

**PAYING FOR CLIMATE RESILIENCE: A TAX INCENTIVE
FOR CLIMATE ADAPTATION IN NEW JERSEY**

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ABSTRACT

Climate change poses a significant threat to the health and safety of New Jersey's coastal communities. Scientists predict rising sea levels and intensifying storms will bring increased flooding, erosion, and other climate-driven coastal hazards. In January 2026, the New Jersey Department of Environmental Protection ("NJDEP") adopted the Resilient Environments and Landscapes ("REAL") rule amendments. While the REAL rules made New Jersey the first state to adopt forward-looking climate-adaptation land-use regulations, New Jersey's economic and environmental interests conflict. The REAL rules lack sufficient funding to support compliance without deterring development. Further, the high costs associated with sustainable development risk that developers will choose to build in states with more lenient environmental regulations. This Note argues that New Jersey's mandate-only approach creates a dangerous split-incentive problem between the state's short-term economic development goals and its long-term climate resilience strategy. As a result, the current adaptation plan risks both economic stagnation in the state and inadequate climate protection for climate risks.

This Note proposes a Climate Resilience Corporate Tax Credit to solve the REAL rule's funding gap. The proposed credit allows developers in coastal zones to offset compliance costs by following or exceeding the REAL rules' mandates. The proposed credit will align the competing objectives of the New Jersey Department of Environmental Protection and the New Jersey Economic Development Authority by incentivizing investment and development despite stricter environmental regulations. The long-term economic benefits of investing in climate-resilient development to prevent future climate damage outweigh the short-term downsides of reduced tax revenue. Therefore, the proposed tax credit is not only environmentally essential, but also economically sensible.

INTRODUCTION: CLIMATE CHANGE, LAND USE, AND THE COST OF ADAPTATION ALONG NEW JERSEY'S COASTLINE

The New Jersey coastline faces unprecedented climate threats from sea-level rise and intensifying storms that threaten the state's 1,792 miles of coastline.¹ For a state with nearly half of its 239 municipalities classified as part of the coastal zone,² sound coastal infrastructure and protection for coastal communities is of the utmost importance.³ The New Jersey Department of Environmental Protection's ("NJDEP") newly adopted Resilient Environments and Landscapes ("REAL") rules aim to protect the state by raising elevation requirements, expanding flood maps, creating new wetland protections, and placing limits on construction in flood-prone areas.⁴ However, these regulations impose costly development standards without providing dedicated funding to support developer adherence.⁵ Although the New Jersey Department of Environmental Protection explicitly acknowledged that the mandates lacked a direct source of funding during the rulemaking process, New Jersey has not designated a funding source.⁶ This Note advocates for a Climate Resilience Corporate Tax Credit as a necessary complement to New Jersey's REAL rules.

Part I addresses New Jersey's climate vulnerability, the regulatory experiment represented by the REAL rules, and provides background about New Jersey's corporate tax structure. Part II addresses the core funding problem and the limits and dangers of mandate-only climate resilience regulation. Part III proposes a Climate Resilience Corporate Tax Credit and explains how a tax-based solution can

1. *Coastal Zone Management*, N.J. DEP'T OF ENVTL. PROT., <https://dep.nj.gov/wlm/lrp/coastal-zone> (last visited Feb. 25, 2026) [hereinafter *N.J. DEP Coastal Zone Management*].

2. *Id.*

3. *Id.*

4. *REAL Program Overview*, N.J. DEP'T OF ENVTL. PROT., <https://dep.nj.gov/njreal/overview> (last visited Feb. 25, 2026) [hereinafter *N.J. DEP REAL Program Overview*].

5. Resilient Environments & Landscapes, R.2026 d.002, 58 N.J. Reg. 493-96 (Jan. 20, 2026) (response to comment 938).

6. *Id.*

address the funding gap in New Jersey's climate resilience strategy. It will also address potential constitutional challenges and distinguish the proposed credit from cases such as *Cuno v. DaimlerChrysler*.⁷ Then, the Note will conclude.

PART I: CLIMATE RESILIENCE AND NEW JERSEY'S REGULATORY EXPERIMENT

A. CLIMATE RISK, CLIMATE ADAPTATION, AND NEW JERSEY'S VULNERABILITY

Human activity, specifically the emission of greenhouse gasses, is changing the climate.⁸ As a result, both nature and people suffer adverse impacts and related losses and damages.⁹ Climate adaptation refers to the process of adjusting to the current and projected effects of climate change.¹⁰ Climate resilience refers to the capacity to anticipate, withstand, and cope with the effects of climate change.¹¹ Strengthening climate resilience is a hopeful result of climate adaptation and involves decreasing a region's vulnerability to the climate-related hazards imposed by scientifically predicated climate change.¹² Climate-resilient development integrates climate adaptation

7. *Cuno v. DaimlerChrysler, Inc.*, 386 F.3d 738 (6th Cir. 2004), *overruled by DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).

8. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023: SYNTHESIS REPORT 8 (Core Writing Team, H. Lee & J. Romero eds., 2023) https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf [hereinafter CLIMATE CHANGE 2023: SYNTHESIS REPORT].

9. *Id.*

10. *What Is Climate Change Adaptation and Why Is It Crucial?*, U.N. DEV. PROGRAMME (Jan. 30, 2024), <https://climatepromise.undp.org/news-and-stories/what-climate-change-adaptation-and-why-it-crucial>; Michael Fine, *Climate Adaptation and the Need for a National Land Use Policy*, 103 B.U. L. Rev. 1843 (2023).

11. CTR. FOR CLIMATE AND ENERGY SOLS., WHAT IS CLIMATE RESILIENCE AND WHY DOES IT MATTER? 1, 2 (2019); Sara Mehryar, *What Is the Difference Between Climate Change Adaptation and Resilience?*, GRANTHAM RSCH. INST. ON CLIMATE CHANGE & THE ENV'T (Sep. 12, 2022), <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-difference-between-climate-change-adaptation-and-resilience/>.

12. *Id.*

and greenhouse gas mitigation to advance sustainable development.¹³ This requires governments, civil society, and the private sector to make inclusive development choices that prioritize long-term risk reduction, equity, and justice.¹⁴ While the need for climate adaptation and resilience is clear, insufficient mobilization of finance and a low sense of urgency pose significant barriers.¹⁵ However, climate adaptation and climate resilience are extremely time sensitive, and delaying action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damage.¹⁶

Nowhere are these stakes more apparent than in coastal zones, where the physical consequences of climate change threaten to sink entire cities.¹⁷ If human activity continues at its current rate, global mean sea level rise is virtually certain.¹⁸ Rising global sea levels increase risks for coastal ecosystems, people, and infrastructure, as higher sea levels will increase the baseline for flooding from high tides and coastal storms.¹⁹ Flooding can overwhelm stormwater drainage systems, causing damage to buildings and infrastructure, road closures, and the disruption of daily life for businesses and residents.²⁰ While climate change is a global challenge, the impacts are experienced locally.²¹ Coastal zones face the greatest risks from

13. U.N. DEV. PROGRAMME, *supra* note 10.

14. *Id.*

15. CLIMATE CHANGE 2023: SYNTHESIS REPORT, *supra* note 8, at 8–9.

16. *Id.*

17. See Steven Rodas, *11 N.J. Neighborhoods That Will Be Completely Underwater by the End of the Century*, NJ.COM (Jul. 13, 2024), <https://www.nj.com/atlantic/2024/07/11-nj-neighborhoods-that-will-be-completely-underwater-by-the-end-of-the-century.html> (identifying eleven New Jersey neighborhoods projected to be fully submerged by 2100, including Lavallette, Manasquan, and Cape May).

