

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2024-248

Title: **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**, Lower Township 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**, Lower Township continues to respond to the threat of tidal flooding/major coastal storms by practicing the highest standards of coastal resiliency and floodplain management in all critical infrastructure and building projects, while also providing the necessary support in the approach, duration, and wake of major coastal storms through our Office of Emergency Management and Public Safety Department; and

**WHEREAS**, in addition to the previously mentioned efforts, all of the municipalities in Cape May County that are within Special Flood Hazard Areas (SFHAs) have all adopted floodplain management ordinances that in most cases go beyond compliance with FEMA’s standards, have a designated and certified floodplain manager on staff; and are participants of the Insurance Services Office, Inc. (ISO’s) Community Rating System (CRS) Program, with several County towns floodplain management efforts ranked best in the State and near the best in the Nation; 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**, in this case, like the NJDEP’s recently proposed Shore Protection Rule, there is no legislation that authorized the NJDEP to require more stringent requirements than the federal regulations that are now in place; and

**WHEREAS**, these rules as currently written do not consider the economic impact these new standards may have on the ratables, real-estate values, development, and redevelopment statewide, but especially in Cape May County where we have greater than \$50 billion in net ratables, and greater than \$625 million in State tourism tax revenues produced annually; and

**WHEREAS**, the proposed rules also do not account for the impact these higher regulatory building standards will impose on historic structures and historic districts throughout the Cape May County and the State of New Jersey; and

**WHEREAS**, the State of New Jersey must also consider the burden these new rules will have on coastal municipalities, especially within their local construction offices, due to the additional duties and



responsibilities of enforcing these higher regulatory standards that will likely result in the need to hire additional staff or enter additional public/private contracts; and

**WHEREAS**, these rules will also increase construction costs and impact the feasibility for public infrastructure projects with the minimum construction height requirements for new roads in excess of Base Flood Elevation (BFE) plus 5 ft Freeboard, that in some cases like the County's soon to be designed Ocean Drive Bridge reconstruction project, will be infeasible and unachievable given the path and location of the project; and

**WHEREAS**, despite the burden these rules will inevitably play on our coastal towns, the State of New Jersey has not mentioned any plan for a State budget appropriation to assist coastal towns statewide with the additional duties and functions imposed through the proposed NJPACT/REAL rules; and

**WHEREAS**, the proposed expansion of flood hazard areas will also create additional financial burdens for lower and middle class property owners living in Lower Township by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within the newly expanded regulated areas, and may also potentially result in higher insurance premiums given the expansion of the inundation risk zone and increase of the regulated flood hazard area limits by 5 feet vertically; and

**WHEREAS**, the proposed NJPACT/REAL policy document is based on Rutgers University's 2019 Study Report, entitled, "New Jersey Rising Seas and Changing Coastal Storms," projecting sea level rise for the year 2100 exceeding 5.1 feet, which has a probability of occurrence of approximately 17%; and

**WHEREAS**, the science behind these 80-year projections have been questioned by many, including former NJDEP employee and New Jersey Business & Industry Association (NJBIA) Deputy Chief of Staff, Ray Cantor, stating, "the (NJDEP) knows there is no proved science justifying their position, but they also know it is easier to scare people and force them to retreat from the shore if they tell them that much of Cape May and other areas will be underwater. It is part of their managed retreat strategy"; and

**WHEREAS**, potentially pushing fixed income residents out of their homes based on the 17% probability of an 80-year sea level rise projection should be taken more gradually with a higher percentage of probability and likelihood of occurring; and

**WHEREAS**, Municipalities are required to prepare Master Plans for a 20- or 30-year planning horizon, and Lower Township strongly recommends a similar time horizon for rules based on sea level rise projections; and

**WHEREAS**, Cape May County, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis that prompted the County's Board of County Commissioners to recently implement an Ad Hoc Committee for Mixed Income Housing, to explore opportunities for Mixed Income Housing development throughout the County, in order to support the permanent housing needs for our residents and veterans; and

**WHEREAS**, the NJDEP's proposed expansion of flood hazard areas limits the potential capacity of mixed income housing development and even prohibits development in most coastal areas, especially as inland development centers are being reduced in size via the State Planning process; and

**WHEREAS**, these Rules will appear to run counter to the laudable Mount Laurel Doctrine and coastal zone towns fair share affordable housing obligations, especially in the wake of the Governor's



recently signed legislation (Bill S50/A4) that established one of the strongest affordable housing frameworks in the United States in the State of New Jersey; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) is also in the process of preparing detailed updates to the flood insurance rate maps (FIRMS) that take into account many factors of risk including sea level rise; and

**WHEREAS**, the State of New Jersey has historically used these maps to guide public policy, and therefore, Cape May County urges the State to defer to the superseding governing body, in this instance FEMA, and wait until the new FIRMS have been posted before expanding flood hazard areas through a streamlined State authorization; and

**WHEREAS**, while recognizing the importance of addressing climate change, as stated previously, Lower Township 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 in the coastal zones; and

**WHEREAS**, for the reasons outlined above, Cape May County through consultation with The Lomax Consulting Group has produced a Study Analysis and Flood Hazard Area Maps of the proposed NJPACT/REAL rules to assess the potential impacts they may have on the County and Municipalities therein, which is attached hereto this Resolution as Exhibit A.

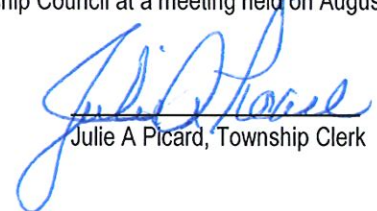
**NOW, THEREFORE, BE IT RESOLVED**, that the Township Council of the Township of Lower, County of Cape May, State of New Jersey poses the following:

1. Lower Township Council requests a comprehensive and independent analysis of the potential economic and social impacts of the proposed regulations, including a focus on protecting the interests of low and moderate income families.
2. Lower Township Council requests that the State of New Jersey engage the Legislature and enact these rules through the typical legislative process, in order to give the people of New Jersey a voice, rather than through an Executive Order with limited public engagement.
3. Lower Township Council requests that these regulations be based on a 20- or 30-year timeframe that is adjusted over time to reflect sea level rise and resiliency measures, rather than based on an 80-year projection.
4. Lower Township Council requests that the State of New Jersey consider the inclusion of a budgetary appropriation to assist towns with the implementation of these rules and further, appropriate funding to implement a State grant program to support coastal resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that includes significantly higher elevation requirements for new roads.
5. If the State of New Jersey decides to proceed with the expansion of flood hazard areas before FEMA releases the new FIRMS, Lower Township requests that the State of New Jersey follow the same practice as FEMA and prepare detailed flood maps, and further hold public engagement sessions across the State, so that communities and residents can clearly understand how these regulations will impact their areas and properties.

