ATTACHMENT

4.2.B.2.  6 NYCRR PARTS 505.5 - 505.9, COASTAL EROSION MANAGEMENT REGULATIONS
such time as may be extended by the commissioner pursuant to section 34-0105(3) of the act, and the department meets the public hearing and notification requirements of section 34-0107(2) of the act;

(2) New York City's proposed local program is not approved by the commissioner within six months after the filing of the applicable coastal erosion hazard area maps, or within such time as may be extended by the commissioner pursuant to section 34-0105(3) of the act, and the department meets the public hearing and notification requirements of section 34-0107(2) of the act or

(3) the commissioner revokes his approval of New York City's local program because of improper administration or enforcement.

(d) The department is the regulatory authority and will process coastal erosion management permit applications for regulated activities within any county outside New York City when:

(1) such a county fails to submit to the commissioner a local program within six months after receipt of notification as required by section 34-0106(1) of the act, or within such time as may be extended by the commissioner pursuant to subdivision (3) of such section, and the department meets the public hearing and notification requirements of section 34-0107(2) of the act; or

(2) such county's proposed local program is not approved by the commissioner within six months after the filing of the applicable coastal erosion hazard area maps, or within such time as may be extended by the commissioner pursuant to section 34-0105(3) of the act, and the department meets the public hearing and notification requirements of section 34-0107(2) of the act; or

(3) the department does not authorize such a county to administer a city, town or village local program which has been revoked because of improper administration or enforcement; or

(4) the commissioner revokes his authorization of a county to administer and enforce a city, town or village local program because of improper administration or enforcement; or

(5) the commissioner revokes his approval of a county local program because of improper administration or enforcement.

Historical Note
Sec. filed: Sept. 22, 1982 as emergency measure; Nov. 19, 1982 as emergency measure, expired 60 days after filing: Jan. 31, 1983; amd. filed March 18, 1983; repealed. New filed Feb. 26, 1983 etc. 30 days after filing.

§ 505.5 Coastal erosion management permits: regulatory procedures. (a) Any person proposing to undertake a regulated activity within a designated erosion hazard area must first obtain a coastal erosion management permit.

(b) Coastal erosion management permit applications are available from each regional office of the department. Applications must be made on a form prescribed by the department, and must include the following information:

(1) a description of the proposed activity;

(2) a map drawn to a scale no smaller than 1:24,000, showing the location of the proposed activity; and

(3) additional information the department may require to properly evaluate the proposed activity. Coastal erosion management permit applications are not complete until any required fees are submitted. Completed coastal erosion management permit applications should be submitted to the appropriate regional permit administrator.
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(c) Prior to issuing a coastal erosion management permit for a regulated activity undertaken by a State agency within a local government jurisdiction having a local program, the department must first make a finding that the standards, restrictions and requirements of the local program, adopted pursuant to section 54-0156 of the act, have been met.

(d) Article 70 of the Environmental Conservation Law and Part 621 of this Title govern the department’s procedures for the issuance, modification, renewal, suspension and revocation of coastal erosion management permits under this Part.

(e) All regulated activities are subject to the review procedures required by the State Environmental Quality Review Act (SEQRA), article 8 of the Environmental Conservation Law. The applicant may be required to submit information necessary for compliance with SEQRA in addition to information required under this Part.

(f) A coastal erosion management permit may be issued with such terms and conditions as are necessary to ensure compliance with the policies and provisions of the act and of this Part.

(g) A coastal erosion management permit issued pursuant to this Part does not relieve such permit applicant from the responsibility of obtaining other permits or approvals as may be necessary, nor does it convey any rights or interest in real property.

(h) Where more than one regulatory agency has jurisdiction over an activity regulated by this Part, the application review process and hearing process must be consolidated and coordinated as required by sections 54-0156(8), 54-0156(9) and 54-0.07(3) of the act, upon request of the applicant.

Historical Note
Sec. filed: Sept. 22, 1982 as emergency measure; Nov. 19, 1982 as emergency measure, expired 90 days after filing; Jan. 21, 1983; amd. filed March 18, 1983; repealed, new filed Feb. 26, 1988 eff. 90 days after filing.

