

**CITY OF BRIGANTINE
RESOLUTION 2024-166**

**RESOLUTION OPPOSING THE PROPOSED “PROTECTING AGAINST
CLIMATE THREAT (PACT)/RESILIENT ENVIRONMENTS AND LANDSCAPE
(REAL)” RULES**

WHEREAS, the City of Brigantine 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, the City of Brigantine 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, the City of Brigantine 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 the necessary support to our local communities in the approach, duration, and wake of major coastal storms through our Office of Emergency Management and Public Safety Departments; 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, these rules establish expansive inundation risk zones that the State is claiming will be under water in 75 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, 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 Atlantic County where we have greater than \$30 billion in net ratables and greater than \$8 billion in annual tourism spending according to the New Jersey Division of Tourism. Tourism is 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 in (name of municipality), throughout Atlantic County, and 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 six feet freeboard, 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 the City of Brigantine 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 regulations are based Science and Technical Advisory Panel Report (2019 STAP 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, since the 2019 STAP Report several key studies on sea level rise were issued as was the International Panel on Climate Change (IPCC) Assessment that addressed sea level rise. Professor Bob Kopp, the primary author of the 2019 STAP Report, was an author of one of the more recent studies as well as the IPCC report. The more recent studies do not support the idea of a 5.1 foot sea level rise as being likely; and

WHEREAS, The IPCC and all the newer scientific reports predict that worldwide sea level rise this century will be 0-2 feet; 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 the City of Brigantine strongly recommends a similar time horizon for rules based on sea level rise projections; and

WHEREAS, the City of Brigantine, like a lot of Counties and Municipalities nationwide, are experiencing a housing crisis due in part to the high cost of housing, and these requirement will significantly increase the cost of housing, making it difficult if not impossible to provide affordable housing for the region's workforce; 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 where there is already statutory affordable housing obligations imposed through fair share housing laws, especially as inland development centers are being reduced in size via the State Planning process; and

WHEREAS, the proposed coastal regulations will create an Environmental Justice issue since local residents will be deterred from improving their homes because they will have to elevate 6 feet above BFE which they cannot afford when they improve their homes above 50 percent of its value, hence those in most need of shelter will witness the deterioration of their homes and be forced to relocate; 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, the City of Brigantine urges the State to differ 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, the City of Brigantine 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.

NOW, THEREFORE, BE IT RESOLVED, the City of Brigantine strongly recommends the following:

1. The City of Brigantine 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. The City of Brigantine 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. The City of Brigantine 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. The City of Brigantine 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. In advance of these Rules potentially being voted into law, the City of Brigantine 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. The City of Brigantine 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 2's Senator Vince Polistina, Assemblyman Don Guardian, Assemblywoman Claire Swift; the New Jersey Association of Counties (NJAC); New Jersey Business and Industry Association (NJBIA); and the New Jersey League of Municipalities (NJLM) to convey (name of municipality)'s concerns and recommendations.

7. The City of Brigantine hereby orders copies of this Resolution be submitted as public comment on the NJ Register to serve as the municipality's official comments to the NJDEP's proposed NJPACT/REAL rules.

This is to certify that this is a true and correct copy of a resolution passed by the City Council of the City of Brigantine at their meeting held on October 2, 2024.

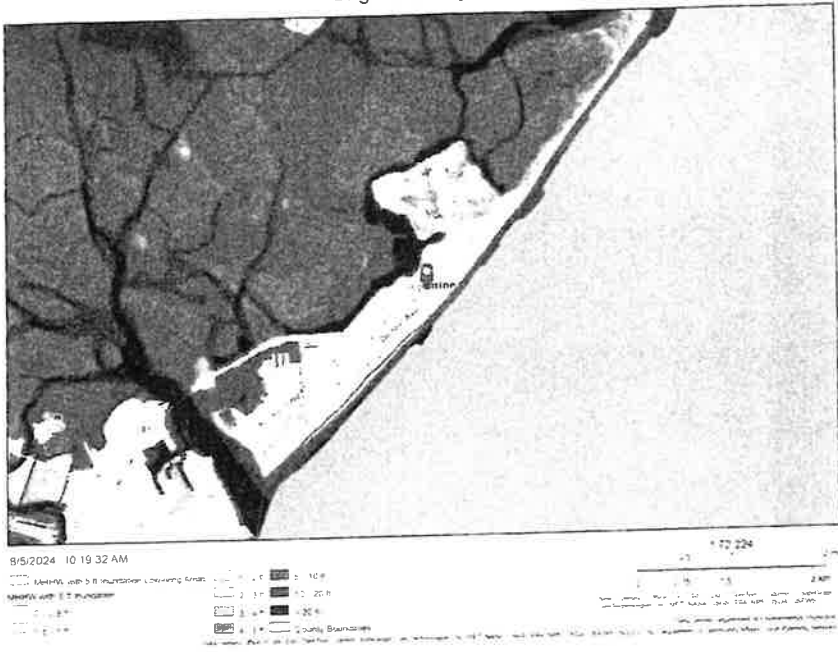
Lynn Sweeney, RMC

Lynn Sweeney, RMC, City Clerk
City of Brigantine

RECORD VOTE OF COUNCIL ON FINAL PASSAGE				
COUNCIL MEMBERS	Y	N	NV	AB
SERA	✓			
RIORDAN ✱	✓			
KANE	✓			
BEW ✱ ✱	✓			
LETTIERI	✓			
HANEY	✓			
DeLUCRY				✓

