OLR RESEARCH REPORT

February 2, 2012 2012-R-0046

COASTLINE CONSTRUCTION RESTRICTIONS

By: Mark Randall, Research Fellow
Hendrik deBoer, Research Fellow

You asked (1) about other states' restrictions for building homes or other structures in coastline areas and (2) what the ramifications would be for any state implementing a statewide coastal development setback line.

Sources of information for the following report include applicable state statutes and regulations, as well as government agencies.

SUMMARY

All 23 oceanic and Gulf coast states, with the exception of Alaska, regulate their coastal areas under the federal Coastal Zone Management Act. States have broad discretion in how they accomplish the federal act's goals, which include protecting natural resources, managing development in high hazard areas, giving development priority to coastal-dependent uses, providing public access for recreation, and coordinating state and federal actions.

Fourteen states use some form of statewide coastal setback, which requires structures and uses to be sited inland a minimum distance from a specific shoreline feature, such as a high water mark, vegetation line, dune toe, or bluff crest. This distance may be a fixed number of feet or may be based on the long-term annual rate of erosion. The remaining

Sandra Norman-Eady, Director
Phone (860) 240-8400
FAX (860) 240-8881
http://www.cga.ct.gov/olr

Connecticut General Assembly
Office of Legislative Research

Room 5300
Legislative Office Building
Hartford, CT 06106-1591
Olr@cga.ct.gov

nine states, including Connecticut, have no statewide setback, but usually delegate local zoning decisions to municipalities. These states often review the municipal plans for consistency with the state and federal goals.

Most states also have laws governing reconstruction and repair of structures in coastal areas. Whether reconstruction or repair is permitted often depends on the size of the structure, how much of the structure was damaged, or the cost of repairing the damage.

Although no states have recently adopted a statewide setback, in 2008, Maryland increased its coastal development setback from 100 feet to 200 feet in a portion of the state's "Critical Area" classified as "Resource Conservation Areas." These are the most undeveloped and sensitive lands, and the new setback applies only during the act of subdivision. The increase's proponents viewed the new requirements as strengthening the Critical Area law in light of the ongoing, accelerating decline of the State's water quality and the loss of valuable shoreline areas. At the local level, the setback change required local governments to update their programs to incorporate the bill's changes, including amending local ordinances and updating local maps. No significant additional local costs were anticipated. Although there was no legislative record indicating opposition, a Maryland law firm specializing in land use issued a report after the law was passed, envisioning the new setbacks as a constraint on the state's ability to develop, finance, and deliver environmentally progressive projects within the Chesapeake and Atlantic Coastal bays.

FEDERAL LAW

Most states have enacted state coastal laws pursuant to the federal Coastal Zone Management Act (CZMA), passed in 1972 "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." The CZMA created a voluntary program for states to establish and implement coastal management programs, subject to federal approval. To encourage adoption, the Act provides states financial assistance to develop and implement coastal programs (16 U.S.C. §§ 1451 – 64). All oceanic and Gulf coast states have adopted the CZMA. Alaska adopted it, but then abandoned it in 2011.

Each state that has adopted the CZMA has created a coastal zone, the area in which activities are regulated. The method for determining the boundaries of the coastal zone vary from state to state. Also varying are the types of activities regulated and the manner in which they are

enforced. Many states have created a specific state agency for implementing the coastal management program, while others have designated existing state agencies.

STATES WITH STATEWIDE SETBACKS

The following 14 states have minimum statewide setback requirements for construction within the coastal area or zone.

Alabama

Alabama's Department of Environmental Management regulates the Coastal Area Management Act. The coastal area generally includes lands and waters seaward of the continuous ten-foot contour line. The Coastal Area Management Program regulates Alabama beaches and shorefront. Its regulations require a permit for (1) removing primary dune or beach sands and vegetation or otherwise altering the primary dune system, (2) constructing any new structure, or (3) making any substantial improvement to any existing structure on property between the mean high tide and the "construction control line." This line is the minimum construction setback for the state and is defined in terms of plane coordinates and the vicinity of monuments (ALA. ADMIN. CODE r. 335-8-2-.08, 335-8-1-.02).

