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Chris Segal, Esq.
Attention: DEP Docket No. 05-24-05
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street,
7th Floor Mail Code 401-04L
PO Box 402

RE: DEP Docket No. 05-24-05

Dear Mr. Segal:

The New Jersey Builders Association (NJBA), representing the residential construction industry in New Jersey, submits the following comments regarding the New Jersey Department of Environmental Protection's (Department) Notice Of Substantial Change (NOSC) regarding the Resilient Environments And Landscapes (REAL) rule.

General

NJBA strives to further public policy that help address our state's housing shortage while simultaneously supporting reasonable steps to increase resiliency and adapt to climate change. Over the past decade, NJBA has welcomed and supported countless new rule proposals and code changes that advance new homes' resiliency and energy efficiency. However, NJBA continues to oppose the REAL rule proposal in its current form as the totality of changes in the proposal make it prohibitively more difficult, time consuming and more costly to develop housing in the state without offering any incentives to development and redevelopment in low-risk areas. NJBA believes that with proper stakeholder engagement the Department can craft a rule proposal that accomplishes our state's goals of solving our housing crisis and increasing resiliency without compromising one at the expense of the other.

Beyond the purview of the Department's regulatory scheme, a coordinated effort should have taken place across state agencies and the Legislature to complete the State Plan, make land use reforms, provide financial incentives and contemplate engineering solutions to complement the REAL rule in our fight against climate change, our housing, equity and environmental justice crises. Where these actions are happening, they appear to be taking place in silos as the REAL rule appears to be in direct conflict with aspects of the State Development and Redevelopment Plan, the recently passed affordable housing law, countless local zoning plans, and contemplated engineering solutions to resiliency.

Since 1948, the New Jersey Builders Association (NJBA) has been the State's leading trade association and voice of the homebuilding industry in Trenton. As a major influencer on the state's economic strength, its mission is to advocate for a sustainable and healthy economy and a more affordable and vibrant housing market. NJBA's diverse membership includes residential builders, developers, remodelers, subcontractors, suppliers, engineers, architects, lawyers, consultants and industry professionals that are involved in constructing entry-level to luxury units in for-sale, rental and mixed-use developments.

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The state needs a plan that helps us build our way to resiliency while tackling our housing crisis. NJ needs both short- and long-term goals to address systemic encumbrances and a desperate need for building, illustrated by an undersupply of at least 200,000 units and an older housing stock in need of rehabilitation and increased resiliency. Meanwhile, the state currently has more than 250,000 policies covered by the NFIP¹ which does not include properties in the newly proposed CAFE and approximately 25% of all affordable housing units in the state are at risk of flooding.² NJ averages about 30,000 building permits per year, only a portion of which are for redevelopment. Assuming a very gracious 10,000 units per year are redeveloped and that redevelopment only occurs in areas with flood risks, it would still take 250 years to protect all our housing stock from flooding. While addressing this gigantic planning issue is beyond the purview of Department rulemaking, one should not occur without the other.

NJBA appreciates that the Department has responded to stakeholder comments regarding its proposed REAL rule with the NOSC but is disappointed that the public and critical stakeholders were not consulted on the proposed corrections to the REAL rule. The Department's NOSC falls short of addressing numerous³ concerns from stakeholders and appears to have been drafted without stakeholder input. NJBA is extremely concerned that the Department has been unable or unwilling to answer numerous crucial questions that it and others posed in response to the REAL proposal, including:

- Did the Department evaluate any rule or permitting incentives for developments that meet certain resilient criteria?
- Has the Department estimated the dollar figure for the total value of property within the new Inundation Risk Zone (IRZ) and expanded Flood Hazard Area (FHA) and by how much it may be devalued?
- Has the Department calculated the number of parcels that will be located in the expanded FHA as proposed under the REAL rule?
- Have property owners in the expanded FHA or proposed IRZ been notified?
- Have property owners in such proposed, expanded FHAs been notified?
- Has the Department evaluated the estimated 4.4%-13.3% devaluation of land that may be suffered by owners due to inclusion of land in a regulated FHA and the financial burdens and consequences on landowners who hold financing for such parcels?⁴

¹ New Jersey Climate Change Resource Center. (n.d.). *The National Flood Insurance Program and New Jersey*. Retrieved from <https://njclimateresourcecenter.rutgers.edu>

² StoryMaps ArcGIS. (n.d.). *25% of all NJ Affordable Housing is at risk for flooding*. Retrieved from <https://storymaps.arcgis.com/stories/dd3e9167297243f8bb3f272afd151063>

³ NJBA relies upon its comment letter dated November 7, 2024, incorporated herein by reference, for a full recitation of its concerns and comments regarding the REAL rule proposal.

