

# ENVIRONMENTAL LAW IN NEW YORK

ARNOLD & PORTER

  
MATTHEW  
BENDER

Volume 9, No. 5

May 1998

## Coastal Zone Management in New York

by Matthew A. Sokol<sup>1</sup>

### I. INTRODUCTION

New York State has one of the most diverse and unique coastal environments in the United States. Together, the coastal areas of the Atlantic Ocean, Long Island Sound and Lakes Ontario and Erie, combined with an abundance of smaller waterbodies, total more than 5000 miles of shoreline.<sup>2</sup> Indeed, such a wealth of coastal area makes New York rich in natural, cultural and economic resources. However, the use and enjoyment of coastal resources has not come without a price. New York coastal waters have shared in the stress experienced by many other coastal areas in the U.S.

In 1990, an estimated 132 million people (53% of U.S. population) lived within 50 miles of a coast.<sup>3</sup> That number is expected to increase significantly over the next 20 years.<sup>4</sup> An increasing coastal population, as well as the commercial, tourist, and residential building industries, have placed a tremendous strain on coastal resources. For example, commercial fishing in the U.S. is a multi-billion dollar industry that has plainly out-fished many coastal ecosystems. Recreational boating has also burdened coastal resources. In 1995, an estimated 77 million recreational boaters using more than 16 million boats took to U.S. waters.<sup>5</sup> In addition, natural processes such as physical erosion, chemical and biological processes and climactic changes create an ever-changing and unstable shoreline.<sup>6</sup>

Taken together, these natural, social, and economic factors contribute to a list of coastal problems such as pollution, erosion, salt intrusion, flooding, habitat degradation, loss of biodiversity and economic stagnation.<sup>7</sup> Without adequate legislation to

protect and develop the coastline in a responsible and prospective way, coastal areas will continue to be degraded, and the characteristics that have made shorelines so attractive will be damaged irreparably.

This article examines the existing legislation aimed at protecting New York's coastal area, and explores the relationship  
(continued on page 71)

### IN THIS ISSUE

#### LEGAL DEVELOPMENTS

◆ Asbestos . . . . .	66
◆ Hazardous Substances . . . . .	66
◆ Insurance . . . . .	67
◆ Land Use . . . . .	67
◆ Lead . . . . .	68
◆ Mining . . . . .	68
◆ Noise . . . . .	68
◆ SEQRA/NEPA . . . . .	68
◆ Solid Waste . . . . .	68
◆ Toxic Torts . . . . .	68
◆ Water . . . . .	69
◆ Wetlands . . . . .	69
◆ Wildlife . . . . .	69

NATIONAL DEVELOPMENTS . . . . .	69
---------------------------------	----

NEW YORK NEWSNOTES . . . . .	70
------------------------------	----

UPCOMING EVENTS . . . . .	70
---------------------------	----

WORTH READING . . . . .	71
-------------------------	----

May 14-15, 1998

"Hazardous Substances and Male Reproductive Health," jointly sponsored by the Mount Sinai School of Medicine, the National Institute of Environmental Health Sciences, Superfund Research Program and the New York City Academy of Medicine, New York City. Information: (212) 241-4785.

May 15, 1998

"Second Annual Environmental Capital Forum," New York City. Sponsored by the Environmental Business Association and Environmental Capital Network. Information: (518) 276-2164.

May 18-22, 1998

"Summer Institute in Environmental Law," New York University. For course information: Professor R. Zimmerman (212) 998-7432.

May 19-20, 1998

"Environmental Finance Center Innovation & Privatization Conference," Syracuse University. Sponsored by the Environmental Business Association and Syracuse University. Information: (518) 276-2164.

June 9-12, 1998

"Summer Institute in Risk Management in Environmental Health and Protection (Including Quantitative Risk Assessment)," New York University. For course information: R. Zimmerman (212) 998-7432.

June 12, 1998

"Current Issues at EPA Region II," Association of the Bar of the City of New York. Co-sponsored by the American, New York State, New York City, and New Jersey Bar Associations and EPA Region II. Information: Dolia Christoffersen, (212) 715-1191.

June 17-19, 1998

"11th Annual New York State DEC Pollution Prevention Conference: Still Making A Difference," sponsored by the New York State Department of Environmental Conservation, Albany. Information: (518) 457-2570.

July 10-11, 1998

"Integrating the Regional Forest—From Street Trees to Watersheds," Hofstra University, Long Island. Sponsored by Hofstra University and DEC's Forestry Division. Information: (518) 457-7370.

October 23-25, 1998

"New York State Environmental Law Section Annual Meeting Program: Fall Meeting," Hancock, Massachusetts. Sponsored by the New York State Bar Association. Information:

Lisa Bataille (518) 463-3200 or <http://www.nysba.org/sections/environ/links.html>.

## WORTH READING

Michael B. Gerrard, "Emerging Statutory and Constitutional Tools for States to Resist Federal Environmental Regulation," *Envtl. L. Rep.*, March 1998, at 10127.

Mark Green, "Lead & Kids: Why Are 30,000 NYC Children Contaminated?" *Public Advocate for the City of New York*, Feb. 2, 1998.

Sandara Frinton, "Power Play: Who's Coming Out Ahead Under Deregulation?" *Empire State Rep.*, (Feb. 1998), at 21.

Jenny M. Heumann, "Recycling Facility of the Month: Trash to Art" [New York City's Materials for the Arts Program], *Waste Age*, Feb. 1998, at 57.

New York State Department of Environmental Conservation, "Information for Applicants and Application for State Assistance Payments for Dam Safety Projects" (Clean Water/Clean Air Bond Act of 1996 Dam Safety Projects, Jan. 1998).

New York State Department of Environmental Conservation, "Information for Applicants and Application for State Assistance Payments for Flood Control Projects" (Clean Water/Clean Air Bond Act of 1996 Flood Control Projects, Jan. 1998).

Charles J. Orlebeke, *New Life at Ground Zero: New York, Home Ownership, and the Future of American Cities*, The Rockefeller Institute Press (1997).

Fred Siegel, *The Future Once Happened Here: New York, D.C., L.A., and the Fate of America's Big Cities*, The Free Press (1997).

Jeffrey Wells, "Important Bird Areas: Protected under New State Law," *New York State Conservationist*, Vol.52, No. 4 (Feb. 1998), at 28.

Ann Vileisis, *Discovering the Unknown Landscape: A History of America's Wetlands*, Island Press (1997).

## Coastal Zone Management in New York

(continued from page 65)

between New York's Waterfront Revitalization and Coastal Resources Act (WRCRA) and both federal and local coastal zone policies. In addition, the association between local waterfront revitalization plans and existing land use policies is analyzed. Because New York's coastal policy is derived from, and in many ways dependent on, federal coastal zone legislation, the Coastal Zone Management Act (CZMA) is treated first.

