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LOCATIONS:

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|---|---|
|  Coastal Communities |  Groundwater Resources |
|  Freshwater |  Projected Sea-Level Rise Impacted Areas |
|  Shorelands |  Entire Community |
|  Tidal Waters |  Coastal Zone Designated Communities |
|  Surface Waters |  Locally Designated Areas and Districts |
|  Flood Zones | |
|  Inland Communities | |

COMMUNITY GOAL REGULATIONS:

- | | |
|---|--|
|  Open Space Protection |  Recreation Options |
|  Flood Protection |  Transportation Enhancement |
|  Drinking Water Protection |  Historic and Cultural Preservation |
|  Environmental Protection |  Community Design & Aesthetics |
|  Stormwater Management |  Community Equity |
|  Water Quality Protection | |
|  Infrastructure Protection | |
|  Economic Development | |

REGULATION OPTIONS:

1. Impact Fees
 2. Transfer of Development Rights
 3. Off-Site Improvements
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WHY ADOPT THESE REGULATIONS?

- Increase options to require land use development in a community to help fund resiliency projects, particularly those related to infrastructure modifications.
- Reduce the financial burden on property owners to improve local infrastructure to deal with impacts from climate change, sea-level rise, and flooding that can be exacerbated by land use development.

BACKGROUND & PURPOSE

As the knowledge of impacts from sea-level rise, storm surge and flooding grow, so does the list of identified resources and projects that municipalities need to plan for. Often the biggest obstacle for projects, specifically infrastructure projects, is cost. The purpose of the following regulations is to establish mechanisms for financing coastal resiliency projects at the municipal or regional level through land use development.

In addition to the local land use regulations, other mechanism (local and regional) for financing coastal resiliency projects, from infrastructure projects to planning efforts to land conservation are outline.

REGULATION OPTIONS

These following land use regulation options provide a variety of mechanisms for reducing the cost of funding resiliency projects by either 1) avoiding or deducing development in areas vulnerable to coastal hazards through financial incentives or, by 2) providing funding to upgrade infrastructure to handle the impacts of coastal storms and climate change. All three regulations may be utilized and are not dependent upon one another.

Establish Coastal Hazards/Resiliency Overlay District: The first step for all three regulations is to adopt a new zoning district to define the geographical extent of anticipated coastal hazards where land use regulation options below would apply. A Coastal Flood Hazard Overlay District may also include included performance-based standards – outlined in the site design standards offered throughout the Guide - that protect against flood impacts from sea-level rise and coastal storm surge. The overlay district boundaries can be established based on current flood hazard areas on FEMA Flood Insurance Rate Maps and projected future high risk flood areas using the [NH Coastal Flood Risk Summary: Part 2 Guidance for Using Scientific Projections](#) as a guide for risk tolerance.

Transfer of Development Rights

Incentivize developing outside of coastal hazard overlay district without penalizing property owners within coastal hazard district. The zones in which increased densities are permitted are intended to be those where higher development densities are desired and consistent with future land use recommendations of the master plan. The areas where less development will be allowed or conservation areas are to be acquired are intended to be those with higher susceptibility to coastal hazards and consistent with the future land use recommendations of the master plan. The level of tolerance for risk to coastal hazards should be considered as part of the establishment of a Coastal Hazards/Resiliency Overlay District

The following are the steps require to establishing the financial mechanism to incentive development outside of a coastal hazard overlay district. The complete ordinance language for Transfer of Development Rights (also known as a Density Transfer Credit) is available as part of the NH Innovative Land Use Guide - [Chapter 1.1 Complete Chapter](#) - [Chapter 1.1 Ordinance Template Only \(Word Document\)](#):

- 1. Identify areas to allow increased development density.** Examples: More housing units, smaller setbacks, higher height limits, increased impervious surface.
- 2. Establish the conditions to be met to allow higher density.** Examples: No building in wetland setbacks, stormwater management design to higher standard, density fits character of surrounding properties.
- 3. Conduct economic analysis to determine value of increase density credits.** This is the most difficult step and may require analysis to be done every few years.
- 4. Seek adoption of transfer of development credit zoning ordinance (RSA 675:2-4).**
- 5. Establish density transfer fund (and connection to coastal resiliency funds) and administrative oversight procedures.** Will require oversight at municipal level and at level with resiliency funding mechanisms.

