

Erosion Management for Lake Erie

9 December 2021 | Erie and Chautauqua

Roy Widrig, New York Sea Grant

Coastal Processes and Hazards Specialist



Agenda

- 1:00 Introduction
 - NYSG Overview, Why we are here today
- 1:15 Living on the Shoreline
- 1:45 DEC – Permitting & CEHA
- 2:30 NYSDOS – Coastal Consistency Review
- 3:15 USACE – Regulatory Program
- 3:30 Discussion



What is New York Sea Grant

- ❖ Network of integrated research, education and extension services promoting coastal community economic vitality, environmental sustainability and citizen awareness of the State's marine and Great Lakes resources
- ❖ One of 34 University-based programs
- ❖ Specialists in hazard resilience in coastal communities, safe and sustainable seafood supply, sustainable coastal development and healthy coastal ecosystems
- ❖ Great Lakes offices in Buffalo, Newark, Oswego and Ithaca
- ❖ Today's workshop brought to you by NYSG-NYSDEC MOU



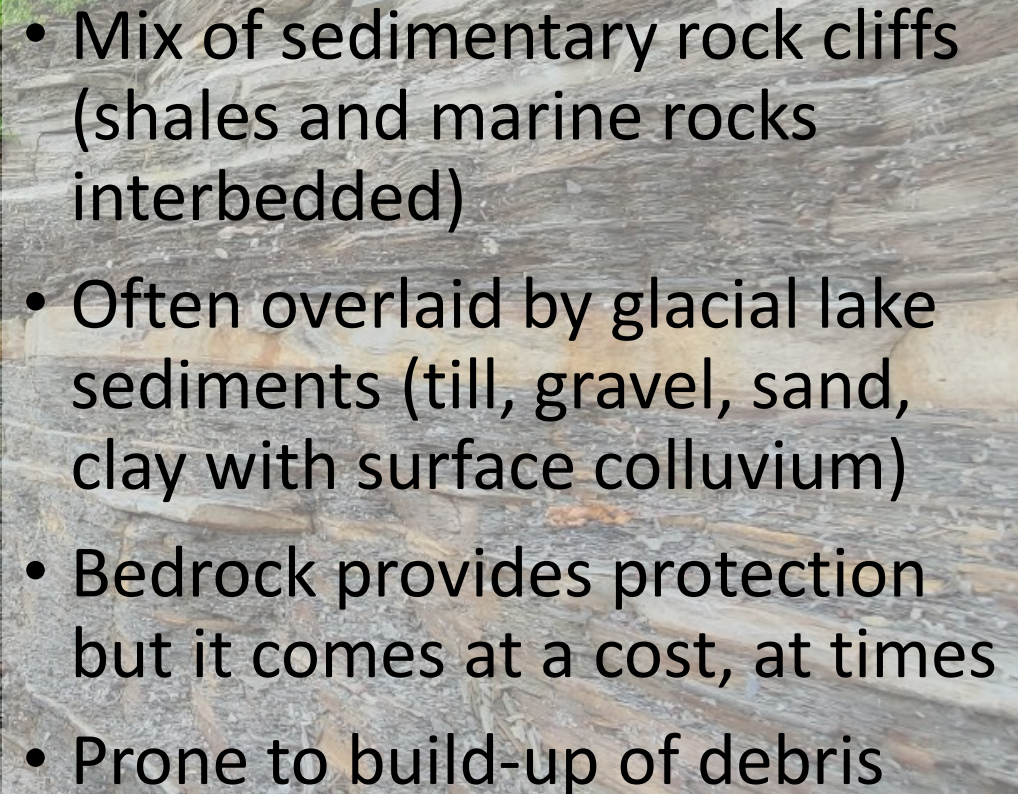
Living on the Shoreline



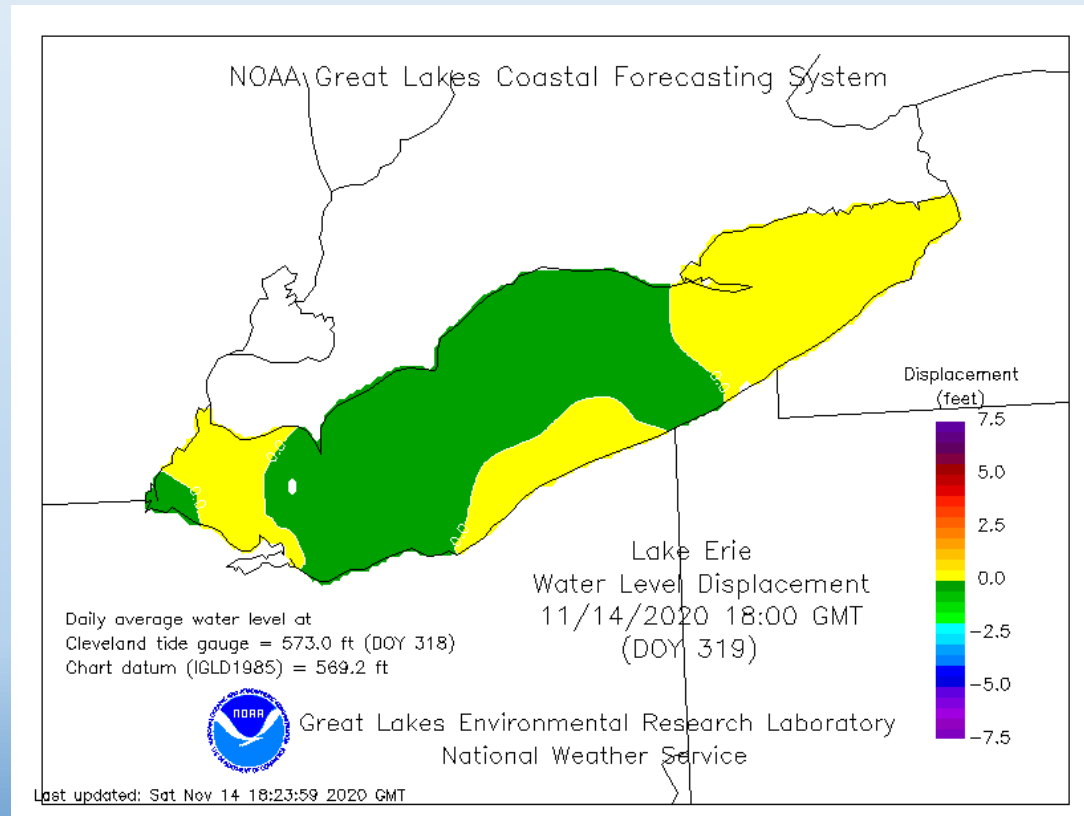


The Lake Erie Shoreline



- 
- Mix of sedimentary rock cliffs (shales and marine rocks interbedded)
 - Often overlaid by glacial lake sediments (till, gravel, sand, clay with surface colluvium)
 - Bedrock provides protection but it comes at a cost, at times
 - Prone to build-up of debris

Lake Erie – Cliffs and Seiches



- Lake Erie is prone to seiching, where long-term sustained winds cause water to “pile-up” along the eastern shore, while water level is drawn down to the west
- Seiches can lead to lakeshore and tributary flooding, severe erosion, and pose recreational hazards

Living with Seiche

- Know if you're in the affected areas
- Prepare or winterize your property (docks, lifts, boat houses)
- Work seiche scenarios into your shoreline planning

Seiche Events on Lake Erie

Roy Widrig, New York Sea Grant
Kendra Vorenkamp, University at Buffalo



Seiche waves blast a shoreline structure in Buffalo, NY in April 2018. Photo by New York State Department of Environmental Conservation.

What is a Seiche and What Causes Them?

A seiche (pronounced "saysh") is a prolonged, standing wave oscillating through a body of water such as a lake or bay. Rapid changes in atmospheric pressure or high sustained winds from one direction, push up the water level at one end of the lake, while dropping by a corresponding amount on the opposite end. As the winds decrease, water rebounds to the drawn-down area and continues to oscillate back and forth, often for multiple days [See Figure 1A page 2]. These events are often associated with periods of high winds and fast-moving thunderstorms.

