

ORDINANCE # 2021- _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LONG BEACH,
LAPORTE COUNTY, INDIANA RESTATING TITLE XV, CHAPTER 200, ET. SEQ.,
GENERALLY KNOWN AS THE LAKE MICHIGAN SHORELINE PRESERVATION
AND ENHANCEMENT OVERLAY ZONING DISTRICT**

WHEREAS, on June 10, 2002, the Town Council of the Town of Long Beach, LaPorte County, Indiana (the “Town Council”), adopted a Zoning Code of the Town of Long Beach, LaPorte County, Indiana (the “Town”), which is located at Chapter 154 of the Long Beach Town Code; and

WHEREAS, Chapter 154 of the Long Beach Town Code remains in full force and effect; and

WHEREAS, in accordance with Indiana Code § 36-7-4-600, et. seq., the Advisory Plan Commission of the Town has initiated an amendment to the Zoning Code to establish regulations concerning the installation of Shoreline Preservation Structures and removal of shoreline vegetation within the Town; and

WHEREAS, in conjunction with the Town’s 2016 Comprehensive Plan Update and in recognition that the economic and environmental well-being of the Town of Long Beach is directly related to the protection of its Lake Michigan shoreline and in recognition that the scenic views of Lake Michigan are one of our communities most valued assets; and

WHEREAS, the shoreline of Lake Michigan in Long Beach is a valuable natural resource that has for generations been enjoyed by the citizens of Long Beach and the State of Indiana as well providing significant economic value to Northwest Indiana..

WHEREAS, it is the intent of this Ordinance to allow property owners to protect their property while balancing the public interest by the conservation and enhancement of the natural shoreline environment and the adjacent Public Trust Lands; and

WHEREAS, this Ordinance has been drafted to protect the public health safety and welfare, preserve the natural scenic beauty and environmental health of Lake Michigan and the shoreline; and

WHEREAS, the Advisory Plan Commission and the Town Council have given reasonable regard to the provisions and considerations set forth in Indiana Code § 36-7-4-603; and

WHEREAS, the State of Indiana Supreme Court in Case No. 46S03-1706-PL-423 **has** affirmed that the State of Indiana owns in its sovereign capacity and holds in trust for the public all lands on the shore of Lake Michigan in the State of Indiana lakeward of the common law Natural Ordinary High Water Mark, whether or not submerged at any given time (“Public Trust Lands”), and that the State of Indiana has not relinquished its title to such lands, except as to certain parcels not adjacent to properties within the jurisdiction of the Town of Long Beach.

WHEREAS, a public hearing has been held before the Town of Long Beach Advisory Plan Commission, which has certified this proposal to amend the text of Title XV of the Zoning Code to the Long Beach Town Council; and

WHEREAS, public notice has been given in accordance with Indiana Code of all proceedings concerning this text amendment to Title XV of the Zoning Code; and

WHEREAS, the Long Beach Town Council concurs with its Advisory Plan Commission and has received this proposal regarding amending the text of the Zoning Code; and

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Town Council of Long Beach, Indiana as follows:

1. Chapter 154.200-154.299 is hereby added to the Town of Long Beach’s Title XV of the Zoning Code which chapter shall read as follows:

LAKE MICHIGAN SHORELINE PRESERVATION OVERLAY ZONING DISTRICT

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154.200 PURPOSE, INTENT, AND GENERAL APPLICABILITY

The Town of Long Beach is committed to protecting and preserving life and property as well as enhancing the natural resources of the Long Beach Coastal Zone and the Public Trust Lands of the State of Indiana in order to minimize to the greatest extent possible damage that may result from inappropriate development of environmentally sensitive areas. The Lake Michigan Property Shoreline Preservation Overlay Zoning District regulations are based on the Town’s determination, as expressed in its 2016 Comprehensive Plan, that:

- The economic, environmental, and community well-being of the Town of Long Beach, Indiana depend upon the preservation of the Town’s Lake Michigan shoreline.
- The Lake Michigan shoreline has unique natural physical, biologic, hydrologic, ecologic, cultural, historic, scenic, and recreational attributes that require protection and enhancement.
- Land development and redevelopment should not be conducted at the expense of these attributes.
- Pollution, impairment, and/or destruction of the shoreline areas within the Town’s jurisdiction must be minimized to conserve these attributes for future generations.

The provisions of this Ordinance are established with the following intent:

- Preserve traditional access to and the use of the Public Trust Lands of Lake Michigan as a public recreational resource for the citizens of Long Beach and the State of Indiana.
- Protect the integrity of the shoreline area that is a distinctive and valuable feature of the Long Beach community.
- Recognize the potential for coastal hazards to adversely affect life and property.
- Protect coastal property values by maintaining the attractive natural landforms, character and environment

- Protect the stability of the Lake Michigan Shoreline in a manner that reduces coastal erosion and, conserves the natural dune and beach environment. Prevent water pollution and damage to neighboring coastal properties and structures from activities and development that accelerate or contribute to erosion.
- Maintain the high quality of life along the shoreline by maintaining and restoring native vegetation, landforms and wildlife habitat.

