



**Office of Planning
and Development**

Decision-Making Roles

**Who is responsible for our
Hudson River shorelines?**

An Office of New York Department of State

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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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