

CT DEEP Living Shoreline Permit Process



November 20, 2017

Tonia L. Selmeski & John Gaucher
CTDEEP, LWRD

Coastal Structures Regulation

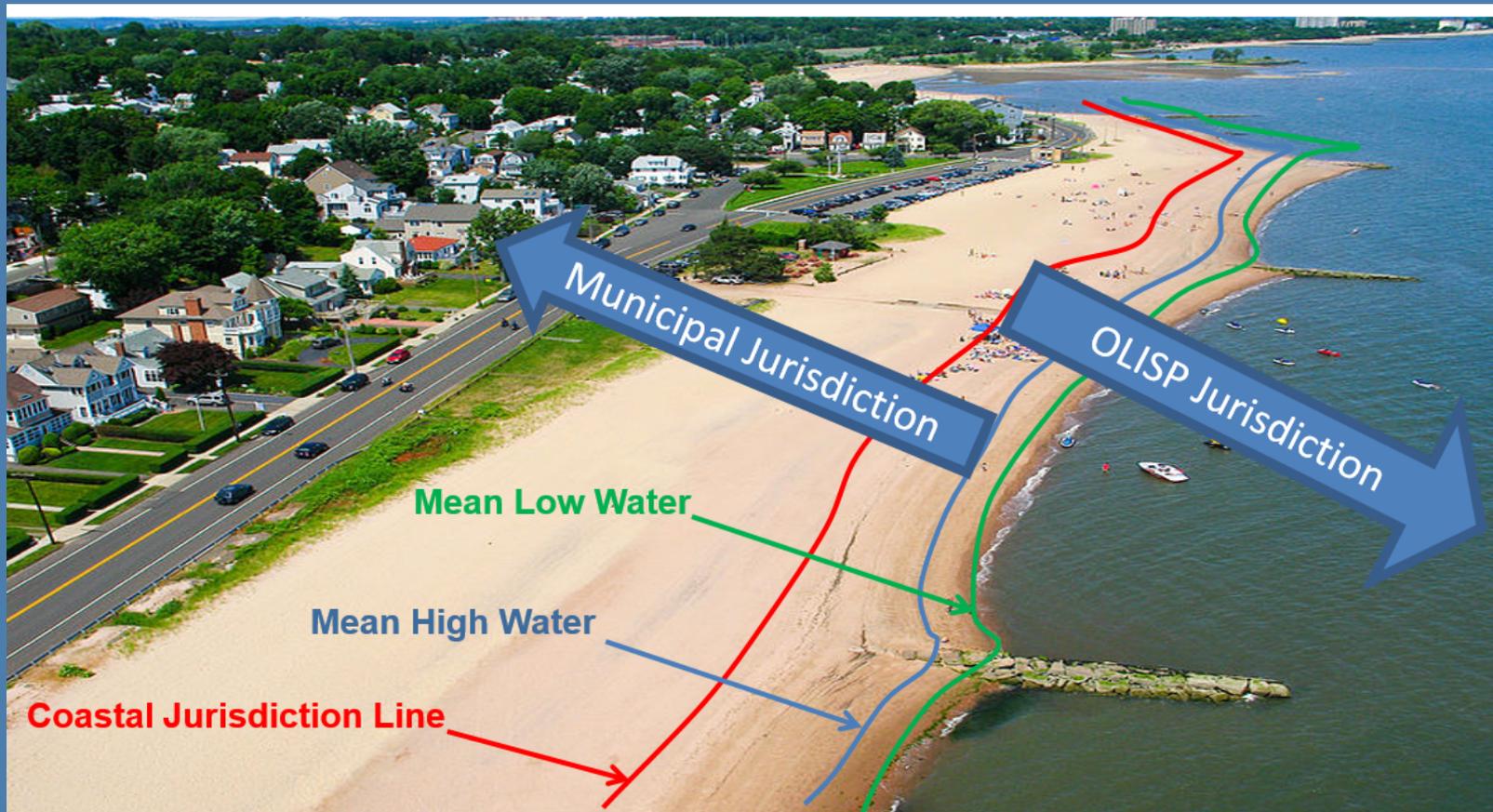
- 1939 Structures, dredging and fill activities
- 1969 Tidal Wetlands Act
- 1980 Connecticut Coastal Management Act



Regulatory Jurisdiction

- DEEP regulates waterward of Coastal Jurisdiction Line (CJL) or within tidal wetlands
- CJL is an elevation in North American Vertical Datum of 1988 (NAVD88) and is based on the elevation of a specific predicted tide
- Mean high water (MHW) is average shoreward extent of all high tides and denotes seaward limit of private property in CT
- Mean low water (MLW) is average of all low tides
- Navigable waters include rivers upstream to limit of first dam or obstruction

