



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2012-WS-0029

RE: Senate Bill 64 of the 146th General Assembly
Floodplain and Drainage Standards and Recommendations

Date of Issuance: August 2, 2012

Effective Date: August 2, 2012

Under the authority vested in the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department" or "DNREC"), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above referenced proceeding.

Background and History

Governor Jack A. Markell signed Senate Bill 64 into law on August 17, 2011. The legislation was developed in response to concerns about Delaware's vulnerability to ongoing inland and coastal flooding and drainage challenges, coastal storms and other extreme weather events, and rising sea level—all of which threaten public infrastructure, private property, and human health and safety. Chronic and nuisance flooding and drainage problems throughout the state have cost taxpayers an estimated \$65,000,000 since 1996, much of which may have been avoided through more consistent and proactive policies in areas prone to flooding.

With overwhelming bipartisan support, Senate Bill 64 passed with the purpose of protecting human life, health and welfare by requiring the Department to assemble a panel of experts to identify best practices and assist local governments in implementing such policies in order to prevent or minimize flood damage in the future. Specifically the bill's purpose is to:

- minimize flooding of water supply and sanitary sewage disposal systems;
- maintain natural drainage;
- reduce financial burdens imposed on the state, local community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
- minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

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- minimize prolonged business interruptions and damage to public facilities and other utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
- prevent or minimize the impact of development on adjacent properties within and near flood prone areas;
- provide that the flood storage and conveyance functions of the floodplain are maintained and minimize the impact of development on the natural and beneficial functions of the floodplain.

Senate Bill 64 established a Floodplain and Drainage Advisory Committee (Committee) with diverse stakeholders that included public and private interests to review best practices and national standards and recommend minimum standards for improved floodplain management and drainage within the state. The Committee also examined the adequacy of existing requirements, policies and practices associated with notification to prospective property purchasers of existing flooding or drainage issues. The Committee, having met seven times between September, 2011 and May, 2012, has completed its review, received public comments on its Floodplain and Drainage Standards and Recommendations (Recommendations) and has, through the Committee Chair Frank Piorko, recommended adoption. These recommendations are not mandates on local government, but rather a compilation of best practices that may be employed, depending on local conditions and existing requirements, to improve coordination and management of flooding and drainage issues across the state.

Findings, Discussion and Conclusion

I find that the proposed Floodplain and Drainage Standards and Recommendations are well supported by the deliberations of the Committee and I adopt the Recommendations to the extent they are consistent with this order.

The adoption of these Recommendations for consideration by local governments is consistent with the charge set forth in Senate Bill 64 passed by the 146th General Assembly and signed by Governor Markell on August 17, 2011.

Within six months following my adoption of these recommendations, the three county governments and all municipal governments as appropriate shall review and prepare comments regarding their individual codes and ordinances to determine if they are consistent with the Recommendations. Such review and comments shall identify areas where existing requirements meet or exceed these Recommendations, are functionally equivalent to the Recommendations, or do not comply with the Recommendations.

The review and comments from local governments will also identify areas where implementation of these standards may represent a hardship to the local government, and what impediments to adoption of these Recommendations have been identified. The Committee shall develop the framework for conducting such a review and DNREC shall provide technical assistance to local governments in conducting such analysis when requested.

By no later than March 15, 2013, DNREC shall compile the results of the review, develop a draft report, reconvene the Committee to review the draft report and solicit feedback and deliver the final report to the General Assembly.

Consistent with SB 64, I direct the DNREC staff to provide, as requested, any technical assistance necessary to local governments in order to meet the review and reporting requirements in the statute.

In conclusion, the following findings and conclusions are entered:

- 1) The Department has jurisdiction under its statutory authority to issue an order adopting these proposed standards and recommendations;
- 2) The Department provided adequate public notice of the Committee meetings and public comment period;
- 3) The proposed Floodplain and Drainage Standards and Recommendations as set forth in Appendix A are adopted to provide additional reasons and findings for this order.



Collin P. O'Mara,
Secretary