6. Lower Township Council hereby orders copies of this Resolution, attached Analysis Study, and Maps be transmitted to Governor Phil Murphy; Lieutenant Governor Tahesha Way; Chief of Staff to Governor Murphy Diane Gutierrez-Scaccetti; Senate President Nicholas P. Scutari; Assembly Speaker Craig J. Coughlin; Senate Environment Committee Chair Bob Smith; Assembly Environment Committee Chair James J. Kennedy; the Office of Legislative District 1's Senator Michael Testa, Assemblyman Antwan McClellan, and Assemblyman Erik Simonsen; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the New Jersey League of Municipalities (NJLM) to convey Cape May County's concerns and recommendations.
  
7. Lower Township Council hereby orders copies of this Resolution, Study, and Maps be submitted as public comment on the NJ Register after the rules have been posted to serve as the Township's official comments to the NJDEP's proposed NJPACT/REAL rules.

	MOTION	SECOND	AYE	NAY	RECUSE	ABSTAIN	ABSENT
CONRAD	✗		✗				
COOMBS		✗	✗				
ROY			✗				
PERRY			✗				
SIPPEL			✗				

I, Julie A. Picard, Township Clerk of the Township of Lower, County of Cape May, State of New Jersey, do hereby certify the foregoing to be a true and exact copy of a resolution duly authorized by the Township Council at a meeting held on August 5, 2024

  
 Julie A Picard, Township Clerk



# EXHIBIT A



MEMORANDUM

TO: File  
 FROM: Peter Lomax  
 DATE: June 25, 2024  
 RE: Comments on NJDEP New Rule Pre-Proposal documentation for “Resilient Environments and Landscapes (REAL)” reformation of existing Land Use Regulations in the State of New Jersey

**Summary**

This memorandum was prepared pursuant to a request by the County of Cape May and interest expressed by several local municipalities regarding future regulatory implications resulting from the NJ Department of Environmental Protection (NJDEP) **Resilient Environments and Landscapes (REAL) draft rule** in its preproposal form. The 1,057-page formal REAL rule proposal is scheduled for official publication in a July 2024 New Jersey Register.

The REAL rule proposal stems from Governor Murphy’s Executive Order 100, January 2020, which instructed the NJDEP to adopt “Protecting Against Climate Threats” (PACT) regulations. In its pre-proposal presentations, NJDEP has represented that the forthcoming REAL rule proposal is based on the “best available predictive climate science” which indicates that current practices are not on target for moderate greenhouse gas emissions reductions. By extension, State policy aims to adapt to prevailing sea-level rise, extreme weather intensification, and chronic flooding at higher elevations which leads to recurrent flood damage. The REAL rule proposal will establish new and revised land use regulations to be integrated into the Coastal Zone Management Rules (N.J.A.C. 7:7), Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and Stormwater Management Rules (N.J.A.C. 7:8), as well as cross-referencing and clarifications to other rules which reference flooding.

The REAL rule proposal will rely on sea level rise projections from the Rutgers University 2019 Science and Technical Advisory Panel (STAP) Report entitled, “New Jersey’s Rising Seas and Changing Coastal Storms”, which concluded a 50% probability that sea level rise will exceed 3.3 feet by year 2100 and a 17% chance that sea level rise will exceed 5.1 feet by year 2100 assuming moderate emissions.

Table 1. Rutgers University STAP-Predicted Sea Level Rise Probability

Table ES-1: New Jersey Sea-Level Rise above the year 2000 (1991-2009 average) baseline (ft)\*

		2030	2050	2070			2100			2150		
		Emissions										
Chance SLR Exceeds		Low	Mod.	High	Low	Mod.	High	Low	Mod.	High	Low	High
Low End	> 95% chance	0.3	0.7	0.9	1	1.1	1.0	1.3	1.5	1.3	2.1	2.9
Likely Range	> 83% chance	0.5	0.9	1.3	1.4	1.5	1.7	2.0	2.3	2.4	3.1	3.8
	~50% chance	0.8	1.4	1.9	2.2	2.4	2.8	3.3	3.9	4.2	5.2	6.2
	<17% chance	1.1	2.1	2.7	3.1	3.5	3.9	5.1	6.3	6.3	8.3	10.3
High End	< 5% chance	1.3	2.6	3.2	3.8	4.4	5.0	6.9	8.8	8.0	13.8	19.6

\*2010 (2001-2019 average) Observed = 0.2 ft

Rutgers University STAP, <https://njclimateresourcecenter.rutgers.edu/resources/nj-sea-level-rise-reports/>, 2019



Accordingly, NJDEP selected the more conservative prediction designating a 5-foot sea level rise and establishing the year 2100 as the planning horizon for the REAL rule proposal regulations, indicating that roads, building and bridges constructed over the proceeding years under the new rule will still be serviceable in year 2100. Through designation of the 5-foot sea level rise, the REAL rule proposal will redefine the extent of tidal flood hazards areas by establishing an "Inundation Risk Zone" and a "Climate Adjusted Flood Elevation" which include design standards restricting development in the coastal zone.

