

**MANAGING
COASTAL EROSION
THROUGH
COMMUNITY
ACTION**

By

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PREFACE

This bulletin is intended to increase public awareness about the role of erosion control districts in dealing with shoreline erosion and of the procedures involved in forming such a district. While primarily written for the coastal property owner and homeowners associations, the bulletin contains information useful also to the local government officials and regulatory agencies involved in coastal development. It is hoped this information will promote the community approach to erosion control. The publication is not intended to be an erosion control manual. Examples of various methods of shoreline stabilization are given for illustrative purposes only. Due to the complexity of the erosion process, the property owner seeking advice on erosion control measures is urged to consult a qualified marine engineer, contractor, or Sea Grant specialist for more information on this topic.

INTRODUCTION

Each year property owners along Long Island's marine coast lose part of their land to the sea. To stem this erosion, property owners, usually acting individually, spend much time and money on erosion control projects, some of which are successful and many of which are failures. Many other owners, for various reasons, do nothing at all.

This piecemeal, individual approach usually results in ineffective erosion control and wasted money. For example, an owner may install a bulkhead along the toe of a bluff at considerable cost while neighbors on both sides do not, leaving the bluff along their properties exposed to direct wave action. The individual is then faced with either losing the structure as the bluff is cut back behind it or initiating expensive repairs to tie the bulkhead back into the receding bluff. While flanking may not be totally stopped, the impact of this type of problem can be lessened if all the property owners join together to build a continuous bulkhead along the entire length of the bluff. Furthermore, the cost of necessary repairs or modifications to the structure will be considerably less to the individual property owner when such costs are shared by the community.

This example illustrates the problem of the individual approach and the benefits of the community approach to erosion control. A cooperative approach can provide a number of advantages which individuals' efforts do not. As already explained, erosion control can be more effective when applied over an entire length of shore rather than random parcels. In many cases, the cost per unit length of structures and other treatments such as beach nourishment, will decrease as the length of shoreline to be protected increases. A single, community project can also reduce the number of permits that would be required for numerous individual erosion control measures, saving time and money. Finally, an erosion control district may provide the local funding required for matching federal and state funds for certain projects involving land with public access or hurricane protection. Thus, the community approach can provide more effective erosion control at a lower cost for the shoreline property owners.

EROSION CONTROL DISTRICTS

An erosion control district, as its name implies, is a special improvement district established to provide a specific service (erosion control) in a given geographic area. Although different measures may be used, the erosion control project selected is basically funded by an additional tax on each property in the district. In terms of organization and function, it is essentially the same as other improvement districts for sewer and water systems, parks, sidewalks, and other services. In fact, most special improvement districts, including those for erosion control, are established under the same statutory authority. However, the procedures may differ slightly depending on the type of district formed.

STATUTORY AUTHORITY

New York State laws authorize the establishment of erosion control projects by several levels of government, including state, county, town, and village.

Since the state and county erosion control laws authorize projects only on public lands, they will not be described in this bulletin. For more information on these, the reader is directed to New York State Unconsolidated Laws, Title 4, Chapter 7: "Projects to Prevent Shore Erosion" (Sections 1531-1539) for state involvement and to County Law, Article 5-B: "County Hurricane Protection, Flood and Shoreline Erosion Control Districts," (Sections 280-280Z) for county projects.*

At the town level, New York State Town Law Articles 12 and 12A describe the procedures and requirements for the creation of improvement districts including those for erosion control. Article 12 authorizes the creation of "beach erosion control districts" in "any town bordering on or containing within its boundaries any navigable waters of the state." (The definition of "navigable waters" is found in the Navigation Law.) Local improvement and assessment are authorized for incorporated villages through the New York State Village Law, Article 4: "Powers, Duties, and Responsibilities of Officers," (Section 412) and Article 22: "Local Improvements," (Section 2200). New York State General City Law allows cities to construct local improvements and tax property owners according to their benefit (Article 2-A, Sections 19-24).

The majority of Long Island coastal residents are affected by the town and village statutes. Therefore, this publication will focus on the formation of erosion control districts at these two levels of government.

PUBLIC PURPOSE

For any government to make improvements on private lands and to spend public funds for such purposes, a public benefit or purpose must be demonstrated. A public purpose is one that promotes or protects public health, safety, and/or general welfare. Such a public benefit may be the protection of adjacent public lands such as a park, road, or beach. If a direct public benefit cannot be shown, the project may not be undertaken, even if the private landowners' tax monies pay for these improvements (once the taxes are collected, they are considered public monies and may not be spent for private-benefit projects).

