

HEMPSTEAD HARBOR PROTECTION COMMITTEE

MODEL WATERWAYS LOCAL LAW

NOVEMBER 15, 2013 VERSION



**HEMPSTEAD HARBOR PROTECTION
MODEL CODE**

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Hempstead Harbor Protection Model Code

For Review and Approval By The Hempstead Harbor Protection Committee's Municipal Members

Version: November 15, 2013

ARTICLE 1: PURPOSE FOR THE HEMPSTEAD HARBOR PROTECTION MODEL CODE

Section 1.1 Statement of Purpose

- a. The purpose of the Hempstead Harbor Protection Model Code is to provide a suggested coordinated set of regulations to be referred to and voluntarily used, in whole or in part, or as the basis for further inter-municipal planning, coordination, and enforcement by any member municipality of the Hempstead Harbor Protection Committee in order to protect and improve the water quality, safety, public access, historic values and scenic vistas of Hempstead Harbor and its tributaries.

- b. The Hempstead Harbor Protection Committee (HHPC) developed the Hempstead Harbor Management Plan (HMP, August 2004) as a planning vehicle for balancing the diverse interests of the HHPC member municipalities that benefit from the unique natural and cultural resources available in the harbor and watershed area relating to water-dependant uses, water-enhanced uses, and environmental impacts to the surface water quality in Hempstead Harbor.

- c. The HHPC's Member Municipalities include: the County of Nassau; the Town of Oyster Bay; the Town of North Hempstead; the City of Glen Cove; the Village of Flower Hill; the Village of Roslyn; the Village of Roslyn Harbor; the Village of Sands Point; and the Village of Sea Cliff. The standards and regulations of the Hempstead Harbor Model Code represent a suggested minimum set of standards for use by the HHPC Member Municipalities having jurisdiction within Hempstead Harbor.

Section 1.2 Model Code Applicability to the Hempstead Harbor Management Plan

- a. The suggested standards and regulations of the Hempstead Harbor Model Code were developed to provide a sample regulatory framework for improving water-dependant uses, water-enhanced uses, and environmental impacts to the surface water quality in Hempstead Harbor and its tributaries, conforming to the following HHPC HMP goals:
 - i. Ensure efficient and safe navigation and operating conditions in Hempstead Harbor addressing: conflicts among existing harbor uses by HHPC Member Municipalities; speeding vessels; natural resource protection; docking structures; aids to navigation; and goals for coordination among HHPC Member Municipalities guidelines for mutual enforcement.
 - ii. Protect Hempstead Harbor's water-dependent uses, and promote the development of new water-dependent uses at suitable locations, without impacting important natural resources sensitive to pollution from point-sources and non-point sources in the harbor and its water shed.
 - iii. Redevelop vacant and underutilized waterfront land on Hempstead Harbor with appropriate uses, while mitigating and eliminating harmful environmental impacts resulting from known, suspected and discovered contamination of vacant and under utilized waterfront properties.
 - iv. Increase water-related recreational opportunities within Hempstead Harbor and along the harbor's shoreline, and increase public access to the waterfront, and promote and encourage improvement of existing public access points and development of additional access points, including pedestrian trails and walkways, bicycle access and trails, and public access by hand-launched vessels.
 - v. Protect and enhance Hempstead Harbor's natural environment and open space resources, including surface water quality, wetlands, coastal fish and wildlife habitats, upland natural areas, and important scenic viewpoints. To coordinate

efforts to preserve and rehabilitate the harbor as a significant coastal fish and wildlife habitat, and educate the public about water-dependant uses and water-enhanced uses and related impacts to the harbor's natural resources.

- vi. Preserve important historical resources along the waterfront of Hempstead Harbor by regulating activities by private property owners.
- vii. Increase water-enhanced recreational and economic opportunities within Hempstead Harbor Member Municipalities by improving linkages between the Hempstead Harbor waterfront, parklands and open spaces, and adjacent downtown areas.
- viii. Promote a collaborative effort among the municipalities surrounding Hempstead Harbor, by facilitating coordination among HHPC Member Municipalities for developing innovative inter-municipal planning and sustainable community practices that integrate environmental protection, economic prosperity, and community well-being, so as to ensure effective long-term community, regional, and watershed vitality.
- ix. Promote a collaborative effort among the municipalities which builds upon the unique characteristics and circumstances of Hempstead Harbor and its watershed, and applying these coordinated efforts to: revitalize existing communities to become livable and vital neighborhoods; preserve open space and critical environmental resources; encourage sustainable economic development practices; improve community partnerships; promote and facilitate local goods and services sharing arrangements; and promote and facilitate heightened public awareness and community pride.

ARTICLE 2: DEFINITIONS

As used for this HHP Model Code, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

Section 2.1 MODEL CODE:

This Hempstead Harbor Protection Model Code.

