

CHAPTER XIX
COASTAL WETLANDS

19-1 INTENT.

The borough council finds that the spread of development and increasing demands upon natural resources are encroaching upon, polluting or eliminating many of the borough's natural coastal water courses, coastal wetlands, tidal marshes and other natural resources in the coastal flood zone, and processes associated therewith, which, if preserved and maintained in an undisturbed and natural condition, constitute important physical, social, aesthetic, recreational and economic assets to existing and future residents of the borough and the public in general.

It is the intent of the borough council to provide for the protection, preservation, proper maintenance and use of the borough's natural coastal water courses, coastal wetlands and tidal marshes in order to minimize their disturbance; prevent damage from erosion or siltation; protect against the loss of vital coastal natural resources including fish, shellfish, or other beneficial marine organisms, aquatic wildlife and vegetation and the destruction of the natural habitat thereof; avoid the danger of flood and storm tide damage and pollution, and to otherwise protect the quality of natural coastal water courses, coastal wetlands, tidal waters, marshes, beaches and shorelines in the coastal flood zone for purposes of conservation, economics, aesthetics, recreation and other public uses and values. Therefore, the borough council declares that the regulation of the natural coastal water courses, coastal wetlands, tidal marshes and other natural resources in the coastal flood zone in the borough is essential to the health,

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safety, economic and general welfare of the people. (Ord. #511-01 § 1)

19-2 TITLE.

This chapter shall be known and may be cited as the "Coastal Wetlands Ordinance" of the Borough of Little Silver. (Ord. #511-01 § 1)

19-3 DEFINITIONS.

As used in this chapter.

- a. *Peak-lunar tides* shall mean those excessively high tides or spring tides caused by solar-lunar gravitational phenomena.
- b. *Tidal waters* shall mean and include all waters bordering on or within the borough boundaries subject to fluctuations caused by the solar-lunar gravitational phenomena in depth from storm, peak-lunar or normal tidal action and shall include but not be limited to all partially saline and salt water of streams, creeks, estuaries, bays, sounds and inlets identified and mapped on the coastal wetlands map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., prepared by the New Jersey Department of Environmental Protection.
- c. *Peak storm tides* shall mean 100 year storm as defined on the U.S. Geological Survey Map, 1972, flood prone areas.
- d. *Water courses, natural coastal* shall mean all tidal water bodies that flow through, border on or are contained within the coastal flood zone.
- e. *Coastal wetlands* shall mean and include all lands and submerged lands located within the coastal flood zone of the Borough of Little Silver which are covered by tidal

waters permanently or intermittently from normal or peak-lunar tides and are so identified and mapped on the coastal wetlands map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., prepared by the New Jersey Department of Environmental Protection.

- f. *Tidal marsh* shall mean and include those coastal wetlands located within the coastal flood zone inundated by tidal waters from normal tidal action and/or peak-lunar tides, and upon which may grow or is capable of growing some or all marsh plants indigenous to the area and are identified and mapped on the coastal wetlands map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., prepared by the New Jersey Department of Environmental Protection.
- g. *Intertidal zone* shall mean and include those portions of the coastal flood zone which lie between mean low and mean high water.
- h. *Coastal flood zone* shall mean and include all tidal waters, natural coastal water courses, coastal wetlands, tidal wetlands and tidal marshes which are inundated regularly or intermittently from normal tidal cycles and/or peak-lunar and storm tides. The upland limit of peak storm tide and, hence, limit of the coastal flood zone shall be defined by the six-foot contour line as designated on the National Geodetic Vertical Datum (NGVD). This level is based on actual observed flood levels. The coastal flood zone shall exclude any wetlands regulated by or subject to the Freshwater Wetlands Protection Act.
- i. *Material* shall mean and include but not be limited to soil, sand, gravel, clay, silt, peat, debris and refuse or any other materials.
- j. *Tax map* shall mean the map of the Borough of Little Silver dated December 1957, and revised April 1965, October 1986, November 1993, April 1996 and January 1997.

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- k. *Deposit* shall mean to place in any manner, including any materials and/or structures.
- l. *Structures* shall mean any physical construction built above or below ground level.
- m. *Remove* shall mean to take away in any manner including but not being limited to digging, dredging, sucking, bulldozing, draglining or blasting.
- n. *Operation* shall mean and include, but not be limited to, any or all uses or activity, removal, deposition or construction.
- o. *Tidal wetlands* shall mean and include all banks, marshes, swamps, salt meadows, flats or any other low lands subject to tidal action.
(Ord. #511-01 § 1)

19-4 RESERVED.

19-5 PERMITTED ACTS.

The following operations and uses are permitted within the coastal flood zone, provided that there is no significant adverse impact on the coastal flood zone.

- a. Conservation of soil, vegetation, water, fish, shellfish and wildlife.
- b. Outdoor low-intensity recreation including nature study, hiking, horseback riding, swimming, skin diving, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.
- c. Boat anchorage or mooring.
(Ord. #511-01 § 1)

19-6 REGULATED ACTS.

Regulated acts within the coastal flood zone may be permitted by the planning board only after referral of the permit application to the environmental commission for its review and recommendation, and are subject to applicable County, State and Federal rules and regulations. The recommendation of the environmental commission is advisory only. If the environmental commission fails to submit said recommendation to the planning board within the time provided for in this chapter, the permit may be issued without the benefit of said recommendation. Special permits shall be issued as provided for in section 19-7 for such regulated acts. Regulated acts shall include:

- a. Erection of structures, driving of pilings, placing of obstructions whether or not changing the tidal ebb and flow, boat launching or landing sites and marinas.
- b. Temporary storage of materials.
- c. Dams and other water control structures or drainage improvements deemed to be consistent with the intent and objectives of this ordinance by the planning board.
- d. Driveways and roads on pilings where they pass over tidal wetlands, tidal waters and tidal marshes where alternative means of access are proven to be impractical in the considered judgment of the planning board.
- e. Deposit or permit to be deposited any materials or liquid wastes in the coastal flood zone.
- f. Remove, dig, dredge, or in any other way alter or remove any material from the coastal flood zone.
(Ord. #511-01 § 1)

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19-7 PERMIT PROCEDURE.