### II. THE COASTAL ZONE MANAGEMENT ACT OF 1972

#### A. Background

Increasing concern over the plight of U.S. coastal areas, as

well as an in-depth report on coastal areas conducted by the Commission on Marine Science, Engineering, and Resources (the Stratton Commission), prompted Congress to enact CZMA in 1972.<sup>8</sup> The Stratton Commission stated that "coastal pollution is a national problem arising from the piecemeal development of coastal ecosystems without an overall strategy for comprehensive coastal management."<sup>9</sup> Further, the Commission stated that the coast is "in many respects, the Nation's most valuable geographic feature."<sup>10</sup>

Congress recognized that coastal zones were "rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value" and that "state and local institutional arrangements for planning and regulating land and water uses in coastal areas [were] inadequate."<sup>11</sup> After several failed attempts,<sup>12</sup> CZMA was the first piece of *comprehensive* federal legislation to deal with the issues concerning coastal areas in the United States.

### B. Scope

The CZMA covers 35 states and territories, including Puerto Rico, the Virgin Islands, Guam, the Commonwealth of Northern Mariana, the Trust Territories of the Pacific Islands, and American Samoa.<sup>13</sup> Water bodies which have coastlines subject to CZMA include the Atlantic, Pacific and Arctic Oceans, the Gulf of Mexico, Long Island Sound, and the Great Lakes.<sup>14</sup> The CZMA defines a "coastal zone" as coastal waters and adjacent shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.<sup>15</sup> In the five Great Lakes, the coastal zone extends to the international boundary. In all other areas, it extends to the outer limit of state title under the Submerged Lands Act.<sup>16</sup>

CZMA's intent is not to stop development in the interest of coastal conservation. CZMA does focus on the coastal environment, but it also advocates the development and use of shoreline areas. CZMA encourages responsible economic, cultural and recreational growth in coastal zones.<sup>17</sup> The Stratton Commission noted that any coastal zone management program should emphasize "fostering the widest possible variety of beneficial uses so as to maximize net social return."<sup>18</sup>

### C. Focus on State Administration

Drafters of CZMA realized that in order for a coastal management program to be successful, administration needed to take place at a local, rather than a national, level.<sup>19</sup> Since many of the problems surrounding coastal areas are geographically specific, drafters reasoned that each state should be in control of its own policy. Thus, CZMA did not create a centralized federal agency to dictate coastal zone management, but rather established a process for the development of state coastal zone management programs.<sup>20</sup> Although participation in CZMA is not mandatory, in order to encourage states to implement a Coastal Management Program (CMP), CZMA provides two key incentives. First, it offers states that meet consistency requirements effective regulatory control of their coastal areas. Second,

it provides for federally funded development and administrative grants.

The federal consistency, or "reverse preemption,"<sup>21</sup> requirement allows states to better control the activities of all state agencies and "relevant federal agencies" that are active in coastal areas.<sup>22</sup> CZMA allows each state to be the lead administrator of its CMP. According to the Office of Coastal Resource Management (OCRM),<sup>23</sup> "[f]ederal consistency is the CZMA requirement that federal actions that are reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a coastal state's or territory's federally approved coastal management plan."<sup>24</sup> Further, OCRM states that "[t]he objective is to ensure that federal agencies and applicants for federal approvals and funding adequately consider and comply with state CMPs. . . . The key to effective and efficient consistency actions is early coordination and regular consultation between CMPs, federal agencies, and applicants."<sup>25</sup> It is each state's obligation to ensure that all local, regional, and federal activity is consistent with its CMP. The federal government, through OCRM, works with all state lead agencies to ensure that consistency policies are followed. The OCRM also provides states and federal agencies with technical assistance and mediates consistency disputes between states and federal agencies.<sup>26</sup>

Federal funding provides an important impetus for states to enact a CMP. CZMA provides two types of funding development grants and administrative grants. Under the most recent amendments to CZMA,<sup>27</sup> development grants allow states without an approved CMP to receive up to \$200,000 a year (provided states match at a 4:1 federal-to-state ratio), up to a total of four years.<sup>28</sup> Development grants are used by the states to establish a federally approved CMP. To remain eligible, a state must remain consistent in carrying out its development objectives. After a state's program has been federally approved, it is eligible to receive annual administrative grants. Again, each state with an approved program is required to provide matching funds, the amount of which will vary according to when the state program was adopted.<sup>29</sup>

### D. State Coastal Management Requirements Under CZMA

In order for a state to gain federal approval, its program must, among other things, contain the following elements:

- (1) an identification of the boundaries of the coastal zones subject to the management program;
- (2) a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters;
- (3) an inventory and designation of areas of particular concern within the coastal zone;
- (4) an identification of the means by which the state proposes to exert control over the land uses and water uses referred to in (2), including a list of relevant state

constitutional provisions, laws, regulations, and judicial decisions;

- (5) broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority;
- (6) a description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, area-wide, state, regional, and interstate agencies in the management process;
- (7) a definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value;
- (8) a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities; and
- (9) a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.<sup>30</sup>

In addition, a state must follow all rules and regulations issued under CZMA and seek full participation of all relevant federal and local agencies. A state must also ensure that it has sought input from public and private groups and individuals in developing its coastal program.<sup>31</sup>

In 1990, Congress passed the Coastal Zone Act Reauthorization Amendments (CZARA) to deal with modern problems in the coastal zone. Realizing the "clear link between coastal water quality and land use activities along the shore[.]" Congress aimed CZARA at controlling upland factors that significantly affect coastal areas, specifically nonpoint source pollution.<sup>32</sup> In efforts to abate upland pollution, CZARA requires states and territories with approved CMPs to develop Coastal Nonpoint Pollution Control Programs.<sup>33</sup>

## II. NEW YORK WATERFRONT REVITALIZATION AND COASTAL RESOURCES ACT

### A. General Policies

The New York State Legislature passed the Waterfront Revitalization and Coastal Resources Act (WRCRA)<sup>34</sup> in 1981, pursuant to CZMA. Recognizing the importance of its coastal zone, the legislature noted that "resources of the state's coastal areas . . . are increasingly subject to the pressures of population growth and economic development, which include requirements for industry, commercial and residential development, recreation and for the production of energy."<sup>35</sup> In accordance with CZMA's mandate,<sup>36</sup> and in an effort to encourage economic

growth while preserving coastal areas, New York has developed 44 policies to which all state and federal agencies must adhere.<sup>37</sup> These 44 policies are gleaned from the general goals of WRCRA, and cover issues from habitat protection to public beach access.<sup>38</sup>

New York's coastal management program pursues these objectives: (1) to encourage and oversee the development of Local Waterfront Revitalization Programs (LWRPs), (2) to ensure that state and federal consistency requirements are upheld, and (3) to advocate further development of New York Coastal Policies.

