



Assistant Commissioner Vincent Mazzei  
Watershed and Land Use Management  
New Jersey Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08608

March 18, 2021

RE: New Jersey Protecting Against Climate Threats (NJ PACT), Resilient Environment and Landscapes (REAL), and Amendments to Land Use Protection Act Rule Analysis and Comments

Dear Assistant Commissioner Mazzei;

The Cape May County Chamber of Commerce appreciates the Department's outreach to stakeholders during the NJPACT rulemaking process. Your participation in the January 25, 2021 Chamber webinar and our follow up virtual meeting with Acting Commissioner LaTourette have provided valuable insights into the motives and basis of the NJPACT, REAL rulemaking. Following up on what we've learned, it is critical that the Department recognize the challenges the rule making will create when applied to the regulated public. Therefore it is important that the Department take seriously its obligation to receive public comments on the proposed rule changes and carefully consider the opinions and views of the individuals, business interests, and municipal and County governments who will be tasked to abide by these regulations.

Evidence of climate change is clear.

- The planet's average surface temperature has risen about 2.12 degrees Fahrenheit (1.18 degrees Celsius) since the late 19th century, driven largely by increased carbon dioxide emissions into the atmosphere and other human activities.
- The ocean has absorbed much of the increased heat, with the top 100 meters of ocean showing warming of more than 0.6 degrees Fahrenheit since 1969.
- The Greenland and Antarctic ice sheets have decreased in mass. Data from NASA's Gravity Recovery and Climate Experiment show the ice sheets losing hundreds of billions of tons of ice per year between 1993 and 2019.
- Global sea level rose about 8 inches in the last century with the rate nearly doubling in the last two decades.

Data Source: [Climate.NASA.gov](http://Climate.NASA.gov)

The Cape May County Chamber Board of Directors recognize that climate change is real, and that its effects will have profound impacts on Cape May County's 267 square miles of natural and built environment. Protecting our County's special landforms and coastal waters is of utmost importance to the health safety and welfare of Cape May County's approximate 96,000 full-time and 800,000 summer residents, and our supporting 3,800 +/- local businesses. Therefore, a balanced approach to mitigate climate threats must be examined to include the economic, and societal effects that are expected from the proposed NJPACT rulemaking.

To that we offer the following comments:

1. The State and its agents should be careful not to leverage the selected scientific data to support their rulemaking decisions without considering the economic and social impacts these

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regulations will have on the regulated public. The STAP report contains numerous explanations on the methodologies considered to project SLR. In guiding policy decisions, the IPCC states in its report titled IPCC 2014: Summary for Policymakers, "The degree of certainty in findings is based on a qualitative level of confidence. Confidence in the validity of a finding is based on the type, amount, quality, and consistency of evidence (e.g., data, mechanistic understanding, theory, models, expert judgement) and degree of agreement." It should then be understood that the STAP report methodologies and findings may be acceptable for on-going research purposes, but they are not necessarily suitable to apply to hard and fast rulemaking.

The Science and Technical Advisory Panel (STAP) report concluded that while near-term SLR projections through 2050 exhibit only minor sensitivity to different emissions scenarios (<0.1 feet), SLR projections after 2050 increasingly depend upon the pathway of future global greenhouse gas emission." Hence sea level rise projections beyond 2050 are not fact based. Beyond 2050 projections are difficult due to political, economic, and social unknowns. Uncertainties in future greenhouse gas emissions, the effects on temperature and the degree of ice sheet and glacier melting can only be projected by modeling. The (STAP) report even recommends that SLR projections be revisited periodically, preferably shortly after the releases of any relevant reports from the Intergovernmental Panel on Climate Change (IPCC) or the U.S. National Climate Assessment, to assure that the estimates remain consistent with scientific advances.

From a planning perspective there is little support for the Department to regulate development using SLR projections eighty (80) years out to the year 2100. The median home age in NJ is 53 years. Roads, bulkheads, and utilities have a planned typical 30 to 40-year life span. In accordance with current State statutes Municipal and County Master Plans are reexamined in even shorter timeframes. Therefore, the Department's NJPACT rulemaking amendments should not rely on year-2100 SLR projections.

2. If the Department holds fast to referring to the year 2100 SLR projections, proposed flood elevations will be applied to tidal and fluvial areas as follows.
  - Tidal areas - NJDEP is considering creation of a "Climate Adjusted Flood Elevation," (CAFÉ) that will expand the tidal flood area by adding an additional 5 feet to the FEMA 100-year flood elevation.
  - Fluvial Areas – NJDEP is considering two options: (1) utilizing the FEMA 500-year flood elevation to require design flood plus 2 feet, or the FEMA 100-year flood elevation plus 3 feet; or (2) calculating the flood hazard area limits using hydrologic and hydraulic calculations based on 125 percent of the 100-year storm.

