

Topic:	Erosion & Sedimentation Control; Coastal Protection
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	State
Municipality:	N/A
Year (adopted, written, etc.):	Unknown
Community Type – applicable to:	Urban; Suburban; Rural
Title:	State of New York Coastal Erosion Hazard Areas Act
Document Last Updated in Database:	May 8, 2017

Abstract

The purpose of this statute is to prevent coastal erosion from destroying natural resources, property, and human life. This statute states causes of erosion and presents policies to address erosion. The main focus is on the identification of coastal erosion hazard areas and the creation and implementation of local laws to address the problems in such areas. The state commissioner in consultation with local governments must identify hazard areas in the state and then hold public hearings before the final identifications are made. The commissioner must review the boundaries of each hazard area every ten years. After the final identification, cities, towns, etc. must submit an erosion hazard area law applicable to the area within its jurisdiction. If the jurisdiction fails to submit a law or the commissioner determines the law is not consistent with the purposes of this article and in accordance with the minimum standards then the county in which such jurisdiction is located must submit a hazard area law. This statute states the minimum standards in section 34-0108. If a city which wholly includes one or more counties fails to submit a hazard area law or if the law is disapproved, the commissioner must issue and enforce regulations which apply the minimum standards to the hazard area. The commissioner must provide technical assistance to the local governments in the preparation and implementation of hazard area laws. Any person aggrieved by an order or decision of the commissioner may seek judicial review.

Resource

**NEW YORK STATE CONSOLIDATED LAWS
ENVIRONMENTAL CONSERVATION
ARTICLE 34
COASTAL EROSION HAZARD AREAS**
<http://www.assembly.state.ny.us/>

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§ 34-0101. Statement of findings.

1. Certain sections of the coastline of the state of New York are prone to erosion from action of the adjacent water bodies. Such erosion may be caused by the action of waves, currents running along the shore, tides, wind-driven water and ice as well as human activities such as construction and shipping. Such areas are also prone to erosion caused by the wind, runoff of rain water along the surface of the land, or groundwater seepage as well as by human activities such as construction, navigation and certain forms of recreation.

2. Coastal erosion 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 does the state's economy, 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.

3. Man often contributes to erosion-related problems by building without considering the potential for damage to property, by undertaking activities which destroy natural protective features such as dunes or vegetation and 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.

4. Programs to build erosion protective structures, either with private or public funds, are costly, often only partially effective over time, and may even be harmful to adjacent or nearby properties, and in some sections of the state major erosion protective structures of great length would be required to effectively reduce future damages due to erosion.

§ 34-0102. Declaration of policy.

It is declared to be the public policy of the state of New York that:

1. Those areas of the state's coastline most prone to erosion hazards should be identified.

2. Any activities, development or other actions in such erosion hazard areas should be undertaken in such manner as to minimize damage to property, and to prevent the exacerbation of erosion hazards. Such actions may be restricted or prohibited if necessary to protect natural protective features or to prevent or reduce erosion impacts.
3. Local governments should be encouraged to use all authorities that can be applied within the identified erosion hazard areas to achieve these objectives.
4. Public actions, such as the provision of additional municipal services, which are likely to encourage new permanent activities or development within coastal erosion hazard areas should not occur unless such hazard areas have been protected by erosion protection structures or non-structural measures which are most likely to prevent damage from effects of erosion during the anticipated life of the proposed activities or development.
5. Publicly-financed structures to minimize erosion damage should be utilized only where necessary to protect human life, existing investment in development or new development which requires a location within the erosion hazard area or adjacent coastal waters to be able to function. Both publicly and privately financed erosion protective structures should be designed to minimize damage to other man-made property or to natural protective features or to other natural resources; long term costs of such structures should be carefully weighed against public benefits before construction is undertaken.

§ 34-0103. Definitions.

