that provide protection for the environment and the public. Some have argued that the Department should use a less protective standard and that some of the science used by it is suspect. There has been an argument that there is low confidence in the sea level rise numbers and therefore should be disregarded. They are misusing "low confidence" to mean the science is demonstrating the outcome or prediction is unlikely. That is inaccurate. We also would note that Dr. Kopp's subsequent work does not repudiate the 2019 Climate Change report.¹⁶

The Department is entitled to deference in its use of science. "It is well within the DEP's discretion to determine what scientific data it will rely upon to support its decision-making."¹⁷ That deference is not defeated or overcome merely by contrary expert opinions.¹⁸

We will also note that some have expressed concern that complying with 5.1 feet of sea level rise will be too costly and create additional zoning and construction concerns. They advocate for using 3.3 of sea level rise instead. The cost of complying with 5.1 versus 3.3 is incremental and de minimis to modest at best. Costs for new construction will be less than the cost of attempting retrofit structures. It also should be noted that only certain structures, critical infrastructure, will need to meet this standard, not all structures. Protection critical infrastructure is vital to the safety of the public but to the economic wellbeing on the State. NJ has the th. highest number of critical infrastructures at risk of flooding at least twice a year by 2100.¹⁹

¹⁶ Kopp, Robert; Oppenheimer, Michael, et al. "Communication Future Sea-Level Rise Uncertainty and ambiguity to assessment users.", *Nature Climate Change* vol. 13, July 2023 Pages 648-660.

¹⁷ In re Amendments to N.J.A.C. 7:9b, 2022 N.J. Super Unpub. LEXIS 1309, *83 (App Div. 2022) (citing *Mercer County Deer Alliance v. State Dept. of Environmental Protection*, 349 N.J. Super 440, 449 (App. Div. 2002)).

¹⁸ *Animal Prot. League vs. State Dept. of Environmental Protection*, 423 N.J. Super 549, 562 (App. Div. 2011) See also In re Amendments to N.J.A.C. 7:9b, 2022 N.J. Super Unpub. LEXIS 1309, *7 (App. Div. 2022).

¹⁹ "Looming Deadlines for Coastal Resilience: Rising Seas, Disruptive Tides, and Risks to Coastal Infrastructure", Union of Concerned Scientists, June 2024.

Further, the cost of compliance will not be uniform as the coast is not uniform in elevation. The grade elevation is very different throughout the coast where some buildings may already be several feet above current sea level rise, therefore, will not be required to elevate as significantly as a property that is at current sea level.

While some have argued that the cost of compliance is too extreme, we suggest that not only will it be incremental, but that the investment in resiliency is a wise investment. According to a recent study commissioned by U.S. Chamber of Commerce, Allstate, and the U.S. Chamber of Commerce Foundation, that every dollar invested in resiliency returns \$13 in benefits from reduction in economic costs, damage and cleanup costs.²⁰ Another report demonstrated that adopting the latest building codes has resulted in a \$11 savings for every \$1 invested. More importantly the report explains these costs only added 1% to the construction costs compared to the standards in place in 1990.²¹ The report continued and found \$4 in additional benefits by exceeding the latest building codes. As New Jersey is third in dollars paid by FEMA for repetitive loss²², it is good policy to reduce the risks and recoup the investment. It would be bad economic policy not to adopt these regulations.

We the reasons set forth above, we support the Department's judgment on sea level rise and level of risk.

Below are specific comments regarding the various amendments to the rule. Overall, we are supportive of the proposed changes. Where we have concerns, we outline those concerns and urge the Department to begin additional rulemaking to address these issues. We strongly urge the Department to adopt these regulations as soon as possible.

²⁰ "The Preparedness Payoff: The Economic Benefits of Investing In Climate Resilience", U.S. Chamber of Commerce, Allstate, and the U.S. Chamber of Commerce Foundation, 2024

²¹ "Mitigation Saves: Mitigation Saves up to \$13 per \$1 Invested", National Institute of Building Sciences, 2020. While this report was not necessarily limited to elevation of structures, the report did discuss it. For example, "In most coastal locations subject to hurricane surge, it can be cost effective to build the first floor up to 10 feet above base flood elevation, in some places saving more than \$12 per \$1 of added costs."

²² <https://rebuildbydesign.org/atlas-of-disaster-new-jersey/> last visited Nov. 7, 2024.

Stormwater Management N.J.A.C. 7:8-1 Et. seq.

Overall, we are supportive of the proposed amendments to the stormwater management rules. We do have several concerns over the proposal and suggestions for future amendments.

N.J.A.C. 7:8-1.2- Definitions- Amendments to "Disturbance". Generally, we agree with the additional exemptions the Department is proposing, with a nuanced exception. In instances where repair or replacement of sidewalks, curbing etc. provides an opportunity to create new stormwater management that opportunity should be explored. For example, the reconstruction of curbing and sidewalks along a street may create an opportunity to create a bump out and redirect some unmanaged stormwater into a bioretention basin for treatment. In these instances, it would not make sense to exempt these activities. As the Department notes further on in the proposal, many of our urban areas are overburdened communities that "have long since been developed with motor vehicles surfaces and burdened with degraded water quality that results from allowing runoff from those surfaces to enter watercourses unmanaged."²³ Therefore, when the repair or replacement of curbing and sidewalks occur in segments of roads that do not have managed stormwater; the agency should explore the opportunity to add small scale stormwater management and implement it. If it is technically practicable and not exorbitant in cost compared to the benefits, these "retrofits" should be implemented.

N.J.A.C. 7:8-5-3 & 5- this definition/regulation should not be interpreted to limit the inquiry to the right of way immediately alongside of the proposed project. Rights of way adjacent or up and down gradient from the project should be examined for opportunities to implement stormwater management practices especially in instances where the segment is not managed or is draining into an impaired or TMDL listed waterway.

²³ 55 N.J.R. supra at 1338.

N.J.A.C. 7:8-1.6(d) & 5.3(k). It is understood that there are instances where the design or implementation of a project has reached a milestone which makes compliance with new rules difficult or more expensive. We disagree that the State agencies should not be held to a higher standard. Given the significant impacts of climate change on the state, state entities should strive to lead by example and demonstrate the State's commitment to reduce the "disastrous consequences for public health and safety."²⁴ It would be appropriate to require compliance with these rules from the date of the executive order. The Green Infrastructure Rule was adopted in 2020. Allowing projects to avoid compliance with those rules and these rules is bad public policy. It will cause some number of projects in New Jersey to implement practices that were abandoned by the State as outdated and to avoid the benefits of green infrastructure. When the Department proposed the Green Infrastructure rule it did so because, "Green infrastructure is widely recognized to be a cost-effective and resilient approach to managing stormwater while simultaneously providing environmental, social, and economic co-benefits"²⁵

Courts have approved of the state's ability to provide retroactive applicability to statutes and rules in instances where the rules provide for the protection of public health and safety. For example, in OFP v. DEP, the Court upheld the retroactive application of the Highlands Water Protection and Planning Act.²⁶ The Court found the justification to protect forested lands and wetlands from a rush of development rational and supported. Even more relevant the Courts have upheld retroactive application of affordable housing lawsuits to agency review because "loss of expected profits is discordant, under these circumstances, with the connotations of 'manifest injustice.'"²⁷ Retroactive application of a regulation is appropriate when the regulation is ameliorative or curative.²⁸ Given the strong language in the Executive Order, the recognized benefits of green infrastructure over how stormwater was managed in the past, allowing for the use of outdated standards and rules is counter to the Department's obligations under the law. It will result in

²⁴ Executive Order 100, Jan. 27, 2020.

²⁵ 50 N.J.R. 2375(a), 2377 (Dec. 3, 2008).

²⁶ OFP v. Department of Env't Prot., 395 N.J. Super 571, 592-594 (App. Div. 2007), *aff'd* 197 N.J. 418 (2009).

²⁷ Hills Development Company v. Bernards Township, 103 N.J. 1, 54-55 (1986)

²⁸ Matter of Appeal by Progressive Cas. Ins. Co., 307 N.J. Super 93, 94 (App. Div. 1997) citing Twiss v. State Dept. of Treasury, 124 N.J. 461, 467 (1991).

projects that do not meet the maximum extent practicable standard under the CWA and will place people and property at risk. The recognition in these rules that climate change is currently have impacts in this State and those impacts will continue to increase retroactive application of these rules is manifest necessity. State agencies were clearly put on notice of the content and requirements of these rules in May. Delaying the requirements of these rules to the future will result in many projects complying with regulations that are inadequate resulting in the compounding of threats to public health and safety.

While we recognize that yes, the planning and design of public roadways take resources of the state to implement, the extra resources to comply with these rules will likely result in reduced costs in the future in the repair and replacement of damaged infrastructure due to storms, reduced threat to life, etc. As noted elsewhere in these comments the investment of \$1 in resiliency will result in up to \$13 in benefits from that resiliency investment.²⁹ We would argue not requiring these projects to comply with the instant rules is contrary to the public interest. We will be spending money on projects that are subject to damage and destruction from climate change which will require rebuilding. Therefore, the extra expense invested in redesigning projects to comply with the increased safety requirements of these rules will potentially result in a thirteen-fold benefit to the state and its communities.

Given the Governor's Executive Order 100 and that these rules have been in process for years, it is not unreasonable for the State of New Jersey to hold itself to a higher standard. At the latest, the cutoff should be from the release of these rules as a courtesy copy, i.e. May 17, 2024. Once these rules were released the public and the regulated community were put on notice of the issues and regulatory requirements. State agencies were even more so, as it is presumed that there were significant interagency discussions regarding these rules during their development. Therefore, we respectfully requested that the State of New Jersey and their agencies are required to meet these standards if they did not meet the listed milestones by May 17, 2024, as opposed to the adoption of these regulations.

²⁹ Supra at Footnote 20.

N.J.A.C. 7:8-4.2- we strongly support this provision. We can no longer ignore that conditions that have existed in the past or that currently exist will not be impacted by climate change over the years. By requiring municipalities to consider how its stormwater management program will be impacted by increased rainfall, more extreme storms, sea level rise, etc. it can plan future infrastructure to avoid or accommodate those impacts. It will hopefully also examine existing infrastructure, practices, etc. and plan for ways to adapt those structures for the future. This provision compliments the requirements of the municipal land use law amendments.³⁰

N.J.A.C. 7:8-5.3- There are areas of this section that we can support and others where we have concerns. First, the public transportation entity should be required to demonstrate that it is technically impracticable to utilize the BMPs in Tables 5.1 & 5.2. This proposal does not set out the standard utilized to determine that this alternative is necessary. Assuming the demonstration of technically impractical is made, we support the requirement to look at adjacent *disturbed* lands to meet those requirements. We also support the explicit exclusion of undisturbed wooded areas from consideration. We cautiously support the examination of recreation and conservation lands as areas to address the stormwater requirements. Any such examination and implementation should be done so that those recreational or conservation lands are enhanced by the addition of stormwater BMPs and not merely as a location for BMPs to be installed. The use of these lands should not be implemented in such a way to allow for poor planning of infrastructure or as a cost reduction. Further it should not be done to accommodate new or expanded road infrastructure and this allowance should only be to implement stormwater management for existing roadways that currently are unmanaged or do not meet current standards. This would be consistent with the new section at N.J.A.C. 7:8-5.2(e). Further there should be a demonstration that it is not technically practical to retrofit existing stormwater BMPs to meet current standards thus requiring the use of open space to manage stormwater runoff.