Lake Erie Seiche Impacts

Lake Erie, the shallowest of the Great Lakes, is known for seiches due to its west-east orientation, shallow depth, and dominant wind direction. When high pressure or strong winds move along the lake's long axis, from southwest to northeast, water accumulates along the shores of eastern Lake Erie, causing a drawdown in water on the western shore [See Figure 1B page 2]. These seiche events can cause local coastal flooding, rapid and intense erosion of the shoreline [See Figure 2 page 2], and impede recreation on the lake. When ice is present, it can pile up and cause additional damage to the shoreline. A recent study showed that over a 1-year period, seiche events were observed to be a significant source of coastline changes (erosion) near Woodlawn Beach, NY (Sogut and Farhadzadeh, 2021.)



New York Sea Grant
SUNY College at Oswego
Oswego, NY 13126-3599
(315) 312-3042

Lake Erie – Cliffs and Seiches



Addressing Shoreline Erosion Locally

- There's no one size fits all technique for shoreline protection
- Wide range of options available from “hard” to “soft” that can be hybridized with natural and nature-based features
- Hard options include revetments – rock rip rap, poured concrete seawalls, sheet piling
- Softer options include drainage improvements and surface water capture, terracing, and strategic use of vegetation

Addressing Shoreline Erosion Locally

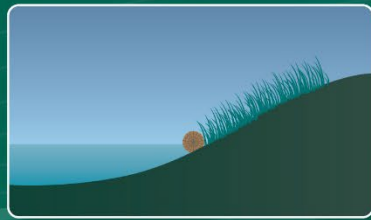


Alternatives to Hard protection

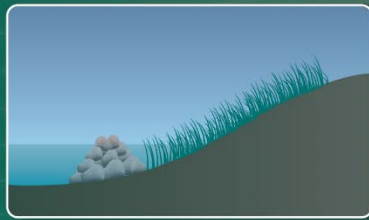
- For NY's bluffs and rocky outcroppings
- Terracing and/or reshaping – reduce the slope
- Drainage Improvements



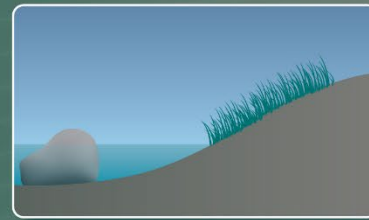
VEGETATION



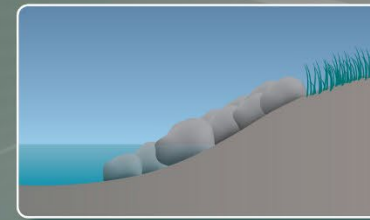
EDGING



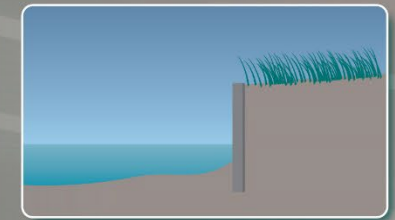
SILLS



BREAKWATER



REVETMENT



BULKHEAD



GREEN - SOFTER TECHNIQUES

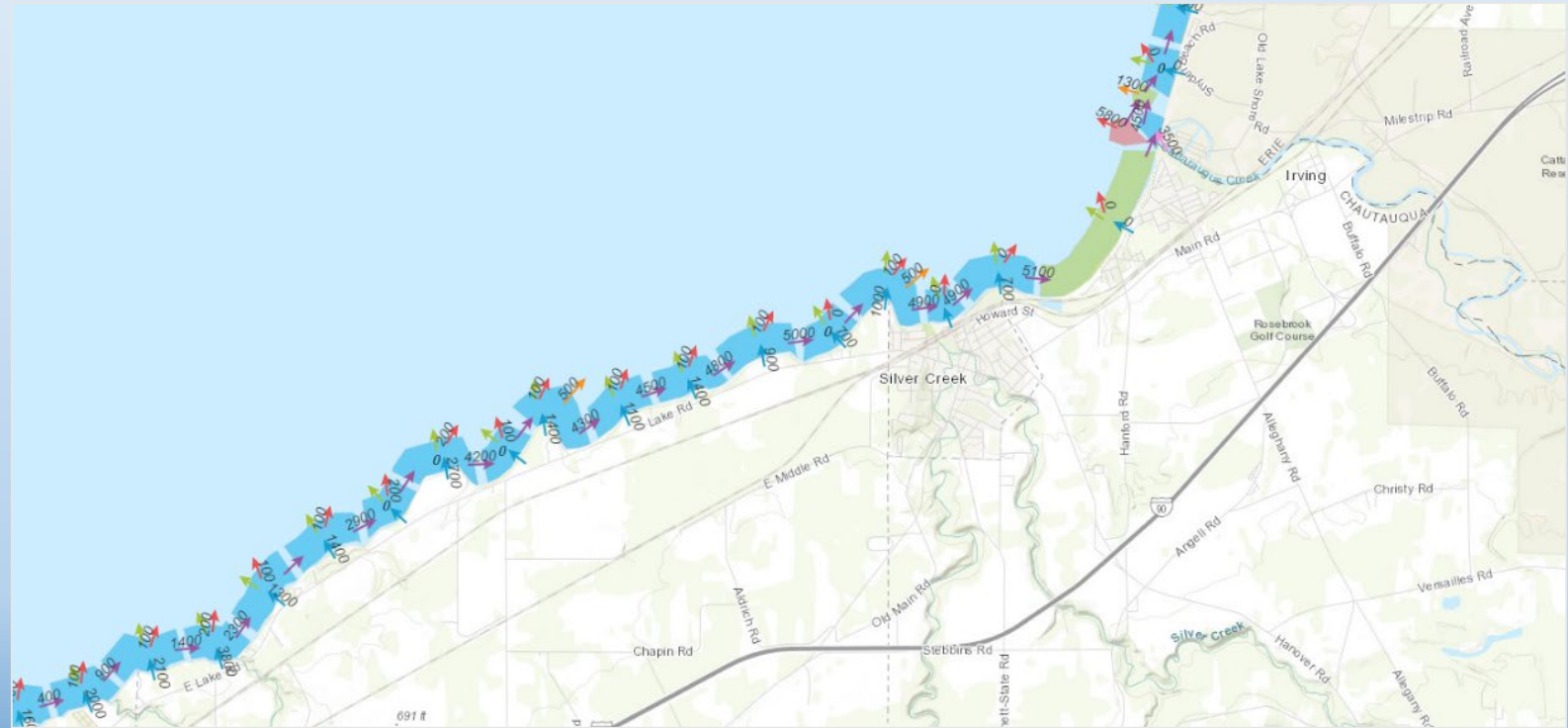
Small Waves | Small Fetch | Gentle Slope | Sheltered Coast

GRAY - HARDER TECHNIQUES

Large Waves | Large Fetch | Steep Slope | Open Coast

Why the shoreline system matters

- Each parcel is part of a large system
- Coastal processes are the build-up/break-down of shorelines and the movement of sediments that sustain landforms
- Shore structures impede coastal processes Nearly total habitat loss



Considerations for Lake Erie



- Often dealing with cliffs and bedrock – limited options*
- Piecemeal approach leaves neighboring properties vulnerable
- Vertical walls are steepening nearshore, impeding sediment movement needed to rebuild beaches