1. "Activities or development" shall mean any land use, construction or placement by any person of a structure, or any action which materially alters the condition of land, including grading and excavating or other disturbance of soil. The term shall include the division of land into lots, parcels or sites.
2. "Coastal erosion" or "erosion" shall mean loss or displacement of land along the coastline due to the action of waves, currents running along the shore, tides, wind-driven water or water-borne ice or other impacts of coastal storms. It shall also mean loss or displacement of land along the coastline due to the action of wind, runoff of surface waters, or groundwater seepage.
3. "Coastal erosion hazard area" or "erosion hazard area" shall mean those areas of the coastline:
 - (a) Which are determined as likely to be subject to erosion within a forty-year period. The inland boundary of such areas shall be determined on the basis of shoreline recession analysis and other pertinent studies and surveys by starting at the bluff edge or most landward point of active erosion and measuring along a line which is normal to the line of mean high water a distance which is forty times the long-term average annual rate of shoreline recession, where such average annual recession rate is at least one foot; or

(b) Which constitute natural protective features, the alteration of which might reduce or destroy the protection afforded other lands against erosion, or lower the reserves of sand or other natural materials available to replenish storm losses through natural processes.

The erosion hazard area is to be identified as provided in section 34-0104 of this article and shall be the area within which new activities or development shall be reviewed to effectuate the policies and purposes of this article to minimize damage caused by erosion to structures and to prevent damage to natural protective features caused by activities or development, as provided for in section 34-0108 of this article.

4. "Coastline" shall mean the lands adjacent to the state's coastal waters, including lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill van Kull and Arthur Kill, Long Island sound and the Atlantic ocean, their connecting water bodies, bays, harbors, shallows and marshes.

5. "Erosion protective structure" shall mean a structure specifically designed to reduce or prevent erosion including man made protection features created by landfill or deposition.

6. "Land" shall mean the earth, on or below the surface of the ground, including water and air above.

7. "Local government" shall mean a village, town (outside the area of any incorporated village), city or county.

8. "Natural protective features" shall mean without limitation, beaches, dunes, shoals, bars, spits, barrier islands, bluffs and wetlands; associated natural vegetation shall also be considered as part of such natural protective features.

9. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, partnership, association, firm, trust, estate or any other legal entity whatsoever.

10. "State agency" shall mean any department, bureau, commission, board, public authority, or other agency of the state, including any public benefit corporation, any member of which is appointed by the governor.

11. "Structure" shall mean any object constructed, installed or placed on land or in water, including, but not limited to, buildings, permanent sheds, mobile homes, tanks, bulkheads, piers, docks, groins, jetties and any additions or alterations thereto.

12. "Significant fish and wildlife habitat" shall mean 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 would be difficult or impossible to replace.

§ 34-0104. Identification of coastal erosion hazard areas.

1. The commissioner shall as soon as practicable, but no later than thirty months after the effective date of this article, after the adoption of rules and regulations pursuant to subdivision one of section 34-0108 of this article, and in full cooperation with and consultation with local governments in which such land is located prepare a preliminary identification of the erosion hazard areas of the state's coastline. The identification may, in the discretion of the commissioner, be carried out on a regional basis, with priority given to the identification of critical erosion areas. Such preliminary identification shall include, for each such area, a map showing the area subject to erosion, a statement of the long-term average annual rate of loss of land in such area from erosion, if applicable, and an identification of any land areas containing or comprising natural protective features the alteration of which might reduce or destroy the protection afforded other lands against erosion, or lower the reserves of sand or other natural materials available to replenish storm losses through natural processes.

2. Upon completion of a preliminary identification of an erosion hazard area, the commissioner or his designated hearing officer shall hold a public hearing in a place reasonably accessible to residents of the affected area in order to afford an opportunity for any person to propose changes in such preliminary identification. The commissioner shall give notice of such hearing to each owner of record, as shown on the latest completed tax assessment rolls, of lands included within such area, and also to the chief executive officer and clerk of each local government within the boundaries of which any portion of such area may be located, by certified mail at least thirty days prior to the date set for such hearing, and shall insure that a copy of the preliminary identification is available for public inspection at a convenient location in such local government. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least one newspaper having general circulation in the area involved and in the environmental notice publication provided for under section 3-0306 of this chapter.