§ 505.6 Standards for issuance of coastal erosion management permits. A coastal erosion management permit will be issued only if the commissioner finds 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) will not be likely to cause a measurable increase in erosion at the proposed site or at other locations; and

(c) prevents, if possible, or minimizes adverse effects on:

(1) natural protective features and their functions and protective values as described in section 508.3 of this Part;

(2) existing erosion protection structures; and

(3) or natural resources, including, but not limited to significant fish and wildlife habitats and shellfish beds.

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§ 505.7 Restrictions on regulated activities within structural hazard areas.

(a) Movable structures may be constructed or placed within a structural hazard area only if a coastal erosion management permit has been granted. Coastal erosion management permit requirements include the following:

(1) No permanent foundation is attached to the movable structure and any temporary foundations are removed at the time the structure is moved. Below-grade footings will be allowed if satisfactory provision is made for their removal.

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(2) No movable structure may be placed closer to the landward limit of a bluff than 25 feet.

(3) No movable structure may be placed or constructed so that, according to accepted engineering practice, its weight places an excessive ground loading on a bluff.

(4) A plan for the landward relocation of a movable structure, when threatened by shoreline recession, must be included with each coastal erosion management permit application.

(5) Movable structures, which have been located within an erosion hazard area pursuant to a coastal erosion management permit, must be removed before the receding edge recedes to within 10 feet of the most seaward point of the movable structure.

(6) Debris from structural damage which may occur as a result of sudden, unanticipated bluff-edge failure or erosion must be removed within 60 days of the damaging event.

(7) The last owner of record, as shown on the latest assessment roll, of real property upon which a movable structure is placed is responsible for removing that structure and its foundation, unless the last owner of record and the owner of the structure, if the structure is not owned by the last owner of record, have made an agreement providing otherwise in a form acceptable to the department.

(b) The construction or placement of a nonmovable structure, or nonmovable major addition to an existing structure, is prohibited within structural hazard areas.

(c) A coastal erosion management permit is required for the installation of public service distribution, transmission or collection systems for gas, electricity, water or wastewater. Systems installed to serve coastline development along mainland shorelines must be located landward of the shoreline structures being served.

(d) Any grading, excavating, or other soil disturbance conducted within a structural hazard area must not direct surface water runoff over a bluff face.

Historical Note
Sec. filed: Sept. 22, 1982 as emergency measure; Nov. 19, 1982 as emergency measure, expired 60 days after filing; Jan. 21, 1983; amd. filed March 18, 1983; repealed, new filed Feb. 26, 1988 eff. 30 days after filing.

§ 505.8 Restrictions on regulated activities within natural protective feature areas.
(a) Nearshore areas. The following restrictions and requirements apply to regulated activities in nearshore areas:

(1) Excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas is prohibited. However, coastal erosion management permits for dredging may be issued for constructing or maintaining navigation channels, bypassing sand around natural and man-made obstructions, or artificial beach nourishment.

(2) All development is prohibited in nearshore areas unless specifically allowed by this subdivision.

(3) The normal maintenance of structures may be undertaken without a coastal erosion management permit.

(4) 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.

(5) A coastal erosion management permit is required for new construction, modification or restoration of docks, piers, wharves, groins, jetties, seawalls, bulkheads, breakwaters, revetments and artificial beach nourishment. Docks, piers, wharves or structures built on floats, columns, open timber, piles or similar open-work supports having a top surface area of 200 square feet or less, or docks, piers, wharves or other structures built on floats and removed in the fall of each year, are expected from this permit requirement.
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(b) Beaches. The following restrictions and requirements apply to regulated activities on beaches:

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

(2) All development is prohibited on beaches unless specifically allowed by this subdivision.

(3) The normal maintenance of structures may be undertaken without a coastal erosion management permit.

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

(5) Nonmajor additions to existing structures that are damaged or destroyed by events not related to coastal flooding and erosion may be undertaken without a coastal erosion management permit.