Community Approach

- Organized
- Combined resources
- Non-combative options
- Reduce verticality

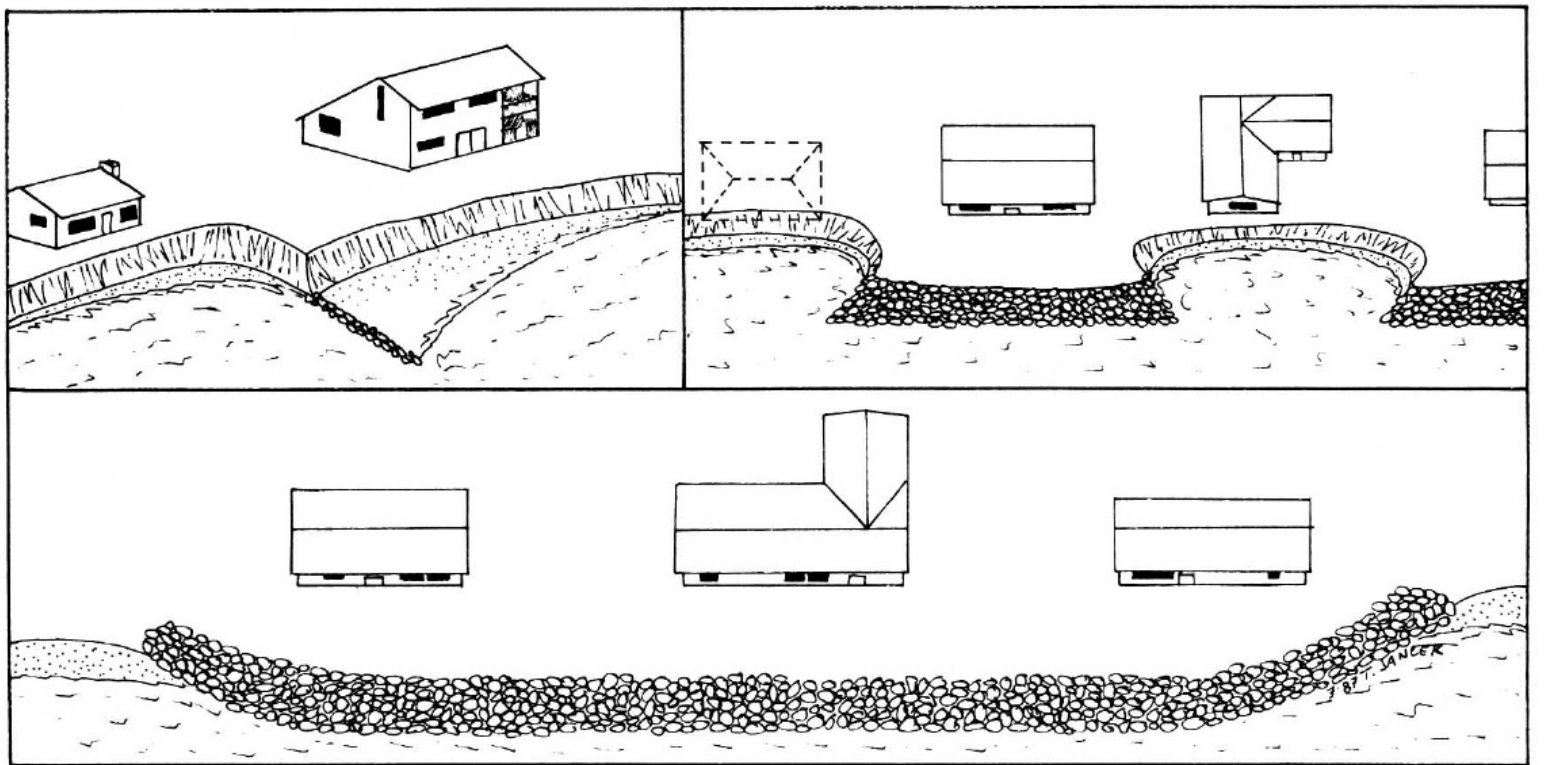


Figure 2. Attempts to control coastal erosion on a property-by-property piecemeal basis is often ineffective, with individual protective structures sometimes shifting erosion problems to adjacent properties or being damaged by continued erosion on adjacent properties. A proper erosion control approach is a unified, group project.

Non structural or long-term Shoreline Planning

- Reduction of risk to structures and communities
- Elevation
- Setbacks, zoning requirements
- Relocation or planned retreat



Getting Started with Shoreline Work

- Do:
 - Thoroughly evaluate your situation
 - Work with neighbors
 - Get started early – don't wait for the extreme event
 - Follow DEC, DOS and USACE permitting processes
 - Ask for help
 - NYSG, NYSDEC

- Do not:
 - Get “experimental”
 - Go forward without generational and succession planning



Additional Resources from NYSG

- NYSG Erosion Management for New York's Great Lakes Shorelines
- Working with Nature: A Guide to Native Plants for New York's Great Lakes Shorelines
- Seiche Fact Sheet
- Virtual Site Visits
 - www.nyseagrant.org/glcoastal or contact me directly: rlw294@cornell.edu



Conclusion/Wrap-up/Transition

- Up next:
 - DEC Permitting Process
 - DOS Coastal Consistency Review
 - US Army Corps of Engineers
- Contact:
 - Roy Widrig, NY Sea Grant
 - rlw294@cornell.edu
 - Oswego Office: 315-312-3042





Department of
**Environmental
Conservation**

Lake Erie Permitting

NYS Sea Grant

December 9, 2021

DEC Lake Erie Permitting Options

- General Permit 0-20-004
“Great Lakes Erosion Control General Permit”
- Individual Permit
- Emergency Authorization

General Permit 0-20-004

- Repair and in-kind replacement of existing functional erosion protection structures. The repair or replacement of these structures must not extend waterward of the pre-existing footprint, except where the Department accepts an applicant's demonstration that minor deviations are necessary for the stability of the structure. Increase in structure height may be approved if appropriate. Replacement structures must be adequately sized and designed.
- **New sloped rock revetments ($\leq 100'$) along CEHA bluffs or non-CEHA areas that are necessary for the protection of existing and functional dwellings. Slope and height limits apply.**
- Repair or reconstruction of existing public roads, bridges, utilities and other public infrastructure.
- **Emergency repair of functional concrete or steel vertical breakwalls along bluffs and non-CEHA areas by installation of sheet piling immediately adjacent to lakeward vertical face.**



General Permit 0-20-004 (Continued)

- Minor grading back of scarped bluffs to a stable slope. Project must include approved vegetation plan. Toe stone for stabilization may be allowed in specific circumstances.
- Repair or reconstruction of docks, catwalks and floats that were functional on April 1, 2017.
- Stabilization of existing functional storm-damaged dwellings, decks and walkways with temporary bracing and pilings.
- Repair or reconstruction of elevated walk ways or stairways necessary for water access. The stairs and landings shall be a maximum of 4 feet in width and constructed a minimum of 18 inches above grade over the dune/bluff face.
- Removal of channel blockages on Lake Ontario tributaries.
- Removal of debris by use of motorized equipment.



General Permit Application

Submit the following:

- Completed GP-0-20-004 Application
- Submit current photos (historic photos helpful in some cases)
- Project Plans (both a site plan and cross section)
- **If project meets General Permit criteria**, no need to send application to USACE of NYSDOS

GP-0-20-004 Application Form

Great Lakes Erosion Control General Permit (GP-0-20-004)



Application for General Permit and NYSDEC Authorization

Applicant Information:

Name of Applicant: _____

Applicant must be ☐ property owner, ☐ lessee or ☐ operator (check which applies).

