

June 3, 2022

Dear Governor Murphy:

We are a coalition of business, labor, real estate development , and local government groups that represent thousands of businesses and entities in the state who care about their employees, families and tenants, the communities where they operate and the overall economic health of New Jersey. Last week, the Department of Environmental Protection (DEP) informed us they will be filing Emergency NJPACT Rules on or about June 10, 2022 to become effective immediately.

We respectfully urge you to delay the rule's advancement and not concur with any finding by the DEP that an imminent peril exists to public health, safety, or welfare that would necessitate the filing of an emergency rule concerning flood design elevations and mapping in the state and change the basis for calculating future rainfall amounts. If adopted, this rule would adversely impact countless sorely needed development and infrastructure projects that are being planned or have already been designed and engineered at great cost to both the private and public sectors.

Our request not to advance this emergency rulemaking is based solely on the process being used. There are three primary objections we have to the filing of an emergency rule for this purpose. One, no imminent peril exists. Two, the DEP's intent to limit the grandfather provisions will have dire economic consequences on potentially thousands of projects, including those involving infrastructure, low-income housing, and those in economically disadvantaged communities. This is particularly unfair to those who invested in projects and relied on the existing flood hazard maps. Finally, while flood maps may need to be updated, the primary problem, as evidenced by Tropical Storm Ida, is existing inadequate stormwater facilities, not flood mapping. This emergency rule is addressing the wrong problem with the wrong solution.

While the Administrative Procedure Act (APA) does allow for rules to take effect immediately, there must be an imminent peril to public health, safety, or welfare. There is no imminent peril and, thus, no reason to deviate from the normal rulemaking process. We understand and agree that there may be a need to change standards to address new information. This is no different than any other rule. However, DEP's statement that future Ida recovery monies should be spent wisely does not come close to demonstrating an imminent peril. If that were the standard, then nearly any rule could be so justified. That is not what the Legislature intended nor what the law allows. Moreover, if the concern is with spending Ida recovery money in a prudent manner, the expenditure or granting of those funds can be conditioned upon compliance with a more stringent standard without the need to issue an emergency rule applicable to all projects when no imminent peril exists.

More important is the impact this emergency proposal, with its limited grandfather provisions, would have on perhaps thousands of projects being planned, many of which are already in the design, engineering and approval process and have incurred substantial transactional, design, and engineering costs, some funded by taxpayer dollars. These projects would need to be redesigned and resubmitted for new state and local approvals.

Significantly, projects in areas which were never part of a flood hazard area before, many of which have legal determinations that they were not in flood hazard areas, will now need flood hazard permits for

the first time. While no maps or analysis have been provided by the DEP to show the areas or projects being impacted, this new area may encompass as much as 5 to 10 percent of the buildable area of the state (200,000 to 400,000 acres). This is a tremendous land area certainly subject to potentially thousands of planned or pending projects. Just as significant is the fact that no one will know if they are in a flood hazard area or not, thus putting a development question mark over the entire state.

Finally, this rule addresses the wrong problem. While the flood maps certainly need to be updated, Ida has shown, and DEP has acknowledged, that much of the flooding and deaths occurred in areas away from rivers and streams and were the result of inadequate stormwater facilities. This rule would do nothing to solve that problem.

Any benefit of adopting this rule on an emergency basis is far outweighed by the burdens and costs involved and a waste of precious and previously allocated resources. A better way to proceed would be to propose this rule as any other, by adherence to the Administrative Procedure Act. This will allow for the public to adequately comment, for equities and impacts to be evaluated and planned for and minimize economic disruptions and legal challenges. Government's efforts should instead be targeted on funding solutions to our existing, inadequate stormwater facilities.

The problem with advancing this proposal as an emergency rule is that there are too many unknowns. We don't know all the areas that will be impacted, how many projects will be affected, or how it will impact infrastructure, low-income housing, and redevelopment projects that are policy priorities. There will be significant unintended consequences which far outweigh any need to issue this rule prior to a complete rulemaking process. We ask that you not concur with a finding of imminent peril.

We thank you for your consideration and request a meeting at your earliest convenience.

Chamber of Commerce Southern New Jersey  
Chemistry Council of New Jersey  
Commerce and Industry Association of New Jersey  
Engineers Labor-Employer Cooperative (ELEC 825)  
Innovating Commerce Serving Communities  
NAIOP New Jersey  
Marine Trades Association  
New Jersey Association of Counties  
New Jersey Apartment Association  
New Jersey Builders Association  
New Jersey Business & Industry Association  
New Jersey Concrete and Aggregate Association  
New Jersey Farm Bureau  
New Jersey Society of Professional Land Surveyors  
New Jersey State Chamber of Commerce  
New Jersey Utilities Association  
Princeton Mercer Regional Chamber of Commerce  
NJ SEED  
Utility & Transportation Contractors Association

CC: George Helmy, Chief of Staff, Governor Murphy  
Sheila Y. Oliver, Lieutenant Governor, Commissioner, Department of Community Affairs  
The Honorable Nicholas Scutari, Senate President  
The Honorable M. Teresa Ruiz, Senate Majority Leader  
The Honorable Steven Oroho, Senate Republican Leader  
The Honorable Craig Coughlin, Assembly Speaker  
The Honorable Louis Greenwald, Assembly Majority Leader  
The Honorable John DiMaio, Assembly Minority Leader  
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