



DRAFT MINUTES
Legal Affairs Committee
March 14, 2014
Agency Meeting
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4/2/14 8:30 AM

**Legal Affairs Committee
March 14, 2014**

The Committee convened at 9:05 am

Committee Members Present:

Karen Feldman, Chair, Arthur Lussi, Richard Booth, Sherman Craig and Bradley Austin (DED)

Other Members or Designees Present:

Leilani Ulrich, Chairwoman, William Thomas, Dan Wilt, Dierdre Scozzafava (DOS) and Robert Stegemann (DEC)

Local Government Review Board Present:

Frederick Monroe, Executive Director

Agency Staff Present:

James Townsend, Counsel, Jennifer McAleese, Shaun LaLonde and Mary Palmer

Jennifer McAleese presented the Board with second revision to the Emergency Authorization Regulations. Shaun LaLonde also added to the presentation.

Ms. McAleese stated that if approved, the Emergency Authorization Resolution would authorize the Agency to move forward with a formal rule making process. She added that as the Rule moves forward the Agency would reach out to other agencies, stakeholders and local governments.

Ms. McAleese discussed the different types of emergencies that would qualify under emergency authorization, as well as the type of work that would require Agency involvement.

She also noted the Agency's goals of developing a regulation that would provide a prompt and flexible response while limiting environmental impacts; she added that regulations would also require follow-up work where appropriate.

Ms. McAleese stated that another goal is to increase coordination with other agencies such as the Department of Environmental Conservation, and the Department of Transportation as they do a lot of emergency work.

Ms. McAleese and Mr. LaLonde discussed various management techniques and jurisdictional and non-jurisdictional options for shoreline stabilization and restoration. She stated that the emergency project rule will replace the letter of authorization; the proposed rule provides for a more consistent and predictable Agency response.

Mr. Booth asked if a natural barrier was the leading soft technique. Mr. LaLonde said that the Agency tries to encourage use of this type of technique where applicable because after 10 years the structure is not readily apparent.

Ms. McAleese commented that the issue for the Agency is it lacks a definition for determining when land use and development is an emergency project. She added that the primary objective is to define jurisdictional land use and development that is an emergency project.

Ms. McAleese stated that staff tried to both limit the scope of what is considered an emergency project and develop an expedited process that will cause minimal environmental impacts.

She also noted that the end result for a landowner is receipt of documentation that the work done during an emergency is lawful for Agency purposes. She said that certain things, such as FEMA reimbursement, require documentation from regulating agencies that the emergency work done has been approved.

Ms. McAleese stated that based on feedback from the Board and consultation with other agencies, staff made some fairly significant revisions to the original draft.

Ms. McAleese commented on the discussions held with DEC concerning their process during emergencies and how the Agency tried to parallel the emergency project rule as close to DEC's process as possible. She added that staff is in discussion with DEC on developing an MOU that would set forth how the agencies will interact with each other.

Ms. McAleese went over the key provisions of the proposed rule. She said the main objective is defining an "emergency project".

She added that it was also necessary to define an "emergency" and broke it down in two ways. The first is an event or condition which presents an immediate threat to life or property, and the second is a specific storm event or natural calamity that has been declared to be an emergency by Federal or State Officials.

Mr. Booth commented that some calamities are man-made and suggested that staff review the definition of emergency to include human created events.

Mr. Booth asked why the definition of emergency was limited to federal and state declared emergencies and it did not include locally declared emergencies. He added that sheriffs' authority is wide reaching and in cases of emergencies they make decisions, and under the General City Law the Mayor can initiate certain emergency protocols. Mr. Monroe added that local officials do have authority to declare emergencies and agrees they should be included.

Ms. McAleese explained the two ways to authorize an emergency project through the proposed rule. She said the first is through an emergency certification which is intended for use during the emergency; the certification is a written determination by the Agency that an emergency exists or has existed and the project may be undertaken or has been undertaken. The certification is intended for the initial response to the emergency and may be issued while the event is occurring or within 30 days of the emergency.

She also noted that staff wanted to recognize that it is often not possible for a project sponsor to obtain approval before one must act to protect life or property. She added the emergency certification may be issued by the Executive Director, or other designated staff, allowing the potential for that person to be in the field at the time of the emergency and issue the emergency certification.

Chairwoman Ulrich asked if there are three separate applications that individuals have to fill out for each different agency. Mr. Craig suggested if there was a way to combine some of these applications it would be easier for landowners to have one procedure that satisfies both the Agency and the DEC.

Ms. McAleese stated that it was discussed and while we do have to look at some things differently than what the DEC does, that will be something that comes out more in the process of

developing an MOU with them. Mr. Townsend added that the certification process will follow a common standard so the information that is captured for other agencies will not be repetitive.

Mr. Stegemann added that when an emergency is declared individual DEC staff can be authorized to write permits or emergency work on the spot out in the field and the paperwork follows.

Mr. Townsend said the individual will receive a different certification from this agency because we are authorizing a structure in a shoreline and no one else has that review. Ms. McAleese added that discussions will continue to try to streamline this as much as possible and staff are looking at forms that mirror what DEC uses.

Ms. McAleese asked that the committee recommend approval of the draft resolution to the Full Agency. She noted that the resolution will commence the start of the State Administrative Procedure Act and authorizes staff to file a Notice of Proposed Rule Making with the Secretary of State.

Ms. McAleese said that once the public comment period has expired and the hearings have been held staff will bring the proposed rule back to the Agency for further action.

Ms. Feldman added that having been through these kinds of emergency situations and seeing people not know what to do, it is important to endorse this because it is necessary. She also thanked everyone for making this happen.

On motion of Mr. Craig, seconded by Mr. Booth, the Resolution was unanimously approved to go to the Full Agency.

The meeting adjourned at 10:10 am.