(6) The following restrictions apply to the use of motor vehicles on beaches:

(i) Motor vehicles must operate seaward of the upper debris line at all times. On those beaches where no debris line exists, motor vehicles must operate seaward of the toe of the primary dune; and

(ii) Motor vehicles must not travel on vegetation.

(7) A coastal erosion management permit for deposition of material on beaches will be issued only for expansion or stabilization of beaches; clean sand, or gravel of an equivalent or slightly larger grain size, must be used.

(8) Beach grooming or clean-up operations do not require a coastal erosion management permit.

(9) A coastal erosion management permit is required for new construction, modification or restoration of docks, piers, wharves, boardwalks, groins, jetties, seawalls, bulkheads, breakwaters, revetments, and artificial beach nourishment. Docks, piers, wharves or structures built on floats, columns, open timber, piles or similar open-work supports having a top surface area of 200 square feet or less, or docks, piers, wharves or other structures built on floats and removed in the fall of each year, are exempt from this permit requirement.

(10) 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 department.

(c) Bluffs. The following restrictions and requirements apply to regulated activities on bluffs:

(1) Excavating, grading or mining of bluffs is prohibited, except where:

(i) the minor alteration of a bluff is done in accordance with conditions stated in a coastal erosion management permit issued for the construction of an erosion protection structure; or

(ii) A bluff cut is made in a direction perpendicular to the shoreline to provide shoreline access. The ramp slope of bluff cuts must not be steeper than 1:3 and the side slopes must not be steeper than 1:3, if not terraced or otherwise structurally stabilized. Side slopes and other disturbed nonroadway areas must be stabilized with vegetation or other approved physical means, and completed roadways must be stabilized and drainage provided for, all in accordance with terms and conditions of a coastal erosion management permit.

(2) Vehicular traffic is prohibited on bluffs.

(3) All development is prohibited on bluffs unless specifically allowed by this subdivision.
(4) The normal maintenance of structures may be undertaken without a coastal erosion management permit.

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

(6) Nonmajor additions to existing structures may be allowed on bluffs pursuant to a coastal erosion management permit.

(7) A coastal erosion management permit is required for new construction, modification or restoration of erosion protection structures, walkways or stairways. Elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner for the limited purpose of providing noncommercial access to the beach are excepted from this permit requirement.

(8) 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 department.

(9) Any grading, excavating, or other soil disturbance conducted on a bluff must not direct surface water runoff over a bluff face.

(d) Primary dunes. The following restrictions and requirements apply to regulate activities on primary dunes:

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

(2) Vehicular traffic is prohibited on primary dunes, except in those areas designated by the department for dune crossing.

(3) 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.

(4) Foot traffic which causes sufficient damage to primary dunes to diminish the erosion protection afforded by them is prohibited. Pedestrian passage across primary dunes must utilize elevated walkways and stairways, or other specially designed dune crossing structures approved by the department.

(5) All development is prohibited on primary dunes unless specifically allowed by this subdivision.

(6) The normal maintenance of structures may be undertaken without a coastal erosion management permit.

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

(8) A coastal erosion management permit is required for new construction, modification or restoration of stone revetments or other erosion-protection structures compatible with primary dunes. Such erosion-protection structures will only be allowed if the seaward toe of primary dunes and must not interfere with the exchange of sand between primary dunes and their fronting beaches.

(9) A coastal erosion management permit is required for new construction, modification or restoration of elevated walkways or stairways. Elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner for the limited purpose of providing noncommercial access to the beach are excepted from this permit requirement.
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(10) Clean sand obtained from excavation, dredging or beach grading may be deposited on a primary dune, or on an area formerly a primary dune, to increase its size or restore it. Such deposition must be vegetatively stabilized using native species tolerant to salt spray and sand burial, e.g., American beach grass. Such deposition requires a coastal erosion management permit.

(11) Vegetative planting and sand fencing, to stabilize or entrap sand in order to maintain or increase the height and width of dunes, does not require a coastal erosion management permit. Vegetative plantings must be of native species tolerant to salt spray and sand burial, e.g., American beach grass.

