

COMMENTS ON NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP)

“PROTECTING AGAINST CLIMATE THREATS” (NJPACT) PROPOSAL

SUBMITTED BY:

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BACKGROUND

As a coastal state, New Jersey has been subject to climate change and Sea Level Rise (SLR) for thousands of years. We believe that even while our State pursues an aggressive Energy Master Plan designed to reduce greenhouse gas emissions by 2050 and its effect on climate change, SLR and rainfall precipitation will continue to impact New Jersey. However, we also believe that these impacts and any policy choices and proposals to address them by the NJDEP must match and not exceed the data that exists to support them.

These comments are focused on the REAL component of the NJPACT proposal. We would note however, that some of the comments submitted herein, such as concerns about fiscal and economic impact and the lack of a fiscal impact statement, apply to the overall NJPACT proposal.

OUR OVERALL CONCERNS WITH THESE NJPACT PROPOSALS

- i. DATA ON SEA LEVEL RISE(SLR) AND RAINFALL FROM CREDIBLE SOURCES MUST NOT BE USED FOR EXTREME POLICY CHOICES THAT ARE NOT WARRANTED FROM THE DATA**
- ii. ALL DATA, PARTICULARLY DATA AND PROJECTIONS SEEKING TO GAUGE IMPACTS 50 TO 70 YEARS IN THE FUTURE, WILL BE SUBJECT TO UNCERTAINTIES AND SHOULD NOT BE THE SUBJECT TODAY OF HARD AND FAST REGULATORY PROPOSALS**
- iii. A FINANCIAL IMPACT ASSESSMENT MUST BE DONE ON THESE PROPOSALS TO PROVIDE AN UNDERSTANDING OF HOW CHANGES IN OUR LAND USE REGULATORY FRAMEWORK WILL IMPACT OUR STATE’S FINANCES, PUBLIC AND PRIVATE PROJECT COSTS, AND NJ’S OVERALL ECONOMY.**
- iv. NJDEP MUST REMOVE PROPOSED REGULATORY CHANGES UNRELATED TO EO 100 / AO 2020 – 01 FROM NJPACT RULEMAKING.**

Our detailed comments on the NJPACT proposals are as follows:

I. DEP MUST AVOID MIS-USE OF DATA IN ITS CHOICES FOR REGULATORY PROPOSALS.

Proposed Flood Hazard Rules – Inundation and Flood Damage

The Rutgers University Science and Technical Advisory Panel (STAP) in its 2019 report states: “New Jersey coastal areas are likely (at least a 66% chance) to experience SLR of 0.5 to 1.1 ft. between 2000 and 2030, and 0.9 to 2.1 ft. between 2000 and 2050. It is extremely unlikely (less than a 5% chance) that SLR will exceed 1.3 ft. and 2.6 ft. by 2050.”

The report further indicated that while near term SLR projections through 2050 exhibit only minor sensitivity to different emissions scenarios, SLR projections after 2050 would depend more on the pathway of future gas emissions. In a moderate pathway scenario, the report stated: “It is extremely unlikely (less than a 5% chance) that SLR will exceed 3.8 ft. by 2070 and 6.9 ft. by 2100.”

Projections this far into the future can be illuminating and provide useful guidance in policy-making, however these estimations are subject to potentially wide error margins. The policies we implement now should be based on the best available information today in conjunction with what the data projects are the highest likelihood of outcomes in the coming years, not the very least-likely outcomes.

We believe that the DEP proposal to impact development now and through 2050 with a CAFÉ plus 5 ft. SLR is extreme and should not be supported.

Fluvial Flood Hazard Areas

Two things are very clear from the Precipitation Chapter of the 2020 NJ Scientific Report on Climate Change:

First, the Chapter references over a dozen studies on various aspects of precipitation impact on the Northeast or NJ and there does not appear to be any single research report that definitively predicts future precipitation levels. The report states “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.”

Second, the reports that do speak to future precipitation projections do not come close to the “one study” not cited but referenced in the NJPACT proposal that “precipitation intensities” (not sure what this is but it does not appear to be total annual precipitation as projected in the other studies) are likely to increase by as much as 35% by 2100. In fact, the report states: “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 show 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).”

We believe that data projecting future precipitation levels is not conclusive enough for the DEP to assume an extreme 35% increase in annual precipitation rates through the end of the century.

II. DEP MUST AVOID OVERREACH IN PACT-DRIVEN CHANGES TO PLANNING, LAND USE AND DEVELOPMENT STANDARDS, THAT VIOLATE HOME RULE AND DEVALUE PROPERTY

First and foremost, rulemaking that will drastically alter planning throughout the State to address anticipated climate change should be guided by the NJ Resiliency Planning Study, which was due to be released in September of 2020. Before these rules can be drafted or discussed, the DEP must provide a timeline for the introduction of the Resiliency Plan so that the stakeholders can be prepared to analyze the potential impacts and provide thoughtful commentary.