3. After considering the testimony given at such hearings and the potential erosion hazard in accordance with the purposes and policies of this article, and after consultation with affected local governments, the commissioner shall issue the final identification of the erosion hazard areas. Such final identification shall not be made less than sixty days from the date of the public hearing required by subdivision two hereof. A copy of such final identification shall be filed in the office of the clerk of each local government in which such area or any portion thereof is located. Notice that such final identification has been made shall be given each owner of lands included within the erosion hazard area, as such ownership is shown on the latest completed tax assessment rolls, by certified mail in any case where a notice by certified mail was not sent pursuant to subdivision two of this section, and in all other cases by first class mail. Such notice shall also be given at such time to the chief executive officer of each local government within the boundaries of which such erosion hazard area or any portion thereof is located.

4. The commissioner shall review the boundaries of each erosion hazard area identified pursuant to this section ten years from the date of its identification and every ten years thereafter. The commissioner may revise erosion hazard area maps not sooner than twelve months after the occurrence of a major man made or natural event or a major coastal storm if he determines that topographical changes or loss of structural protection at the end of such a twelve month period and as a result of such event or such storm justify, pursuant to the regulations of the department, adjustment of the erosion hazard area boundary by twenty-five feet or more. Following such review, the commissioner shall adjust the boundaries of such erosion hazard area to effect any additions, deletions or technical changes, or to reflect any changes due to erosion, accretion or other natural or man-made changes. The commissioner shall follow the procedures set forth in subdivisions two and three of this section with respect to any lands which are proposed to be added to or deleted from an erosion hazard area because of an adjustment of the boundaries of such erosion hazard area pursuant to this subdivision.

5. The commissioner shall maintain a current file of maps or descriptions of all erosion hazard areas pursuant to this article, which shall be available to the public for inspection and examination at the regional office of the department in which the area is wholly or partly located and in the office of the clerk of each local government in which each such area or part thereof is located.

§ 34-0105. Local regulation of coastal erosion hazard areas.

1. Within six months after the date on which a final identification of an erosion hazard area is filed with the clerk of a city, town or village pursuant to subdivision three of section 34-0104 of this article, such city, town or village shall submit to the commissioner an erosion hazard area ordinance or local law applicable to that portion of such area located within its jurisdiction. Then the commissioner shall review and certify such regulations as being consistent with the purposes of this article and in accordance with minimum standards promulgated under section 34-0108 of this article. All such ordinances or local laws shall include a map or other identification of the erosion hazard area subject to regulation, and zoning regulations, subdivision regulations, site plan approval regulations or any other applications of the police power, as such regulations may be authorized by the municipal home rule law or other state enabling legislation, for the reasonable and prudent use of erosion hazard areas in accordance with minimum standards promulgated by the commissioner pursuant to section 34-0108 of this article. Nothing in this article shall be construed to increase the powers of any city, town or village; provided, however, that to carry out the purpose of this article, any regulations adopted in compliance with the provisions of this subdivision may be made applicable to only that portion of such city, town or village which is located within the erosion hazard area. The commissioner shall provide whatever technical assistance he may deem necessary for preparation of an ordinance or local law pursuant to this section.

2. Such erosion hazard area ordinance or local law shall be subject to public notification and review and, be submitted to the commissioner for approval as to its consistency with the minimum standards promulgated pursuant to section 34-0108 of this article; the

commissioner shall act to approve or disapprove such ordinance or local law within thirty working days of its receipt. If the commissioner disapproves the ordinance or local law, he shall notify the city, town or village in writing of the reasons for such disapproval, or modification necessary for approval. The commissioner shall issue findings as part of his decision.

3. In the case of the commissioner's disapproval of a local law or ordinance under subdivision two of this section, the commissioner, at his discretion, may extend the six month period for the adoption of an erosion hazard area local law or ordinance for a reasonable time period not to exceed an additional six months, during which time, the local government may adopt and re-submit a new or modified local law or ordinance to the commissioner for approval as provided in subdivision two of this section. During such extension period, provisions of section 34-0106 of this article shall not apply.