Section 2.2 SURFACE WATERS:

All waters and waterways in the Hempstead Harbor watershed, including Hempstead Harbor, Glen Cove Creek, Roslyn Creek, streams, inland basins, and ponds

Section 2.3 WATER-DEPENDENT USES:

Those uses and activities which require direct access to with frontage on, or location in, marine or tidal waters in order to operate. Such uses include but are not limited to: marinas, boatyards, yacht clubs, and similar facilities that provide dockage/berthing for watercraft; fishing piers; boat launching ramps; boat repair and services businesses; boat construction companies; port facilities; boat, canoe and kayak rentals; aquaculture; water-borne transportation operations; public swimming beaches; waterfront parks; and the like.

Section 2.4 WATER-ENHANCED USES :

Those uses which does not require a waterfront location in order to function, but that primarily contribute to the natural resource preservation, cultural aspects, recreational functioning, or economic viability of water-dependent uses or that increases the public use and enjoyment of the waterfront.

ARTICLE 3. GENERAL STANDARDS FOR WATERWAY USE

Section 3.1 Purpose and Goals

- a. The provisions contained herein this Chapter of the Model Code establish suggested uniform standards for efficient and safe navigation and operating conditions in Hempstead Harbor which are protective of water-dependant uses, public health, the environment, and natural resources.
- b. It is intended that the HHPC Member Municipalities refer to the provisions of this Model Code when considering changes to existing municipal codes to further the HHPC goals to

promote, regulate and manage Hempstead Harbor's water-dependent uses, water-enhanced uses, environmental quality, natural resources, and economic resources in a coordinated and consistent manner.

- c. All Model Code rules and regulations were developed to conform with the water use plan depicted in the Harbor Management Map prepared as part of the Hempstead Harbor Management Plan developed in August 2004, or any subsequent modifications to the Harbor Management Map.

Section 3.2 Powers of HHPC Member Municipalities

- a. Each HHPC Member Municipality shall have the sole discretion to determine whether or not to adopt and enact rules and regulations consistent with those contained in this Model Code.

Section 3.3 Operation of Vessels

- a. The rules and regulations for the safe and prudent operation of vessels shall apply to all waters or waterways within Hempstead Harbor, subject to the jurisdiction of the Hempstead Harbor Member Municipalities, unless in conflict with the laws of the State of New York, the County of Nassau or the United States of America.
- b. All provisions of the Navigation Law of New York State, of the inland rules enacted by the Congress and governing the navigation of the inland waters of the United States and of the Pilot Rules for United States inland waters, relative to the rules for aids to navigation, operation of vessels, prohibited discharges, drift and debris, abandoned vessels, dilapidated structures, and other matters consistent with proper use of the navigable waters, shall be complied with by all vessels navigating said waters within the jurisdiction of all HHPC Member Municipalities.
- c. Every person operating a vessel shall at all times operate the same in a careful and prudent manner and at such a rate of speed as not to disturb the reasonable comfort or

endanger the property of another, the life or safety of any person, or so as to interfere with the free and proper use of the waters, or as to interfere or disrupt or damage the natural resource conditions in Hempstead Harbor.

- d. Generating a dangerous wake when approaching or passing another boat shall be prohibited.
- e. Prohibited vessel activities shall include, but not be limited to:
 - i. Operation of a vessel, including a jet ski, at a speed greater than five miles per hour within 200 feet of a shoreline, channel system, docks, mooring areas, rafts or floats, and other areas designated by appropriate markers.
 - ii. Operating of a vessel, including a jet ski, in a swimming area.
 - iii. Operating a vessel, including a jet ski, while under the influence of drugs and/or alcohol.
 - iv. The use of excessive speed by any vessel, including a jet ski, in the vicinity of other boats or within dangerous waters or environmentally sensitive areas.
 - v. Engaging in hazardous waterskiing practices.
 - vi. Engaging in hazardous jet skiing practices.
 - vii. Riding on the bow, seatback, gunwale or transom of a boat.
 - viii. Operating a vessel or jet ski, with too many passengers or with an unbalanced load of any type.
 - ix. Having insufficient personal life preservers or floatation devices, distress signaling devices, and/or fire-fighting devices.
 - x. Having an improper navigation light display.

