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**Comments on
Resilient Environments and Landscapes (REAL)
Rule Proposal
Submitted to the New Jersey Department of
Environmental Protection (NJDEP)
DEP Docket Number: 05-24-05**

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Introduction

The issuance of Resilient Environments and Landscapes (REAL) signifies an essential step toward enacting a robust climate change adaptation strategy in New Jersey. New Jersey Future (NJF) appreciates the phased approach and prioritization of crucial rulemaking in the NJ PACT process. Thank you to the New Jersey Department of Environmental Protection (NJDEP or “The Department”) for proposing this phase of New Jersey Protecting Against Climate Threats (NJ PACT). As a follow-up to the Inland Flood Protection (IFP) Rule issued last year, REAL enacts a series of changes to state rules and regulations to address the vulnerabilities of our coastal areas, further strengthen Stormwater Management rules, and increase the resilience of New Jersey’s wetlands.

Founded in 1987, NJF is a nonprofit, nonpartisan organization that promotes sensible growth, redevelopment, and infrastructure investments to foster vibrant cities and towns; protect natural lands and waterways; enhance transportation choices; provide access to safe, affordable, and aging-friendly neighborhoods; and fuel a strong economy. NJF does this through original research, innovative policy development, coalition-building, advocacy, and hands-on strategic assistance. Embracing differences and advancing fairness is central to NJF’s mission and operations. NJF is firmly committed to pursuing greater justice, equity, diversity, and inclusion through its programs, internal operations, and external communications.

NJF generally supports the REAL proposal and the updates to New Jersey’s land use regulations to include the latest climate science to ensure that existing assets and new investments are well-suited to manage current and future levels of rainfall, increased flooding, storm surge, and future climate-related hazards. Addressing the vulnerabilities of the state’s coastal areas, where increased rainfall, sea level rise, and storm surge converge, is imperative. Investing in safeguarding new and rebuilt assets will help ensure that future rebuilding costs can be avoided, but addressing climate hazards will also improve the health and safety of New Jerseyans.

A [recent study](#) conducted by the Federal Reserve shows that over one million New Jerseyans are currently at risk of flooding. Additionally, according to a 2018 Union of Concerned Scientists study, more than 62,000 New Jersey homes, valued at \$26.8 billion, could be underwater by 2045, displacing nearly 80,000 people. In their 2020 [study](#), Climate Central and its partners estimate that New Jersey currently has 1,640 affordable housing units subject to coastal flooding at least once a year. Affordable housing residents and low-income households are less able to recover from flooding and property loss associated with rising sea levels and have fewer resources to relocate. These numbers demonstrate that New Jersey needs innovative planning and policymaking to protect residents and infrastructure, especially residents disproportionately impacted by flooding and other climate-related hazards.

NJDEP's REAL proposal includes rulemaking to address development in vulnerable areas to help mitigate future impacts of flooding. While costs for building in vulnerable areas could increase, investing in safeguarding residents and property is essential. Findings from a [new economic study](#) by Allstate, the US Chamber of Commerce, and the US Chamber of Commerce Foundation demonstrate that "every \$1 spent on climate resilience and preparedness saves communities \$13 in damages, cleanup costs, and economic impact". The preparedness REAL outlines for future development and investment in infrastructure projects will help ensure New Jersey is investing in a climate-resilient future.

REAL primarily changes the Flood Hazard Area Control Act Rules (Coastal), Coastal Zone Management Rules, Stormwater Management Rules, and Freshwater Wetlands Protection Act Rules. While other rule areas that cross-reference these regulations will be revised through REAL, our comments reflect changes to these four primary rule areas. We appreciate the time the NJDEP has invested in providing information and soliciting input on the proposed changes. We especially appreciate issuing a courtesy copy of the rule change to allow for a thorough review of these significant changes to New Jersey's land use regulations.

Recommendations

While we generally support the rule proposal, we have closely reviewed the proposed language to understand better whether its implementation will result in equitable, resilient infrastructure improvements that include nature-based solutions. We feel several areas of the proposal could be improved to achieve such outcomes, and additional efforts could be explored by state agencies and other levels of government to ensure effective implementation. We have the following comments and recommendations for the rule areas impacted by REAL.

