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Submitted Electronically via [www.nj.gov/dep/rules/comments](http://www.nj.gov/dep/rules/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, 7<sup>th</sup> Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

**Re: Proposal No.: PRN 2024-073**

**DEP Docket No.: 05-24-05**

Dear Ms. Abatemarco,

On behalf of New Jersey's municipalities, I write to express significant concerns regarding the New Jersey Department of Environmental Protection's (NJDEP) PACT REAL rule proposal. While we share the NJDEP's commitment to addressing climate change and protecting our communities from sea-level rise, we believe the proposed rules create undue burdens on municipal governments, businesses, and residents without providing the necessary flexibility to effectively implement climate adaptation measures.

Municipalities have already demonstrated strong leadership in climate resilience. Following Superstorm Sandy, local governments have actively updated their flood ordinances, implemented stricter building codes, and invested millions in infrastructure improvements to protect our communities. Municipalities have developed comprehensive plans, elevated critical infrastructure, and worked closely with property owners to reduce flood risks. These efforts show that local governments understand the urgency of climate adaptation and are taking meaningful action while balancing complex needs of our communities.

The proposed rules, however, threaten to undermine this progress by imposing unrealistic restrictions on potential development, redevelopment, and infrastructure planning. We believe that addressing climate change and enhancing our state's resilience are critical goals. However, we must ensure that the path to achieve these goals does not inadvertently create undue burdens on our municipalities or hinder meeting other important societal needs.

Specific concerns with the rule proposal are detailed further below, but first it is necessary to address the general nature of the proposal itself. The scope and impact of this proposal cannot be understated. At 1,044 pages this is the longest rule the NJDEP has ever proposed. The proposal makes significant modifications to multiple sets of regulations, including the Coastal Zone Management Rules, Freshwater Wetlands Protection Act Rules, Flood Hazard Area Control Act Rules, and Stormwater Management Rules. If adopted these rules will seriously restrict and in some cases prohibit development and redevelopment in many areas within the state and possibly create conflicts with implementing other state policies.

While the underlying rules which the NJDEP now seeks to amend and supplement are themselves of significant magnitude, they were developed in response to direct legislative action. The PACT REAL rule proposal is being undertaken without any similar legislative directive. Instead, the NJDEP relies on Governor Murphy's Executive Order 100 (EO 100) as authority to make such sweeping regulations. The drastic changes that this proposal represents are more appropriately made through the legislative process or with explicit authority from the legislature.

### **Impact on Redevelopment and Affordable Housing Development**

The introduction of the Inundation Risk Zone (IRZ) and Climate Adjusted Flood Elevation (CAFE) concepts will dramatically expand regulated flood hazard areas. In some counties, up to 60% of the total land area could be affected, significantly impacting development potential and infrastructure planning. The proposed expansion of riparian zones and reduction of disturbance thresholds may limit development potential near water bodies and increase mitigation requirements. New requirements for development within the IRZ and CAFE areas will increase complexity and costs for projects, potentially hindering economic growth and affordable housing initiatives. All these changes will necessitate substantial revisions to municipal master plans and zoning ordinances.

These changes will have a drastic impact on the ability to develop affordable housing. This is especially concerning given the recent adoption of P.L. 2024, c.2 updating municipal affordable housing obligations. The Department of Community Affairs (DCA) has provided guidance calculations of both regional and municipal fair share obligations for the upcoming fourth round. Municipalities are set to adopt their own numbers through binding resolution by the end of January 2025. These calculations are being done without consideration for the impact that the potential adoption of these REAL rules would have on a region or municipality's realistic ability to meet these obligations. This will result in municipalities needing to adopt a Housing Element and Municipal Fair Share plan with uncertainty regarding available developable and re-developable land.