³⁰ N.J.S.A. 40:55D-28, P.L. 2021 c.6, 2021.

N.J.A.C. 7:8-5.3(k)- We oppose this provision for the reasons set forth above in N.J.A.C. 7:8-1.6(d).

N.J.S.A. 7:8-5.5- We support this provision. A significant percentage of NJ was developed prior to the statewide requirements for stormwater management not alone "modern" stormwater management required since 2004. By 1984, the year after enactment of New Jersey's Stormwater Management Act, over 1.2 million acres of land had been developed.³¹ Between 1986 and 2002 an additional 243,950 acres of urban development occurred under pre-2004 rules.³² One of the byproducts of this development is water pollution. The series of Integrated Water Quality Assessment Reports demonstrate that a majority of monitored waters do not meet standards so that the waters are not complying with designated uses.³³ That trend has been consistent since at least the 2010 Integrated Report to present. In 2016, the Department attributed Impairments to urban development.³⁴ This would be consistent with findings from the Environmental Protection Agency on a national level.³⁵

We will not reverse the trends of water quality impairment unless we address the impervious surfaces that are not receiving treatment or not receiving adequate treatment. Given that there is a significant amount of development in NJ that predates modern stormwater regulations, it only makes sense to take advantage of the opportunity of private development investment to require the installation of stormwater management during the redevelopment process. That will slowly start to address the source of pollution from older development.

While we support the requirement that water quality treatment requirements for redevelopment that is only part of the equation. Sites that are redeveloped should

³¹ Infra at Footnote 43.

³² Changing Landscapes in the Garden State: Land Use change in New Jersey 1986 through 2015, Richard G. Lathrop and John E. Hasse, Rutgers University (July 2020) page 5. The true amount of development under legacy pre-2004 rules is likely more than that as in 2007 1,534,612 acres were urbanized for an additional 82,109 acres. So somewhere between 243,950 and 326,059 acres were developed under old standards.

³³ 2022 NJ Water Quality Assessment Report.

³⁴ 2016 New Jersey Integrated Water Quality Assessment Report, page X & XI.

³⁵ National Water Quality Inventory Report to Congress (U.S. EPA).

require not only water quality treatment, but peak rate reductions and recharge requirements as set out in N.J.A.C. 7:8-5.4 and 5.6 as if the site is a greenfield without pre-existing impervious surfaces.

We know that some of the sedimentation and pollution occurring in our streams is from erosion within the stream bank/bed itself. As erosion is caused by increased volumes and velocities of stormwater piped into the streams. While the water quality and volumetric reduction requirements will help, we can no longer afford incremental steps addressing the problem. We strongly urge the Department to propose additional amendments to the stormwater rules requiring peak rate reductions as well as recharge requirements for redevelopment sites as if the site is a "greenfield" with forested land cover in good condition.

Additionally, the water quality treatment requirements only apply to Total Suspended Solids and nutrients to the maximum extent practicable. The rules do not address any other pollutant. For example, petrochemical substances, 6PPD-Quinone and other substances are found on our motor vehicle traveled surfaces and are having impacts to water quality.³⁶ The Department had started to examine dissolved solids during the Phase II stakeholder process, but that effort was discontinued. Therefore, we request that the Department begin a stakeholder process to investigate these pollutants and to develop requirements for treatment through stormwater management systems.

N.J.A.C. 7:8-5.5(j)- We strongly support this proposed provision. We agree with the Department's analysis that under the Clean Water Act and New Jersey's Water Quality Planning Act, the waste load reductions in an approved Total Maximum Daily Load must be implemented and addressed by municipalities and major developments. The Department's New Jersey Discharge Elimination System

³⁶ Product-Chemical Profile for Motor Vehicle Tires Containing N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine (GPPD), March 2022. See also, Tian, Zhenyu, et al., "A ubiquitous tire rubber-derived chemical induces acute mortality in coho salmon" Science Vol 371, Issue 6525, 185-189 (Dec. 3, 2020).

regulations required the implementation of TMDLs through the stormwater program.³⁷

We are concerned though that the proposed language limits this obligation only to those additional measures specified in an approved TMDL. It is unclear how many of NJ's approved TMDLs include additional measures that municipalities can readily implement. We suggest that this language be modified to require municipalities to develop programs and stormwater control ordinances to implement the WLA set out in the TMDL independent of whether an additional measure exists within the TMDL. Permits or approvals cannot be issued that would violate the WLAs in approved TMDLs.³⁸ The Department should also commit to a review and modification of all TMDLs to add appropriate additional measures that can be implemented through the State's stormwater program. Otherwise, the requirement may not be as impactful as it would appear and achieving water quality standards will be less likely.

N.J.A.C. 7:8-5.6(d)- We strongly support this proposed provision. Implementing the volumetric reduction standard requirement for both new development and redevelopment sites will certainly reduce downstream flooding. We know that adding impervious cover increases the runoff from a site. This results in increased volume downstream which may result in or exacerbate flooding. The peak rate reductions in the current rules are not sufficient to address flooding.

Further we support the ability of sites to provide alternative means to address the volumetric reduction standard. Removing impervious cover is a technique used on other jurisdictions to address volume issues.³⁹ We do suggest that the removal of impervious surfaces follow a hierarchical list of preferred surfaces: (1) unmanaged motor vehicle surfaces (2) unmanaged nonmotor vehicle surfaces near environmental resources (state open waters or wetlands) (3) unmanaged nonmotor vehicle surfaces and lastly (4) impervious surfaces managed under standards that pre-date the 2004 stormwater management rules. Utilizing a hierarchical approach will maximize the reduction of runoff volumes and improve water quality. This hierarchical list can be developed as part of Stormwater Management BMP manual.

³⁷ N.J.A.C. 7:14A-25.6.

³⁸ N.J.A.C. 7:9B-1.5(d)

³⁹ 55 N.J.R. supra at 1339.

Additionally, we suggest when an applicant cannot meet the requirements on site, they engage in the same process as we propose below for N.J.A.C. 7:8-5.6(d)2(ii).

N.J.A.C. 7:8-5.6(d)2(ii) We do not support a provision that allows public transportation entities to jump from the HUC14 to the Watershed Management Area. This is a significant jump in scale of watershed and may provide little to no benefits of flood reduction downstream from the proposed project. As an example, a road project in West Amwell, which is in the upper portion of the Stony Brook watershed, where the volumetric reduction standard cannot be met will provide increase flood volumes downstream within the Stony Brook Watershed. Providing for a project of volumetric reductions in Cranbury will not benefit the municipalities of Hopewell, Pennington, Lawrence and Princeton. Those downstream communities will be subjected to increased flood volumes. Therefore, again the Department should require the off-site location to be as close to the project as technically practicable. The hierarchical list of preferences should be upstream HUC14s within the same waterbody; (2) the HUC14 immediately downstream of the project; (3) the HUC12 encompassing the project site; (4) the HUC10 encompassing the project site; and then the WMA. The proposed language "and as close as practicable to the major development," may suggest this approach, but we believe it is better to make this assumption explicit. Requiring "mitigation" as close to the site is utilized by other jurisdictions. For example, Connecticut requires that the off-site retention which looks to the same "CT DEEP Subregional Basin or USGS HUC12 watershed (and preferably the same municipality)"⁴⁰

N.J.A.C. 7:8-5.6(b)2i- We do not support the elimination of the requirement to perform an analysis of downstream flooding impacts. Given the increasing severity of flooding events, the removal of this analysis is counterproductive. The proposal creates an exception to this exception, which is when the "review agency determines that there will be increased flooding impacts downstream of the site." If there is no analysis it is difficult to understand how the review agency will determine there is downstream flooding impacts.

⁴⁰ Connecticut Stormwater Quality Manual, Chapter 4.2 Page 43.

Flood Hazard Area Control Act Rules N.J.A.C. 7:13 et seq.

General Comment:

For permits whether there are permits by registration, permits by certification, general permits or individual permits, we urge the Department to adopt the concepts found in the Army Corp of Engineer's 404(b) guidance. This guidance under the CWA sets out a hierarchical requirement to avoid, then minimize and then mitigate impacts to the waters and wetlands of United States. While the 404(b) guidance applies to the placement of dredge and fill directly into waterways the concepts are equally important to the riparian zones. As stated elsewhere in these comments, the larger and more intact a riparian zone is the more protection is afforded to the waterways.⁴¹ Avoiding unnecessary impacts to the riparian zone can result in halting the degradation of our waterways from development. The 404(b) guidelines analysis should be required for all forms of approvals: permit by registrations, permits by certification, general permits and individual permits. If the activity can occur onsite outside of regulated areas that should be required unless there is a clear demonstration that the proposed activity will not have a negative impact on the waterway.⁴² By not requiring an avoid, minimize and mitigate approach, impacts to our waterways are occurring unnecessarily.

N.J.A.C. 7:13-1.1. We urge the Department to include in subsection c the restoration of waters of the state as a purpose. This would be consistent with authorizing statute's goals and requirements.

N.J.A.C. 7:13-1.3- Definitions.

"Climate Adjusted Flood Elevation" we strongly support the inclusion of this new definition and its implementation throughout these rules. As noted above in the "Science" section of these comments, it is clear that climate change, sea level rise, subsidence, etc. are having and will continue to dramatic impact on our coastal areas. The failure to require new development to address these dramatic impacts places the property owners' lives and property at risk. It also places the lives of first

⁴¹ See footnotes 46-48 supra. See also Wenger, Seth, "A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation", Office of Public Service & Outreach Institute of Ecology, University of Georgia, March 5, 1999.

⁴² Clean Water Act Section 404(b)(1) Guidelines. .

responders at risk in that they will be required to rescue those that reside in buildings that have not incorporated climate resiliency into the design and construction of the buildings. Further, it is clear that what is built today will continue to exist and be utilized for decades. NJ is replete with buildings that are over a hundred years old. Much of our development in the state pre-dates the 1980s.⁴³ Much of those structures are still standing decades later. Given this trend, it is prudent to look to 2100 and instill standards that will be protective of those future conditions now. What is built today will likely exist in 2100.