Flood Hazard Area Control Act (FHACA) Rules (N.J.A.C. 7:13)

Climate Adjusted Flood Elevation (CAFE)

REAL expands the area considered flood-prone to account for future sea level rise, changing how we build or rebuild infrastructure in vulnerable areas. New [flood hazard mapping](#) also provides residents, municipalities, builders, and advocates with a more holistic understanding of flood risk. The proposed Climate Adjusted Flood Elevation (CAFE) accounts for a five-foot rise in sea level by the year 2100. New or reconstructed buildings, roadways, and other

infrastructure will now be raised five feet above base flood elevation, plus an additional foot of freeboard if in a flood hazard area. For example, the first floor of new homes must be six feet higher than previous regulations. There will be new “dry access” requirements to ensure that new critical buildings, multi-family buildings, or two or more single-family homes or duplexes are served by at least one existing or proposed roadway for two-way traffic constructed above the CAFE to provide access to and from buildings for the duration of a flood unless certain conditions are met.

- Raising homes is now second nature in our shore communities. Many homeowners who rebuilt their homes after Hurricane Sandy in 2012 raised their homes higher than necessary because federal and state funding supported rebuilding. There were also statewide maximum building height exceptions, where a building could include additional height in feet to raise its first floor out of the flood zone without a variance from local height requirements.
 - Height exceptions were temporary, but height may become an issue after REAL is adopted; therefore, the state should revisit this exception and reinstitute a statewide height exception rather than rely on local zoning changes.
- While raising homes is expected in shore communities of New Jersey, there will likely be implementation issues in our coastal cities. The building typologies in cities differ from “Jersey Shore” communities. There are more buildings with ground-floor retail and active streetscapes with bike and pedestrian infrastructure. Raising the first floor in mixed-use and multi-family buildings may negatively impact pedestrian safety, local businesses, and other conditions unique to densely populated communities. If parking is permitted below the CAFE, projects may include unnecessary parking, even in cities with ample mass transit access. Dry access requirements in cities may also be challenging for the Department to enforce since those roadway networks are more complex and are highly built out with buildings and above- and below-grade infrastructure. To address these issues, a statewide height exception, local zoning guidance, and coordination with state agencies and local governments should commence pre- and post-adoption of REAL.
 - The Department should clarify whether parking is permitted within the CAFE. The rule proposal contains contradictory sections.
 - In partnership with other state agencies, including the New Jersey Department of Community Affairs (NJDCA), the New Jersey Department of Transportation (NJDOT), and NJDEP should issue design guidelines for municipalities and counties to guide the design of buildings and roadways in the CAFE. Guidance should include clear graphics showing preferred methods for achieving CAFE and differentiating between CAFE and flood elevation. For different types of structures and projects, it may be essential to have the flexibility to achieve CAFE through setbacks wet/dry floodproofing, or a combination of these methods, as well as elevation. The guidelines should address ground-floor retail, historic preservation, differences in building typologies and parking design in coastal cities and “shore communities,” and dry access.
 - To support local implementation, design guidelines should include recommended zoning changes, including a height exception for buildings in the CAFE. In

addition to design guidelines, state agencies should offer technical assistance for local planning and policy updates.