The provisions of this Article XV, Section 154.200, *et. seq.*, shall apply to the repair, maintenance, and construction of Shoreline Protection Structures.

154.201 DEFINITIONS:

In addition to the definitions provided in other Chapters of Title XV of the Long Beach Town Code, the following definitions apply to the interpretation and application of this Ordinance. In the event there is conflict between this ordinance and other ordinances provided in the Code of the Town of Long Beach, the more restrictive ordinance shall apply---except where specifically noted.

“Accessory Structure ” means a detached structure---roofed or unroofed, surface or sub-surface---that is clearly incidental to, and found in connection with, the principal structure or use to which it is related and is located on the same zoning lot as the principal structure or use, including, but not limited to, patios, gazebos, swimming pools, garages, workshops, sheds, and carports.

“Coastal Engineer” A Professional Engineer authorized to provide services in the State of Indiana with experience in coastal engineering for projects on the shore of the Great Lakes. The Town of Long Beach shall maintain a list of pre-approved Coastal Engineers.

~~**“Coastal Engineer”** A Professional Engineer certified to provide coastal engineering services and experienced in coastal engineering for projects on the shore of the Great Lakes. The Town of Long Beach shall maintain a list of pre-approved Coastal Engineers.~~

“Coastal Planning Guide” refers to the publication “Coastal Hazards Planning Guidance for Indiana Coastal Communities,” Indiana Department of Natural Resources, July 2016.

“Coastal Slope” refers to the first major slope or greatest vertical drop north of Lake Shore Drive.

“Coastal Zone” see definition for Lake Michigan Shoreline Preservation Overlay Zoning District.

“Delineation Consultant” A consultant with the education, training, and experience to delineate the location of the Natural Ordinary High Water Mark of Lake Michigan on the shore according to the principles and methodology provided in the U.S. Bureau of Land Management’s 2009 “Manual of Surveying Instructions” (Sections 3-162 through 3-172), the U.S. Army Corps of Engineers’ Wetland Delineation Manual and Regulatory Guidance on “Ordinary High Water Mark Identification,” and the Indiana Supreme Court’s decree in Case No. 46S03-1706-PL-423. The Long Beach Office of the Building Commission maintains a list of pre-approved Delineation Consultants.

“Emergency” A situation that: (1) requires immediate action; (2) is induced by weather or high lake levels; AND (3) either: (A) creates the potential for imminent structural damage to private property in an area adjacent to Lake Michigan; or (B) threatens or creates an imminent risk to the public health, welfare, or safety in areas adjacent to Lake Michigan. This determination is to be made by the Long Beach Building Commissioner, and/or the ~~Commissioner’s~~ Commissioner’s designee, at each individual property.

“Lake Michigan Shoreline Preservation Overlay Zoning District” shall mean all lands located between the northern boundary of LSD in the Town of Long Beach and the natural OHWM of Lake Michigan. This is also referred to as the “Coastal Zone.”

“Lake Shore Drive (LSD)” shall mean the dedicated public way that is the entire width between the dedicated street boundaries of fifty-feet (50) in the Town of Long Beach. This includes paved and unpaved portions.

“LOMA Letter” is a letter of map amendment obtained from FEMA verifying an amendment to FEMA’s flood plain map.

“Natural Ordinary High Water Mark (NOHWM)” means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding area, ~~as established (and re-established as necessary to remain current) by the US Army Corps of Engineers. as provided in Clean Water Act regulations at 33 C.F.R. 328.3 and stated in the Indiana Supreme Court decision in Case No. 46S03-1706-PL-423.~~

“Principal Use Structure” means any primary living quarters, and any functional appurtenances to those structures such as septic systems and related infrastructure except roads, utilities, and accessory structures.

“Public Trust Lands” shall mean all lands lakeward of the ~~natural~~ NOHWM.

“Revetment” is a Protection Structure consisting of concrete blocks, stone rubble or cast concrete slabs over the slope of a shoreline protecting the slope from erosion and/or waves. See the “ Natural and Structural Measures for Shoreline Stabilization Brochure” (sagecoast/docs/SAGE.LivingShorelineBrochure-Print.pdf). (NOTE: Verify cites and confirm possession of reference docs.)

“Seawall” is a Protection Structure that is vertical or slanted parallel to the shoreline sometimes constructed of sheet piling but also concrete or geometric blocks.

“Shoreline Preservation Structure (Protection Structure)” includes any and all structures designed to prevent erosion, conserve sand and/or promote the development of landforms such as dunes as well as protect public and private properties adjacent to the Public Trust Lands. These structures are described in the Coastal Planning Guide, See, Shoreline Stabilization Techniques page 21, figure 19.

“Town Engineer” is a registered Indiana Professional Engineer selected by the Long Beach Building Commission to verify compliance with this ordinance regarding structural, Environmental, and other regulations.