“Compelling Public Need” – we support the addition of this definition and the resulting requirements. This will help reduce the potential for impacts to the very generous allowances in Table 11.2.

“Inundation Risk Zone”- We support adding this definition and the resulting requirements to the rule.

“Substantial damage” and “Substantial improvement- we support these definitions.

N.J.A.C. 7:13-2.1(c). We do not support creating a legacy provision for projects that applied for permits prior to the adoption of this rule. As noted above regarding N.J.A.C. 7:8-5.3(k), there is precedent for retroactive implementation of regulations. As many of the amendments to the Flood Hazard Area Control Act regulations are public health and safety related it is easily justified. As the Department notes in its discussion of N.J.A.C. 7:13-2.1(c)(3), projects under older exemptions/regulations “possibly adversely impacting public health, safety and welfare, and the environment if constructed as designed.”⁴⁴ Similarly, it is reasonable for projects submitted after the release of the rules in May to be required to comply with those requirements “to prevent a rush to obtain development approvals while the [regulation] proceeded through the [regulatory] process.”⁴⁵ At the very latest, the rules should be effective from the date of their proposal, i.e. August 5, 2024. This

⁴³ New Jersey Land Cover Analysis Project 1972-1984-1995, Center for Remote Sensing & Spatial Analysis, Rutgers University, Richard G. Lathrop Oct. 2020. NJ had approximately 1,204,920 acres of land developed by 1984.

⁴⁴ 55 N.J.R. supra at 1343.

⁴⁵ OFP, LLC. supra at 593.

will reduce the number of projects that are legacied resulting in increased resilience, reduced damage, reduced threats to life, less economic loss, et.

N.J.A.C. 7:13-2.2(a)(3)iii- We support the removal of exemptions for isolated waters. We are supportive of the Department's protection of waters within the karst geological areas. This provides protection to these waters. Unfortunately, this proposal does not go far enough to protect our waterways. The 50-acre drainage area threshold holds no basis in science. The opposite is true. Research demonstrates that these smaller streams are strongly influenced by upland disturbances; therefore, protecting these waters as regulated and providing a riparian zones will help preserve the integrity of the streams.⁴⁶ Scientific literature is replete with support that headwater, smaller tributary streams are significant to water quality on the larger streams.⁴⁷ In its review of the science in developing the 2015 Waters of the United States rule, EPA did an extensive study. One of the conclusions was "[t]he scientific literature unequivocally demonstrates that streams, *regardless of their size or frequency of flow, are connected to downstream waters and strongly influence their function.*"⁴⁸ We therefore urge the Department to proposal supplemental regulations to regulate headwaters and implement riparian zones for all waters regardless of drainage areas or whether the stream has a defined bed and bank. Not doing so seems to be inconsistent with the amendments the Department is proposing at N.J.A.C. 7:13-2.3(c).

N.J.A.C. 7:13-2.3(c)- We are supportive of this provision. First, the addition of the language "regardless of the drainage areas" is important. Riparian zones are very important for the protection of water quality, protection of the streams physiology as well as providing a buffer from flood waters.⁴⁹ We are supportive of the re-

⁴⁶ "The Significance of Small Streams," Ellen Wohl, *Font. Earth Sci.* 2017 Vol 11, 447-456, (2017). See also, <http://www.delcoed.org/wp-content/uploads/2016/01/The-Science-Behind-the-Need-for-Riparian-Buffer-Protection.pdf>.

⁴⁷ *Id.* at 3. "Another study indicated that basic water chemistry parameters ... in downstream reaches of a river network in eastern Kansas correlated most closely with riparian land cover adjacent to first-order streams."

⁴⁸ "Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of the Scientific Evidence", U.S. EPA January 2015.

⁴⁹ *Id.*

establishment of riparian zones along the bayside of barrier islands for the reasons set forth above.

N.J.A.C. 7:13-2.3(c)vi- We support the inclusion of riparian zones along all waters for the reason set forth above. We are also supportive of the Department's deletion of this provision. It recognizes that some of these human created features function as a state open water; therefore, it should receive the same protections.

N.J.A.C. 7:13-2.5(a)1- While we are supportive of this provision we urge the Department to consider adding additional guardrails. As we understand it this proposed exemption would allow the maintenance of stormwater management structures and related conveyances. We support this concept, except to the extent that maintenance includes the removal of "nuisance vegetation." Our concern is related to the recognition of riparian zones along stormwater conveyances found in proposed N.J.A.C. 7:13-2.3(c)vi. Abuse of this exemption may be utilized to circumvent the protections of riparian zones. The exemption should be revised that it is clear the removal of nuisance vegetation shall only be from within the structure itself and not the riparian zone protected in section 2.3 above.

N.J.A.C. 7:13-3.2- We support this provision for the reason set forth above at N.J.A.C. 7:13-1.3. We support the inclusion of flexibility to account for updates of mapping over time but still provides a default of the use of protective standards. This provision provides additional methods of compliance but sets the bar at a minimum of compliance with NFIP standards. As noted in the proposal we are not allowed to enact standards that are less protective than the minimum standards set by FEMA.⁵⁰

N.J.A.C. 7:13-3.4- We support this provision for the reasons set forth above.

N.J.A.C. 7:13-4.1- We support this provision. The recognition that threatened and endangered species are reliant upon healthy riparian zones is important. By providing healthy riparian zones for species that rely on healthy water and

⁵⁰ 44 C.F.R. 60.3.

terrestrial habitat these regulations further the requirements under New Jersey's Endangered and Nongame Species Conservation Act to "assist in the protection of species."⁵¹ Further, one of the designated uses of New Jersey's waters are aquatic life. We know wider more intact riparian zones protect against water pollution thus supporting the designated uses.

N.J.A.C. 7:13-6.1- We support the creation of permits by registration to take the place of permit by rule. We support and agree with the Department's desire to track the application and actual development under permit by rule. This will provide the Department with a better understanding of the impacts to a waterway and its watershed. We may not agree that all of the proposed permit-by-registrations should exist, but we do support the overall provision of tracking what is going on. The Department should utilize this data annually or biannually to re-evaluate the various non-individual permits and revise or delete them as appropriate. While we assume the Department intends to do this, we wish to make it explicit.

As noted by the Department this tracking "enables the Department to address waters appearing on the ... 303(d) list" or waters that have an applicable TMDL.⁵² We would assert that once a water is listed on the 303(d) list or is included in a TMDL the use of any permit by registration, permit by certification or general permit is foreclosed. According to the Surface Water Quality Standards the Department "shall not approve any activity which, alone or in combination with any other activities, might cause changes, other than toward natural water quality, in the existing water quality characteristics."⁵³ Minimal impacts is not no impacts. We suggest that even minimal negative impacts are impacts which may cause changes to existing water quality characteristics. According to these regulations, the permit by registration, formerly permit by rule "the regulated activity will only cause minimal adverse impacts."⁵⁴ Unless the various non-individual permits can be demonstrated to have zero negative impact on water quality, the regulations would

⁵¹ N.J.S.A. 223:2A-2.

⁵² 55 N.J.R. supra at 1356.

⁵³ N.J.A.C. 7:9b-1.6(d)2ii.

⁵⁴ N.J.A.C. 7:13-6.2(b)1.

prohibit the issuance or usage of the permits. Therefore, the Department should begin a new rulemaking process to provide consideration of water quality impacts from permits by registration, permits by certification, general permits and individual permits.

N.J.A.C. 7:13-6.4- We support the clarification that all the various non-individual permits have a maximum cumulative impact that cannot be exceeded by piling on the various permits.

N.J.A.C. 7:13-6.5- We support the timelines and other requirements for permits-by-registration. This will ensure that the proposed projects are using the most current delineations and information.

N.J.A.C. 7:13-6.5(e)- We support this provision. By confirming completion of a project, the Department has additional data to analysis the impacts of projects on water quality for the reasons noted above in N.J.A.C. 7:13-6.

N.J.A.C. 7:13-6.7. As part of a supplemental proposal, the Department should require applicants for non-individual permits to avoid impacts to the riparian zone or flood hazard areas where there is available non-regulated areas on site to accomplish the project unless the applicant can demonstrate the proposed project will not have any negative impacts on the resource and waters. This would be consistent with the avoidance requirements in the 404(b) guidance and as implicitly reference in the regulations. The regulations require an applicant to "take all reasonable steps to prevent, minimize, or correct adverse impact on the environment"⁵⁵ While the regulations arguable already require this analysis as it is the section applicable to all permits, placing it in the permits by registration section clarifies this requirement.

⁵⁵ N.J.A.C. 7:13-22(c)5.

N.J.A.C. 7:13-7.2- We support the reinstatement of the riparian zone along bulkheaded waters. We have long argued that riparian zones even along bulkheaded, etc. waters still provide water quality, volume reduction benefit. Therefore, we strongly support the Department in the restoration of the protections.

N.J.A.C. 7:13-7.28- We appreciate the reduction in size for allowable manure management structures within a riparian zone. We question whether manure management structures should be allowed in riparian zones in the first place. We know that healthy riparian zones need to be at least 15 to 100 meter to remove 90% of nutrients depending on conditions.⁵⁶ Given the recognized impacts to water pollution that manure can have it would be prudent to avoid as much as possible the potential for these facilities to contribute material to state waters.

N.J.A.C. 7:13-8.1 & 8.2- While we support the removal of duplicative and/or contradictory provisions we object to the selection of 750 square feet of allowable expansion during the reconstruction, relocation and/or elevation of a structure (8.1) or initial construction of a building (8.2). Only that which is absolutely necessary to accomplish the goal should be allowed and not to exceed 400 square feet as provided by existing N.J.A.C. 7:12-7.11. Further, the concepts of avoid, minimize and mitigate should require the avoidance of the impacts in the first place. The expansion of a structure should occur in non-regulated areas as a preference then in the regulated areas if absolutely necessary. This provision does not require minimization or avoidance of the impacts.

N.J.A.C. 7:13-9.1- We support the addition of restriction to the removal of trees from the riparian zone during stream cleaning activities. Allowing removal of trees during stream cleaning activities would increase impacts to streams, water quality and downstream flooding.

⁵⁶ "Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations" US EPA Oct. 2005

N.J.A.C. 7:13-9.12- We strongly support the deletion of permit by rule 36 and requiring a general permit or individual permit for horizontal directional drilling or jacking. Over the years it has become clear that these techniques are not without risks and very real impacts to our waterways. HDD has a 50% plus failure rate resulting in impacts to waters and groundwater.⁵⁷

N.J.A.C. 7:13-10 & 11- Individual Permits- We strongly urge the Department in a subsequent rulemaking incorporate the 404(b) guidelines as outlined above. Further, as noted above, the Department should institute additional rulemaking to explicitly set out the review process for water quality impacts from a proposed project. Currently, review and approval of applications does not consider the existing water pollution conditions of the receiving water body. The current regulations require the Department to issue a permit **“only** if it determines that the regulated activity is not likely to cause significant and adverse effects on the following: (1) water quality; (2) aquatic biota; ... (4) flooding; ... (threatened and endangered species or their current or documented historic habitats.”⁵⁸The Surface Water Quality Standards prohibits the issuance of a permit to an impaired water.⁵⁹ The current process also ignores waters with a Load Allocation from a TMDL. These load allocations address non-MS4 stormwater contributions and/or agricultural contributions to impairment. By not considering the Load Allocations (LA); this process ignores approved WMP. The Department should not be issuing permits that conflict with water quality management plans.