- The Department should provide guidelines on dry access as part of future design guidelines or a separate but complementary effort. These guidelines should include the extent and responsibilities of state, county, and local roadways. If no existing road provides dry access, there must be a process to identify the responsible entity.
 - Municipalities should be required to include roadways vulnerable to flooding in their Master Plan, specifically the climate change-related hazard vulnerability assessments (CCRHVAs), in the context of REAL to ensure its contemplation when making future zoning changes and considering areas in need of redevelopment. This is an opportunity to coordinate local planning, specifically the CCRHVA, and the purpose of the REAL rules. Integrating dry access into local long-range planning and implementation would help ensure local context and guidance from local officials is included in NJDEP's permitting process.
- There are areas across the state that require redevelopment. Where infrastructure, including roadway networks and a mass transit system, is established, meeting dry access and other requirements will be complex. While we support climate-safe redevelopment, REAL should not disincentivize redevelopment, especially in communities that would significantly benefit from economic development. Design guidelines, clarifying the dry access requirement, and technical assistance would help guide future redevelopment efforts in communities grappling with climate hazards.
- While placing affordable housing in vulnerable areas is not a climate-safe approach to ensuring New Jersey residents have affordable places to live, it is also essential that REAL does not reduce municipalities' ability to meet affordable housing obligations. The proposed CAFE maps demonstrate that fewer buildable locations are safe from current and future flooding. Pre- and post-adoption of REAL must include interagency coordination and guidance for local and county governments on the relationship between REAL and fair share housing planning requirements to ensure that REAL does not preclude affordable housing development.
 - The NJDEP and NJDCA should work together to provide municipalities with the clarity necessary to propose Housing Elements and accompanying ordinance changes on schedule by June 2025 so the process can move smoothly and expeditiously.
 - The State Plan is likely the appropriate conduit for resilient and affordable housing planning. The siting of future housing, especially affordable housing to meet fair share obligations, will likely be impacted. As the State Planning Commission (SPC) undergoes the forthcoming cross-acceptance process for the State Plan, integrating the principle of climate-resilient housing should be a priority.
 - We need to get creative with redeveloping non-flood-prone areas to meet needs like affordable housing. The State Plan should identify areas that remain undeveloped or targeted for redevelopment as reflected by long-standing center designations and supporting local zoning standards. Municipalities should be required to identify areas in need of

redevelopment that are safe from flooding to meet their affordable housing obligations. An updated and well-informed State Plan, housing planning guidance, funding, and technical assistance would help municipalities meet affordable housing requirements while supporting economic development. Led by the Office of Planning Advocacy (OPA) or the State Planning Commission (SPC), a task force should be assembled to guide the process.

- The REAL rules will impact drinking water and wastewater systems in the CAFE. If a drinking water or wastewater system needs to make significant site improvements, it will need to elevate or relocate its sites. The rules do not account for fortification, and existing sites are fortified to protect their systems from flooding. However, if these water systems need to do anything significant to their sites, the infrastructure will need to be elevated.
 - NJDEP should build upon its existing guidance for water systems, [Building Resilient Water Infrastructure: Climate Change Resilience Guidance](#), by requiring the consideration of alternatives to address climate resilience considerations for current and future water infrastructure needs, including more intense precipitation and sea level rise.
 - To incentivize climate-resilient water infrastructure, NJDEP could consider the following as part of the Department's [Water Infrastructure Investment Plan](#):
 - Adding points for climate resilience to the priority system ranking methodology used to distribute the Clean Water and Drinking Water State Revolving Funds.
 - Reducing interest rates for nature-based projects that result in direct resilience outcomes in overburdened communities.
 - Dedicating technical assistance in developing climate-resilient and nature-based infrastructure solutions in overburdened communities, ideally in collaboration with interested community and nonprofit organizations.
 - A dedicated funding source for climate-resilient water infrastructure is desperately needed to invest in planning and project implementation that will prevent costly damage from extreme weather and flooding events should be established.
 - As the state identifies locations in New Jersey to fortify and protect or gradually retreat, difficult decisions about the appropriate locations for water infrastructure will need to be considered. NJDEP should develop guidance for water systems faced with decisions on whether to fortify or retreat, ideally based upon an updated State Development and Redevelopment Plan.

Inundation Risk Zone (IRZ)

Current climate projections indicate as much as 5.1 feet of sea level rise (SLR) by 2100. NJDEP states that assuming moderate emissions, there is a 17% probability that SLR will exceed 5.1 feet by 2100. The Inundation Risk Zone (IRZ) is the portion of a tidal flood hazard area determined to be at significant risk for future permanent or daily inundation. It represents a high

level of risk for existing or proposed development. The standards for new or improved residential buildings, critical buildings, and critical infrastructure within the IRZ are proposed to account for the increased flood risk that people and property are exposed to due to expected SLR and more intense storm events.

For development in the IRZ, the rules would require inundation risk assessments, which include a narrative response to the risk of future flooding, an on-site alternatives analysis to examine onsite design alternatives to avoid or minimize risks, and a risk acknowledgment, which includes a narrative disclosure based on the completed risk assessment.