Coastal Zone Management

Proposals to eliminate existing Coastal Nodes and Centers, which designation allows for additional density and infrastructure along the coast, are a significant departure from New Jersey’s Home Rule principle, putting too much control in the hands of the State Planning Commission, rather than in county and municipal governments. These local elected officials understand and are accountable to the unique needs of the industries, small businesses, full-time and seasonal residents of their communities. Some of the State’s best redevelopment opportunities lie in our coastal communities, however this much needed progress will be stalled if not eliminated if the increased regulatory burden and existing high cost to do business makes projects already operating on razor thin margins, to become economically unviable. Not only will this harm the community, decreasing potential for revenue and local jobs, it deprives the regional economy from the benefit of construction dollars and related infrastructure investment. Now more than ever in the face of the global pandemic, NJ must avoid its historical trend of mis-using GIS data to create regulatory frameworks that deprive communities the freedom to redevelop, preventing private investment, increasing the cost of public projects and hurting middle-class workers throughout the construction supply chain.

Property Values

New Jersey's geographic location is perhaps its most attractive feature, and is absolutely the major driver in the state's high property values, especially along our coasts. For many New Jerseyans, their home is the lion's share of personal financial assets. For others, property is a form of generational wealth while others see a shore second-property as an investment tool. Young professionals and empty-nesters alike are flocking to developing communities along our coast like Asbury Park, Long Branch, Atlantic City and Hoboken to experience walkable living. If the regulatory environment in these communities, which are all in various stages of redevelopment, becomes too high it will stop private investment from individuals, small businesses and larger commercial developers, which will significantly devalue properties. Not only is this a crushing blow for NJ coastal property owners, it will diminish wealth and therefore decrease state and local revenues, and prevent the redevelopment of potentially vibrant communities.

Inundation Risk Zone

The newly created Inundation Risk Zone, based on moderate emissions with a 17% chance of sea level rise by 2100, will severely limit development in New Jersey in areas of this state where flooding is not currently an issue, but is projected as a flood zone by year 2100.

Fifty percent of New Jersey residents are living in a coastal flood zone, which based on NJPACT initiatives, will be subject to immense regulatory changes and limitations in residential and commercial redevelopment.

By creating an Inundation Risk Zone, which would require an elevation of Climate Adjusted Flood Elevation +1 or a hardship exemption in an area anticipated to be impacted by sea level rise in the year 2100, New Jersey will be limiting development and redevelopment as these additional regulatory requirements and the cost associated with them will make construction less viable. In return, New Jersey will see residents and businesses leaving our state as the regulatory uncertainty and cost of residing and doing business will be too significant for either to survive.

IRZ: Roads

The NJPACT framework document indicates that, again due to its assumptions/choices regarding inundation risk, that a "hardship exception" would be required for any full depth reconstruction and new roads in NJ. An applicant must demonstrate "compelling need" (undefined) for the project and any "expenditure of public funds highly discouraged".

This proposal seems onerous and impractical given both the magnitude and importance of road work in NJ, the extensive local and State DOT scrutiny and permits required and the fact that almost all of this work is funded through Federal, State, County and Municipal public funds.

We believe this proposal should be eliminated.

IRZ: Infrastructure

Although the inundation risk zone addresses transportation, it lacks the mention of utility or telecommunication infrastructure. While the DEP is developing framework for its climate change initiatives, it is imperative to consider what impact these changes will have on water and sewer, energy, and telecom infrastructure. Twenty-one communities in New Jersey still operating with Combined Sewer Overflow systems recently submitted Long Term Control Plans to address untreated wastewater reaching waterways during storm water surges. It is critical for the DEP to consider if the plans outlined meet proposed requirements. As for our energy infrastructure, the introduction of the Energy Master Plan in January 2020, solar and wind energy, including ports and transmission lines, will be subject to the same regulatory changes, and will increase the costs associated with New Jersey's shift to renewable energy.

Impact to Existing Public Capital Programs

It is imperative to acknowledge the financial impact this will have on transportation infrastructure in New Jersey. The recent capital programs introduced by the New Jersey Turnpike Authority and New Jersey Transit will be directly impacted by the proposed regulatory changes as these projects are currently in the design or bid process. Projects outlined in the capital plans will likely commence or complete prior to the introduction of new regulations, leading to billions of dollars in infrastructure improvements that may be considered inadequate before being put into service.

The drastic changes that will occur have the potential to interrupt projects that may be deemed critical and which may have strong public benefit. It is imperative that the DEP establish a grandfather clause on development and redevelopment projects to ensure that projects can continue if previously permitted or submitted prior to the enactment of these changes.

Financial Impact on Public and Private Development

To fully understand the cumulative impact of these changes, we urge DEP to consider generating a layered GIS map delineating areas where development is prohibited or strictly limited; the Pinelands, Highlands, Environmental Justice communities, military bases with the IRZ, TFHZ (Tidal Flood Hazard Zone) and FFHZ (Fluvial Flood Hazard Zone). This holistic view that includes all restricted/limited development areas in New Jersey, will help us identify the true limitations these proposed land regulatory changes would create.