Not only will this proposal hinder or prevent future development of new affordable housing, but it also will greatly impact the ability of low- and moderate-income residents to remain in their current homes. Quite simply, lower income and underserved communities will lack the resources needed to comply with the proposed regulations when they are triggered. In turn they will be

forced to relocate outside of communities many have been a part of for decades. Property values of lower priced homes and properties common in many parts of New Jersey are already negatively impacted under current regulations. Adding these new burdens will further depress property values for those least able to afford it. The disproportionate negative impact this proposal will have on lower income and underserved communities is counter to any environmental and social justice initiative employed by the state.

For example, the oldest subsidized housing development in New Jersey, Stanley Holmes Village, located in Atlantic City and built in 1937, is planned for redevelopment. The developers for this project have reviewed the proposed rules and have stated that the project cannot be completed if these rules are adopted. This leaves hundreds of low-income residents facing the prospect of being uprooted from their communities or left to remain in substandard housing. This is only one example, with many similar stories playing out across the state.

### **Impact on Municipal Tax Base**

When environmental regulations limit development in flood-prone areas, municipalities often face significant fiscal challenges. The immediate impact comes from the reduction in developable land, which directly affects property values and the potential for new ratables. Land that might have been slated for commercial, industrial, or residential development may be effectively removed from the tax base if development restrictions are put in place.

The ripple effects can be particularly severe for communities that have historically relied on waterfront or flood-plain development as economic drivers. Commercial corridors along rivers or coastal areas, which often command premium property values and generate substantial tax revenue, may face reduced development potential. This doesn't just affect new development – existing properties may see their values decline if expansion or substantial renovation becomes restricted, leading to a gradual erosion of the tax base over time.

Small and medium-sized municipalities often feel these impacts most acutely, as they typically have less diverse tax bases to begin with. When a significant portion of their potentially developable land becomes restricted, they have fewer options for generating new tax revenue to fund essential services and infrastructure. This can create a challenging cycle where reduced tax revenue leads to service cuts or tax increases on remaining properties, potentially making the municipality less attractive for new investment.

The measures within the NJDEP's PACT REAL rule proposal would severely limit the development potential in effected communities. Not only this, but the rules if adopted would undermine redevelopment efforts, including those in environmentally contaminated areas such as brownfields and other similar lands. Such drastic regulations should not be adopted without first identifying potential revenue replacements for those municipalities that are sure to be impacted by the pending depreciated tax base.

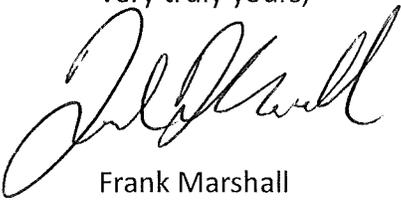
## Impact on Flood Insurance Rates

It is also unclear how these regulations will impact neighborhoods where many homes have been built or raised to the current required first floor elevation standards. Newer homes will now have to be five feet higher. This will undoubtedly have an impact on the cost and ability to obtain flood insurance. For example, will homes recently elevated or built be considered a higher risk without an additional five feet and will this in turn impact flood insurance rates? Will the impact be immediate or over time? Rules like the ones proposed need careful coordination with FEMA and NFIP so that residents and businesses are not caught between conflicting regulations and policies.

Another significant issue to consider is how this will impact municipalities that participate in the Community Rating System (CRS)? This program gives homeowners in participating towns (more than 100 in New Jersey) discounts on their flood insurance rates, depending upon points earned. The more points earned by the municipality the larger the discount for residents. Will the newer first floor height requirement now be factored into the CRS rating system? If so, it could negatively impact places where a lot of elevations have already occurred, in accordance with the current rules? Thus, many would not meet the newer higher standard. Would those houses now be considered non-compliant and if so, a municipality could lose points, thereby raising flood insurance rates in a municipality as a consequence?

The League of Municipalities respectfully urges the NJDEP to withdraw these rules and consider a much more measured approach to climate adaptability and takes into further account the impact such rules would have on municipalities and taxpayers.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frank Marshall". The signature is fluid and cursive, with a large initial "F" and "M".

Frank Marshall  
Associate General Counsel  
New Jersey State League of Municipalities