154.202 COASTAL ZONE BOUNDARY

The Coastal Zone (Lake Michigan Shoreline Preservation Overlay Zoning District) shall apply as a mapped overlay zone. The boundaries of the Coastal Zone shall be applicable to all land lying northward of the northern boundary of the dedicated right-of-way known as Lake Shore Drive and extend across all underlying and existing zoning districts in Long Beach and to the **Natural NOHWM** of Lake Michigan as established (and re-established as necessary to remain current) by the US Army Corps of Engineers.

~~The Natural OHWM is the northern most boundary of any public or private property within the Town’s jurisdiction and subject to this Ordinance. Where the Natural OHWM is the northern boundary of a Zoning Lot, the Natural OHWM shall be established (and re-established as necessary to remain current) by a delineation performed by a Delineation Consultant in accordance with the principles and methods provided in the U.S. Bureau of Land Management’s 2009 “Manual of Surveying Instructions (Sections 3-162 through 3-172) and the U.S. Army Corps of Engineers’ Wetland Delineation Manual and Regulatory Guidance on “Ordinary High Water Mark Identification.”~~

154.203 Permissible Shoreline Preservation Structures and Specifications

~~The Town of Long Beach acknowledges that seawalls, revetments, retaining walls, groins, and other such structural methods designed with the intention of forestalling erosion also alter natural shoreline processes that result in a variety of negative effects on coastal resources, including but~~

~~not limited to effects on sand supply, public access, coastal views, natural landforms, and overall beach dynamics. See Coastal Planning Guide and “Natural and Structural Measures for Shoreline Stabilization,” developed with support and funding by NOAA and the US Army Corps of Engineers.~~

~~Only after the property owner and Coastal Engineer (post review and approval by the Town’s Engineer) establish that the proposed Protection Structure is in fact required and is the minimum necessary to reasonably preserve the shoreline and protect the property, complies with the terms of all Long Beach Town Ordinances and is in receipt of all applicable federal, state, county, and Town permit(s) and approval(s), shall a Building Permit for the construction of a Protection Structure be issued.~~

~~The following conditions shall apply to the issuance of Building Permits or variances within the Coastal Zone:~~

- ~~1. No Protection Structure or structure of any kind—except Town information signs—is to be located greater than 106.6’ lakeward from the northern boundary of Lake Shore Drive or lakeward of the Natural OHWM, whichever is most restrictive.~~
- ~~2. The installation of a seawall is not permitted as the first line of protection between Lake Michigan and the Principal Use Structure.~~
- ~~3. A seawall may only be installed between a revetment and the Principal Use Structure. It may not be installed greater than five (5) feet from the lakeward foundation of the primary structure and not greater than three (3) feet from the side foundation, footing or piling of that same primary structure. It may not extend into the side setback by more than three (3) feet.~~
- ~~4. A revetment may be installed on a private property for the purpose of protecting the property. Any such revetment shall be installed with the lakeward toe of the structure not to extend greater than 106.6’ from the northern boundary of Lake Shore Drive or lakeward of the Natural OHWM, whichever is most restrictive.~~
- ~~5. The slope of any revetment shall be 1.5:1 or less for dumped stone or rip rap and 1:5:1 or less for hand placed stone or rip rap. The stone size shall be based on the determination and recommendation of a Coastal Engineer.~~
- ~~6. The crest elevation of a Protection Structure shall not exceed the elevation of the existing grade with no fill. The height of a Protection Structure shall not exceed the lesser of 590’ or the current elevation.~~
- ~~7. The revetment may be constructed within the traditional side setback for the purpose of connecting to a neighboring Protection Structure with the permission of the abutting or adjoining neighbor.~~

The Town of Long Beach acknowledges that seawalls, revetments, retaining walls, groins, and other such structural methods designed with the intention of forestalling erosion also alter natural shoreline processes that result in a variety of negative effects on coastal resources, including but not limited to effects on sand supply, public access, coastal views, natural landforms, and overall beach dynamics. See Coastal Planning Guide and “Natural and Structural Measures for Shoreline Stabilization,” developed with support and funding by NOAA and the US Army Corps of Engineers.

Only after the property owner and Coastal Engineer (post review and approval by the Town’s Engineer) establish that the proposed Protection Structure is in fact required and is the minimum necessary to reasonably preserve the shoreline and protect the property, complies with the terms of all Long Beach Town Ordinances and ~~has provided is in receipt of~~ all applicable federal, state, county, and Town permit(s) and approval(s), shall a Building Permit for the construction of a Protection Structure be issued.

