

**Public Comment of the Borough of Stone Harbor,
Cape May County, NJ on the Resilient Environments and
Landscape (REAL) Proposed Rule.**

The Borough of Stone Harbor, NJ wishes to provide commentary on the proposed Rules as published in the August 5, 2024 NJ Register regarding the REAL legislation. The Borough enlisted the services of the Borough Administrator, Manuel Parada, a Professional Engineer licensed in New Jersey (No. 46353), to assist in the formation of these comments and in the memorialization of the opinions of the Governing Body.

Utilizing Governor Murphy's Executive Order No. 100, signed in January, 2020 as its mandate, the NJDEP developed the REAL Rule Proposal based on what is claimed as the best available predictive climate science. The State policy is clear in that extreme weather intensification, chronic flooding and sea level rise will continue and the proposed Rule is based on the continued intensification of climate change. In fact, the entire Rule Proposal is based on a single study from Rutgers University (2019 Science and Technology Advisory Panel Report entitled "New Jersey's Rising Seas and Changing Coastal Storms"). The report provides low, likely and high probabilities of sea level rise based on whether carbon emissions go low, moderate or high in the coming years. The State arbitrarily chose 2100 as the design year for the Rule and equally arbitrarily chose a 17% chance of probability for the Sea Level Rise prediction. The Year 2100 is particularly onerous to coastal communities such as Stone Harbor because our current housing stock usually lasts 20-25 years. The State is proposing to impose regulations on houses now that will not see the Year

2100, which is arbitrary and capricious. In fact, it is predicted that the typical home in Stone Harbor will be reconstructed 3 times between now and the 75-year term of this regulation ensuring that not only the homes being built now will not see the Year 2100, but neither will the replacement home built in 2050. It would be the third home built on the same lot, in the Year 2075 that may see the Year 2100.

The selection of the highest end of the “likely” spectrum in the Rutgers report was an extraordinarily conservative standard that results in 5.1 feet of sea level rise. Selection of an extremely conservative standard should only be made with the ability to verify progress during the term. That is, the sea level predicted rise in the years between 2024 and 2100 should be closely monitored and compared to the actual sea level rise measured at the shore point. Only with that data can such an extreme position be justified. A more appropriate methodology to employ would be to stay in the same 17% likelihood row, but base the Rule on the 2030 elevation rise of 1.1 feet. In 2030, the actual sea level rise can be observed and the plan then adjusted. If the sea level rise is 0.8 feet, the Rule should be adjusted to 50% likelihood. If the sea level rise is 1.3 feet in 2030, the projection should be made on the less than 5% likelihood model. Similar stop points should be entrenched in the Rule to verify the actual sea level rise in 2050, 2070 and finally 2100. The State is leaving itself vulnerable to lawsuits should the 2030 projection not come to fruition in that the obvious conclusion is that the entire science is then flawed.

Coastal Communities on barrier islands, such as Stone Harbor, are disproportionately affected by the introduction of the Inundation Risk Zone (IRZ). While the NJDEP may argue that the coastal communities are more vulnerable and therefore should be more affected by the IRZ, the reality is that coastal communities have made great strides in meeting the Federal standards imposed by FEMA to obtain more favorable scores in the Community Rating System. This Proposed Rule essentially removes individual characteristics of each coastal community and instead selects a homogenized approach to all shore towns as if we are all identical. The Rule, if adopted, would circumvent the ability of each community to decide for itself what is a tolerable level of flooding. Furthermore, the use of IRZ on barrier islands will clearly add land use restrictions on development or redevelopment which will likely lower the desirability of coastal living, dropping the value of the homes and in the process, remove the ratable tax base of these communities. It would appear that the NJDEP is attempting to destroy coastal communities with these Rules, and diminish the generational wealth of certain sectors of the population arbitrarily because these residents and homeowners had the forethought to find barrier island living as desirable.

The Borough of Stone Harbor, much like many shore front communities in Cape May County entered into a 50-year agreement with the US Army Corps of Engineers for recurring beach nourishment and Dune sustainability. The project has been highly successful in Stone Harbor with wide, healthy dunes that reach 20 feet in height where there were none at the turn of this century. This engineered dune system provides invaluable protection to the community and particularly the ocean front homes. The US Army Corps of Engineers uses a base template for their berm design at an elevation of +7.25 feet in Stone Harbor. Was the Army Corps of Engineers

consulted in the development of this Proposed Rule and what effect will the proposed rule have on the Army Corps design standards? Assuming the entire beach profile will need to change, are the federal and state governments prepared to absorb the increase in costs this legislation will create in the current funding formula? Is it the intention of the NJDEP to eliminate the engineered dune system after this current term of contract expires? That is, the first Contract with the Army Corps of Engineers will expire in 2052. If the Army Corps needs to meet the CAFÉ standards in their design, will the Corps be willing to start a second 50 year Contract in 2052?

Should the extreme position of a 5.1-foot sea level rise be realized by the Year 2100, will the State provide Level of Service (LOS) on their own roadways to reach a Level of Service of D? That is, currently the peak days result in a LOS Grade of 'F' on the Garden State Parkway, and State Routes 47, 55, 83 and 347 in Cape May County. Historically, these roadways can be so congested that traffic is essentially at a standstill or low crawl, damaging air quality in Cape May County. Safe evacuation of the County residents during a major storm event, with or without the added influx of summer visitors utilizing the State Roads is already doubtful. Will the REAL Rules apply to State owned roadways to ensure that northbound evacuations can take place above the CAFÉ height? Is the NJDOT and the NJ Turnpike Authority prepared for the cost to comply with the REAL Legislation on their roadways? What is the economic impact of those compliance measures?