N.J.A.C. 7:13-11.2(b)- We support the addition of requirements to remove impervious cover within 25 feet of the top of bank. As noted above in the wetlands portion, 25 feet is not sufficient to protect water quality and provide other environmental benefits. The Department should enlarge this width to a minimum

⁵⁷ Skonberg, Eric R., Carl E. Tammi, et al., 2008 Inadvertent Slurry Returns during Horizontal Directional Drilling: Understanding the Frequency and Causes. Environmental Concerns in Rights-of-Way Management 8th International Symposium, 12-16 Sept. 2004 Saratoga Springs, NY. See also, “Final Report on Horizontal Directional Drilling,” NJDEP Science Advisory Board, Oct. 2021.

⁵⁸ N.J.A.C. 7:13-12(1)(b). emphasis added.

⁵⁹ Supra at 53.

of 30 feet. In reality the removal of impervious cover should be to the requirements for the appropriate water classification (50/150/300) as we know wider more intact riparian zones are necessary to remove pollutants, etc.

N.J.A.C. 7:13-11.2(b)2 – As noted above the requirement to avoid and minimize is important especially in New Jersey. We support the provision to limit development to actively disturbed areas or areas wherein the benefits and functions of a riparian zone are deteriorated. We would prefer that applicants take all opportunities to avoid any development in the riparian zone and require restoration of disturbed areas. As noted by the Department in the explanation of the amendments to the stormwater regulations, we are not going to see significant improvements in water quality and reductions in flooding until we start to repair the damage from past approvals/decisions. In regard to this provision and its allowance for additional riparian zone impacts where reuse of disturbed areas is not practicable, we urge the Department to clearly explain that compliance with local zoning setbacks or other zoning requirements is not justification for development in riparian zones. Applicants should be required to seek a variance from the appropriate land use board before seeking to demonstrate they have minimized the impacts to the “maximum extent practicable.”

N.J.A.C. 7:13-11.2(b)(6)(ii)- We support requiring mitigation for all impacts to the Riparian Zone. We do not support the allowance of 2,000 square feet of impacts within the 150-foot riparian zone without mitigation. Not only does this run counter to the proposed avoid, minimize, mitigate proposal above, it also ignores any inquiring as to the water quality/water pollution impacts to impaired waters or TMDL listed water. Mitigation should be required for all impacts to a riparian zone whether in a 50-foot, 150-foot, 300-foot riparian zone. As noted above, it has been demonstrated that wider more intact buffers function better resulting in more effective pollutant removal, temperature regulation, absorption of runoff and the reduction in velocity of runoff. The Department recognizes this importance of riparian zones with “a riparian zone and its attendant water quality protections would be in place around these waters.”⁶⁰ Allowing impacts to the riparian zone

⁶⁰ 55 N.J.R. supra at 1345.

compromises the effectiveness of the riparian zone. As noted elsewhere intact riparian zones are important for water quality.

Freshwater Wetlands Protection Act N.J.A.C. 7:7A-1 et seq.

Wetlands are an important system in New Jersey to filter pollutants, absorb and slow down stormwater runoff, provides base flow to streams, and provide habitat to various species of plants and animals. As climate change continues threats will continue to challenge wetlands and their functioning. As the Department notes, protecting wetlands is a resiliency strategy. The Freshwater Wetlands Protection Act regulations require the Department to determine before issuing any permit that the activity will "not cause or contribute to a violation of any applicable State water quality standard; ... will not cause or contribute to a significant degradation, as defined at 40 C.F.R. 230.10(c) to ground or surface water."⁶¹

New Jersey has lost a significant amount of its wetlands. According to the United States Geological Survey, New Jersey lost thirty-nine percent of our wetlands between 1780's and the 1980's.⁶² The Freshwater Wetlands Protection Act was enacted effective in 1988. Since then loss continues. According to Lathrop and Hasse's study between 1986 and 2012 New Jersey lost an additional 56,703 acres of wetlands.⁶³ That trend continued between 2012-2015.⁶⁴ That means more than forty-five percent of New Jersey's wetlands have been lost to development. As the data is only current through 2015, there are over 9 additional years of potential wetlands loss. This loss also does not account for the changes or conversions of wetlands from a more productive type to another less productive type. Another trend that was noted in the 2020 report.⁶⁵

⁶¹ N.J.A.C. 7:7A-10.2(b)5 & 8.

⁶² USGS Water Supply Paper 2425.

⁶³ Hasse, J & Lathrop, R.G. (2012) Changing Landscapes in the Garden State: Land Use Change in NJ 1986 thru 2012. Center for Remote Sensing & Spatial Analysis, Rutgers University, New Brunswick, NJ, Page 2 Table 2.1.

⁶⁴ Hasse, J, supra at Footnote 32.

⁶⁵ Id.

We also know that wetlands are valuable to addressing water quality, flood control, etc. Scientific studies repeatedly demonstrate the value and service of wetlands to New Jersey. The Department reconfirmed these values in its "Scientific Report on Climate Change." Freshwater wetlands provide the following services:

- Flood Control
- Groundwater replenishment
- Sediment and nutrient retention and export
- Water purification
- Reservoirs of biodiversity
- Recreation and tourism
- Climate change mitigation and adaptation including carbon sequestration.⁶⁶

Those provisions of the rule that provide opportunities to fill wetlands, impact transition areas without the requirement to determine water quality impacts is counter to the CWA. Further applicants should be required to engage in a robust avoid, minimize then mitigation process people the issuance of a permit. The EPA notes that "water quality standards for wetlands are necessary to ensure the provisions of the Clean Water Act (CWA) applied to other surface waters are also applied to wetlands."⁶⁷

N.J.A.C. 7:1-3- The Department should in a future rulemaking revise the definition of "Part of a surface water tributary system." The definition should be revised to delete the prohibition against the connection between waters consisting solely of groundwater flow. Wetlands provide baseflow to waterways through groundwater connections. By requiring a surface water connection for wetlands, it ignores the subsurface connections.

⁶⁶ Scientific Report on Climate Change, page 95. (2020). See also, National Guidance Water Quality Standards for Wetlands, U.S. EPA <https://www.epa.gov/cwa-404/national-guidance-water-quality-standards-wetlands>.

⁶⁷ Id.

N.J.A.C. 7:7A-5- As noted above in the Flood Hazard Area Control Act discussion regarding non-individual permits, there needs to be a 404(b) like process for impacts to the wetlands and transition areas. Further, an analysis of the water quality impacts to the receiving water bodies as wetlands are integral to surface water bodies, should be included in the decision on the availability of and issuance of the approvals.

N.J.A.C. 7:7A-5.4- We support the requirement of mitigation for impacts to wetlands, state open waters and transition areas for the use of general permits. We urge the Department to require mitigation for all impacts and not just impacts over 0.1 acres. As noted above, NJ water quality is severely impacted by development. Allowing continued impacts without mitigation will not achieve the goal of reducing flooding, improving water quality and increasing NJ's resiliency to climate change.

N.J.A.C. 7:7A-5.7- We support the addition of avoidance criteria in 404(b) by requiring a demonstration that there "is not other practicable onsite configuration for the project." We would encourage the Department to include a reduction in the size or scope of the project as another required demonstration. We also support the addition of mitigation requirements for temporary impacts.

N.J.A.C. 7:7A-7.2 We support the requirement of a general permit for HDD installation of utility lines for the reason set forth in comments to N.J.A.C. 7:13-9.12.

N.J.A.C. 7:7A-7.20 We support the revisions to the Bank Stabilization GP. We note that it is important not only to stabilize banks but to understand the reasoning why the project is needed and that the proposed project will likely result in improvements to the waterway. If there is not an understanding of the causes of the instability than projects may be designed in ways that do not ultimately succeed.

N.J.A.C. 7:7A-8.1(b)(5)- We support the requirement to remove impervious cover within 25 feet of a freshwater wetland. For the same reasons that a riparian zone is important to the health of a stream and its water quality, transition areas provide the same benefits. Requiring the restoration of the transition area as we redevelop is an important tool reducing flooding, improving water quality and providing other benefits. Just as our comments in N.J.A.C. 7:13-2(b) we urge the Department to look at expanding beyond the 25 feet.

Again, we appreciate the Department's engagement and proactive approach in these rules. There was significant stakeholdering over the years to reach the proposal stage. While we believe these rules could be stronger, we support the Department's adoption of these rules in total. We urge the Department to adopt these rules as quickly as possible. Also as noted throughout these comments there are opportunities to address missed opportunities or to clarify provisions. We urge the department to start the stakeholder process on these topics as soon as possible as well.

Respectfully submitted,

Michael L. Pisauro, Jr. Esq., Policy Director, The Watershed Institute

William S. Kibler, Policy Director, Raritan Headwaters

Greg Remaud, NY/NY Baykeeper, NY/NJ Baykeeper

Captain Bill Sheehan, Hackensack Riverkeeper, Hackensack Riverkeeper

Fred Akers, Operations Manager, Great Egg Harbor Watershed Association

Heather Fenyk, Ph.D., AICP/PP, Board President, Lower Raritan Watershed Partnership

Elliot Rugga, Policy & Communications Director, New Jersey Highlands Coalition

Jennifer Coffey, Executive Director, Association of New Jersey Environmental Commissions

Michael W. Klein, JD, PHD, Director of Government Relations, Pinelands Preservation Alliance

Lindsey Kayman, New Jersey Environmental Education Fund

Anne O. Poole, President, New Jersey Environmental Lobby

Fred Stine, Co-Chair, Cooper River Watershed Association

Laurie Howard, Executive Director, The Passaic River Coalition

Laura McBride, President, Deal Lake Watershed Alliance

Alison Mitchell, Co-Executive Director, New Jersey Conservation Foundation

Marsha Benevengo, Chair, Trout Unlimited New Jersey Council

Tim Dillingham, Executive Director, American Littoral Society

Anjuli Ramos, Executive Director, New Jersey Sierra Club

Cindy Zipf, Executive Director, Clean Ocean Action

Ed Potosnak, Executive Director, New Jersey League of Conservation Voters

Doug O'Malley, Director, Environment New Jersey



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RESOLUTION 2026.03.01

**SUPPORTING SENATE CONCURRENT RESOLUTION (SCR) NO. 106 (SCUTARI D-22,
Burzichelli D-3, Testa R-1)**

WHEREAS, on January 20, 2026, the New Jersey Department of Environmental Protection (NJDEP) adopted the NJPACT REAL rules, which drastically expand the State's "Flood Hazard Area" by creating a new area known as the Climate Adjusted Flood Elevation (CAFE), along with sweeping changes to stormwater management, wetlands conservation, and coastal area protection rules and regulations; and