Any Living Shoreline Activity Proposed Below CJL is Regulated



Permit Process Options

- Certificate of Permission
 - Commissioner can authorize 3 expedited COPs per year for LS
- Structures, Dredging and Fill & Tidal Wetlands

Process will depend on size and scope of the project

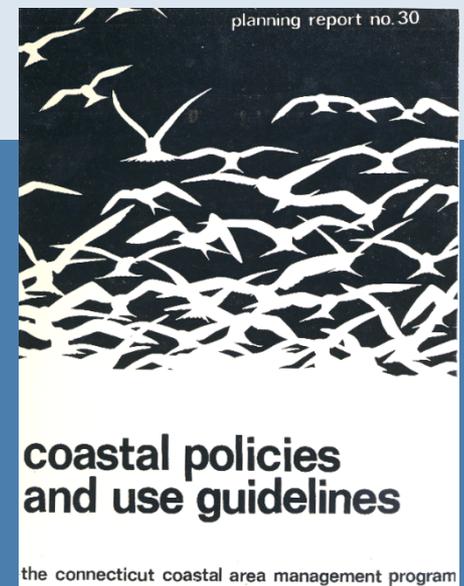
How we evaluate LS projects

- Factors for consideration:
 - CCMA Policies (i.e. tidal wetlands, shellfish, fisheries)
 - Navigation
 - Public Trust Area
 - Flood & Erosion control standards (discussed later)



What is the CCMA?

- Most important document
- Foundation for all decisions
- Purpose is to guide planning, development, acquisition, and regulatory activities
- Provides uniform standards and criteria for all public agencies – local, state, federal



How does the CCMA work?

- Defines adverse impacts to consider
- Defines coastal resources
- Each coastal resource has a set of specific enforceable policies pertaining to them
- Projects are evaluated for consistency with coastal policies and adverse impacts



Policy: Maintain erosion/deposition

- To maintain the natural relationship between eroding and depositional landforms and to minimize the impacts of erosion and sedimentation on coastal land uses

Sec. 22a-92(b)(2)(J)



Connecticut Department of Energy and Environmental Protection

Policy: Maintain erosion/deposition



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Policy: Protect beach systems

- To preserve the dynamic form and integrity of natural beach systems to provide critical wildlife habitats, reservoir for sand supply, buffer for flooding and erosion, and recreational opportunities

Sec. 22a-92(b)(2)(C)



Policy: Protect beach systems



Connecticut Department of Energy and Environmental Protection

Policy: Protect bluffs/escarpments

- To manage coastal bluffs and escarpments so as to preserve their slope
- To disapprove uses that accelerate slope erosion and alter essential patterns and supply of sediments to the littoral transport system

Sec. 22a-92(b)(2)(A)



Policy: Protect bluffs/escarpments



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Policy: Protect shoreline processes

- To ensure that coastal uses are compatible with the capabilities of the system and do not unreasonably interfere with natural processes of erosion and sedimentation

Sec. 22a-92(b)(2)(C)



Policy: Protect shoreline processes



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Policy: Protect Tidal Wetlands

- To preserve tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions
- To encourage the rehabilitation and restoration of tidal wetlands
- To encourage the creation of wetlands for shellfish and finfish management, habitat creation, and dredge spoil disposal



Sec. 22a-92(b)(2)(E)

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Policy: Protect Tidal Wetlands



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Policy: Protect Intertidal Flats

- To manage intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds
- To encourage the restoration and enhancement of degraded of intertidal flats
- To disallow uses that substantially accelerate erosion or lead to significant despoliation of tidal flats

Sec. 22a-92(b)(2)(D)



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Policy: Protect Intertidal Flats



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Policy: Protect Navigation



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SDF: Section 22a-359

Decisions by Commissioner shall be made with due regard for:

- Indigenous aquatic life, fish and wildlife
- Prevention/alleviation of erosion and flooding
- Use/development of adjoining uplands
- Improvement of coastal/inland navigation, including small craft for recreational purposes
- Use/development of adjacent lands and properties
- Interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources



TWR: Section 22a-30-10

Factors for consideration:

- Wetlands and Coastal resources
- Navigation/Recreation
- Erosion and sedimentation
- Water quality and circulation
- Fisheries, shellfisheries, wildlife
- Flooding and other natural disasters
- Water-dependent use opportunities



Public Trust Doctrine

- Submerged lands and waters – “tidelands” – below MHW in CT belong to all citizens under ancient common law public trust doctrine
- The State of Connecticut holds title as trustee to tidelands, subject to private rights of littoral access, that is, access to navigable waters
- General public may freely use tidelands for fishing, shellfishing, hunting, boating, sunbathing and walking
- DEEP works to preserve these rights by regulating encroachment of private structures into public trust area
- DEEP ensures that filling activities below MHW does not become private property



In practice, how does this process
all work?



