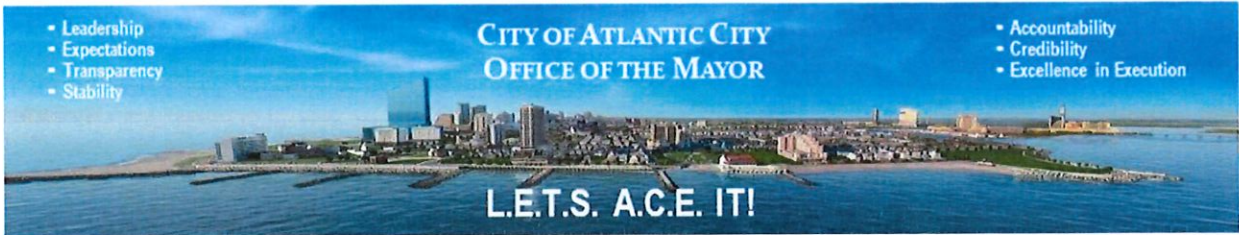


- Leadership
- Expectations
- Transparency
- Stability

CITY OF ATLANTIC CITY  
OFFICE OF THE MAYOR

- Accountability
- Credibility
- Excellence in Execution



**MAYOR MARTY SMALL, SR.**

City Hall  
1301 Bacharach Boulevard • Suite 706  
Atlantic City, New Jersey 08401  
Telephone 609-347-5400

October 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: New Jersey Protecting Against Climate Threats (NJPACT)  
Resilient Environments and Landscape (REAL) Rules**

Dear Ms. Abatemarco:

I am writing as Mayor of the City of Atlantic City to oppose the New Jersey Protecting Against Climate Threats Resilient Environments and Landscape (NJ PACT) rules published by the New Jersey Department of Environmental Protection (DEP). The NJ PACT regulations will have a significant impact on Atlantic City.

I recognize the threat that climate change poses to New Jersey and support DEP's efforts to address this threat. However, I oppose these regulations as published. I find it disturbing that given the State's strong efforts to revitalize Atlantic City, such regulations would be created without the input of the City of Atlantic City. My position is supported by City Council, attached you will find their resolution.

**Legislation vs. Rulemaking**

The NJ PACT 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. I understand that no local officials from Atlantic City or Atlantic County were included in the Stakeholders meetings for the NJ PACT rules.

## **Economic Impacts**

Atlantic City is an \$8 billion economic engine for all of South Jersey. An in-depth, independent economic impact study prepared by a qualified economist is imperative prior to adopting the NJ PACT rules.

Many already economically burdened communities including Atlantic City 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 Atlantic City's ratable tax base, which has already been significantly reduced in recent decades

Further complicating this issue, raising homes costs from \$150,000 to \$250,000, 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.<sup>1</sup> 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.

Forcing Atlantic City 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. If the published rules are put in effect, detailed mapping must be made available prior to their adoption 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. No analysis of this impact is included.

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. However, no funding has been offered by the state 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 (IRZ) rules will add to the cost and of discourage redevelopment and new development in Atlantic City. The fiscal impact on the real-estate market must be analyzed. 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. An economic analysis should be prepared to reflect the true cost and burden on existing homes, businesses, property

---

<sup>1</sup> [https://www.fema.gov/sites/default/files/2020-08/fema\\_increased-cost-of-compliance\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_increased-cost-of-compliance_fact-sheet.pdf)



owners, other structures, and municipalities, within the expanded Flood Hazard Area, with a realistic assessment of flood risk.

### **FEMA Process**

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 and any sharing of mapping information with the municipalities and the impacted public.

When FEMA proposes FHA map changes, they survey new coastal protection structures, dune systems, and other resiliency efforts to incorporate them into their mapping. The NJ PACT rules do not take this efforts into account. The NJ PACT rules 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 City, the Small Administration is in the middle of implementing a \$100 million resiliency program which includes seawalls, bulkheads, pump stations, dredging, tide flex valve replacement, and dry floodproofing. None of this is taken into account by the NJ PACT regulations.

Similarly, Green Energy improvements being implemented in Atlantic City 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 Project<sup>2</sup> 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.

### **Environmental Justice**

The impact of these new regulations on poor, diverse, urban communities are not being adequately considered. The new regulations will effectively stymie the redevelopment of Atlantic City. Many members of Atlantic City's lower income and underserved communities will lack the resources to comply with the regulations when they are triggered and therefore will be disproportionately negatively impacted by the NJ PACT regulations. Low property values will mean that any property improvements undertaken are likely to result in the need to elevate the property, a process financially out of reach for many Atlantic City homeowners.