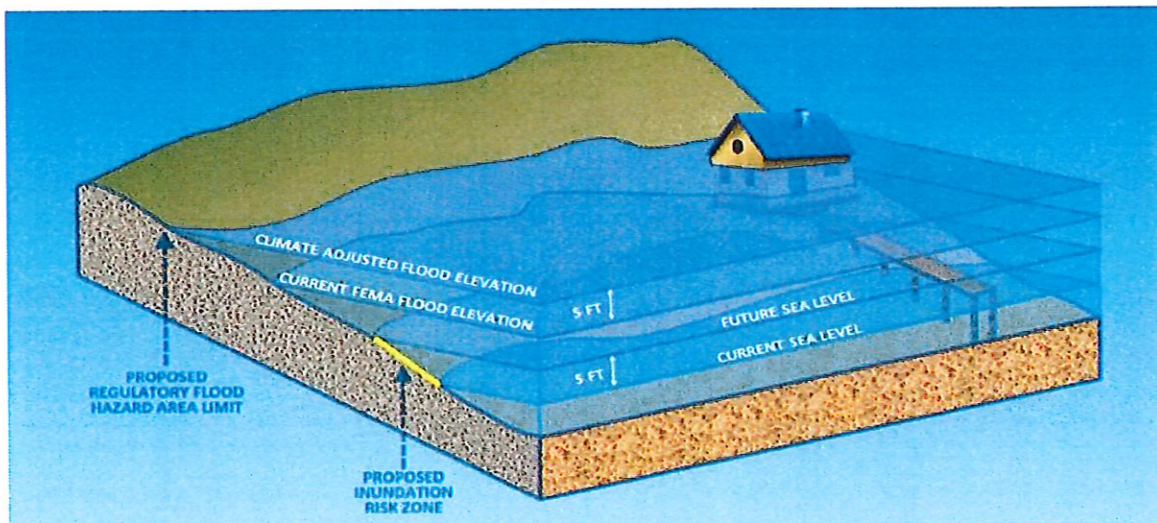
**Inundation Risk Zone (IRZ)** is the predicted area of permanent standing water due to sea level rise by year 2100

IRZ upper limit = current elevation of mean high higher water (MHHW) + 5 feet

**Climate Adjusted Flood Elevation (CAFE)** is the predicted limit of coastal flood hazard areas with storm-induced flooding exacerbated by sea-level rise by year 2100

CAFE upper limit = current FEMA 100-year flood elevation + 5 feet

Diagram 1. Composite of IRZ and CAFE



Graphic Excerpt: NJDEP REAL Sea Level Rise & Inundation Risk Zone Fact Sheet, May 20, 2024

### **Scope of Rulemaking**

The creation of these newly regulated areas applies REAL standards to:

1. New development
2. Redevelopment
3. Renovation of existing development where "substantial improvements to buildings" will occur (i.e., renovation costs exceed 50% of the market value)

### **Applicability**

REAL rule standards will be:

1. integrated into the Coastal Zone Management Rules (*N.J.A.C. 7:7*), Freshwater Wetlands Protection Act Rules (*N.J.A.C. 7:7A*), Flood Hazard Area Control Act Rules (*N.J.A.C. 7:13*), Stormwater Management Rules (*N.J.A.C. 7:8*), as well as cross-referencing and



clarifications to other rules which reference flooding whereby terminology has been amended to integrate REAL precepts;

2. applied to all projects which are not yet deemed technically complete for review before the rule is adopted. Application submission and a determination of administrative completeness in advance of rule adoption is not sufficient to establish protection from the new rule; and
3. implemented to reform existing State land use practices specific to sea-level rise, coastal storm surge, flooding, and stormwater management considerations by:
  - a. increasing protections against predicted future flooding/sea level rise and storm events;
  - b. protecting critical facilities and infrastructure from the effects of climate change;
  - c. restoring water quality and reducing flooding across the state, especially in urban zones;
  - d. increasing resilience for land and water resources;
  - e. planning for climate change;
  - f. designing to prioritize nature-based solutions;
  - g. encouraging renewable energy; and
  - h. revising the administrative processes to make improvements.

#### **Timeline for Action (as reported by NJDEP)**

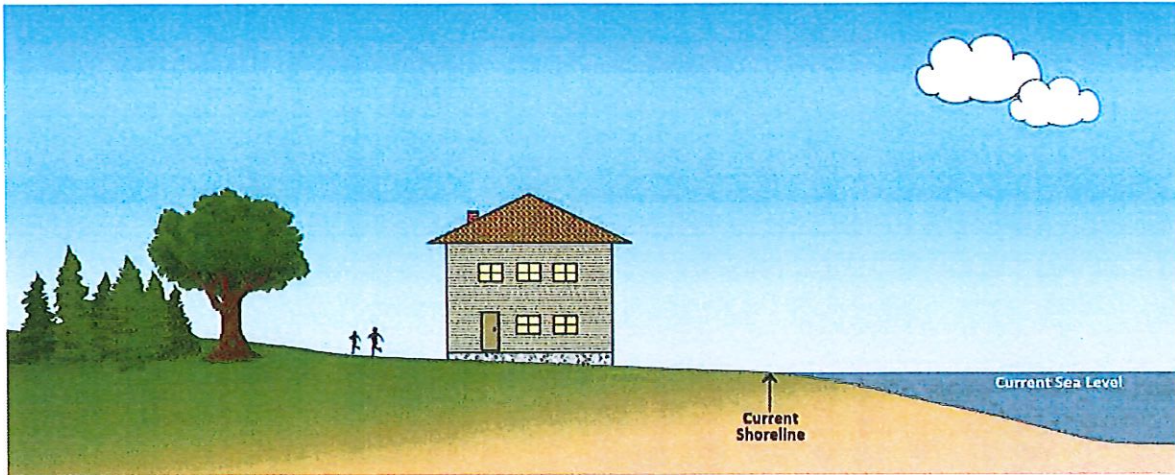
The window for engagement in providing public comment and/or seeking clarification or changes to the proposed REAL rule is as follows:

- **July 1 or July 15, 2024:** Formal Publication of the REAL rule proposal in the NJ Register and commencement of the 90-day Public Comment Period
- **July 24, 2024 at 10am:** Public Hearing #1 via virtual format
- **July 31, 2024 at 2pm:** Public Hearing #2 via virtual format
- **August 7, 2024 at 6pm:** Public Hearing #3 via virtual format
- **October 2024:** End of Public Comment Period and commencement of NJDEP evaluation of public comments, including preparation of responses to all public comments and review of minor draft language changes to be considered.
- **Summer/Fall 2025:** Anticipated Filing of Adoption documents with Office of Administrative Law (must be within 1 year of proposal publication in the NJ Register)

