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September 27, 2024

NJPACT PROPOSED RULE COMMENTS

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, P.O. Box 402
Trenton, New Jersey 08625-0402

Dear Ms. Abatemarco,

Thank you for the opportunity to submit comments in response to the NJDEP's Protecting Against Climate Threats proposed rules ("NJPACT"). Located on an eighteen-mile-long barrier island, Long Beach Township is acutely aware of the risks posed by and the impacts of climate change. Indeed, the Township is on the proverbial front line of the risks and impacts, and, therefore, has been proactive and aggressive in its approach by addressing stormwater and resilience challenges and protecting and mitigating such risks to the environment, residents, residential and commercial properties, utilities, and infrastructure. As set forth at greater length herein, the Township's knowledge and experience guide our approach to the actual risk probabilities and what is practical, effective, and balanced with the real world effects upon the environment, economy, and residents. Ultimately, the Township contends the facts and law and establish the NJDEP should amend NJPACT in accordance with the comments set forth herein and follow our lead of a common-sense, practical, and measured approach which respects the actual risks, the rights of the people, the economic impact, and the resources required to address these important issues.

I. THE TOWNSHIP'S AGGRESSIVE AND PRACTICAL APPROACH

The Township has aggressively addressed climate change through the preparation of its Resilient LBI Action Plan, which meets the most stringent versions of FEMA flood maps (including freeboard) to account for future climate conditions, natural hazards, and innovative climate mitigation and adaptation strategies. In addition, the wastewater and water treatment infrastructure has been designed to withstand a 500-year flood event.¹ Moreover, the Township has hosted 7 engagement workshops regarding the Resilient LBI Action Plan, both in person and virtually. The Township undertook such necessary and common-sense planning exercises because we are aware sea levels are rising and storms

¹ Resilient NJ – Long Beach Island. New Jersey Department of Environmental Protection. April 15, 2025.
<https://storymaps.arcgis.com/stories/8270c8d6d42f4783b0a4fcf530a866a3>

are worsening; we do not deny the reality. However, crafting policy based on the most unlikely climate scenario, as NJPACT does, defies established climate science and places unnecessary burdens on residents, businesses, and municipalities.

II. UNFUNDED MANDATE WITH EXTREME ECONOMIC CONSEQUENCES

The costs of remaining resilient in highly dynamic coastal environments exposed to severe weather challenges are significant even without the added and extraordinary unfunded mandate NJPACT would create. Without adequate funding assistance, few of the necessary improvements to combat climate change are possible for the average resident. Mandating new rules and requirements without financial assistance for implementation will spell economic disaster for seasonal economies that rely on tourism and recreation. The accelerated approach will result in unintended consequences for the Township's economy, real estate, and related cascading effects on tourism and recreation. Accordingly, the NJDEP must amend NJPACT to a more gradual approach for implementing regulations to adapt to climate change.

III. FOLLOWING ESTABLISHED CLIMATE SCIENCE

NJPACT begins with a climate change introduction and acknowledgement that leading universities have determined sea levels are rising and annual precipitation and extreme storm events are increasing. Again, the Township is aware of the existential threat these issues pose to all Jersey Shore communities, as coastal flooding is an intrinsic quality of barrier island communities, but it should not be conflated with fear and unlikely statistics to promote unsound policy. The NJDEP's use of a sea level rise metric that has only a 17% chance of occurring 76 years from now is both a scare tactic and unsound policy. We are aware that sea levels are rising and that streets are flooding in greater frequency, but this issue must be addressed incrementally through adaptive management rather than an across-the-board overhaul which is unaffordable.

IV. RULEMAKING ISSUES

The use of an uncertain sea level rise metric projected 76 years from now is unwisely deemed as the "established climate science," which is then used to craft 8 principles of NJPACT. Several of those principles are of special concern to the Township, including the following: (A) Increased Protection Against Flood Inundation; (B) Protecting Critical Facilities and Infrastructure; (C) Increased Protection of Land and Water Resources; and (D) Encouraging Renewable Energy.

A. Increased Protection Against Flood Inundation

The establishment of an Inundation Risk Zone ("IRZ") is a forward-looking approach; however, it is overly prescriptive and far too extreme for the foreseeable flood issues facing coastal communities. The Township is supportive of policies which provide resilience against hazardous events that have reasonable statistical likelihood of occurring. From the Township's point of view, there must be a sound basis for mandating requirements to avoid hazards that may occur during the lifetime of the structures being protected.

According to a 2023 study by the Massachusetts Institute of Technology, the design life of most residential homes is 50-63 years.² However, according to local builders and real estate professionals, homes along the Jersey Shore are often replaced more frequently, roughly every 25-30 years or less. That means homes built today to the NJPACT standard would be overbuilt by 25 years or more beyond

² A new exhibition at MIT Wiesner Student Art Gallery explores the practicalities and play of architectural aging, Matilda Bathurst.
<https://arts.mit.edu/mit-architectural-longevity-exhibition/#carousel-example-generic>

the actual expected risks they will face. This imposes unnecessary costs on homeowners which could be mitigated simply by selecting a lower value for the IRZ and updating the NJPACT rules again in 2049 (25 years) or 2074 (50 years).