Email: _____ Phone: _____

Mailing Address: Street: _____ City: _____ State: _____ Zip: _____

Name of Property Owner (if different from applicant): _____

Email: _____ Phone: _____

Mailing Address: Street: _____ City: _____ State: _____ Zip: _____

Application Contact or Contractor (if applicable): _____

Email: _____ Phone: _____

Mailing Address: Street: _____ City: _____ State: _____ Zip: _____

Project Location (where work will be done): _____

Town (where property taxes paid): _____ County: _____

Street Address: _____ City: _____ State: NY Zip: _____

Project Description (short description of work proposed and overall dimensions):

☒ **Required Attachments** (check each box to indicate that the attachment is provided with this form):

- ☐ Project Location Map (with location marked)
- ☐ Project Drawing – Overhead view (plan view)
- ☐ Project Site Photos
- ☐ Project Drawing – Side view (Cross-section)

☒ **Type of Project** (check all that apply – continued on page 2):

- ☐ Repair and in-kind replacement of existing functional erosion protection structures. The repair or replacement of these structures must not extend waterward of the pre-existing footprint, except where the Department accepts an applicant's demonstration that minor deviations are necessary for the stability of the structure. Increase in structure height may be approved if appropriate. Replacement structures must be adequately sized and designed.
- ☐ New stone necessary for the stabilization of existing, functional, vertical erosion protection structures along CEHA bluffs or non-CEHA areas. Stone must be sized appropriately for the location. Minor deviations in the original structure's configuration, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. **Not applicable along beach or dune CEHA shorelines.**
- ☐ New sloped rock revetment structures along CEHA bluffs or non-CEHA areas, that are necessary for the emergency stabilization of existing and functional dwellings. Structures must be no greater than 100 feet in length and 10 feet in height and must be sloped no steeper than 1.5H to 1V and not extend waterward of the existing shoreline, or the shoreline as it existed immediately prior to a discrete erosion event no more than 6 months prior to the time of permit

- application. Stone must be sized appropriately and placed as close to the toe of the slope as possible. **Not applicable along beach or dune CEHA shorelines.**
- ☐ Emergency repair of functional concrete or steel vertical breakwalls along bluffs or non-CEHA areas, by installation of sheet piling immediately adjacent to the existing lakeward vertical face. **Not applicable along beach or dune CEHA shorelines.**
- ☐ Repair or in-kind reconstruction of existing public roads, bridges, utilities and other public infrastructure.
- ☐ Stabilization of existing functional storm-damaged dwellings, decks and walkways with temporary bracing and pilings.
- ☐ Repair or in-kind reconstruction of elevated walkways or stairways necessary for water access. The stairs and landings shall be a maximum of 4 feet in width and constructed a minimum of 18 inches above grade over the dune/bluff face.
- ☐ Minor grading back of the top of scarped bluffs landward to a stable slope. Project must include an approved vegetation plan. Toe stone for stabilization may be allowed in specific circumstances.
- ☐ Removal of debris by use of motorized equipment.
- ☐ Temporary installation of sandbags or other Department approved temporary flood protection devices located above MHW. Sandbags may be conventional or large (cubic yard or larger).
- ☐ Removal of channel blockages of streams tributary to Lake Ontario and Lake Erie blocked by shoreline sediment or other natural-deposited materials. Application must include a disposal plan.
- ☐ Repair or in-kind reconstruction of previously authorized docks, catwalks and floats located within CEHA areas and within DEC regulated freshwater wetlands or wetland adjacent areas.
- ☐ New shoreline stabilization measures that consist predominately of vegetative stabilization or bioengineering techniques. Structures must be no greater than 200 feet in length and 10 feet in height and must be sloped no steeper than 1.5H to 1V and not extend waterward of the existing shoreline, or the shoreline as it existed immediately prior to a discrete erosion event no more than 6 months prior to the time of permit application. Stone or other materials must be sized appropriately and placed as close to the toe of the slope as possible.

Certification:
I hereby apply for authorization under General Permit GP-0-20-004. I have read General Permit GP-0-20-004 and will construct and operate this project in strict compliance with the approved plans and terms and conditions of this permit as well as the Environmental Conservation Law and applicable regulations. I understand that any false or inaccurate statements made in the application for this permit are punishable as a Class A misdemeanor. As a condition of this permit, I accept full legal responsibility for all damage, direct or indirect, of whatever nature, and by whomsoever suffered, arising out of the project described herein and agree to indemnify and save harmless the state from suits, actions, damages, and costs of every name and description resulting from this project. I hereby consent to Agency inspection of the project site and adjacent areas on the property. Agency staff may enter the property without notice between 7:00 am and 7:00 pm, Monday - Friday. Inspection may occur without the owner, applicant or agent present. If the property is posted with "keep out" signs or fenced with an unlocked gate, Agency staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site. I understand that failure to give this consent may result in denial of the permit(s) sought by this application.

Applicant Signature

Date

Property Owner Signature
(if different than applicant)

Date

DEPARTMENT AUTHORIZATION (FOR AGENCY USE ONLY):

AUTHORIZED NYSDEC SIGNATURE and DATE:	PRINT NAME and TITLE:
DEC NO: _____	
PERMIT EFFECTIVE DATE:	PERMIT EXPIRATION DATE:
AUTHORIZATION TYPE(S):	
<input type="checkbox"/> 6 NYCRR 608; Article 15, Title 5 Protection of Water	<input type="checkbox"/> 6 NYCRR 663; Article 24, Freshwater Wetlands
<input type="checkbox"/> 6 NYCRR 608; Water Quality Certification	<input type="checkbox"/> 6 NYCRR 505; Coast Erosion Management
ATTACHMENTS:	
<input type="checkbox"/> General Permit	<input type="checkbox"/> Location Map
<input type="checkbox"/> Project Drawings	<input type="checkbox"/> Other: _____
DISTRIBUTION:	
cc: <input type="checkbox"/> Regional DEP	<input type="checkbox"/> COE
<input type="checkbox"/> Regional BEH	<input type="checkbox"/> CEHA

Department of Environmental Conservation

Individual Permit

When are they required?

Most new erosion protection structures including:

- Rip Rap/Revetments
- Stepped Block Walls
- Fill within regulated wetlands
- Structures with CEHA

What is required?

Joint Application

Environmental Assessment Form

Photos

Project Plans

Copies are submitted by the applicant to:

- NYSDEC
- NYSDOS
- USACE



Department of
Environmental
Conservation

Emergency Authorization

- Issued in accordance with 6 NYCRR Part 621.12 (UPA)
- Must be immediate threat to life, health, general welfare, property, or natural resources.
- Department can only authorize the minimum work necessary to overcome the emergency
- Authorization valid for 30 days
- What is needed?

Article 15 Protection of Waters Permit

All Protection of Waters Permit applications must meet the following standards:

- the proposal is reasonable and necessary;
- the proposal will not endanger the health, safety or welfare of the people of the State of New York; and
- the proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the State, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment.



Article 24 Wetlands and Part 182 Endangered/Threatened Species Permitting

- Avoid and minimize impacts
- Evaluate alternatives
- Demonstrate this is the only practicable alternative
- Mitigate unavoidable impacts



Article 34 Coastal Erosion Management Permit

Purpose and intent is to:

