



October 2013

2013 Public Acts Amending Coastal Permitting and Management Statutes in Connecticut

On October 1, 2013, new laws came into effect that impact coastal permitting and management policies in Connecticut. The highlights of the new public acts are below. Links to background information on the legislation are included, and you may contact us for more information:

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An Act Concerning the Permitting of Certain Coastal Structures by the Department of Energy and Environmental Protection, [Public Act 13-179](#), makes several amendments to the Coastal Management Act and other statutes regulating certain activities in the navigable waters of the state. The major changes include the following:

- The Certificate of Permission (COP) permitting process, an expedited process to obtain a Department of Energy and Environmental Protection (DEEP) permit for modifications or repairs to existing coastal structures, has been significantly revised. A key "grandfathering" date has been changed from June 24, 1939, to January 1, 1995. Also, the statute now provides that DEEP "shall" (instead of "may") issue a COP for activities completed prior to January 1, 1995, without a permit as long as the activity "substantially complies" with all applicable tidal wetlands and coastal permitting and management standards and criteria. COP applicants have also been given the right to request a mediation session at DEEP if their application is denied. Lastly, the amendment seeks to limit the number of docks on easements by declaring that dock easements created after January 1, 1995, shall not entitle the easement holder the right to a docking structure.
- The list of activities eligible to be protected by a "shoreline flood and erosion control structure" (for example, a seawall) has been expanded from "inhabited structures constructed as of January 1, 1995," to "commercial and residential structures and substantial appurtenances that are attached or integral thereto, constructed as of January 1, 1995." Infrastructure facilities, cemetery or burial grounds, and water-dependent uses continue to be eligible for protection by a seawall or similar structure.
- Following up on changes made last year regarding policies for the review of applications for shoreline flood and erosion control structures, the statute now provides a specific appeal and third-party engineering review process when such applications are denied by DEEP. This process only applies to applications prepared by a licensed engineer and allows the applicant to trigger the start of the process after DEEP issues
- its tentative decision to deny the application.

- "Rise in sea level," added to the list of items that must be considered when planning new coastal development in 2012, has been redefined to reference the rise in water surface levels at the National Oceanic and Atmospheric Administration's (NOAA) tidal gauges in Bridgeport and New London. In other parts of the General Statutes, sea level change scenarios published in NOAA's [Technical Report OAR CPO-1](#) have been added as factors to be considered in the planning process.
- Elevated decks at residential properties have been added to the list of activities that municipalities can exempt from coastal site plan review. To benefit from this change, a municipality must amend its zoning regulations to add elevated decks to its list of exempt activities.

An Act Concerning Department of Energy and Environmental Protection Regulatory Streamlining to Assist Municipalities, [Public Act 13-209](#), makes changes to the tidal wetlands and coastal structures permitting statutes, including the following:

- Petitions requesting a hearing on a tidal wetland application now must be received not later than 30 days after publication of DEEP's tentative decision on the application.
- Following up on a change enacted in 2012, which allowed an applicant for a dock permit to request a hearing, the coastal structures permitting statute now provides that DEEP must hold a hearing if it receives a petition signed by 25 persons. This is a significant change in that, under the prior law, DEEP could only hold a hearing based on a petition under three specific circumstances. The new legislation eliminates the requirement that one of the three circumstances be met and now simply requires that a hearing be held if a petition is submitted.
- Applicants for tidal wetlands or coastal structures permits are now required to include with their applications a copy of the notice of application published in the local newspaper and a signed statement certifying that they notified the chief elected official in the town. While these notification requirements have been mandatory for years, the new legislation makes it clear that such notifications must be made before an application is submitted to DEEP, as opposed to sometime after the application is filed.

An Act Concerning Climate Change Adaption and Data Collection, [Special Act 13-9](#), requires that by January 15, 2014, DEEP and the University of Connecticut report their proposal to establish a Connecticut Center for Coasts to the legislature. The report must also include details about how the center will be run and the programs and policies for which it will be responsible.

An Act Concerning Administrative Streamlining at the Department of Energy and Environmental Protection, [Public Act 13-205](#), sections 1 and 13, effectively eliminates the Stream Channel Encroachment Line permitting program. The legislation changes the law so that DEEP is now allowed, rather than required, to establish boundary lines along certain tidal or inland waterways or flood-prone areas, beyond which no one may place an encroachment, hindrance, or obstruction without authorization. The act also specifies that any such order establishing these lines on or before October 1, 2013, is deemed revoked.

As with changes enacted in past years, these acts not only provide benefits to waterfront property owners (a relaxing of the COP standards, an expanded list of activities eligible for a seawall permit, and a new process to challenge DEEP denials of seawall permits) but also have the potential to impose greater burdens now that opponents to coastal development projects can force a hearing with the submission of a petition signed by 25 persons. In addition, there is still uncertainty as to how sea level rise will be considered in future application decisions. It is important that coastal property owners fully consider the ramifications of these acts in their development plans.

CONTACT US

If you have any questions or would like to discuss coastal development or permitting issues further, please contact:

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