### B. Boundaries

Coastal waters and lands subject to WRCRA include lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem River, the Kell von Kull and Arthur Kill Rivers, Long Island Sound and Atlantic Ocean and their connecting waterbodies, bays, harbors, shallows and marshes.<sup>39</sup> In addition to the waterbodies themselves, WRCRA covers adjacent shorelands, such as islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, inter-tidal estuaries and erosion prone areas.<sup>40</sup> The boundaries of New York's coastal zone are specifically delineated on Coastal Area Maps maintained by New York's Department of State.<sup>41</sup>

The state's coastal boundary, as established under this program, may be adjusted in number of ways. First, any city, town or village may petition the state to change its coastal area boundary.<sup>42</sup> Municipalities may do so by local resolution from the local legislative body, or by making the alteration as an element of a Local Waterfront Revitalization Program (LWRP).<sup>43</sup> In addition, any state agency may request that the coastal area be changed.<sup>44</sup> Lastly, New York's Secretary of State may determine that amending the coastal area boundary is necessary.<sup>45</sup> The secretary may do so for several reasons, including the discovery of an error in mapping, or the determination that changing the coastal boundary would better serve the purposes of WRCRA.<sup>46</sup>

### C. Local Waterfront Revitalization Plans

#### 1. LWRPs For Coastal Areas

Keeping with the geographically specific design of CZMA,<sup>47</sup> New York provides coastal municipalities with the opportunity to adopt and implement their own coastal policies through LWRPs. The LWRPs refine and supplement the state's CMP by defining area-specific needs and objectives at the municipal level.<sup>48</sup> An LWRP may be developed by any coastal municipality or any group of municipalities acting jointly.<sup>49</sup>

##### a. Approval

Once a municipality has adopted an LWRP, it must be approved by the Secretary of State.<sup>50</sup> The program and an accompanying Draft Environmental Impact Statement (DEIS)<sup>51</sup>

are reviewed by the Department of State's Division of Coastal Resources. Before state approval, a copy of the LWRP must be submitted to any interested party that may be affected by it. Interested parties may include: (1) state and federal agencies potentially affected by the LWRP; (2) any adjacent local government with contiguous coastal areas; (3) the county in which the municipality resides; and (4) the regional planning board, if any.<sup>52</sup> Once the program is approved by the state,<sup>53</sup> it is submitted for federal approval to the Office of Coastal Resource Management. If the OCRM concurs with the state's approval, then the LWRP becomes effective.

### b. Program Content

WRCRA provides that an LWRP shall be consistent with the general goals of the state's coastal management program. Therefore, each LWRP must address the 44 coastal policies contained in the state's Coastal Management Program and Final Environmental Impact Statement (FEIS).<sup>54</sup> In every LWRP, each of the state's 44 policies is either incorporated into the local waterfront revitalization scheme, or determined to be inapplicable to the coastal area.<sup>55</sup> In addition to addressing the state's coastal policies, each program should include pertinent information that will help to identify coastal problems, provide for implementation, and insure that the programs are properly managed.<sup>56</sup>

All LWRPs should identify coastal area boundaries. In designating coastal areas, a local government may include as much or as little area as it deems necessary to carry out the goals of its LWRP.<sup>57</sup> In their shared LWRP, the Town of Mamaroneck and Village of Larchmont have designated their coastal communities as coastal zones, making all land subject to the requirements of their LWRP.<sup>58</sup>

Municipalities should also inventory any natural and historic resources in the coastal areas that are in need of protecting.<sup>59</sup> This aspect of the LWRP may be especially useful for a municipality that seeks to protect a resource of local significance which may have been overlooked in WRCRA. Resource identification may include significant fish or wildlife, wetlands, sensitive ecosystems, or important local historic sites.

An LWRP should state its goals and objectives. Although the overall goal of every LWRP will be to protect and revitalize coastal areas, local municipalities will differ in their selection of priorities. For example, a municipality may stress the importance of one form of coastal protection over another (e.g. wetland preservation over prevention of beach erosion), or may find that while coastal environmental protection is adequate, a plan for water-dependent industry needs to be developed.<sup>60</sup>

A program should identify the uses, public and private, to be accommodated in the waterfront area and describe proposed means for long-term management and maintenance of waterfront development.<sup>61</sup> Here, local governments may use traditional land use controls, such as zoning, to carry out their goals. Local governments may choose to expand or amend their zoning codes as a technique for implementation of their LWRPs. For example, the Village of Tivoli has established a Land Conservation

District that borders the Hudson River and other major water-courses that flow through the village. No as of right uses are permitted in these Districts, and only agriculture, wildlife preserves, outdoor recreation facilities, parks, and playgrounds may be established by special permit.<sup>62</sup> Another example is the Village of Larchmont, which has amended its zoning code to create a new waterfront district with R-50 zoning (minimum lot size 50,000 square feet) that encompasses all properties fronting directly on the Long Island Sound and the Larchmont harbor.<sup>63</sup> A municipality may simply highlight portions of its existing zoning ordinance that help achieve the goals of the program. For instance, the Town of Mamaroneck/Village of Larchmont program provides that current zoning regulations dealing with critical environmental areas, freshwater wetlands, and dog waste all further its LWRP.<sup>64</sup>

Local governments may choose more creative techniques for implementing LWRPs. For instance, as part of its program, the Village of Port Chester has established a Harbor Area Redevelopment Plan to encourage water dependent uses in the waterfront area, such as public and private boating facilities, a waterfront walk, and public parking.<sup>65</sup> Also, the Village of Sleepy Hollow has established a new local law entitled, "Village of Sleepy Hollow Waterfront Consistency Review Law." The law provides a framework for local agencies to follow when acting or reviewing proposed actions in the waterfront area.<sup>66</sup>

WRCRA also mandates that each LWRP shall provide "organizational structures."<sup>67</sup> It goes no further in describing how an LWRP should be managed, and thus a municipality has broad discretion in how it delegates its management responsibilities. Towns may appoint an existing entity when administering a program (i.e. a board of trustees), or may establish a special board for overseeing an LWRP.<sup>68</sup> Special coastal boards are generally charged with overall program coordination and with the duty to review activities that take place in coastal areas. These special boards then make recommendation to legislative or permitting authorities. The authorities may enact appropriate legislation or choose to grant or deny permits for activities in coastal areas.<sup>69</sup> For instance, the Village of Port Chester vests LWRP management responsibility in a "Waterfront Commission," whose duty is to "assume the role of reviewing all public and private proposals for development or regulations in the Waterfront Revitalization Area and, where appropriate, make recommendations to responsible agencies to assure consistency with the LWRP."<sup>70</sup> Despite vesting overall administrative responsibility in one entity, most programs stress that successful implementation comes from the coordination of the activities of all local agencies that affect the waterfront.<sup>71</sup>