18. CLIMATE CHANGE 2023: SYNTHESIS REPORT, *supra* note 8, at 12.

19. *Id.* at 16; ROBERT E. KOPP ET AL., NEW JERSEY'S RISING SEAS AND CHANGING COASTAL STORMS: REPORT OF THE 2019 SCIENCE AND TECHNICAL ADVISORY PANEL 24 (2019), <https://doi.org/10.7282/t3-ecqu-mq48> [hereinafter KOPP, NEW JERSEY'S RISING SEAS AND CHANGING COASTAL STORMS].

20. NICHOLAS ANGARONE ET AL., NEW JERSEY STATEWIDE CLIMATE CHANGE RESILIENCE STRATEGY 23 (2021), <https://dep.nj.gov/wp-content/uploads/climatechange/docs/nj-climate-resilience-strategy-2021.pdf>.

21. *The Human Rights Impact of Climate Change: An International and Local Challenge*, GENEVA CITIES HUB (Mar. 14, 2022),

sea level rise, coastal storms, and erosion, and are increasingly vulnerable to compound flood events, which exacerbate the adverse consequences of flooding.²²

New Jersey's sea levels are rising at roughly twice the global average, and coastal flooding has increased in frequency and magnitude.²³ New Jersey's coastal zone includes developed urban waterfronts, industrial ports, suburban neighborhoods, commercial centers, critical infrastructure, as well as parks and beaches. These vital areas provide people with opportunities for recreation, commerce, industry, housing, and tourism.²⁴ Additionally, New Jersey's coastline is vital to its economy, with the commercial fishing

<https://www.genevacitieshub.org/en/the-human-rights-impact-of-climate-change-an-international-and-local-challenge/>.

22. KOPP, NEW JERSEY'S RISING SEAS AND CHANGING COASTAL STORMS, *supra* note 19; J. Green et al., *A Comprehensive Review of Compound Flooding Literature with a Focus on Coastal and Estuarine Regions*, 25 NAT. HAZARDS EARTH SYST. SCIS. 747 (2025) [hereinafter Green on Flooding] <https://doi.org/10.5194/nhess-25-747-2025> (defining compound flooding as the combination or successive occurrence of two or more flood drivers leads to a greater impact); *High-Water Marks in New Jersey Following Hurricane Ida and Associated Floods, September 2021*, U.S. GEOLOGICAL SURV. (Nov. 8, 2021), <https://www.usgs.gov/data/high-water-marks-new-jersey-following-hurricane-ida-and-associated-floods-september-2021> (documenting high-water marks at 50 sites across New Jersey counties severely affected by Hurricane Ida's remnants); THOMAS P SURO, ANNA DEETZ & PAUL HEARN, DOCUMENTATION AND HYDRAULIC ANALYSIS OF HURRICANE SANDY IN NEW JERSEY, OCTOBER 29-30, 2012 at 1 (2016), <https://doi.org/10.3133/sir20165085> (documenting peak storm-tide elevations at 169 high-water-mark sites along the New Jersey coast during Hurricane Sandy); N.J. Water Sci. Ctr., *Summary of Coastal Flooding in New Jersey Caused by the Nor'easter*, U.S. GEOLOGICAL SURV. (May 13, 2016), <https://www.usgs.gov/news/summary-coastal-flooding-new-jersey-caused-noreaster-january-22-24-2016> (showcasing that a 2016 storm produced record peak storm-tide elevations along the New Jersey coastline, above Hurricane Sandy level).

23. *See Sea-Level Rise*, ARCGIS STORYMAPS, <https://storymaps.arcgis.com/stories/d4aedda20c9b4c4cbee34e480e13553b> (last visited Feb. 25, 2026); KOPP, NEW JERSEY'S RISING SEAS AND CHANGING COASTAL STORMS, *supra* note 19; Green on Flooding, *supra* note 22.

24. N.J. DEP *Coastal Zone Management*, *supra* note 1; Lucia Osborne, *Building a Resilient New Jersey With the NJPACT REAL Rules*, AM. LITTORAL SOC'Y (Dec. 4, 2024), <https://www.littoralsociety.org/blog/building-a-resilient-new-jersey-with-the-njpact-real-rules>.

industry, the Ports of New York and New Jersey, and tourism in the shore counties generating billions of dollars.²⁵ In sum, New Jersey's coastline and its communities are extremely vulnerable to climate change, and a rapid response is required to avoid massive human and economic costs.

In 2012, Hurricane Sandy exploited the vulnerabilities of New Jersey's coastline.²⁶ Hurricane Sandy was the most destructive and costliest hurricane ever recorded in New Jersey's history.²⁷ The post-tropical cyclone destroyed hundreds of thousands of homes and businesses, inflicting \$37 billion in damages to the state and devastating coastal communities.²⁸ The devastation of the storm proved to be a wake-up call to both residents and government officials to protect the coast from present and expected future threats as a result of climate change.²⁹ The storm's devastation "provided an opportunity to make impacted communities more resilient," says Darlene Finch, Mid-Atlantic Regional Coordinator with the National Oceanic and Atmospheric Administration's ("NOAA") Office for Coastal Management.³⁰ In New Jersey and surrounding states that were also affected, Hurricane Sandy marked a pivotal moment that launched billions of dollars of resilience investments and provided the spark for a whole range of climate policies, such as New Jersey's REAL rules.³¹

25. *Ocean Resources Management in New Jersey*, N.J. DEP'T OF ENVTL. PROT. OFF. OF COASTAL PLANNING (2002), <https://www.nj.gov/dep/cmp/fact3.pdf> (providing information on Ocean Resources Management in New Jersey).

26. *Lessons from Hurricane Sandy*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/about-us/where-we-work/united-states/new-jersey/stories-in-new-jersey/sandy-one-year-later/> (last updated Sep. 27, 2022).

27. *Id.*

28. *Id.*; *Sandy Five Years Later: What Have We Learned?*, NOAA NAT'L OCEAN SERV., <https://oceanservice.noaa.gov/news/oct17/sandy-five-years-later.html> (last updated Jun. 16, 2024).

29. NOAA NAT'L OCEAN SERV., *supra* note 28.

30. *Id.*

31. Sarah Gibbens, *10 Years Later, See How Superstorm Sandy Changed the Northeast*, NAT'L GEOGRAPHIC (Oct. 20, 2022), <https://www.nationalgeographic.com/history/article/10-years-later-see-how-superstorm-sandy-changed-the-northeast>.

B. NEW JERSEY'S CLIMATE RESILIENCE REGULATORY EXPERIMENT

The State of New Jersey recognizes the risk that climate change poses to the state and has implemented environmental land use regulations in an effort to protect its vulnerable coastal communities.³² New Jersey has defined “climate resilience” in the New Jersey Climate Change Resilience Strategy as “the ability of social and ecological systems to absorb and adapt to shocks and stresses resulting from a changing climate, while becoming better positioned to respond in the future.”³³ In 2019, Governor Murphy signed Executive Order No. 89 (Oct. 29, 2019) appointing the State’s first Chief Resilience Officer, mandating the development of a Scientific Report on Climate Change and establishing a Climate and Flood Resilience Program within the NJDEP.³⁴ Just under four months later, on January 27, 2020, Governor Murphy signed Executive Order No. 100, which directed the NJDEP to “reform a suite of land use rules to incorporate climate change considerations . . . and other regulations that address flooding and chronic inundation.”³⁵

As a result of Governor Phil Murphy’s Executive Order 100, the NJDEP drafted the REAL rules with the stated purpose to modernize New Jersey’s land use regulations to respond to climate change risks such as sea-level rise and chronic flooding, as well as to facilitate climate resilience by supporting green infrastructure and renewable energy.³⁶ The REAL rules represent the most significant overhaul of

32. Edward J. Bloustein Sch. of Planning & Pub. Pol’y, *Rising Tides: Tackling Housing & Resilience in New Jersey’s Meadowlands*, RUTGERS UNIV. (2021), <https://bloustein.rutgers.edu/rising-tides-tackling-housing-resilience-in-new-jerseys-meadowlands/>; Exec. Order No. 89 (N.J. Oct. 29, 2019), <https://nj.gov/infobank/eo/056murphy/pdf/EO-89.pdf> [hereinafter N.J. Exec. Order No. 89]; see also Resilient Environments and Landscapes (REAL) Rules, N.J. ADMIN. CODE §§ 7:7, 7:7A, 7:87:13 (2026).

