

Wednesday, May 29, 2024

State proposes big changes related to land use rules

The state Department of Environmental Protection (DEP) is set to propose its much-anticipated new land use regulations that are intended to protect communities from the increased public health and safety risks due to climate change.

Part of Gov. Murphy's NJPACT (New Jersey Protect Against Climate Threats) Initiative, the land use part has its own descriptive acronym: REAL (Resilient Environments and Landscapes).

The new rules will be formally proposed in July. State agencies follow a fixed procedure for adopting or amending regulations beginning with an announcement of the new rules, a narrative explanation of what's changed and why, and the actual language of the new rules.

These appear in an issue of the twice-monthly publication of the NJ Office of Administrative Law's New Jersey Register.

The date of publication in the NJ Register triggers a minimum 30-day period that the public may submit comments on the proposal.

If the rules are highly complex or there is significant public interest the public comment period may be extended and a public hearing may be scheduled.

In the 17 years I have been commenting on rule proposals for the N.J. Highlands Coalition, at a whopping 1072 pages, these rules are by far the most comprehensive and complex.

They cover several rule "chapters," such as Coastal Zone Management Rules, Freshwater Wetlands Rules, Stormwater Management, Flood Hazard Area



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HIGHLANDS HIGHLIGHTS

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rules, Hazardous Waste, to name a few.

As such, the public comment period will be 90 days and three public hearings will be scheduled.

Recently the DEP made available an advanced, "courtesy" copy of the proposal, which may be downloaded at dep.nj.gov/njreal.

From the date of the publication of the proposal in the NJ Register, an agency has one year to adopt the proposed rule. Because the agency is required to consider all timely submitted comments — DEP typically identifies every commenter and responds to each unique comment in a response-to-comments document that accompanies the notice of adoption—it could be a challenge for DEP to make the one-year deadline.

Development interests are not happy with the proposal. Last year, in order to update decades old precipitation data and to get ahead of the looming hurricane season, DEP proposed to adopt just two NJPACT/REAL provisions of the Stormwater and Flood Hazard Area rules under procedures stipulated for an emergency rule adoption.

In protest against the mere two rule provisions, developers descended on the Governor, who respond-

ed by delaying the adoption for eight months.

In April of this year, the New Jersey Business Coalition (NJBC) sent a letter to DEP Commissioner Shawn LaTourette, urging him to further delay the full NJPACT/REAL rule proposal because they claim DEP lacked a "meaningful stakeholder process" and warned of the "many, perhaps insurmountable problems with the rule that could have been avoided by reengaging the stakeholders in a meaningful process."

Of course, the NJBC was aware of the substance of the new rules by having participated in the several stakeholder meetings convened by DEP. The letter listed two pages of business, development and other organizations that claimed to have signed on to its opposition.

We were curious why among the sign-ons was the NJ Chapter of the American Planning Association. We reached out to one of their executives who confirmed that they never gave NJBAC permission to list them as a signatory to the letter.

These new rules are sweeping. And necessary. Some serve to reverse the rollbacks to water quality regulations that were weakened under the Christie administration.

But mostly, they better protect people and property in inland and coastal areas from catastrophic flooding due to sea level rise.

In most cases they don't outright prohibit development in areas at risk, but they do require an assessment and acknowledge-

ment of the risks and design standards that respond to the risk.

We don't understand why so many development and business interests oppose what we see as a needed modernization of regulations. Especially in light of the fact that developer's banks and creditors want to know that their investments will be better protected in response to the changing climate.

New Jersey, with its population density, has experienced environmental challenges much sooner than other states. We have had to be innovative protectors of our water and other natural resources and landscapes in order to maintain a high quality of life and strong economy. This is not the time to whine about regulations that seek to do just that.

We have yet to digest the over 1,000 pages of rulemaking before we can come to a final conclusion about the adequacy of these rules to address the very real climate threats we face in the state.

But based on the discussions we have had with DEP, the stakeholder sessions and the walk-throughs they have provided us and their thought processes in amending land use regulations, we believe they have been thorough, that their sincere intent is to get ahead of the threats and that the health and safety of New Jersey and ensuring a bright economic future has driven every one of their decisions.

We look forward to reviewing the rules in depth and commenting accordingly.