Example communities: Only eight in NH have any type of development credit transfer program. In coastal watershed, examples are Portsmouth, Dover, Lee, Farmington, and Milton.

Impact Fees:

Establishment of a fee program that includes requiring development that increases demand on municipally owned infrastructure or facilities to help fund a portion of those upgrades that are needed to mitigate potential impacts from coastal hazards. These fees are limited to only to capital improvement needs related to the proposed development and cannot be used to just upgrade existing facilities. Impact fees can be used for a wide variety of infrastructure and facilities including upgrades to schools, roadways, water and wastewater facilities, drainage and flood controls, recreation facilities (except open space) and municipal facilities.

The following are the steps require to adopting impact fees to help financial mechanism to help finance improvements to capital improvements that are determined to be needed under this scenario to deal with mitigating coastal hazards. Identifying those capital improvements in a regional or municipal master plan, through a vulnerability assessment, or local needs assessment is an important step prior to establish type of capital improvements are most suitable for establishing impact fees for.

1. **Enact a Capital Improvement Program (CIP) (RSA 674:4-7 & 674:21).** While an up-to-date CIP is not explicitly required, it is strongly recommended to help assess the proper fee rate.
2. **Adopt impact fee zoning ordinance (RSA 675: 2-4)**
3. **Establish fee rate.** There is not set methodology for establishing fees, but the process for establishing the fees must be factual, proportionate to the development. Fees can be adjusted periodically, but not arbitrarily.
4. **Collect fees at time of occupancy permit OR use is allowed to begin.** Municipality must account for fees collected separately and they can be spent “solely for the capital improvements for which it was collected”. In other words, fees collected to expand the school cannot be used for roadway improvements.
5. **Fees not used for required improvements within six years (RSA 674:21, V(c) must be returned to the developer.** Administration of tracking these fees and identifying who to return them too can be a burden to municipalities.

Example communities: Eight out of 17 NH municipalities in the NH Coastal Zone have adopted impacts fees, with the majority limiting such fees to impacts to school facilities only. The full listing of municipalities with impact fees is available on NH Office of Planning and Development’s annual [Municipal Land Use Survey](#).

Off-Site Improvements:

Off-site improvements, also known as off-site exactions, are a method of requiring improvements determined necessary by a planning board for a development to occur, RSA 674:21, V(j) allows a municipality to charge a developer an "exaction" for off-site improvement for the occupancy of any portion of a development. Improvements are limited to roadway, drainage, sewer and water upgrades; the scope of improvements must be in a reasonable proportion to the proposed development. Establishing a proportional share for an off-site improvement for upgrading roadway, drainage, sewer and water facilities due to impacts from coastal hazards

Under RSA 674:21, V(j), planning boards have the authority to require off site improvements as part of the approval process of any land use application they have jurisdiction over. **Off-site improvements are determined on a case-by - case basis and do not require a municipality to have adopted a specific regulation.** Typically, procedures for establishing if off-site improvements are already found within a municipal site plan and subdivision regulations.

The following is language that can be included within a municipality's subdivision and site plan regulations to follow the state law language:

Exactions for Off-Site Improvements

1. Consistent with NH RSA 674:21 V(j), the Planning Board may determine that improvements to off- site public roads, drainage, water, and/or sewer infrastructure will be necessary for the occupancy of any portion of the development subject to subdivision and/or site plan approval. In such case, the applicant shall be required to pay their fair share for upgrading of the public facilities to an extent necessary to protect the public interest.
2. For the purposes of this Section, "off-site improvements" are those improvements necessitated by a development, but which are located outside the boundaries of the property that is the subject of a subdivision and/or site plan application.
3. The amount of any such exaction shall be a proportional share of the municipal improvement costs and one that is reasonably related to the benefits accruing to the development from the improvements financed by the exaction. The Planning Board, in consultation with the Department of Public Works, shall determine the necessary improvements and the appropriate exaction fee.
4. As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to bonding and timing conditions as may be reasonably required by the Planning Board.
5. Any exaction imposed pursuant to this Section shall be assessed at the time of Planning Board approval of the development necessitating an off-site improvement.
6. The Town shall refund the balance of any exaction funds that have not been appropriated for their dedicated purposes within six years of the date of collection.
7. The Planning Board shall have the discretion to accept an applicant-proposed donation as an alternative. The donation shall be utilized for the same purposes as an exaction fee, or for other transportation and/or utility-related projects, consistent with the Master Plan and/or Capital Improvement Plan. A donation would not be subject to a refund pursuant to Subsection 6 above.

