Decision-Making Roles

Who is responsible for our Hudson River shorelines?
Who do I need authorization from?

- Federal
- State
- Local
- Land Owner
Federal

• U.S. Army Corps of Engineers
  – Section 10 Rivers and Harbors Act 1899
    • Regulates all structures in Navigable Waters of the United States
      – Up to Mean (ordinary) High water of water bodies and connected wetlands
  – Section 404 Clean Water Act
    • Regulates discharges into Water of the United States
      – Up to Spring High water
    • Ongoing argument over what this means

• Other federal resource agencies (needed when over a certain threshold)
  – FWS
  – NMFS
NYS Permission for Federal Permit

• Coastal Consistency Certification (CZMA)
  – Projects w/in or affecting NYS Coastal Area

• Water Quality Certification (only for 404 permits) (CWA)
  – NYS water quality standards

• Section 106 Consultation (NHPA)
  – Historic resources
State Authorizations/Permits

• NYS DEC

• NYS OGS

• NYSOPRHP
Local Authorizations

• Building permits
• Zoning
• Site plan review
• Local consistency review (with LWRP)
• Surface water use and structure local laws
Land Owner Authorization

• Applicable if a private entity owns the property you wish to occupy/encroach
• Could be municipal
Army Corps of Engineers

- Nationwide Permits
- Regional General Permits/SPGP
- Letter of Permission
- Individual Permits
Nationwide Permits (new 2017)

• ~50 categories of minor activities that the ACOE authorizes with minimal direct oversight (maintenance, bank stabilization)
  • conditions and PCN’s may apply

• Water Quality Cert. and Coastal Consistency Cert. may add additional layers of NYS review
Letter Permission

• Abbreviated Review Process for smaller projects
  – ACOE District Specific procedures
  – Requires specific data from applicant
  – Imposes certain general conditions
Individual Permit

- Full review for large scale projects
- Public notice requirements
- Resource agency collaboration
- Imposes project specific conditions
Water Quality Cert.

• Required for a federal permit to be issued
• NYS DEC certifies that the proposed activity would not violate NYS’s water quality standards
• Usually is done in conjunction with other NYS DEC permits
Coastal Consistency Certification

• Required for a federal permit to be issued w/in or affecting the NYS Coastal Area
• Applicant certifies to NYS DOS that the activity will not be inconsistent with NYS’s 44 coastal policies or applicable LWRP Policies
• Cannot take longer than 6 months
The Coastal Area

- All tidal waters (Hudson River up to Troy)
- Lakes Ontario and Erie
- St. Lawrence and Niagara Rivers
- Certain tributaries to these waters
- Roughly 1000 feet inland from these waters
  - Generally follows a road, park boundary or natural feature
Coastal Consistency Cert. (Cont.)

- Special Management Areas
  - LWRP
  - SASS
    - Scenic quality
  - SCFWH
    - Important habitats designated to protect a specific area
Coastal Consistency Cert. (Cont.)

• General Concurrence

• Full Review
  – Concurrence
  – Objection
Section 106 Consultation

• NYSHPO review required for federal permit to be issued
State Authorizations

• NYS DEC
  – Protection of waters
    • Disturbance of bed/bank
    • Docks and mooring
      – Docks under 4k square ft exempt (restrictions apply)
    • Excavation/fill
  – Freshwater Wetlands
    • Specific mapped wetlands 12.4 acres or more (generally)
  – Tidal Wetlands
    • Only south of Tappan Zee Bridge
  – SEQR/UPA
    • Procedural and timeline requirements
  – SWPPP/E&SCP
  – E & T Species (incidental take)
State Authorizations

• NYS OGS (The Landlord)
  – OGS holds title to the majority of the land under water (others include OPRHP, NYSDEC, NYSDOT, L.I. Towns)
  – Authorization is a conveyance (sale)
  – Docks under 4000 square feet are exempt (restrictions apply)

• NYSOPRHP
  – Floating objects
Local Authorizations

• Building and zoning
• Site plan review
• Other local laws
  – wetlands
• Municipal Consents
  – When another public entity owns land the project will occupy
• Local consistency review (with LWRP)
  – Advisory to DOS and others state entities
• Surface water use and structure local laws
  – Town cities and villages can generally regulate surface water use w/in municipality and outside municipality w/in 1500 ft from shore and structures within municipality and sometimes outside of municipality w/in 1500 ft from shore (with legislative or SOS authorization with HMP)
Case Study – Private Landowner repairing dock and stabilizing shoreline on Hudson River
Dock Repair

• Assumptions
  – Legal
  – Repaired with no increase in footprint
  – Reasonable size

• ACOE – NW 3 (maintenance)
  – Needs PCN if removing debris from outside the immediate vicinity of the structure or expanding
  – Needs PCN in certain EFH and NMFS situations
Dock Repair

• Water Quality Certification
  • Not needed – blanket approval (general conditions met) ie not in tidal wetlands

• Coastal Consistency Certification
  – Not needed – blanket approval unless
    • In tidal wetland
    • Any waterward expansion

• DEC permits – not needed unless over 4k sqft (restrictions apply) or in tidal wetland
Shoreline Stabilization

• ACOE NW 13 and new NW 54 (living shore)
  • PCN needed if over 500 ft, EFH and NMFS restrictions

• Water Quality Certification
  – Not needed – blanket approval (subject to conditions ie tidal wetlands)

• Coastal Consistency Certification
  – Individual review required
Shoreline Stabilization

• DEC
  – Excavation and Fill
  – Tidal Wetlands

• NYS OGS
  – May need to get title/license from State depending on scope
Why?

• Coastal Policies 11-17 (generally) require non structural methods
  – Demonstrate need
  – Consider relocation of receptor
  – Justify occupying public space
  – Consider effects on adjacent properties
Case Study – Commercial Marina – Maintenance with no expansion
Go ahead

• See conditions in NW 3
Case Study – Large shoreline owner looking to develop
More substantive review

- Depends on what natural resources are affected.
- Appropriateness of development
- Public Access should be provided
- Types of shoreline treatments
  - Native, living shoreline, rip-rap, bulkhead
- Change the development to utilize the location, not the other way around
Case Study – Private owner looking to respond to flooding
Statewide PGP

• Authorizes specific repair actions in response to disaster declarations (expected shortly)
Defense/Accommodation/Relocation

• Shoreline treatments
  – Continuum of options depending on the appropriateness of upland use

• Site development that can handle periodic inundation
  – Park, relocate utilities to higher floors

• Remove receptor
  – Investment doesn’t justify return
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