- The Department should clarify the level of review and analysis that will be applied to regulated activities in the IRZ and the extent to which this process extends the application review period. For example, the Department should clarify the extent to which onsite alternatives are required and the protocol if other options are determined infeasible by the permittee.
- The Department should guide the IRZ submission requirements. For example, a template and checklist for the required assessments should be available.
- Municipalities should be required to include the IRZ in their Master Plan, especially the climate change-related hazard vulnerability assessments (CCRHVAs), to ensure its contemplation when making future zoning changes and considering areas in need of redevelopment. The IRZ should be included in the Land Use and Transportation elements of the Master Plan, and a municipal or county review process for projects in these risk zones should be developed. This is an opportunity to coordinate local planning, specifically the CCRHVA, and the purpose of the REAL rules. Integrating the IRZ and other components of REAL into local long-range planning and implementation would help ensure local context and guidance from local officials is included in NJDEP's permitting process.

Public Transportation Entity Exceptions

Through the IFP rule, the Department proposed a new term for “public transportation entity,” distinguishing municipalities, counties, and state and federal highway agencies from other public entities. The IFP rule and REAL include exceptions for public transportation entities. Exempting public roadways from the new requirements does not address the risk currently facing our roadways and accompanying infrastructure. This exception contradicts the purpose of this regulatory change effort and will leave miles of roadway and users vulnerable to flooding. Raising homes and leaving roadways at risk does not ensure the safety of New Jerseyans.

- We recommend that the definition be narrowed to federal and state transportation entities.
- REAL places the burden of roadway improvements on the private sector, whereas the state should address public transportation infrastructure. As recent storms have demonstrated, state and federal investment in public transportation infrastructure (e.g., roads, bridges, railroads, etc.) is where substantial improvements are needed. NJDOT should issue a plan for upgrading roadways and other transportation infrastructure most vulnerable to current and future flooding.

- This exception demonstrates a need for more coordination between state agencies like NJDEP and NJDOT. State agencies must engage in complementary climate resilience planning and project implementation. For example, the project design should include raising infrastructure and providing flood protection before investing in a new transit line or platform.
 - In 2020, Rutgers was developing an [NJDOT Flood Risk Visualization Tool](#). Once complete, the tool would incorporate the data necessary for NJDOT personnel to locate transportation infrastructure and assets and assess their potential exposure to climate-related hazards. This would help NJDOT personnel incorporate flood risk visualization in transportation planning, project development, operations, and maintenance decisions. The State should fund the completion of this project, and NJDEP should work with NJDOT to provide the data inputs needed to incorporate the REAL rules and ensure the project is completed.

Coastal Zone Management (CZM) Rules (NJAC 7:7)

Nature-Based Solutions Permitting

Proposed amendments in REAL would incentivize the permitting and implementation of nature-based solution projects. The CZM rules include a new definition for “nature-based solution,” clarifying that these projects have a substantial biological design component and contain examples of projects that would be considered a “nature-based solution,” such as certain living shorelines, marsh restoration and enhancement, and shallow submerged habitat creation projects. NJF supports this change.

State Planning Commission

To ensure that a State Planning Commission (SPC) action is consistent with the coastal rules before implementation, REAL will formalize a process for NJDEP to review the SPC’s formal actions and determine their consistency with CAFRA, the Coastal Zone Management Rules, and State coastal policy goals. The new definition of “Formal action by the State Planning Commission” triggers NJDEP to take action to ensure that the State Planning Commission’s action is consistent with coastal goals. The Department’s data indicates that the proposed Inundation Risk Zone (IRZ) significantly affects all the non-mainland coastal centers. As a result, the Department has decided to remove the non-mainland coastal centers, citing development should not be directed into these areas. Municipalities in this area can pursue center designations through the State Planning Commission’s plan endorsement process. The SPC will determine whether a particular center can accommodate a community’s long-term growth and development needs while safeguarding people, property, and coastal resources.

