

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 263 -2024

**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, 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

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 the 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 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 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 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, is 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, 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 Township 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 protecting critical habitat areas and endangered species throughout the State, the Township 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

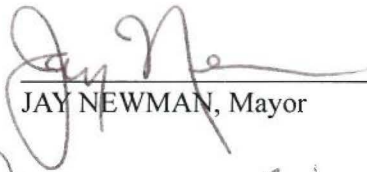
WHEREAS, it is imperative that the State of New Jersey consider the disproportionate burden resulting from the implementation of such stringent regulatory standards that will challenge the people of New Jersey living, working, and visiting in the coastal zones; and

WHEREAS, the County of Cape May, through consultation with the Lomax 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; and

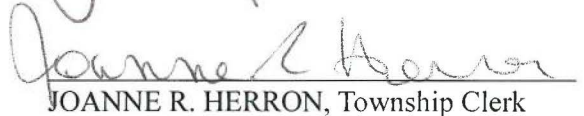
NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, that the Township of Upper hereby supports the County of Cape in the following:

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 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. 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. If the State of New Jersey decides to proceed with the expansion of flood hazard areas before FEMA releases the new FIRMS, 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, so that communities and residents can clearly understand how these regulations will impact their areas and properties.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be submitted to the County of Cape May, State Representatives of Legislative District One, the Governor and DEP Commissioner of the State of New Jersey for their review and consideration in advance of release of the proposed new rule for public comment.



JAY NEWMAN, Mayor



JOANNE R. HERRON, Township Clerk

Resolution No. 263 -2024

Offered by: Hayes Seconded by: Pancoast

Adopted: August 12, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	x			
Hayes	x			
Nappen	x			
Pancoast	x			
Newman	x			