33. *Id.*

34. N.J. Exec. Order No. 89, *supra* note 32.

35. Osborne, *supra* note 24.

36. Michael S. Kettler, Alexa Richman-La Londe & Marilyn Greenberg, *NJDEP’s REAL Rule Revisions Enter Final Phase: What It Means for Coastal Development*, RIKER DANZIG: ENVTL. L. BLOG (Sept. 29, 2025), <https://riker.com/blog/environmental-law/njdeps-real-rule-revisions-enter-final-phase-what-it-means-for-coastal-development/>; *Resilient Environment and Landscapes (REAL)*, N.J. STATE LEAGUE OF MUN., <https://njlm.org/1339/NJDEP->

New Jersey's coastal and environmental land use regulations in decades, amending the Coastal Zone Management Rules, the Freshwater Wetlands Protection Act Rules, the Flood Hazard Area Control Act Rules, and the Stormwater Management Rules based on scientific predictions of sea level rise in 2100.³⁷ The rules adjust coastal flood hazard areas, create inundation risk zones, reduce flooding through enhanced stormwater management, support renewable energy, and streamline the NJDEP permitting processes.³⁸

Climate adaptation scholars identify three categories of coastal zone policies: protection, accommodation, and managed retreat.³⁹ The REAL rules are comprehensive regulatory amendments that incorporate each of these categories in meaningful ways. The protection category is incorporated through the expanded riparian buffers and wetland protections.⁴⁰ Wetlands and riparian buffers are natural systems that reduce erosion and provide a buffer for developed areas from storm surge and flooding; their protection is

[Resilient-Environment-and-Landscap](#) (last visited Feb. 25, 2026); *Resilient Environments and Landscapes*, N.J. DEP'T OF ENVTL. PROT., <https://dep.nj.gov/njreal/> (last updated Jan. 20, 2026); *N.J. DEP REAL Program Overview*, *supra* note 4.

37. KOPP, NEW JERSEY'S RISING SEAS AND CHANGING COASTAL STORMS, *supra* note 19; N.J. ADMIN. CODE §§ 7:7, 7:7A, 7:8, 7:13 (2026).

38. Kettler, *supra* note 36.

39. Michael Oppenheimer et al., *Sea Level Rise and Implications for Low-Lying Islands, Coasts, and Communities*, in IPCC SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE 321 (H.-O. Pörtner et al. eds., 2019), <https://www.ipcc.ch/srocc/chapter/chapter-4-sea-level-rise-and-implications-for-low-lying-islands-coasts-and-communities/> (reviewing the general agreement on the distinctions among three main categories of response: protection, accommodation, and managed retreat); Adam D. Orford, *Tools for Regulators in a Changing Climate: Proposed Standards, State Policies, and Case Studies from the Western Grid*, 32 GEO. ENVTL. L. REV. 227 (2020) (quoting J. Dronkers et al., *Coastal Zone Management*, in AR1 WG3 REPORT 129–59).

40. Legislative Staff, *NJDEP's REAL Rule Proposal: A Seismic Shift for NJ Municipalities*, N.J. STATE LEAGUE OF MUN. LEGIS. BLOG (Oct. 11, 2024, 2:30 PM), <https://www.njlm.org/Blog.aspx?IID=264>; *see also* N.J. ADMIN. CODE § 7:7A (Freshwater Wetlands Protection Act Rules) (ensuring all activities in transition areas are situated at least twenty-five feet from freshwater wetlands); N.J. ADMIN. CODE § 7:13 (Flood Hazard Area Control Act Rules) (applying a 150-foot riparian zone to regulated waters based on defined criteria for endangered or threatened species and requiring riparian zone mitigation for all impacts within 150-foot riparian zones that individually or cumulatively exceed 2,000 square feet).

vital to ensuring coastlines are preserved.⁴¹ The accommodation category is best exemplified in the REAL rules by the Adjusted Flood Elevation requirement.⁴² The elevation requirement requires new and substantially improved structures in tidal flood hazard areas to be built four feet above the Federal Emergency Management Agency's ("FEMA") existing 100-year flood standard. Finally, the retreat category is visible in the creation of new Inundation Risk Zones, designating coastal areas projected to face permanent tidal inundation by 2100, signaling that certain areas are not viable for continued development and implicitly encouraging withdrawal from the most vulnerable shorelines. Collectively, the REAL rules utilize all three categories of climate adaptation coastal zone policy. However, they do so entirely through unfunded regulatory mandates, leaving private parties to bear the cost of protection, accommodation, and managed retreat without governmental support.

Despite the state's initial enthusiasm for the REAL rule proposal, its momentum quickly stalled when the notice and comment period ended, largely in response to pushback from developers and local coastal municipalities.⁴³ Following the pushback, on July 21, 2025, the NJDEP published a Notice of Substantial Change that lowered the elevation requirement from five feet above the FEMA base flood elevation to four feet, and provided a legacy exception for large-scale projects that were already in progress.⁴⁴ Though less stringent, the updates did little to appease developers who critiqued the original proposal, worried the REAL rules may halt future development in the state.⁴⁵ The NJDEP followed the Notice of Substantial Change with a public hearing on September 3, 2025, and a second sixty-day

41. The Nature Conservancy, *New Jersey*, COASTAL RESILIENCE, <https://coastalresilience.org/project/new-jersey/> (last visited Feb. 27, 2026).

42. *Underlying Science*, REAL Rule, N.J. DEP'T OF ENVTL. PROT., <https://dep.nj.gov/njreal/underlying-science/> (last visited Feb. 27, 2026); N.J. ADMIN. CODE §§ 7:7, 7:7A, 7:8, 7:13.

43. 58 N.J. Reg. 247(a) (Feb. 17, 2026) (adopting amendments to N.J.A.C. 7:7 and 7:7E governing coastal zone management); *Resilient Environments and Landscapes (REAL): Amendments to N.J.A.C. 7:7 and 7:7E*, N.J. DEP'T OF ENVTL. PROT., https://dep.nj.gov/wp-content/uploads/njreal/real_adoption_courtesy.pdf (last visited Feb. 27, 2026).