WHEREAS, the Cape May County Chamber of Commerce has opposed the NJPACT REAL Rules and continues to remain in opposition to the rules as written, and is alarmed by the long-term consequences these rules may inflict on new development, redevelopment, the renovation of existing structures, and the overall business climate in Cape May County; and

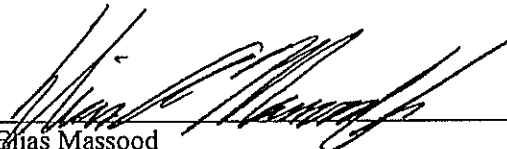
WHEREAS, the NJDEP failed to conduct a comprehensive and independent economic analysis of the NJPACT REAL rules to determine how the rules will impact businesses, local governments, critical infrastructure projects, affordable housing, and residents throughout the State; and

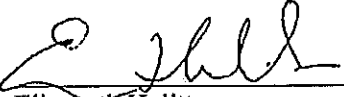
WHEREAS, the NJPACT REAL rules fail to adequately address how the new standards may increase the State's cost of living, devalue property, and diminish the ratable base of county and municipal governments, which is critical for delivering essential services to businesses and residents alike; and

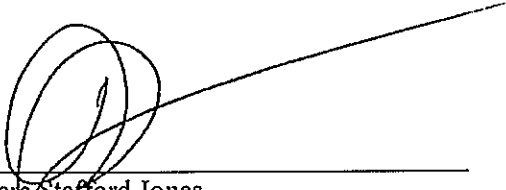
WHEREAS, the NJDEP circumvented the State Legislature by enacting these rules through the Governor's Executive Order, thereby disregarding the opportunity to adopt a more measured, reasonable, and collaborative approach to effectively balance the risks imposed by climate change and sea level rise with the long-term economic and social needs of the Garden State;

NOW, THEREFORE, BE IT RESOLVED, that the Cape May County Chamber of Commerce, representing more than 920 member businesses in Cape May County and throughout Southern New Jersey, hereby formally and enthusiastically supports Senate Concurrent Resolution No. 106 (Scutari, D-22, Burzichelli, D-3 and Testa, R-1), which would determine that the NJPACT REAL Rules are inconsistent with legislative intent; and

BE IT FURTHER RESOLVED, that this resolution was adopted on the 12th day of March, 2026, by the Executive Board of Directors of the Cape May County Chamber of Commerce.


Elias Massood
Chair


Elizabeth Hulitt
Secretary


Barbara Stafford Jones
President & CEO

Resolution of the City of Atlantic City

No. 179

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Deputy City Solicitor /s/Rashanna Butler

Director of Planning & Development/s/ Jacques Howard

Prepared by City Solicitor's Office

Council Members MARSHALL, KURTZ, RANDOLPH, SHABAZZ & LACCA present the following Resolution:

A RESOLUTION APPROVING THE SUPPORT OF SENATE RESOLUTION NO. 106 (SCUTARI D-22) TO DETERMINE WHETHER THE NJDEP'S PROPOSED COASTAL REGULATIONS ARE INCONSISTENT WITH THE LEGISLATIVE INTENT

WHEREAS, In the January 20, 2026 New Jersey Register, 58 N.J.R. 13 247(a), the Department of Environmental Protection (DEP) adopted a set of rules and regulations, known as "New Jersey Protecting Against Climate Change – Resilient Environment and Landscapes" (NJPACT – REAL), which make sweeping changes to various DEP rules and programs in response to climate change, including drastically increasing the size of the Flood Hazard Area under the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et 20 seq.), in addition to making changes to the state's stormwater management, wetlands conservation, and coastal area protection rules; and

WHEREAS, the rules and regulations will have substantial effects on ordinary New Jerseyans, by limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments; and

WHEREAS, the rules and regulations will increase the cost of housing in New Jersey, by greatly restricting development in large areas of the state and increasing regulatory costs; and

WHEREAS, the rules and regulations apply the Flood Hazard Area rules to "substantial improvements," meaning, improvements that are valued at 50 percent or more of a property's value, which occur in the expanded "Coastal Adjusted Flood Hazard Area," creating disincentives to renovation, redevelopment, and imposing significant economic burdens on lower-valued properties in large areas of the state; and

WHEREAS, the rule adoption contains economic, housing, and jobs impact statements that are severely inadequate and include little evidence, and the impacts of rules and regulations of this magnitude should be carefully studied prior to implementation; and

WHEREAS, under the State Constitution, the duties and powers of the Executive Branch are limited to executing those laws that are enacted by the Legislature and the Governor; and

WHEREAS, the Legislature recognizes this principle by including, within its laws, an explicit authorization for an Executive Department to adopt rules and regulations to implement the law; and

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WHEREAS, in this case, the Legislature did not merely neglect to include such an authorization, it enacted no law; and

WHEREAS, instead, the DEP proposed the NJPACT – REAL rules and regulations, which constitute a major climate change law, unilaterally, likely with the well-intended aim of combating the negative effects of climate change, but forgetting that the DEP does not represent the people of New Jersey and thus that it oversteps its constitutional authority by proposing entirely new laws, and ignoring the fact that inaction can also be an expression of the Legislature's will; and

WHEREAS, the DEP claims, in its rule proposal, that approximately 50 existing laws provide it with the statutory authority to advance the NJPACT – REAL rules and regulations; and

WHEREAS, there are several issues with this claim as many of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq., have not been amended for at least 40 years, meaning that the Legislature could not possibly have intended them to authorize the DEP to combat the effects of climate change, since the issue of climate change was not salient at that time; and

WHEREAS, in addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law; and

WHEREAS, it is therefore clear that the DEP has overstepped its authority in proposing the NJPACT – REAL rules and regulations, and the Legislature urges the DEP to follow the principles of the Constitution and await future Legislative enactments regarding how best to protect New Jerseyans lives and property from the negative effects of climate change.

NOW THEREFORE, BE IT RESOLVED, that the City of Atlantic City hereby formally supports SCR No. 106, which would determine that the NJPACT - REAL Rules are inconsistent with legislative intent.

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BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be sent to the offices of Governor Mikie Sherrill, Senate President Nicholas Scutari, General Assembly Speaker Craig Coughlin, and State Legislators.

March 19, 2026 7:23 AM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
AHMED	X						KURTZ	X					X
BAILEY	X						LACCA	X					
CROUCH	X						MARSHALL				X		
DUNSTON	X						SHABAZZ	X				X	
RANDOLPH, COUNCIL PRESIDENT								X					
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: MARCH 18, 2026

Paula Geletei

/s/ Paula Geletei, City Clerk

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**BOROUGH OF LONGPORT
COUNTY OF ATLANTIC
RESOLUTION 2026-35**

**A RESOLUTION SUPPORTING SENATE RESOLUTION NO. 106 (SCUTARI D-22)
TO DETERMINE THAT THE
NJDEP'S PROPOSED COASTAL REGULATIONS ARE INCONSISTENT
WITH LEGISLATIVE INTENT**

WHEREAS, In the January 20, 2026 New Jersey Register, 58 N.J.R. 13 247(a), the Department of Environmental Protection (DEP) adopted a set of rules and regulations, known as "New Jersey Protecting Against Climate Change - Resilient Environment and Landscapes" (NJPACT - REAL), which make sweeping changes to various DEP rules and programs in response to climate change, including drastically increasing the size of the Flood Hazard Area under the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et 20 seq.), in addition to making changes to the State's stormwater management, wetlands conservation, and coastal area protection rules; and

WHEREAS, the rules and regulations will have substantial effects on ordinary New Jerseyans, by limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments; and

WHEREAS, the rules and regulations will increase the cost of housing in New Jersey, by greatly restricting development in large areas of the State and increasing regulatory costs; and

WHEREAS, the rules and regulations apply the Flood Hazard Area rules to "substantial improvements," meaning, improvements that are valued at 50 percent or more of a property's value, which occur in the expanded "Coastal Adjusted Flood Hazard Area," creating disincentives to renovation, redevelopment, and imposing significant economic burdens on lower-valued properties in large areas of the State; and

WHEREAS, the rule adoption contains economic, housing, and jobs impact statements that are severely inadequate and include little evidence, and the impacts of rules and regulations of this magnitude should be carefully studied prior to implementation; and

WHEREAS, under the State Constitution, the duties and powers of the Executive Branch are limited to executing those laws that are enacted by the Legislature and the Governor; and

WHEREAS, the Legislature recognizes this principle by including, within its laws, an explicit authorization for an Executive Department to adopt rules and regulations to implement the law; and

WHEREAS, however, in this case, the Legislature did not merely neglect to include such an authorization, it enacted no law; and

WHEREAS, instead, the DEP proposed the NJPACT - REAL rules and regulations, which constitute a major climate change law, unilaterally, likely with the well-intended aim of combating the negative effects of climate change, but forgetting that the DEP does not represent the people of

New Jersey and thus that it oversteps its constitutional authority by proposing entirely new laws, and ignoring the fact that inaction can also be an expression of the Legislature's will; and

WHEREAS, the DEP claims, in its rule proposal, that approximately 50 existing laws provide it with the statutory authority to advance the NJPACT – REAL rules and regulations; and

WHEREAS, however, there are several issues with this claim as many of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq., have not been amended for at least 40 years, meaning that the Legislature could not possibly have intended them to authorize the DEP to combat the effects of climate change, since the issue of climate change was not salient at that time; and

WHEREAS, in addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law; and

WHEREAS, it is therefore clear that the DEP has overstepped its authority in proposing the NJPACT – REAL rules and regulations, and the Legislature urges the DEP to follow the principles of the Constitution and await future Legislative enactments regarding how best to protect New Jerseyans lives and property from the negative effects of climate change.

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Borough of Longport hereby formally supports SCR No. 106, which would determine that the NJPACT REAL Rules are inconsistent with legislative intent.

BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be sent to the offices of Governor Mikie Sherrill, Senate President Nicholas Scutari, General Assembly Speaker Craig Coughlin, and State Legislators.

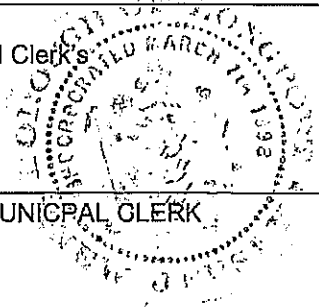
RECORD OF GOVERNING BODY VOTE ON FINAL PASSAGE						
COMMISSION	AYE	NAY	N.V.	AB.	MOT.	SEC.
ARMSTRONG	X					X
LAWLER	X				X	
ULMER	X					
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second						

This is a Certified True copy of the Original Resolution on file in the Municipal Clerk's Office.