- The State Plan is likely the appropriate conduit for resilient and affordable housing planning. The proposed CAFE and IRZ maps demonstrate that fewer buildable locations are safe from current and future flooding. The siting of future housing, especially affordable housing to meet fair share obligations, will likely be impacted. As the SPC undergoes the forthcoming cross-acceptance process for the State Plan, integrating the principle of climate-resilient housing should be a priority.

- Using the new NJDEP mapping and REAL principles, the State Plan should guide future investments in fortifying the coastal zone and identify areas where we should retreat and revert to natural spaces for flood mitigation.
- An updated and well-informed State Plan, housing planning guidance, funding, and technical assistance would help municipalities meet affordable housing requirements.
- To address these issues, a task force led by the Office of Planning Advocacy (OPA) or the State Planning Commission (SPC) should be assembled.

Stormwater Management Rules (N.J.A.C. 7:8)

The Mainstreaming Green Infrastructure (MGI) Program at New Jersey Future encourages nature-based solutions to manage flood risk and improve water quality. REAL aligns with our efforts by capitalizing on opportunities to retrofit areas needing redevelopment with green stormwater infrastructure that can capture excess runoff to minimize localized flooding, safeguard water quality, and mitigate increasing temperatures in urban areas.

Redevelopment Requirements

REAL will require runoff from reconstructed motor vehicle surfaces, including parking lots, driveways, and roadways, to receive the same water quality treatment required for new motor vehicle surfaces. Most development projects in New Jersey were constructed before NJDEP's 2004 Stormwater Management Rule. Therefore, stormwater management systems are nonexistent or have not been designed to manage current and future storm events. Redevelopment provides an opportunity to address existing impervious surfaces and outdated stormwater management systems to reduce stormwater runoff, filter out pollutants, increase groundwater recharge, and help mimic predevelopment hydrology.

Communities primed for potential redevelopment projects are more likely to be urbanized and include [environmental justice communities](#). Environmental injustices include the siting and clustering of landfills, incinerators, sewage treatment facilities, and the lack of comprehensive stormwater management. For example, the state's urbanized municipalities along the Hudson River and Delaware River grapple with combined sewer overflows (CSOs), where untreated stormwater and wastewater flow into nearby waterbodies. New Jersey's overburdened communities should benefit from economic redevelopment, and it is the responsibility of the state and local governments to ensure that future projects address existing water quality issues and mitigate flooding. NJF is supportive of this change.

Stormwater Retention Standards

The proposed Stormwater Runoff Quantity Standards would require a reduction of stormwater runoff volume to ensure a portion will stay on site. This would help address the more frequent rainfall events our region is experiencing and reduce local and regional flooding. Where the volumetric reduction of runoff onsite is demonstrated to be technically impracticable, the applicant can instead remove existing impervious surfaces within the same subwatershed (HUC14).

- Projects have several options to meet the retention standard, including retaining an equivalent or greater volume of stormwater runoff generated by the water quality design storm at an offsite location within the same subwatershed. The Department should clarify if a municipality's mitigation plan must be revised to include the off-site project.
- Consider creating an exemption for stormwater retrofit projects. Municipal Separate Storm Sewer System (MS4) permit-required Watershed Improvement Plans (WIPs) will require improvements to stormwater management facilities in New Jersey in the coming years. While improving existing stormwater infrastructure, some projects may not fully meet the stormwater retention standard.
- Milling, repaving, or resurfacing pavement are not considered disturbances in the definition of "disturbance." We recommend further defining "repaving" to ensure maintenance or small-scale improvement projects are not required to meet these requirements.
- Regulations should clarify what project site areas must comply with the stormwater retention standards. For example, it should be clear if projects need to retain stormwater runoff from the entire site and all disturbed or impervious areas.

Stormwater Management Plans

REAL requires a municipality or a regional planning entity to evaluate how climate change impacts, including sea level rise, increased flooding frequency, and rainfall, will impact stormwater management. This evaluation must be included in a municipal or regional Stormwater Management Plan. This will assist municipalities and regions in identifying vulnerable stormwater infrastructure and subsequent mitigation measures.