Lastly, a program should provide a description of necessary state and federal actions needed for successful implementation of the LWRP.<sup>72</sup> State and federal actions that facilitate the implementation of the program will vary depending on the specific area in which the program is to be implemented, as well as the needs of each municipality. For example, the Town of Hamburg's program provides that the state Department of Transportation should "[e]rect Seaway Trail signs at appropriate locations . . . to aid in the area's promotion as a tourist/retail

corridor."<sup>73</sup> An LWRP's direction for state action may be more general. In its program, the Village of Port Chester asks the New York State Council on the Arts to provide "[a]ssistance from the Architecture and Environmental Arts program for a harbor-front plan," and asks that the Department of State provide "funding for implementation of the LWRP."<sup>74</sup> Examples of necessary federal action to implement the LWRPs include the issuance of endangered species permits by the Fish and Wildlife Service,<sup>75</sup> the management of gas pipelines by the Economic Regulatory Commission,<sup>76</sup> or the issuance of National Pollutant Discharge Elimination System (NPDES) permits by the EPA.<sup>77</sup>

### c. Enforcement Power

An LWRP is a plan without direct regulatory force. The legal authority to implement its policies is derived from a municipality's comprehensive planning and zoning power delegated by the state through the Town, Village, or General City Laws.<sup>78</sup> Once an LWRP is adopted, it effectively becomes a supplemental comprehensive plan for the portion of the municipality that has been designated a coastal zone. Courts in New York take judicial notice of all plans that set forth a community's goals and objectives, and regard them as important in determining whether local land use regulations are in conformance with the "comprehensive plan."<sup>79</sup> For this reason, it may be advisable for a municipality to declare that the LWRP formally constitutes an amendment to the comprehensive plan for the area designated as coastal zone to the extent that its provisions are inconsistent with, or more detailed than, the comprehensive plan.

Declaring the LWRP an amendment to the comprehensive plan accomplishes the objective of eliminating conflicts between the two plans. It makes it possible for the local legislature to adopt regulations that conform to the LWRP, as an amendment of the comprehensive plan, in compliance with state law requirements that all land use regulations conform to the comprehensive plan.<sup>80</sup>

Municipalities have realized the close nexus between LWRPs and comprehensive plans. The Village of Sleepy Hollow, for example, stated that "[b]ecause of the comprehensive nature of the New York State Coastal Management Program, the . . . [LWRP] can easily accommodate the Village's desire for it to be a comprehensive master plan."<sup>81</sup>

### d. Funding

The state will fund up to fifty percent of the activities of a local government that will lead to the adoption of an LWRP.<sup>82</sup> In addition, the state will make grants to municipalities with approved programs for the cost of any research, design or other activity that facilitates construction projects aimed at protecting or enhancing a coastal area.<sup>83</sup> Sources of revenue available for LWRP implementation include the Environmental Protection Fund<sup>84</sup> and the Clean Water/Clean Air Bond Act.<sup>85</sup> Although New York continues to receive federal grant money through CZMA, federal funds are fully utilized to cover state administrative costs.<sup>86</sup>

## 2. LWRPs for Inland Waterways

New York goes beyond federally mandated coastal zone boundaries and extends the benefits and protections of WRCRA to inland waterbodies. Since these waterbodies are not defined as "coastal zones" by CZMA, LWRPs for inland areas are not subject to federal regulation.

Inland waterbodies eligible to receive WRCRA assistance and funding are limited, however. New York limits the availability of establishing inland LWRPs to economically distressed,<sup>87</sup> and severely economically distressed, municipalities.<sup>88</sup> An economically distressed local government that has any portion of its jurisdiction contiguous to a designated inland waterway<sup>89</sup> is eligible to establish an LWRP. A severely economically depressed local community that has any portion of its jurisdiction contiguous to a non-designated inland waterway<sup>90</sup> is similarly eligible. Limiting LWRPs for inland areas based on economic criteria is a way to channel the limited funds available for coastal management to the local governments that may benefit the most from an improved waterfront.<sup>91</sup> The need to limit WRCRA's reach, however, has not yet been a problem. Since adding inland waterways to WRCRA in 1992, only one inland municipality has adopted an LWRP.<sup>92</sup>

The funding scheme for inland LWRPs is largely identical to that of coastal LWRPs. One noted difference is that although inland coastal municipalities may receive up to fifty percent of the development costs of preparing an LWRP (the same as their coastal counterparts), development grants are capped at \$25,000.<sup>93</sup> Inland LWRPs are also eligible for grants equaling sixty percent of construction facilitation costs (research, design, etc.), and are again limited to a maximum of \$25,000. WRCRA also seems more tentative about granting money to severely economically distressed areas. Section 918-a warns severely economically distressed areas that they must "demonstrate[] to the secretary<sup>94</sup> that development of its waterfront will make a significant contribution to the revitalization of its local economy . . ."<sup>95</sup> In addition, WRCRA makes clear that "such projects [should] make a significant contribution to the local economic development plan for the region."<sup>96</sup>

Another significant difference between inland LWRPs and their coastal counterparts is the number of state coastal zone policies that are followed. Where a coastal LWRP must address all 44 state policies, inland LWRPs must address only 18.<sup>97</sup> The 18 inland policies are selected from the 44 state policies and they are the most relevant to inland areas.<sup>98</sup>

## 3. LWRP Incentives for Local Governments

In addition to funding, WRCRA provides numerous incentives for local governments to establish LWRPs. Perhaps the most pronounced incentive is the consistency requirement of both WRCRA and CZMA. Briefly stated, once an adopted program is in place, it sets the standards to which all coastal activities of state and federal agencies must adhere.<sup>99</sup> The consistency requirements provide local leaders with the ability to tailor coastal policies to their area's own needs and concerns. This

"grass roots" process places policy-making power in the hands of those with local knowledge of a coastal region.