---

<sup>2</sup> [www.repeatproject.org](http://www.repeatproject.org)



DEP defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. Meaningful involvement means people have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; community concerns will be considered in the decision-making process; and decision makers will seek out and facilitate the involvement of those potentially affected.

For example, the oldest subsidized housing development in New Jersey, Stanley Holmes Village, located in Atlantic City and built in 1937, is planned for redevelopment. The developers have reviewed the NJ PACT rules and stated that the project cannot be built under these new regulations.

The published NJ PACT rules will encompass a larger area and elevations which would increase construction costs and, in some cases, prohibit vitally needed redevelopment projects to supply housing as well as economic development by requiring zero net fill, and higher finished floors. For property owners, any "substantial damage" from flooding or other disaster would trigger these rules. In addition, particularly in areas with relatively low property values, even minor improvements to structures may trigger the "substantial improvement" provisions of the rules, even if the home has not been damaged due to flooding. The economic and social impacts of this policy must be considered before the rules are published since such policies have the potential to drive residents of underserved communities from their homes.

Atlantic City has worked with surrounding communities to submit FEMA home elevation grant application each year. The reality is this program does not work in working class communities like Atlantic City. Homeowners cannot afford to front the money to elevate their home and then wait for FEMA to provide a reimbursement. The City of Atlantic City does not have access to the bond market or I-Bank funds, so the City cannot assist the homeowners. So Atlantic City homeowners are restricted from improving their homes due to the requirements to elevate homes that are substantially improved, and the housing stock continues to deteriorate. How will the NJ PACT regulations impact this dire situation?

### **80-year vs. 20-year Timeframe & Sea Level Rise Projections**

DEP is using a year 2100-time horizon and the 17th percentile chance of occurrence as the basis for the NJ PACT rules. Science has demonstrated that the brightest minds cannot predict with accuracy the impacts of sea level rise over thirty years let alone eighty years which is the basis of the published regulations. Most master planning efforts project twenty years in the future due to future 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.<sup>3</sup> 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

---

<sup>3</sup> <https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>



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.”<sup>4</sup>

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.”<sup>5</sup>

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.<sup>6</sup>

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;

---

<sup>4</sup> <https://njclimateresourcecenter.rutgers.edu/wp-content/uploads/2022/04/State-of-the-Climate-Report-NJ-2021-4-18.pdf>

<sup>5</sup> <https://www.nj.gov/dep/dsr/publications/projected-changes-rainfall-model.pdf>

<sup>6</sup> <http://njba.org/wp-content/uploads/2023/02/AWA-Response-to-NJ-DEP-Rainfall-Regulations83.docx>



- 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."

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. There is ample reason to enact these changes incrementally since it is so difficult to predict the future.

### **Resiliency vs. Regulation**

The federal government has provided many funding options for resiliency improvements and local governments are working to rebuild their infrastructure using the lessons learned from Superstorm Sandy and other natural disasters. The State's priority should be funding resiliency improvements and fast tracking the Army Corps efforts rather than adopting one-size-fits-all regulations.

### **Roadway and Parking Area Elevation**

We oppose the elevation of roadways and parking areas. Municipal engineers have reviewed this concept and find that it is not feasible to elevate roads or parking lots where surrounding areas may be substantially lower through no fault of the applicant. We seek further clarification as to what method DEP would use to determine when raising a roadway is "impractical." Flexibility must be provided in the regulatory framework, particularly as it relates to existing developed areas to recognize and account for the fact that in many such areas elevating roadways, including along evacuation routes, is not realistic or feasible.

Many other state policies dictate that redevelopment of such areas be promoted, including facilitating brownfield redevelopment and transit village development, and addressing environmental justice concerns in impoverished communities. Provisions must be embedded in the regulations to allow for meaningful relief from unattainable standards. DEP's current hardship exception provisions, often considered in the context of existing rules relating to roadway elevation for residential and critical buildings, do not provide such realistic and meaningful opportunity for relief. DEP must do more in the contemplated rules, particularly given the increased flood elevation, to provide for flexibility with respect to unattainable standards. Further, we urge DEP to create clear and predictable standards that will help applicants and communities plan accordingly. DEP should also clarify the extent of access required. In the example where an adjoining roadway meets the applicable elevation standard, but other roadways in the area do not, how far must the compliant roadways extend to provide safe access?