GETTING STARTED

Since creation of a beach erosion control district is a community approach requiring the support of the majority of property owners, the organizing of a group to represent the community is a logical first step. The group may be created specifically and solely for the purpose of establishing the district, or it may be an existing organization such as a homeowner or civic association

* Note: Although state and county erosion control projects may be implemented only on publicly-owned lands (including those owned by local governments), such projects may concurrently benefit private landowners. If state projects encompass lands owned by local governments, 70% of the cost is paid by the state. Thus, state assistance may be available to control erosion on privately-owned lands under certain circumstances.

which has a broader mission. For the sake of efficiency, small committees may be appointed and given specific tasks.

Among the tasks that must be accomplished include the following:

- determine the nature and scope of the erosion problem.
- define the geographic boundary of the area where erosion problems exist.
- identify all of the property owners in the affected area and prepare a complete, accurate mailing list.
- prepare a summary report on the erosion problems and the geographic area affected, the various structural and non-structural alternatives for controlling erosion and their advantages and disadvantages and probable costs.
- organize a general information meeting and invite every property owner, preferably by mail, to attend.
- at the meeting, present the report and propose that all property owners agree to work together to solve the problems as a community.
- present general information about the district creation, including benefits and procedures.
- seek consensus of the property owners to investigate creation of an erosion control district.
- if consensus is achieved, appoint a committee to meet with town or village officials to discuss creation of a district.
- proceed according to the provisions of the Town Law Article 12 or 12A or Village Law Article 22.
- keep all property owners fully informed about plans and decisions through mailings and periodic informational meetings.
- once an engineering plan has been prepared, call a general meeting to present the findings and recommendations.
- prepare written information about recommended erosion control measures, anticipated costs (both constructional and maintenance), and the method of financing.
- if a referendum is held, fully inform all voters about the plan and benefits.

CREATING DISTRICTS IN TOWNS

The Town Law provides for the creation of erosion control districts by either of two procedures - upon petition of the residents living in the area of the proposed districts or by initiative of the Town Board.

Article 12 of the Town Law outlines the procedure whereby residents can petition the Town Board to create a district. The petition must be signed by owners of property equaling at least one-half the assessed value of the real property in the proposed district. In addition, the petition must include the signatures of resident owners (if any) who own at least one-half of the total assessed value of all resident-owned property. (This is important in predominately summer communities.) The assessed value must be determined from the latest completed tax assessment role. If the petition requests construction or acquisition of an improvement, the maximum amount to be expended must be included. Likewise, if services are requested, the maximum annual expenditures for these services shall be included. A map and plan may accompany the petition but are not required.

Upon receipt of the petition and plan, the town board publishes a notice and holds a public hearing. Subsequently, the Board either denies or approves a resolution to create an erosion control district. If approved, this resolution must include a description of erosion control measures, construction and maintenance costs and methods of financing.

If any of the costs are to be financed by the District,* such as through the sale of bonds, the application must be forwarded to the New York State Department of Audit and Control for approval. Upon approval from the State Comptroller, the Town Board may then adopt a final order establishing the district and, by bids, contract for plans and work. If costs are not to be financed by the District, copies of the resolution must still be filed with the State Department of Audit and Control.

Article 12A of the Town Law permits the Town Board to create a district on its own initiative. The Town Board adopts a resolution appropriating an amount for preparation of a map, plan, and report concerning the proposed district. After these documents are completed, the Board holds a public hearing on the proposal. Following the hearing, the Board may adopt a resolution to establish the district subject to a permissive referendum. If the Board receives a petition signed by 5 percent of the owners of real property within the district or by 100 owners, whichever is less, a referendum must be held as authorized by Article 7 of the Town Law. If the resolution is defeated in the referendum, the district is not created.

If the resolution of the Town Board is not challenged or if the voters approve the resolution in a permissive referendum, the resolution, map, and plan must be forwarded to the New York State Department of Audit and Control as noted above.