Permits are also required for any "substantial improvement." This applies only if a structure's repair, reconstruction or improvement will cost 50% or more of the structure's fair market value before the work begins. If the structure was damaged and is being restored, the cost threshold applies to the structure's value before the damage occurred (ALA. ADMIN. CODE r. 335-8-1-.02 (jjj)(2)). (http://adem.alabama.gov/programs/coastal/default.cnt).

Delaware

The Department of Natural Resources and Environmental Control (DNREC) regulates coastal uses through the Delaware Coastal Management Program and two statutes, the Coastal Zone Act and the Beach Preservation Act.

The Coastal Zone Act regulates manufacturing uses in the coastal zone through permits. The state's coastal zone is the area of the state, "whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads" (DEL. CODE ANN. tit. 7 § 7002(a)). This includes requiring permits for all new and expanded manufacturing facilities and prohibiting them for new heavy industry uses within the coastal zone.

Additionally, the Beach Preservation Act regulates beach areas by requiring permits for all construction seaward of a state-delineated building line and "letters of approval" for construction landward of the building line. The building line is the state minimum setback requirement. It is defined in terms of certain distances, depending on the area, landward of a contour above the water line. It is set forth on maps the DNREC prepares with reference to a commonly used vertical datum.

The regulations prohibit construction seaward of the building line, but allow for exceptions including when the size of the area landward of the building line is inadequate for erecting the proposed structure. If a structure located seaward of the building line is completely destroyed, it cannot be reconstructed without a permit (DEL. CODE ANN. tit. 7 § 6802(4)).

(http://www.dnrec.delaware.gov/coastal/Pages/CoastalMgt.aspx).

Florida

The Department of Environmental Protection (DEP) is the Florida Coastal Management Program's primary administrator and the Beach and Shore Preservation Act is the primary law governing beach development in the state. Under the law, DEP may grant or deny construction permits for excavation or construction activities at any coastal location or activities conducted on sovereign submerged lands. These permits must comply with the requirements and use restrictions of the following three jurisdictional lines or zones.

The first line of jurisdiction is a "50-foot set-back line," set 50 feet from erosion control lines or from the mean high water line, whichever is more landward. The line's establishment does not preclude all development activities or alteration of coastal property seaward of the line; and the permit applicant must state and clearly justify the need to develop, construct, or alter (FLA. STAT. § 161.052).

Second, DEP must establish coastal construction control lines (CCCL) when necessary to protect upland properties and to control beach erosion. These lines define that portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other forces such as wind, waves, or water level changes. This line varies across the state in distance landward from the mean high water line, ranging from approximately 200 feet in a portion of Florida's east coast to over 1,000 feet in a part of Florida's west coast. The Act limits the activities seaward of this line, and the permit applicant must state and clearly justify such development, construction, or alteration. If a CCCL does not exist, the line of jurisdiction is the 50-foot setback line (FLA. STAT. § 161.053).

Finally, the Office of Beaches and Coastal Systems determines a "30-year erosion projection line" for permit applications by forecasting the seasonal high-water line 30 years from the date of the permit application. The Department may not issue a permit for any structure seaward of this line, except for coastal or shore protection, minor, or certain intake and discharge structures, or for single-family dwellings if these structures conform to the requirements of the Act (FLA. STAT. § 161.053).

The setback requirements do not apply to any modification, maintenance, or repair to any existing structure within limits of the existing foundation that does not require, involve, or include any additions to, or repair or modification of, the structure's existing foundation (FLA. STAT. § 161.052).
(http://www.dep.state.fl.us/cmp/default.htm).

Georgia

Georgia protects its coastal areas through two separate programs: the Coastal Marshlands Protection Program and the Shore Protection Program. The Coastal Marshlands Protection Program, administered by the Coastal Marshlands Protection Committee, requires a 50-foot setback that applies to the upland component of the project as measured horizontally inland from the coastal marshland. This ensures that the project does not result in the filling or other alteration of the coastal marshlands. "Coastal marshland" is any marshland intertidal area, mud flat, tidal water bottom, or salt marsh (GA COMP. R. & REGS. 391-2-3-.02).