- xi. Operating with a fuel leakage and/or fuel in the bilges.
 - xii. Any action resulting in the dumping or releasing or discharging of marine toilets, sewage, oils, chemicals, hazardous materials, refuse, garbage, waste materials, or any pollutant in any of the surface waters within the jurisdiction of the HHPC Member Municipalities.
 - xiii. Operating with improper ventilation.
 - xiv. Operating a vessel, including a jet ski, with a defective muffler or without a proper muffler.
- f. Boat ramps and launch areas for access by vessels, including but not limited to: power boats, sail boats, row boats, paddle boats, canoes, kayaks, jet skis, etc. shall be limited to conspicuously marked, regulated and controlled locations by the HHPC Member Municipality. Boat ramps and launch areas shall be prohibited from location in environmentally sensitive areas.
- g. No person or persons, including commercial entities and organizations shall rent vessels, including but not limited to: power boats, sail boats, row boats, paddle boats, canoes, kayaks, jet skis, etc. without the approval, regulation and control of the HHPC Member Municipality.
- h. Any violation of the aforementioned prohibited activities, or any other acts of grossly negligent operation, shall be subject to a fine of up to \$5,000, imprisonment for not more than one year, or both.
- i. Any vessel which becomes a public safety hazard, significant hazard to sensitive environmental resources, hazard to navigation, sinks, becomes abandoned, becomes grounded, or is otherwise disabled shall be removed by the Harbor Master or other agent of the HHPC Member Municipality having jurisdictional control over the waters and underwater lands where such vessel is located or by the Nassau County Police Department at the expense of the owner or the person in charge of such vessel, and the

Harbor Master or other agent of the HHPC Member Municipality having jurisdictional control over the waters and underwater lands where such vessel is located or by the Nassau County Police Department shall not be responsible for any damage that may occur to such vessel in the course of removing the same.

Section 3.4 Mooring, Docking and Anchoring of Vessels

- a. The general purpose of this section is to make the best use of available mooring and docking space consistent with the HHPC Harbor Management Plan and the purposes and rules of the HHPC Member Municipality having jurisdictional control over the placement of moorings and docks; to efficiently accommodate existing demand for moorings and docks; to avoid congestion due to future overdevelopment of additional mooring and docking spaces; to avoid obstruction of channels and fairways; to make available mooring positions and dock locations with due regard for the depth of water and draft of the boats accommodated; and to afford ease of approach to and departure from moorings and docking structures without danger of polluting the Hempstead Harbor waters, or of vessel collisions.
- b. No person shall place a mooring or construct a dock within the waters of Hempstead Harbor unless he or she shall have first obtained a permit from the HHPC Member Municipality, and is in compliance with any rules and regulations established by the HHPC Member Municipality, including, but not limited to all permit fee requirements.
- c. All moorings and docks shall be placed at the approved locations, as set forth by the HHPC Member Municipality as part of the permit requirements, and unless permitted in a federal anchorage area, at no time shall any vessel be anchored:
 - i. in any channel or within 100 feet of any channel marker, buoy or other fixed navigational aid;
 - ii. within 300 feet of lifelines maintained at any public beach; and
 - iii. within 100 feet of environmentally sensitive natural resource area.

- d. All mooring and docking permit holders shall receive public awareness information relating to the safe operation of recreational boating in the harbor, and in the vicinity of large vessels associated with commercial/industrial uses in the harbor.
- e. Any commercial and industrial barge mooring or docking locations identified on the HHPC Harbor Management Map shall be subject to the rules and regulations of the HHPC Member Municipality having jurisdiction over such locations, and also subject to the jurisdiction of the rules and regulations of the U.S. Coast Guard.
- f. It shall be the absolute responsibility of each and every owner and operator of a moored or docked vessel located within Hempstead Harbor that the moorings, chains, lines, pennants, anchors, anchor mooring buoys, floating docks, anchored or fixed docks, etc., and other related equipment be regularly inspected and certified to be in good condition prior to placement in the waters of the Harbor, with evidence of such certification made expressly part of the HHPC Member Municipality permit requirements.
- g. With the approval of the HHPC Member Municipality, the Harbormaster or other appropriate agent shall have the authority to direct the change of locations of moorings, floating docks and anchored docks, as well as the adjustment of associated chains, cables or ropes in compliance with this article and other more specific rules and regulations set by the HHPC Member Municipality. In case of emergency, the Harbormaster or other appropriate agent is authorized to shift the position of any unattended boat moored in or near any anchorage.
- h. Any vessel or float moored, docked or anchored in violation of this Model Code or the prevailing rules and regulations of the HHPC Member Municipality having jurisdiction over the location of such vessel or float may be removed by the Harbor Master, or other agent of the HHPC Member Municipality having jurisdictional control over the waters and underwater lands where such vessel is located or by the Nassau County Police Department at the expense of the owner or person in charge of such vessel or float, with any additional assessments of penalties imposed by the HHPC Member Municipality and

the laws of New York State and the United States. The Harbor Master or other agent of the HHPC Member Municipality having jurisdictional control or the Nassau County Police Department shall not be responsible for any damage that may occur to such vessel or float in the course of removing the same.