The 5' "Climate Adjusted Flood Elevation," (CAFÉ) elevation change will cover most of Cape May County's barrier island communities under a flood zone. What is the expected fiscal impact to these communities? Businesses not currently within mapped flood zones and that have not experienced flooding will be encumbered with higher insurance premiums and coastal real-estate values may be pre-maturely devalued based on far reaching SLR projections and State regulation. This is a social justice issue as poor and middle-class full-time residents will be disproportionately priced out of their homes. NJDEP must address the overall social and economic impacts this rulemaking will have now, and not simply rely on a one-sided analysis of potential economic impacts based on climate change related threats projected for 80 years in the future.

3. NJDEP is proposing that new residential and critical infrastructure will require the first floor to be constructed 1 foot above the new "Climate Adjusted Flood Elevation" (CAFÉ). What is the purpose of adding +1 feet to building elevations on top of the CAFÉ? This means a 6' elevation

change. Referring to Table 3 in the STAP report SLR above the 5 feet projection has only a 17% chance of being exceeded.

Under this scenario raising houses and commercial buildings will not be feasible in developed areas. Lot frontages with limited front yard setbacks and small lot sizes will prevent access to most buildings as stairs will not fit on the properties. In addition, accessible routes and ADA ramps will be impracticable. If the Department admittedly knows these elevation policies are not going to be practicable in most cases, why have the criteria at all. Requiring the public to request waivers from impractical rulemaking just adds uncertainty to investment and expense for public and private development.

4. What is the purpose of requiring signage for roads below the Climate Adjusted Flood Elevation (CAFÉ)? It is evident that many road surfaces in coastal areas will be below the CAFÉ, Cape May County alone has 210 miles of County roads. This requirement will do nothing but create sign pollution.
5. The Inundation Risk Zones (IRZ) rules will likely discourage redevelopment in the coastal zone. What is the fiscal impact to the real-estate market in Cape May County? Poor and middle-class residents in coastal communities may be disproportionately impacted by these rules.

Will Cape May County and other coastal counties and municipalities be put at a disadvantage for public funding for road reconstruction in the "Inundation Risk Zone"?

6. NJDEP is proposing to replace "permits-by-rule" by a "permits-by-registration" system, that would allow NJDEP to better track cumulative impacts and address standards in impaired watersheds. It is currently unclear which permits-by-rule would be converted to permits-by-registration, or whether current permits-by-rule will be converted into general permits.

Permits-by-rule were created because they have a de minimis impact on a resource. Requiring applicants to apply for permits even by simple registration still adds a seemingly unnecessary cost and time delays for these activities.

7. The New Jersey Coastal Resiliency Plan is being prepared and has yet to be released or subjected to public input or adoption. NJDEP is jumping the gun by proposing drastic climate-based rule changes before release of this planning document. As stated on the NJ Coastal Resilience Plan webpage, "no study has comprehensively evaluated the potential impacts of sea-level rise and future coastal storms on the coastal zone". Again taken from the webpage, the Resiliency Plan's purpose is to "evaluate policies, programs, and regulations and identifying new strategies that will reduce physical, economic, and social risks to flood events and encourage innovative solutions to the complex challenges of sea level rise". The NJDEP should delay adoption of new NJPACT rules until policy officials and stakeholders have had the opportunity to review and evaluate the New Jersey Coastal Resiliency Plan. The Department should focus more on increasing coordination within agencies to improve awareness and support County's and municipalities in developing practicable flood risk adaptation strategies.

The Chamber recognizes that planning for the eminent threats of climate change is essential to the County sustaining its natural and built environment to support a resilient economy. The Chamber requests that the Department continue its outreach and work closely with those communities, businesses and residents that are subject to these Land Resource Protection amendments. We ask that the NJDEP focus on planning strategies that will address climate change threats and not so much on rulemaking that will add further burdens to the regulated public without adding climate change protections at a time when businesses and local governments are struggling through the pandemic. With all else considered the State should provide technical and financial resources, where feasible, to support planning efforts instead of imposing rules and the unfunded mandates contained within the NJPACT rulemaking.

Our Mission

The mission of the Cape May County Chamber of Commerce is to be the advocate for the Cape May County business community through the strength of legislative engagement, member services, and education programs.

Very truly yours,

A handwritten signature in cursive script that reads "Vicki T. Clark".

Vicki T. Clark, IOM  
President

cc:

Senate President Steve Sweeney  
Assembly Speaker Craig J. Coughlin  
Senator Mike Testa  
Assemblyman Antwan McClellan  
Assemblyman Erik Simonsen  
Cape May Co. Board of Commissioners  
Cape May County Municipalities  
New Jersey Chamber of Commerce  
New Jersey Business & Industry Association