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## **The view from the shore - Regulation as far as the eye can see**

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The New England coast is a beautiful place to live with beaches, bluffs, and wetlands, but owning shoreline property carries the obligation to follow numerous federal, state, and local regulations. When making development plans, property owners must consider everything from floodplain management and the preservation of wetlands, to sea level rise and impacts on navigation.

### **Floodplain Management**

#### **Regulations**

Congress created the National Flood Insurance Program (NFIP) in 1968. Local communities administer the NFIP by enacting and enforcing floodplain management regulations that comply with minimum Federal Emergency Management Agency (FEMA) requirements. Flood insurance is only available in towns that participate in the NFIP. New construction in "Special Flood Hazard Areas" must conform to flood-proofing construction requirements, including raising the lowest inhabited floor of the building above the base flood elevation. Older homes predating the NFIP need to comply with current construction requirements only when the structure is "substantially improved," which is when the owner undertakes work exceeding 50% of the value of the structure.

### **Coastal Management**

#### **Review and Permitting**

In 1972, Congress passed the Coastal Zone Management (CZM) Act, which encouraged states to develop CZM programs to balance land and water uses while protecting sensitive coastal resources. Connecticut passed its own Coastal Management Act (CMA) in 1978, providing goals and policies to protect and enhance Long Island Sound and the coastal resources along its shoreline. Coastal communities administer the CMA through special sections in their zoning regulations. Except for some minor activities, all proposed development within the "Coastal Boundary" (i.e., 1,000 feet from the shore) are subject to review to ensure that the proposal complies with the CMA, whose policies to protect coastal resources often conflict with an owner's plans to develop vacant land or protect developed land from storms and erosion. For instance, new seawalls are only allowed when damage from coastal erosion threatens the structural integrity of a home constructed before 1980.

### **Waterways and Tidal**

#### **Wetlands Permitting**

The Connecticut Department of Energy and Environmental Protection (DEEP) and the U.S. Army Corps of Engineers share jurisdiction over all shoreline activities, such as docks, dredging, and seawalls, taking place either waterward of the high tide line or in tidal wetlands. All DEEP permitting decisions must comply with the CMA. Army Corps decisions must comply with numerous federal laws and regulations, such as the Clean Water Act.

Docks are the most common coastal activity, but permitting decisions are often complicated by the unique topographic and ecological features of each property, and by the requirement that no dock

negatively impact the public's right to access the beach below the mean high water line or to freely navigate over the waters of the state.

Tidal wetlands, which filter pollution, absorb storm surge, and provide habitat for many species, are given special protection under the law. About 90 percent of the tidal wetlands that once existed along the Connecticut shore have been dredged or filled. As such, it is very difficult to obtain a permit to conduct activities in tidal wetlands. One exception is that a dock may pass through a wetland, but only when there is no other suitable location and the dock is designed to have as little impact on the wetland as possible.

#### Preparing for Climate

##### Change and Sea Level Rise

The Connecticut Legislature introduced a bill in 2012 requiring sea level rise to be considered in any coastal permitting decision. The Legislature has not yet voted on the bill. The Legislature has also convened a bipartisan task force to study how climate change impacts the shoreline. Property owners worry that planning for sea level rise will reduce their ability to protect their property from storms and lead to a taking of property in violation of the U.S. and state constitutions. Only one Connecticut town, Groton, has instituted policies to identify and respond to the impacts of climate change as part of its planning strategy.

Coastal management regulations are an overlapping and interwoven web that often cause confusion and frustration for shoreline property owners. This article only touches on the most common coastal management issues, but we hope it serves as a notice to thoroughly investigate the applicable regulatory requirements before embarking on any new development plans along the shore.

John Casey is counsel for  
Robinson & Cole LLP, New  
London, Conn.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540