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State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Babylon
Year (adopted, written, etc.):	1989
Community Type – applicable to:	Urban; Suburban; Rural
Title:	Town of Babylon Coastal Erosion Hazard Zone Ordinance
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Abstract

This ordinance establishes standards and procedures for minimizing damage to structures and to protect natural resources from coastal erosion. It employs the NYSDEC's coastal erosion area delineation, and specifies separate definitions and restrictions for nearshore, beach, and dune areas. Special consideration is given to the protection of bird nesting and breeding areas, and other special wildlife habitat as identified by the NYSDEC. The local law goes beyond state guidelines by prohibiting development in nearshore and beach areas.

Resource

**CODE OF THE TOWN OF BABYLON, NEW YORK,
PART II GENERAL LEGISLATION
Chapter 99, COASTAL EROSION HAZARD AREAS
§ 99-1 to § 99-14**

ARTICLE I, General Provisions

§ 99-1. Legislative authority.

Pursuant to the provisions of Article 34 of the New York State Environmental Conservation Law § 10 of the Municipal Home Rule Law, the Town of Babylon, County of Suffolk, State of New York, hereby enacts, by Local Law No. 2 of 1989, this chapter.

§ 99-2. Title.

This chapter shall be known and may be cited as the "Town of Babylon Coastal Erosion Hazard Area Law."

§ 99-3. Effective date.

This chapter shall take effect 20 calendar days from May 2, 1989, which is the date of this chapter's adoption and filing pursuant to § 27 of the Municipal Home Rule Law, or the date of filing the official maps, whichever is later.

§ 99-4. Purpose.

The Town of Babylon hereby assumes the responsibility and authority to implement and administer a coastal erosion management program within its jurisdiction pursuant to Article 34 of the New York State Environmental Conservation Law. It is the purpose of this chapter to:

A. Establish standards and procedures for minimizing and preventing damage to structures from coastal flooding and erosion and to protect natural protective features and other natural resources.

B. Regulate, in coastal areas subject to coastal flooding and erosion, land use and development activities so as to minimize or prevent damage or destruction to man-made property, natural protective features and other natural resources and to protect human life.

C. Regulate new construction or placement of structures in order to place them a safe distance from areas of active erosion and the impacts of coastal storms to ensure that these structures are not prematurely destroyed or damaged due to improper siting, as well as to prevent damage to natural protective features and other natural resources.

D. Restrict public investment in services, facilities or activities which are likely to encourage new permanent development in erosion hazard areas.

E. Regulate the construction of erosion protection structures in coastal areas subject to serious erosion to assure that, when the construction of erosion protection structures is justified, their construction and operation will minimize or prevent damage or destruction to man-made property, private and public property, natural protective features and other natural resources.

§ 99-5. Findings.

The Town of Babylon finds that the coastal erosion hazard area:

A. Is prone to erosion from action of the Atlantic Ocean and Fire Island Inlet. Such erosion may be caused by action of waves, currents running along the shore and wind-driven water and ice. Such areas are also prone to erosion caused by the wind, runoff of rainwater along the surface of the land or groundwater seepage, as well as by human activities such as construction, navigation and certain forms of recreation.

B. Experiences coastal erosion which causes extensive damage to publicly and privately owned property and to natural resources as well as endangering human lives. When this

occurs, individuals and private businesses suffer significant economic losses, as do the Town and the state economies, either directly through property damage or indirectly through loss of economic return. Large public expenditures may also be necessitated for the removal of debris and damaged structures and replacement of essential public facilities and services.

C. Experiences erosion-related problems that are often contributed to by man's building without considering the potential for damage to property, by undertaking activities which destroy natural protective features such as dunes or vegetation by building structures intended for erosion prevention which may exacerbate erosion conditions on adjacent or nearby property and by water action produced by wakes from boats.

D. Is the subject of programs which foster erosion protection structures, either with private or public funds, which are costly, often only partially effective over time and may even be harmful to adjacent or nearby properties. In some sections of the Town, major erosion protection structures of great length would be required to effectively reduce future damages due to erosion.

§ 99-6. Definitions.

The following terms, as used in this chapter, shall have the meanings indicated, unless the context clearly requires otherwise:

ADMINISTRATOR -- The Commissioner of Environmental Control or his or her designee shall be responsible for administering and enforcing this chapter. The powers and duties of this position are fully described in § 99-26.

BEACH -- The zone of unconsolidated earth that extends landward from the mean low-water line to the waterward toe of a dune. Where no dune exists landward of a "beach," the landward limit of a "beach" is 100 feet landward from the place where there is a marked change in material or physiographic form or from the line of permanent vegetation, whichever is most waterward. Shorelands subject to seasonal or more frequent overwash or inundation are considered to be "beaches."

