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### I/M/O CENTEX HOMES

#### *BPU Main Extension Regulations*

The Appellate Division overturned BPU's Main Extension Regulations, N.J.A.C. 14:3-8.1 – 8.13, that precluded regulated utilities from paying for or financially contributing to utility extensions in areas not designated for growth under the State Plan. The regulations were intended to reflect State smart growth policy by implementing the State Plan.

The court held that the BPU did not have statutory authority under N.J.S.A. 48:2-27 to implement the State Plan and lacked authority to incorporate smart growth principles in its regulations. The court held that the State Plan carries no regulatory effect. An agency may only adopt regulations to reflect the State Plan if it has specific statutory authority.

The statute “does not have a land use or environmental concern as main purposes” and “BPU was not vested with the authority to consider environmental concerns”. BPU's regulations constituted a “drastic change” from regulation of public utilities to the regulation of urban and suburban sprawl. The “State Planning Act itself and the Executive Orders encouraging compliance with the State Planning Act cannot be considered enabling Legislation for the BPU to make what are essentially land use decision in exercising its statutory authority.”

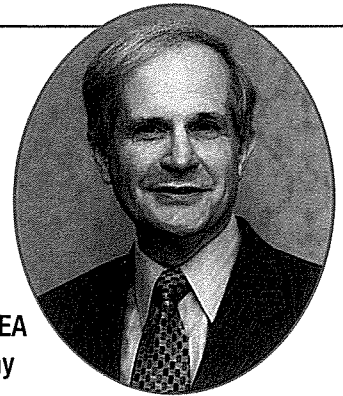
This is a significant decision that should benefit developers in negotiations over the cost of utility extensions.

#### WQMP's and PERMIT EXTENSION ACT

Prior to leaving office, Governor Corzine signed one bill important to the building and development industry but failed to take action on another. The WQMP bill (A-4345) was not signed. It would have extended the time for counties to update sewer service areas and would have required inclusion of parcels within the sewer service area if certain conditions were met. NJBA's legislative committee will continue to pursue this issue with the new administration.

Former Governor Corzine did sign into law A-4347, amending the Permit Extension Act of 2008 (“PEA”). The PEA is now extended until December 31, 2012, providing potentially significant protection against expiration of approvals while the economic recovery progresses. Qualifying approvals may also be tolled for an additional six month until June 30, 2013. The protections of the

PEA would have ended July 1, 2010 for many approvals. All other provisions of the PEA remain unchanged. Builders and developers should review their approvals to ensure they are covered under the PEA and are not subject to one of its many exceptions.



#### DEP SETTLEMENTS – COASTAL MUNICIPALITIES

Builders and developers who enter into settlement discussions with DEP for properties located in “coastal municipalities” may have to negotiate with municipalities as well. Under P.L. 2009, c.171, effective January 11, 2010, DEP is required to give notice to the governing body of coastal municipalities whenever DEP enters into settlement discussions with a property owner if the property contains dunes or other environmentally sensitive areas. DEP is required to offer municipalities the opportunity to participate in the settlement discussions. Coastal municipalities include those within the coastal area defined under CAFRA.

Municipal participation will likely be an impediment to settling cases with DEP. However, builders and developers must ensure that DEP complies with this requirement to avoid the potential for challenges to settlement agreements on procedural grounds.

#### EXECUTIVE ORDER 1

Governor Christie appears to be following through on a campaign pledge to immediately evaluate all DEP regulatory programs. Under Executive Order 1, various proposed DEP rules and regulations were “frozen and suspended for a period of 90 days” commencing January 21, 2010. The lists of affected proposed rules and regulations can be found on-line at [www.state.nj.us/infobank/circular/eocc1.pdf](http://www.state.nj.us/infobank/circular/eocc1.pdf). or by contacting NJBA.

#### CONSTRUCTION SITE STORMWATER DISCHARGES

The EPA adopted stormwater Effluent Limitation Guidelines (ELG's) for the Construction and Development Industry on December 1, 2009. The ELG's will not be required in New Jersey until New Jersey renews its NJPDES general permit for construction site stormwater discharges, which expires February 2012. The State could choose to update its NJPDES GP early.