In addition to ensuring that all state and federal actions are consistent with the LWRP, the state can also assist the local government by utilizing state agencies to aid in furthering the goals of an approved local program.<sup>100</sup> State agencies that may be called on include the Urban Development Corporation, the Job Development Authority, the Environmental Facilities Corporation, the Office of Parks, Recreation and Historic Preservation, the Department of Economic Development, and the Department of Transportation.<sup>101</sup> In addition, the state will provide any technical assistance that is available, including map, data, criteria and model implementation provisions, technical counsel, and advice.<sup>102</sup>

#### D. Consistency Requirements

The consistency requirements of both CZMA and WRCRA are among the most important aspects of both acts. On the federal level, CZMA requires that any federal agency activity in a coastal area must be consistent with the state's coastal management program.<sup>103</sup> On the state level, WRCRA requires that all state agency action be consistent with its coastal policies.<sup>104</sup> Also, recall that if a municipality adopts an LWRP, it becomes the state's coastal policy for that geographically specific area; all state and federal action must then conform to the LWRP. In addition, any other agency, company or individual that is funded, permitted or authorized by a state or federal agency must also adhere to the consistency requirements established by CZMA and WRCRA.<sup>105</sup>

Applicants seeking federal agency approval for activities that affect any land or water use or natural resource in New York's coastal zone<sup>106</sup> must submit a Federal Consistency Assessment Form (FCAF), along with a copy of any necessary federal application for authorization, to the New York State Department of State (DOS).<sup>107</sup> The applicant certifies that the proposed action is consistent with the state coastal policy. DOS then concurs with, or objects to the certification. If DOS finds that the proposed action will be contrary to New York's coastal policies, it rejects the application, and the federal agency may not fund or approve the applicant's project.

Furthermore, a federal agency that directly undertakes an activity in the state's coastal zone must certify that its actions are consistent to the maximum extent possible with the state's coastal policies. DOS may agree or disagree with this consistency statement.

A noteworthy exception to the consistency process exists; an applicant or federal agency may seek an exemption by the President if "the activity is in the paramount interest of the United States."<sup>108</sup>

State agency actions must adhere to WRCRA's guidelines as set forth in its corresponding rules and regulations.<sup>109</sup> First, a state agency must classify the proposed action under the State Environmental Quality Review Act (SEQRA).<sup>110</sup> Only Type I<sup>111</sup> or unlisted<sup>112</sup> actions are subject to the consistency

requirements of WRCRA.<sup>113</sup> If the action is Type I or unlisted, the agency then must submit a Coastal Assessment Form<sup>114</sup> (CAF) to the New York State Secretary of State *prior* to determining the action's significance under SEQRA.<sup>115</sup> The CAF is used to ensure consistency with the state's 44 coastal policies (or the policies established in an LWRP, if applicable) and to aid state agencies in making determinations under SEQRA. If, pursuant to SEQRA, it is determined that the action will have a significant impact on the environment, that impact must be mitigated. Only after mitigation will the action be considered consistent with WRCRA.<sup>116</sup> If the action will *not* have a significant impact on the environment, the state agency then must notify the Secretary of State that the action is consistent with, and in fact advances New York's coastal policies or the policies of an LWRP.<sup>117</sup> If the action will be contrary to one of the 44 coastal policies, the agency must then satisfy at least one or more of the following to meet WRCRA's consistency requirements:

- No reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;
- The action taken will minimize all adverse effects on such policies to the maximum extent practicable;
- The action will advance one or more of the other coastal policies; and
- The action will result in an overriding regional or statewide public benefit.<sup>118</sup>

#### E. Additional WRCRA Programs

##### 1. Comprehensive Harbor Management Plans

Due to the rise in recreational boating in recent years, an increased stress has been placed on New York's harbors and nearby harbor areas. In response to the negative impact that recreational boating has had on coastal resources and commercial enterprises in harbors, the New York Legislature amended WRCRA in 1992 to allow local governments to adopt Harbor Management Plans (HMPs).<sup>119</sup> Under WRCRA, a municipality that wishes to adopt an LWRP must also include a HMP, or at least address the possibility of establishing a HMP.<sup>120</sup> If a HMP is not appropriate for a particular area, then the requirement is waived.

The HMP amendments provide direct regulatory authority to local governments that adopt a harbor management plan. Section 922 of WRCRA provides the following:

In order to implement a comprehensive harbor management plan the local legislative body of a city, town, or village may adopt, amend and enforce local laws or ordinances to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures . . . to a distance of fifteen hundred feet from shore.<sup>121</sup>

Further, the regulations state that "the Legislature . . .

recognize[s] the significant role New York's cities, towns and villages are capable of taking in the regulation and management of activities in or over the state's navigable waters and underwater lands if granted clear authority to regulate these areas. Accordingly, the legislature has provided for the development and approval of local government [HMPs] and the local laws or ordinances necessary to implement these plans."<sup>122</sup> Factors that municipalities should consider when enacting HMPs include commercial and recreational needs, habitat protection, water-dependent uses, aesthetic values, and public interests.<sup>123</sup>

Harbor management plans can play an important role in enhancing or restricting water-dependent uses. For example, the Town of Mamaroneck/Village of Larchmont plan suggests using the HMP's power to restrict the size of docks, especially within its coves and embayments.<sup>124</sup>

## 2. Long Island Sound Coastal Advisory Commission

The Long Island Sound Coastal Advisory Commission, established in 1995, is the latest addition to WRCRA. The Commission was established to deal with the unique problems of the Long Island Sound. The intense development that has occurred on Long Island over the past five decades has caused numerous problems that burden the Sound's waters. The commission was created to address those problems, including water quality degradation, decreasing biological diversity, stress on beaches and shellfish beds, loss of open space, and an increasingly difficult business climate.<sup>125</sup> The seventeen-member commission<sup>126</sup> is responsible for implementing the Long Island Sound Coastal Management Program, as well as for assisting other local government agencies that have jurisdiction over the sound and coordinating their actions.<sup>127</sup> The program is established pursuant to the recommendation of the governor's task force on coastal resources, and acts as the overall regional plan for Long Island Sound's coastal environment.<sup>128</sup>

## IV. CONCLUSION

CZMA is a federal initiative that exhibits a sophisticated and sensitive policy of coastline protection that is based on grass

roots planning and control within a federal and state created framework. It is a model for other federal and state land use policies and could become the basis for a system of land use management applicable to the entire nation beyond the coastal area.

The Waterfront Revitalization and Coastal Resources Act provides an effective method for protecting and rejuvenating New York's coastal areas. WRCRA has followed CZMA's geographically specific concept<sup>129</sup> by allowing local municipalities to develop LWRPs.<sup>130</sup> LWRPs ensure that coastal protection and management policies are as area-specific as possible. In addition, by establishing consistency requirements,<sup>131</sup> WRCRA ensures that all federal, state, and local activity will conform to the needs and limitations of specific coastal areas.

New York's 44 coastal policies are exemplary of the type of policy guidance that local communities need to inform an otherwise parochial view of land use planning. By giving local legislatures the means of controlling the actions of state and federal agencies within their jurisdiction, CZMA and WRCRA provide a powerful incentive for intermunicipal cooperation.

The impacts of nonpoint source pollution are relevant to coastal and non-coastal areas alike. The effects of local land use action – and failure to act – on suburban sprawl, the location of regional service facilities such as water filtration plants, sewage treatment plants and landfills, air quality and transportation planning are profound. In protecting fragile and critical coastal areas, the federal and state governments, through CZMA and WRCRA, have created a model for land use planning and regulation that should be greatly expanded to become a truly comprehensive means of supporting sustainable community development.