Pre-Application Meeting

- Essential to permit process
- Discussion of proposed project – guidance on consistency & permit eligibility (COP vs. Individual Permit)
- Coordination with other DEEP Divisions (Aquaculture, Fisheries, NDDDB)
- Coordination with Municipality & ACOE (including NMFS)
- While DEEP has technical resources available, it is NOT DEEP's responsibility to design project



Application Type/Process

- Certificate of Permission (COP)
 - 45-90 Day processing timeframe
- Structures, Dredging and Fill & Tidal Wetlands Permit
 - 6-9 months processing timeframe
 - Consult forms prior to application submittal
 - Notification to abutters
 - Public notice & comment period
 - Final Permit/COP issued with conditions



Using the Coastal Policies

- Determine coastal resources on or near project site that may be affected
- Identify corresponding coastal resource policies
- Review coastal use policies to determine if any apply
- Coastal resource policies PLUS coastal use policies will indicate the criteria and standards with which the proposed activity must be consistent



LS-Specific Project Considerations



Does the project adversely affect:

- Naturally-eroding shorelands?
- Longshore sediment transport?
- Patterns of shoreline erosion and accretion?
- Intertidal flats?
- Existing tidal wetlands?
- Wildlife, finfish, shellfish habitat?
- Navigation?
- Public access?



If found acceptable:

- DEEP issues Public Notice (SDF/TW) of tentative determination to approve
- Prepares draft authorization including scope of work and terms and conditions
- Issues Permit/COP



License Conditions

Conditions are included to ensure project impacts are avoided, minimized and mitigated. These may include:

- Waterfowl control (goose deterrent)
- Maintain/rebuild as necessary
- Allow modified design with notification
- Wetland viability monitoring/reporting
- Removal of structures if not maintained

DEEP doesn't want to discourage projects by including long term monitoring, but might be necessary for project success



FECS vs Living Shorelines



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What is a FECS?

- Defined in Section 22a-109(c)
- Any structure the purpose or effect of which is to control flooding or erosion from tidal, coastal, navigable waters



What Structures?

- Breakwaters, bulkheads, groins, jetties, revetments, riprap, seawalls
- Placement of concrete, rocks, or other significant barriers to the flow of flood waters or the movement of sediments along shoreline



What Structures?



What Structures?



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Strict Threshold for FECS

- Structural solutions are permissible when **necessary** AND **unavoidable** for protection of:
 - infrastructural facilities (e.g. bridges, power plants)
 - cemeteries or burial grounds
 - water-dependent uses (marinas, boat yards, etc.)
 - commercial or residential structures/
appurtenances predating January 1, 1995

Section 22a-92(b)(2)(J)



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Strict Threshold for FECS

AND...

where there is no feasible, less environmentally damaging alternative

AND...

where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts

Section 22a-92(b)(2)(J)



Local vs DEEP Considerations

- CCMA requires local communities to refer ALL FECS applications to DEEP for review/comment (vital for structures landward of DEEP jurisdiction)
- DEEP has appealed local approvals of FECS which we determined inconsistent and recommended denial
- Most structures lie in both jurisdictions (close coordination required)



Example – Parcel on Quinnipiac River, New Haven



New developments s/b designed such that future FECS do not become necessary and unavoidable (good coastal planning avoids creating a foreseeable hardship)

Proposed mixed-use development with a residential building located 23' from MHW with a public access walkway b/t the building and the water



PA 12-101

- Exempted structural components of Living Shorelines projects from strict FECS eligibility thresholds



What was exempted?

- Any activity, including, but not limited to Living Shorelines projects, for which primary purpose or effect is restoration or enhancement of **tidal wetlands, beaches, dunes, or intertidal flats**



Why is this exemption important?

- (1) Allows DEEP to consider LS where FECS is not allowable
- (2) Municipality no longer needs to forward LS project to DEEP (municipal staff need training)
- (3) Provides some regulatory flexibility to consider wider range of LS projects

However - DEEP needs to be careful of what we call “Living Shoreline”



Why is this exemption important?

(4) Allows projects that incorporate **in-water structures** to **restore resources** which would otherwise be inconsistent with state policies.



Role of Municipalities

- LS projects are exempt from definition of FECS, but are not necessarily exempt from local CSPR – **depends on local zoning regs**
- Therefore, the portion of any LS project located landward of MHW may need local approvals – thus applicant should coordinate with DEEP and local staff

Consultants may push the limits of the LS definition to include FECS projects!





Photos courtesy of livingshorelinesacademy.org

LS or FECS?



Yes in CT, if the primary purpose or effect is to restore or enhance tidal wetlands or the beach



LS or FECS?



org



Connecticut Department of Energy and Environmental Protection

LS or FECS?



Reefball.org



Connecticut Department of Energy and Environmental Protection

LS or FECS?



No – appears to be non-structural vegetated erosion control



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Thank you!



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