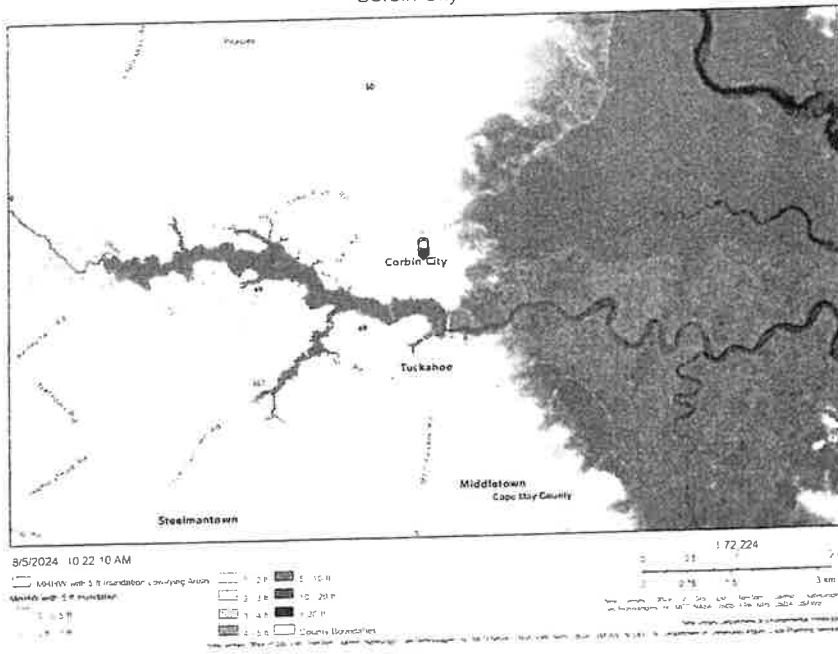
X-INDICATES VOTE NV=NOT VOTING AB=ABSENT

Brigantine City IRZ



Corbin City, Atlantic County

Corbin City IRZ



Egg Harbor City, Atlantic County

[View as Webpage](#)

NJDEP Publishes New Climate Change Rule Proposal

By *Steven M Dalton, Esq. and Michael J. Gross, Esq.*

August 6, 2024

Substantial changes to NJDEP's use Coastal, Flood Hazard, Wetland and Stormwater regulatory programs are coming that will severely impact proposed and existing development. NJDEP published its *Protecting Against Climate Threats (PACT) Resilient Environments and Landscapes (REAL)* rule in the August 5, 2024 New Jersey Register and has up to a year to adopt the proposed amendments.

The proposal is extensive and will implement sweeping regulatory changes across various regulatory permitting programs, affecting new development and redevelopment, and substantial improvements to existing development. The proposal relies on several reports and studies commissioned or prepared by NJDEP, including the NJ Scientific Report on Climate Change (NJ Climate Science Report), the New Jersey Climate Change Alliance Science and Technical Advisory Panel (STAP) "Rising Seas and Changing Coastal Storms" report prepared by Rutgers University, and two rainfall studies in 2021, which predict a less than 17% chance that sea level rise ("SLR") will exceed 5.1 feet by Year 2100, and that the State's precipitation rates and intensity are expected to increase through the Year 2100. DEP is using this very conservative less than 17% chance as the basis for these proposed rules.

NJDEP will establish a regulatory Inundation Risk Zone (IRZ) largely in coastal areas along tidal waters that are predicted to be at risk of daily inundation or standing flood waters of up to 5.1 feet (by Year 2100). The extent of the IRZ is determined by adding 5 feet to the calculated mean higher high water (MHHW) line elevation. Projects in the IRZ involving new residential development, critical buildings and substantial improvements to existing structures will need to meet onerous enhanced risk assessment criteria including an alternatives analysis designed to avoid the risk (a/k/a discourage building). The rule will also establish a new Climate Adjusted Flood Elevation (CAFE) in tidal flood hazard areas, which represents a 5-foot addition to FEMA's 100-year flood elevation based on NJDEP's very conservative SLR predictions.

Numerous other proscriptive measures are proposed. Some of the more noteworthy provisions are listed below.

General

- New burdens will be imposed regarding pre-commencement work notices, including that such notices be made no more than 14 days in advance of the start of work in addition to reporting requirements for completion of work. In our experience, notices similar to these are simply filed and are merely a regulatory burden.