New York's next coastal initiative is likely to be the implementation of a coastal nonpoint pollution control program (CNPCP) that CZMA is requiring of all CMP-approved states.<sup>132</sup> After its inception, the CNPCP will focus on controlling upland pollution that continues to degrade coastal areas and frustrate the efforts of current coastal zone protection measures. This will require significant integration of local land use regulation with coastal planning if it is to succeed.

<sup>1</sup>Matthew A. Sokol is a research fellow at the Pace University Land Use Law Center, a legal intern at the Pace Environmental Litigation Clinic, and an associate member of Pace Law Review.

<sup>2</sup>George R. Stafford, *Mission of Coastal Resources and Waterfront Revitalization* (last visited Mar. 19, 1998) <http://www.dos.state.ny.us/cstl/cstlmiss.html>.

<sup>3</sup>1994 WL 322764 (D.O.I.).

<sup>4</sup>See 16 U.S.C. § 1451 (1972).

<sup>5</sup>1996 WL 70189 (D.O.I.).

<sup>6</sup>See generally NetCoast, *General Processes*, (visited Mar. 19, 1998) <http://www.minvenw.nl/projects/netcoast/process/process.htm>.

<sup>7</sup>See generally NetCoast, *General Processes*, (visited Mar. 19, 1998) <http://www.minvenw.nl/projects/netcoast/process/process.htm>.

<sup>8</sup>See Michael J. Straub, *The West Coast of New England: A Case For the Inclusion of Lake Champlain in the Federal Coastal Zone Management Program*. 16 Vt. L. Rev. 749 (1992).

<sup>9</sup>*Id.* (citing 118 Cong. Rec. S14170-71 79 (1972) (statement of Sen. Hollings)).

<sup>10</sup>*Id.*

<sup>11</sup>16 U.S.C. § 1451(b), (h).

<sup>12</sup>Previous legislation aimed at improving coastal zone quality includes the National Seashores/National Lake Shores program (National Park Service),

the Estuary Protection Act (Department of Interiors) and the Wild and Scenic River Act.

<sup>13</sup> 16 U.S.C. § 1453(4).

<sup>14</sup> See *id.* Some have suggested that other sizeable bodies of water, such as Lake Champlain, should also be included under CZMA. Those advocating the expansion of CZMA note that the logic Congress used in including the Great Lakes' coasts in CZMA (the economic and recreational importance) also applies to other sizeable bodies of water in the U.S. See Straub, *above* note 7, at 749.

<sup>15</sup> 16 U.S.C. § 1453(1).

<sup>16</sup> See *id.* See also 43 U.S.C. § 1301 et. seq.

<sup>17</sup> See generally 16 U.S.C. § 1451.

<sup>18</sup> Straub, *above* note 7, at 753.

<sup>19</sup> See 16 U.S.C. § 1452. Prior to the enactment of CZMA, the Stratton Report noted, "[T]he States must be the focus for responsibility and action in the coastal zone. The State is the central link joining the many participants, but in most cases, the States now lack adequate machinery for [the] task. An agency of the State is needed with sufficient planning and regulatory authority to manage coastal areas effectively and to resolve problems of competing uses. Such agencies should be strong enough to deal with the host of overlapping and often competing jurisdictions of the various federal agencies. Finally, strong State organization is essential to surmount special local interests, to assist local agencies in solving common problems, and to effect strong interstate cooperation." Straub, *above* note 7, at 752.

<sup>20</sup> See 16 U.S.C. § 1452(2).

<sup>21</sup> See Straub, *above* note 7, at 755.

<sup>22</sup> "Relevant federal agencies" are identified as those federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in fields which could impact or affect a state's coastal zone including: energy production or transmission; recreations of a more than local nature; transportation; production of food and fiber, preservation of life and property; national defense; historic, cultural, aesthetic and conservation values; pollution abatement and control. The following are defined as relevant federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration; and the Nuclear Regulatory Commission. 44 F.R. 18595 (1979).

<sup>23</sup> OCRM is a division of the National Oceanic and Atmospheric Administration, and is the administrative agency in charge of CZMA.

<sup>24</sup> Office of Coastal Resource Management, General Consistency Requirements (visited Mar. 19, 1998) [http://www.nos.noaa.gov/ocrm/czm/federal\\_consistency.html](http://www.nos.noaa.gov/ocrm/czm/federal_consistency.html).

<sup>25</sup> Office of Coastal Resource Management, General Consistency Requirements (visited Mar. 19, 1998) [http://www.nos.noaa.gov/ocrm/czm/federal\\_consistency.html](http://www.nos.noaa.gov/ocrm/czm/federal_consistency.html).

<sup>26</sup> See Office of Coastal Resource Management, General Consistency Requirements (visited Mar. 19, 1998) [http://www.nos.noaa.gov/ocrm/czm/federal\\_consistency.html](http://www.nos.noaa.gov/ocrm/czm/federal_consistency.html).

<sup>27</sup> See Coastal Zone Protection Act of 1996, 110 Stat. 1380 (1996).

<sup>28</sup> 16 U.S.C. § 1454(a).

<sup>29</sup> For those states for which programs were approved prior to the 1990 Amendments to CZMA, the state matching ratio is 1 to 1. For programs approved after the 1990 Amendments, states are required to match 4 to 1 (federal to state) for the first fiscal year, 2.3 to 1 for the second fiscal year, and 1.5 to 1 for the third fiscal year. See 16 U.S.C. § 1455(a)(1),(2).

<sup>30</sup> 16 U.S.C. § 1455(d)(2).

<sup>31</sup> 16 U.S.C. § 1455(d)(1).

<sup>32</sup> 16 U.S.C. § 1451 (amended 1990).

<sup>33</sup> See 16 U.S.C. § 1455b (amended 1990).

<sup>34</sup> The act was originally named the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, but was amended in 1986, reflecting its current title. See N.Y. Exec. Law § 910 (McKinneys 1996) (amended 1986).

<sup>35</sup> N.Y. Exec. Law § 910.

<sup>36</sup> As a requirement of CZMA, states must show that a CMP will be effectuated through enforceable policies, such as constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions. See 16 U.S.C. § 1455(d)(2)(D).

<sup>37</sup> The 44 policies are set forth in WRCRA's implementing regulations, 19 N.Y.C.R.R. 600.5. The policies are grouped under the general categories of development, fish and wildlife, flooding and erosion, public access, recreation, historic and scenic resources, agriculture, energy and ice management, and water and air resources. For policy explanations, see State of New York Coastal Management Program and Final Environmental Impact Statement, sec. 6 (1992).

<sup>38</sup> See 19 N.Y.C.R.R. § 600.5.

<sup>39</sup> N.Y. Exec. Law § 911.

