



COMMENTS

Comments on Resilient Environments and Landscapes (REAL) Notice of Substantial Change, DEP Docket No. 05 -24 -05

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Introduction

In August 2024, the New Jersey Department of Environmental Protection (NJDEP) proposed amendments to several land use rules, known as Resilient Environments and Landscapes (REAL), to address New Jersey's vulnerabilities to climate change. As provided in New Jersey Future's (NJF) [comments](#) on the REAL proposal submitted to the Department in November 2024, NJF is generally supportive of REAL. With every severe weather event, New Jersey is reminded of the importance of elevating homes, maintaining the integrity of roadways, and ensuring the functionality of stormwater infrastructure. Ensuring the Department's land use regulations incorporate the latest climate science will help guarantee that existing assets and new investments are well-suited to manage current and future levels of rainfall, increased flooding, storm surge, and other climate-related hazards.

In response to the thousands of comments received, the Department [proposed a Notice of Substantial Change](#) (NoSC) to several sections of the originally proposed REAL provisions. The NoSC includes the comments received that prompted the Department to revise the rule proposal. The Department also cites updated scientific data as driving the decision to reconsider critical aspects of the REAL rule. NJF has reviewed the NoSC (or "the Notice") and provides comments organized by rule and topic area below. Overall, REAL should move forward, and NJF seeks clarity on several rule areas, outlining recommendations for next steps following their adoption.

Reduced Climate Adjusted Flood Elevation (CAFE)

REAL expands the area considered flood-prone to account for future sea level rise, changing how projects are built or rebuilt in vulnerable areas. The original rule proposed a Climate Adjusted Flood Elevation (CAFE) that accounted for a five-foot sea level rise by 2100. Based on [findings](#) from the International Panel on Climate Change (IPCC), the proposed changes outlined in the Notice reduce this requirement to four feet. The table referenced in the Notice is provided in Figure 2 of this comment letter, which corresponds to the original proposal's reference to the

[New Jersey Science and Technical Advisory Panel \(STAP\) reports](#) table shown in Figure 1. Additionally, the proposed changes will reduce the coastal area of New Jersey, which is subject to the REAL rule requirements. The adjustments will require new and reconstructed buildings in the applicable coastal area to be built four feet higher than today's standards.

- Starting in 2020, the Department initiated a multi-year rule-making and public engagement effort to address climate change and its impacts on New Jersey's residents, homes, businesses, natural resources, and other infrastructure. The information shared was based on the STAP reports (Figure 1) and New Jersey's 2020 [Scientific Report on Climate Change](#). The scientific findings and recommendations in these reports referenced a "likely range" of outcomes for sea level rise across various planning horizons, assuming greenhouse gas emissions remained static, increased, or decreased.
- The Notice refers to a comparison table, shown in Figure 2, and a degree of warming identified by the Intergovernmental Panel on Climate Change (IPCC) as the basis for revising the CAFE from 5 feet to 4 feet of sea level rise. It is appropriate to defer to the scientific experts identified by the Department regarding the most relevant sea level rise scenarios to utilize for their rulemaking.

Summary of STAP Outcomes

Sea-level rise:

Table ES-1: New Jersey Sea-Level Rise above the year 2000 (1991-2009 average) baseline (ft)*

		2030	2050	2070			2100			2150		
				Emissions								
Chance SLR Exceeds				Low	Mod.	High	Low	Mod.	High	Low	Mod.	High
Low End	> 95% chance	0.3	0.7	0.9	1	1.1	1.0	1.3	1.5	1.3	2.1	2.9
Likely Range	> 83% chance	0.5	0.9	1.3	1.4	1.5	1.7	2.0	2.3	2.4	3.1	3.8
	~50 % chance	0.8	1.4	1.9	2.2	2.4	2.8	3.3	3.9	4.2	5.2	6.2
	<17% chance	1.1	2.1	2.7	3.1	3.5	3.9	5.1	6.3	6.3	8.3	10.3
High End	< 5% chance	1.3	2.6	3.2	3.8	4.4	5.0	6.9	8.8	8.0	13.8	19.6

*2010 (2001-2019 average) Observed = 0.2 ft

Figure 1: Summary of SLR scenarios from the [STAP report](#) (2019)

2019 STAP and the IPCC Report

Table 8.1. Comparison of estimated sea level rise in New Jersey based on the STAP and IPCC AR6 reports. Estimates are organized by: the climate scenario; the report; the degree of warming expected by the end of the century (Degree of Warming °C); and the confidence levels of processes included in each projection. All values are reported in feet (ft), and “—” represents a value that was not assessed in a report.