The Shore Protection Committee, under the auspices of the Georgia Department of Natural Resources, runs the Shore Protection Program. Permit applications are divided into three types depending on the location and type of structure proposed. Each permit type must meet specific requirements.

The first type of application is for building or altering land on stable sand dunes. In granting a permit, the Committee must require that (1) construction be as landward as possible; (2) a reasonable portion of the land be retained in its natural vegetative condition; and (3) the proposed project maintain the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the subject parcel and at other shoreline locations (GA. CODE ANN. § 12-5-239(c)(1)).

The second type are applications seeking to build shoreline engineering projects on beaches, eroding sand dune areas, and areas without stable sand dunes. No permits, except those for shoreline engineering and boardwalks, may be granted in these areas. These permits allow only temporary activities, kept to a minimum, which maintain the normal functioning of the dune system (GA. CODE ANN. § 12-5-239(c)(2)).

The third type of permit covers shoreline engineering projects in submerged shoreline lands. If the Committee issues a permit, it is only for a temporary disruption that results in complete restoration of the former stability of the area. Additionally, at least a reasonable percentage of the parcel must remain naturally vegetated. If shoreline stabilization is necessary, only low-sloping rock structures or other techniques that maximize the absorption of wave energy are allowed (GA. CODE ANN. § 12-5-239(c)(3)).

Permits are not required for changes to structures and projects in existence before July 1, 1979, but they are required to rebuild a structure or project damaged more than 80% by wind, water, or erosion, as determined by an appraisal of its fair market value (GA. CODE ANN. § 12-5-237.)
(http://www.coastalgadnr.org/)

Hawaii

Hawaii's Office of Planning is the state's lead agency for coastal zone management. It monitors state and county actions for compliance with Hawaii's Coastal Zone Management Act's objectives and policies. However, various other state agencies issue use permits that implement the Coastal Zone Management Plan and county "authorities" issue development control permits and grant setback variances.

The law generally establishes shoreline setbacks between 20 and 40 feet inland from the shoreline (mean high tide line). Additionally, the Special Management Areas Program establishes county-by-county

special management areas along all shorelines. Within these areas, the local coastal management authority controls development by issuing permits, but in designated community development districts, the Office of Planning administers these permits and the shoreline setback approval program. Counties can, and in some instances have, established setbacks more than 40 feet from the shoreline (HAW. CODE R. § 15-150-20).

Permitted structures may be repaired, but not enlarged, without a variance (HRS § 205A-44).
(http://hawaii.gov/dbedt/czm/).

Maine

Maine implements its Coastal Zone Management Program through a variety of land use and conservation laws rather than through a single coastal zone management law. The state has established general coastal policies in the Coastal Management Policies Act, which directs all state, local, and, where applicable, federal agencies to conduct coastal activities consistent with state policies. The state regulates its coast in large part through the state Natural Resources Protection Act, which regulates coastal sand dune systems and significant coastal wildlife habitat areas.

The Mandatory Shoreland Zoning Act requires local governments to develop and administer zoning ordinances in shore land areas. The following setback distances are included in the state's mandatory minimum guidelines adopted pursuant to this law:

1. Resource protection zones—development is strictly limited to the upland edge of a wetland within 250 feet of the shoreline

2. Limited residential, limited commercial and stream protection zones—no building allowed within 75 feet of the shoreline

3. General development zones—no building allowed within 25 feet of the shoreline, except for water-dependent uses

Maine also has a detailed set of regulations for protecting its sand dune system, which by statute includes dune ridges, back dunes, and other sand or gravel areas deposited by wave or wind action. Current regulations prohibit any building greater than 35 feet in height above existing grade or covering a ground area greater than 2,500 square feet in a sand dune system unless the applicant demonstrates that the area will remain stable.