4. Prior to the adoption of any amendment to an approved erosion hazard area ordinance or local law, the local government shall notify the commissioner, who shall within fifteen days after receipt of such notification advise the local government whether such amendment conforms to the minimum standards promulgated pursuant to section 34-0108 of this article. Any amendment to such ordinance or local law that relates to such minimum standards shall be subject to approval by the commissioner as provided in subdivision two of this section.

5. The commissioner shall revoke his approval of an erosion hazard area ordinance or local law if he determines, after notice and hearing relative thereto, that the affected city, town or village has failed to administer or enforce such ordinance or local law to adequately carry out the purposes and policies of this article. In the event of such revocation, the provisions of subdivision seven of section 34-0106 of this article or the provisions of subdivision three of section 34-0107 of this article shall apply.

6. Where an application is made for any permit, variance or other form of approval required pursuant to any local law or ordinance enacted or adopted and approved by the commissioner pursuant to this section, for any activity or development within a designated erosion hazard area, the city, town or village to which such application is made shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or by any governing body of the state or any of its subdivisions pursuant to any federal, state or local law or ordinance. Such city, town or village, at the request of the applicant, shall consolidate and coordinate said application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to the issuance, denial or modification of such permits, variances or other forms of approval as they may have been granted by law.

§ 34-0106. County regulation of coastal erosion hazard areas.

1. If a city, other than a city which wholly includes one or more counties, a town or village fails to submit an erosion hazard area ordinance or local law to the commissioner within the time specified in subdivision one of section 34-0105 of this article, as such time may be extended by the commissioner under subdivision three of such section or if an ordinance or local law has been disapproved pursuant to subdivision two of such section, the commissioner shall notify the clerk of the legislative body of the county in which such city, town or village is located. Within six months from receipt of such notification, such county shall submit to the commissioner a county erosion hazard area local law meeting the criteria specified in subdivision one of section 34-0105 of this article, applicable to the erosion hazard area of such city, town or village. Notwithstanding any other provisions of law, whether general or special, or any provision of local law or ordinance, to carry out the purposes of this section, counties shall, within the erosion hazard area subject to such county local law, be deemed to possess the same implementation powers as could be exercised by the city, town or village within which the erosion hazard area is situated. The commissioner shall provide whatever technical assistance he may deem necessary for preparation of a local law pursuant to this section.

2. Such county erosion hazard area local law shall be subject to public notification and review and, be submitted to the commissioner for approval as to its consistency with the minimum standards promulgated pursuant to section 34-0108 of this article; the commissioner shall act to approve or disapprove such local law within thirty working days of its receipt. If the commissioner disapproves the local law, he shall notify the county legislative body in writing of the reasons for such disapproval or modification necessary for approval. The commissioner shall issue findings as part of his decision.

3. In case of disapproval of a county erosion hazard area local law under subdivision two of this section, the commissioner at his discretion may extend the six month period for adoption of such local law for a reasonable time period not to exceed an additional six months, during which time, the county may adopt and re-submit a new or modified county erosion hazard area local law to the commissioner for approval as provided in subdivision two of this section.

4. Prior to the adoption of any amendment to an approved county erosion hazard area local law, the county shall notify the commissioner, who shall within fifteen days after receipt of such notification advise the county whether such amendment relates to the minimum standards promulgated pursuant to section 34-0108 of this article. Any amendment to such local law that relates to such minimum standards shall be subject to approval by the commissioner as provided in subdivision two of this section.

5. Nothing in this section shall be construed to prohibit any city, town or village from adopting and enforcing any ordinances or local laws, or exercising any other lawful powers within any area governed by an approved county erosion hazard area local law; provided, however, that to the extent of any inconsistency between a city, town or village ordinance or local law and an approved county erosion hazard area local law, the latter shall apply.