Coastal

- Non-mainland (barrier island) coastal centers will be extinguished and, in many cases, strict new impervious cover limitations (3%) and vegetative preserve/plantings requirements will become applicable. This makes development or redevelopment in most of the barrier islands improbable, if not impossible.
- A 3% cover limit will be applicable even in designated centers for lands identified as a Coastal Environmentally Sensitive Area, even if these areas can be otherwise developed with permits from discrete programs such as wetlands or flood hazard areas.
- Construction continuation rights beyond the permit expiration date in the CAFRA Individual Permit context will be curtailed based on new requirements to justify the continuation based on the reasonable financial investment of the permittee "in proportion to the project as a whole".
- The CAFRA infill exception for a single-family house or duplex in a coastal high hazard area and erosion hazard area will be removed for parcels in the IRZ.

Wetlands

- Limitations and mitigation requirements will be enhanced with respect to wetland buffers and permitting.
- New conditions will be imposed for wetland general permits requiring stormwater compliance for projects that are a major development, in contrast to the current rules which only require stormwater compliance if the wetland and/or buffer impacts are considered major development thresholds.
- The rules will require General Permit applicants to demonstrate "no other practicable configuration" that would avoid or reduce the impacts to wetlands, effectively holding General Permit applicants to standards similar to the alternatives analysis required for an Individual Permit, contrary to the purpose of the General Permit program as a streamlined approval process.
- Wetland buffer averaging plan approvals will impose onerous conditions requiring placement of conservation restrictions on the entire wetland and buffer complex, whether or not a project has only limited impacts and additional future regulated activities would otherwise be allowed under NJDEP's rules, but for the conservation restriction.

Flood Hazard

- Permittees will need to recertify that flood hazard areas remain unchanged if work is not commenced within 180 days after a permit is issued, and the work must involve elements of permanent construction of a habitable structure and not only site clearing/preparation, excavation, roadwork or construction of accessory structures (garages). If flood hazard conditions have changed, the project may need to be revised to address the changed conditions, and NJDEP approval obtained before the approved work may occur.
- A FEMA Letter of Map Revision approval will be required for certain projects involving minimal flood elevation increases before NJDEP will take action on the permit application. This will add a substantial period of time to the review since FEMA is not required to make a decision within a specified time period, unlike DEP which must adhere to the 90-day law time periods for decision making.
- Single-family home subdivisions with more than two units will be held to the same access road elevation requirements currently applicable only to multi-residential and critical buildings, and NJDEP is removing the minimal flexibility currently afforded to redevelopment projects that allows for access roads to be up to a foot below the applicable flood elevation where it is not feasible to elevate. This will make many developments and redevelopments infeasible. There is no clarity on the issue of how far dry access must extend for it to be approvable by DEP.
- New criteria will be imposed for access roads including that they must accommodate two-way traffic of motor vehicles providing access to and from each building for the duration of the flood.
- The current restriction on construction of a single-family home on a lot created after 2007 in a fluvial flood hazard area if there is already an existing habitable building or authorization for same from NJDEP will be extended to multi-residence buildings.
- Critical and multi-residence buildings will be required to grade pedestrian areas outside of the building footprint to 1 foot above CAFE subject to certain non-feasibility conditions.
- Limitations and mitigation requirements will be enhanced with respect to riparian buffers and permitting, including removal of the current exemptions for disturbance in truncated riparian zones and along manmade channels conveying stormwater.
- The land area subject to 150-foot riparian zone buffers associated with threatened or endangered species habitat is being expanded. Activities within 25 of top of bank will be curtailed.
- A permit will be required to conduct horizontal directional drilling below riparian zones (or wetlands), and enhanced permitting requirements will be imposed for solar panels in a flood hazard area.
- A Verification will need to be obtained for projects impacting riparian zones.

Stormwater

- Stormwater requirements will be enhanced including new requirements on redevelopment of 80% TSS removal for stormwater runoff for new and redeveloped motor vehicle surface (increased from 50% for redeveloped impervious surfaces).

The proposed amendments do nothing meaningful to incentivize development opportunities in areas outside of the IRZ or CAFE. The FHA hardship provisions do not provide meaningful opportunities for relief, and in fact, the proposal imposes new conditions making it even less likely that hardship relief may be obtained.

Legacy (previously, grandfathering) provisions remain consistent with current NJDEP rules and depend

largely on securing relevant approvals or the filing of a complete application before the rules become effective. Applications submitted before the effective date and declared technically complete will qualify for legacy status.

Three public hearing dates are scheduled (September 5, 12 and 19, 2024) and comments on the rule proposal must be submitted by November 3, 2024. If you have questions regarding qualification for legacy status or how the forthcoming rules may affect your project, please contact one of the attorneys in our Environmental Department. A courtesy copy of the draft proposal can be found [here](#).

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