



To: Mary Austerman, New York Sea Grant; Jayme Thoman, Genesee/Finger Lakes Regional Planning Council

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center, University of Mississippi School of Law; Alex Dominguez, 2L, University of Mississippi School of Law

Re: New York Coastal Erosion Hazard Area Permit Program (NSGLC-19-04-01)

Date: March 21, 2019

Advisory Request Summary

In March 2019, New York Sea Grant and the Genesee/Finger Lakes Regional Planning Council asked the National Sea Grant Law Center to research the New York Coastal Erosion Hazard Area (CEHA) Permit Program. CEHA provides written approval of regulated activities or land disturbance to properties within the coastal erosion hazard areas. For purposes of CEHA, communities may remain under the Department of Environmental Conservation's (DEC) jurisdiction or become certified communities administering and enforcing their own local programs.

Currently, there are 86 communities on the Atlantic Ocean, Long Island Sound, Lake Ontario, and Lake Erie that fall under CEHA jurisdiction. Thirty-five of those communities have been certified by DEC and have their own coastal erosion hazard area law. These communities oversee the CEHA permit application process and enforcement of regulated activities within coastal erosion hazard areas in their community. Therefore, a resident in one of these communities must contact the appropriate local department for information on how to apply for a permit. The remaining 51 communities are managed by DEC. Residents living in one of these communities must contact their local DEC Permit Administrator to apply for a CEHA permit.

Community Certification

N.Y. Env'tl. Conserv. Law §§ 34-0105, 34-0106, and 34-107 outline the methods by which a community can become certified. Section 34-0105 requires the clerk of a city, town or village to submit an erosion hazard area ordinance or local law to the Commissioner of DEC within six months of a final identification of an erosion hazard area. Section 34-0106 provides that if a city, town or village fails to submit an erosion hazard area ordinance or local law or is disapproved, a county may then step in and submit a county erosion hazard area ordinance or local law to the Commissioner of DEC within six months of a receipt of notification.

According to DEC personnel, these six-month time frames applied when the maps were first created and certified in the 1980s. While §34-0105 and §34-0106 provide strict time frames, § 34-0107(5) provides a means by which uncertified communities may become certified at any



time. “In any city, town or village where there are in effect erosion hazard area regulations issued by the commissioner pursuant to this section, nothing herein shall be construed as preventing such city, town or village from submitting, *at any time*, an erosion hazard area ordinance or local law to the commissioner for approval pursuant to section 34-0105 of this article, or for any county to provide such regulation in absence of local law or ordinance, pursuant to section 34-0106 of this article.” [emphasis added].

To become certified, communities must submit information, including, but not limited to, the following:

- a certified copy of the Coastal Erosion Management local law;
- appropriate CEHA maps;
- identification of the individual who will administer the program and his or her qualifications;
- a description of the community’s administrative capacity;
- identification of who will be in charge of enforcement; and
- a resolution stating the community will enforce and inspect when necessary.

Certified communities are required to submit an annual assessment to the DEC. (6 CRR-NY 505.19.) This annual assessment must include statistics of applications received, permits issued, variances granted, and total violations. It may also include additional information necessary for the DEC to monitor the performance of a local program or to assess the need for technical assistance. The annual assessment form, is located at:
https://www.dec.ny.gov/docs/water_pdf/cemcehaassf.pdf.

CEHA maps are currently being updated. This process involves re-evaluating the currently mapped coastline to determine any changes that have occurred in the natural protective features, comparing historical imagery to current imagery to determine long-term shoreline recession rates, and updating the location of both the NPFA and the SHA lines. In addition, the DEC is reviewing and updating Part 505 regulations. This will include outreach to stakeholders and a public comment period.