DATE OF ADOPTION:
3/25/2026



 MONICA A. KYLE, RMC, MUNICIPAL CLERK



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City of Somers Point
Resolution
No. 76 of 2026

Subject: Resolution Opposing the Proposed “Protecting Against Climate Threat (Pact)/Resilient Environments and Landscape (Real)” Rules

Introduced By: Council President Gerety

WHEREAS, on July 14, 2025, the New Jersey Department of Environmental Protection announced intent to amend the NJ PACT REAL regulations; and

WHEREAS, on January 20, 2026, the changes to the NJ PACT REAL regulations were adopted and will go into effect on July 20, 2026; and

WHEREAS, the City of Somers Point opposes the amended coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

WHEREAS, the City of Somers Point acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring thoughtful and well-reasoned response from all levels of government; and

WHEREAS, the City of Somers Point continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all critical infrastructure and building projects, while also providing the necessary support to our local communities in the approach, duration, and wake of major coastal storms; and

WHEREAS, the City of Somers Point is extremely disappointed in the level of transparency during this rule making process. The coastal municipalities and counties were not included in the stakeholder meeting when these rules were being formulated. Finally, when we were afforded the opportunity to meet with NJDEP staff we were told that a detailed economic impact analysis that studies the impact of these rules on local communities would be provided, to date this analysis has not been distributed. Also, the responses to the 2,965 comments on the initial rules were to be made public; and

WHEREAS, historically, new rules issued by the NJDEP have always been promulgated pursuant to legislation through the typical legislative process; and

WHEREAS, in this case, like the NJDEP’s recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

WHEREAS, NJDEP uses a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for these regulations. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over twenty years let alone seven-five years which is the basis of the published regulations. This is supported by the fact that municipal master planning efforts project twenty years in the future due to uncertainties. These regulations should be applied incrementally based on twenty year projects; and

WHEREAS, by creating a new flood zone (inundation risk zone or IRZ) with strict development standards, expanding existing flood zones (climate adjusted flood elevation or CAFE), and creating new 3

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City of Somers Point **Resolution**

percent impervious coverage limits (CAFRA Critical Environmental Areas), thousands of prime developable acres of land will be either undevelopable or much harder to develop. This will impact major projects and hurt rateables. Given that the most restrictive development limits are on lands closer to the water, the rule would impact some of the state's most valuable lands; and

WHEREAS, these rules as currently written do not consider the economic impact these new standards may have on the rateables, real-estate values, development, and redevelopment statewide, but especially in Atlantic County where we have more than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is the largest industry in Atlantic County; and

WHEREAS, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts in the City of Somers Point, throughout Atlantic County, and State of New Jersey; and

WHEREAS, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

WHEREAS, these rules will also increase construction costs and impact the feasibility for public infrastructure projects with the minimum construction height requirements for new roads in excess of Base Flood Elevation, will be infeasible and unachievable given the path and location of the project; and

WHEREAS, despite the burden these rules will inevitably play on our coastal towns, the State of New Jersey has not mentioned any plan for a State budget appropriation to assist coastal towns statewide with the additional duties and functions imposed through the proposed NJPACT REAL regulations; and

WHEREAS, the proposed expansion of flood hazard areas will also create additional financial burdens for lower and middle class property owners living in the City of Somers Point by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within the newly expanded regulated areas and may also potentially result in higher insurance premiums given the expansion of the inundation risk zone and increase of the regulated flood hazard area limits by 4 feet vertically; and

WHEREAS, the proposed NJPACT REAL regulations are based Science and Technical Advisory Panel Report (2019 STAP Report) entitled, "New Jersey Rising Seas and Changing Coastal Storms," projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

WHEREAS, since the 2019 STAP Report several key studies on sea level rise were issued as was the International Panel on Climate Change (IPCC) Assessment that addressed sea level rise. The more recent studies do not support the idea of a 5.1 foot sea level rise as being likely. The IPCC and all the newer scientific reports predict that worldwide sea level rise this century will be 0-2 feet; and

WHEREAS, municipalities are required to prepare Master Plans for a 20-year planning horizon, and the City of Somers Point strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, the City of Somers Point, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirement will

City of Somers Point **Resolution**

significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region's workforce; and

WHEREAS, the NJDEP's proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

WHEREAS, the proposed coastal regulations will create an Environmental Justice issue since local residents will be deterred from improving their homes because they will have to elevate 6 feet above BFE which they cannot afford when they improve their homes above 50 percent of its value, hence those in most need of shelter will witness the deterioration of their homes and be forced to relocate; and

WHEREAS, the Federal Emergency Management Agency is also in the process of preparing detailed updates to the flood insurance rate maps (FIRMS) that take into account many factors of risk including sea level rise; and

WHEREAS, the State of New Jersey has historically used these maps to guide public policy, and therefore, the City of Somers Point urges the State to differ to the superseding governing body, in this instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

WHEREAS, with the expansion of state regulatory flood zones will come requirements by banks for homeowners to purchase costly flood insurance. Thousands of residents who are currently living outside the existing federal flood zone will now be thrust into a new state expanded flood zone with the potential that they will be forced to purchase flood insurance; and

WHEREAS, while recognizing the importance of addressing climate change, as stated previously, the City of Somers Point believes that a more gradual and balanced approach is necessary to target incremental adjustments over time in order to mitigate the potential negative impacts that these radically changing rules will have on the coastal towns of New Jersey; and

WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones.

NOW, THEREFORE, BE IT RESOLVED, the City of Somers Point strongly recommends the following:

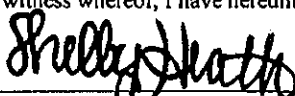
1. The City of Somers Point recommends that the State abandon the NJPACT REAL rule making process and start anew with a process that includes the Legislature and local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time horizon.
2. The City of Somers Point recommends a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations.
3. The City of Somers Point recommends that these regulations be based on a 20- year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on a 75-year projection.

City of Somers Point Resolution

4. The City of Somers Point recommends that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that include significantly higher elevation requirements for new roads.
5. The City of Somers Point recommends that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. This resolution encourages Atlantic County Government to join in the litigation opposing these regulations on behalf of all the municipalities of Atlantic County.
7. The City of Somers Point hereby orders copies of this Resolution be transmitted to:
 - a. Governor Mikie Sherrell;
 - b. Lieutenant Governor Cale Caldwell;
 - c. Chief of Staff to Governor Alex Ball;
 - d. Senate President Nicholas P. Scutari;
 - e. Assembly Speaker Craig J. Coughlin;
 - f. Senate Environment Committee Chair Bob Smith;
 - g. Assembly Environment Committee Chair James J. Kennedy;
 - h. Senator Vince Polistina;
 - i. Assemblyman Don Guardian;
 - j. Assemblywomen Maureen Rowan;
 - k. County Executive Dennis Levinson;
 - l. New Jersey Association of Counties (NJAC);
 - m. New Jersey Business and Industry Association (NJBIA); and
 - n. New Jersey League of Municipalities (NJLM).

	MOTIONS	YES	NO	ABSTAIN	ABSENT	RECUSE
DePamphilis					X	
Dill		X				
Gerety		X				
Johnston	1	X				
McGuigan		X				
Shields					X	
Slaughter	2	X				
Consent Agenda						

I, Shelby Heath, City Clerk of the City of Somers Point, New Jersey, hereby certify that the foregoing Resolution is a true copy, duly adopted by the City Council of said City at a Regular meeting held on the 12th day of February 2026. In witness whereof, I have hereunto set my hand and seal of the Office on the 12th day of February 2026.



 Shelby Heath, RMC, City Clerk

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TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION

RESOLUTION NO. 080 -2026

A RESOLUTION SUPPORTING SENATE CONCURRENT RESOLUTION NO. 106
TO DETERMINE THAT THE NJDEP'S PROPOSED COASTAL REGULATIONS
ARE INCONSISTENT WITH LEGISLATIVE INTENT

WHEREAS, In the January 20, 2026 New Jersey Register, 58 N.J.R. 13 247(a), the Department of Environmental Protection (DEP) adopted a set of rules and regulations, known as "New Jersey Protecting Against Climate Change – Resilient Environment and Landscapes" (NJPACT – REAL), which make sweeping changes to various DEP rules and programs in response to climate change, including drastically increasing the size of the Flood Hazard Area under the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), in addition to making changes to the State's stormwater management, wetlands conservation, and coastal area protection rules; and

WHEREAS, the rules and regulations will have substantial effects on ordinary New Jerseyans, by limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments; and

WHEREAS, the rules and regulations will increase the cost of housing in New Jersey, by greatly restricting development in large areas of the State and increasing regulatory costs; and

WHEREAS, the rules and regulations apply the Flood Hazard Area rules to "substantial improvements," meaning, improvements that are valued at 50 percent or more of a property's value, which occur in the expanded "Coastal Adjusted Flood Hazard Area," creating disincentives to renovation, redevelopment, and imposing significant economic burdens on lower-valued properties in large areas of the State; and

WHEREAS, the rule adoption contains economic, housing, and jobs impact statements that are severely inadequate and include little evidence, and the impacts of rules and regulations of this magnitude should be carefully studied prior to implementation; and

WHEREAS, under the State Constitution, the duties and powers of the Executive Branch are limited to executing those laws that are enacted by the Legislature and the Governor; and

WHEREAS, the Legislature recognizes this principle by including, within its laws, an explicit authorization for an Executive Department to adopt rules and regulations to implement the law; and

WHEREAS, however, in this case, the Legislature did not merely neglect to include such an authorization, it enacted no law; and

WHEREAS, instead, the DEP proposed the NJPACT – REAL rules and regulations, which constitute a major climate change law, unilaterally, likely with the well-intended aim of combating the negative effects of climate change, but forgetting that the DEP does not represent the people of New Jersey and thus that it oversteps its constitutional authority by proposing entirely new laws, and ignoring the fact that inaction can also be an expression of the Legislature's will; and

WHEREAS, the DEP claims, in its rule proposal, that approximately 50 existing laws provide it with the statutory authority to advance the NJPACT – REAL rules and regulations; and


WHEREAS, however, there are several issues with this claim as many of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq., have not been amended for at least 40 years, meaning that the Legislature could not possibly have intended them to authorize the DEP to combat the effects of climate change, since the issue of climate change was not salient at that time; and

WHEREAS, in addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law; and

WHEREAS, it is therefore clear that the DEP has overstepped its authority in proposing the NJPACT – REAL rules and regulations, and the Legislature urges the DEP to follow the principles of the Constitution and await future Legislative enactments regarding how best to protect New Jerseyans lives and property from the negative effects of climate change.

