



## Comments on NJ PACT Pre-Proposal Submitted to the New Jersey Department of Environmental Protection

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February 3, 2021

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New Jersey Future appreciates the thoughtful approach and prioritization of key rulemaking in the NJ PACT process. We particularly appreciate the Department sharing its pre-proposal concepts and direction, which enable more stakeholder input and will ultimately lead to better and more implementable rules.

New Jersey Future supports the articulated rulemaking objective, the shift to a land and water resource protection perspective, and the thorough principles described. In particular, the focus on future-oriented planning and decision-making and the encouragement of redevelopment in safer areas are important points.

New Jersey Future supports the Department's approach to addressing inundation and flood damage (Theme 1). Redefining both the tidal and fluvial flood hazard areas is necessary, and the creation of special inundation zones (Inundation Risk Zones) recognizes the urgency with which we need to address certain coastal areas. We will be looking closely at how these concepts will be applied to our most densely populated urban areas where different planning approaches and regulatory structures may be necessary. It will also be important to understand how the rules will address inherent and structural inequities that exist in some of these high hazard areas where people with lower incomes and people of color have made their homes and communities. Applying rules that are intended to keep everyone safe, may have the unintended consequence of financial and social hardships for some, while allowing others with more privilege to have elevated or continued access.

We are glad to see that projected sea level rise standards are being incorporated directly into these rules. Our hope is that these standards, once fully vetted, can be adopted as a statewide standard to be implemented across other departments to add consistency to state land use planning and capital investment decision making.

We appreciate that the rulemaking structure will create disincentives for building and rebuilding in high risk areas. We are concerned, however, that these disincentives will disproportionately affect those with more modest income and wealth, while creating a higher, but attainable bar for

those with more resources resulting in further segregating our communities, particularly our shore communities. As this process moves forward, we would urge the state to look at mechanisms that allow towns to say “no” to development and redevelopment in high risk areas, which ultimately would be more fair and save taxpayer dollars. One place to start is by enabling towns to not rebuild public infrastructure, such as roads, after repetitive damage and destruction.

The disclosure requirements in the Inundation Risk Zones is a good start toward public education and informed private sector decision making. We urge the state to look for additional opportunities to incorporate flood disclosure based on flood projection data in the rulemaking process and internal policy making and to eventually support legislation to this end.

As the Department noted, protecting critical facilities and infrastructure is a priority (Theme 2). While the general direction of this section seems appropriate, we are concerned how our water and wastewater treatment facilities and the infrastructure that supports them will be addressed. By their nature, many of these facilities are in future flood prone areas. Involving these stakeholders early and often in the process will be important. Related to the permitting, sea level rise and flood elevation standards should be incorporated into infrastructure projects funded by the Water Bank.

Resilience planning is an important tool for reducing the negative effects of climate change. Municipal and regional stormwater management plans can identify areas and infrastructure vulnerable to climate change and propose actions to mitigate those vulnerabilities (Theme 4). But some communities may not have the capacity and/or expertise to develop resilience actions even though the effects of climate change require immediate action. We recommend NJDEP provide sample language and recommended resilience actions that communities might include in their municipal and regional stormwater management plans by publishing model stormwater management plans with detailed guidance. The Department should provide guidance on incorporating climate change in stormwater management plans as soon as possible. Some municipalities may opt to save on costs by updating their stormwater ordinances and stormwater management plans at the same time. New Jersey Future appreciates the opportunity to review draft guidance, with other stakeholders, before final guidance is published. We ask the Department to establish and make known a timeframe for the release of this guidance. For further comments related to Theme 4, please refer to [New Jersey Future's comments on the Stormwater Rule Amendments](#) submitted following the July 30, 2020 stakeholder meeting. Specifically, the aforementioned comments address redevelopment. They recommend that NJDEP require that redevelopment projects meeting the definition of major development comply with all stormwater management requirements. With today's high-performing green infrastructure techniques designed for urban areas, there is less need to exempt redevelopment (while being mindful of special circumstances on contaminated sites).

New Jersey Future would like NJDEP to use NJ PACT to coordinate green infrastructure implementation policies with other state agencies. Specifically, we request that the Department of Transportation (NJDOT) prioritize and build green streets on NJDOT roadways by adopting a

Complete and Green Streets policy at the state level that builds on the [Model Complete and Green Streets Policy](#) that NJDOT published for municipalities and counties. NJDOT should develop road designs that use green infrastructure to reduce stormwater impacts. We would also like the NJ Department of the Treasury to implement green infrastructure on and around state-owned properties. In general, New Jersey Future would like more information on how NJ PACT will affect other state agencies.

To reemphasize the importance of good planning, we are glad to see that the Department will be working closely with the State Planning Commission when reviewing and approving new “centers.” The center designation process can be an important mechanism for towns to comprehensively plan with the future in mind and should include local resilience planning that identifies actions to address flood vulnerabilities in center areas. We recommend that this cross-departmental work be elevated so that towns will plan proactively and use the regulations to support their good planning decisions, rather than using the regulations as planning tools, which generally results in uncoordinated decision-making with negative unintended consequences.

In addition to affecting coastal communities, sea level rise will affect coastal ecosystems and will make nature-based solutions an important tool (Theme 6). New Jersey Future would like to see three changes to protect coastal salt marshes and other coastal habitats. First, NJDEP should change permitting to make it easier to build living shoreline projects and nature-based solutions. Second, NJDEP should update the dredging regulations to require that dredged material be kept in the estuarine system and used to elevate coastal marshes. Third, NJDEP should establish buffer areas so that marshes have the ability to migrate inland. For more information, see the comments submitted by The Nature Conservancy, The American Littoral Society, and the Urban Coast Institute on November 12, 2020.

Finally, we appreciate the recognition that solar siting is a critical issue in New Jersey (Theme 7). The state has more than enough disturbed and developed land to accommodate vast amounts of new solar capacity so as not to have to use undeveloped land for this purpose. We recommend that the Department play an active role in bringing stakeholders together to figure out the most sustainable and fairest way to do this.

We understand that the Department is moving along parallel planning and regulatory tracts related to addressing climate change. While this is laudable, it is not clear how the rules will fit into or support the state’s resilience strategy without seeing the strategy first. This parallel process will require additional transparency and flexibility to ensure that both align behind the vision of a more climate change adaptable state that has fewer people and properties in harm’s way.