New Jersey Sea level Rise Estimates (ft) in 2100 *												
Climate Scenario	STAP Low / IPCC Low (SSP1-2.6)			IPCC Intermediate (SSP2-4.5)			STAP Moderate / IPCC High (SSP3-7.0)			STAP High / IPCC Very High (SSP5-8.5)		
Report	STAP	IPCC AR6		STAP	IPCC AR6		STAP	IPCC AR6		STAP	IPCC AR6	
Degree of Warming (°C)**	2.0	1.8		--	2.7		3.5	3.6		5.0	4.4	
Confidence Levels of Processes Included	Low, Medium, and High	Low, Medium, and High	Medium and High	Low, Medium, and High	***Low, Medium, and High	Medium and High	Low, Medium, and High	***Low, Medium, and High	Medium and High	Low, Medium, and High	Low, Medium, and High	Medium and High
Chance SLR Exceeds												
> 83% chance	1.7	1.9	1.9	--	2.3	2.3	2.0	2.7	2.7	2.3	3.0	3.0
~ 50% chance	2.8	2.5	2.5	--	3.1	2.9	3.3	3.6	3.3	3.9	4.0	3.7
< 17% chance	3.9	3.4	3.2	--	4.4	3.8	5.1	5.1	4.2	6.3	5.9	4.7

Figure 2: STAP & IPCC [Comparison Chart from Rutgers \(2023\)](#)

Dry Access

The Department is changing the REAL rule proposal to correct standards for evaluating the feasibility and location of proposed building sites, a requirement called “dry access”. The revisions clarify that areas subject to fluvial flooding may or may not be subject to tidal flooding. To construct a critical or multi-family building within a flood hazard area, the applicant must demonstrate that the building is served by at least one existing or proposed roadway at least one foot above the flood hazard area design flood elevation. The roadway must be adequately sized and have the capacity to serve the building and its occupants.

- The Notice states that the applicant must submit an engineering certification demonstrating that strict compliance with the dry access requirements would result in one or more of the adverse conditions referenced, that the applicant made every reasonable effort to provide access, and that there is no extraordinary risk to occupants. These “adverse conditions” include prohibitively high construction costs, a design that necessitates an excessive volume of fill, a design that causes adverse environmental impacts with limited mitigation ability, or a design that exacerbates flooding or adversely affects existing drainage patterns or off-site properties.
 - The Department should clarify what constitutes prohibitive construction costs and the methods for determining the threshold of prohibitive costs. Similarly, it should provide clarification on what constitutes excessive fill.
 - The Department should clarify what constitutes “a design that exacerbates flooding” and the authority used to verify claims pursuant to this exception. These claims should be investigated, approved, or rejected by an impartial municipal, county, or Department engineer.

- Suppose the applicant cannot provide dry access, and a project meets the Department's criteria for granting an exception. In that case, the Department should require signage to inform the building's tenants and emergency vehicles of the flood risk.
- As recommended in NJF's original comments submitted to the Department, NJF recommends that the Department provide guidelines on dry access as part of future design guidelines or a separate but complementary effort.

Affordable Housing

The proposed changes include a definition of affordable housing and identify it as a compelling public need that may justify a hardship exception. Applicants seeking hardship exemption regarding an affordable housing project must demonstrate that they meet the criteria. The criteria specify that the Department will grant a hardship exception only if the regulated activities do not threaten public health, safety, or welfare. While the Notice recognizes affordable housing as a compelling public need that may warrant such an exception, it emphasizes that this consideration must be balanced with the safety of residents. Accordingly, the Department affirms that municipalities should not locate affordable housing in hazardous areas unless they can ensure resident safety.

- To effectively strike this balance, the Department should clarify how affordable housing projects may qualify for a hardship exemption under the new requirements, while recognizing that a uniform statewide minimum for integrated developments may not be appropriate given the wide variation in local requirements.
 - To account for this diversity, the Department could provide flexibility by referencing Fair Share Plans or other locally adopted mechanisms rather than prescribing a single statewide threshold.
- Moreover, the Department and other state agencies should coordinate to ensure municipalities can prepare Housing Elements, Fair Share Plans, and related ordinances that align with REAL's purpose; rather than creating a situation in which municipalities use flooding as justification to build less affordable housing.
 - There must be a process for reviewing Housing Elements and Fair Share Plans in relation to flood-prone areas that does not result in less affordable housing being constructed, but instead, identifies alternate courses of action to fulfill obligations.
 - In addition, State agencies must facilitate a process that guides municipalities in building affordable housing in climate-resilient locations. Municipalities should also utilize other land use measures, such as reduced parking requirements, to make housing development cost-effective.

As previously stated, New Jersey must be creative in redeveloping non-flood-prone areas to meet needs such as 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, along with housing planning guidance, funding, and technical assistance, would help municipalities meet their 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.

Five-Year Reexamination

The proposed changes include a reexamination requirement for the Department. Within five years of the effective date of the rulemaking and every five years thereafter, the Department will determine whether the sea-level rise and precipitation data incorporated into the rules reflect the most current climate science. Based on that determination, the Department could amend the rules.