COASTAL EROSION HAZARD AREA MAP -- The final map and any amendments thereof issued by the Commissioner of the New York State Department of Environmental Conservation, which delineates boundaries of coastal erosion hazard areas subject to regulation under this chapter.

COASTLINE and COASTAL WATERS -- The land adjacent to the Town of Babylon coastal waters is the "coastline." The "coastal waters" are the Atlantic Ocean and its connecting water bodies, bays, harbors, shallows and marshes.

DEBRIS LINE -- A linear accumulation of waterborne debris deposited on a beach by storm-induced high water or by wave action.

DEPARTMENT -- The New York State Department of Environmental Conservation.

DUNE -- A ridge or hill of loose, windblown or artificially placed earth, the principal component of which is sand.

EROSION -- The loss or displacement of land along the coastline due to the action of waves, currents, wind-driven water, waterborne ice or other impacts of storms. It also means the loss or displacement of land due to the action of wind, runoff or surface waters or groundwaters or groundwater seepage.

EROSION HAZARD AREA -- An area of the coastline which is a structural hazard area, or a natural protective feature area.

EROSION PROTECTION STRUCTURE -- A structure specifically designed to reduce or prevent erosion such as a groin, jetty, revetment, breakwater or artificial beach nourishment project.

EXISTING STRUCTURE -- A structure and appurtenances in existence or one where construction has commenced or one where construction has not begun but for which a building permit has been issued prior to the effective date of this chapter, as set forth in § 99-3 herein.

GRADING -- A redistribution of sand or other unconsolidated earth to effect a change in profile.

MAJOR ADDITION -- An addition to a structure resulting in a twenty-five-percent or greater increase in the ground area coverage of the structure, other than an erosion protection structure or a pier, dock or wharf. The increase will be calculated as follows: the ground area coverage to be added, including any additions previously constructed under a coastal erosion management permit, divided by the ground area coverage of the existing structure as defined in "existing structure." The sum total ground area coverage of subsequent additions may not exceed 25% of the ground area coverage of the existing structure as that term is defined in § 99-6 herein.

MEAN LOW WATER -- The approximate average low water level for a given body of water at a given location, determined by reference to hydrological information concerning water levels or other appropriate tests.

MODIFICATION -- A change in size, design or function.

MOVABLE STRUCTURE -- A structure designed and constructed to be readily relocated with minimum disruption of the intended use. Mobile homes and structures built on skids or piles and not having a permanent foundation are examples of "movable structures."

NATURAL PROTECTIVE FEATURE -- A nearshore area, beach, primary dune, secondary dune or marsh and their vegetation.

NATURAL PROTECTIVE FEATURE AREA -- A land and/or water area containing natural protective features, the alteration of which might reduce or destroy the protection afforded other lands against erosion or high water or lower the reserve of sand or other natural materials available to replenish storm losses through natural processes.

NEARSHORE AREA -- Those lands under water beginning at the mean low-water line and extending waterward in a direction perpendicular to the shoreline to a point where mean low water depth is 15 feet to or a horizontal distance of 1,000 feet from the mean low-water line, whichever is greater.

NORMAL MAINTENANCE -- Periodic replacement or repair of same-kind structural elements or protective coatings which do not change the size, design or function of a functioning structure. A "functioning structure" is one which is fully performing as originally designed at the time that "normal maintenance" is scheduled to begin. "Normal maintenance" of a structure does not require a coastal erosion management permit.

PERSON -- Any individual, public or private corporation, political subdivision, government agency, public improvement district, partnership, association, firm, trust, estate or any other legal entity whatsoever.

PRIMARY DUNE -- The most waterward major dune where there are two or more parallel lines within a coastal area. Where there is only one dune present, it is the primary one. Occasionally one or more relatively small dune formations exist waterward of the "primary dune." These smaller formations will be considered to be part of the primary dune for the purposes of this chapter. The waterward limit of the "primary dune" is the landward limit of its fronting beach. The landward limit of the primary dune is 25 feet landward of its landward toe.

RECEDING EDGE -- The most landward line of active erosion or, in cases where there is no discernible line of active erosion, it is the most waterward line of permanent vegetation.

RECESSION RATE -- The rate, expressed in feet per year, at which an eroding shoreline moves landward.

REGULATED ACTIVITY -- The construction, modification, restoration or placement of a structure or major addition to a structure or any action or use of land which materially alters the condition of land, including grading, excavating, dumping, mining, dredging, filling or other disturbance of soil.

RESTORATION -- The reconstruction, without modification, of a structure, the cost of which equals or exceeds 50% of the estimated full replacement cost of the structure at time of "restoration." Modifications, however, may be allowed if they do not exceed preexisting size limits and are intended to mitigate impacts to natural protective features and other natural resources.

SECONDARY DUNE -- The major dune immediately landward of the primary dune. The waterward limit of a "secondary dune" is the landward limit of its fronting primary dune. The landward limit of a "secondary dune" is 25 feet landward of its landward toe.