44. *Id.*

45. *Id.*

comment period that concluded on September 19, 2025.⁴⁶ Finally, on January 20, 2026, New Jersey formally adopted the Resilient Environments and Landscapes (“REAL”) rules with some exceptions, including the 180-day legacy period and exceptions for a few large-scale developments supported by the New Jersey Economic Development Authority’s (“NJEDA”) Film and Digital Media Tax Credit Program.⁴⁷

C. NEW JERSEY’S EXISTING CORPORATE BUSINESS TAX CREDITS AND INCENTIVES

To understand how a tax incentive might be tailored to support New Jersey’s climate resilience goals, it is helpful to provide a brief overview of tax incentives and examine the state’s existing corporate tax structure. A tax incentive is a tax benefit given to taxpayers for engaging in certain favored transactions and activities.⁴⁸ Federal, state, and local governments offer many tax incentives to encourage new and expanded businesses and other beneficial economic activity. Historically, corporate tax incentives have rewarded specific business behaviors among companies.⁴⁹

Tax systems serve three main objectives: raising revenue, redistributing wealth, and influencing behavior in ways that benefit society.⁵⁰ To achieve the third objective, policymakers often employ tax incentives in various forms, including credits, deductions, and

46. N.J. Dep’t of Env’tl. Prot., Notice of Proposed Substantial Changes Upon Adoption of Resilient Environments and Landscapes Rule, 57 N.J. Reg. 1547(a) (Jul. 21, 2025).

47. 58 N.J. Reg. 247(a) (Feb. 17, 2026) (adopting amendments to N.J.A.C. 7:7 and 7:7E governing coastal zone management); *Resilient Environments and Landscapes (REAL)*, N.J. DEP’T OF ENVTL. PROT., https://dep.nj.gov/wp-content/uploads/njreal/real_adoption_courtesy.pdf (last visited Apr. 8, 2026).

48. *Tax Incentive*, WEST’S TAX LAW DICTIONARY § T615 (2026).

49. Lourdes German & Joseph Parilla, *How Tax Incentives Can Power More Equitable, Inclusive Growth*, BROOKINGS INST. (May 5, 2021), <https://www.brookings.edu/articles/how-tax-incentives-can-power-more-equitable-inclusive-growth/>.

50. Reuven Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 3–5 (2006); Allison Christians, *Introduction to Tax Policy Theory*, 1–11 (2018); Paul Johnson, *Tax by Design: The Mirrlees Review*, INST. FOR FISCAL STUD. 21–33 (2011), <https://www.imf.org/external/np/exr/bforums/2011/pdf/112111d.pdf>.

exemptions.⁵¹ Tax credits directly reduce the amount of tax owed, while exemptions and deductions indirectly reduce the tax burden by lowering taxable income.⁵² Tax incentives can promote corporate development, but they must be well-targeted to function properly.⁵³ When a government allows tax reductions to incentivize specific behavior, it necessarily accepts reduced overall revenue as the cost of the policy.⁵⁴ Therefore, tax incentives must be designed effectively; otherwise, the revenue reduction becomes a waste of public money.

New Jersey's corporate tax structure reflects these principles. Under the Corporation Business Tax Act ("CBTA"), a corporate tax credit is a dollar-for-dollar reduction in a corporation's business tax liability.⁵⁵ The CBTA requires all domestic and foreign corporations to pay an annual tax, with domestic corporations taxed existing under state law and foreign corporations taxed if they meet certain thresholds established by the state.⁵⁶

New Jersey's existing tax credits support that the tax credit proposed herein is practical and feasible. Currently, New Jersey offers twenty-two corporate business tax credits and six additional tax incentive programs.⁵⁷ Critically, four of the state's existing tax credits already require certification by or cooperation with the NJDEP.⁵⁸ Thus, New Jersey's existing NJDEP-linked tax credits

51. *Policy Basics: Tax Exemptions, Deductions, and Credits*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 24, 2020), <https://www.cbpp.org/research/policy-basics-tax-exemptions-deductions-and-credits>.

52. *Id.*

53. Amedeo Rizzo, *Intellectual Property and Tax Incentives: A Comparative Analysis of the E.U. and the U.S. Legal Frameworks*, 43 VA. TAX REV. 291, 302 (2023).

54. *Id.* at 302.

55. N.J. Div. of Tax'n, *Corporation Business Tax Overview*, N.J. DEP'T OF TREASURY, https://www.nj.gov/treasury/taxation/corp_over.shtml (last visited Feb. 27, 2026).

56. N.J. ADMIN. CODE tit. 18, ch. 7 (2026); N.J. Div. of Tax'n, *Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023*, N.J. DEP'T OF TREASURY, <https://nj.gov/treasury/taxation/pdf/pubs/tb/tb108.pdf#:~:text=With%20the%20exception%20o> (revised Jan. 18, 2024).

57. N.J. Div. of Tax'n, *Corporation Business Tax Credits*, N.J. DEP'T OF TREASURY, <https://www.nj.gov/treasury/taxation/cbt-creditlist.shtml> (last visited Feb. 27, 2026).

58. *Id.*

demonstrate that the state already has the tools to design and implement a corporate tax incentive to strengthen coastal climate resilience.

PART II: THE LIMITS OF MANDATE-ONLY CLIMATE RESILIENCE

A. THE FUNDING GAP IN NEW JERSEY'S CLIMATE RESILIENCE FRAMEWORK

The core issue with New Jersey's climate adaptation plan is that the REAL rules lack a dedicated funding source.⁵⁹ New Jersey's climate resilience strategy requires substantial upfront funding that current state incentives and federal programs cannot currently provide.⁶⁰ These stricter regulations will inevitably result in

59. *See Resilient Environments and Landscapes (REAL)*, N.J. DEP'T OF ENVTL. PROT., (filed Nov. 20, 2025), https://dep.nj.gov/wp-content/uploads/njreal/real_adoption_courtesy.pdf (adopting statewide climate adaptation rules without a dedicated funding mechanism); S. Comm. Substitute for S. 3545, 221st Leg. (N.J. 2026). The absence of a dedicated funding source in the REAL rules is underscored by the introduction of S. 3545, which proposes to create one only after the regulations have already taken effect. The fact that the Legislature felt compelled to act reflects that the concerns that were raised during the notice and comment period for the REAL rules and acknowledged by the NJDEP itself were valid. As enacted, compliance costs for the new REAL rules will fall on developers, municipalities, and overburdened communities without any corresponding funding mechanism to support them. As of the time of this writing, the proposal remains unenacted, leaving the REAL rules in force with the funding gap this Note identifies.

60. *Help Oppose the PACT REAL Rule*, N.J. BUILDERS ASS'N, <https://njba.org/real/> (last visited Feb. 27, 2026) (arguing that the REAL rules' economic impact statements are "severely inadequate" and that compliance costs will render countless development projects financially infeasible); *How Real Problems Remain with DEP Land Use Rules*, N.J. BUS. & INDUS. ASS'N (Sep. 27, 2025), <https://njbia.org/how-real-real-problems-remain-with-dep-land-use-rules/> (explaining that the REAL rules will have "devastating economic impacts to coastal and river communities" and that the existing regulatory framework provides no mechanism to offset compliance costs); Jim Pytell, *What's the Deal with REAL?*, N.J. BUS. MAG. (Dec. 5, 2025), <https://njbmagazine.com/monthly-articles/whats-the-deal-with-real/> (describing industry concern that increased permitting complexity, elevation requirements, and expanded flood hazard

decreased development, as developers will decide to work in states without these limitations. As a result, New Jersey must find a way to make sustainable development feasible. Within the latest notice and comment period, multiple comments raised concerns surrounding the lack of specific grants or initiatives and highlighted how the gap could impact overburdened communities.⁶¹ In response, the NJDEP acknowledged that there was no funding specifically associated with this rule and that state funding would require approval by the State Legislature.⁶² The NJDEP website points out that there are other potential sources for funding, which are listed on the Resilient New Jersey Climate Resilience Funding Directory.⁶³ However, these funding resources are limited. For example, many of these programs are designated only for municipalities and counties, which may fail to incentivize developers while placing an even greater burden on local governments.⁶⁴

Notably, despite New Jersey's inaugural attempt at a climate resilience strategy, the state's commitment to climate resilience has wavered after pushback to the original REAL rule proposal.⁶⁵ After the initial notice and comment period, the NJDEP issued a Notice of Substantial Change, which included an amended proposal cutting back on the initial rule's ambitious reach.⁶⁶ First, the amended proposal included a "hardship exception" for affordable housing, recognizing it as a compelling public need that could secure exemptions from certain flood rules.⁶⁷ However, by exempting

designations will generate costs that current state incentives cannot absorb); *Resilient Environments and Landscapes*, 58 N.J. Reg. 247(a) (Jan. 20, 2026) (adopting coastal and flood hazard regulations requiring substantial infrastructure investment without a dedicated state funding mechanism).