Private roadways should qualify for the same exemptions as public roadways. There is no reason private roadways should be held to a different standard if site constraints exist that are similar to public linear projects.

### **Discouraging Urban Redevelopment**

DEP is proposing to require the same level of stormwater treatment and discharge levels for urban redevelopment projects as they do for new greenfield development (80 TSS/100% on-site retention). For decades, this approach has been rejected because the standards cannot be met by many or most urban redevelopment projects or to the extent it could be met it would be at a substantial cost and project downsizing. Imposing these standards will make urban redevelopment efforts less competitive with greenfield development and will lead to more suburban sprawl at the expense of our cities. The DEP should be required to provide an engineering/economic analysis to support this regulatory change.

### **Hardships**

There has been much discussion regarding "offramps" that are built into the NJ PACT rules to address hardships. We advocate that clear guidance on hardship provisions be articulated given the change in flood elevations under these rules. DEP's existing regulatory programs are deliberately limiting and intended to be infrequently utilized or approved. Significantly, access requirements in areas with vast stretches of roadways below flood elevation will effectively become undevelopable. If all new and redeveloped buildings in these regions require a hardship, the standards to obtain a hardship exception must provide a reasonable and realistic opportunity to successfully obtain relief or provisions should be incorporated into the rules to not require a hardship. Current rule N.J.A.C. 7:13-12.6.c - e has not provided meaningful relief, and it will only become less relevant with this rule proposal's elevation increases.

I ask that you abandon the NJ PACT rule process and start anew with a process that includes local officials and a focuses on a comprehensive approach to fund infrastructure improvements as well as regulatory changes based on a twenty year time arisen.

I look forward to your timely response and to collaborating with you to develop a reasonable path forward.

Yours in service to the community,  
**City of Atlantic City**

  
Marty Small, Sr.  
Mayor

cc: Vince Polistina, Senator  
Assemblyman Don Guardian  
Assemblywomen Claire Swift  
Michael Chait, Executive Director, Greater Atlantic City Chamber  
Ray Cantor, Vice President, New Jersey Business and Industry Association  
Jacquelyn Suarez, NJDCA, Director, Local Government Services  
Anthony Swan, Atlantic City Business Administrator  
Wes Swain, NJDCA



# Resolution of the City of Atlantic City

No. 678

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Director of Planning & Development/s/ Jacques Howard

Prepared by City Solicitor's Office

Council Member SHABAZZ presents the following Resolution:

**A RESOLUTION URGING THE STATE OF NEW JERSEY TO TAKE AN INCREMENTAL AND TARGETED APPROACH TO ADOPTING THE PROPOSED “PROTECTING AGAINST CLIMATE THREAT (PACT) / RESILIENT ENVIRONMENTS AND LANDSCAPE (REAL)” RULES**

**WHEREAS**, the City of Atlantic 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**, 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**, according to the NJDEP’s website, these rules will soon be posted on the NJ Register for a 90-day public comment period, with a benchmark adoption range of February 2025; and

**WHEREAS**, historically, new rules issued by the NJDEP have always been promulgated pursuant to legislation through the typical legislative process; and

**WHEREAS**, the proposed rules have received considerable opposition from shore communities, as it proposes measures that would restrict development and impose un-intended economic impacts, including the loss of tax ratables from new construction and potential tax appeals resulting from proposed declaration of inundation zones, elevation of roadways and more; and

**WHEREAS**, while recognizing the importance of addressing climate change, as stated previously, the City of Atlantic 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 the coastal zones; and



**WHEREAS**, this matter was considered and approved for action at the September 4, 2024, Planning & Development Subcommittee Meeting.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Atlantic City hereby authorizes this resolution urging the State of New Jersey to take an incremental and targeted approach to adopting the proposed PACT/REAL Rules initiated through Governor Murphy’s Executive Order 100.

**BE IT FURTHER RESOLVED** the City of Atlantic City requests that the State of New Jersey engage the Legislature and enact these proposed rules through the typical legislative process, in order to give the people of Atlantic City and the State of New Jersey a voice, rather than through an Executive Order with limited public engagement.

September 24, 2024 1:25 PM

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.
CROUCH	X					X	MARSHALL	X					
DUNSTON		X					SHABAZZ	X				X	
HUQ	X						TIBBITT		X				
KURTZ	X						WEEKES	X					
RANDOLPH, 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: SEPTEMBER 18, 2024

*Paula Geletei*  
 /s/ Paula Geletei, City Clerk