

County of Atlantic, New Jersey



Resolution No.: 541

Approved as to Form and Legality

Submitted By:

N. Lynne Hughes
N. Lynne Hughes, County Counsel

Gerald Del Rosso
Gerald Del Rosso, County Administrator

RE: 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, Atlantic County opposes the coastal rules proposed by the State of New Jersey. These rules will impact the availability of affordable housing, result in environmental equity issues, deter economic development, impose an unnecessary layer of State regulation, potentially require New Jersey homeowners to obtain flood insurance; and have other harmful impacts on the residents and businesses in New Jersey; and

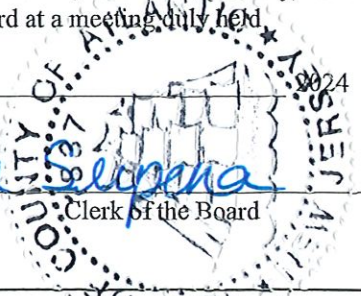
WHEREAS, Atlantic County acknowledges that climate change and sea level rise are a documented risk to the coastal zone of New Jersey and its barrier island communities, requiring a thoughtful and well-reasoned response from all levels of government; and

WHEREAS, Atlantic County 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 County critical infrastructure and building projects, while also providing necessary support to our local communities in the approach, duration, and wake of major coastal storms through our County Office of Emergency Management and Public Safety Departments; and

I, Tara Silipena, Clerk of the Board of County Commissioners of the County of Atlantic, State of New Jersey, do hereby certify that the foregoing is a correct and true copy of a resolution adopted by the Board at a meeting duly held

on the 15 day of October

Signed Tara Silipena
Clerk of the Board



RECORD OF VOTE															
COMMISSIONER	MOVED	SECOND	YES	NO	ABS	REC	AB	COMMISSIONER	MOVED	SECOND	YES	NO	ABS	REC	AB
BALLES			✓					GATTO	✓		✓				
BERTINO			✓					PARKER		✓	✓				
BYRNES			✓					RISLEY			✓				
COURSEY							✓	KERN, Chairwoman			✓				
DASE							✓								
ABS - Abstain				REC - Recuse				AB - Absent							



WHEREAS, Atlantic County municipalities are aggressive leaders in resiliency. The Municipalities are actively involved in the Community Rating System to reduce flood damage. They continually work with the Army Corps of Engineers and FEMA to secure substantial funding to build sea walls, bulkheads, living shorelines, beach replenishment and other resiliency improvements. Municipalities all know that resiliency is an important issue, and they are focused on addressing this issue and improving the quality of life in our County; and

WHEREAS, initiated through Governor Murphy's Executive Order 100, the New Jersey Department of Environmental Protection (NJDEP) has produced a 1,044-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, these rules establish expansive inundation risk zones that the State is claiming will be under water in 80 years. Not only would development there, including redevelopment expansions, and substantial reconstructions, be subject to elevation (six foot above base flood elevation), more stringent building requirements, alternatives analysis, and deed notices, but they would be subject to a 3% impervious cover standard for the site in most communities. Impervious cover includes the building, parking, driveways, and sidewalks. The imposition of these stringent limitations, especially the 3% impervious cover standard, effectively makes the IRZs "no build" zones. Cumulatively, along with other requirements on infrastructure, these rules will have the effect of requiring, or at least driving a retreat; and

WHEREAS, the end of Public Comment Period is November 3, 2024. NJDEP commencement of its review and evaluation of public comments, including preparation of responses to all public comments occurs thereafter; and

WHEREAS, anticipated filing of Adoption documents with the Office of Administrative Law is Spring/Summer of 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

A handwritten signature in blue ink that reads "Lana Silipena".