- To accompany the rule change, the Department should provide guidance on incorporating climate change-related hazards in stormwater management plans. We recommend that NJDEP publish model stormwater management plans with detailed guidance and sample language, as well as recommended resilience actions that communities might include in their municipal and regional stormwater management plans.
- For New Jersey's CSO communities that also have Municipal Separate Stormwater System permits (MS4), NJDEP should ensure projects are aligned between the CSO permit and MS4 permit requirements. This will benefit the municipality and the region as a whole.
- Regional stormwater management plans should be incentivized through a regional planning grant or technical assistance program through NJDEP. A regional approach could better enable the implementation of a regional Stormwater Utility (SWU) to provide dedicated funding for stormwater improvement projects.
- Additionally, municipalities must update their local Stormwater Control Ordinances within one year of adoption to comply with REAL. Some municipalities may save on costs by updating their stormwater ordinances and stormwater management plans simultaneously. Therefore, the model ordinance and planning guidance should be released within the same time frame.

Mitigation Plans

To grant a variance from stormwater management requirements, a municipality must adopt a mitigation plan. The plan must either include an improvement project within the same subwatershed as the project, or the applicant can propose a revision to the mitigation plan.

- Municipalities should be encouraged and incentivized to adopt mitigation plans informed by the Stormwater Management Plan and the MS4 permit-required Watershed Improvement Plan (WIP). Mitigation Plans allow private developments to fund off-site stormwater management projects. This would also ensure that if an applicant cannot fully meet the requirement, which may often be the case for redevelopment projects, there is a plan for off-site alternatives that align with the localities' long-range planning for climate resilience.
- The Department should issue guidance for phasing the interrelationship between Stormwater Management Plans, Mitigation Plans, and Watershed Improvement Plans.
- NJDEP must improve its enforcement of MS4 permit obligations to ensure the adoption and implementation of these interrelated plans.

TMDLs

Through REAL, projects in a watershed with an approved Total Maximum Daily Load (TMDL) must incorporate “additional measures” identified in the plan to address the applicable TMDL.

- NJDEP should clarify how the department will implement this requirement for projects located in TMDL areas.
- It is unclear if “additional measures specified in a TMDL” would generate additional requirements beyond the current TSS removal criteria.
- The Department should commit to reviewing and modifying all TMDLs to add appropriate “additional measures” that can be implemented.

Public Transportation Entities

Through the IFP rule, the Department proposed a new term for “public transportation entity,” distinguishing municipalities, counties, and state and federal highway agencies from other public entities. The IFP rule and REAL include exceptions for public transportation entities. Exempting public roadways from the new requirements does not address the risk currently facing our roadways and accompanying infrastructure. This exception contradicts the purpose of this regulatory change effort and will leave miles of roadway and users vulnerable to flooding. Raising homes and leaving roadways at risk does not ensure the safety of New Jerseyans.

- These entities should be required to implement stormwater BMPs, including green infrastructure, into their roadway designs. As counties and local governments undergo Vision Zero planning, bike and pedestrian enhancement planning, and implementation, there are many opportunities to design complete and green streets. We recommend that municipalities and counties be removed from this definition of public transportation entity.
- This exception demonstrates a need for more coordination between state agencies like NJDEP and NJDOT. State agencies must engage in complementary climate resilience planning and project implementation.
- REAL requires transportation projects to investigate adjacent properties for the siting of stormwater management BMPs if disturbed land is adjacent to the public roadway or

railroad. The Department should provide criteria regarding how far agencies are required to look for “disturbed lands” on neighboring properties. Proper evaluation would require survey and geotechnical investigations; therefore, clarification is needed.

Combined Sewer Overflow (CSO) Considerations

Municipal Separate Storm Sewer Systems (MS4) and CSO municipalities experience unique stormwater challenges and must comply with permitting requirements to meet these challenges. REAL includes climate-adjusted stormwater management requirements that should be integrated into MS4 and CSO permit requirements.

- As CSO communities address overflows through their approved or pending Long-Term Control Plans (LTCP), NJDEP should guide them in incorporating these changes into the design of LTCP projects. NJDEP should work with CSO permittees to review plans for CSO removals and understand how the precipitation and sea level rise projections used in REAL could affect their LTCPs. REAL should be included in future CSO permits to ensure compliance costs are accounted for.
- The new stormwater retention standard should help address the runoff volume, which benefits CSO communities where quantity contributes to the overflow issue. NJF is supportive of this change.