⁴ AMRES. (2024). *Understanding and Evaluating the Resale Value of a Home in a Flood Zone*. Retrieved from <https://www.amres.com>

- Has the Department estimated the impact to tax bases and the shifting tax burden to property owners who reside in unaffected areas?
- Has the Department estimated the impact to tax bases and the likely shifting of tax burden to property owners who reside outside of expanded FHAs?
- Has the Department considered how much less home equity the average property owner will have as a result of the new CAFE designation?
- Has the Department evaluated approximately how many residents in the IRZ or CAFE have enough disposable income or home equity to afford to raise their home?
- Has the Department evaluated at what rate decreasing home equity could affect the ability of property owners to make improvements that increase resiliency?

The failure of the Department to address these questions negates the ability of the public and stakeholders to have a meaningful debate about how best to respond to the REAL proposal. The NOSC does not answer these questions and addresses a only portion of the massive rule with minor changes that do little to mitigate its harms to the housing industry. Most crucially, the NOSC continues the principal failure of the REAL proposal which is that it makes building and developing significantly more difficult in certain areas without making any changes to incentivize development and increase our housing supply and resiliency in other areas.

Implementing measures to encourage development and redevelopment in low-risk areas is not outside of the Department's rulemaking purview. Stakeholders have long advocated for rule or program changes that incentivize this behavior, such as priority reviews, shorter permit review windows, pre-conforming design types and more. Unfortunately, the REAL rule does not include any enhanced efficiencies for low-risk, resilient or even energy efficient development or redevelopment. NJBA reiterates its belief that the REAL rule should be withdrawn and properly stakeholdered.

N.J.A.C. 7:8-5.7(e) and 7:13-3.1(e) Sea Level Rise Adjustment

NJBA appreciates that the Department is utilizing updated information to re-evaluate potential sea level rise scenarios. NJBA has steadfastly maintained that the Department should utilize scientific and data that reflect the latest projections, and which are based on a median range of available forecasts. NJBA's concern with the Department's sea level rise projection continues to be centered on the fact that sea level rise projections vary wildly and do so increasingly the longer the time range of the forecast. For instance, the Intergovernmental Panel on Climate Change (IPCC) 2021 projects under a moderate emissions scenario (RCP4.5), a median sea level rise of approximately about 1.8 to 2.6 feet by 2100 and under a high emissions scenario, projections increase to about 2.6 to 3.6 feet;⁵ the National Oceanic and Atmospheric Administration utilizes a median estimate of around 2 to 4 feet under high greenhouse gas

⁵ Intergovernmental Panel on Climate Change. (2021). *Sixth Assessment Report: The Physical Science Basis*. Retrieved from <https://www.ipcc.ch/report/ar6/wg1/>

scenarios;⁶ the United States Geological Survey (USGS) finds a median rise of about 1.6 to 2.6 feet based on moderate emissions scenarios;⁷ and the United Nations Environment Programme reports a global average sea level rise projection of 2 to 4 feet by 2100, based on a moderate to high emissions scenarios.⁸ Most recently, a study out of the Netherlands concluded that sea level rise estimates by the IPCC have been biased upward by approximately 2 mm per year in comparison with the observed rate.⁹

The Department claims the reduction from 5 feet to 4 feet of sea level rise is based on new information regarding lowered temperature change projections. That the science relied on has changed in such a short period of time demonstrates that the “science” is uncertain and not reliable for such a long-term projection. It is unreasonable for the State to regulate based on unreliable science in a way that will have substantial present day economic implications for public. Due to the uncertainty with a year 2100 projection, NJBA has recommended utilizing the median range of projections for NJ with an update once every ten years. NJBA appreciates that the Department has reduced its sea level rise projection to four feet but questions the continued use of the 17th percentile chance of occurrence as the regulatory standard. This statistical choice would be acceptable if the Department was not applying a set of rules which are also based on un-probable scenarios such as the 1% annual flood. Regulating based on a combination of probabilities creates a regulatory standard based on an extremely un-probable scenario in that the likelihood of both the 17% worst case chance of sea level rise occurring and a 1% flood affecting a random property in the fringe of the new expanded FHA would be 0.17%.