61. See cmts. 938–950, *Resilient Environments and Landscapes*, 58 N.J. Reg. 247(a) (Jan. 20, 2026).

62. *Id.*

63. *REAL Rule Mapper, ArcGIS, RESILIENT N.J.*, <https://experience.arcgis.com/experience/196a9c8077e847c3b4a815d7c814930c> (last updated Oct. 30, 2024).

64. N.J. STAT. ANN. § 13:19-16.1 (West 2026).

65. 57 N.J. Reg. 1547(a) (Jul. 21, 2025).

66. *Id.*

67. *Resilient Environments and Landscapes*, 58 N.J. Reg. 247(a) (Jan. 20, 2026); *Resilient Environments and Landscapes*, 56 N.J. Reg. 1282(a) (Aug. 5, 2024).

affordable housing from the REAL rules, the amended proposal in fact exposes the population with the greatest need for housing to immense vulnerability from the climate dangers the rules are supposed to protect against. Low-income communities are most at risk to climate change; while those with the greatest resources have better options to move their homes, people in poorer communities are effectively stuck.⁶⁸ Thus, the hardship exception puts the most vulnerable populations at risk.

Additionally, the amended proposal included an unofficial Hollywood exception.⁶⁹ This exception represents a substantial departure from the original proposal's immediate applicability and consists of a 180-day grace period for ongoing projects, during which developers could submit applications after the REAL rules were signed into law and have their projects remain governed by prior regulations.⁷⁰ The "Hollywood exception" gained its moniker based on Netflix's new billion-dollar studio located in Monmouth County.⁷¹ The studio, a proud achievement for the Murphy administration, is notably exempt from the updated REAL rules and will continue to be governed by outdated standards.⁷² This particular exemption highlights the tension that exists between environmental protection and economic development priorities within the state. On one hand, NJEDA successfully created a Film and Digital Media Tax Credit Program to incentivize production companies to film and create

68. Mark Nevitt, *Climate Adaptation Strategies: How Do We Manage Managed Retreat?*, KLEINMANN ENERGY CTR. (Aug. 25, 2020), <https://kleinmanenergy.upenn.edu/research/publications/climate-adaptation-strategies-how-do-we-manage-managed-retreat/>.

69. See response to cmts. 2367–2373, *Resilient Environments and Landscapes*, 58 N.J. Reg. 247(a) (Jan. 20, 2026) (exempting projects with long-term commitments to New Jersey from the REAL rules).

70. *Id.*

71. Terrence T. McDonald, *NJ Has New Regulations to Protect Against Flooding, but Hollywood Gets a Pass*, N.J. MONITOR (Jul. 30, 2025), <https://newjerseymonitor.com/2025/07/30/nj-has-new-regulations-to-protect-against-flooding-but-hollywood-gets-a-pass/>.

72. *Id.*; Ry Rivard, *Murphy administration exempts \$1B Netflix studio from sea-level rise rule*, POLITICO PRO (Jul. 17, 2025), <https://subscriber.politicopro.com/article/2025/07/murphy-administration-exempts-1b-netflix-studio-from-sea-level-rise-rule-00459754>.

digital media content in New Jersey.⁷³ Yet on the other hand, developers are building new billion-dollar projects in vulnerable coastal areas and are not adhering to the most up-to-date standards backed by scientific prediction of climate change.⁷⁴ This highlights the very question this Note hopes to solve: if a large company like Netflix can't afford to follow the REAL rules, who can?

Understandably, these exceptions have generated considerable criticism regarding the regulatory framework's coherence and stakeholder engagement process.⁷⁵ As one critic observed, “[t]o carve out something like Netflix, an economic development endeavor we support, or any business development or affordable housing project, highlights a larger problem with this proposal — that it was not thought out well.”⁷⁶ The Murphy administration defended the Netflix exemptions by claiming the film studio exemptions applied broadly to film production companies that demonstrated a “long-term commitment” to New Jersey.⁷⁷ It supported the claim by noting that it is not only for Netflix, as the exception also includes Lionsgate's Newark studio and 1888 Studios in Bayonne.⁷⁸ The administration contends that because developers relied on existing regulations when electing to build in New Jersey, applying new flood rules to these ongoing developments would be inequitable.⁷⁹ The fact that the only way to retain development is to exempt it from the REAL rules lends credibility to the NJEDA's concern that the environmental regulations undermine New Jersey's broader economic development objectives.

73. *2024 Film Industry Spending Breaks Yet Another Record in NJ*, N.J. ECON. DEV. AUTH. (Oct. 21, 2025), <https://www.njeda.gov/2024-film-industry-spending-breaks-yet-another-record-in-nj/>.

74. *Id.*; Yaehee Gloria Bae, *The Entertainment Industry Gets a (Tax) Break, but AAPIs Don't*, 48 SETON HALL J. LEGIS. & PUB. POL'Y 799, 811 (2024).

75. *See* Rivard, *supra* note 72.

76. McDonald, *supra* note 71.

77. *Id.*

78. *Id.*

79. *Id.*

B. THE SPLIT-INCENTIVE PROBLEM IN CLIMATE-RESILIENT DEVELOPMENT

There is a fundamental split-incentive problem in New Jersey's regulatory framework between short-term economic interests and long-term climate resilience strategy. On the one hand, the NJEDA has created numerous economic incentives for development that prioritize short-term economic gains.⁸⁰ On the other hand, the NJDEP recognizes that there will be exponentially greater financial burdens when climate disasters strike inadequately protected developments.⁸¹ Widening disparities between the estimated costs of climate adaptation and the actual finances allocated to implementing these protective measures compound this tension.⁸²

The New Jersey Business Coalition, which includes the New Jersey Business and Industry Association ("NJBIA") and over 100 different business groups, urged NJDEP to withdraw its REAL proposal and restart the process with a more workable plan. It argued in a letter that a 1,057-page rule is too complicated for one regulatory framework, and that the provisions are extreme and harmful to the state's critical economic goals, which include affordable housing, commercial development, and urban development and redevelopment.⁸³ Ray Cantor, then-Deputy Chief Government Affairs Officer for the NJBIA, argued that the adopted rules "carry new costs for developers and discourage construction in the state", which in turn will make it "much more difficult to get a permit

80. *See* N.J. ECON. DEV. AUTH., *THE STATE OF INNOVATION: BUILDING A STRONGER AND FAIRER ECONOMY IN NEW JERSEY* 3–5 (2018), <https://www.njeda.gov/wp-content/uploads/2021/02/StrongerAndFairerNewJerseyEconomyReport.pdf>.

81. CMTY INV. AND ECON. REVITALIZATION PROGRAM ET AL., *ECONOMIC RISKS OF CLIMATE CHANGE IN NEW JERSEY* 51 (2025), <https://dep.nj.gov/wp-content/uploads/climatechange/economic-risks-of-climate-change.pdf>; TREVOR HOUSER ET AL., *ECONOMIC RISKS OF CLIMATE CHANGE: AN AMERICAN PROSPECTUS* 18 (2015).