6. In any city, town or village where there is in effect a county erosion hazard area local law adopted 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. If such ordinance or local law is approved by the commissioner, he shall immediately notify the affected county, and the county local law shall cease to apply to the affected erosion hazard area from the date of receipt by the county of such notification.

7. (a) If approval of a city (other than a city which wholly includes one or more counties), town or village erosion hazard area ordinance or local law is revoked by the commissioner pursuant to subdivision four of section 34-0105 of this article, the commissioner may designate the county in which such city, town or village is located to administer and enforce such city, town or village ordinance or local law so as to insure compliance of activities or development in the affected erosion hazard area with the minimum standards promulgated pursuant to section 34-0108 of this article. Such county shall be deemed to possess all administrative and enforcement powers included in such city, town or village ordinance or local law.

(b) The commissioner shall reinstate approval of the city, town or village ordinance or local law when the commissioner is satisfied that the city, town or village will carry out the purposes and policies of this article, at which time administration and enforcement by the county pursuant to this subdivision shall cease, and the city, town or village shall administer and enforce such ordinance or local law.

8. The commissioner shall revoke his approval of a county erosion hazard area local law, or shall revoke his designation pursuant to subdivision six of this section of a county to administer and enforce a city, town or village ordinance or local law, if he determines, after notice and hearing relative thereto, that the affected county has failed to administer or enforce such ordinance or local law to adequately carry out the purposes and policies of this article. In the event of such revocation, the provisions of subdivision three of section 34-0107 of this article shall apply.

9. Where an application is made for any permit, variance or other form of approval required pursuant to any local law enacted and approved by the commissioner pursuant to this section, for any activity or development within a designated erosion hazard area, the county to which such application is made shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or development by any governing body of the state or its subdivisions pursuant to any federal, state or local law or ordinance. Such county, at the request of the applicant, shall consolidate and coordinate said application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions, or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to

the issuance, denial or modification of such permits, variances or other forms of approval as they may have been granted by law.

§ 34-0107. Department regulation of coastal erosion hazard areas.

1. If a city which wholly includes one or more counties fails to submit an erosion hazard area local law or ordinance to the commissioner within the time specified in subdivision one of section 34-0105 of this article, as such time may be extended by the commissioner under subdivision three of such section, or if such local law or ordinance has been disapproved pursuant to subdivision two of such section, or if a county fails to submit an erosion hazard area local law to the commissioner within the time specified in subdivision one of section 34-0106 of this article as such time may be extended by the commissioner under subdivision three of such section, or if a county local law has been disapproved pursuant to subdivision two of such section, the commissioner shall, within ninety days after such failure or disapproval, as the case may be, issue and enforce regulations which apply the minimum standards promulgated pursuant to section 34-0108 of this article within the affected erosion hazard area.

2. Prior to the issuance of regulations applicable to a particular erosion hazard area pursuant to subdivision one of this section, the commissioner shall hold a public hearing thereon in the affected city, town or village, and shall give at least fifteen days prior notice thereof by publication at least once in a newspaper having general circulation therein. The commissioner shall issue the regulations within thirty days after the close of such hearing, shall publish a summary of such regulations in a newspaper having general circulation in the affected city, town or village, and shall make such regulations available for public inspection. Such regulations shall not take effect until thirty days after the filing thereof with the clerk of the affected county.

3. If the commissioner does not designate, pursuant to subdivision eight of section 34-0106 of this article, a county to administer and enforce a city, town or village erosion hazard area ordinance or local law for which approval has been revoked pursuant to subdivision five of section 34-0105 of this article, or if the commissioner, pursuant to subdivision seven of section 34-0106 of this article, revokes his approval of a county erosion hazard area local law or, pursuant to such subdivision revokes his designation of a county to administer and enforce a city, town or village erosion hazard area ordinance or local law, he shall administer and enforce the affected ordinance or local law in such manner as to insure compliance of activities or development in the affected erosion hazard area with the minimum standards promulgated pursuant to section 34-0108 of this article. The commissioner may designate such county to commence administration and enforcement of an ordinance or local law subject to this subdivision upon receiving satisfactory assurance that such administration and enforcement will be undertaken in such manner as to adequately carry out the purposes and policies of this article.