<sup>40</sup> See *id.*

<sup>41</sup> The set of 57 maps designate the coastal areas in each of the areas listed above starting from the Pennsylvania/New York border eastward to the Canadian/New York border. They then cover from the federal dam at Troy southward to New York City and proceed eastward to Montauk point, Long Island and Fishers Island.

<sup>42</sup> See 19 N.Y.C.R.R. § 602.2.

<sup>43</sup> See 19 N.Y.C.R.R. § 602.2(a)(2).

<sup>44</sup> See 19 N.Y.C.R.R. § 602.2(b).

<sup>45</sup> See 19 N.Y.C.R.R. § 602.2(c).

<sup>46</sup> See 19 N.Y.C.R.R. § 602.2(d).

<sup>47</sup> Remember that the federal government, rather than trying to regulate coastal areas on a federal level, left the development of coastal policies to the states. Logically, states are in a better position to recognize the types of coastal problems that are most pressing. Keeping with the spirit of that design, New York's coastal program encourages coastal legislation to become even more focused with LWRPs.

<sup>48</sup> Alexander F. Treadwell, *Background Information on the New York State Coastal Management Program*, New York State D.O.S. publication, 1989.

<sup>49</sup> See N.Y. Exec. Law § 915(3).

<sup>50</sup> See 19 N.Y.C.R.R. § 601.2.

<sup>51</sup> See Village of Sleepy Hollow Draft Local Waterfront Revitalization Program, Executive Summary (1995).

<sup>52</sup> 19 N.Y.C.R.R. § 601.4.

<sup>53</sup> In order to meet state approval requirements, the LWRP must meet all criteria set forth in §§ 911(10), 915(4), and § 922 of WRCRA. See also 19 N.Y.C.R.R. § 601.2.

<sup>54</sup> See *above* text accompanying note 36.

<sup>55</sup> See, e.g., Town of Hamburg Local Waterfront Revitalization Program, sec. III (1990); Town of Mamaroneck and Village of Larchmont Local Waterfront Revitalization Program, sec. III (1995); Village of Port Chester Local Waterfront Revitalization Program, sec. III (1992); Village of Tivoli Local Waterfront Revitalization Program, sec. III (1991).

<sup>56</sup> N.Y. Exec. Law § 915(4).

<sup>57</sup> But see *above* text accompanying note 15.

<sup>58</sup> See Town of Mamaroneck/Village of Larchmont LWRP, sec. I.

<sup>59</sup> See N.Y. Exec. Law § 915(4).

<sup>60</sup> See generally Town of Hamburg Local Waterfront Revitalization Program, sec. II (1990); Town of Mamaroneck and Village of Larchmont Local Waterfront Revitalization Program, sec. II (1995); Village of Port Chester Local

Waterfront Revitalization Program, sec. II (1992); Village of Tivoli Local Waterfront Revitalization Program, sec. II (1991).

<sup>61</sup> See N.Y. Exec. Law § 915(4).

<sup>62</sup> See Village of Tivoli LWRP, V-3.

<sup>63</sup> Town of Mamaroneck/Village of Larchmont LWRP, V-12.

<sup>64</sup> See Town of Mamaroneck/Village of Larchmont LWRP, V-12.

<sup>65</sup> See Village of Port Chester LWRP, sec. V.

<sup>66</sup> Village of Sleepy Hollow Draft LWRP, sec. V.

<sup>67</sup> See N.Y. Exec. Law § 915(4)(e).

<sup>68</sup> The Town of Mamaroneck and the Village of Larchmont have created the Coastal Zone Management Commission to administer their LWRP. The Commission is especially aware of its bi-municipal character, and was created to deal with the problems and concerns that may arise when dealing with two separate legislative bodies trying to implement one intermunicipal plan. See Town of Mamaroneck/Village of Larchmont LWRP, V-13.

<sup>69</sup> See, e.g., Town of Mamaroneck/Village of Larchmont LWRP, V-6; Town of Hamburg LWRP, p. V-8; Village of Port Chester LWRP, V-12.

<sup>70</sup> Village of Port Chester LWRP, p. V-12.

<sup>71</sup> For example, the Town of Hamburg states that "[s]uccessful implementation of the [LWRP] will require participation of the Town Board, Waterfront Revitalization committee, Planning Board, and technical support of staff in the Planning and Development Engineering, [sic] and Building Inspector's Offices." Town of Hamburg LWRP, sec. V (1990).

<sup>72</sup> See N.Y. Exec. Law § 915(4).

<sup>73</sup> Town of Hamburg LWRP, sec. VI.

<sup>74</sup> Village of Port Chester LWRP, sec. VI.

<sup>75</sup> See Town of Mamaroneck/Village of Larchmont LWRP, sec. VI.

<sup>76</sup> See Village of Port Chester LWRP, sec. VI.

<sup>77</sup> See Town of Hamburg LWRP, sec. VI.

<sup>78</sup> For New York's comprehensive planning statutes, see N.Y. Gen. City Law § 28-a (McKinney 1989); N.Y. Town Law § 272-a (McKinney 1987); N.Y. Village Law § 7-722 (McKinney 1996). For New York's zoning statutes, see N.Y. Gen. City Law § 20 (24)-(25); N.Y. Town Law § 261 et seq.; N.Y. Village Law § 7-700 et seq.

<sup>79</sup> See *Udell v. Haas*, 21 N.Y.2d 463, 235 N.E.2d 897, 288 N.Y.S.2d 888 (1968). Used in this way, the term "comprehensive plan" is not limited only to the document that bears its name, but refers to all plans set forth by a municipality that identify land development and conservation. In *Udell*, the Court of Appeals stated that "[w]e have found the comprehensive plan" by examining *all relevant evidence*, and that "[no legislation] should . . . conflict with the fundamental land use policies and development plans of the community." *Id.* at 471 (emphasis added). Further, the court found that "[t]hese policies may be garnered from any available source . . ." *Id.* (emphasis added).

<sup>80</sup> See Gen. City Law § 28-a(12)(a) ("All city land use regulations must be in accordance with a comprehensive plan."); Town Law § 272-a(11)(a) ("All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section."); Village Law § 7-722(11)(a) ("All village land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.").

"Land use regulation" is defined as "an ordinance or local law enacted by the town for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location, and intensity of development." Town Law § 272-a(2)(b). See also Gen. City Law § 28-a(3)(b); Village Law § 7-722(2)(b).

<sup>81</sup> Village of Sleepy Hollow Draft LWRP, Sec. V-3.

<sup>82</sup> N.Y. Exec. Law § 918(1)

<sup>83</sup> These construction facilitation grants are *not* for the construction itself.

They are provided for developmental purposes only, and are limited to ten percent of the total cost of an individual construction project.

<sup>84</sup> See N.Y. Envtl. Conserv. Law § 54-1101.