CREATING DISTRICTS IN VILLAGES

Improvement districts per se cannot be created in incorporated villages because, according to New York State law, a village possesses all governmental powers. However, village trustees are authorized to construct drains, culverts, dams and bulkheads; dredge channels; and regulate water courses for the purpose of arresting and preventing damage to property resulting from floods and erosion pursuant to Article 4 of the Village Law. They are further authorized, in accordance with Article 22, to make local improvements at the expense of the benefitted property owners and the village at large. Town governments may also establish or extend districts in incorporated villages with the approval of the village government and residents.

Decisions to make improvements to control erosion may be initiated by the Village Trustees unilaterally or at the request of village residents. Such decisions by the Trustees become final within 30 days. Such action is not

* Note: The authority of local government to borrow money is found in the Local Finance Law, Section 11. This lists the projects for which local government may borrow money and indicates the time period for which it may be borrowed (called "the period of probable usefulness").

subject to referendum. However, if the project will incur indebtedness for longer than five years, the question of borrowing money is subject to referendum pursuant to the Finance Law. However, the easiest method is for the Village Trustees to simply enact a local law to establish the special benefit assessment area for the purpose of controlling erosion. Such a local law would specify the work to be done, the projected cost, and the method of financing.

The Village Law makes no reference to preparing an erosion control plan. However, such a plan, including costs, would appear necessary before the Trustees and voters would approve such action.

EROSION CONTROL PLAN

An important part of the district creation process is the preparation of the erosion control plan. This plan may be prepared by a licensed professional engineer, by the Town or Village Engineer, or by a private consulting firm. The costs may be paid by the Town or Village and/or by the residents of the proposed district. If the Town or Village retains a consultant to prepare the plan, it can bill the district for the costs after it is created.

The plan must include a map of the boundaries of the proposed district, description of the nature and scope of the erosion problem, an evaluation of structural and non-structural erosion control alternatives including cost estimates and environmental impacts (preparation of an environmental impact statement pursuant to the State Environmental Quality Review Act may be necessary). The recommended erosion control projects and activities, and description of lands or rights-of-way that may be necessary to acquire.* In addition the method of administering and of financing the district must be described. The latter should include information on the assessed value of all real property in the district for the purpose of levying taxes to pay for administrative, construction, and maintenance costs.

WHERE TO GET HELP

The information presented in this bulletin is quite basic and general. Property owners who need more in-depth information or have specific questions, may contact the following:

- Sea Grant Extension Program, Marine Sciences Research Center, SUNY, Stony Brook, NY 11794, phone 246-7777; for information on erosion processes, control alternatives, and general planning.

- Cooperative Extension Association of Suffolk County, 246 Griffing Avenue, Riverhead, NY 11901, phone 727-7850 and Cooperative Extension Association of Nassau County, Nassau County Complex, Building J, 1425 Old Country Road, Plainview, NY 11803, phone 454-0900; for guidance on group organization and information on erosion control vegetation.

*Note: To conduct periodic maintenance and repair of structures located on private lands, the District must obtain at least a long-term easement to enter on such properties.

- New York State Department of Environmental Conservation, Building 40, SUNY, Stony Brook, NY 11794, phone 751; for information on erosion control and environmental regulations and for acquiring permits.

- Suffolk County Soil and Water Conservation District/USDA Soil Conservation Service, Nassau County Complex, Building J, 1425 Old Country Road, Plainview, NY 11803, phone 454-0900; for information and technical assistance on soil, drainage, and erosion control, including vegetation.

- Town and Village Clerks, attorneys of the respective Towns and Incorporated Villages of Suffolk and Nassau Counties; for information and guidance on administrative and legal procedures pertaining to creation of districts.

REFERENCES

1. New York State Town Law, Article 12 (District and Special Improvements), Article 12A (Establishment or Extension of Improvement Districts - Alternative Procedure) and Article 7 (Permissive Referendum), McKinney's Consolidated Laws of New York.
2. New York State Village Law, Article 4 (Powers, Duties and Compensation of Officers), Article 22 (Local Improvements), and Article 9 (Permissive Referendum), McKinney's Consolidated Laws of New York.
3. Legal Requirements and Administrative Procedures for Establishment of Town Special Improvement Districts, New York State Department of Audit and Control. (Note: Samples of the recommended format for petitions, public notices, resolutions, etc. can be found in this publication.)
4. Finding Help on Erosion Control: A Directory of Agencies and Organizations, Cooperative Extension and Sea Grant Extension Program.

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