(12) 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 department.

(c) Secondary dunes. The following restrictions and requirements apply to regulated activities in areas identified on coastal erosion hazard area maps as secondary dunes:

(1) Secondary dunes must not be excavated, graded or mined such that the erosion protection afforded by them is diminished.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a secondary dune, or an area formerly a secondary dune, to increase its size or restore it. Such deposition must be vegetatively stabilized using native species tolerant to salt spray and sand burial, e.g., American beach grass. Such deposition requires a coastal erosion management permit.

(3) The normal maintenance of structures may be undertaken without a coastal erosion management permit.

(4) The construction, modification, or restoration of a structure, or major addition to an existing structure, requires a coastal erosion management permit. Permit requirements include:

(i) a new structure, or the restoration of or major addition to an existing structure, must be built on adequately anchored pilings such that at least three feet of open space exists between the lowest horizontal structural members, e.g., floor joists, and the surface of the secondary dune; and

(ii) the space below the lowest horizontal structural members must be left open and free of obstructions.

(5) Exceptions. (i) The provisions contained in paragraph (4) of this subdivision that requires obtaining a coastal erosion management permit for the construction, modification, or restoration of a structure or major addition to an existing structure, does not apply to elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner for the limited purpose of providing noncommercial access to the beach.

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

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

(7) Vegetative planting and sand fencing, to stabilize or entrap sand to maintain or increase the height and width of dunes, does not require a coastal erosion management permit. Vegetative plantings must be of native species tolerant to salt spray and sand burial, such as American beach grass.

Historical Note

Sec. filed: Sept. 22, 1982 as emergency measure; Nov. 19, 1982 as emergency measure, expired 40 days after filing; Jan. 21, 1983: amd. filed March 18, 1983; repealed, new filed Feb. 26, 1988 eff. 30 days after filing.

302.42 CN 2-29-88
505.9 Erosion protection structures. Construction of erosion protection structures is expensive, often only partially effective over time, and may even be harmful to adjacent or nearby properties. In some areas of the coastline, major erosion protection structures of great length would be required to effectively reduce future damages due to erosion. However, in those instances where properly designed and constructed erosion protection structures will be likely to minimize or prevent damage or destruction to manmade property, private and public property, natural protective features, and other natural resources, construction of erosion protection structures may be allowed. In such cases, the construction, modification or restoration of erosion protection structures is subject to the following requirements:

(a) A coastal erosion management permit is required for construction, modification or restoration of erosion protection structures, including the modification or restoration of erosion protection structures that were constructed without a coastal erosion management permit. Normal maintenance of an erosion protection structure does not require a coastal erosion management permit.

(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) A long-term maintenance program must be included with every permit application for construction, modification or restoration of an erosion protection structure. That program must include specifications for normal maintenance of degradable materials and the periodic replacement of removable materials.

(d) All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions. 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.

(e) The construction, modification or restoration of erosion protection structures must:

1. not be likely to cause any measurable increase in erosion at the development site or other locations; and

2. minimize, and if possible prevent, adverse effects to natural protective features, existing erosion protection structures, and natural resources such as significant fish and wildlife habitats.

Historical Note
Sec. filed: Sept. 22, 1982 as emergency measure; Nov. 19, 1982 as emergency measure, expired 60 days after filing; Jan. 21, 1983; amd. filed March 18, 1983; repealed, new filed Feb. 26, 1988 eff. 30 days after filing.

505.10 Appeal of erosion hazard area designation. (a) Any person who owns real property within a designated erosion hazard area may appeal that designation.

(b) Erosion hazard area designation appeals may be made after the coastal erosion hazard area map(s) including the subject lands has been filed with the clerk(s) of each local government within the boundaries of which the subject lands are located.

(c) Any person wishing to make an appeal pursuant to this section must complete an erosion hazard area designation appeal application and submit it to the department. Appeal applications are available at department regional offices and the Bureau of