

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NEW JERSEY CHAPTER

To: Vince Mazzei, Assistant Commissioner Watershed & Land Use Management
New Jersey Department of Environmental Protection

From: Michael G. McGuinness
CEO

Date: February 9, 2021

Re: PACT Initiative Comments

On behalf of the 840 members of NAIOP New Jersey, the Commercial Real Estate Development Association, thank you for the opportunity to comment on the potential rule changes that have been discussed during the Protecting Against Climate Threats (PACT) stakeholder process.

NAIOP and its members acknowledge the very real challenges and threats New Jersey, its residents and our built environment face due to climate change and sea level rise. We appreciate that the Department is faced with a daunting task in developing rules and strategies to mitigate the effects of climate change. Our comments below do not attempt to duplicate the highly technical comments other stakeholders have submitted, but rather we want to address our concerns about the process.

Unfortunately, we don't believe that the State has gone about the process of tackling this problem in the best or most effective manner. Aside from convening a two-day summit meeting at Monmouth University in 2018 and holding periodic (and widely spaced) stakeholder meetings, the State's plans for responding to these threats (whether that response is labelled the "Climate Change Resilience Strategy" or "Protecting Against Climate Threats") are being developed almost exclusively within DEP, and almost exclusively within the context of land use regulations. This approach stands in stark contrast to the State of New York, which has a 22-member statutory "Climate Action Council" that is tasked with developing New York's overall response to climate change. The DEP has historically been less than successful in assessing the economic and social impact of its rulemaking. The "democratization" of this very difficult process of deciding who will be the winners and losers in addressing sea level rise and climate change would perhaps make that process less painful.

There was an early recognition in Governor Murphy's Executive Orders that taking steps toward dealing with the consequences of climate change required "building blocks" of a sort. That is why the Rutgers Climate Report (published last summer) and the Climate Change Resilience Strategy (due to be completed in September 2020, but yet to be published) were logical and necessary predicates to the development of meaningful land use regulations. NAIOP NJ does not understand how the current rulemaking process can proceed without completion of and public discussion of the Resilience Strategy.

While we understand the need to use conservative assumptions when dealing with unknowns, given what is at stake in terms of deciding what current and future land use

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patterns will look like, the decision to use 2100 as a planning horizon, and a sea level rise value that has a confidence level of only 17%, seems unreasonable.

Government decision making that affects land use patterns and everyday lives in flood-prone areas has historically existed in silos. Perhaps the most glaring example is the notable gap between the National Flood Insurance Program (NFIP) and DEP's land use programs. With the NFIP's "Risk Rating 2.0" coming online (later this year), we would expect to see direct links between the two programs in the rulemaking, but we do not.

The inclusion of matters in the proposed PACT rules that are unrelated to the threats that DEP is trying to address undercuts the seriousness and the focus of the effort. Rule changes pertaining to the width of riparian zones and wetland transition areas, changes to water quality performance standards for stormwater systems, and even process changes don't belong in this rulemaking. It is and will continue to be difficult enough for the regulated community (which goes far beyond NAIOP's members and realistically includes anyone who lives in, or owns property in a current or future flood hazard area) to respond to the core issues, much less the bucket list issues that have been thrown into this proposal.

We trust that the DEP will not interpret these comments as a rejection of the need to address and respond to the very real challenges that we all face. We support the State's effort to address these challenges. However, climate change threats are existential; meaningful and effective solutions will require a degree of public support and buy-in not easily achieved through the mere promulgation of regulations.