The following conditions shall apply to the issuance of Building Permits or variances within the Coastal Zone:

1. No Protection Structure or structure of any kind---except Town information signs---is to be located greater than 106.6’ lakeward from the northern boundary of Lake Shore Drive or lakeward of the ~~Natural Ordinary High Water Mark (NOHWM)~~, whichever is most restrictive.
2. ~~The installation of a seawall is not permitted as the first line of protection between Lake Michigan and the Principal Use Structure if determined in writing by a Coastal Engineer to be necessary and reasonable.~~
(RENUMBER...)
3. A new seawall may only be installed between a revetment and the Principal Use Structure. A new seawall must be installed as close as reasonably practicable to ~~may not be installed greater than five (5) feet from the~~ lakeward foundation of the primary structure and not greater than eighteen inches (18”) from the side property line, subject to Building Commission approval. ~~Except where the Contiguous Seawall Ordinance (See, Section 154.160) applies, a seawall may not extend into the side setback by more than eighteen inches (18”).~~ A new seawall may not extend into the side setback by more than eighteen inches (18”) unless connecting to an existing neighboring seawall, subject to the following additional requirements:
 - (A) neighboring property owner(s) have given their written consent to allow the new seawall to be connected to the existing seawall; and

(B) the resulting seawall structure will form a continuous barrier.

4. A revetment may be installed on a private property for the purpose of protecting the property. Any such revetment shall be installed with the lakeward toe of the structure not to extend greater than 106.6' from the northern boundary of Lake Shore Drive or lakeward of the ~~Natural Ordinary High Water Mark (NOHWM)~~, whichever is most restrictive.
5. The slope of any revetment shall be 1.5:1 or less for dumped stone or rip rap and 1:5:1 or less for hand-placed stone or rip rap. The stone size shall be based on the determination and recommendation of a Coastal Engineer.
6. ~~The crest elevation of a Protection Structure shall not exceed the elevation of the existing grade with no fill.~~ The height of a Protection Structure shall not exceed the height determined to be necessary by the Coastal Engineer. ~~lesser of 590' or the current elevation.~~
7. The revetment may be constructed within the traditional side setback for the purpose of connecting to a neighboring Protection Structure with the permission of the abutting or adjoining neighbor.

154.204 SITE PLAN AND ADDITIONAL STANDARDS FOR DEVELOPMENT ACTIVITIES WITHIN THE COASTAL ZONE

~~In addition to the usual site plan requirements set forth in Title XV of the Town Code, the following standards will be required in the Coastal Zone:~~

- ~~1. A site plan for Development within the Coastal Zone shall include a survey depicting the current location of the Natural Ordinary High Water Mark, as located, delineated, and certified by a Delineation Consultant approved by the Town. The site plan shall be accompanied by written evidence that the delineation of the Natural Ordinary High Water as depicted in the survey has been reviewed and determined to be an accurate representation by the U.S. Army Corps of Engineers.~~
- ~~2. The site plan must comply with the Town's Flood Hazard Areas Ordinance(s) as set forth in Title IV, Chapter 155 of the Town Code.~~
- ~~3. All required pre-/post-construction elevations shall be current (within thirty (30) days) and shall be certified on the site plan by a licensed Indiana Professional Surveyor. Pre-construction grades are to be maintained. However in the event a storm or other natural event causes damage to the existing topography, a property owner may only restore the damaged topography to the elevation existing prior to such storm or event. Except as otherwise allowed under the Town Code, sand shall not be moved to increase the view from any property nor shall it be removed from any property. Wind-blown sand may be removed from patios and other living areas; however, it may not be moved off the subject property nor moved into Lake Michigan or onto the Public Trust Lands.~~

~~All applicable authorizations and permits for access for heavy equipment to properties within the Coastal Zone and to the Public Trust Lands shall be obtained from the Town, the U.S. Army Corps of Engineers, and the Indiana Department of Natural Resources prior to the access or operation any heavy equipment within the Coastal Zone, and copies of all such permits or approvals shall be provided to the Town with the application for a Heavy Equipment access permit.~~

~~Heavy Equipment access permits must be obtained from the Town regardless of the method of access to the Coastal Zone. Photographs of the proposed construction site shall be submitted to the Building Commission before the access permit is issued. No work other than the work specified in the access permit application shall be performed. Permits are restricted to certain calendar days. Heavy equipment may remain within the Coastal Zone for no more than thirty (30) days. Extensions may only be granted for periods longer than thirty (30) days and in such case will only be effective between Labor Day and Memorial Day.~~

In addition to the usual site plan requirements set forth in Title XV of the Town Code, the following standards will be required in the Coastal Zone:

- ~~1. A site plan for Development within the Coastal Zone shall include a survey depicting the current location of the **Natural Ordinary High Water Mark (NOHWM)**, as established (and re-established as necessary to remain current) by the US Army Corps of Engineers. **as located, delineated, and Certified by a Delineation Consultant approved by the Town. The site plan shall be accompanied by written evidence that the delineation of the Natural Ordinary High Water as depicted in the survey has been reviewed and determined to be an accurate representation by the U.S. Army Corps of Engineers.**~~
2. The site plan must comply with the Town's Flood Hazard Areas Ordinance(s) as set forth in Title IV, Chapter 155 of the Town Code.
3. All required pre-/post-construction elevations shall be current (within ~~sixty (60)~~ **thirty (30)** days) and shall be Certified on the site plan by a licensed Indiana Professional Surveyor. Pre-construction grades are to be maintained. However, in the event a storm or other natural event causes damage to the existing topography, a property owner may only restore the damaged topography to the elevation existing prior to such storm or event. Except as otherwise allowed under the Town Code, sand shall not be moved to increase the view from any property nor shall it be removed from any property. Wind-blown sand may be removed from patios and other living areas; however, it may not be moved off the subject property nor moved into Lake Michigan or onto the Public Trust Lands.