The contemplated overhaul of planning and land use coupled with the proposed hardening of regulations will have lasting negative impacts on the value of properties - not only in coastal communities - but throughout the State.

Property devaluation will lead to reductions in property taxes and funding for social programs, schools, and our local, county and state governments. The reduction in

property values will prevent many residents from relocating out of risk zones as many residents rely on their primary residence as a primary asset.

In addition to property devaluation, these new regulatory hurdles may prevent individual property owners from making improvements, and preclude private development and redevelopment opportunities because of the additional costs associated with these new regulations will be far too significant to be economically viable – meaning these projects simply will not come to fruition.

It is also important to consider how these proposed changes will impact the cost of publically funded development. Government at all levels will be faced with increased costs across a wide variety of public works projects, meaning in some cases much-needed infrastructure will not be built or capital programs will have to scaled back to accommodate the additional costs.

Governmental entities such as NJ Transit, which is currently seeking to monetize their real estate holdings to generate non-fare-box revenue to help alleviate some of the agency’s financial troubles, will be significantly impacted by these regulatory changes. Other agencies like DOT and DEP may have to re-design projects that were already planned and designed, and re-estimate the project cost.

Lastly, it is imperative that NJ DEP takes a holistic approach to examining the financial impacts of these proposals. While this paper focuses on the potential impacts of the PACT proposals under REAL (Resilient Environments and Landscapes), any financial analysis should consider these implications in conjunction with the proposals in CPR (Climate Pollution Reduction) as well as the implementation of various aspects of the Administration’s Energy Master Plan.

A financial impact assessment must be completed to provide the DEP with an understanding of how changes in our land use regulatory framework will impact our state and local government finances, public and private project costs, and overall economy.

III. DEP MUST REMOVE PROPOSED REGULATORY CHANGES UNRELATED TO EO 100 / AO 2020 – 01 FROM PACT RULEMAKING

The Department is considering adding in its “bucket list” of additional requirements to various land-use related rules. The specific PACT objectives outlined in the Executive Orders task NJ DEP with an enormous undertaking which will have major impacts across a wide-range of industries and on our State’s economy. We would recommend that NJDEP focus on the items specifically and directly related to PACT EO direction rather than taking on so many issues at once. Notable examples include:

FHACA Rules– notable examples include:

- Expanding definition of regulated water (include isolated water draining > 50 acres)
- Increasing T&E protections (threatened and endangered species)
- Requiring IP (individual permits) for bridges, culverts based on reducing species fragmentation
- Requiring individual permits for all horizontal directional drilling (HDD)

Wetlands Rules –notable examples include:

- Expanding various requirements unrelated to projected impact/risks from tidal and non-tidal water level rise or other impacts reasonably expected from accelerated climate change
- Requiring a general permit for HDD and limiting the size and scope of drilling

Stormwater Management Rules– notable examples include:

- Expanding various requirements (TSS removal for redeveloped / reconstructed motor vehicle surfaces is one example) unrelated to projected impact/risks from tidal and non-tidal water level rise or other impacts reasonably expected from accelerated climate change

Increasing requirements for permits for major development for authorized activities.

We believe additional requirements unrelated to the change given to DEP by EO 100 / AO 2020 should be removed from the PACT rulemaking and proposed in standalone proposals, if and when appropriate.

IV. PACT-DRIVEN DEP REORGANIZATION OF PROGRAMS CREATES UNNECESSARY INEFFICIENCIES

PACT proposals do not consider watershed-based approach to land resource protection.

Nowhere in the PACT stakeholder sessions communicates any clear intention to develop rules and policies that are based on “watersheds” in lieu of other geo-political subdivisions. The DEP is backsliding into a failed organizational structure that has been tried in the past and failed. The result was state government overstepping the role authorized by the Legislature far into the role of local governments under the Municipal Land Use Law (MLUL). Nowhere in the PACT proposal does it indicate how the resulting rules would be “taking a broad, holistic look and environmental protection rather than a site-by-site, incremental approach.” Even worse, as previously stated there is no statewide “Resiliency Plan” for any stakeholder to respond to.

We believe these structural changes should be reconsidered until the DEP identifies how a “watershed-based approach” will work in practice and avoid the failed attempts of the

past for DEP to supersede the responsibilities of local governments to plan for and zone land for appropriate use of land within its local jurisdiction.

Moving water resource programs into a land use focused unit limits opportunity for collaboration to further water protection and restoration opportunities working with wastewater and drinking water systems.

The DEP is taking its eye off its responsibilities under the Clean Water Act and the Safe Drinking Water Act by proposing to move critical functions housed under the Assistant Commissioner for Water Resource Management to the Land Use unit. What resulted the last time this was attempted was a massive disconnect between the regulation of wastewater and drinking water systems and the land-use driven goals primarily in place to control growth.

We believe these structural changes should be reconsidered based on the negative impact of disconnecting important existing functions of Water Resource Management in terms of overcoming documented challenges related to water-resources infrastructure.