- Promote and preserve the natural protective features
- Limit development

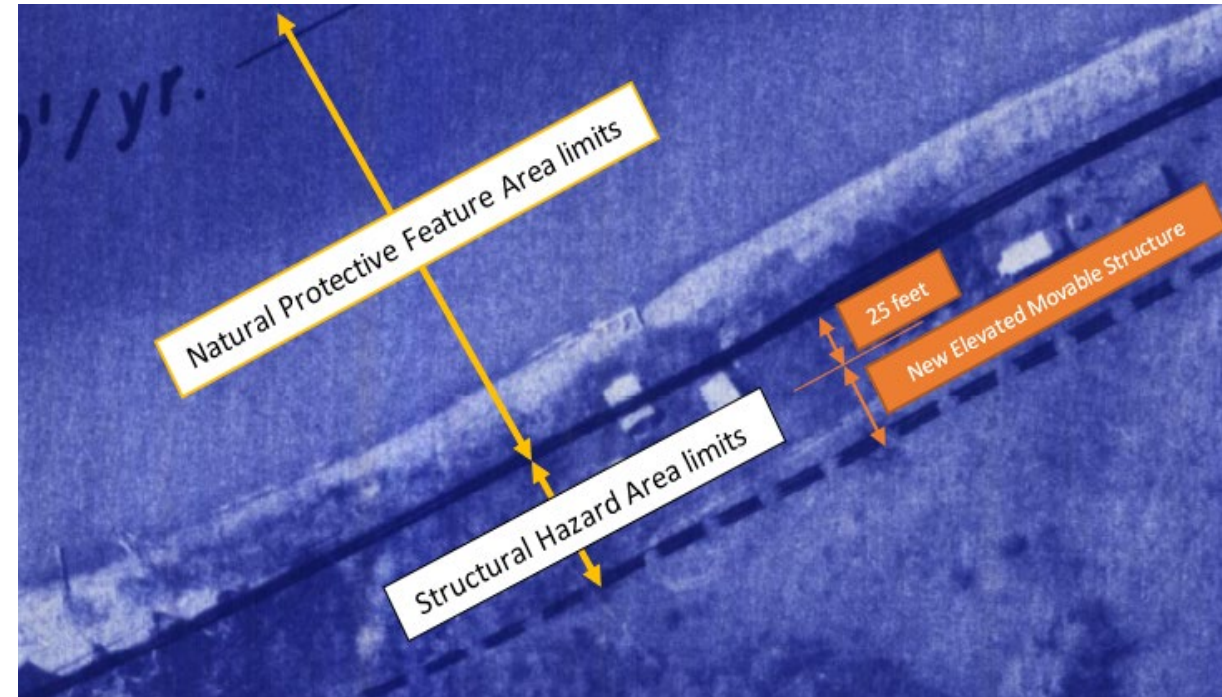
A permit can only be issued provided that the proposed regulated activity:

- Is reasonable and necessary
- Considers alternatives to the proposed activity
- Will not likely cause a measurable increase in erosion
- Prevents or minimizes adverse effects natural protective features, existing erosion protection structures, and natural resources



Coastal Erosion Hazard Areas

- Natural Protective Feature Areas
- Structural Hazard Areas



All Coastal Erosion Hazard Area maps can be downloaded at <http://on.ny.gov/2aVYuOA>

Coastal Erosion Hazard Areas



Project Information to Include:

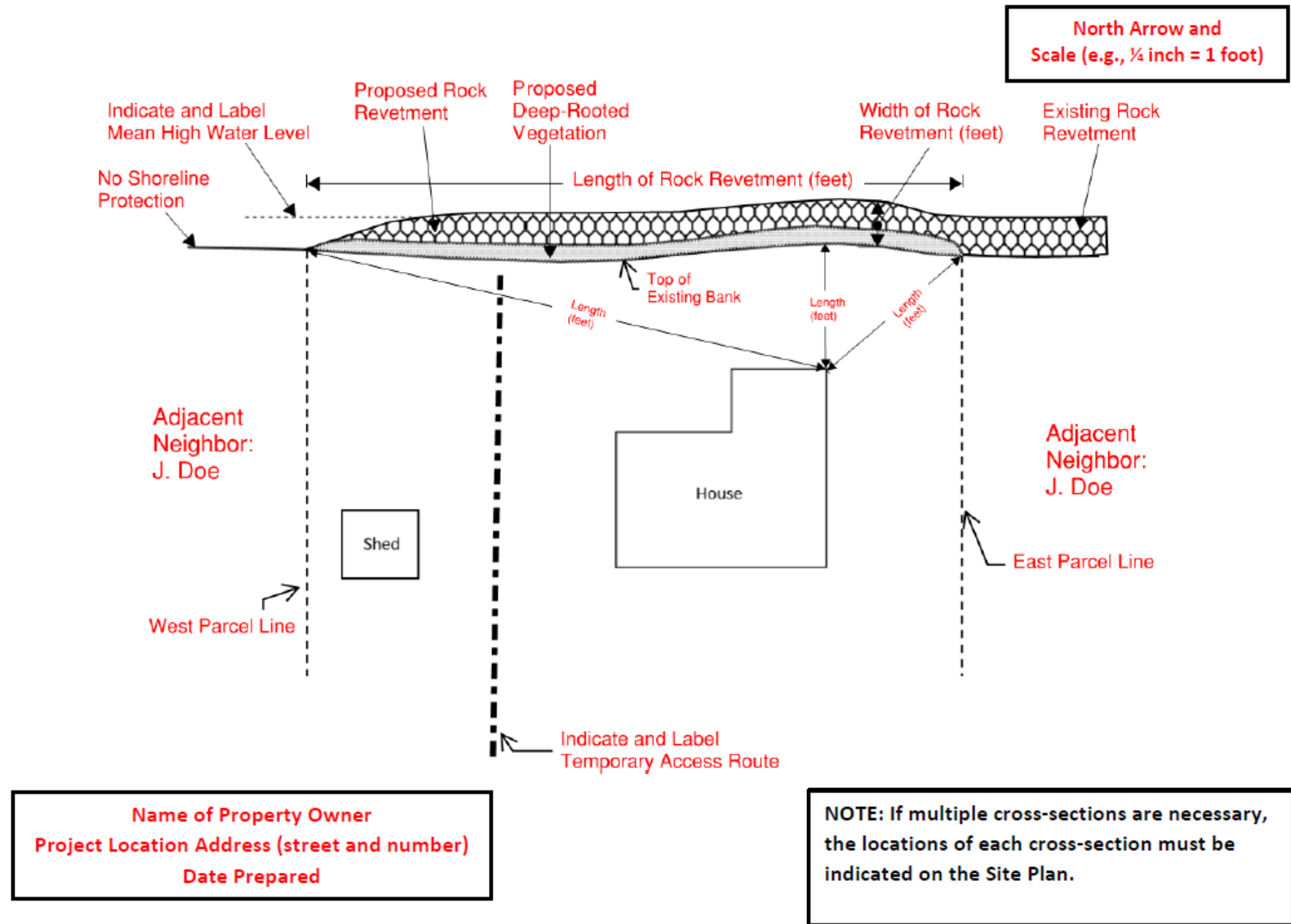
- Descriptions of how you meet permit issuance standards
 - Is the project reasonable and necessary?
 - Have you considered reasonable alternatives?
 - Will your project cause a measurable increase in erosion at the proposed site or at other locations?
- Aerial photos (Google Maps or Bing Maps)
- Location map
- Stamped and signed survey
- Recent photos of project site