HOW TO ADOPT THESE REGULATIONS:

The planning board is responsible for preparing and, in towns, holding public hearings on proposals to adopt or revise the zoning ordinance. RSA 674:1 outlines the duties of the planning board. RSA 674:1, V states that the Planning Board “may, from time to time, recommend to the local legislative body amendments of the zoning ordinance....”

In towns, a zoning ordinance or revision of the ordinance must then be adopted by ballot vote at Town Meeting.

In cities and town council towns where the municipal charter determines how a zoning ordinance is to be adopted or revised, a public hearing is still required for all zoning ordinances, and site plan regulations, and amendments

More information about the process of adopting regulations is available in the Adopting Regulations section of this guide.

SUGGESTED SUPPLEMENTARY INFORMATION AND RESOURCES TO COMPLEMENT THESE REGULATIONS:

The following are two state level funding mechanisms for municipalities to work cooperatively on larger scale resiliency projects related to planning, infrastructure investments, land conservation projects and historical resource conservation efforts. The legal ability for using funds acquired in the land use regulations presented in this model remains unclear, but may be feasible depending on the contractual language use via the voluntary cooperative agreements reference via following state laws.

Coastal Resiliency Funds (RSA 36:53)

In 2019, New Hampshire enacted RSA 36:53-a giving municipalities the ability to establish coastal resiliency funds to plan for and address the impacts of sea-level rise, storm surge and flooding. By working with Rockingham Planning Commission (RPC) and/or Strafford Regional Planning Commission (SPRC), municipalities can voluntarily enter into cooperative agreements to plan for and address current and future impacts. Coastal resiliency funds can be used for, but are not limited to, road projects, shared municipal facilities (such as water and wastewater systems), and other coastal mitigation and protection projects. The oversight of how coastal

resiliency funds could be used would include: 1) the directors of RPC and SRPC, 2) appointed elected official of a participating municipality from the RPC and SRPC regions, and 3) the chairs of the county delegation for Rockingham and Strafford counties.

Coastal Resiliency and Cultural and Historic Resources District & Funds (RSA 12-A:68 & 69)

In 2019, New Hampshire enacted RSA 12-A 68 and 69 giving municipalities, regional planning commissions and others the ability to establish coastal resilience and cultural and historic reserve districts and a funding mechanism. The district can include lands suitable and eligible as a reserve of sufficient elevation and distance from tidal and riverine waters for historic properties and other historic and cultural resources, including historic burial grounds. Funding can come from a variety of sources, including municipal, state and federal funds, non-profit donations, and private sources. The funds can be used for assessing historic resource vulnerability, for implementing adaptation measures that protect endangered cultural and historic resources, for the acquisition of land and the acquisition, removal, restoration, and placement of historic properties and other historic and cultural resources including historic burial grounds in danger of flooding from tidal and riverine waters when other adaptation measures are insufficient.

The oversight of the coastal resiliency and cultural and historic district would be conducted by a commission that includes up to 37 representatives made up of the following members: 1) representatives from RPC and SRPC, 2) municipal representative from each municipality with tidal waters, 3) two state senate members, 4) three state house members, 5) representative of NH Municipal Association, 6) representative of the Division of Historic Resources, 7) three representatives from historic resource protection non-profits, 8) representative of Historic New England, 9) representative of Southeastern Land Trust, 10) representative of the NH Old Graveyard Association, 11) one representative of each local historic district in a municipality that borders Great Bay Estuary or the Atlantic Ocean.

ADDITIONAL RESOURCES AND REFERENCES

The following are additional funding mechanisms that can be utilized to fund efforts related to coastal resilience and climate change related impact projects.

- Coastal Resilience Incentive Zone (RSA 79-E: 4-a)
- Capital Reserve Fund (RSA 35)
- Trust Funds (RSA 31:19-a)
- Municipal Finance Act – Issuance of Bonds (RSA 33)
- Utility Fees: Stormwater & Resiliency (RSA 149-I:6)