Regarding the Department’s proposal to update its sea level rise and precipitation forecasts every five years, NJBA is concerned that this frequency does not allow the regulated public and government agencies sufficient time to reasonably respond to potential regulatory changes. The development timeline in NJ is lengthy due to the State’s complex regulatory framework and projects often take over five years to complete. Additionally, the duration of a flood hazard individual permit is only five years. A five-year update is likely to cause uncertainty in the development process and would need to include a significant legacy provision to ensure changing flood hazard elevations or precipitation rates would not create a bottleneck of project redesigns every five years. Accordingly, NJBA recommends that the data be revisited every 10 years and that proper APA notice, stakeholdering and legacy provisions be included with future updates.

N.J.A.C. 7:13-8.1 Reconstruction, Relocation, Expansion, and/or Elevation of a Building Outside a Floodway and an Inundation Risk Zone,

⁶ National Oceanic and Atmospheric Administration. (2022). *Global and regional sea level rise scenarios for the United States*. Retrieved from <https://oceanservice.noaa.gov>

⁷ United States Geological Survey. (n.d.). *Sea level rise projections*. Retrieved from <https://www.usgs.gov>

⁸ United Nations Environment Programme (UNEP). (2022). *Climate Change Science Compendium*. Retrieved from <https://www.unep.org>

⁹ Voortman, H.G. and De Vos, R. (2025) ‘A Global Perspective on Local Sea Level Changes’, *Journal of Marine Science and Engineering*, 13(9), p. 1641. Available at: <https://doi.org/10.3390/jmse13091641>.

NJBA appreciates that the Department has provided additional clarifications regarding general repair and maintenance activities.

N.J.A.C. 7:13-11.5 Requirements for a Regulated Activity in an Inundation Risk Zone

NJBA supports the Department's proposal to remove signage requirements from the rule as signs would need to be regularly updated with sea level rise adjustments.

N.J.A.C. 7:13-12.5 Requirements for a Building

NJBA remains opposed to the requirement to demonstrate that every reasonable effort has been made to locate a building on the highest portion of a site. If an applicant can meet the required elevation and other requirements of this section for the building, the location of the building should not be an additional consideration of the Department. The proposed addition of the phrase, "unless doing so would result in more environmental disturbance than siting it on lower ground" requires additional definition as to what constitutes "environmental disturbance."

NJBA is opposed to the Department's addition of the word "convert" to the provision to regulate the change in use of buildings. This proposal would implicate use changes for substantial improvements and certain non-substantial changes to buildings. The Department has not shared any meaningful economic impact analysis for this change which is likely to be substantial. Additionally, this proposal would likely lead to many properties being "fixed" in their use designation to avoid the heightened regulatory compliance obligations for buildings associated with changed use which could have far reaching consequences for areas in need of redevelopment and infringes upon local zoning and planning initiatives.

N.J.A.C. 7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, CAFRA Nodes, and CAFRA Critical Environmental Sites--Clarifying Inundation Risk Zone as Exclusion From or Designated as a CAFRA/Critical Environmental Site Within Areas Designated as a CAFRA Core, Node, or Center

NJBA appreciates that the Department has removed references to the IRZ in the Special Area rules but reiterates its original concerns because the State Planning Commission is likely to endorse new plans in the CAFRA area and has made recent references to creating Environmentally Sensitive Area overlays based on flood hazard areas. By extension, this would lead to the imposition of the most severe impervious cover limits and vegetation preservation requirements pursuant to the Department's CAFRA rules. In addition to removal of the reference to the IRZ as a Critical Environmental Site, the Department should implement rules provisions to clarify that flood hazard areas, which are separately regulated under the Flood Hazard Area Control Act rules, are not a basis for Critical Environmental Site designation, and the most severe cover limitations in the context of the Impervious Cover / Vegetative Preserve provisions of the CAFRA Individual Permit requirements of the Coastal rules should not apply to such areas.

**N.J.A.C. 7:7-26.1 , 7:7A-19.1 , and 7:13-21.1 General Application Review Provisions,
N.J.A.C.7:8-1.6 Applicability to Major Development--Applying Standards Prior to REAL**

for Projects Obtaining Certain Approvals

NJBA appreciates the Department's proposal to extend legacy protections for projects that have invested substantial time and resources in development and planning and supports the proposed legacy protection extension of 180 days following REAL's effective date. NJBA seeks clarification that when a permit requires a public hearing, the term, complete for public hearing means the application is complete and not that the public hearing has already occurred. Public hearing schedules can be unpredictable, and the Department should not subject applicants to these factors outside of their control.