The growth of the NJDEP will be considerable if this Rule is passed. How does the NJDEP plan to staff all of the specialists and technical expertise it will need to have to respond to the increase in

permitting requirements? Has the impact on all state taxpayers been considered or does the Department plan to fund the vast expansion of government through permit fees and fines?

Should the sea level rise approach its prediction in the Rutgers model, most of the established and permitted Temporary Debris Management Areas (TDMA's) along the coastal communities will be inundated. How do the proposed regulations plan on incorporating the needs of the Department's Division of Sustainable Waste Management after a coastal storm creates damage and subsequent waste for the community? Has the Division of Sustainable Waste Management been consulted on this proposed rule? Is the Department assuming that the Community will raise the elevation of the TDMA's above the CAFÉ, adding financial burdens that have not been considered?

Retention of runoff is already a concept that is embraced by flood prone communities. In fact, Stone Harbor has one of the strictest lot grading Ordinances in the State that requires all new development and redevelopment to provide a means to control runoff. However, according to the NJDEP's Proposed Climate Adjusted Flood Elevation predictions for the Year 2100, 99.89% of Stone Harbor will be below the CAFÉ elevation. How does the State propose we should regulate storm retention facilities that will be below water? Is the Rule suggesting that we need to elevate all storm water retention devices above the CAFÉ elevations, noting that 900 of the 901 acres that comprises Stone Harbor will be below water? It would appear that the State is imposing non-

gravity based retention systems which will impose a significant impact on homeowners and the community.

What is the purpose of requiring the detailed alternatives analysis of project consequences to the functioning of a natural shoreline when the Department's Proposed Rule clearly indicates that nature based solutions are the desire of the NJDEP. Will design standards similar to the 10 States Standards be provided so that the engineering community can follow under the same principles?

What is the legislative authority to require major site plan review under the Freshwater Wetlands regulations even if the proposed project is not in the Wetlands or in the Transition Area? Is that an over-reach of the Wetlands Regulations?

The proposed rule allows for Offshore Wind Developers to disturb shellfish habitats by simply providing a monetary donation to the NJDEP Shellfish Mitigation Fund. Can this approach be expanded to other areas of the Rule? That is, can communities buy their way out of compliance or is it only limited to Offshore Wind Developers?

The State must perform a detailed, holistic and comprehensive economic impact study to address the financial implications to the communities, residents, and businesses directly affected by this capricious Rule making effort. At a minimum, the Economic Impact Study must determine the

property devaluation that will follow the Rule and the loss of local real estate taxes on communities and counties. Additional impacts to be consider include what will the Rule do to the cost of Ownership in coastal communities, specifically as it relates to affordable housing and non-regulated housing that is affordable. It is apparent that the cost of the Rule to be borne by the homeowner will knock low and moderate income individuals out of the coastal areas if the communities survive the loss of tax base. Insurance premiums will undoubtedly soar even higher than they are now along the coast, further deteriorating the low and moderate income people presence in shore communities. For a State that demands economic and environmental justice in all its endeavors, this Rule has the apparent opposite effect long-term and will make the coastal communities an extremely exclusive society available only to the ultra-rich who can comply with these daunting regulations. Additionally, the Rule, with its high direct and indirect costs of compliance will discourage small businesses from taking hold or starting in coastal areas. It would appear that this Rule will have the unintended consequence of creating more economic exclusivity and not less along the shoreline by eliminating the low and moderate income class.

The Borough's Administrator is an Environmental Engineer, with nearly 40 years of experience in water management. In fact, he was specifically hired to bring that expertise to the Borough as we face a future with higher water levels. In fact, his Senior Thesis in 1986 studied the effects of rising sea levels on five wastewater treatment plants in New Jersey. In 1986, there was virtually no discussion on rising sea levels, which is a testament to forethought of our Administrator. He has been involved in the response to sea level rise since the mid-1980's. The Stone Harbor community as a whole recognizes that storms are intensifying and the sea level is rising. We live

with it every day. As a Community, we do approach this issue with the upmost concern for the rising sea level and the impacts on the climate change occurring. However, this community cannot support such an obvious overreach of a state government, that is also laying out an unfunded mandate that will cost billions if not trillions of dollars and will have the added detriment of destroying low and moderate income families in coastal communities across the state.

We implore the State to act within its own mantra. New Jersey has been a national leader in the environmental justice arena and is looked at with envy from other states. However, without the detailed economic impact analysis of this proposed rule, we suspect we will be looked at with pity from those states after you created the very rule that will divide the coastal community from the low and moderate income families and make it a playground for the ultra-rich. Additionally, an unprecedented 75-year planning device should never be implemented without the ability to monitor its progress. The data is already in the Rutgers report. We ask that you allow the progression of this Rule to play out by monitoring how close we come to predicted sea levels in the report at the years 2030, 2050, 2070 and ultimately 2100. It is inappropriate to base the progression otherwise without invitation of legal challenges when the predicted 1.1 feet of Sea Level rise does not come to fruition in just 63 months from now (2030).