4. All applicable authorizations and permits for access for heavy equipment to properties within the Coastal Zone and to the Public Trust Lands shall be obtained from the Town. ~~, the U.S. Army Corps of Engineers, and the Indiana Department of Natural Resources prior to the access or operation any heavy equipment within the Coastal Zone, and copies of all such permits or approvals shall be provided to the Town with the application for a Heavy Equipment access permit.~~

5. Heavy Equipment access permits must be obtained from the Town regardless of the method of access to the Coastal Zone. Photographs of the proposed construction site shall be submitted to the Building Commission before the access permit is issued. No work other than the work specified in the access permit application shall be performed. Permits are restricted to certain calendar days. Heavy equipment may remain within the Coastal Zone for no more than thirty (30) days. Extensions may only be granted by the Town for good cause shown ~~for periods longer than thirty (30) days and in such case will only be effective but will be limited to the period between Labor Day and Memorial Day. (NOTE: Discuss fee \$250-500 to cover inspections, etc.?)~~

154.205 PROTECTION STRUCTURE PERMIT REVIEW

Requirements:

1. Any property owner desiring to install a Protection Structure within the Town shall first apply for a Protection Structure Permit prior to beginning construction.
2. Application shall be made to the Town Building Commission.
3. A review fee of \$500 shall be due and payable at the time the application is submitted for review. The payment of the application fee does not guarantee issuance of a Protection Structure permit and the fee is nonrefundable.
4. A deposit of \$~~10,000~~ ~~7,500~~ shall also be payable at the time of application which shall be used to pay for the review and approval process performed by the Town's Coastal Engineer, Delineation Consultant, ~~and/or~~ Structural Engineer ~~and/or as determined necessary by the Building Commission~~. If the Town's expense is less than the \$~~10,000~~ ~~7500~~ deposit, the balance will be refunded. An overage will result in it being payable by the applicant to the town to be used to pay the engineers. The applicant shall be responsible for all fees of his chosen Coastal Engineer. This Coastal Engineer is to be chosen from a list approved by the Town and available from the Building Commission.
5. Forms and related materials for the Protection Structure application shall be available from the Town's Building Commission.
6. All applications must include:

- A. An original and five (5) copies of scale drawing(s), including topography elevations certified by a licensed Indiana Surveyor and site photographs of the Zoning Lot certified by a Coastal Engineer with Great Lakes experience that provide accurate and complete information.
 - B. A site plan and dimensions of the Zoning Lot. At minimum, the site plan must show the dimensions of the property, the length and location of the proposed Protection Structure, all setbacks, the 106.6' line, and the ~~Natural~~ NOHWM. The ~~Natural~~ NOHWM location is to be certified on the site plan by the applicant's surveyor and must conform with the latest determination by ~~applicant's Town approved Delineation Consultant and affirmed as accurate by the~~ U.S. Army Corps of Engineers. However, if the Building Commission in its sole discretion finds that the U.S. Army Corps of Engineers' delineation is outdated because of lake level changes since the last formal delineation, applicant shall be required to obtain an updated delineation in conformance with the U.S. Army Corps of Engineers' standard and shall be paid for out of the deposit provided for under Paragraph 4 of this Section.
 - C. ~~Soil boring are preferred and recommended but not required. If obtained, A the~~ soil borings report performed by a state licensed soil engineer and plans certified by a structural engineer ~~should be submitted.~~
 - D. Identification of the applicant's Coastal Engineer, Delineation Consultant (if deemed necessary by the Building Commission), and licensed Contractor registered with the Town who will be installing or otherwise constructing the Protection Structure, a statement of their respective experience and qualifications to delineated the ~~Natural Ordinary High Water Mark~~ NOHWM and to design and construct the proposed Protection Structure within the Coastal Zone, and a certification that each has read and will comply with this Ordinance ~~must be submitted with the Application.~~
 - E. All drawings must be drawn utilizing an industry standard engineering scale.
 - F. The distance of the proposed Protection Structure to any other existing Protection Structures on adjoining lots ~~must be shown on the plans.~~
 - G. ~~Subsections A-F, above, shall be certified by the applicant's Coastal Engineer and structural engineer.~~
7. Review Standards. Each applicant for the installation, construction or repair of a Protection Structure is required to demonstrate:
- A. The proposed Protection Structure has been designed to minimize erosion and other adverse impacts on other properties and the Public Trust and Lands while simultaneously protecting the subject property.