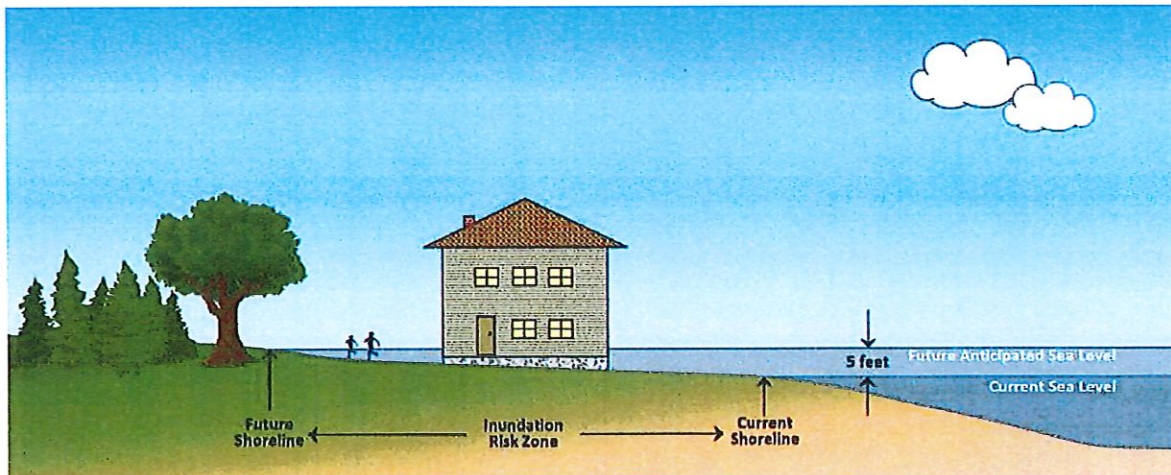
**Inundation Risk Zone (IRZ)** is the predicted area of permanent standing water due to sea level rise by year 2100

IRZ upper limit = current elevation of mean high higher water (MHHW) + 5 feet

**Diagram 2. Current Sea Level in MHHW**



**Diagram 3. Future Anticipated Sea Level (Year 2100) in MHHW**



*Graphics Excerpts: NJDEP REAL Webinar 1: Sea Level Rise & Inundation Risk Zone, May 20, 2024*

NJDEP's stated goal in establishing the IRZ is to regulate coastal redevelopment whereby the need for land use approvals can be leveraged to mitigate future anticipated damage to existing facilities due to sea level rise and coastal storms. When proposing regulated development, redevelopment, or substantial improvement renovations for residential buildings and critical buildings and infrastructure in the IRZ, the project must be designed to meet the applicable standards and the applicant must complete:

- Impact Assessment of sea level rise on the proposed activity,
- On-site Alternatives Analysis to avoid or minimize risks, and
- Risk Acknowledgement to be incorporated into NJDEP decision documents such that formal notice is attached to the title of ownership.



**IRZ Impacts by Municipality and County**

The establishment of the IRZ has a disproportionate impact on land areas within the coastal zone than those areas in the interior portions of the State. By extension, the IRZ will place additional land use restrictions on development within coastal communities thereby resulting in greater impacts to the ratable base of those local units of government. While NJDEP estimates that much of the IRZ is already developed or encumbered by environmental Special Areas that would otherwise make development difficult, its analysis is generalized for the entire state and does not account for regional impacts such as those in Cape May County. Significant portions of the County, including within the coastal areas, remain undeveloped or targeted for redevelopment as reflected by long-standing center designations and supporting local zoning standards, which is in contrast to NJDEP’s interpretation of the impact of the IRZ on anticipated future development.

As provided herein, the “NJDEP/NOAA Predicted Sea Level Rise Inundation Risk Zone Mapping” (Sheets 0-5), prepared by The Lomax Consulting Group, dated June 11, 2024, depicts the extent of the mapped IRZ within Cape May County. Table 2 below provides a summary of IRZ-impacted land areas (excluding surface waters) for the County as a whole and for each municipality. Of the 157,481 acres of land in Cape May County, the IRZ will overlay 42.85% of the total, and while this area includes coastal marsh, it also includes significant portions of upland coastal communities and the transportation infrastructure between the mainland municipalities and the barrier islands that would be subject to additional regulation under the REAL rule proposal.

**Table 2. Future Anticipated Sea Level (Year 2100)**

Name	Total Land Area (Acres)	Inundated Area (Acres)	% Inundated
Avalon	2,496	1,918	76.84%
Cape May City	1,470	621	42.24%
Cape May Point	178	113	63.48%
Dennis Township	38,141	11,928	31.27%
Lower Township	17,184	6,937	40.37%
Middle Township	43,710	23,652	54.11%
North Wildwood	1,046	816	78.01%
Ocean City	4,349	3,555	81.74%
Sea Isle City	1,387	1,124	81.04%
Stone Harbor	901	581	64.48%
Upper Township	38,907	14,599	37.52%
West Cape May	748	408	54.55%
West Wildwood	182	178	97.80%
Wildwood City	904	712	78.76%
Wildwood Crest	773	338	43.73%
Woodbine	5,105	0	0.00%
<b>Cape May County</b>	<b>157,481</b>	<b>67,480</b>	<b>42.85%</b>

The barrier island municipalities will be most significantly impacted by the IRZ in terms of percentage of total inundated land area, whereas the mainland municipalities will have significantly larger impacted acreage by the IRZ for which larger scale development will be



*Environmental Consulting Excellence Since 1975*

restricted, especially in terms of proposed new housing stock, as well as significant restrictions on redevelopment and renovation activities for communities along the Delaware Bayshore.