Most property owners hold flood insurance policies through the National Flood Insurance Program (NFIP) due to the prohibitive cost of flood insurance in the private market. The NFIP's Community Rating System is a voluntary incentive program that encourages communities to implement floodplain management activities that exceed the minimum NFIP requirements. This program rewards communities with discounts on flood insurance premiums, ranging from 5% to 45%, based on their level of floodplain management activities. NJPACT specifically states the NJDEP's goal of "aligning the State's floodplain management efforts with the NFIP's minimum standards." However, exceeding these minimum standards to adhere to NJPACT provides no reward to policyholders. The requirement to raise homes 5 feet is an unfunded mandate that will have cascading effects on Jersey Shore economies by restricting the ability to make timely and necessary improvements, modifications, or repairs to homes and buildings.

The rule is as restrictive for current owners as it is prohibitive for future owners. Current owners may never be able to afford to implement NJPACT to their existing homes or future renovations. Future owners may find that purchasing an existing property is prohibitively expensive due to the necessary renovations to remain compliant under the proposed rule. Both of these scenarios produce an economic situation where ordinary hardworking homeowners on the Jersey Shore can no longer afford to remain where they are, ultimately resulting in a retreat from the coast by middle class populations and an expansion of ultra-wealthy homeowners with extraordinary disposable income they can use to adapt their homes to NJDEP's costly and unnecessary proposed rule. This transition of wealth is facilitated by this Department's proposed rule.

A reduced IRZ that is proportionate to the statistical likelihood of weather events occurring within the life of the structure is required. The current proposal is far too extreme unless the NJDEP provides communities or individual homeowners adequate funding to undertake improvements for the well-intentioned purpose of flood protection. If property owners are going to exceed national flood standards, they must be rewarded incrementally as the CRS provides for, rather than punished for lacking capital to implement an unfunded mandate.

B. Protecting Critical Facilities and Infrastructure

The NJDEP believes the rulemaking proposes more stringent design and construction standards that are "commensurate with the level of anticipated risk." To reiterate, however, the level of anticipated risk described by the Department is a 17% chance of sea levels rising 5 feet 76 years from now. Regardless of the accuracy of this statistic, if the focus is to ensure the resilience of public facilities and infrastructure, it is appropriate to expend public funds to improve services and connectivity through raising roads and protecting critical public utilities and without requiring municipalities to foot the entire bill. Leaving municipalities solely responsible for funding such upgrades could lead to inconsistent levels of protection across regions, disproportionately impacting smaller communities with limited resources. A more balanced approach, where the State shares in the financial responsibility, would ensure all communities, regardless of size or wealth, are protected from the anticipated risks posed by sea level rise and other climate-related challenges. This would also promote uniformity in the resilience of critical infrastructure across the State.

C. Increased Protection of Land and Water Resources

The State spends approximately \$50 million annually on beach replenishment³, while the coastal communities contribute \$16 billion to the State's economy⁴ and generate around \$5.2 billion in state and local taxes annually.⁶ The proposed rule claims that more intense coastal storms are eroding the State's beaches and dunes, putting coastal communities at increased risk and creating "an economic burden upon government entities to continually replenish and restore these invaluable assets." However, based on the State's own economic data, it is simply wrong to claim beach replenishment imposes an economic burden on the State. Coastal tourism and recreation, which are entirely dependent upon the beaches, generate substantial tax and economic revenue. Visitor activity also supports 501,014 jobs (or 1 in 12 jobs in NJ), accounting for 8.3% of all jobs in the State. Given these facts, it is entirely inaccurate for the State to claim that beach nourishment is hindering the economy.

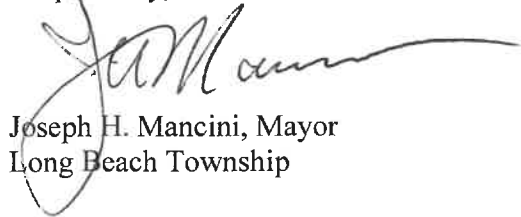
D. Encouraging Renewable Energy

The Township has long expressed concerns regarding the State's irresponsible approach to offshore wind development. While the Township fully supports renewable energy initiatives, it favors proposals that respect the historic, economic, environmental, social, and cultural importance of maintaining visually appealing beaches and unobstructed horizons. We oppose projects that harm the natural environment, impose significant visual impacts, or increase costs for residents without providing a meaningful boost in energy production or reliability. Moreover, the Township is troubled by the State's decision to overlook disturbances to shellfish and marine fish habitats caused by offshore wind projects in exchange for financial compensation, referred to as "mitigation standards." The NJDEP appears to tolerate significant environmental impacts from renewable energy projects as long as sufficient monetary compensation is provided, raising concerns about the prioritization of economic considerations over environmental preservation.

V. CONCLUSION

The Township supports reasonable climate adaptation policies and requests that the NJDEP take a more measured approach in implementing NJPACT. The Township shares concerns with other communities about the impact on local economies and residents who may face significant challenges to meet even basic compliance. While we acknowledge the importance of climate adaptation, we urge the Governor and the State to adopt a more gradual, science-based, and common-sense approach to NJPACT.

Respectfully,



Joseph H. Mancini, Mayor
Long Beach Township

³ More Sand, Please! A Record-Setting \$50M Will go to Keeping Jersey Shore Beaches Sandy, <https://www.nj.com/news/2023/07/more-sand-please-a-record-setting-50m-will-go-to-keeping-jersey-shore-beaches-sandy.html#:~:text=Although%20New%20Jersey%20has%20poured.Click%20here>

⁴ Ocean Resources Management in New Jersey <https://www.nj.gov/dep/cmp/fact3.pdf>