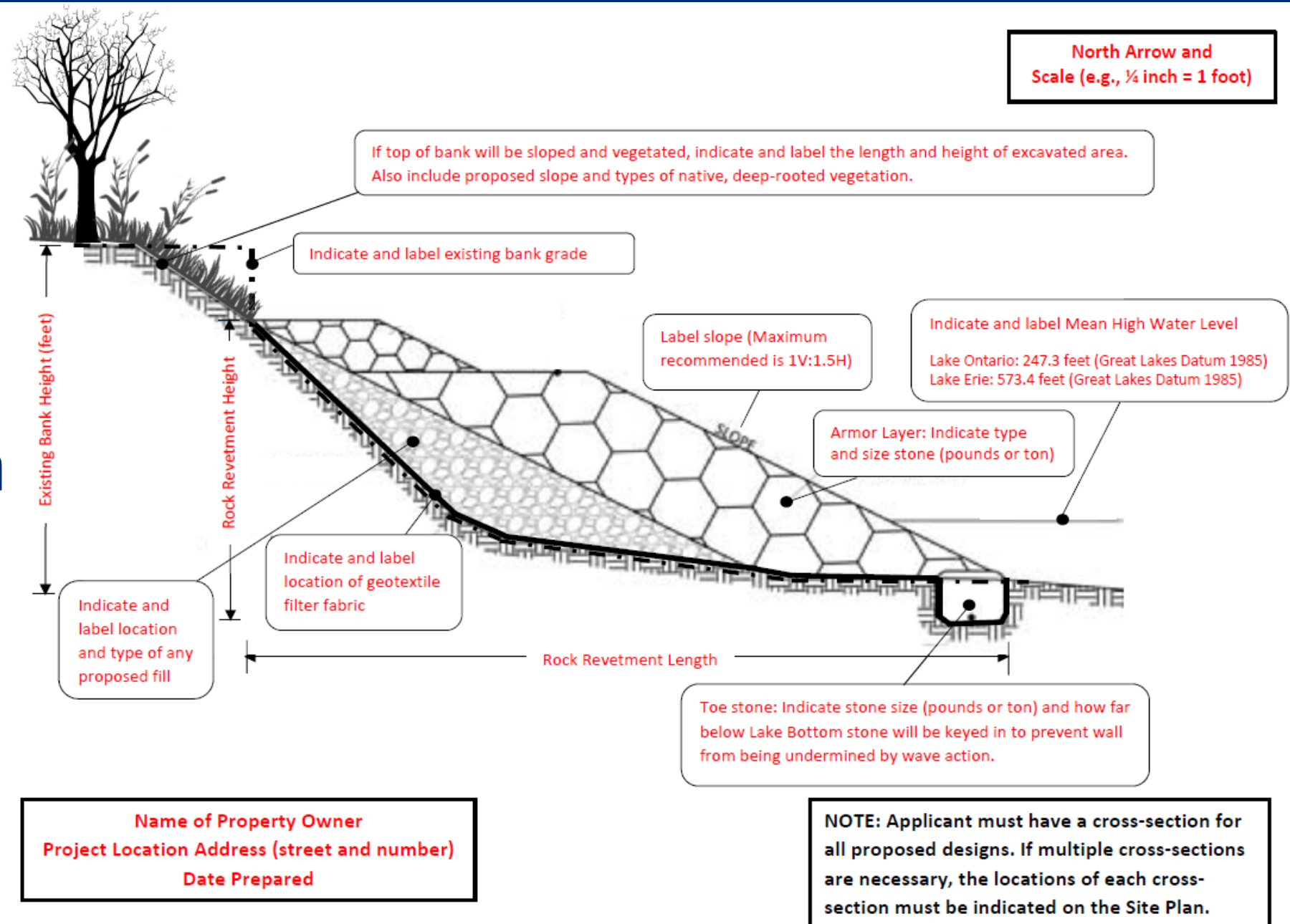
Project Information to Include (continued):

- Project plans (site plan and cross-section plan)
- Description of construction materials, methods, and manner of placement
- Quantity of materials to be used above and below MHWL
- Debris/structure removal prior to work commencement
- Quantity of material to be removed and disposal location
- Long-term maintenance plan

Sample Site Plan



Sample Cross-section





Evans, NY



Department of
Environmental
Conservation



Portland, NY



Department of
Environmental
Conservation

Coordination with DEC

- As early as possible to avoid holdups
- Questions on regulated activities
- Technical guidance

Contacts:

NYSDEC Region 9 Permits

David Denk

David.denk@dec.ny.gov

716-851-7165

NYSDEC Coastal Erosion

Beth Geldard, P.E.

Beth.Geldard@dec.ny.gov

585-226-5450



Department of
Environmental
Conservation

Questions?





**Office of Planning
and Development**

Coastal Consistency Review NYS OPRHP

An Office of New York Department of State

May 19, 2021

Topics

- Federal Coastal Zone Management Act
- NYS CMP
 - Special Management Areas
- Federal Consistency Review
- State Consistency Review
- Local Consistency Review

Coastal Zone Management Act

The Coastal Zone Management Act of 1972



Federal Coastal Zone Management Act

- Passed in 1972
- Encourages Coastal States to develop a Coastal Management Program
- Incentivized participation by providing funding and regulatory authority (Consistency)
- Certain Federal Actions CANNOT be undertaken without a State's consent (15 CFR Part 930)

The core idea (reverse federalism)

- Certain federal actions cannot be undertaken without being found consistent with the NYS CMP enforceable policies.
 - Direct (ACOE dredging)
 - **Authoritative (permit issuance)**
 - Funding to a state of local gov't (HUD Money)
 - OCS plans
- The state uses this authority as ONE means of implementing its plans

New York CMP

- Adopted in 1982 as a Networked Program
- Incorporates multiple state laws into one set of policy statements (44 policies)
- Required the passage of Article 42 of the NYS executive law which describes “State Consistency.” (more to follow)
- CMP incorporates Special Management Areas
 - LWRPs,
 - SCFWHs,
 - SASS,
 - LIS CMP

Special Management Areas

Local Waterfront Revitalization Programs

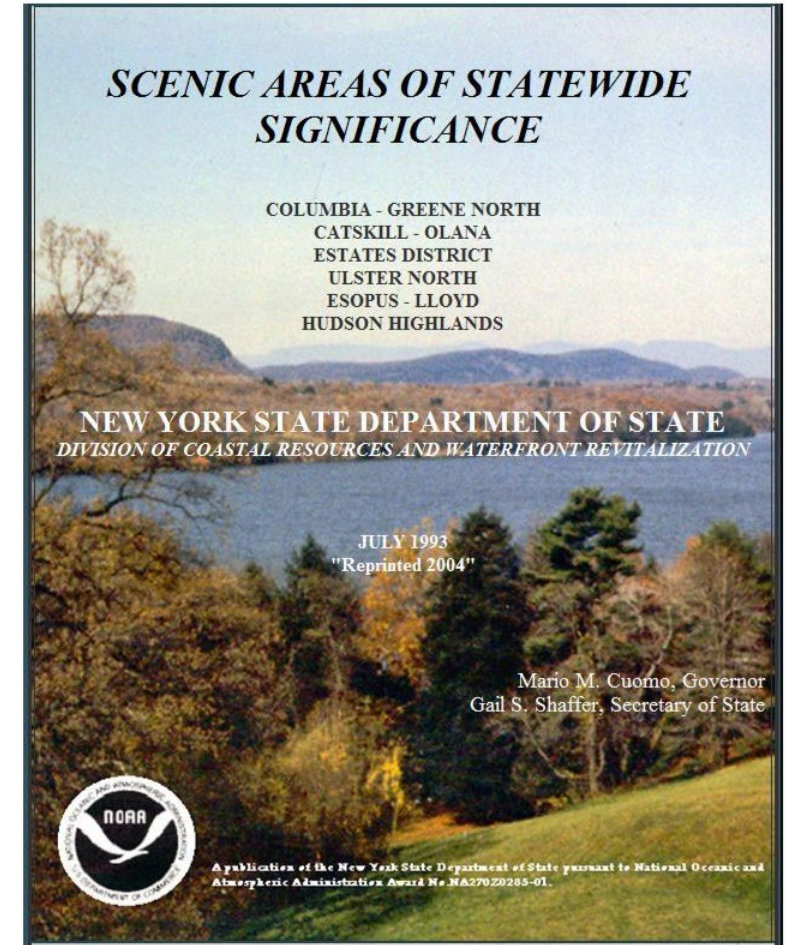
- Municipality (1 or more) based local refinement of coastal policies
 - Can be completed in the coastal area or on a designated inland waterway.
 - Only those within the coastal area can be federally approved
 - Only those that are federally approved are binding on federal actions
- Requires communities to develop local consistency laws for their own actions

Significant Coastal Fish and Wildlife Habitats

- Areas designated by DOS upon recommendation by DEC that have special characteristics
- Incorporates comments from federal agencies
- A specific coastal policy applies if action is within or affecting the SCFWH
- The whole habitat is considered, not an individual species.
- Species considered during designation
- All SCFWHs provided the same protection (200+) under Policy 7