No structure located in a frontal dune can be rebuilt if it loses more than 50% of its appraised value as a result of an ocean storm (06-096-305 ME. CODE R. § 16) (http://www.maine.gov/spo/coastal/index.htm).

Maryland

Maryland's Critical Area Program is made up of the Coastal Zone Management Program, the Chesapeake Bay Critical Area Act, and the Atlantic Coastal Bays Critical Area Act. The Department of Natural Resources serves as the lead agency to coordinate their implementation.

The Critical Area Program requires local jurisdictions to develop and implement enforceable land use plans for development. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays oversees these local programs. The Critical Area is defined as the land areas that are 1,000 feet from tidal waters and tidal wetlands.

Local programs must establish shoreline buffers and minimum setbacks. New developments must maximize the site's habitat potential through clustering, incorporating a wildlife corridor system, and limiting the clearing of existing vegetation. In addition, they must provide 100-foot setbacks from the mean high water line along tidal waters and tidal wetlands. In a "resource conservation area," area characterized by nature-dominated environments (e.g., wetlands, forests, abandoned fields and resource-utilization activities), there is a 200-foot minimum setback (MD. CODE REGS. 27.01.09.01, MD CODE ANN., NATURAL RESOURCES, § 8-1808.10).

The Maryland statute regulating the Atlantic Ocean beaches prohibits land clearing, construction activity, and the construction of permanent structures within the beach erosion control district, as defined by statute (MD CODE ANN., NATURAL RESOURCES, § 8-1105.1).

A new application is required showing the requisite setback of any "substantial alteration." This includes any principal structure's repair, reconstruction, replacement, or improvement when there will be at least a 50% increase in its total footprint (MD. CODE REGS. 27.01.09.01).
(http://www.dnr.state.md.us/ccp/index.asp).

New Hampshire

New Hampshire's Department of Environmental Services manages coastal development. The regulated coastal zone includes the state's 17 coastal municipalities. In these areas, primary structures must be set back 50 feet from the highest observable tide line, which is a line

defining the furthest landward limit of tidal flow, not including storm events, that can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks the tide's further flow (N.H. REV. STAT. ANN. §§ 483-B:4, 482-B:9).

Developers may rebuild any primary structure damaged by accidental means in its existing location as long as construction begins within two years of the date of the accident or a shorter period if specified in local ordinances or regulations. (N.H. CODE ADMIN. R. ENV-WQ 1408.01).

New Jersey

New Jersey's Department of Environmental Protection manages coastal development. The regulated coastal zone is an irregularly shaped zone that covers the entire state coastline (although some inland tidal waters are not covered). A permit is required to construct any structure on a beach or dune or within a certain distance of the coast. This distance depends on the structure's size and use. A single family residential home must be at least 150 feet from the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward. The distance for commercial developments depends on the amount of necessary parking spaces (http://www.nj.gov/dep/cmp/).

Developers do not need a permit to reconstruct any development that legally existed before July 19, 1994 and subsequently was damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God. But any such reconstruction must (1) comply with existing law and (2) not enlarge the development (N.J.ADMIN. CODE § 7:7-2.1).

New York

New York's Department of Environmental Conservation (DEC) manages coastal development. The regulated coastal zone includes coastal hazard areas that the DEC has identified as likely to erode within a 40-year period or that serve as natural protection for other areas against erosion. Municipalities or counties that contain coastal hazard areas are encouraged to implement regulatory programs, which must conform to DEC regulations. If a municipality or county fails to implement a regulatory program, DEC itself must do so. DEC regulations include a minimum setback of 75 feet from the most landward edge of any tidal wetland, for all buildings and structures larger than 100 square feet within the hazard area, with limited exceptions. Developers may apply for variances, which are allowed under special circumstances (http://www.dec.ny.gov/lands/28923.html).

Developers do not need a variance to repair, restore or rebuild any structure or facility that exists lawfully provided that such work does not increase noncompliance with regulations implemented since the building's original construction (N.Y. COMP. CODES R. & REGS. tit. 6, § 661.10).