N.J.A.C. 7:7-26.1(b) 2, 7:7A-19.1(b) 2, 7:8-1.6(g), and 7:13-21.1(b) 2 Film Projects

NJBA is concerned that certain projects are being given priority status and that the rules are being applied unequally. NJBA appreciates that substantial planning investment and economic incentives are involved in certain project and that the REAL rules imposition could threaten their success. However, these threats to project feasibility apply to countless residential development and redevelopment projects as well which may have also relied on economic incentives from various agencies, specific financing constraints and have also borne significant planning costs. NJBA believes that the rules should apply equally and that the referenced exemptions for film projects should be applied to all projects that have received public funding.

N.J.A.C. 7:7A-7.1 General Permit--Maintenance and Repair of Existing Features— Changing Permit Criteria for Stormwater Basins

General Permit Number 1 (GP1) has been used to maintain existing off-stream stormwater management facilities that were created in uplands. These stormwater facilities were originally designed to be uplands and did not include newer green infrastructure such as standard constructed wetlands. Additionally, these stormwater management facilities typically have sediment accretion, which can result in incidental human-made wetlands within the facility. The GP1 would allow an applicant to remove the accreted sediment, which would remove the incidental human-made wetlands within the stormwater management facility which would allow the stormwater management facility to function as originally designed following the GP1 authorized maintenance. The NJDEP proposed "There is no net loss of wetlands and wetlands functions or values" would not allow these stormwater facilities to be maintained to the original design and functions and would be a disservice and burden to applicants who seek to have their stormwater management facilities function as originally designed. This regulation should be completely removed or written to exclude any wetlands that have unintentionally been formed within the stormwater management facility.

N.J.A.C. 7:8-1.2 Definitions--"Major Development" and N.J.A.C. 7:8-5.5 Stormwater Runoff Quality Standards--Regulation of Reconstruction of a Motor Vehicle Surface

NJBA is disappointed that the Department has not altered its position regarding redeveloped impervious surface. NJBA reiterates its original comment that the proposed onsite retention standard will not help reduce stormwater runoff unless a property is actually redeveloped. This particular proposal removes a pre-existing incentive of redevelopment from the rules. NJBA believes that the current 50 percent TSS removal standard and the incentive for redeveloping

existing impervious surfaces furthers the dual goals of improving stormwater runoff and renovating/remediating properties. The Department should strongly reconsider this proposed change which will discourage redevelopment and remediation in relation to the current environment.

N.J.A.C. 7:13-2.2 Regulated Waters--Changing Exemption Regarding Hydrologic Connection with Other Surface Waters

NJBA appreciates the Department's re-evaluation of the proposal and the newly proposed N.J.A.C. 7:13-2.2(a) 5 to provide that isolated waters with a drainage area of less than 50 acres, which have no surface or subsurface hydrological connection to existing waters, remain exempt from regulation. However, the proposal now mentions waters that are contained in subsurface pipe or channel. Many urban and suburban areas of the State have subsurface piped or channelized waters. The removal of this exemption to regulate such manmade features will greatly expand regulated flood hazard areas in such areas and have severe regulatory and financial consequences. Finally, NJBA reiterates a question from the original proposal which was not answered in the NOSC: has the Department evaluated how much land would be affected by the proposed change?

N.J.A.C. 7:13-12.5(m) Dry Access

NJBA appreciates the Department's evaluation of its Dry Access standard and its attempt to provide additional clarification concerning when exemptions may apply. However, the Department's proposed change has failed to address NJBA's primary concern, that the dry access rules continue to have no discernable standard for when exemptions may be provided. This continues to leave large areas of communities in potential no build zones, where providing access to a site would be financially infeasible. If the Department could provide measurable standards for exemptions, the public would be able to reasonably determine before developing or redeveloping a site if the site was suitable.

N.J.A.C. 7:13-12.5(m)2

NJBA appreciates that the Department has clarified that dry access requirements only apply to a building proposed within an FHA. NJBA appreciates that the Department has added some clarifying language that access requirements apply to emergency response vehicles and their movement to a government designated shelter. NJBA believes that this clarification will provide predictability to the development community and additional safety for the public. The Department should explore ways to ensure that municipalities have designated shelters and that this information is readily available to the public. NJBA requests that the presence of high-water emergency response vehicles be a consideration of the Department in its FHA guidance and the ultimate determination of when access is feasible. Further, the proposed language to require proposals to ameliorate adverse impacts including evacuation plans will help to ensure that applicants have taken all proper methods to provide reasonable means to protect residents.