NOW THEREFORE, BE IT RESOLVED, that the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, hereby formally supports Senate Concurrent Resolution No. 106, which would determine that the NJPACT – REAL Rules are inconsistent with legislative intent.

BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be sent to the offices of Governor Mikie Sherrill, Senate President Nicholas Scutari, General Assembly Speaker Craig Coughlin, Senator Michael Testa, Assemblyman Antwan McClellan, and Assemblyman Erik Simonsen.


CURTIS T. CORSON, JR., Mayor


JOANNE R. HERRON, Township Clerk

Resolution No. 080-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	x			
Nappen	x			
S. Palombo				x
Z. Palombo	x			
Corson	x			

CERTIFICATION

The undersigned, Township Clerk for the Township of Upper, County of Cape May, State of New Jersey, hereby certifies the foregoing to be a true copy of a Resolution adopted by the Township Committee of the Township of Upper on March 9, 2026.


Joanne R. Herron, Township Clerk

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CITY OF WILDWOOD
Cape May County, New Jersey
RESOLUTION

**A RESOLUTION SUPPORTING SENATE RESOLUTION NO. 106 (SCUTARI D-22)
TO DETERMINE THAT THE NJDEP'S PROPOSED COASTAL REGULATIONS ARE
INCONSISTENT WITH LEGISLATIVE INTENT**

WHEREAS, In the January 20, 2026 New Jersey Register, 58 N.J.R. 13 247(a), the Department of Environmental Protection (DEP) adopted a set of rules and regulations, known as "New Jersey Protecting Against Climate Change – Resilient Environment and Landscapes" (NJPACT – REAL), which make sweeping changes to various DEP rules and programs in response to climate change, including drastically increasing the size of the Flood Hazard Area under the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), in addition to making changes to the State's stormwater management, wetlands conservation, and coastal area protection rules; and

WHEREAS, the rules and regulations will have substantial effects on ordinary New Jerseyans, by limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments; and

WHEREAS, the rules and regulations may increase the cost of housing in New Jersey, by greatly restricting development in large areas of the State and increasing regulatory costs; and

WHEREAS, the rules and regulations apply the Flood Hazard Area rules to "substantial improvements," meaning, improvements that are valued at 50 percent or more of a property's value, which occur in the expanded "Coastal Adjusted Flood Hazard Area," creating disincentives to renovation, redevelopment, and imposing significant economic burdens on lower-valued properties in large areas of the State; and

WHEREAS, the rule adoption contains economic, housing, and jobs impact statements that are severely inadequate and include little evidence, and the impacts of rules and regulations of this magnitude should be carefully studied prior to implementation; and

WHEREAS, under the State Constitution, the duties and powers of the Executive Branch are limited to executing those laws that are enacted by the Legislature and the Governor; and

WHEREAS, the Legislature recognizes this principle by including, within its laws, an explicit authorization for an Executive Department to adopt rules and regulations to implement the law; and

WHEREAS, however, in this case, the Legislature did not merely neglect to include such an authorization, it enacted no law; and

WHEREAS, instead, the DEP proposed the NJPACT – REAL rules and regulations, which constitute a major climate change law, unilaterally, likely with the well-intended aim of combating the negative effects of climate change, but forgetting that the DEP does not represent the people of New Jersey and thus that it oversteps its constitutional authority by proposing entirely new laws, and ignoring the fact that inaction can also be an expression of the Legislature's will; and

WHEREAS, the DEP claims, in its rule proposal, that approximately 50 existing laws provide it with the statutory authority to advance the NJPACT – REAL rules and regulations; and

WHEREAS, however, there are several issues with this claim as many of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq., have not been amended for at least 40 years, meaning that the Legislature could not possibly have intended them to authorize the DEP to combat the effects of climate change, since the issue of climate change was not salient at that time; and

WHEREAS, in addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and

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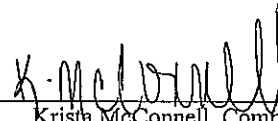
that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law; and

WHEREAS, it is therefore clear that the DEP has overstepped its authority in proposing the NJPACT – REAL rules and regulations, and the Legislature urges the DEP to follow the principles of the Constitution and await future Legislative enactments regarding how best to protect New Jerseyans lives and property from the negative effects of climate change; and

WHEREAS, the City has received and reviewed the contents of Senate Resolution No. 106 (Scutari D-22) and wishes to advance its local support for the same by way of this Resolution.

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the City of Wildwood, County of Cape May, State of New Jersey hereby formally supports SCR No. 106, which would determine that the NJPACT REAL Rules are inconsistent with legislative intent.

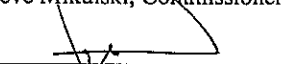
BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be sent to the offices of Governor Mikie Sherrill, Senate President Nicholas Scutari, General Assembly Speaker Craig Coughlin, State Senator Mike Testa and General Assembly members Antwan McClellan and Erik K. Simonsen of the 1st Legislative District



Krista McConnell, Commissioner



Steve Mikulski, Commissioner



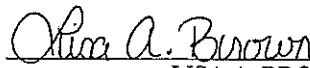
Ernest Troiano, Jr., Mayor

Resolution No. 122-3-26

Offered By McConnell

Seconded by Mikulski

I, Lisa A. Brown, City Clerk of the City of Wildwood, do hereby certify that the foregoing Resolution was adopted at a Regular Meeting of the Wildwood Board of Commissioners, held this 11th day of March, 2026, and in witness whereof I have hereunder set my hand and official seal on this date written.



LISA A. BROWN, CITY CLERK

295X

**SENATE CONCURRENT
RESOLUTION No. 106**
STATE OF NEW JERSEY
222nd LEGISLATURE

INTRODUCED FEBRUARY 24, 2026

Sponsored by:

Senator **NICHOLAS P. SCUTARI**
District 22 (Somerset and Union)
Senator **JOHN J. BURZICHELLI**
District 3 (Cumberland, Gloucester and Salem)
Senator **MICHAEL L. TESTA, JR.**
District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

Senators Polistina, Schepisi, Singer and Amato

SYNOPSIS

Determines that DEP's "Protecting Against Climate Threats" rules, adopted January 20, 2026, are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/2/2026)

296x

1 A CONCURRENT RESOLUTION concerning legislative review of
2 Department of Environmental Protection rules and regulations
3 pursuant to Article V, Section IV, paragraph 6 of the
4 Constitution of the State of New Jersey.
5

6 WHEREAS, Article V, Section IV, paragraph 6 of the Constitution of
7 the State of New Jersey provides that the Legislature may review
8 any rule or regulation of an administrative agency to determine if
9 the rule or regulation is consistent with the intent of the Legislature
10 and, upon a finding that the rule or regulation is not consistent with
11 legislative intent, may transmit such finding to the Governor and
12 the head of the agency; and

13 WHEREAS, In the January 20, 2026 New Jersey Register, 58 N.J.R.
14 247(a), the Department of Environmental Protection (DEP) adopted
15 a set of rules and regulations, known as "New Jersey Protecting
16 Against Climate Change – Resilient Environment and Landscapes"
17 (NJPACT – REAL), which make sweeping changes to various
18 DEP rules and programs in response to climate change, including
19 drastically increasing the size of the Flood Hazard Area under the
20 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et
21 seq.), in addition to making changes to the State's stormwater
22 management, wetlands conservation, and coastal area protection
23 rules; and

24 WHEREAS, The rules and regulations will have substantial effects on
25 ordinary New Jerseyans, by limiting development rights for
26 countless homeowners and property owners, devaluing property,
27 and having a significant impact on property tax assessments; and

28 WHEREAS, The rules and regulations will increase the cost of housing
29 in New Jersey, by greatly restricting development in large areas of
30 the State and increasing regulatory costs; and

31 WHEREAS, The rules and regulations apply the Flood Hazard Area
32 rules to "substantial improvements," meaning, improvements that
33 are valued at 50 percent or more of a property's value, which occur
34 in the expanded "Coastal Adjusted Flood Hazard Area," creating
35 disincentives to renovation, redevelopment, and imposing
36 significant economic burdens on lower-valued properties in large
37 areas of the State; and

38 WHEREAS, The rule adoption contains economic, housing, and jobs
39 impact statements that are severely inadequate and include little
40 evidence, and the impacts of rules and regulations of this magnitude
41 should be carefully studied prior to implementation; and

42 WHEREAS, Under the State Constitution, the duties and powers of the
43 Executive Branch are limited to executing those laws that are
44 enacted by the Legislature and the Governor; and

45 WHEREAS, The Legislature recognizes this principle by including,
46 within its laws, an explicit authorization for an Executive
47 Department to adopt rules and regulations to implement the law;
48 and

1 WHEREAS, However, in this case, the Legislature did not merely
 2 neglect to include such an authorization, it enacted no law; and
 3 WHEREAS, Instead, the DEP unilaterally adopted the NJPACT --
 4 REAL rules and regulations, which constitute a major climate
 5 change law, overstepping its constitutional authority by adopting
 6 entirely new laws, and ignoring the fact that inaction can also be an
 7 expression of the Legislature's will; and
 8 WHEREAS, The DEP claims, in its rule adoption, that approximately
 9 50 existing laws provide it with the statutory authority to advance
 10 the NJPACT – REAL rules and regulations; and
 11 WHEREAS, However, there are several issues with this claim as many
 12 of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the
 13 "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq.,
 14 have not been amended for at least 40 years, meaning that the
 15 Legislature could not possibly have intended them to authorize the
 16 DEP to combat the effects of climate change, since the issue of
 17 climate change was not salient at that time; and
 18 WHEREAS, In addition, the DEP fails to cite the one significant statute
 19 that has been enacted specifically in response to climate change, the
 20 "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et
 21 seq.), perhaps in tacit recognition of the fact that that law explicitly
 22 provides the DEP with the authority to establish a greenhouse gas
 23 monitoring and reporting program only, and that the Legislature
 24 specifically removed a provision that would have authorized the
 25 DEP to adopt rules and regulations to implement the other
 26 provisions of the law, including the greenhouse gas emissions
 27 reduction goals, during the passage of the law; and
 28 WHEREAS, It is therefore clear that the DEP has overstepped its
 29 authority in adopting the NJPACT – REAL rules and regulations,
 30 and the Legislature urges the DEP to follow the principles of the
 31 Constitution and await future Legislative enactments regarding how
 32 best to protect New Jerseyans lives and property from the negative
 33 effects of climate change; now, therefore,

34
 35 *BE IT RESOLVED by the Senate of the State of New Jersey (the*
 36 *General Assembly concurring):*
 37

38 1. The Legislature declares that the rules and regulations
 39 adopted by the Department of Environmental Protection in the
 40 January 20, 2026 New Jersey Register, 58 N.J.R. 247(a), and known
 41 as "New Jersey Protecting Against Climate Change – Resilient
 42 Environment and Landscapes," are inconsistent with legislative
 43 intent.
 44

45 2. Copies of this resolution, as filed with the Secretary of State,
 46 shall be transmitted by the Clerk of the General Assembly or the
 47 Secretary of the Senate to the Governor and the Commissioner of
 48 Environmental Protection.