SIGNIFICANT FISH AND WILDLIFE HABITAT -- Those habitats which are essential to the survival of a large portion of a particular fish or wildlife population; support rare or endangered species; are found at a very low frequency within a geographic area; support fish or wildlife populations having significant commercial or recreational value; or that would be difficult or impossible to replace.

STRUCTURAL HAZARD AREA -- Those shorelands located landward of natural protective features and having shorelines receding at a long-term average recession rate of one foot or more per year. The inland boundary of a "structural hazard area" is calculated by starting at the landward limit of the fronting natural protective feature and measuring along a line perpendicular to the shoreline a horizontal distance landward which is 40 times the long-term average annual recession rate.

STRUCTURE -- Any object constructed, installed or placed in, on or under land or water, including but not limited to a building, permanent shed, deck, in-ground and aboveground pool, garage, mobile home, road, public service distribution, transmission or collection system, tank, dock, pier, wharf, groin, jetty, seawall, bulkhead, breakwater, revetment, artificial beach nourishment or any addition to or alteration of the same.

TOE -- The lowest surface point on a slope face of a dune.

UNREGULATED ACTIVITY -- Excepted activities which are not regulated by this chapter include, but are not limited to, elevated walkways or stairways constructed solely for pedestrian use and built by an individual property owner for the limited purpose of providing noncommercial access to the beach; docks, piers, wharves or structures built on floats, columns, open timber piles or other similar openwork supports with a top surface area of less than 200 square feet or which are removed in the fall of each year; normal beach grooming or cleanup; maintenance of structures when normal and customary and/or in compliance with an approved maintenance program; planting vegetation and sand fencing so as to stabilize or entrap sand in primary dune and secondary dune areas, in order to maintain or increase the height and width of dunes; routine agricultural operations, including cultivation or harvesting, and the implementation of practices recommended in a soil and water conservation plan as defined in Section 3(12) of the Soil and Water Conservation District Law; provided, however, that agricultural operations and implementation of practices will not be construed to include any activity that involves the construction or placement of a structure.

VEGETATION -- Plant life capable of surviving and successfully reproducing in the area or region and which is compatible with the environment of the coastal erosion hazard area.

ARTICLE II, Standards and Restrictions

§ 99-7. Areas established; boundaries.

The coastal erosion hazard area is hereby established to classify land and water areas within the Town of Babylon, based upon shoreline recession rates or the location of natural protective features. The boundaries of the area are established on the final map prepared by the New York State Department of Environmental Conservation under § 34-0104 of the New York State Environmental Conservation Law and entitled "Coastal Erosion Hazard Area Map of the Town of Babylon," including all amendments made thereto by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 34-0104 of the New York State Environmental Conservation Law.

§ 99-8. Permit required for regulated activities.

No person may engage in any regulated activity in an erosion hazard area as depicted on the Coastal Erosion Hazard Areas Map of the Town of Babylon, as amended, without first obtaining a coastal erosion management permit. No coastal erosion management permit is required for unregulated activities.

§ 99-9. General standards.

A coastal erosion management permit will be issued only with a finding by the administrator that the proposed regulated activity:

- A.** Is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location.
- B.** Is not likely to cause a measurable increase in erosion at the proposed site and at other locations.
- C.** Prevents, if possible, or minimizes adverse effects on natural protective features and their functions and protective values, existing erosion protection structures and natural resources.

§ 99-10. Nearshore area restrictions.

A. Nearshore areas dissipate a substantial amount of wave energy before it is expended on beaches or dunes by causing waves to collapse or break. Nearshore areas also function as reservoirs of sand, gravel and other unconsolidated material for beaches. Sandbars, which are located in nearshore areas, control the orientation of incoming waves and promote the development of ice cap formations which help protect shorelines during winter storms. The roots of aquatic vegetation in nearshore areas bind fine-grained silts, clays and organic matter to form a fairly cohesive bottom that resists erosion.

B. The following restrictions apply to regulated activities in nearshore areas:

(1) Excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore area is prohibited, except construction or maintenance of navigation channels, bypassing sand around natural and man-made obstructions and artificial beach nourishment, all of which require a coastal erosion management permit.

(2) Clean sand or gravel of an equivalent or slightly larger grain size is the only material which may be deposited within nearshore areas. Any deposition will require a coastal erosion management permit.

(3) All development is prohibited in nearshore areas unless specifically provided for by this chapter.

§ 99-11. Beach area restrictions.

A. Beaches buffer shorelands from erosion by absorbing wave energy that otherwise would be expended on the toes of dunes. Beaches that are high and wide protect shorelands from erosion more effectively than beaches that are low or narrow. Beaches also act as reservoirs of sand or other unconsolidated material for longshore littoral transport and offshore sandbar and shoal formation.

