



Testimony Before the Senate Environment and Energy Committee and the Assembly Environment, Natural Resources and Solid Waste Committee

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On behalf of the New Jersey Business & Industry Association, thank you for the opportunity to provide written testimony on the proposed New Jersey Department of Environmental Protection rules entitled PACT REAL. This proposal seeks to establish new standards for certain coastal development in anticipation of changes to sea level rise over the next 76 years. While this rule also contains significant changes to land use rules in general, and its applicability covers the entire state, we will focus our comments on how these rules will impact the New Jersey coast, from the Hudson River to the Raritan, along the Atlantic Ocean, our bays, and up the Delaware River to Trenton.

At the outset, NJBIA understands the very real risk of sea level rise and the historic problem of coastal storms. We can and must address these issues in a comprehensive manner. NJBIA believes we must plan for these eventualities and build structures and ecosystems that are resilient. We do not support, as these rules promote, the massive managed retreat from the Jersey Shore and our coastal communities.

We strongly object to this rule proposal because it will significantly harm the economy of our shore and river communities and is premised on the policy that people and businesses should be forced to retreat from coast. Whether we choose a “managed retreat” or not should be a matter of open public debate, and ultimately decided by the Legislature, not hidden, or not so hidden, in a long, complicated rule proposal that makes it nearly impossible for these communities to continue as viable economic entities.

While this rule is long, detailed, and complex, and touches on land use standards throughout the entire state, and thus worthy of a much longer analysis, this testimony will focus on the key impacts to the shore and river communities, and their residents, should it be adopted in its current form.

The rule proposal contains the following fundamental flaws:

Drives a Managed Retreat from the Shore and Coastal Communities – The rule seeks to prevent new, expanded, reconstructed, and even improved development in a newly created “inundation risk zone” (IRZ). The goal of the rule is to force existing residents and businesses from these vast areas and to prevent new development from occurring. The rule does this in several ways:

- Using an outdated and flawed study, assumes a 5-foot sea level rise with a 17% probability by the year 2100 and applies those standards today to create the IRZ;

- Eliminates coastal centers on barrier islands resulting in a 3% impervious cover limit for development in all barrier islands;
- Provides that the IRZ is a critical environmental site and subjecting any development in the IRZs to 3% impervious cover;
- Apply the IRZ standards to commercial and residential development that is new, redeveloped, and reconstructed, as well as substantially improved. Thus, even improvements to an existing building without a footprint expansion can trigger the IRZ requirements.

Impact on Property Values and Property Taxes Collected – If a building needs any DEP permit, even for minor activities such as a bulkhead replacement, the permittee will be required to place a deed notice on the property informing future purchasers that the property will be subject to being flooded on a continual basis.

- This deed notice will have the impact of reducing property values and maybe even the ability to be financed;
- The impervious cover requirements will limit development potential on site, and even imperial existing development, thus lowering property values;
- If property values are decreased, tax appeals will follow thus depriving revenues from the relevant municipalities, counties, and school districts.

Creates Vast “No Build Zones” – By placing stringent building standards, deed notices, and limiting the impervious cover requirements to 3% in the IRZ, the rules will effectively create “no build zones.” While the total land covered by the IRZ may be low in comparison to the whole state, they can be significant in coastal areas and counties. For instance, 43% of Cape May will be in an IRZ and thus a “no build zone.”

Impacts Affordable Housing – By removing significant areas of coastal communities from being developed, either because they are in the IRZ or the vastly expanded flood hazard areas, less affordable housing will be built.

Flawed Science – The creation of the IRZ and expanded flood hazard areas (Climate Affected Flood Elevations or CAFE) is based on a 2019 report out of Rutgers (STAP report) that is now outdated and based on flawed assumptions. No other jurisdiction in this or any other country regulates development with a presumption of a 5-foot sea level rise. All the scientific reports released after the STAP report all predict a sea level rise in New Jersey of between 1-3 feet by the turn of the century. We recommend adopting a 2-foot SLR standard as it is both protective, consistent with the latest scientific studies, and can be adjusted in decades to come if actual measurements of SLR show an increased level.

No Planning for Resiliency – Despite claiming that this rule is being proposed to enhance resiliency, there are no provisions that seek to plan or implement resiliency measures. In fact, even if resiliency measures are put in place to protect against flooding (e.g. Hoboken) the rule does not recognize those measures when establishing the IRZ or CAFE maps.

Impacts on Urban Redevelopment – The rules would limit urban development and redevelopment by:

- Removing IRZs from centers and other areas of denser development thus subjecting those areas to 3% impervious cover. This means that even developed areas like Jersey City, Hoboken, Long Branch, and Asbury Park will have large IRZs and thus no build zones contained within them;
- Imposing stringent stormwater requirements in urban areas that previously only applied to greenfields, thus limiting how much redevelopment can occur and making many projects economically infeasible.

NJBIA strongly believes that the state should adopt policies of coastal resilience so that the vast majority of coastal communities can continue to exist and economically thrive.

This rule would do the opposite. We believe that we need to consider sea level rise in our planning efforts. However, this rule will force a retreat from the Jersey Shore and coastal communities. It is also based on flawed scientific assumptions. We ask that the Legislature perform its oversight functions and reject this rule proposal. Instead, the Legislature should promote policies on coastal resilience.