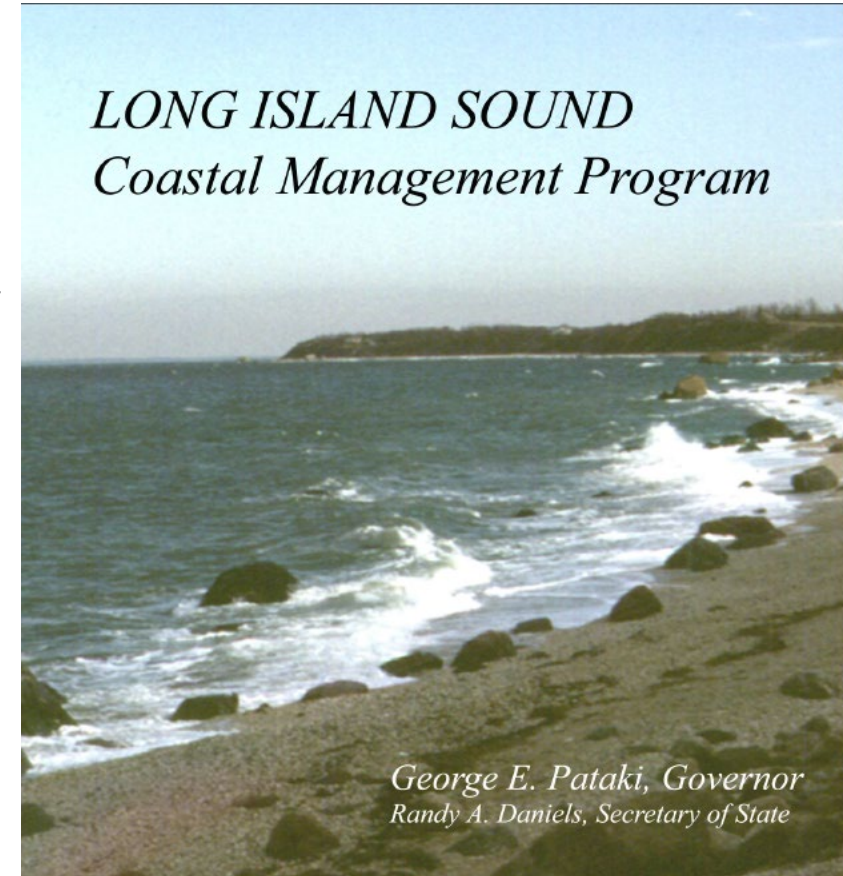
Scenic Areas of Statewide Significance

- Areas designated by DOS as have scenic importance
- Only areas are in the Hudson Valley and East Hampton
- If a project is conducted within a SASS then policy 24 applies



Long Island Sound CMP

- Regional CMP
- 13 policies
- Fully enforceable for federal consistency



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



Federal Consistency Review

- Permitting Actions (includes state agencies that need federal permit)
 - Fully Consistent
 - 6 months review

Federal Consistency & Permitting Actions

- An **APPLICANT** for a federal permit on this list (table 3 of the CMP) must **CERTIFY** that they will conduct their activity in a manner fully consistent with all 44 coastal policies or policies within an applicable LWRP.
 - DOS concurs with, conditionally concurs with, objects to, or objects with alternatives within 6 months of receipt of complete application
 - Concurrence is “conclusively presumed” if longer than 6 months
 - Can “stay” the time clock by mutual consent

Federal Consistency & Permitting Actions

- General Concurrence
 - Abbreviated, No PN required
- Nationwide Permits and Regional Permits (ACOE)
 - NYS DEC General Permit for Great Lakes Erosion Control, GP-0-20-004
 - Designed to incorporate DOS's NW permit decisions
 - **If your action is authorized under this General Permit, it does not require individual DOS review.**
 - Other ACOE regional permits – DOS review in some situations (review ACOE permit language - <https://www.lrb.usace.army.mil/Missions/Regulatory/New-York-Permit-Information/>)
 - Docks
 - Dredging
 - etc

Federal Consistency & Permitting Actions

- Concurrence
 - PN required
 - If conditional, applicant's refusal of conditions turn it to objection
- Objections
 - PN required
 - Encouraged to ID alternatives that are consistent

- **Federal Consistency & Complete App.**
 - **Completed FCAF**
 - Copy of Federal Application (i.e. Joint App)
 - Detailed description
 - Location map
 - Site map
 - Color photos
 - Statement of purpose and need
 - Id of all abutting owners
 - Analysis of alternatives
 - FEIS (if required by another agency)
 - Copies of any NYS application for permits

Federal Consistency Assessment Form

1. Will the proposed activity result in any of the following:	YES/NO
a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 22, 25, 32, 37, 38, 41, 43)	<input type="checkbox"/> <input type="checkbox"/>
b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal waters? (2, 11, 12, 20, 28, 35, 44)	<input type="checkbox"/> <input type="checkbox"/>
c. Revitalization/redevelopment of a deteriorated or underutilized waterfront site? (1)	<input type="checkbox"/> <input type="checkbox"/>
d. Reduction of existing or potential public access to or along coastal waters? (19, 20)	<input type="checkbox"/> <input type="checkbox"/>
e. Adverse effect upon the commercial or recreational use of coastal fish resources? (9,10)	<input type="checkbox"/> <input type="checkbox"/>
f. Siting of a facility essential to the exploration, development and production of energy resources in coastal waters or on the Outer Continental Shelf? (29)	<input type="checkbox"/> <input type="checkbox"/>
g. Siting of a facility essential to the generation or transmission of energy? (27)	<input type="checkbox"/> <input type="checkbox"/>
h. Mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters? (15, 35)	<input type="checkbox"/> <input type="checkbox"/>
i. Discharge of toxics, hazardous substances or other pollutants into coastal waters? (8, 15, 35)	<input type="checkbox"/> <input type="checkbox"/>
j. Draining of stormwater runoff or sewer overflows into coastal waters? (33)	<input type="checkbox"/> <input type="checkbox"/>
k. Transport, storage, treatment, or disposal of solid wastes or hazardous materials? (36, 39)	<input type="checkbox"/> <input type="checkbox"/>
l. Adverse effect upon land or water uses within the State's small harbors? (4)	<input type="checkbox"/> <input type="checkbox"/>

Certification

E. CERTIFICATION

The applicant or agent must certify that the proposed activity is consistent with the State's CMP or the approved local waterfront revitalization program, as appropriate. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program, or with the applicable approved local waterfront revitalization program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name:

Address:

Telephone: Area Code ()

Applicant/Agent's Signature: Date:

The Policies in the CMP

- Development
- Fish and Wildlife
- Flooding and Erosion
- General
- Public Access
- Rec
- Historic/Scenic
- Agricultural
- Energy and Ice Management
- Water and Air Resources
- Wetlands

An Office of New York Department of State



Office of Planning
and Development

Appeals

- Federal Agency **CANNOT** issue permit or funds over State's objection unless the decision is overridden by US Sec. of Commerce
 - Consistent with the objectives or purposes of CZMA
 - Significantly and substantially furthers national interest
 - Interests outweigh adverse coastal effects
 - No reasonable alternatives
 - Necessary in the interest of national security

Local Consistency Law

- Required municipal legislative action to implement LWRP
- Similar to Article 42 of the Exec. Law where State actions must be consistent
 - Town of Wheatfield Chapter 200 Article XVIII
- Local law provides procedures for what types of actions must undergo review and which entity is responsible for review

Town of Wheatfield
Local Waterfront Revitalization Program Consistency Review Law

Local Law No. ____ of the year of 2012

Be it enacted by the Town Board of the Town of Wheatfield as follows:

GENERAL PROVISIONS

I. Title

This local law will be known as the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) Consistency Review Law.

II. Authority and Purpose

1. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this local law is to provide a framework for the agencies of the Town of Wheatfield (Town) to incorporate the policies and purposes contained in the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions located within the waterfront area; and to ensure that such actions and direct actions undertaken by Town agencies are consistent with the LWRP policies and purposes.
3. It is the intention of the Town of Wheatfield that the preservation, enhancement and utilization of the natural and manmade resources of the waterfront area of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss and degradation of living waterfront resources and wildlife; adverse impacts to cultural resources; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.
4. The substantive provisions of this local law shall only apply while there is in existence a Town of Wheatfield Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. Definitions

- A. "Actions" include all the following, except minor actions:

May 19, 2021

https://dos.ny.gov/local-waterfront-revitalization-program


An Office of New York De

← → ↻ dos.ny.gov/local-waterfront-revitalization-program ☆ ⚙️ 👤

May 18, 2021 | 1:58 pm
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Local Waterfront Revitalization

The LWRP is the State's primary program for working in partnership with waterfront communities across New York State.