<sup>85</sup> See N.Y. Envtl. Conserv. Law § § 56-0101, 56-0303.

<sup>86</sup> Interview with Kevin Millington, New York State Dep't of State Division of Coastal Resources, July 11, 1997.

<sup>87</sup> "Economically distressed" means any city, town or village that has a poverty rate at least twenty percent greater than the statewide poverty rate *or* an unemployment rate at least twenty percent greater than the statewide unemployment rate. 19 N.Y.C.R.R. § 601.9(a)

<sup>88</sup> "Severely economically distressed" means any city, town or village that has a poverty rate at least twenty percent greater than the statewide poverty rate *and* an unemployment rate at least twenty percent greater than the statewide unemployment rate. 19 N.Y.C.R.R. § 601.9(b)

<sup>89</sup> "Designated inland waterways" are defined as: "the state's major inland lakes consisting of lakes Big Tupper, Black, Canandaigua, Cayuga, Champlain, Chautauqua, Conesus, Cranberry, George, Indian, Keuka, Long, Oneida, Onondaga, Otsego, Owasco, Raquette, Sacandaga, Saratoga, Schroon, Seneca, Skaneateles, and Upper Saranac; (b) the state's major rivers comprised of the Chemung, Delaware, Hudson (north of the federal dam at Troy), Mohawk, and Susquehanna rivers; (c) the Barge Canal System as defined in section two of article one of the canal law; and (d) the adjacent shorelands to the extent that such inland waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, and erosion prone areas." N.Y. Exec. Law § 911(4).

<sup>90</sup> "Non-designated inland waterways" are defined as any inland waterway not defined as a "designated inland waterway." N.Y. Exec. Law § 911(5).

<sup>91</sup> Interview with Kevin Millington, Dep't of State Division of Coastal Resources, July 11, 1997.

<sup>92</sup> See *id.* See also City of Amsterdam Local Waterfront Revitalization Plan (1993).

<sup>93</sup> N.Y. Exec. Law § 918-a(1)(a).

<sup>94</sup> Refers to the New York Secretary of State.

<sup>95</sup> N.Y. Exec. Law § 918-a(1)(b).

<sup>96</sup> N.Y. Exec. Law § 918-a(1)(c).

<sup>97</sup> See N.Y. Exec. Law § 918-a(1)(c).

<sup>98</sup> See, e.g., City of Amsterdam Local Waterfront Revitalization Plan (1993).

<sup>99</sup> See Part D for detailed discussion of consistency requirements.

<sup>100</sup> See N.Y. Exec. Law § 916(3).

<sup>101</sup> See N.Y. Exec. Law § 916(3).

<sup>102</sup> N.Y. Exec. Law § 917.

<sup>103</sup> See 16 U.S.C. § § 1452, 1455, 1456.

<sup>104</sup> See 19 N.Y.C.R.R. § 600.3.

<sup>105</sup> See 16 U.S.C. § 1456; 19 N.Y.C.R.R. § 600.3(b).

<sup>106</sup> Note that since inland waterways are not considered part of New York's coastal zone by CZMA, any agency activity in those areas need not be consistent with the state's coastal policies.

<sup>107</sup> 16 U.S.C. § 1456(c)(1)(a). To view/download a copy of a FCAF, see <http://www.dos.state.ny.us/cstl/cstlcr.html>.

<sup>108</sup> 16 U.S.C. § 1456(c).

<sup>109</sup> See 19 N.Y.C.R.R. § 600.1 et seq.

<sup>110</sup> See N.Y. Envtl. Conser. Law § 8-0101 et seq.

<sup>111</sup> Type I actions carry the presumption of having a significant adverse impact on the environment, and are more likely than non-Type I actions to require an Environmental Impact Statement before approval. 6 N.Y.C.R.R. § 617.4.

<sup>112</sup> An unlisted action under SEQRA is one that is not defined as either a Type I or Type II. 6 N.Y.C.R.R. § 617.2(ak).

<sup>113</sup> 19 N.Y.C.R.R. § 600.4.

<sup>114</sup> To view/download a CAF, see <http://www.dos.state.ny.us/cstl/cstlcr.html>.

<sup>115</sup> 19 N.Y.C.R.R. § 600.4.

<sup>116</sup> 19 N.Y.C.R.R. § 600.4(a). If an Environmental Impact Statement is involved in the approval process of an action, the EIS must contain an analysis of the proposed action in view of New York's coastal policies, or the policies established by a LWRP. *Id.*

<sup>117</sup> 19 N.Y.C.R.R. § 600.4(b)

<sup>118</sup> See *id.* See also 19 N.Y.C.R.R. § 600.4(c).

<sup>119</sup> See N.Y. Exec. Law § 922. See also Gail S. Shaffer, Harbor Management Plans, 1992.

<sup>120</sup> See N.Y. Exec. Law § 915(5)(i).

<sup>121</sup> N.Y. Exec. Law § 922(1).

<sup>122</sup> 19 N.Y.C.R.R. § 603.1(b) (1995).

<sup>123</sup> See 19 N.Y.C.R.R. § 603.3(m)(3).

<sup>124</sup> See Town of Mamaroneck/Village of Larchmont LWRP, IV-15. The Town and Village have yet to adopt a HMP, but suggest that one should be established. Section 19 N.Y.C.R.R. § 603.6(b) provides that cities, towns and

villages that had complete the review process for their LWRP before July 1, 1994 were *not* required to retroactively adopt a HMP. Thus, only those municipalities that have either established or amended an LWRP since that date are required to have HMPs in their programs.

<sup>125</sup> 1995 N.Y. Laws 212 § 1.

<sup>126</sup> Members of the commission are appointed according to the following criteria: (a) Six local government officials (two each from Westchester, Nassau and Suffolk counties) are appointed by the state legislature (b) five members will be appointed by the N.Y. Secretary of State, each representing an interest group (builders, recreational anglers, commercial fishing, recreational boaters, and birders); (c) the remaining members are chosen by the commissioners of environmental conservation, economic development, and parks, recreation and historic preservation, the Long Island sound study management conference, the Long Island Sound study citizens' advisory committee co-chair, and the director of New York sea grant. N.Y. Exec. Law § 923(2)(a). In addition, the commission members serve voluntarily. See N.Y. Exec. Law § 923(2)(g).

<sup>127</sup> N.Y. Exec. Law § 923(3).

<sup>128</sup> N.Y. Exec. Law § 923(1)(a).

<sup>129</sup> See *above* text accompanying notes 18-25.

<sup>130</sup> See *above* Part III. C.

<sup>131</sup> See *above* Part III. D.

<sup>132</sup> See *above* notes 31-32 and accompanying text.



MATTHEW  
BENDER

1275 BROADWAY  
ALBANY, NEW YORK 12204