

**BOARD OF COUNTY COMMISSIONERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION**

No. 421-24

**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, Cape May 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 thoughtful and well-reasoned response from all levels of government; and

WHEREAS, Cape May 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

WHEREAS, in addition to the County's 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 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

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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 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 Cape May 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

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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 County 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 Cape May County 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 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, 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

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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, Cape May County 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, for the reasons outline above, Cape May County through consultation with the Lomaz 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 Cape May County Board of County Commissioners authorizes the following:

1. Cape May 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. Cape May County 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. Cape May County requests that the 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.
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4. Cape May 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 resiliency projects that will inevitably incur greater costs due to the higher regulatory standards that includes significantly higher elevation requirements for new roads.
5. Cape May 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. Cape May 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.

BE IT FURTHER RESOLVED that the Board of County Commissioners of the County of Cape May 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 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), governing bodies of Atlantic County, Ocean County, Monmouth County, and Cumberland County, and the New Jersey League of Municipalities (NJLM) to convey Cape May 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.

STATE OF NEW JERSEY} ss.:
COUNTY OF CAPE MAY}

I, Kevin Lare, Clerk of the Board of County Commissioners of the County of Cape May, 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 _____ 13th _____ day of

_____ August _____ 2024.

Signed,  Clerk of the Board /dd

RECORD OF VOTE						
Commissioners	Ayes	Nays	Abstain	Absent	Moved	Second
Mr. Barr	✓					
Mr. Bulakowski	✓					✓
Ms. Collette	✓					
Mr. Morey	✓				✓	
Mr. Desiderio	✓					

√ - Indicates Vote Moved-Resolution Offered Second-Resolution Seconded