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Useful links

- Consistency Overview – <https://dos.ny.gov/coastal-consistency-review>
- FCAF - https://dos.ny.gov/system/files/documents/2020/09/fcaf_fillable.pdf
- NYS Coastal Management Program and EIS (table 3 found in this document) – https://dos.ny.gov/system/files/documents/2021/04/ny_cmp_dec2020_w-bookmarks_working_topost.pdf
- NYS Coastal Management Program Policies (for federal consistency) - <https://dos.ny.gov/system/files/documents/2020/02/coastalpolices.pdf>
- LIS CMP - <https://dos.ny.gov/long-island-sound-coastal-management-program-0>
- 19 NYCRR Policies and LIS Policies (for state consistency) - https://dos.ny.gov/system/files/documents/2020/06/19nycrr_part_600-603.pdf
- Approved LWRPs (for state and federal consistency as applicable)- <https://dos.ny.gov/local-waterfront-revitalization-program>
- Coastal Map (coastal boundary, SCFWHs, LWRP, SASS, etc)- <https://dos.ny.gov/using-coastal-atlas-gis-gateway>
- SCFWHs - <https://dos.ny.gov/significant-coastal-fish-wildlife-habitats>
- SASS - <https://dos.ny.gov/scenic-areas-statewide-significance-sass>
- Consistency shared mailbox – cr@dos.ny.gov

Matthew P. Maraglio

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Consistency Review Unit, Office of Planning & Development

New York Department of State

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www.dos.ny.gov

U.S. ARMY CORPS OF ENGINEERS – REGULATORY PROGRAM

Shaina R. Souder
Biologist
Great Lakes & Ohio River Division
Buffalo District
Regulatory Monitoring &
Enforcement Section

Date: 9 December 2021



US Army Corps
of Engineers®





SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899

- Applies to Navigable Waters - waters that are currently, historically and could in the future represent opportunity for interstate commerce
- All activities and structures within, above, over or beneath navigable waters are regulated
- Limit of jurisdiction - Ordinary high-water mark, extending to adjacent wetlands if present



SECTION 404 OF THE CLEAN WATER ACT OF 1977

- Applies to 'waters of the United States' (**33 CFR 328.3**)
 - e.g. Navigable waters, inland lakes/ponds, tributaries (rivers, streams, creeks), wetlands
- Discharges of dredged or fill material are regulated
 - e.g. dredged material, or rock, sand, dirt
- Limit of jurisdiction - ordinary high-water mark or wetland/upland boundary



PERMITS:

- Examples of activities or structures requiring permits in Lake Erie, the Saint Lawrence River, Niagara River, Tonawanda Creek/Erie Canal, Buffalo River, Cayuga Creek, Cattaraugus Creek (Navigable from mouth to Penn Central Bridge about 3/4 miles upstream from mouth), Dunkirk Harbor, Scajaquada Creek
 - Docks/Decks
 - Boathouses
 - Riprap/Stone revetments
 - Bioengineered protective structures
 - Breakwalls/Jetty
 - Seawalls
- https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_ny.pdf?ver=2013-01-31-184500-830



PERMITS



➤ ***General Permits***

- Nationwide Permits (NWP) 3, 13, 19
 - Nested w/DEC GP 0-20-004
 - NWPs may also be used separate from the DEC GP
- Nationwide Permit No. 3 – repair, rehab or replacement of currently serviceable structures or fills; minor deviations allowed; provides for structures or fill damaged as a result of storms, floods, or other discrete events
- Nationwide Permit No. 13 – bank stabilization for erosion control; > 500 linear feet and 1 cy of material per running ft of bank; no work in wetlands
- Nationwide Permit No. 19 – dredging of no more than 25 cy of material; no work in wetlands



PERMITS



DEC GP 0-020-004

Projects that qualify for the General Permit will also qualify for the USACE Nationwide Permit (NWP) No. 3, 13, and/or 19 and have received Coastal Consistency Certification from the New York State Department of State (NYSDOS).

All GP applications must be submitted to the DEC who will determine if the GP applies. If the GP applies, **no coordination with the USACE or DOS is required except for the following circumstances, as certain activities may require USACE pre-construction notification or approval under the Federal Endangered Species Act.**

Before starting work, contact the USACE by sending a copy of the GP application package to: LRB.NewYork.RegActions@usace.army.mil for approval for any project that involves the following activities:

- a.) Tree removal in: all Towns in Jefferson County; in the Towns of Sandy Creek and Richland, Oswego County; and in the Towns of Hammond, Morristown and Oswegatchie, St. Lawrence County.
- b.) Activities in federally-regulated wetlands in the Towns of Huron and Wolcott, Wayne County.
- c.) Activities in federally-regulated wetlands in Cayuga and Oswego Counties.
- d.) Activities within sandy shorelines in the Towns of Sandy Creek and Richland, Oswego County.
- e.) Activities within federally-regulated wetlands or sandy shorelines in the Towns of Henderson and Ellisburg, Jefferson County.
- f.) Projects that involve the placement of stone below the mean high-water line in excess of an average of one cubic yard per running foot of shoreline. Note for 1(f): The GP application package must also be sent to the NYS DOS along with a Federal Coastal Assessment Form for concurrence.

To ensure permit compliance, please review the terms and conditions of the USACE Nationwide Permits 3, 13 & 19, which contains updated DEC Water Quality Certification and DOS Coastal Consistency information for use with the GP.



PERMITS

➤ ***Standard Permits (SP)***

- Require Joint Application for Permit form
- Public Notice
- Evaluation of alternatives

➤ **Letter of Permission (LOP)**

- Require Joint Application for Permit form
- Agency Coordination Letters

- ***Other Authorizations*** – for both IPs and EPs, DEC permits: Water Quality Certification, and DOS Coastal Consistency concurrence are required.



CONSIDERATION ON PERMITTING ACTIVITIES AND STRUCTURES

- Recognize right of landowner to protect property from erosion (33 CFR 320.4(g)(2))
- Consideration of and balancing the following factors:
 - Need for the project
 - Navigation impacts
 - e.g. access to Lake Ontario, safety
 - Impacts to up and down drift properties
 - e.g. increased erosion
 - Affect on aquatic resource
 - e.g. environmental, littoral system
 - Effectiveness of the protective feature (not an engineering assessment)



OTHER PROGRAMS – COMPLIANCE WITH OTHER STATUTES



- Section 401 of the Clean Water Act - Water Quality Certification (NYS Department of Environmental Conservation)
- Coastal Zone Management Program (NYS Department of State)
- Endangered Species Act (U.S. Fish and Wildlife Service) - Section 7 Coordination
- Section 106 of the National Historic Preservation Act (NYS Office of Parks Recreation and Historic Preservation)
- Other coordination: National Environmental Policy Act (NEPA), Wild and Scenic Rivers Act, Fish and Wildlife Coordination Act, U.S. Coast Guard.



QUESTIONS?





REFERENCES

http://www.dec.ny.gov/docs/permits_ej_operations_pdf/gp019003appl.pdf

<https://www.lrb.usace.army.mil/Lake-Ontario-High-Water/>

[https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/HighWaterInfo/Condensed%20NWP%203_13_%2019%20for%20GP-0-19-003\(final\).pdf?ver=2019-05-24-100640-997](https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/HighWaterInfo/Condensed%20NWP%203_13_%2019%20for%20GP-0-19-003(final).pdf?ver=2019-05-24-100640-997)

LRB Regulatory Website: <https://www.lrb.usace.army.mil/Missions/Regulatory/>