North Carolina

North Carolina's Department of Environment and Natural Resources manages coastal development. The regulated coastal zone includes designated ocean hazard areas, which may include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative, and soil conditions indicate a substantial possibility of excessive erosion or flood damage. Within these areas, construction is prohibited within an ocean hazard setback distance from the vegetation line. This distance depends on the size of the structure. A structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater. The minimum setback distance increases as the size of the structure increases (http://dcm2.enr.state.nc.us/index.htm).

Developers may rebuild in ocean hazard areas as long as they comply with the regulations for ocean hazard areas, as well as building codes, the National Flood Insurance Program, and local reconstruction plans (15A N.C. ADMIN. CODE 7M.0503).

Rhode Island

Rhode Island's Coastal Resources Management Council manages coastal development. The regulated coastal zone encompasses the entire state, although the inland extent of the Coastal Program's regulatory authority is generally 200 feet inland from any coastal feature. Individuals must obtain permits to build in these areas. For the permit to be approved, construction must comply with various regulations, including a required minimum setback, which depends on the size of the structure.

Residential structures with less than four dwelling units must be set back 50 feet, or no less than 30 times the average annual erosion rate, whichever is greater, from the inland boundary of any coastal feature or 25 feet from the inland boundary of a Coastal Buffer Zone, whichever is further landward. Commercial and industrial structures or residential structures with more than four dwelling units must be setback 50 feet or no less than 60 times the average annual erosion rate, whichever is

greater, from the inland boundary of any coastal feature or 25 feet from the inland boundary of a Coastal Buffer Zone, whichever is further landward.

Coastal features include beaches and dunes; barrier beaches; wetlands; cliffs, bluffs and banks; rocky shores; and manmade shorelines. Coastal Buffer Zones are land areas adjacent to coastal features that are vegetated with native shoreline species and that act as a natural transition zone between the coast and adjacent upland development. Developers may apply for variances, which are allowed under special circumstances (http://www.crmc.ri.gov/).

Developers may rebuild a structure for which a permit was issued under current regulations if they obtain a Certificate of Maintenance, unless the structure has been destroyed 50% or more by storms, waves, or other natural coastal processes. In this case, the developer must apply for a new permit. For structures in coastal areas that predate current regulations, developers must apply for a Certificate of Maintenance and meet relevant regulations or apply for a permit, depending on the specific case. If such a structure sustains a 50% or larger loss from storm-induced flooding, wave, or wind damage, developers must apply for a permit and meet current regulations (16-2 R.I. CODE R. § 300.14).

South Carolina

South Carolina's Office of Ocean and Coastal Resource Management manages coastal development. The regulated coastal zone includes all lands and waters in counties that contain one or more "critical areas," which are defined as coastal waters, tidelands, beaches, and primary oceanfront sand dunes. Two lines have been established by statute as the basis for coastline regulation: a baseline and a setback line. The baseline is usually established at the crest of the primary oceanfront sand dune, but for inlet zones, it may be based on the most landward point of erosion at any time during the past 40 years, if the zone has not been artificially stabilized. The setback line is established landward of the baseline, a distance of 40 times the average annual erosion rate or not less than 20 feet from the baseline. No new construction is allowed seaward of the baseline, except for specific exceptions that are subject to additional regulation, such as wooden walkways, golf courses and pools, or by special permit (http://www.scdhec.gov/environment/ocrm/).

Developers may repair or renovate habitable structures. They may rebuild habitable structures destroyed beyond repair from natural causes if (1) the total square footage of the replaced structure seaward of the setback line does not exceed the total square footage of the original

structure seaward of the setback line; (2) the linear footage of the replaced structure parallel to the coast does not exceed the original linear footage parallel to the coast; (3) the replaced structure is no farther seaward than the original structure; (4) where possible, the replaced structure is moved landward of the setback line or, if not possible, then as far landward as is practicable, considering local zoning and parking regulations; and (5) the reconstruction is not seaward of the baseline except under special circumstances (S.C. CODE ANN. REGS. 48-39-290).