NJBA is concerned with the Department's requirement that travel surfaces must lie one foot above the 100-year flood elevation even if all other requirements of N.J.A.C. 7:13-12.5(m)2 are

met. Due to the age of many of our state's communities, infrastructure and development patterns near waterways, elevating roadways to this level could still be prohibitively expensive and meet the adverse conditions at **N.J.A.C. 7:13-12.6(c)2**; NJBA believes that the Department should consider waiving this requirement, especially considering that emergency response vehicles may be able to traverse this flood elevation to a particular property and that this prohibition places unnecessary restrictions on the Department's determination of if a waiver should be granted.

The proposal's text appears to remove tidal flood hazard areas that are not additionally fluvial from being able to demonstrate it is not feasible to meet the required dry access standards. Where has DEP preserved this allowance in the proposed amended rules? If it has not, the rule should be revised to preserve such allowance which is clearly intended per the Response to Comment explanation and Department's statements made at public informational sessions prior to release of the NOSC. The language in 12.5(m)2ii (which is referenced in the Response to Comments and speaks to deed noticing) does not specifically reference tidal flood hazard areas or specify that it is the only requirement applicable to tidal flood hazard areas.

NJBA reiterates its position that the dry access requirement should not apply to single family residential subdivisions of more than 1 single family home or duplex. This requirement will be prohibitively expensive compared to the cost of redeveloping or construction a single-family home. Even demonstrating its infeasibility would require costly engineering and permitting work.

NJBA reiterates its comment that the Department does not have the authority to regulate activity based on off-site conditions beyond the control of the applicant.

N.J.A.C. 7:13-12.5(m) 3 Grading of Pedestrian Areas

NJBA seeks clarification of the following statement in the NOSC, "Further, the requirement to elevate areas meant to be accessible for pedestrian use to one foot above the climate-adjusted flood elevation includes flexibility in the case where it is not feasible for these areas to be constructed to this elevation. In this case, the rules require a demonstration of infeasibility and elevation as close as is feasible to one foot above the climate-adjusted flood elevation. A multi-residence building can have a non-residential component, such as a commercial use. N.J.A.C. 7:13-12.5(m) would apply to such a building." Specifically, does this statement suggest that a multi-residence building with ground floor commercial, where the residential component is elevated above the flood hazard level would not need to comply with the requirement to grade pedestrian areas for the ground floor commercial above the flood hazard level?

N.J.A.C. 7:13-12.5(m) 3ii Peak Flow Rates

NJBA appreciates the Department's proposed amendment to provide a more flexible standard regarding off site drainage patterns that may be caused by regrading of a site.

N.J.A.C. 7:13-15

NJBA appreciates the Department has recognized the crucial importance of allowing for the

construction of additional affordable housing in the State. However, NJBA is concerned that the rules may be applied differently to affordable housing as opposed to residential housing in general. NJBA believes that a compelling public need exists for additional housing of all types, including workforce housing. The standards in the REAL rule should be reasonable enough so that additional housing production can occur in all communities and that special exemptions are not needed. Absent withdrawing the rule and re-crafting it to provide for development incentives in low hazard areas to offset the additional restrictions in the rule, NJBA recommends that the word affordable be removed from this section to give the Department additional deference it could employ regardless of the housing type.

Proposed N.J.A.C. 7:7-9.26(e) 2iii(1), “Critically dependent species”

NJBA is concerned by the addition of a new definition in the NOSC which has not been stakeholdered or discussed. The Department claims that, “Historically, the absence of a definition for threatened or endangered species, that are critically dependent on the regulated water for survival, has contributed to confusion between how the Coastal Zone Management rules and FHACA rules regulate threatened and endangered species and their associated habitat.” NJBA is unaware of the referenced confusion and believes it could be addressed with guidance.

N.J.A.C.7:7-9.50(a) 1 and 7:13-8.1(a) 4i, 11.5(a)1, 12.5(f)2i, and 12.5(p)1i to extend an exemption to repair and maintenance activities that may alter the height of a building.

NJBA appreciates that the Department has provided additional clarifications regarding general repair and maintenance activities.

Thank you for your consideration of NJBA’s comments. Please feel free to reach out to us with any questions.

Sincerely,

Grant Lucking
Chief Operating Officer
New Jersey Builders Association