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Are You Ready for Detroit's Shoreline Protection Ordinance?

Client Alert

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Effective July 1, 2022, owners of property along Detroit waterways are required to comply with the City of Detroit's new Shoreline Protection Ordinance. The ordinance requires anyone who owns property abutting a waterbody, such as the Detroit River, that has a waterbody barrier to register the property with Detroit's Buildings, Safety Engineering, and Environmental Department ("BSEED") and obtain a Certificate of Registration of Waterbody Barrier. Single and two-family residences and publicly owned recreational properties are excluded from this requirement. The ordinance broadly defines "waterbody barrier" to include any human-placed material used to "armor the shorelines, streambeds, bridge abutments, pilings, and other shoreline structures against scour, water and wave or ice erosion such as seawalls, dykes, and riprap." The ordinance does not require a waterbody barrier to be built where one does not currently exist. BSEED is required to maintain a registry of property owners and waterbody barriers governed by the ordinance.

BSEED is developing the required application form, which must be submitted by the property owner along with a "seawall report" addressing the structural integrity of the "waterbody barrier." A "seawall report" is defined as a report prepared by a licensed professional civil engineer with relevant experience that provides "data" on the structural integrity of the seawall. The seawall report requirement includes the identification of the presence of a breach, structural issues with respect to the specific use or intended use of the property, as well as structural issues necessitating immediate repair and repair within the next five years. The application must also include a maintenance and repair schedule for any structural issues identified in the report.

The ordinance requires the application to indicate whether the property is a "facility" as defined pursuant to Part 201 of NREPA or has known soil or groundwater contamination above applicable

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Part 201 or 213 criteria. The application must include copies of any documentation of remedial investigations or remedial response actions taken. The Detroit Regional Chamber attempted to include in the ordinance language clarifying that this information applies only to the area abutting the waterfront, but the City declined to add such language. A geotechnical report will also be required for properties with bulk or heavy equipment utilization, or where remediation, redevelopment, restoration, or construction is taking place. The property owner is also required to inform BSEED of any changes in the information submitted in connection with the application within 10 days of the change. Of course, there will also be a fee associated with the permit application.

Seawall and geotechnical reports submitted with the application must be updated and submitted to BSEED every five years thereafter, although BSEED may waive the requirement at its discretion. No guidance is provided on how this waiver will be granted. However, during negotiations with the Chamber on the drafting of the ordinance, BSEED indicated that by way of example, new seawalls and seawalls that were built to last many decades may require less frequent inspections. In addition, property owners may be able to submit a Status Update Report instead of an updated geotechnical report in certain circumstances.

In the event of an emergency condition, such as a shoreline breach, flooding, or collapse, the property owner is required to immediately notify BSEED and provide a report with more detailed information as set forth in the ordinance within 48 hours of submitting the initial notification. The ordinance requires property owners reporting an incident pursuant to the ordinance's emergency provisions to test for contaminants that may have been released into a waterbody with downstream drinking water intakes or at entry points to any distribution system downstream of the property. Property owners will be responsible for any costs to remediate any release of contaminants including the cost to remedy any impact to potable water sources. The City is required to post the results of its review of information about any reported incident and issue a public notice to alert residents that a contaminant may have been released into the waterbody. The Chamber advocated for the City to simply refer to the state website containing this information so as to avoid conflicting information on two different government websites. The City, however, declined to make the change to the draft ordinance. BSEED is also required to inspect the site, update information on its website, and notify the public of any negative impacts on fish and/or wildlife.

BSEED must also provide a report every two years to the City Council, Office of Sustainability, and the Mayor outlining the state of waterbody barriers in the City.

These are just a few highlights of the new ordinance. If you are the owner of property abutting a waterbody in the City of Detroit, now is the time to start determining whether the ordinance applies to you and what steps are required for you to comply.

Beth Gotthelf

248.258.1303

gotthelf@butzel.com

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Susan Johnson

248.258.1307

johnsons@butzel.com