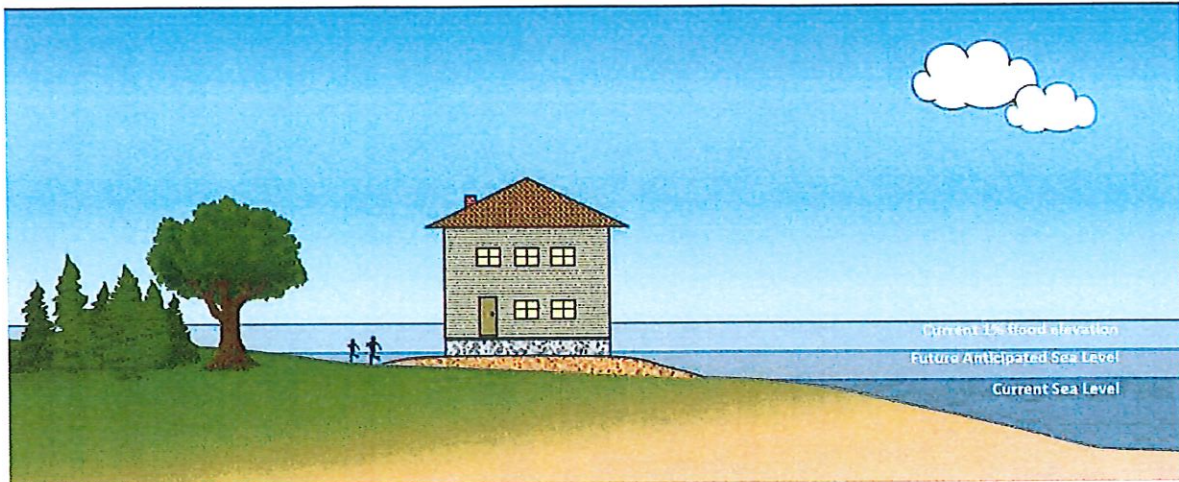
Any future residential buildings, or critical buildings and infrastructure development, redevelopment, or renovation within the IRZ will require substantial impact assessment, alternatives analysis, and risk acknowledgement as part of the land use permitting process, subject to NJDEP discretion, before the proposed activity can be authorized. As an example, NJDEP will request that the applicant examine all opportunities to ameliorate inundation risk on the site, bias development to the highest portions of the site, and/or fill portions of the site to elevate the proposed activity above the IRZ. However, as of the review of the REAL rule pre-proposal documents, it remains unclear what level of critical review and analysis will be applied to regulated activities in the IRZ and the extent to which this process will extend the application review period prior to NJDEP issuance of final decisions.



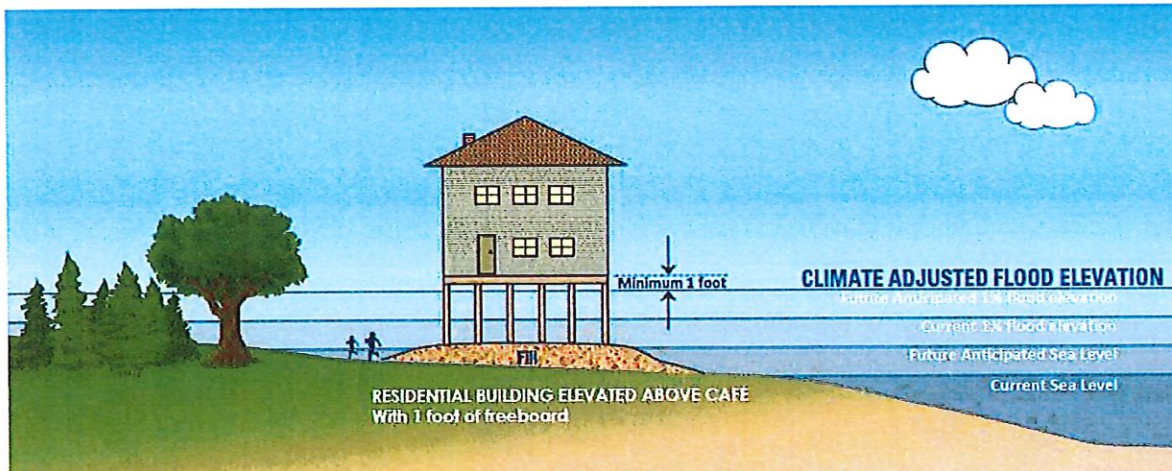
**Climate Adjusted Flood Elevation (CAFE)** is the predicted limit of coastal flood hazard areas with storm-induced flooding exacerbated by sea-level rise by year 2100

CAFE upper limit = current FEMA 100-year flood elevation + 5 feet

**Diagram 4. Current FEMA 100-year (1%) Flood Elevation**



**Diagram 5. Climate Adjusted Flood Elevation (Year 2100)**



*Graphics Excerpts: NJDEP REAL Webinar 1: Sea Level Rise & Inundation Risk Zone, May 20, 2024*

NJDEP's stated goal in establishing the sea-level specific regulatory restrictions is to discourage further development of barrier islands and low-lying mainland areas. By adding 5 feet to the existing FEMA-designated 100-year flood elevation, the REAL rule proposal will establish design criteria to adapt future development to predicted future flood elevation in anticipation of sea level rise and flooding from coastal storms. Through the issuance of land use approvals, NJDEP intends to leverage these opportunities to mitigate future anticipated damage resulting from flood events to renovated and proposed facilities. When proposing regulated development, redevelopment or substantial improvement renovations to habitable buildings and transportation infrastructure projects in the A Zone, the finished floor elevation must be at or above CAFE +1 foot, and in the Coastal A or V Zones, the bottom of the lowest horizontal structural member must be at or above CAFE + 1 foot.



**CAFE Impacts by Municipality and County**

The establishment of the CAFE will have a disproportionate impact on land areas within the coastal zone. By extension, the CAFE will place additional land use restrictions on development within coastal communities thereby impacting the ratable base of those local units of government, as well as development trends (i.e., increased building and road heights, elevated construction costs). While NJDEP estimates that the REAL rule proposal will add only 1.5% more land area into regulatory flood zones, it does not account for the substantial impairment of lands in Cape May County.

As provided herein, the “NJDEP Proposed Climate Adjusted Flood Elevation Land Cover Analysis Mapping” (Sheets 0-5), prepared by The Lomax Consulting Group, dated June 24, 2024, depicts the extent of the existing FEMA-mapped 100-year flood hazard area limits, as well as the extent of the NJDEP-proposed flood hazard area set at 5 feet above the FEMA-designated limits in anticipation of predicted sea level rise as of year 2100. Table 3 below provides a summary of CAFE-impacted land areas (excluding surface waters) for the County as a whole and for each municipality. Of the 157,481 acres of land in Cape May County, the CAFE overlays 60.47% of the total. This expansion is an increase of 15.91% in affected land areas beyond current flood hazard area limits, with the understanding that lands within the pre-existing flood hazard area will inherit an additional 5 feet of regulated flood elevation restriction. The expanded flood hazard areas will cross the U.S. Route 9 corridor and overtop the Garden State Parkway and N.J. Route 47, the three major transportation arteries in Cape May County.