- The Department should consider how revisiting the rules every five years impacts predictability. In addition to the real estate sector, local and county governments, other state agencies, and other entities rely on predictability and consistent information to plan for the future. For example, local master plans often have a planning horizon of 10 to 20 years.
- As noted earlier, the Department embarked on a multi-year effort based on the STAP reports from 2019 and New Jersey's Scientific Report on Climate Change from 2020. The science used referenced a likely range of outcomes. The Department also recognizes in the Notice that SLR is not static, and the cost of constructing buildings higher than previously required is less than retrofitting in the future.
 - If NJDEP revisits the land use rules every five years, the Department should establish the process for making changes. The Department should establish a threshold for making changes to the rules to ensure that future rulemaking is objective. This means that the extent to which a change in scientific understanding of climate change will necessitate a revision to the land use rules should be clear. The Department should identify compelling reasons to make said changes.
 - The Department should continue to use independent and reliable sources of climate change research, such as the Intergovernmental Panel on Climate Change, when outlining the procedure for the five-year reexamination process. The Department should carefully outline the procedure for reexamining sea level rise and precipitation data.

Stormwater Management Rules

The Department proposes revising the REAL rule to permit temporary impacts to human-made wetlands in and around stormwater basins under certain circumstances. The changes will also enable impacts of human-made wetlands in stormwater basins to accommodate the most recent stormwater rules, with certain limiting conditions, including the fact that it will result in no net loss of wetland area or functionality. The Department also clarifies that reconstructing any motor vehicle or other impervious surface, not just "regulated" surfaces, is a "major development" and requires 80 percent total suspended solids removal for stormwater runoff.

- NJF is supportive of these changes.

Exceptions

REAL amendments will not apply to "New Jersey studio partners" and "New Jersey film-lease partner facilities," designated by the New Jersey Economic Development Authority before the effective date of this rulemaking.

- The Department should reconsider this exception. Exempting a handful of projects from the rulemaking sets a dangerous precedent for development in New Jersey.

Deed Notice Requirements

The REAL amendments now expand the exceptions to the deed notice requirements to include repairing underground utility lines located within previously recorded easements. NJF supports this addition as appropriate and logical, given that state rights-of-way and easements are already exempt and that many utility lines are situated within these areas.

NJF is pleased that the proposed deed notice requirements under the Flood Hazard and Coastal Zone Management (CZM) rules were not impacted by the Notice. These requirements will provide an important mechanism to strengthen recordkeeping, enhance transparency, and ensure consistent long-term documentation of flood risk in a manner that supports compliance across local, state, and federal programs.

Specifically:

- **Submission to County Clerk/Registrar:** The requirement that applicants submit deed notice information to the Office of the County Clerk or Registrar of Deeds and Mortgages ensures long-term documentation consistent with existing deed records. Under the Federal Emergency Management Agency's (FEMA) Community Rating System (CRS), municipalities can earn credit—and reduce flood insurance premiums for residents—by demonstrating effective floodplain management, including publicly disclosing flood hazards and maintaining accessible records. By requiring deed notices with flood risk information to be formally recorded and aligned with local and state records, these rules create a permanent, accessible record of flood risk that municipalities can use to document CRS compliance.
- **Proof of Recordation to the Department:** Requiring proof of recordation promotes alignment between state records, local deed records, and official county documentation. This step enhances consistency across agencies and improves the accessibility of information for future reference.
- **Deed Notice Content:** Requiring that the notice include the site's CAFE and a statement that the property is subject to periodic inundation and associated flood damage provides property owners with direct access to official records of their property's history. This transparency benefits current and future owners by reducing reliance on FEMA or state agencies to verify claims during due diligence.

- Inundation Risk Zone (IRZ) Project Notices: Extending the same requirements to projects in the IRZ—specifying likely periodic inundation, anticipated flood depths, and the prohibition on habitable space below the lowest floor—applies consistent logic to higher-risk areas, ensuring owners and occupants have clear, up-front information about risks and use restrictions.

The proposed deed notice requirements would be critical in reinforcing New Jersey's Flood Disclosure Law and supporting compliance. They ensure that property-specific flood risk information is readily accessible, that records remain consistent across ownership transfers, and that municipalities maintain a permanent, documented record of flood hazards, which can also support compliance with federal programs such as FEMA's Community Rating System. These requirements further benefit future owners and current occupants, including renters, by documenting anticipated flooding impacts and site access limitations, which are essential for safety and planning. While the Flood Disclosure Law applies broadly to residential and commercial properties under N.J.S.A. 56:8-19.2 (sales) and N.J.S.A. 46:8-50 (leases), it does not specifically address critical facilities. The deed notice requirements, therefore, strengthen transparency and extend protections that further safeguard the health and safety of New Jersey residents. The Department should also review Flood Disclosure forms to ensure they are updated to reflect these additional deed notice requirements.