B. The following restrictions apply to regulated activities in beach areas:

(1) Excavating, grading or mining which diminishes the erosion protection afforded by beaches is prohibited.

(2) Clean sand or gravel of an equivalent or slightly larger grain size is the only material which may be deposited within beach areas. Any deposition will require a coastal erosion management permit which may be issued only for expansion or stabilization of beaches.

(3) Active bird nesting and breeding areas must not be disturbed unless such disturbance is pursuant to a specific wildlife management activity approved in writing by the New York State Department of Environmental Conservation.

(4) All development is prohibited on beaches unless specifically provided for by this chapter.

(5) The restoration of existing structures on beaches that are damaged or destroyed by events not related to coastal flooding and erosion may be undertaken without a coastal erosion management permit.

§ 99-12. Dune area restrictions.

A. Dunes prevent overtopping and store sand for coastal processes. High, vegetated dunes provide a greater degree of protection than low, unvegetated ones. Dunes are of the greatest protective value during conditions of storm-induced high water. Because dunes often protect some of the most biologically productive areas as well as developed coastal areas, their protective value is especially great. The key to maintaining a stable dune system is the

establishment and maintenance of beach grass or other vegetation on the dunes and assurance of a supply of nourishment sand to the dunes.

B. The following restrictions apply to regulated activities in dune areas:

(1) In primary dune areas:

(a) Excavating, grading or mining of primary dunes is prohibited.

(b) Clean sand of a compatible type and size is the only material which may be deposited. Any deposition requires a coastal erosion management permit.

(c) All depositions must be vegetatively stabilized using species tolerant of the conditions at the site and must be placed so as to increase the size of, or restore, a dune or dune area.

(d) Active bird nesting and breeding areas must not be disturbed unless such disturbance is pursuant to a specific wildlife management activity approved in writing by the New York State Department of Environmental Conservation.

(e) Nonmajor additions to existing structures are allowed on primary dunes pursuant to a coastal erosion management permit and subject to permit conditions concerning the location, design and potential impacts of the structure on the primary dune.

(f) Stone revetments or other erosion protection structures compatible with primary dunes will only be allowed at the waterward toe of primary dunes and must not interfere with the exchange of sand between primary dunes and their fronting beaches.

(2) In secondary dune areas:

(a) All depositions must be of clean sand of a compatible type and size, and all grading must be performed so as to increase the size of, or restore, a dune or former dune area.

(b) Excavating, grading or mining must not diminish the erosion protection afforded by them.

(c) Nonmajor additions to existing structures are allowed on secondary dunes pursuant to a coastal erosion management permit.

(d) Permitted construction, reconstruction, restoration or modifications must be built on adequately anchored pilings such that at least three feet of open space exists between the floor joints and the surface of the secondary dune, and the permitted activity must leave the space below the lowest horizontal structural members free of obstructions.

(3) All other activities and development in dune areas are prohibited unless specifically provided for by this chapter.

(4) The restrictions of § 99-14, Traffic control, apply to dune areas.

(5) The restoration of existing structures in dune areas that are damaged or destroyed by events not related to coastal flooding and erosion may be undertaken without a coastal erosion management permit.

§ 99-13. Erosion protection structures.

The following requirements apply to the construction, modification or restoration of erosion protection structures:

A. The construction, modification or restoration of erosion protection structures must:

(1) Not be likely to cause a measurable increase in erosion at the development site or at other locations.

(2) Minimize and, if possible, prevent adverse effects upon natural protective features, existing erosion protection structures and natural resources such as significant fish and wildlife habitats.

B. All erosion protection structures must be designed and constructed according to generally accepted engineering principles which have demonstrated success or, where sufficient data is not currently available, a likelihood of success in controlling long-term erosion. The protective measures must have a reasonable probability of controlling erosion on the immediate site for at least 30 years.

C. All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering and other effects of storm conditions for a minimum of 30 years. Individual component materials may have a working life of less than 30 years only when a maintenance program ensures that they will be regularly maintained and replaced as necessary to attain the required 30 years of erosion protection.

D. A long-term maintenance program must be included with every permit application of construction, modification or restoration of an erosion protection structure. The maintenance program must include specifications for normal maintenance of degradable materials. To assure compliance with the proposed maintenance programs, a bond may be required.

§ 99-14. Traffic control.

Motorized and nonmotorized traffic must comply with the following restrictions and those set forth in Chapter 81 of Babylon Town Code:

A. Motor vehicles must not travel on vegetation, must operate seaward of the debris line and, when no debris line exists, must operate seaward of the seaward toe of the primary dune.

B. Motor vehicle traffic is prohibited on primary dunes, except for officially posted access points. [Amended 9-12-1989 by L.L. No. 4-1989]

C. Pedestrian passage across primary dunes must utilize elevated walkways and stairways or other specially designed dune crossing structures.