**Table 3. Future Anticipated Sea Level (Year 2100)**

Name	Total Land Area (Acres)	Current FEMA Tidal FHA (Acres)	NJDEP Proposed Climate Adjusted Flood Elevation (Acres)	% of Total Proposed FHA Land Coverage	% Change of FHA Land Coverage - Current vs. Proposed
Avalon	2,496	2,367	2,485	99.56%	4.73%
Cape May City	1,470	857	1,446	98.37%	40.07%
Cape May Point	178	140	177	99.44%	20.79%
Dennis Township	38,141	12,197	16,932	44.39%	12.41%
Lower Township	17,184	7,253	11,546	67.19%	24.98%
Middle Township	43,710	22,265	31,593	72.28%	21.34%
North Wildwood	1,046	1,038	1,046	100.00%	0.76%
Ocean City	4,349	4,135	4,345	99.91%	4.83%
Sea Isle City	1,387	1,340	1,385	99.86%	3.24%
Stone Harbor	901	800	900	99.89%	11.10%
Upper Township	38,907	15,555	20,795	53.45%	13.47%
West Cape May	748	413	717	95.86%	40.64%
West Wildwood	182	181	182	100.00%	0.55%
Wildwood City	904	892	903	99.89%	1.22%
Wildwood Crest	773	613	773	100.00%	20.70%
Woodbine*	5,105	130	8	0.16%	N/A*
<b>Cape May County</b>	<b>157,481</b>	<b>70,176</b>	<b>95,233</b>	<b>60.47%</b>	<b>15.91%</b>

\*Note: current FEMA tidal FHA mapping for Woodbine does not include base flood elevation data and therefore not represented in NJDEP proposed climate adjusted flood elevation



## Comments

Under the State's current Coastal Zone Management Rules (*N.J.A.C. 7:7*), Freshwater Wetlands Protection Act Rules (*N.J.A.C. 7:7A*), Flood Hazard Area Control Act Rules (*N.J.A.C. 7:13*), and Stormwater Management Rules (*N.J.A.C. 7:8*) significant regulatory restrictions already exist which provide NJDEP with substantial authority to regulate activities within the coastal zone. In large part, the anticipated REAL rule proposal sets forth even more stringent regulatory authority which is extraordinary in its far-reaching implications to stakeholders who live, work, and rely on development opportunity within the coastal zone.

The creation of a 5-foot Inundation Risk Zone compounded by the Climate Adjusted Flood Elevation in substantial measure is rooted in a predicted condition 75 years into the future without the opportunity for moderate incremental adaptation over the next half century during which adjustments could be accomplished for climate resiliency. Residential properties alone will likely experience at least 3 cycles of redevelopment (i.e., raze and rebuild) during the predicated 75-year period. The REAL rule pre-proposal focuses a majority of its restriction and resiliency action on residential properties within coastal communities instead of addressing an arguably greater need – public transportation infrastructure. Thus, the burden is shifted greatly to the private sector. State and federal investment in public transportation infrastructure (e.g., roads, bridges, railroads, etc.) is the logical starting point for which substantial improvements are needed.

In addition to the most notable elements of the REAL rule pre-proposal, referenced above, the anticipated regulations also expand jurisdictional reach to:

- provides regulatory relief to offshore wind developers allowing for disturbance to shellfish habitats that can be mitigated by way of monetary donation to the NJDEP Shellfish Mitigation Fund.
- require that all shore protection projects provide a detailed alternatives analysis of the consequences of project design to the overall functioning of the natural shoreline sand system even though the design standards shift to NJDEP-mandated nature-based solutions.
- expand the definition of major development for stormwater management to include 0.25 or more acres of existing motor vehicle surfaces reconstruction.
- require stormwater review as part of "major development" under Freshwater Wetlands applications even when such activity is not within regulated wetland or transition area.
- require the removal of existing impervious cover as part of Special Activity Waiver for Redevelopment despite reuse of existing disturbed/developed areas is the sole purpose of such a waiver.
- compound tidal and fluvial flood hazard area overlap with inflexible requirements for net fill mitigation.
- extend riparian zones into tidal flood hazard areas, including the non-oceanfront side of barrier islands.

Furthermore, the REAL rule pre-proposal establishes increased restrictions for the:

- elimination of Zane exemptions for previously existing structures which are evident in aerial imagery.
- removal of hard structural solutions as an option for shore protection unless proposed as hybrid design which also integrates nature-based solutions.



- prohibition of underground utility lines on beaches that were previously authorized as linear development.
- requirement to prepare and provide an Emergency Structure Removal Plan for temporary seasonal structures on the beach.
- reduction of riparian zone disturbance thresholds increasing the likelihood of mitigation and removal of flexibility for mitigation ratios.

The REAL rule pre-proposal compounds restriction on local units of government which negotiated in good faith and at great expense with the State to establish centers of development density to support residential obligations, in the form of affordable housing, centers of commerce to fuel the local economy and provide jobs to the County's residents, and designate areas in need of redevelopment, many of which have been strategically eliminated from previously approved planning constructs. The designation of "CAFRA Critical Environmental Sites" within centers, cores, and nodes, which downgrades available density even after prior zoning density reductions, is an unnecessary and economically punitive overreach. Existing regulations provide for adequate protection and affords NJDEP discretion to effectively regulate development in a manner that balances the purpose of the center with sensible environmental protections.

