

STATE OF NEW YORK

5221--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. OTIS, BENEDETTO, SIMON -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 (1) authorize and encourage the use of nature-based solutions as the
14 preferred alternative, where appropriate, for stabilizing tidal shore-
15 lines in the state when promulgating and implementing rules and regu-
16 lations relating thereto, specifically including, but not limited to,
17 those promulgated and implemented for articles fifteen, twenty-five and
18 thirty-four of this chapter. The department shall consult with the
19 United States army corps of engineers to ensure the minimization of
20 conflicts with federal law and regulation.

21 (2) continue developing integrated guidance for the management of
22 tidal shoreline systems to provide a technical basis for the coordi-

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

LBD05011-03-3

1 nation of permit decisions required by any regulatory entity exercising
2 authority over a shoreline management project. Such guidance shall:

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

8 (ii) identify preferred shoreline management approaches for the shore-
9 line and community types found in the state;

10 (iii) explain the risks and benefits of protection provided by various
11 shoreline system elements associated with each management option; and

12 (iv) recommend procedures to achieve efficiency and effectiveness by
13 the various regulatory entities exercising authority over a shoreline
14 management project.

15 (3) give preference to a permit application for a shoreline management
16 project based on nature-based solution design unless an alternative
17 analysis containing a review of nature-based solutions that have been
18 evaluated using the best available information shows that such
19 approaches are not suitable. If this analysis shows that a nature-based
20 solution approach is unsuitable or inconsistent with land-use regu-
21 lations, the department shall require the applicant to incorporate, to
22 the maximum extent possible, elements of a nature-based solution that
23 are suitable for the project where appropriate.

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

29 (2) When considering a nature-based solution the department should
30 prioritize techniques, including but not limited to those that:

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

34 (ii) improve, restore, or maintain the connection between the upland
35 and water habitats; and

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

40 (A) under current conditions, or

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

46 § 3. This act shall take effect immediately.