82. *CLIMATE CHANGE 2023: SYNTHESIS REPORT*, *supra* note 8, at 9.

83. N.J. Bus. Coal., *Comment Letter on PACT REAL Rule Proposal* (Nov. 2024), https://njbja.org/wp-content/uploads/2024/11/NJBC_letter_in_opposition.pdf.

approved, much more costly to even apply for a permit.”⁸⁴ The NJBIA contends that the REAL rules will hold New Jersey back from building affordable housing, advancing urban redevelopment, and developing new energy facilities.⁸⁵ This set of concerns, however, downplays or altogether ignores the reality that the cost of climate damage in the long run will be much greater than the cost of implementing climate resilience now.⁸⁶ Understandably, the backlash to the REAL rules can be attributed to the state’s competing interests of immediate development goals and future climate resilience.

C. WHY RETROACTIVE RESPONSES WILL FAIL, AND CLIMATE RESILIENCE IS NECESSARY

Although this Note has thus far examined the REAL rules, they are not the issue. The REAL rules are certainly necessary if New Jersey wishes to protect its coastline. In New Jersey, much of the rebuilding in flood zone communities has been subsidized through federal policy via the National Flood Insurance Program (“NFIP”), passed in 1968, which in turn has created a destructive, backward-looking cycle of destroy-rebuild-repeat.⁸⁷ Ninety-nine percent of New Jersey’s municipalities participate in the NFIP, yet the existing NFIP structure is outdated and fails to properly account for the increased flood risks that come with climate change.⁸⁸ With increasing risks and repetitive losses, private insurers may abandon high-risk areas, making the NFIP the sole option.⁸⁹ However, the NFIP currently

84. Nikita Biryukov, *New Jersey Regulators Approve Controversial New Flood Rules*, N.J. MONITOR (Jan. 22, 2026), <https://newjerseymonitor.com/2026/01/22/nj-new-flood-rules/>.

85. N.J. Bus. Coal., *supra* note 83.

86. *See* U.S. CHAMBER OF COM., ALLSTATE & U.S. CHAMBER OF COM. FOUND., THE PREPAREDNESS PAYOFF: THE ECONOMIC BENEFITS OF INVESTING IN CLIMATE RESILIENCE 4 (2024), https://www.uschamber.com/assets/documents/USCC_2024_Allstate_Climate_Resiliency_Report.pdf (finding that \$1 of investment in resilience and disaster preparedness reduces a community’s economic costs after an event by \$7).

87. Nevitt, *supra* note 68.

88. *National Flood Insurance Program*, N.J. DEP’T OF ENVTL. PROT., <https://dep.nj.gov/wlm/drec/flood-engineering/nfip/> (last visited Feb. 27, 2026).

89. Gilbert M. Gaul, *How Climate Risks Are Putting Home Insurance Out of Reach*, YALE ENV’T. 360 (Sep. 15, 2025), <https://e360.yale.edu/features/climate-change-home-insurance>.

provides no funding mechanism to support New Jersey's forward-looking climate adaptation strategy.⁹⁰

State-run programs like Blue Acres Floodplains Acquisitions have begun to address these issues. The program helps New Jersey residents whose homes have been damaged in flooding events by paying them for their vulnerable properties and turning them into green space that can retain floodwater.⁹¹ However, the funding gap between the desperately needed state climate resilience goals and available resources will persist if funding is only provided retroactively. The risk of the NFIP's market failure furthers the need for an upfront source of funding.⁹² The NFIP suffers from debt, low participation rates, outdated flood risk assessments, and a myriad of other structural issues.⁹³ If private insurers balk and the NFIP fails, New Jersey's funding crisis will only grow, and the state will have to cover the existing \$52 billion of insurance coverage.⁹⁴

Furthering the need for state-sponsored funding is the fact that the Federal Emergency Management Agency ("FEMA") requires that projects funded through its hazard-mitigation programs produce benefits that outweigh the costs.⁹⁵ Historically, New Jersey has relied

90. Dena Adler et al., *Changing the National Flood Insurance Program for a Changing Climate*, 49 ENVTL. L. INST. 10320 (2019).

91. N.J. DEP'T OF ENVTL. PROT., *Choosing Safety: Real Experiences with DEP's Blue Acres Program*, at 00:36–03:53 (YouTube, Feb. 27, 2026), <https://www.youtube.com/watch?v=PT7qS6CcuPQ&t=36s> (describing the program for the relocation of flood-prone families and acquiring property for natural flood storage and open space).

92. CAROLYN KOUSKY, UNDERSTANDING DISASTER INSURANCE: NEW TOOLS FOR A MORE RESILIENT FUTURE 49–53 (2022).

93. Melissa Tier, *Overcoming Contemporary Reform Failure of the National Flood Insurance Program to Accelerate Just Climate Transitions*, J. PUB. & INT'L AFF. (May 5, 2021), <https://jpia.princeton.edu/news/overcoming-contemporary-reform-failure-national-flood-insurance-program-accelerate-just-climate>.

94. To access New Jersey's Flood Insurance Data, download "Policy Information by state", located under "Policy data." See Fed. Emergency Mgmt. Agency, *Flood Insurance Data*, NAT'L FLOOD INS. PROGRAM, <https://agents.floodsmart.gov/flood-maps-and-data/flood-insurance-data> (last visited Apr. 3, 2026).

95. FED. EMERGENCY MGMT. AGENCY, HAZARD MITIGATION ASSISTANCE GUIDANCE: HAZARD MITIGATION GRANT PROGRAM, PRE-DISASTER MITIGATION PROGRAM, AND FLOOD MITIGATION ASSISTANT PROGRAM 871 (2015), https://www.fema.gov/sites/default/files/documents/fema_hma-guide-

on FEMA funding in the aftermath of natural disasters. For example, in the aftermath of Hurricane Sandy, the NJDEP's Office of Coastal Engineering managed to secure 90% of the funding for a coastal rebuilding project through FEMA, with the remaining 10% reimbursed by the Housing and Urban Development Community Development Block Grant ("HUD CDBG").⁹⁶ Following FEMA's methodology, the value of property and other benefits protected by flood-prevention infrastructure must exceed construction costs.⁹⁷ FEMA's cost-benefit framework puts communities with lower property values at greater risk because the necessary requirements for the benefits of a project may not be met as easily as in wealthier areas.⁹⁸ Without renewed funding, FEMA will not offer protection to many of New Jersey's coastal areas with lower property values when the next storm hits: entire communities may be left demolished, completely unable to rebuild.

PART III: INCENTIVIZING RESILIENCE: A TAX-BASED SOLUTION TO NEW JERSEY'S CLIMATE RESILIENCE FUNDING GAP

A. WHY TAX INCENTIVES ARE NECESSARY TO SOLVE THE FUNDING PROBLEM

The potential loss of businesses and jobs to areas with weaker environmental standards demonstrates why tax incentives are essential complements to traditional regulation. The current regulatory scheme in New Jersey is a mandate-only environmental land use regulation. Historically, this sort of regulation has been referred to as command and control, and the drawbacks of these

[v2.1_2025.pdf](#); Kelly McGee, *A Place Worth Protecting: Rethinking Cost-Benefit Analysis Under FEMA's Flood-Mitigation Programs*, 88 U. CHI. L. REV. 1925, 1928 (2021).

96. *Shore Protection Program*, N.J. DEP'T OF ENVTL. PROT., <https://dep.nj.gov/grantandloanprograms/fact-sheets/fact-sheet-shore-protection/> (last visited Feb. 27, 2026).