Sweeping regulatory reform warrants a comprehensive economic impact study to address flood insurance rate considerations and property tax implications, especially where building heights and viewsheds will be dramatically affected on barrier island communities where the majority of the County ratable base is located. Significant uncertainty exists in understanding the economic impacts that these regulatory changes can have on the affordability of housing for the aged and families with low and moderate incomes, insurance premiums, cost of living, existing and start-up enterprises, in addition to the costs/impact of other land use regulatory programs. Further, the State's economy is reliant upon seasonal and year-round business, which in order to prosper, must rely on a stable and predictable regulatory climate. It is for these reasons that a full economic analysis and cost-benefit assessment must be completed before advancing the rule proposal so that the true cost of these anticipated regulations can be quantified and an economic impact and compensatory mitigation plan advanced contemporaneously by the State to address these inherent costs to home and business owners, as well as local units of government in the coastal zone

### **Conclusion**

Current land use application review timeframes are unprecedented in terms of length and iteration where NJDEP review staff is clearly overburdened. With such expansive regulatory authority and attendant assessments/analyses to be included in future land use applications as proposed by the anticipated regulations, a robust staffing plan will be needed by the State to subsume the additional workload for application review and timely issuance of decisions.

It is recognized that climate resiliency action is an important public interest consideration. Cape May County is uniquely positioned geographically to serve a role in this long-term planning commitment but more so as an engaged partner in the process instead of a recipient of disproportionate restriction when viewed in content. It is incumbent on the State government to pause this initiative in the best interests of its citizens and the State economy and engage the most impacted stakeholders in order to mature a reasonable and achievable approach to climate change planning. A more moderate regulatory approach with an interim sea level adjustment, while waiting for the latest FEMA mapping to be updated and issued, is a prudent initial step. Thereafter, the State, in partnership with its coastal zone stakeholders, can pursue a more





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informed stepwise progression of climate change resiliency with a focus on public infrastructure as the initial effort for investment and design standards evolution after which residential, commercial, and industrial development can then initiate site improvements to connect into improved support systems.

In summary, it is recommended that the County and its 16 municipalities engage with the State and other interested parties to address the concerns and disproportionate impacts. There is a defined window for engagement, which will extend over the next 3 months, in order to provide comment and/or seek clarification or changes to the proposed REAL rule via public comment period, public hearings, and mobilization of affected stakeholders to address the deficiencies of the REAL rule proposal

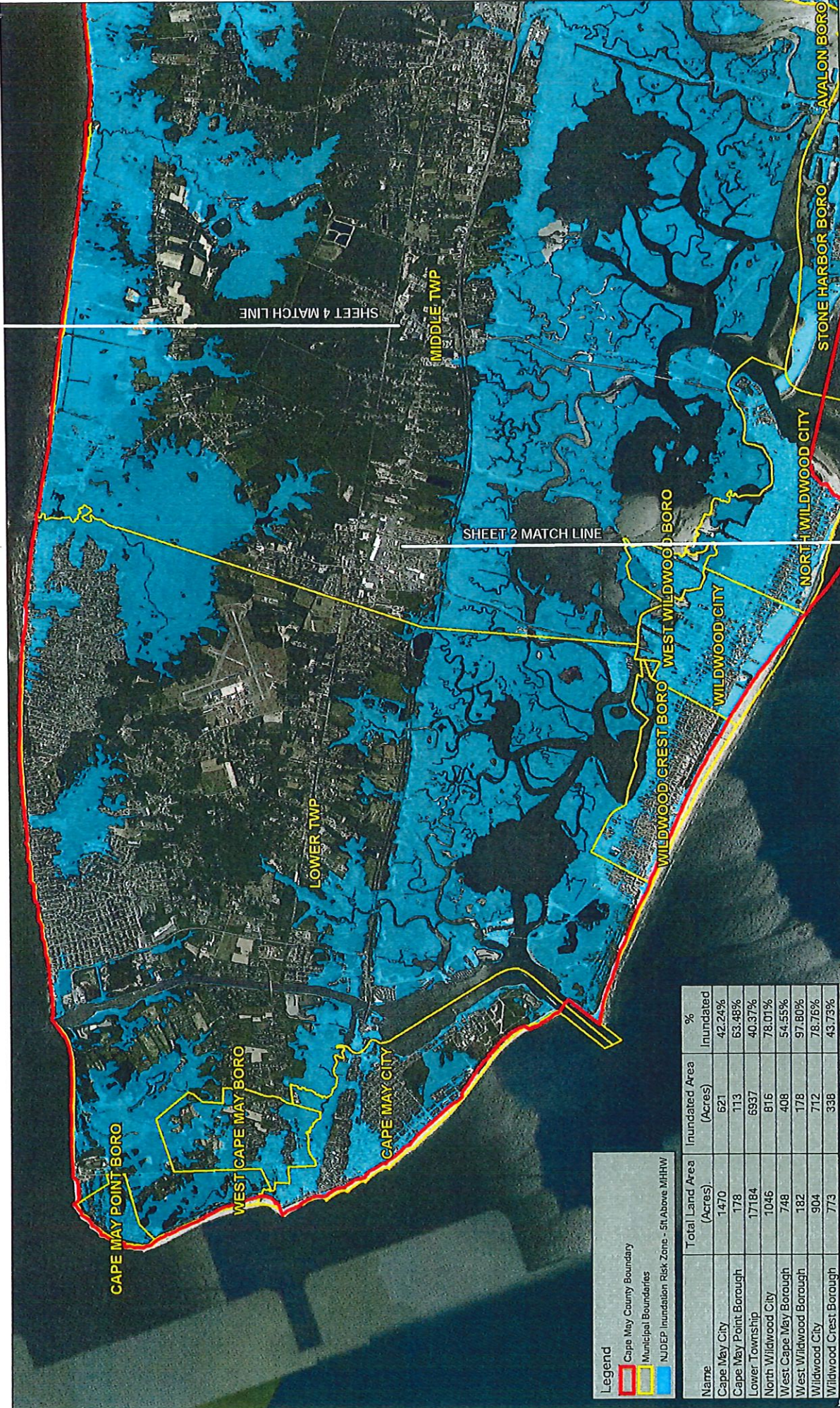
The rule proposal is expected to be formally issued in July 2024 with an anticipated adoption for implementation in the 2025 season, although the State could accelerate that timeline to some extent. Although the rule proposal has not yet been published, now is the time to actively engage in this matter with the State to pursue the above recommendations and any additional modifications to the proposal.