Virginia

Virginia's Department of Environmental Quality manages coastal development. The regulated coastal zone includes the state's 29 coastal counties and encompasses salt marshes, wetlands, beaches, transition and inter-tidal areas, and islands. Developers need a permit for any development that has the potential for encroaching on or otherwise damaging coastal dunes or state-owned beaches. Permit applications are made to the Marine Resources Commission, local wetland boards, or both. Applications must include a survey of the site, including important data about the coastal area.

In reviewing the application, the Commission or wetland board will establish a minimum setback to prevent encroachment in, or damage to, the dune or beach. No permanent structures can be constructed seaward of the coastal dune's crest, except specific structures used for vehicular access. In addition to these requirements, the Chesapeake Bay Preservation Act includes specific guidelines for zoning within the municipalities that are part of the Chesapeake Bay drainage basin (http://www.deq.state.va.us/coastal).

Rebuilding of a structure in a coastal zone may not be authorized if the structure is (1) destroyed or damaged by natural events and (2) condemned by health officials or local building officials. In these cases, the builder must submit a new application and survey as if the structure had never existed (4 VA. ADMIN. CODE § 20-440-10).

STATES WITH NO STATEWIDE SETBACK

The following states do not have minimum setback requirements. Rather, they delegate the authority to institute construction requirements to municipalities, following their review of the municipal plan.

Alaska

Alaska withdrew from the federal National Coastal Zone Management Program on July 1, 2011. The Legislature adjourned a special legislative session earlier in 2011 without passing legislation required to extend the Alaska Coastal Management Program. Thus at this time, no state setback (from the ocean or cliff edge) requirements exist. But, municipalities may create such requirements.

Similarly, Alaska does not place statewide restrictions on the rebuilding of structures near the coast after they have been damaged; that again is up to the individual municipality (http://dnr.alaska.gov/commis/opmp/).

California

California Coastal Commission. The California Coastal Commission regulates all coastal development, except for the San Francisco Bay. It regulates all development activities in land and water areas extending seaward to the state's outer limit of jurisdiction and extending inland generally 1,000 yards from the mean high tide line of the sea. New residential, commercial, or industrial development must be located in close proximity to existing developed areas where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Within these limits, each local government in the coastal zone may regulate activities within its jurisdiction subject to a local coastal plan prepared either by the local government or the Coastal Commission, in accordance with the Coastal Act. Once the Commission certifies that a local coastal plan conforms to the Act, the local government is delegated the authority to issue coastal development permits for most development within its jurisdiction.

A coastal developer must obtain a permit from the commission for developments between the ocean and the first public road paralleling the ocean or within 300 feet of the inland extent of any beach or of the mean high tide line of the water where there is no beach, whichever is the greater distance. Also requiring commission permits are developments located (1) on tidelands, submerged lands, or public trust lands; (2) within 100 feet of any wetland, estuary, or stream; or (3) within 300 feet of the top of the seaward face of any coastal bluff. Any development that constitutes a major public works project or a major energy facility also must obtain a permit.

Repair or maintenance activities are allowed provided they do not result in an addition to, or enlargement or expansion of, the structure. However, a permit is required if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact. The replacement of any structure, other than a public works facility, destroyed by a disaster must (1) conform to applicable zoning requirements; (2) be for the same use as the destroyed structure; (3) not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%; and (4) be sited in the same location on the affected property as the destroyed structure (West's Ann.Cal.Pub.Res.Code § 30610). (http://www.coastal.ca.gov/).

San Francisco Bay Conservation and Development Commission. The San Francisco Bay Conservation and Development Commission has jurisdiction over a 100-foot shoreline band within San Francisco Bay. To receive a permit to develop within this band, the commission must be able to find that the applicant is providing "the maximum feasible public access consistent with the project," the width of which varies depending on the proposed use and the intensity of use. For projects proposed within designated water-oriented priority use areas (such as ports, water-related industry, airports, etc.) shown on Bay Plan Maps, the distance of structures from the shoreline varies depending on the use and project requirements.