97. McGee, *supra* note 95.

98. *Id.*

regulations have been discussed at length.⁹⁹ Mandate-only environmental regulation can lead to excessive bureaucratic centralization, rigidity, cost, litigation, and delay, and the only cure is to make standards less rigorous or to ease enforcement, loosening environmental protections.¹⁰⁰ Moreover, the state faces the risk that businesses may view the cost of compliance with the new regulations as prohibitive and relocate to states with less strict or nonexistent environmental land use regulations.¹⁰¹ The value of place-based tax incentives that are designed to reduce spatial mismatch, reverse harmful disinvestment, and strengthen community infrastructure has been examined over time.¹⁰² With proper guardrails, a climate resilience tax incentive will not only retain but also attract development, while advancing the state's ambitious climate resilience strategy.

Moreover, New Jersey's economic development tax incentives, such as the Film and Digital Media Tax Credit Program, demonstrate how strategic tax incentives have already successfully attracted significant business investment within the state.¹⁰³ In today's climate of intense interstate and international competition for business development, tax incentives have evolved from optional policy tools to essential mechanisms for retaining existing businesses and attracting new investment.¹⁰⁴ The European Commission has already recognized how tax incentives can be used for climate-resilient development in this competitive business climate by releasing a Recommendation on Tax Incentives to support the Clean Industrial

99. Richard B. Stewart, *Controlling Environmental Risks Through Economic Incentives*, 13 COLUM. J. ENVTL. L. 153, 153 (1988).

100. *Id.*

101. Guoqin Pan et al., *Moving with the Wind: Environmental Regulation Avoidance and the Adjustment of Firms' Location*, 3 CHINA ECON. Q. INT'L 238, 239 (2023).

102. Michelle D. Layser, *How Place-Based Tax Incentives Can Reduce Geographic Inequality*, 74 TAX L. REV. 1, 56 (2020).

103. Matthew Fazelpoor, *NJ film boom driven by tax credits, flourishing infrastructure*, NJBIZ (Jun. 2, 2025), <https://njbiz.com/new-jersey-film-industry-boom-tax-credits> (noting that favorable tax credit terms draw major studios and productions that might otherwise locate elsewhere).

104. KUDZAI MATABA ET AL., REVISITING TAX INCENTIVES AS AN INVESTMENT PROMOTION TOOL (2023), <https://www.taxexpenditures.org/wp-content/uploads/2023/10/IISD-tax-incentives.pdf>.

Deal.¹⁰⁵ The incentives specifically aim to stimulate investment from private corporations in clean technology and industrial decarbonization.¹⁰⁶ This same strategy can be applied in New Jersey in order to solve the REAL rules funding problem.

B. A NEW JERSEY CLIMATE RESILIENCE TAX CREDIT

A Climate Resilience Corporate Tax Credit would support climate-resilient development that is compliant with New Jersey's REAL rules. The proposed credit is an additional CBTC that can be loosely modeled after the existing framework outlined in the federal Inflation Reduction Act's ("IRA") investment tax credit, which offered up to a 30% Investment Tax Credit ("ITC") for qualified green energy projects through 2025.¹⁰⁷ Although the Trump administration's One Big Beautiful Bill ("OBBB") significantly amended the IRA by phasing out and restricting power generation and other business-related credits, the innovative implementation structure of the IRA's investment tax credits can be of use in the State of New Jersey.¹⁰⁸

105. EU COMM'N RECOMMENDS TAX INCENTIVES TO SUPPORT CLEAN INDUSTRIAL DEAL, EY TAX ALERT, WESTLAW 1901888 (2025) (detailing the European Commission's recommendation to Member States that they should adopt targeted tax incentives, including credits and deductions, to support climate-resilient development and clean energy goals across the EU in a competitive global economic market).

106. *Id.*

107. *Summary of Inflation Reduction Act Provisions Related to Renewable Energy*, EPA <https://www.epa.gov/green-power-markets/summary-inflation-reduction-act-provisions-related-renewable-energy> (last visited Feb. 27, 2026) (describing the IRA's investment tax credit framework for qualified clean energy projects); Inflation Reduction Act of 2022 § 13102, Pub. L. No. 117-169, 136 Stat. 1818, 1932 (2022) (codified at I.R.C. § 48); WESTCHESTER CNTY. ASS'N, Investment Tax Credit (ITC) (IRC Section 48), <https://www.westchester.org/clean-energy/investment-tax-credit-itc-irc-section-48/> (last visited Feb. 27, 2026) (explaining that tiered IRA tax credits provide a base rate of 6% that increases to 30% for projects meeting prevailing wage and apprenticeship requirements) [hereinafter *Westchester County ITC*].

108. Alex Muresianu, *How the One Big Beautiful Bill Changes Green Energy Tax Credits*, TAX FOUND.: TAX POL'Y BLOG (Jul. 31, 2025), <https://taxfoundation.org/blog/big-beautiful-bill-green-energy-tax-credit-changes/> (noting that the OBBBA restricts or phases out major IRA green energy credits, including the clean electricity ITC and PTC, the clean hydrogen production credit, and the advanced manufacturing production credit).

Like the IRA's investment tax credit, New Jersey's Climate Resilience Tax Credit will offer a tiered investment tax credit for qualified investment projects.

The proposed Climate Resilience Corporate Tax Credit will reduce a developer's New Jersey corporate tax bill based on the costs they incur to comply with the REAL rules. To ensure that the developer is utilizing the credit appropriately, the NJDEP would certify compliance before any credit is granted, consistent with its existing role certifying several other CBTA credits.¹⁰⁹ The credit would also be tiered so that developers who meet the REAL rules' minimum standards may receive a base credit, and developers who exceed the standards are eligible for an enhanced credit. The tiered structure allows the government to offer larger public subsidies to development that is most likely to produce long-term climate resilience.¹¹⁰ Additionally, the credit will be conditioned upon development in a coastal zone that meets the REAL standards, thus the proposed tax incentive is place-based.¹¹¹ In tax policy discourse, place-based tax incentives often refer to direct public investment or tax benefits for businesses and individuals that aim to improve economic conditions in long-suffering areas.¹¹² Although this credit does not meet the economic condition requirement, it falls under the broader definition that any tax law may be described as place-based if its "application depends upon the geographic sites at which persons reside, properties are located, or activities occur."¹¹³

Experts evaluate tax policy under four relevant dimensions: economy, effectiveness, equity, and efficiency, also referred to as the "4 E's."¹¹⁴ Firstly, the Climate Resilience Tax Credit will be economical in that the upfront costs of subsidizing the climate-

109. Corporation Business Tax Act, N.J. ADMIN. CODE § 18:7-1.1–18:7-21.29 (2024).

110. I.R.C. § 48 (2026); *See Westchester County ITC*, *supra* note 107.

111. *See infra* note 112.

112. Layser, *supra* note 102, at 3–4.

113. Daniel J. Hemel, *A Place for Place in Federal Tax Law*, 45 OHIO N. UNIV. L. REV. 525, 526–27 (2019).

114. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 639–40 (S. M. Soares ed., MetaLibri Digit. Libr. 2007) (1776) (articulating four canons of taxation: equity, certainty, convenience, and economy); Kristen Norman-Major, *How Many Es? What Must Public Administrators Consider in Providing for the Public Good?*, 24 PUB. INTEGRITY 342 (2022).

resilient development will pale in comparison with the long-term cost of climate damage. Moreover, as Part II established, the cost of inaction far exceeds the revenue reduction from implementing a climate resilience tax credit. Secondly, the Credit will remain effective so long as it directly addresses the funding gap that currently exists within the REAL rules. It will do so because of its tiered structure and NJDEP certification, which ensures foregone revenue will produce a corresponding climate benefit. Thirdly, to ensure the Credit is equitable, there will be proper guardrails in place, such as reporting requirements and penalties for wrongdoing.¹¹⁵ Fourthly and finally, the efficiency is two-fold. The actual implementation of the Credit would likely be straightforward given the existing relationship between New Jersey's Treasury and the NJDEP, but passing the Credit will likely be difficult, as it will face political barriers in the state legislature. However, with the recent election of Governor Mikie Sherrill, this proposal may be more politically feasible, as Governor Sherrill previously attempted to pass a bipartisan tax incentive for environmental remediation as a congresswoman.¹¹⁶ Her past push for environmental tax credits may indicate support for state passage of climate-focused tax credits.