19-7.1 Information Required. All applicants for a special permit to do any of the regulated acts as described and defined in section 19-6 shall present an original and six copies of the permit application together with other required information as outlined in this section to the borough administrator. All applications and copies thereof must include the following information:

- a. Name and address of applicant and/or applicant's agent and whether applicant is owner, or agent. If applicant is agent, the written consent of the owner, duly acknowledged, must be attached.
- b. The names and addresses of all owners of lands contiguous to and within 500 feet of lands and waters where the proposed project will take place.
- c. Purpose of proposed project.
- d. An environmental (assessment statement) must accompany the application. Requirements and outline for said assessment may be obtained from the borough administrator.
- e. Manner in which material will be removed or deposited, structure installed or use carried out. Provision for retention basins or other drainage measures in accordance with current standards for soil erosion and sediment control in New Jersey.
- f. A surveyor's topographical map, with contours shown at one foot intervals and the project area indicated.
- g. A map showing soil types and defined by the U.S. Soil Conservation Service which were mapped for Little Silver on July 27, 1973, and also showing slope and soil permeabilities shall be also accompanied by the application for the permit.
- h. All maps shall be certified by a professional engineer and land surveyor licensed in the State of New Jersey.

- i. A filing fee of ten (\$10.00) dollars or one percent of the estimated certified cost of the proposed operation, whichever is greater.
- j. Proof of approval(s) and/or permit(s) issued by all County, State or Federal agencies having jurisdiction over the applicant's proposed project, including, but not limited to, Freehold Soil Conservation District, Department of Environmental Protection of the State of New Jersey and the United States Army Corps of Engineers.
(Ord. #511-01 § 1)

19-7.2 Approval or Disapproval Required; Time Limit.

The borough administrator shall retain the original permit application for his files and distribute one copy each to the borough council, environmental commission, borough engineer, planning board and shade tree commission. Each of those agencies, except the borough council and the planning board shall study the permit application and forward a report and recommendation thereon to the planning board within 30 days, indicating approval, disapproval or conditional approval, itemized and explained in writing. (Ord. #511-01 § 1)

19-7.3 Public Hearing; Decision of Planning Board.

The planning board shall review all comments and recommendations pertaining to the permit application. Upon ten days public notice published in the official newspaper of the borough, the planning board shall hold a public hearing on the permit application. The planning board shall, after the required public hearing, render a decision to deny, approve or approve with conditions the permit application. In rendering a decision the planning board shall state in writing its findings of fact and conclusions. The decision shall be transmitted to the borough council, and to the borough clerk, who will advise the applicant of such decision by transmitting a copy of the permit application to the applicant with decision and conditions, if any, imposed by the planning board attached. (Ord. #511-01 § 1)

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19-7.4 Posting of Permit. The permit applicant or his agent shall have visibly posted the approved permit on the project property. (Ord. #511-01 § 1)

19-7.5 Inspections. Operations conducted under permit shall be open to inspection at any time by any agency or agent of the borough. (Ord. #511-01 § 1)

19-7.6 Term of Permit; Extension. Any permit issued herein shall expire one year from date of issue and may only be extended upon approval of the planning board. (Ord. #511-01 § 1)

19-7.7 Environmental Bond Required. The permit applicant upon approval of the permit shall file with the borough administrator an environmental bond, (if required), in an amount designated by the planning board and/or the borough engineer for any environmental damage incurred during project construction.

- a. The environmental bond shall be conditioned on compliance with all provisions of this local law and conditions imposed on permit approval.
- b. The applicant shall also submit to the borough administrator an affidavit which indemnifies and saves harmless the borough or any agency or agent thereof from any claims arising out of or connected with operations under the permit and from all acts, omissions, commissions or negligence on the part of the applicant, his agents or employees.
(Ord. #511-01 § 1)

19-7.8 Prior Approvals by Other Agencies Required.

No application for a special permit shall be filed with the borough administrator until applicant has complied with all applicable County, State and Federal rules and regulations, and has received applicable approval(s) and/or permit(s) from all County, State or Federal agencies having jurisdiction over

the applicant's proposed project, including, but not limited to, Freehold Soil Conservation District, Department of Environmental Protection of the State of New Jersey and the United States Army Corps of Engineers. (Ord. #511-01 § 1)

19-8 PENALTIES AND CORRECTIVE ACTION.

Any person found violating any provisions of this chapter or conditions imposed by the planning board and/or the borough engineer upon an approved permit shall be served with a written notice by the zoning officer stating the nature of the violation and providing a specified time within which the violation shall cease and satisfactory corrective action shall be taken by the violator or under certain conditions have the permit immediately revoked.

- a. Any person violating this chapter shall be guilty of an offense, and upon conviction thereof, be liable to the penalty stated in section 5-13.
- b. Each day of such violation shall constitute a separate offense under this law.
(Ord. #511-01 § 1)

19-9 SEVERABILITY.

The invalidity of any word, clause, section or provision of this chapter shall not affect the validity of any other part of the chapter which can be given without such invalid part or parts.
(Ord. #511-01 § 1)