- B. The proposed Protection Structure involves the minimum shore hardening necessary to provide for the level of protection necessary to achieve the purpose and intent of this Ordinance.
 - C. Access to the lakeshore and Public Trust Lands at Town Beach Stops is not adversely affected.
 - D. The applicant's Protection Structure will not encroach on any neighboring private or public property or any conservation, drainage, utility, or any other easements of record.
 - E. The Protection Structure is the least likely alternative or option to cause a measurable increase in erosion, including lakebed erosion at the development site or at other locations along the shoreline of Coastal Zone.
 - F. The Protection structure is the least likely alternative or option to adverse effects upon natural protective features, existing erosion protection structures, and natural resources, such as significant wildlife habitats, including the transport of sand known as littoral flow.
 - G. All installations of a seawall are to comply with the Steep Slope Resolution #301 of the Town of Long Beach. The slope shall be measured at its steepest point and is not measured as the average slope of the lot.
 - ~~H. A certified statement of the Coastal Engineer that the Proposed Structure fully complies with the requirements of this Ordinance.~~
8. Additional Requirements.
- ~~A. Project plans must be prepared according to USACE Coastal Engineering Manual and certified by a Coastal Engineer from the Town's approved list. (NOTE: Adjust lettering of paragraphs)~~
 - B. The proposed Protection Structure must have reasonable probability of minimizing erosion on the immediate and adjacent properties for a minimum of 30 years.
 - C. A long-term maintenance plan developed by a Coastal Engineer ~~that includes at minimum including~~ specifications regarding how to maintain the integrity of the structure, shoreline and neighboring property. Same shall be recorded as a restriction and condition on the subject property to run with the land in perpetuity upon approval of the Application.
 - D. All necessary permits or other authorizations required by other local, state, and federal authorities, including, but not limited to, the Indiana Department of Natural Resources, Indiana Dept. of Environmental Management, U.S. Army Corps of Engineers, and FEMA must be secured.
9. Applications shall be reviewed and processed by the Building Commission in accordance with the provisions of this Ordinance.

10. After approval of the Building Commission, the Town may issue a Permit for the proposed Protection Structure.

154.206 EXCEPTION FOR EXISTING NONCONFORMING USES OR STRUCTURES

~~An exception shall be made for the repair or replacement of legally existing Protection Structures to their previous specifications. Additionally, an exception shall be made for the installation of a seawall within five (5) feet of an existing foundation of a property owner's Primary Use Structure if the foundation is determined to be more than 106.6' lakeward from the northern boundary of Lake Shore Drive but south of the Natural Ordinary High Water Mark provided that the all other requirements set forth in this Ordinance as well as the provisions of Title XV, Chapter 154, Section 154.125, *et. seq.* of the Town Code are met.~~

Upon application by a prospective permittee, an exception to certain provisions of the Shoreline Protection Zoning Overlay District Ordinance may be granted by the Building Commission if the foundation of the primary use structure is greater than 106.6' lakeward of Lake Shore Drive, a new seawall must be located as close as reasonably practicable to an that existing foundation of a property owner's Primary Use Structure.

~~(A) for the repair or replacement of legally existing Protection Structures if the Building Commission finds adequate evidence that the proposed Protection Structure will be: a) designed, constructed, and maintained so as to be as protective of the shoreline as the provisions of that provision of that Ordinance, b) will not be located lakeward of the existing structure; and c) will not be located lakeward the Natural Ordinary High Water Mark (NOHWM.) as demonstrated in the permit application by a delineation of the physical characteristics stated in the definition of "Natural Ordinary High Water Mark (OHWM)" in Section 154.201 and "Ordinary High Water Mark" in IC § 14-26-2.1(2) by a qualified Delineation Consultant.~~

~~(B) Upon application by a prospective permittee, an exception may be granted by the Building Commission from the requirement that the installation of a seawall be located no greater than five (5) feet from If the foundation of the primary use structure is greater than 106.6' lakeward of Lake Shore Drive, a new seawall must be located as close as reasonably practicable to an existing foundation of a property owner's Primary Use Structure if the Building Commission finds adequate evidence that the proposed Protection Structure will be: a) designed, constructed, and maintained so as to be as protective of the shoreline as that requirement, and b) the foundation is determined to be more than 106.6' lakeward from the northern boundary of Lake Shore Drive and c) the all other requirements set forth in this Ordinance as well as the provisions of Title XV, Chapter 154, Section 154.125, *et. seq.* of the Town Code are met.~~