Freshwater Wetlands Protection Act (FWPA) Rules (N.J.A.C. 7:7A)

REAL proposes several changes to the development of wetlands in New Jersey. The rules require justification that proposed wetland impacts are necessary regardless of whether the impacts meet other rule criteria. REAL requires applicants to comply with the Stormwater Management rules for any project impacting wetlands or transition areas associated with, or part of, a major development. The rules now require the removal of existing impervious surfaces, where practicable, within 25 feet of wetlands under a special activity transition area waiver for redevelopment of a significantly disturbed area. This change is meant to promote restoration and more closely align with the flood hazard rules. Developments must also ensure that all activities in transition areas are at least 25 feet from freshwater wetlands to limit impacts.

- A significant change is the required justification that proposed wetland impacts are necessary regardless of whether the impacts meet other rule criteria. The Department should provide a straightforward justification process to minimize subjectivity in the review process and clarify how this will be enforced.
- It is also recommended that additional clarity be provided on how the conservation restriction will function and how impacts on freshwater wetlands will relate to mitigation requirements or rules.

General Recommendations

Local Climate Resilience Planning

REAL addresses new and rebuilt homes and infrastructure; however, there is still a need to address existing vulnerabilities. Communities need to inventory their assets, such as roadways,

hospitals, and other critical facilities, in relation to climate hazards through a Climate Change-Related Hazard Vulnerability Assessment (CCRHVA). Long-range climate hazard planning will help protect New Jersey's most vulnerable communities. These assessments can form the foundation for a climate hazard profile, shape preparedness plans, inform community engagement strategies, and outline recommendations for action on addressing climate, health, and equity.

- NJDEP should continue to fund local climate resilience planning.
- As local climate resilience plans are completed, the Department should connect communities to state and federal funding opportunities for flood mitigation projects. New Jersey needs consistent funding for local infrastructure projects to address climate change. A dedicated funding source for climate resilience is desperately needed to invest in planning and project implementation that will prevent costly damage from extreme weather and flooding events should be established.
- Over the next few years, municipalities will update their stormwater management plans and complete watershed improvement and mitigation plans. However, these plans are not required to be connected to the CCRHVA. Coordinating these climate resilience planning efforts should be a requirement for Municipal Land Use Law (MLUL) and MS4 permit compliance. A dedicated climate resilience fund would help support this planning and coordination.

Managed Retreat

The state must identify locations in New Jersey to fortify and protect, where we should gradually retreat, and where growth should be incentivized. The REAL rules provide requirements for how to build, but identifying where to grow is imperative. Translating NJDEP's regulations into sound planning for the future growth of New Jersey can be accomplished in several ways. However, an updated State Development and Redevelopment Plan ("the State Plan") is likely the appropriate conduit for guiding future investments. As the State Planning Commission (SPC) undergoes the forthcoming cross-acceptance process for the State Plan, integrating the principle of climate-resilient development and infrastructure investment should be a priority. The State Plan and accompanying mapping of undeveloped land relative to climate-related hazards should provide the basis for a managed retreat plan for New Jersey.

NJDEP Staffing

REAL includes expanded requirements for development in flood-prone areas and around wetlands and projects requiring stormwater management. REAL replaces the term "permit-by-rule" with the new term "permit-by-registration," which requires user registration and submittal of compliance information to the Department via its online portal. While this will provide better tracking of regulated activities throughout the State, this will likely prolong the permitting process. NJDEP must increase staffing capacity to address the expanded requirements and permitting timelines.

Interagency Coordination

REAL addresses development requirements that impact projects beyond the scope of NJDEP. A plan must be developed for other state agencies, local and county governments, regional

entities, and government institutions that identify their roles and responsibilities in implementing REAL. The State Development and Redevelopment Plan and the State Planning Commission could be used more effectively to guide future development. Using the goals and requirements of the REAL rules, NJDOT should issue a plan for upgrading roadways and other transportation infrastructure most vulnerable to current and future flooding. NJDCA should require consideration of redevelopment opportunities for affordable housing units and provide technical assistance to communities. There are many examples of complementary efforts that other state agencies should be engaging in to ensure the implementation of REAL addresses other priorities for New Jersey.

