

REGULATORY CONSISTENCY EVALUATION FOR PUBLIC ACCESS TO COASTAL WATERS

REFERENCES:

- 1** Office of Long Island Sound Programs, Fact Sheet for General Public Access to Coastal Waters. (OLISP Public Access Fact Sheet)
http://www.ct.gov/deep/lib/deep/long_island_sound/coastal_management_manual/manual_section_3_08.pdf
- 2** Office of Long Island Sound Programs, Fact Sheet for Water-dependent Uses. (OLISP WDU Fact Sheet)
http://www.ct.gov/deep/lib/deep/long_island_sound/coastal_management_manual/manual_section_3_08.pdf
- 3** Connecticut Coastal Management Act (CCMA, CGS Sections 22a-90 through 22a-112). https://www.cga.ct.gov/2015forPublicA/pub/chap_444.htm

OBJECTIVE:

Evaluate whether the proposed ADA-compliant public access concepts would be consistent with regulations.

DEFINITIONS:

GENERAL PUBLIC ACCESS TO COASTAL WATERS:

"General public access to coastal waters, as used in the statutory definition of 'water-dependent uses' [see fact sheet for *Water-Dependent Uses*], are uses or facilities which provide for recreational use or enjoyment of Coastal waters and/or their adjacent shoreline by the general public. General public recreational use and enjoyment includes, but is not limited to: fishing, hiking, boat launching, birding or wildlife observation, and general passive enjoyment of scenic waterfront coastal views and vistas." (OLISP Public Access Fact Sheet)

WATER-DEPENDENT USES:

"*Water-Dependent Uses* are specifically defined in the Connecticut Coastal Management Act (CCMA). In general, they are land uses that require direct access to coastal waters in order to function and which therefore must be located at the waterfront rather than on inland sites. Such uses include, but are not limited to marinas, commercial fishing or boating facilities and uses that provide general public access to coastal waters [Connecticut General Statutes (CGS) section 22a-93(16)]." (OLISP WDU Fact Sheet)

COASTAL RESOURCES:

"Coastal resources' means the coastal waters of the state, their natural resources, related marine and wildlife habitat and adjacent shorelands, both developed and undeveloped, that together form an integrated terrestrial and estuarine ecosystem; coastal resources include the following: (A) 'Coastal bluffs and escarpments' means naturally eroding shorelands marked by dynamic escarpments or sea cliffs which have slope angles that constitute an intricate adjustment between erosion, substrate, drainage and degree of plant cover. ..." [(CGS) section 22a-93(7)]

ADVERSE IMPACTS:

"Adverse impacts on coastal resources' include but are not limited to: (A) Degrading water quality ...; (B) degrading existing circulation patterns of coastal waters ...; (C) degrading natural erosion patterns ...; (D) degrading natural or existing drainage patterns ...; (E) increasing the hazard of coastal flooding ...; (F) degrading visual quality through significant alteration of the natural features of vistas and view points; (G) degrading or destroying essential wildlife, finfish or shellfish habitat ...; (H) degrading tidal wetlands, beaches and dunes, rocky shorefronts, and bluffs and escarpments through significant alteration of their natural characteristics or function." [(CGS) section 22a-93(15)]

EVALUATION:

PUBLIC ACCESS TO COASTAL WATERS:

CCMA:

- > **CGS 22a-92 (a)** "The following general goals and policies are established by this chapter: **(6)** To encourage public access to the waters of Long Island Sound by expansion, development and effective utilization of state-owned recreational facilities within the coastal area that are consistent with sound resource conservation procedures and constitutionally protected rights of private property owners."

COWI Commentary:

Public access to the waters of the Long Island Sound is encouraged by regulations. However, conservation of coastal resources must also be considered when evaluating regulatory consistency of the proposed ADA-compliant public access concepts.

WATER DEPENDENT USES:

CCMA:

- > **CGS 22a-92 (b)(1)** "Policies concerning development, facilities and uses within the coastal boundary are: **(C)** to promote, through existing state and local planning, development, promotional and regulatory authorities, the development, reuse or redevelopment of existing urban and commercial fishing ports giving highest priority and preference to water dependent uses, including but not limited to commercial and recreational fishing and boating uses; to disallow uses which unreasonably congest navigation channels, or unreasonably preclude boating support facilities elsewhere in a port or harbor; and to minimize the risk of oil and chemical spills at port facilities."