DATE:	2/15/2024
DRAWN BY:	AL
CHECKED BY:	AL
PROJECT #:	23-1158

CAPE MAY COUNTY  
 NJDEP/NOAA PREDICTED SEA LEVEL RISE  
 INUNDATION RISK ZONE - 5FT ABOVE MHHW  
 CAPE MAY COUNTY, NEW JERSEY

SCALE: 1" = 2,500' HORIZ.  
 1" = 100' VERT.  
 SOURCE: LINDSAY AERIAL PHOTOGRAPHY  
 © THE CAPE MAY COUNTY PLANNING DEPT.



**Legend**

- Cape May County Boundary
- Municipal Boundaries
- NJDEP Inundation Risk Zone - 5ft Above MHHW

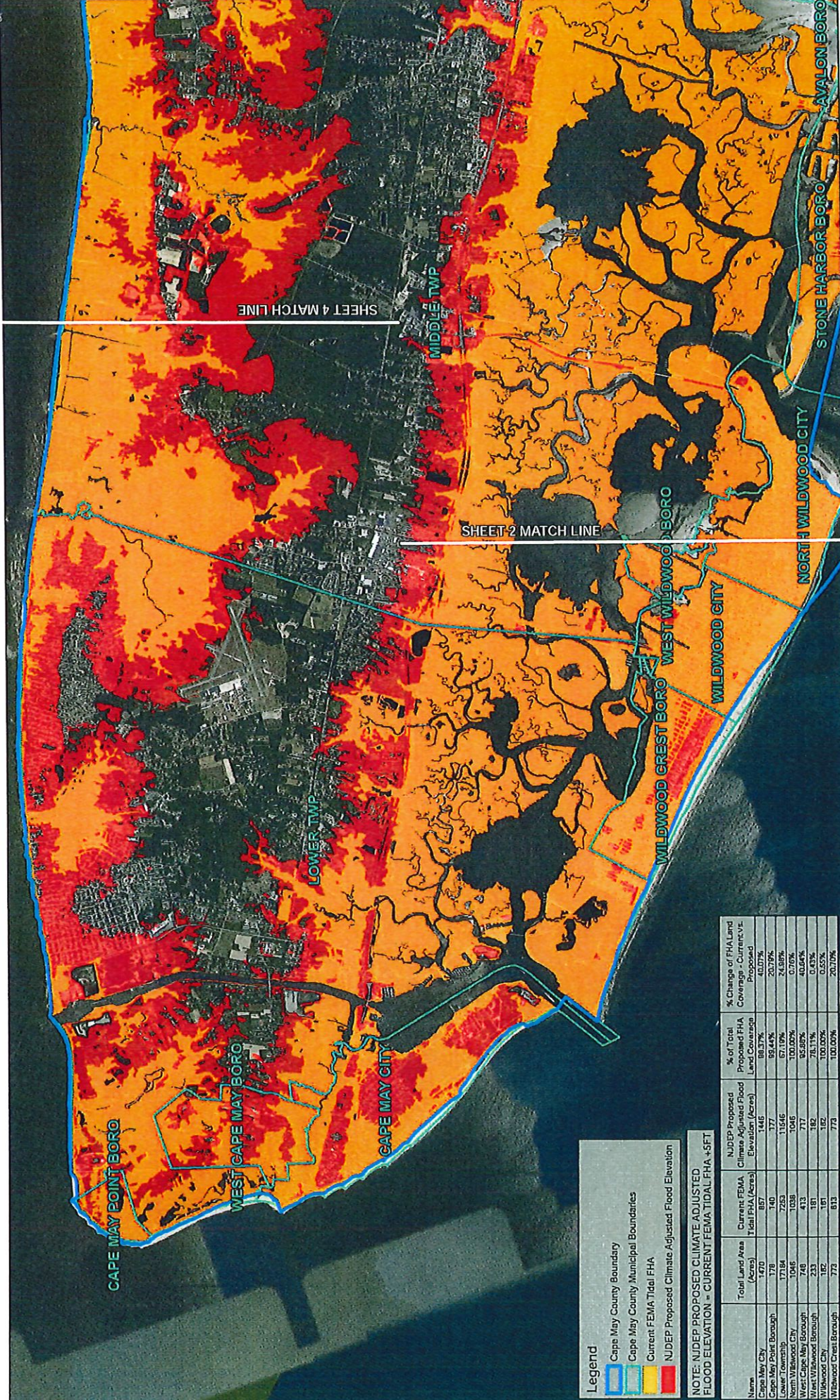
Name	Total Land Area (Acres)	Inundated Area (Acres)	% Inundated
Cape May City	1470	621	42.24%
Cape May Point Borough	178	113	63.48%
Lower Township	17184	6937	40.37%
North Wildwood City	1046	816	78.01%
West Cape May Borough	748	408	54.55%
West Wildwood Borough	182	178	97.80%
Wildwood City	904	712	78.76%
Wildwood Crest Borough	773	338	43.73%

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DATE:	6.13.2014
DRAWN BY:	
CHECKED BY:	
PROJECT #:	201156

CAPE MAY COUNTY  
 NJDEP PROPOSED CLIMATE ADJUSTED  
 FLOOD ELEVATION LAND COVER ANALYSIS  
 CAPE MAY COUNTY, NEW JERSEY



**Legend**

- Cape May County Boundary
- Cape May County Municipal Boundaries
- Current FEMA Tidal FHA
- NJDEP Proposed Climate Adjusted Flood Elevation

NOTE: NJDEP PROPOSED CLIMATE ADJUSTED FLOOD ELEVATION = CURRENT FEMA TIDAL FHA +5FT

Name	Total Land Area (Acres)	Current FEMA Tidal FHA (Acres)	NJDEP Proposed Climate Adjusted Flood Elevation (Acres)	% of Total Proposed FHA Land Coverage	% Change of FHA Land Coverage - Current v/s Proposed
Cape May City	1470	857	1466	99.37%	40.07%
Cape May Point Borough	178	740	1177	57.45%	54.55%
South Wildwood City	1046	1083	1046	100.00%	0.70%
West Cape May Borough	245	413	9289%	40.64%	40.64%
Wildwood City	182	181	182	100.00%	0.43%
Wildwood Crest Borough	773	813	773	100.00%	207.0%

FILED: 2014 JUN 13 PM 2:05 BY: JESSICA L. FLEMING, COUNTY CLERK