4. Nothing in this section shall be construed to prohibit any local government from adopting and enforcing any ordinances or local laws, or exercising any other lawful powers within any area governed by erosion hazard area regulations adopted pursuant to this

section; provided, however, that to the extent of any inconsistency between a county, city, town or village ordinance or local law and erosion hazard area regulations adopted pursuant to this section, the latter shall apply.

5. 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. Before county assumption of such regulation, there shall be notification given to the city, town or village of such intention by the county, and any objections shall be reviewed and considered by the commissioner before approving such county regulation. When a county, city, town or village local law or ordinance is approved by the commissioner, the erosion hazard area regulations issued by the commissioner pursuant to this section shall cease to apply, and a notice to that effect shall be filed with the clerks of the affected local governments.

6. Consistent with the provisions and purposes of article seventy of this chapter, where an application is made to the commissioner for a permit pursuant to section 34-0109 of this article for any activity or development within a designated erosion hazard area, the commissioner shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or development by any governing body of the state or any of its subdivisions pursuant to any federal, state or local law or ordinance. The commissioner, at the request of the applicant shall consolidate and coordinate said application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to the issuance, denial or modification of such permits, variances or other forms of approval as they may have been granted by law.

§ 34-0108. Rules and regulations.

1. After consultation with affected state agencies and representatives of local governments, and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred eighty days after the effective date hereof.

2. The rules and regulations adopted by the commissioner shall include a procedure pursuant to which any owner of land in an erosion hazard area identified pursuant to section 34-0104 of this article may appeal from the inclusion of such land in such erosion hazard area.

Such procedure shall provide that the sole basis for such appeal shall be technical information indicating either (a) that the long-term average annual recession or other method used in identifying the erosion hazard area was incorrect, or (b) that an area has been identified as a natural protective area erroneously, and that the commissioner shall decide such appeal within thirty days after receipt thereof, and shall adjust the boundaries of the identified erosion hazard area or identified natural protective features accordingly.

3. The rules and regulations adopted by the commissioner pursuant to sections 34-0105, 34-0106 and 34-0107 of this article shall establish minimum standards and criteria to be applied to activities or development in erosion hazard areas. Such standards and criteria shall be used to deny, condition or modify a proposed action, if necessary, to implement the policies and purposes of this article. Standards and criteria promulgated pursuant to this section shall include but shall not be limited to:

(a) minimum setback requirements for structures within coastal erosion hazard areas taking into consideration recession rates, the useful life of the proposed structure, and the protection afforded by natural protective features and existing erosion protection structures.

(b) regulation of activities or development, including placement of erosion protection structures or use of non-structural measures so there will be no measurable increase in erosion to the development site or at other locations.

(c) regulation of activities or development, including placement of erosion protection structures, so as to minimize adverse effects upon natural protective features, existing erosion protection structures or natural resources, such as significant fish and wildlife habitat.

(d) standards and criteria shall provide that erosion protection structures that are proposed for construction or reconstruction shall have a reasonable probability of controlling long-term erosion on the immediate site for a period of at least thirty years and that a long-term maintenance program is provided for such structures; however such standards and criteria may allow for such protection structures to be constructed of materials which by themselves have a working life of less than thirty years, when the maintenance program assures that they will be regularly maintained and replaced as necessary to attain the required thirty years of erosion protection.

(e) restoration and stabilization standards for activities which are to be undertaken in connection with activities or development to insure that land areas are maintained and where necessary restored to minimize erosion on the site or to other nearby lands.

4. The rules and regulations shall provide procedure pursuant to which the strict application of their standards and criteria may be varied or modified in cases where

practical difficulty or unnecessary hardship is shown, provided that in granting any such variance, the following criteria are met:

(a) for any proposed activities and development where public funds are utilized the public benefits clearly outweigh the long-range adverse effects.

(b) no reasonable prudent alternative site is available.