1 3. Pursuant to Article V, Section IV, paragraph 6 of the
2 Constitution of the State of New Jersey, the Department of
3 Environmental Protection shall have 30 days following transmittal
4 of this resolution to amend or withdraw the rules or the Legislature
5 may, by passage of another concurrent resolution, exercise its
6 authority under the Constitution to invalidate the regulations in
7 whole or in part.

8

9

10

STATEMENT

11

12 This concurrent resolution embodies the finding of the
13 Legislature that the rules and regulations adopted by the
14 Department of Environmental Protection in the January 20, 2026
15 New Jersey Register, 58 N.J.R. 247(a), are not consistent with the
16 intent of the Legislature. The Department of Environmental
17 Protection would have 30 days from the date of transmittal of this
18 resolution to amend or withdraw the rules and regulations or the
19 Legislature may, by passage of another concurrent resolution,
20 exercise its authority under the Constitution to invalidate the rules
21 and regulations in whole or in part.

299x

May 7, 2026

The Honorable Bob Smith
Chair
New Jersey Senate Environment and
Energy Committee
State House
125 West State St.
Trenton, NJ 08625

The Honorable James J. Kennedy
Chair
New Jersey Assembly Environment and
Solid Waste Committee
State House
125 West State St.
Trenton, NJ 08625

Submitted via e-mail

Dear Chair Smith and Chair Kennedy:

The Pew Charitable Trusts (Pew) appreciates the opportunity to express its continued support for New Jersey's Resilient Environments and Landscapes (REAL) rules as implementation moves forward. Since the beginning of this process in 2020, Pew has supported the State's efforts to protect New Jersey communities by modernizing current land use and environmental rules to better account for future flood risk. Pew commends the New Jersey Department of Environmental Protection (NJDEP) for carrying this work through to adoption after several years of public engagement, scientific analysis, and iterative and thoughtful rule development.

As Pew has noted in prior comments on the New Jersey Protecting Against Climate Threats (NJ PACT) regulatory reform effort, the State faces current and future climate vulnerabilities that require a thoughtful and comprehensive response. The REAL rules, as part of NJ PACT, reflect such an approach. By integrating sea-level rise, chronic and nuisance flooding, and future inundation into regulatory and permitting programs while also supporting green infrastructure, the rules will help ensure that new and redeveloped buildings and infrastructure are safer, more durable, and better suited to the conditions New Jersey residents are increasingly facing. With over 600,000 residents already living in high flood risk areas and a clear and growing threat from sea-level rise and flooding, it is both prudent and necessary to update rules that guide how and where new homes, infrastructure, and public facilities are built.¹

Outlined below are key aspects of the REAL rules that Pew supports as implementation continues.

¹ Rebuild By Design, <https://rebuildbydesign.org/nj-flood-risk/>

I. A Strong Basis in Applied Scientific Data

Pew commends the State for grounding the REAL rules in available scientific data drawing on a long record of sea-level data and localized modeling. New Jersey's sea-level rise guidance relies on tide-gauge records at Atlantic City, Cape May, and Sandy Hook that extend back to the beginning of the 20th century.² The New Jersey Climate Change Alliance's Science and Technical Advisory Panel was initially convened in 2012, releasing its first report in 2016, and later reengaged to develop a 2019 report incorporating more recent peer-reviewed science and New Jersey-specific projections for various time periods extending to 2150. That work is reinforced by the 2020 Scientific Report on Climate Change, the 2021 Sea-Level Rise Guidance, a series of New Jersey-specific rainfall studies, and most recently the 2025 New Jersey Scientific Report on Climate Change. The result is a framework built on decades of measured change, years of expert review, and planning horizons through 2100 and beyond that better match the useful life of buildings and infrastructure.

II. Preparing for the Realities of Future Precipitation and Inundation

Pew applauds the State's decision to prepare for future inundation, rather than relying solely on past flood patterns to guide future development. New Jersey residents know too well the devastation that flooding can cause, and that risk is increasing along the coast and inland. NJDEP has noted that 67% of New Jersey's coastline is already at high or very high risk of coastal erosion, and 98% of the coastline is projected to be at medium to very high risk to sea-level rise.³

The severe consequences of Superstorm Sandy were an important illustration of the need for caution and preparedness, and subsequent storms and recurrent flooding have further demonstrated that sea-level rise and increased precipitation events are not theoretical or distant. Tropical Storm Ida, that caused 30 deaths and pushed 12 rivers over 100-year flood levels, similarly underscored the need for the State's inland protections. NJDEP's analysis of Tropical Storm Ida case studies show flood elevations averaging 3.1 feet above FEMA's 100-year flood elevations. The new rules strengthened the flood protection standard to whichever is higher: NJDEP's mapped flood elevation plus 2 feet or FEMA's 100-year flood elevation plus 3 feet. This better aligns flood protection standards with the type of rainfall and riverine flooding the State has already experienced and that scientists in the field anticipate occurring more

² Sea-Level Rise Guidance in New Jersey, <https://www.nj.gov/dep/bcrp/resilientnj/docs/dep-guidance-on-sea-level-rise-2021.pdf>

³ New Jersey Coastal Management Program Section 309 Assessment & Strategy 2016-2020, <https://www.nj.gov/dep/cmp/docs/new-309-strategy-assessment-%202016-2020.pdf>

frequently in the future.⁴ Preparing for future inundation at the time projects are designed and permitted is a practical approach that avoids building risk-exposed homes, infrastructure, and public facilities.

III. Embedding Resilience Within Construction Standards Reduces Long-Term Costs

Pew supports the State's recognition that accounting for future risk can save money over time. While resilient design and siting decisions affect project planning in the near term, the long-term costs of failing to account for flood risk are often much greater. The State's *Economic Risks of Climate Change* report projects that, by 2050, approximately 67,000 homes and 75,000 people in New Jersey could be at risk from annual flooding due to intermediate sea-level rise, and that New Jersey will rank third nationally in population and number of homes at risk from a severe coastal flood. That analysis also notes that flood risk can weigh on property values and housing markets over time, even in areas that do not experience direct damage in a given year.⁵

Pew supports the use of 2100 as an appropriate planning horizon in REAL Rules and in the sea-level rise guidance. The guidance highlights that as of 2019, 25% of New Jersey's housing units were over 70 years old, and 7 of the 10 most heavily traveled New Jersey bridges were built prior to 1940.⁶ Based on these past trends in project and building life, decisions about where and how New Jersey builds today will shape risk for generations.

When homes, businesses, roads, and utilities are built to standards that do not reflect foreseeable future flooding, the greater costs of lost operation, repairs, and replacement are borne by residents, local governments, businesses, insurers, and taxpayers. Incorporating resilience principles into construction standards can help avoid repeated losses, reduce disruption, help with the availability and affordability of insurance coverage, and support greater long-term stability for communities.

IV. Clear Standards and Practical Implementation Support Resilience

Effective resilience policy depends not only on strong standards, but also on continued implementation. Here, New Jersey has laid substantial groundwork over time. In 2019, Executive Order No. 89 established the State's Chief Resilience Officer and Climate and Flood Resilience Program and directed development of the Statewide Climate Change Resilience

⁴ New Jersey Inland Flood Protection Rule, <https://dep.nj.gov/inland-flood-protection-rule/lessons/>

⁵ Economic Risks of Climate Change in New Jersey, <https://dep.nj.gov/wp-content/uploads/climatechange/economic-risks-of-climate-change.pdf>

⁶ Sea-Level Rise Guidance in New Jersey, <https://www.nj.gov/dep/bcrp/resilientnj/docs/dep-guidance-on-sea-level-rise-2021.pdf>

Strategy, which includes 127 recommended actions across six priority areas. REAL is one clear way the State has translated resilience planning into on-the-ground decision-making for how and where development proceeds. It is also consistent with the State's broader effort to incorporate flood risk into real-world decision-making, including New Jersey's 2023 flood disclosure law requiring landlords and sellers to disclose whether properties are located in FEMA Special or Moderate Risk Flood Hazard Areas.⁷

New Jersey has been a leader in resilience planning, coordinating across State agencies, collaborating with the scientific community, business leaders, and the general public. The years of carefully examining the data on disasters, losses, threats, and mitigation options, however, mean little until the plans and objectives are translated into appropriate permitting, siting, and design requirements to safeguard New Jersey's people and assets. Repealing or weakening resilience requirements at this implementation stage could diminish efforts to carry out the broader framework that the State has already developed.

V. New Jersey is a National Leader in Resilience

Finally, New Jersey's adoption of the REAL rules puts the State on the cutting edge of investing in long-term resilience. Nationally, a growing number of state resilience commitments and plans call for more risk-informed development and land use decisions. Pew has shared the REAL rules with members of the State Resilience Planning Group, a Pew-maintained peer network of state resilience leaders from across the country, citing New Jersey's approach as one of the most comprehensive and promising resilience actions to address risk in a coastal state. New Jersey has been at the forefront of emerging state government responses to growing risk, and Pew urges the State to continue that leadership. A forward-looking resilience framework and application of these carefully crafted REAL standards will enhance New Jersey's long-term prosperity by helping to protect residents, reduce avoidable losses, and provide clearer expectations for future growth and investment.

Conclusion

For these reasons, Pew supports New Jersey's implementation of the REAL rules and commends the State for taking a science-based, forward-looking approach to resilience. The rules reflect a thoughtful effort to integrate climate considerations into environmental land use policy in a way that better protects residents, infrastructure, and communities over the long term. We urge the legislature to reject any attempt to derail these critical standards.

⁷ P.L. 2023, Chapter 93, <https://pub.nileg.state.nj.us/Bills/2022/PL23/93 .PDF>

Pew appreciates the years of work that have gone into this rulemaking and encourages continued implementation that is clear, practical, and grounded in the State's demonstrated need to prepare for rising sea levels, stronger storm impacts, and future flood risk.

Sincerely,



Kristiane Huber

Officer, U.S. Conservation

The Pew Charitable Trusts

CC:

Senate President Nicholas Scutari

Senator Linda R. Greenstein, Vice-Chair, Senate Environment and Energy Committee

Senator John F. McKeon

Senator Parker Space

Senator Latham Tiver

Assemblywoman Alixon Collazos-Gill, Vice-Chair, Environment and Solid Waste Committee

Assemblyman Ravi S. Bhalla

Assemblyman Michael Inganamort

Assemblyman William B. Sampson IV

Assemblyman Gerry Scharfenberger