

STATE OF NEW YORK

5221

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. OTIS, BENEDETTO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring the department of environmental conservation to implement permit regulations and guidance regarding shoreline management

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1-0303 of the environmental conservation law is
2 amended by adding a new subdivision 26 to read as follows:

3 26. "Nature-based solution" shall mean a project that utilizes or
4 mimics nature or natural processes and functions and that may also offer
5 environmental, economic, and social benefits, while increasing resili-
6 ence. Nature-based solutions include both green and natural infrastruc-
7 ture.

8 § 2. Section 3-0301 of the environmental conservation law is amended
9 by adding a new subdivision 2-a to read as follows:

10 2-a. (a) To further assist in carrying out the policy of this state as
11 provided in section 1-0101 of this chapter, the department, by and
12 through the commissioner shall:

13 (i) authorize and encourage the use of nature-based solutions as the
14 preferred alternative for stabilizing tidal shorelines in the state when
15 promulgating and implementing rules and regulations relating thereto,
16 specifically including, but not limited to, those promulgated and imple-
17 mented for articles fifteen, twenty-five and thirty-four of this chap-
18 ter. The department shall consult with the United States army corps of
19 engineers to ensure the minimization of conflicts with federal law and
20 regulation.

21 (ii) continue developing integrated guidance for the management of
22 tidal shoreline systems to provide a technical basis for the coordi-
23 nation of permit decisions required by any regulatory entity exercising
24 authority over a shoreline management project. Such guidance shall:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05011-02-3

1 (1) communicate to stakeholders and regulatory authorities that it is
2 the policy of the state that some shorelines shall remain natural unless
3 stabilization is necessary, and when stabilization is deemed necessary,
4 it shall support nature-based solutions as the preferred alternative for
5 stabilizing tidal shorelines;

6 (2) identify preferred shoreline management approaches for the shore-
7 line and community types found in the state;

8 (3) explain the risks and benefits of protection provided by various
9 shoreline system elements associated with each management option; and

10 (4) recommend procedures to achieve efficiency and effectiveness by
11 the various regulatory entities exercising authority over a shoreline
12 management project.

13 (iii) approve a permit for shoreline management that is a nature-based
14 solution, unless an alternative analysis containing a review of nature-
15 based solutions that have been evaluated using the best available infor-
16 mation shows that such approaches are not suitable. If the best avail-
17 able information shows that a nature-based solution approach is
18 unsuitable or inconsistent with land-use regulations, the department
19 shall require the applicant to incorporate, to the maximum extent possi-
20 ble, elements of a nature-based solution that are suitable into permit-
21 ted projects.

22 (b) (i) For the purposes of this subdivision, "nature-based solution"
23 shall have the same meaning as defined in subdivision twenty-six of
24 section 1-0303 of this chapter and shall specifically mean techniques
25 applied within the tidal zone that incorporate natural, native living
26 features.

27 (ii) When considering a nature-based solution the department should
28 prioritize techniques, including but not limited to those that:

29 (1) control or reduce shoreline erosion while maintaining benefits
30 comparable to the natural shoreline including, but not limited to,
31 allowing for natural sediment movement;

32 (2) improve, restore, or maintain the connection between the upland
33 and water habitats; and

34 (3) incorporate habitat enhancement and natural elements, including
35 but not limited to native re-vegetation or establishment of new vege-
36 tation consistent with a natural shoreline typical of the current site
37 location either:

38 (A) under current conditions, or

39 (B) as adjusted for science-based state sea-level rise projections,
40 utilizing the appropriate projection scenario at a time interval appro-
41 priate for the anticipated lifespan of the project but not less than
42 twenty years after the anticipated project completion, pursuant to
43 section 3-0319 of this title for such location.

44 § 3. This act shall take effect immediately.