(http://www.bcdc.ca.gov/).

Connecticut

In Connecticut, the Department of Energy and Environmental Protection's Office of Long Island Sound Programs (OLISP) is responsible for coastal management under the Coastal Management Act (CMA) of 1980. Although no statewide minimum development setbacks from coastal resources exist in Connecticut, according to state officials, most coastal towns have such setbacks in their zoning regulations. Both state and municipal regulatory programs must be consistent with the CMA standards, many of which are intended to protect coastal resources (CGS 22a-92(a)). OLISP can review and comment on local coastal site plans (specified activities within the coastal boundary), and may appeal local decisions. But it has no veto power or other direct control over development projects landward of the mean high water line. Discussion of how the CMA policies apply to local land use regulation can be found in OLISP's Coastal Management Manual's fact sheets. (http://www.ct.gov/dep/cwp/view.asp?a=2705&q=323814&depNav_GID=1622).

Louisiana

The Louisiana Department of Natural Resources' Office of Coastal Management implements the Louisiana Coastal Resources Program. Louisiana divides coastal zone permitting responsibility between local governments and the state, depending on the nature of the project and whether the appropriate local government (parish) has adopted a local coastal zone management program. The Office is responsible for issuing coastal use permits. If a parish has an approved program, the state issues permits only for projects of state concern. Permits may be issued only if they are consistent with the Act's goals, policies, and provisions, which require a balancing of conservation and development in the coastal zone. In addition, all permits must be consistent with the state's coastal use regulations and guidelines. There are no state-wide minimum setback requirements.

The Act does not require permits for normal maintenance and repair of existing structures as long as the structure or development in question is (1) existing lawfully, (2) currently serviceable, and (3) in active use during the year preceding the repair and the repair did not involve dredging or filling (http://dnr.louisiana.gov/).

Massachusetts

Massachusetts uses a "networking approach" through which all agencies under the Executive Office of Environmental Affairs conform to the program policies contained in the Coastal Zone Management regulations. The policies cover water quality, habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management. The policy does not require a specific coastal setback policy, but it does address coastal erosion rates and resource area functions. Some municipalities have established setback policies for their communities (http://www.mass.gov/czm/czm.htm).

Mississippi

Mississippi's Department of Marine Resources manages coastal development. The regulated coastal zone includes the state's coastal counties, adjacent coastal waters, and the barrier islands. Builders must obtain a permit to erect structures within the state's coastal wetlands, but an individual constructing a home, fishing camp, or similar structure on his or her property is exempted from this requirement. Water-dependent industries also are exempted from the permit requirement for construction on coastal wetlands (http://www.dmr.ms.gov/coastal-management-a-planning).

Oregon

Oregon's Land Conservation and Development Commission (LCDC) manages coastal development. The regulated coastal zone includes the state's entire shoreline. Legislation requires local governments to adopt zoning plans in accordance with the LCDC's goals for the coast's protection and conservation. These goals include prohibiting construction of residential developments and commercial and industrial buildings on beaches and dunes that are conditionally stable and are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding (http://www.oregon.gov/LCD/OCMP/).

Texas

In Texas, the Coastal Coordination Council is responsible for coastal management. The regulated coastal zone includes the state's tidewater areas. The law requires municipal governments containing beaches or dunes to develop an Erosion Response Plan (ERP), designed to reduce public expenditures for erosion and storm damage losses to public and private property. ERPs may include establishing development setback lines that will accommodate a shoreline retreat and prohibit new construction seaward of the setback line (http://www.glo.state.tx.us/coastal/ccc.html).

Developers may repair or rebuild structures seaward of any municipal setback when such work will not increase the structure's footprint, unless the structure has been damaged more than 50% or destroyed (31 TEX. ADMIN. CODE § 15.17(a)(3)).