- > **CGS 22a-93 (16)** "'Water-dependent uses' means those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: Marinas, recreational and commercial fishing and boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards and boat building facilities, water-based recreational uses, navigation aides, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters."

- > **CGS 22a-93 (17)** "'Adverse impacts on future water-dependent development opportunities' and 'adverse impacts on future water-dependent development activities' include but are not limited to **(A)** locating a non-water-dependent use at a site that **(i)** is physically suited for a water-dependent use for which there is a reasonable demand or **(ii)** has been identified for a water-dependent use in the plan of development of the municipality or the zoning regulations; **(B)** replacement of a water-dependent use with a non-water-dependent use, and **(C)** siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters."

COWI Commentary:

The proposed ADA-compliant public access is considered to be a water-dependent use, as it provides general public access to marine or tidal waters. Water-dependent uses are given high priority and are highly encouraged. The proposed concepts for ADA-compliant public access will not create adverse impacts on any future water-dependent development opportunities, and therefore is consistent with these regulations.

COASTAL RESOURCES:

CCMA:

- > **CGS 22a-92 (a)(4)** "To resolve conflicts between competing uses on the shorelands adjacent to marine and tidal waters by giving preference to uses that minimize impacts on natural coastal resources while providing long term stable economic benefits."
- > **CGS 22a-92 (b)(2)** "Policies concerning coastal land and water resources within the coastal boundary are: **(A)** To manage coastal bluffs and escarpments so as to preserve their slope and toe; to discourage uses which do not permit continued natural rates of erosion and to disapprove uses that accelerate slope erosion and alter essential patterns and supply of sediments to the littoral transport system; ... **(I)** to regulate shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources; and **(J)** to maintain the natural relationship between eroding and depositional coastal land forms and to minimize the adverse impacts of erosion and sedimentation on coastal land uses through the promotion of nonstructural mitigation measures. ..."
- > **CGS 22a-93 (15)** "'Adverse impacts on coastal resources' include but are not limited to: (A) Degrading water quality ...; (B) degrading existing circulation patterns of coastal waters ...; (C) degrading natural erosion patterns ...; (D) degrading natural or existing drainage patterns ...; (E) increasing the hazard of coastal flooding ...; (F) degrading visual quality through significant alteration of the natural features of vistas and view points; (G) degrading or destroying essential wildlife, finfish or shellfish habitat ...; (H) degrading tidal wetlands, beaches and dunes, rocky shorefronts, and bluffs and escarpments through significant alteration of their natural characteristics or function."

COWI Commentary:

The proposed ADA-compliant public access, in order to be compliant with regulations, should not alter the natural character of the coastal bluff, destabilize its slope, or alter the natural rate of erosion. Any structure providing public access would have to be designed to withstand the high wave energy experienced during storm conditions at this exposed site. A steel pile supported structure would be able to withstand this wave energy. However, pile driving on the coastal bank would have a very high likelihood of destabilizing the slope of the coastal bank, thereby altering its natural character, and would not be consistent with regulations.

FILL:

CCMA:

- > **CGS 22a-92 (b)(1)** "Policies concerning development, facilities and uses within the coastal boundary are: **(D)** to require that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts on coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners."

- > **CGS 22a-98** "The commissioner shall coordinate the activities of all regulatory programs under his jurisdiction with permitting authority in the coastal area to assure that the administration of such programs is consistent with the goals and policies of this chapter. Such programs include, but are not limited to: **(3)** regulation of dredging and the erection of structures or the placement of fill in tidal, coastal or navigable waters pursuant to sections 22a-359 to 22a-363f, inclusive."

COWI Commentary:

Any public access concept proposed should avoid encroachment past the coastal jurisdiction line (CJL) to the maximum extent practicable. Any encroachment past the CJL would be considered fill in tidal waters and is discouraged by regulations.

OTHER APPLICABLE INFORMATION:

The OLISP Fact Sheet for General Public Access to Coastal Waters provides general recommendations for planning a public access facility, including parking, access and signage.