(c) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developer's expense.

(d) the development will be reasonably safe from flood and erosion damage.

(e) the variance provided will be the minimum necessary to overcome the practical difficulty or unnecessary hardship which was the basis for requesting such variance.

5. Notwithstanding section 34-0105 or 34-0106 of this article, in the case of any department, bureau, commission, board or other agency of the state, or any public benefit corporation, any member of which is appointed by the governor, a permit shall be obtained from the department pursuant to section 34-0109 of this article provided, however, in cases where there is a local law or ordinance in effect the commissioner shall make a finding prior to the issuance of the permit that the conditions of such local law or ordinance have been met, insofar as such conditions relate to the standards and criteria adopted pursuant to section 34-0108 of this article.

§ 34-0109. Administration; applications for permits.

1. Applicability.

(a) Where the commissioner has, pursuant to subdivision one of section 34-0107 of this article, issued regulations which apply the minimum standards promulgated pursuant to section 34-0108 of this article to activities or development within any erosion hazard area, any person proposing to undertake activities or development subject to such regulations shall obtain a permit as provided in this section.

(b) A proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this chapter.

2. Applications for permits.

(a) An application for a permit shall be submitted in such form and manner as the commissioner may prescribe, and shall contain a detailed description of the proposed

development which is sufficient to enable the commissioner to make the findings and determinations required by this section.

(b) Review by the commissioner of applications for permits pursuant to this section shall be governed by the provisions of article seventy of this chapter.

3. Decision.

(a) No permit shall be granted pursuant to this section unless the commissioner shall find that the proposed activity complies with the minimum standards promulgated pursuant to section 34-0108 of this article as such standards are applied to the affected erosion hazard area by the regulations issued by the commissioner pursuant to section 34-0107 of this article.

(b) In granting a permit, the commissioner may limit such permit or impose reasonable conditions or limitations designed to carry out the public policy set forth in this article. Upon a finding that the applicant has a record of non-compliance with the terms and conditions of permits, the commissioner may require a bond or other form of financial security in amount and with surety and conditions satisfactory to him to secure compliance with the terms, conditions and limitations set forth in the permit. The commissioner may suspend or revoke a permit if he finds that the applicant has not complied with any of the terms, conditions or limitations set forth in the permit.

§ 34-0110. Provision of technical assistance.

The commissioner shall encourage and assist affected local governments in the preparation and implementation of erosion hazard area ordinances and local laws. When an erosion hazard area has been identified pursuant to section 34-0104 of this article, the commissioner shall provide to the affected local governments whatever technical assistance may be necessary to enable such local governments to prepare and adopt erosion hazard area ordinances or local laws meeting the requirements of section 34-0105 of this article or section 34-0106 of this article, as the case may be. Such efforts shall include, as may be necessary, maps, model erosion hazard area regulations, and other information.

§ 34-0111. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance.

§ 34-0112. Judicial review.

Any person aggrieved by an act, order, determination or decision of the commissioner made pursuant to this article may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the erosion hazard area affected is located.

§ 34-0113. Applicability.

The provisions of this article shall not apply to any activities or development for which final approval shall have been obtained from the local government or other authorities having jurisdiction over such activities or development, if such final approval was obtained prior to the date of approval of erosion hazard area regulations by the commissioner pursuant to section 34-0105 or 34-0106 of this article, or promulgation of such regulations pursuant to section 34-0107 of this article. As used in this section, the term "final approval" shall mean:

- 1.** in the case of subdivision of land, conditional or preliminary approval of such plat pursuant to section two hundred seventy-six of the town law, section 7-728 of the village law or section thirty-two of the general city law; provided, however, that final plat approval is granted within six months of preliminary plat approval.
- 2.** in the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of a city, town or village of the site plan.
- 3.** in those cases not covered by subdivision one or two of this section, the issuance of a building permit or other authorization for the commencement of the activities or development for which such permit or authorization was issued or in those local governments which do not require such permits or authorizations, the actual commencement of the activities or development.