154.206.1 STAIRS

- (A) The construction of new permanent stairs or the repair or replacement of legally, existing permanent stairs ~~that are above the Natural Ordinary High Water Mark NOHWM~~ are all strictly prohibited unless all applicable permits have been approved and issued by the Town. Stairs that protrude or encroach onto the public trust shall be subject to all federal, state and local requirements, and no permits subject to the Town's jurisdiction will be issued unless the property owner provides the Town with written authorization from appropriate governing bodies or agencies, including, but not limited to, the Indiana Department of Natural Resources and the Army Corps of Engineers. (NOTE: Discuss stairs over seawalls)
- (B) Construction or repairs of ~~S~~stairs over seawalls and onto the Public Trust property are not allowed. Stairs over dunes on properties without seawalls are permissible as these stairs tend to protect the natural dunes that protect lakeshore properties provided these stairs are above the NOHWM ~~Natural Ordinary High Water Mark~~ and all applicable permits have been approved and issued by the Town. Stairs that protrude or encroach onto the public trust shall be subject to all federal, state and local requirements, and no permits subject to the Town's jurisdiction will be issued unless the property owner provides the Town with written authorization from appropriate governing bodies or agencies, including, but not limited to, the Indiana Department of Natural Resources and the Army Corps of Engineers.
- (C) Notwithstanding any other provision in this Section, a permit must be obtained to construct, repair, or replace stairs regardless of the value of the project.

154.207 EMERGENCY REPAIRS

- (A) As of July 1, 2020, the Town Clerk shall accept Emergency Permit Applications pursuant to Indiana Code § 36-1-29(10) for the repair of an existing seawall or revetment or the construction of a new seawall or revetment on property owned by the permit applicant only if such application is:
- (1) Clearly marked on the cover page as an "EMERGENCY PERMIT APPLICATION",
 - (2) Submitted in both (i) electronic form via email to the Town Clerk and (ii) hardcopy to the Clerk in person during business hours; and
 - (3) Accompanied by payment of the required permit application fee (See, Section 154.205).
- (B) Upon receipt of a clearly marked Emergency Permit Application submitted ~~as plus~~ along with the deposit required by Subsection (A) above, the Town Clerk shall promptly:

- (1) Notify Town residents and homeowners by posting the Emergency Permit Application and all materials submitted with it ~~on the Town's website on the Town's website email list-serve list of the receipt of an Emergency Permit Application using the email list-serve system;~~ and
- ~~(2) Post the Emergency Permit Application and all materials submitted with it on the Town's website; and~~
- (2) Forward the Emergency Permit Application and all materials submitted with it to the Building Commissioner (or his designee) and all other members of the Building Commission.

(C) Upon receipt of an Emergency Permit Application from the Town Clerk, the Building Commissioner (or his designee) shall promptly make initial determinations of the following and forward such determinations to the Building Commission:

- (1) Whether the application includes ~~Certified~~ information and evidence demonstrating that an "emergency" situation exists pursuant to the factors stated in the definition of "emergency" in Section 154.201; and
- (2) Whether the permit application is complete, i.e., contains ~~Certified~~ information and evidence addressing compliance with each applicable provision of this Ordinance and each other applicable Town ordinance, ~~including, but not limited to:~~
 - ~~(a) A delineation of the location of the Natural Ordinary High Water Mark (OHWM), as defined by the characteristics stated in Section 154.201 and IC § 14-26-2.1(2), by a Delineation Consultant with the qualifications stated in Section 154.201 and utilizing the techniques and guidance stated therein; and~~
 - ~~(b) A Certified and to scale plat or sealed drawing of the property and proposed seawall or revetment repair or construction which depicts the location of the delineated Natural Ordinary High Water Mark (OHWM) and (i) in the case of a new seawall or new revetment, shows that the proposed seawall will be located landward of the Natural Ordinary High Water Mark (OHWM), or (ii) in the case of an existing seawall or revetment, shows that the seawall repair, revetment repair or construction is (A) landward of the Natural Ordinary High Water Mark (OHWM), and located entirely on the applicant's private property as required by IC § 14-26-2.1(10), and (B) if the existing seawall is in the waters of Lake Michigan, landward of, and as close to, the existing seawall or revetment as reasonably possible as required by IC § 14-26-2.1(11).~~

(D) If the Building Commissioner determines that an application demonstrates an emergency and the application is complete pursuant to Subsection (A) above, the Building Commission shall, within ~~ten~~ (10) Business Days, hold a Building Commission

Meeting and make a final determination to approve or deny the Emergency Permit Application unless it is determined at such meeting by the Building Commission that no such valid emergency exists. ~~based on each and all of the following:~~

- ~~(1) Whether the Building Commission concurs or does not concur in the Building Commissioner's (or his designee's) initial determination of the existence of an "emergency" and of the completeness of the permit application;~~
- ~~(2) In the case of the proposed construction of a new or replacement seawall or revetment, whether the property on which the proposed new seawall or revetment is to be located is landward of the Natural Ordinary High Water Mark (OHWM) and located entirely on the applicant's private property; or~~
- ~~(3) In the case of the repair of an existing seawall or revetment, whether the property on which the proposed repaired seawall or revetment is to be located is (a) landward of the Natural Ordinary High Water Mark (OHWM) and located entirely on the applicant's private property as required by IC § 14-26-2.1(10), and (b) if the existing seawall is in the waters of Lake Michigan, is landward of, and as close to, the existing seawall or revetment as reasonably possible as required by IC 14-26-2.1(11); and~~
- ~~(4) Whether the application contains certified information and evidence adequate to demonstrate that the proposed repaired or new seawall or revetment will comply with all applicable provisions of the Shoreline Protection Zoning Overlay District ordinances and all other Town ordinances.~~