C. ADDRESSING COUNTERARGUMENTS/POTENTIAL CRITIQUES

Like most governmental policies, tax incentives are subject to criticism. Firstly, some critics argue that place-based tax incentives are ineffective since they often benefit wealthy investors more than the communities they were intended to help.¹¹⁷ Secondly, other critics argue that investment tax credits conditioned on in-state activity unconstitutionally discriminate against interstate commerce. This issue was validated when the Sixth Circuit held that tax incentives structured to solicit business away from other states may violate the dormant Commerce Clause in *Cuno v.*

115. Deanna S. Newton, *Inclusive Prosperity*, 12 TEX. A&M L. REV. 1185, 1206 (2025).

116. Press Release, Congressman Michael Turner, Reprs. Turner and Sherrill Reintroduce Bipartisan Bill to Revive Brownfields Tax Incentive (Jan. 29, 2025), <https://turner.house.gov/2025/1/reprs-turner-and-sherrill-reintroduce-bipartisan-bill-to-revive-brownfields-tax-incentive>.

117. Laysner, *supra* note 102, at 2–4.

DaimlerChrysler.¹¹⁸ Although the case was overturned on appeal, and many states continue to use investment tax credits, it was not overturned for substantive reasons, and the possibility of potential litigation lingers.¹¹⁹ Thirdly, many critics claim that the revenue loss of the tax credit will be more detrimental to the area than the loss of new investment.¹²⁰ While these critiques carry weight in the context of traditional economic development incentives, they do not undermine the proposed Climate Resilience Tax Credit, as it is meaningfully distinguishable in both structure and purpose.

Unlike the proposed credit, the tax credit challenged in *Cuno* rewarded in-state investment at the expense of out-of-state economic activity.¹²¹ Thus, the Sixth Circuit found that that particular investment tax credit substantially affected interstate commerce by distorting the interstate market for business location because the credit incentivized businesses away from other states.¹²² Unlike the tax credit in *Cuno*, the proposed Climate Resilience Tax Credit targets developers who have already decided to build within New Jersey's coastal zones. Thus, it does not operate in the same way. The proposed Climate Resilience Tax Credit conditions the credit's benefits solely on compliance with the REAL rules and not on a developer choosing New Jersey over another state. Since the proposed credit does not incentivize investment across state lines nor discriminate against developers who otherwise operate in other states, it does not implicate the Commerce Clause and avoids the critique raised in *Cuno*.

Similarly, the equity critique does not apply to the proposed Climate Resilience Tax Credit, as its structure differs from traditional place-based incentives. Typically, place-based incentives are criticized for benefiting wealthy investors because they allow for

118. *Cuno v. DaimlerChrysler, Inc.*, 386 F.3d 738, 746 (6th Cir. 2004), vacated sub nom. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).

119. *Id.*

120. Maya Forstater, *The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment?*, CTR. FOR GLOB. DEV. (Oct. 16, 2017), <https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment>.

121. Moon J. Koo, *Is the Investment Tax Credit Really More Coercive Than the Personal Property Tax Exemption in the "Cuno" Controversy*, 69 TAX L. 817, 820–21 (2016).

122. *Id.*

decreased investment and development costs without meaningful conditions tied to community outcomes.¹²³ The proposed credit, by contrast, conditions its benefit on adherence to the REAL rules, which are themselves designed to produce climate-resilient coastal communities. Thus, the benefit flows not solely to the developer, but also to the surrounding coastal community, which will occupy structures built to withstand future climate impacts, such as increased flooding and coastal storms. To the extent corporate developers capture value through the credit, that value is counterbalanced by the public benefit of reduced disaster recovery costs borne by the state.

The revenue loss associated with the credit is a legitimate concern, but one that must be weighed against the cost of inaction. Inaction against climate change will lead to damage and service disruptions to public utilities, transportation networks, emergency response, medical care, and government services, resulting from natural hazard events, causing significant, long-term adverse socioeconomic impacts.¹²⁴ Climate-related disasters impose enormous fiscal burdens on governments and communities. Between 1980 and 2024, the U.S. sustained 403 weather and climate disasters where overall damages reached or exceeded \$1 billion, and the total cost of these 403 events exceeded \$2.915 trillion.¹²⁵ The cost of revitalizing communities devastated by climate change far exceeds the foregone revenue from a targeted tax credit designed to prevent that devastation in the first

123. Layser, *supra* note 102, at 4; Cailin Slattery & Owen Zidar, *Evaluating State and Local Business Incentives*, 34 J. ECON. PERSP. 90, 90 (2020) (“[T]here is now growing enthusiasm among many policymakers and academics for using place-based policies to address these regional disparities.”); see Michelle D. Layser, *A Typology of Place-Based Investment Tax Incentives*, 25 WASH. & LEE J. C.R. & SOC. JUST. 403, 411 (2019) (providing a definition of place-based tax incentives).

124. *New Jersey Climate Change Resilience Strategy*, N.J. DEP’T OF ENVTL. PROT. (Oct. 12, 2021), <https://dep.nj.gov/wp-content/uploads/climatechange/docs/nj-climate-resilience-strategy-2021.pdf>; KOPP, NEW JERSEY’S RISING SEAS AND CHANGING COASTAL STORMS, *supra* note 19.

125. *Billion-Dollar Weather and Climate Disasters*, NAT’L CTRS. FOR ENVTL. INFO., <https://www.ncei.noaa.gov/access/billions/> (last visited Feb. 27, 2026).

place.¹²⁶ Thus, investment in climate resilience is not merely preferable on policy grounds; it is fiscally sound.

Finally, the vulnerability of New Jersey's coastal communities is compounded by chronic underinsurance. A significant proportion of homeowners in special flood hazard areas lack flood insurance.¹²⁷ This pattern leaves the most vulnerable populations repeatedly exposed to uncompensated disaster losses. While this may seem only to affect individual homeowners, when entire communities are composed of uninsured homes, the most vulnerable populations remain at risk when disaster strikes. While the proposed credit is aimed at corporations, New Jersey can hopefully leverage the framework to eventually expand it to architecture for proactive climate adaptation, as it proves to be efficient in incentivizing development and protecting communities. This will serve as a model that other coastal states may ultimately follow.

CONCLUSION

In conclusion, a Climate Resilience Tax Credit will align New Jersey's economic and environmental goals and equitably distribute the costs of climate adaptation by supporting development that is compliant with the REAL rule amendments.

126. CLIMATE CHANGE 2023: SYNTHESIS REPORT, *supra* note 8, at 26 (confirming that more rapid climate change mitigation requires higher up-front investments but reduces costs in the long term).

127. U.S. GLOB. CHANGE RSCH. PROGRAM, FIFTH NATIONAL CLIMATE ASSESSMENT 21–26 (Allison R. Crimmins et al. eds., 2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf (finding that a significant proportion of homeowners in special flood hazard areas lack flood insurance).