The State's role in addressing economic equity consequences

We strongly support informing the public of current and future risks. These rules guide how flood risks are managed. While we applaud the NJDEP for being one of the only agencies to proactively and transparently address climate change adaptation, trying to do so without more proactive coordination and support of the Governor's office and other departments will have consequences. To address these consequences, we implore the Governor's Office and other departments to step up and incorporate climate change adaptation into their planning, programs, and investment decisions. Without a coordinated approach, NJDEP is forced to use the only tools in its toolbox to advance this critical issue. Below are some of the economic equity issues that may arise from the implementation of these rules that should be addressed by the Governor's Office and other state departments.

The primary economic equity issue will be that the combination of the previously passed Flood Disclosure law and the current REAL rules will provide risk-based information to the real estate market that [corrects overinflated property values in high-risk locations](#). Properties located in places that flood regularly or will flood regularly in the future will be valued lower than if they did not flood. This risk assessment is generally not factored into the value of properties because property owners are unaware or unable to assess the risk, especially future flood risk. As prices readjust to reflect true market value, there may be some economic equity consequences that the State can proactively address. Some examples are:

- **Low-income homeowners.** Low-income homeowners are typically in a precarious financial position to begin with. Still, they have taken the risk associated with home ownership to provide stability for their families and begin building wealth. When their property values are corrected for hazard risks, they will lose value, which means losing equity and wealth. In some instances, this may put people in "underwater" mortgage situations (when the mortgage value exceeds the home value), making it difficult to sell their homes. The State should assess where this is likely and look to mitigate these losses.
- **Insurance costs.** While properties in risky locations will lose value, they will also pay higher property insurance costs if they can even obtain insurance. For low-income homeowners, this increased cost may be too much to bear, forcing families to leave or lose their homes and any equity they may have accumulated.
- **Municipalities with shrinking tax bases.** As property values go down in high-risk parts of a municipality, the property tax burden will shift to those in less risky parts of town

whose properties will be relatively more valuable. This shift is not a problem in and of itself, but if enough properties lose value, the burden may be excessive for the remaining property owners in safe areas. The State should help towns understand this dynamic and provide support to help towns consolidate with neighboring towns to spread the risk and costs.

- **Cascading disinvestment.** As properties in high-hazard areas lose value, this could lead to widespread disinvestment and even abandonment. In the long run, this is appropriate. In the short run, lower-income property owners may suffer by being unable to maintain their homes or being locked into a home in a high-risk location without the ability to sell or leave. The State should recognize this dynamic and assist low-income homeowners in these instances.
- **Secondary displacement.** As wealthier property owners decide that the risk is too great in high-hazard areas, they will migrate to safer locations. If lower-income households, especially renters, currently occupy those locations, displacement will follow. Wealthier investors will purchase lower-value homes in safer locations, increasing demand, rent, and values. The State should proactively identify places likely to be subject to this secondary displacement dynamic and build long-term affordability safeguards.
- **Playground of the rich.** Many communities along the Jersey Shore and in high-hazard areas are seeing their property values increase, in direct opposition to what economic forecasts would suggest. This dynamic has several drivers, including the state and federal governments subsidizing insurance rates, rebuilding homes and infrastructure, and requiring that public infrastructure be rebuilt to service these properties no matter how many times they are destroyed. As low-income property owners are forced to deal with the ever-increasing costs of remaining in high-hazard areas, wealthier households are seizing the opportunity to purchase properties, knowing they can afford the increased risk. The result of this dynamic is the systematic relocation and exclusion of lower-income families from shore communities. The State should consider removing incentives and subsidies for households to invest in high-risk locations while ensuring that our shore assets remain open and available to everyone.

Conclusion

Overall, we support the proposed changes to New Jersey's land use regulations, incorporating the latest climate science to ensure new development and rebuilt infrastructure are resilient to flooding. However, we are concerned about the scope of the changes recommended and the NJDEP's ability to implement them effectively without additional resources. Thank you for considering our recommendations and questions. We look forward to the next steps during this iterative process of enhancing the resilience of New Jersey's infrastructure.