~~(E) Unless the Building Commission finds adequate evidence to concur in determinations of the Building Commissioner and also finds that: (1) the proposed seawall or revetment will be located entirely landward of the Natural Ordinary High Water Mark (OHWM) and on the permit applicant's private property, and (2) that the Emergency Permit Application contains Certified information and evidence demonstrating compliance with each applicable provision of this Ordinance and each other applicable Town ordinance, the Building Commission shall, within the 10 Business Days set forth in Subection (D) above, deny the Emergency Permit Application.~~

~~(E)~~ Pursuant to IC § 36-1-29(15), the permit applicant may submit not more than one (1) completed reapplication for an emergency repair or construction of a seawall or revetment that lists reasons why the Building Commission should approve its application. The provisions of Subsections (A) through ~~(E)~~ above shall govern the review of such reapplication.

~~(F)~~ If the Building Commission overrules the Building Commissioner and determines that the situation is not an emergency, the permit application will be treated as nonemergency application.

154.208 MISCELLANEOUS PROVISIONS (NOTE: renumber; previously 154.207)

(a) This Ordinance and the below listed Chapters of the Long Beach Town Code are interrelated and should be understood before preparing any plan submissions:

- Ch. 34.30 Enforcement of Town Ordinances on Properties in the Coastal Zone
- Ch. 154.020 Definitions
- Ch. 154.048 Maximum Building Height
- Ch. 154.060 Waterfront Setback And View Protection
- Ch. 154.111 Sand mining and mineral extraction prohibited
- Ch. 154.112 Permit required for earth changes and to alter topography
- Ch. 154.125, *et. seq.* Nonconforming Uses and Structures
- Ch. 154 Appendix A, Zoning District Regulations (Note: In the R-1 Zoning District, the 20' rear setback shall not apply to Protection Structures that otherwise fully comply with the terms of this Ordinance)
- Ch. 155 Flood Hazard Areas

(b) All costs associated with the retention of and services to be provided by the Town's engineer and the applicant's engineer(s), including, but not limited to, coastal, geotechnical, and structural engineers and Delineation Consultants, shall be borne solely by the applicant.

(c) The Town will maintain and provide a list of Coastal Engineers and Delineation Consultants which shall be reviewed and updated from time to time and shall serve as the exclusive list of acceptable engineers to provide services under this Ordinance. It is available in the Office of the Building Commission,

154.298 LAW ENFORCEMENT POLICIES

Enforcement of Chapters 154.201 thru 154.299 shall be in accordance with Title III, Chapter 34, Section 34.30 of the Town Code.

154.299 PENALTIES FOR NON-COMPLIANCE

Any person violating any of the provisions of this Ordinance, including unapproved alteration of the topography, shall be subject to the following penalties:

(a) Fines.

1. One Thousand Dollars (\$1,000.00/day) for the first violation;
2. Two Thousand Five Hundred Dollars (\$2,500.00/day) for the second violation;

3. Seven Thousand Five Hundred Dollars (\$7,500.00/day) for the third and each subsequent violation

(b) Revocation of Contractor Registration. If a permit holder or contractor is found to be in knowing violation of this Section, the permit and the contractor's registration with the Town shall be revoked subject to any administrative appeal provided for under the Town Code.

(c) Each day that any violation continues shall be considered a separate violation punishable as provided in this Section.

(d) In view of the critical role that the natural dunes play in the protection of the Town's Lake Michigan shoreline, any non-permitted alteration of the topography or sand moving beyond what is allowed in this Ordinance will require, at the violating person's or entity's expense, restoration to the pre-violation condition, including restoration of vegetation. Additionally, any person or entity that violates this provision shall incur a Two Hundred Fifty Dollar (\$250) fine. This fine will accumulate daily at that same amount until full restoration, including, but not limited to, replanting of vegetation, is completed as determined and required by the Town and shall be in addition to other applicable fines or penalties for violations of other sections of the Town Code. (Note: Discuss increase of fines...Min. \$500?)

The Sections of this Ordinance shall be codified and made part of the Town of Long Beach Code of Ordinances. ~~and all sections and subsections may be renumbered or re-lettered as necessary to achieve such purpose.~~

It is the intent of the Town Council of the Town of Long Beach, LaPorte County, Indiana, and is hereby provided, that if any section, subsection, sentence, clause or phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

This Ordinance shall become effective upon adoption by the Town Council and publication as required by Indiana Code.

ALL OF WHICH IS PASSED AND ADOPTED by the Town Council of the Town of Long Beach, LaPorte County, Indiana, this _____ day of _____, 2020.

LONG BEACH TOWN COUNCIL

By:

Robert LeMay, President

Nicholas Meyer, Vice-President

John Kocher

Mary Lou McFadden

John Wall

ATTEST: _____ Date: _____
William DeFuniak, Clerk-Treasurer