Washington

Washington's Department of Ecology is responsible for coastal management. The regulated coastal zone includes the 15 coastal counties that front on salt water. The law requires local governments to adopt a Shoreline Masters Program (SMP), which is responsible for regulating the state's shorelines within their jurisdiction. There is no overarching statewide setback, but each local government must analyze its shoreline and formulate appropriate protective measures, which must conform to state guidelines (http://www.ecy.wa.gov/programs/sea/czm/prgm.html).

Developers may reconstruct a damaged development that existed before current regulations as long as (1) the development is not damaged more than 75% of the replacement cost of the original development, (2) it is reconstructed to those configurations existing immediately before it was damaged, (3) the developers apply for the permits within six months of the date the damage occurred, and (4) the restoration is completed within two years of permit issuance (WASH. ADMIN. CODE 173-27-080).

STATEWIDE SETBACK CHANGE AND IMPLEMENTATION

Maryland – Setback Law

In 2008, Maryland's legislature passed a major overhaul of the state's Critical Area law. This included requiring certain lands in the Critical Area to have a minimum 200-foot buffer from tidal water and wetlands, a 100-foot increase over the previous setback requirement. The minimum 200-foot buffer's application is currently limited to lands with a Critical Area classification as a Resource Conservation Area (the most undeveloped and sensitive lands) and only during the act of subdivision. This means that newly created lots require a minimum 200-foot buffer (H.B. 1253, 425th Gen. Assemb., Reg. Sess. (Md. 2008), codified in MD CODE ANN. NATURAL RESOURCES, § 8-1808.10).

Background. In February 2008, the Chesapeake Bay Foundation (CBF) released a report entitled "The Critical Area Act: Intent, Reality, and the Need for Reform." The report outlined CBF's findings in its comprehensive study of the Act's effectiveness in limiting development in four representative counties. Among other things, CBF reported that, on average, 76% of variance requests were approved. CBF recommended that the governor and the General Assembly reform the law to ensure it (1) was consistently applied, (2) provided robust and equitable enforcement, (3) corrected Critical Area boundaries to reflect current conditions, (4) updated variance and grandfathering procedures to

minimize natural resource and water quality impacts, and (5) ensured that development in the Critical Area was consistent with Maryland's Smart Growth policies.

Legislative History of 2008 Maryland Laws Ch. 119 (H.B. 1253). The bill's intent was to strengthen the Critical Area law in light of a perceived ongoing, accelerating decline of the State's water quality resources and the loss of valuable shoreline areas. Specifically, the measure was intended to (1) stop unrestrained growth near the water, (2) stop illegal building in the Critical Area, and (3) require offenders to restore the harm they inflict on the State's waters. And, according to the executive branch, giving the Critical Area Commission the tools it needed to more effectively deal with these issues was critical to those purposes.

Because local Critical Area programs are administered and enforced by local jurisdictions, the bill's changes required local governments to update their programs to incorporate them. This included:

1. amending local ordinances;
2. updating local maps;
3. conducting outreach, advertising, and education activities;
4. modifying local forms and applications;
5. conducting additional enforcement activities;
6. holding additional hearings;
7. handling additional legal issues;
8. mailing additional notices; and
9. handling any additional project review activities.

According to the Critical Area Commission, the bill's changes were generally anticipated to assist local jurisdictions in effectively implementing their local programs. Although the bill required local jurisdictions to do certain things, the commission advised that any associated costs would not be significant for most local jurisdictions.

Fiscal and Policy Note compiled by the Department of Legislative Services, Maryland General Assembly, for the 2008 Session: http://mlis.state.md.us/2008rs/fnotes/bil_0003/hb1253.pdf

Reaction. A 2008 report of the new law's effect on waterfront developments by an environmental and land use attorney viewed the new setbacks as having potentially serious impacts on management and development of land along the Chesapeake Bay and the Atlantic Coastal Bays. It also asserted the law would constrain the ability to develop, finance, and deliver environmentally progressive projects that provide net environmental benefits to the Chesapeake and Atlantic Coastal bays. The report also suggested that the law's broad scope, paired with the lack of flexibility in its implementation, would make legal challenges a near certainty (http://www.linowes-law.com/portalresource/critical_area).

MR:ro