Clerk of the Board



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 Atlantic County where we have greater than \$46.2 billion in net ratables, and greater than \$8 billion in annual tourism spending according to the NJ Division of Tourism with tourism being the largest industry in Atlantic County; 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 Atlantic 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 may also result in increased design and construction costs of County transportation infrastructure projects due to the implementation of the rules as currently proposed since they would require additional analysis and design considerations regarding flood elevations; 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 Atlantic County by imposing more restrictive building standards accompanied by engineering assessments and alternatives analyses within 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

Laura Sulejerna

Clerk of the Board



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 reexamine their master plans and developed regulations every 6 to 10 years with much shorter planning time horizons than the approximate 80-year time horizon used for sea level rise in the proposed rules. Atlantic County strongly recommends this more measured and incremental approach for rules tied so closely to sea level rise projections; and

WHEREAS, Atlantic County, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis and in 2020 and 2021, Atlantic County had the highest foreclosure rate in the United States; and

WHEREAS the NJDEP's proposed expansion of flood hazard areas limits the County's 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, it has been noted that a possible contributing factor for the delay of the approval of the Preliminary State Development and Redevelopment Plan (State Plan) has been the incompatibility of the State Plan with the NJPACT/REAL rules and the goals and objectives of the State Plan; and

WHEREAS, the State sanctioned cross-acceptance process aspires to achieve consistency and compatibility among all levels of government from the State, State Agencies, regional entities, counties, and municipal governments with regards to the goals and objectives of the State Plan; and

Lara Silepene

Clerk of the Board



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, Atlantic 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, Atlantic County believes that a more gradual and balanced approach is necessary to target incremental adjustments over time to mitigate the potential negative impacts that these radical rules will have on the fluvial communities with New Jersey and Atlantic County especially those along the Egg Harbor, Mullica and Tuckahoe Rivers; 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, for the reasons outlined above, Atlantic County through consultation with the Lomax Consulting Group has produced a Memorandum and analysis on the regulatory implications resulting from the proposed NJPACT/REAL rules and the potential impacts they may have on the County and Municipalities therein, which is attached hereto this Resolution as Exhibit "A";

Laura Silveira

Clerk of the Board



NOW, THEREFORE, BE IT RESOLVED, that the Atlantic County Board of County Commissioners rejects the coastal rules proposed by the State of New Jersey and joins Senator Vincent J. Polistina in his request to withdraw these proposed regulations and to work with the Legislature and FEMA, the Army Corps, and our counties and local communities to come up with a comprehensive strategy with reasonable regulation and funding to assist homeowners and businesses with the new rules. The Atlantic County Board of Commissioners also strongly recommends the following:

1. Atlantic County 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. Atlantic County requests that the State of New Jersey engage the Legislature and enact these rules through the typical legislative process, to give the people of New Jersey a voice, rather than through an Executive Order with limited public engagement.
3. Atlantic County requests that the regulations be based on shorter time horizons that are adjusted over time to reflect actual sea level rise and more appropriate resiliency measures, rather than the austere resiliency measures based on an 80-year projection with a 17% probability of occurring.
4. Atlantic County 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 transportation infrastructure resiliency projects which may require additional funding due to increased regulations driving additional analysis, design, permitting and constructions costs.
5. Atlantic County 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 before any Rules are adopted, so that communities and residents can clearly understand how these regulations will impact their areas and properties.
6. Atlantic County 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 County's official comments to the NJDEP's proposed NJPACT /REAL rules.

Laura Silepene

Clerk of the Board



BE IT FURTHER RESOLVED that the Board of County Commissioners of the County of Atlantic 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 James J. Kennedy, the Office of Legislative District 2: Senator Vincent J. Polistina, Assemblywoman Claire Swift and Assemblyman Donald A. Guardian, the New Jersey Association of Counties (NJAC), New Jersey Business and Industry Association (NJBIA), governing bodies of Cape May County, Ocean County, Monmouth County, and Cumberland County, and the New Jersey League of Municipalities (NJLM) to convey Atlantic County's concerns and recommendations.

STATEMENT

This Resolution urges 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.

ADOPTED: 10-15-24
COUNTY OF ATLANTIC.

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Laura Selipena

Clerk of the Board