Section 3.5 Additional Restrictions for Docks and Moorings

- a. The owner, lessees, licensees or invitees of a piece of property adjacent to a waterway may keep any number of boats they have title to at any mooring they shall maintain, subject to restrictions by the HHPC Member Municipality.
- b. A person may allow any property owner to whom his property owes an easement to place their boat at their dock or alongside their property, provided that it does not exceed the length restrictions set forth by the HHPC Member Municipality.
- c. No boat may be docked at a dock, pier, floating dock or bulkhead directly to another boat overnight, unless specifically allowed by the HHPC Member Municipality.
- d. No electrical or other wiring shall be allowed upon any mooring or dock, unless specifically allowed by rules and regulations set by the HHPC Member Municipality.
- e. No mooring, dock, pier, floating dock or bulkhead may be created, repaired or modified which interferes with the use of adjacent beaches, adjacent existing permanent moorings and docks or causes a hazard to adjacent properties or natural resources or unduly restricts the use of navigable waterways.
- f. No gasoline fuel, diesel fuel or similar flammable materials in an amount in excess of five gallons may be kept upon or within a dock or mooring for more than three hours, unless specifically allowed by rules and regulations set by the HHPC Member Municipality.

- g. Plumbing installed upon any dock or mooring must conform to the requirements specifically set forth by the rules and regulations by the HHPC Member Municipality.
- h. Any mooring and floating dock which is either longer than 25 feet or in excess of 200 square feet must have a personal flotation device with a four-hundred-pound-strength rope of nylon or similar material of a length of at least 100 feet attached to it which is easily accessible for use in the event of an emergency.
- i. All moorings and floating docks designed for pedestrian traffic must have applied to their upper surfaces a nonslip material to retard possible slipping on wet materials when boarding or exiting a boat.
- j. No fixed dock or pier may be erected unless there is a dwelling or other building upon the property adjacent to such fixed dock or pier, unless specifically allowed by rules and regulations set by the HHPC Member Municipality.
- k. No environmentally sensitive areas, including areas containing wetland vegetation such as sea grass or similar flora and fauna, shall be disturbed by the construction, modification or repair of any moorings or docks, unless specifically controlled by rules and regulations set by the HHPC Member Municipality and the New York State Department of Environmental Conservation.
- l. Prohibited hazardous or dangerous conditions.
 - i. No boat owner or operator of a vessel shall allow any hazardous or dangerous conditions to exist or be maintained upon any vessel attached to any mooring or dock or within the waters of Hempstead Harbor, including but not limited to:
 - 1. Combustible vapors in any compartment or associated structure; or

2. Combustible materials, except for materials in proper labeled and maintained containers, tanks or compartments kept according to all applicable laws, rules and regulations.
- ii. Enclosures or coverings shall not be used to protect engines, accessories and fuel storage containers, unless such coverings are made of fire-resistant materials.
- iii. No grills, hibachis or similar types of charcoal or wood-burning cooking equipment are to be used on any boat which is moored to any dock or pier or upon such dock or pier, unless specifically allowed and controlled by rules and regulations set by the HHPC Member Municipality and according to all applicable laws, rules and regulations.

Section 3.6 Swimming and Diving

- a. No person shall swim or dive with any type of diving equipment within any channel, fairway, designated swimming area or legally designated anchorage or mooring area in the waters within the jurisdiction of the HHPC Member Municipality, nor shall any person bathe, swim or dive in any such areas, except in the course of a rescue or while performing nonchemical removal of algae during normal boat maintenance with proper precautions.
- b. No person shall dive with any type of diving equipment unless he or she marks the diving area with the proper regulation red diving flag, nor shall any person allow or permit such diving flag to remain in any area unless such person is actually diving in the area at the time. No vessel, including any jet ski, shall operate within 50 feet of any area marked for diving by the placement of said regulation red diving flag.

Section 3.7 Taking of Fish and Shellfish

- a. The taking of fish and shellfish within the boundaries of the Harbor Management Map is prohibited, except where such taking is specifically allowed and regulated by the HHPC

Member Municipality and/or the New York State Department of Environmental Conservation.

Section 3.8 Petroleum and Chemical Storage Vessels and Facilities

- a. All vessels operating within the surface waters of Hempstead Harbor and all facilities on or adjacent to the surface waters of Hempstead Harbor shall fully comply with all laws and rules and regulations of any appropriate federal, state, Nassau County, or HHPC Member Municipality having jurisdiction over the use, handling, transportation, storage, and disposal of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants.
- b. The discharge of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants into or upon any surface water, waterways, beaches and lands within the watershed under the jurisdiction of the HHPC Member Municipality from any vessel or associated facility is strictly prohibited.
- c. All heating oil and petroleum fuel companies, fuel retailers, and heating oil and petroleum fuel and other vessels carrying petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants on the waters under the jurisdiction of the HHPC Member Municipality shall have available in appropriate locations at the waterfront fueling station, or on board such vessels, a floating product retention boom system, such as a Bar Boom, United States Coast Guard Water Pollution Barrier, or similar floating sorbent and/or containment device or system sufficient to completely encircle the vessels or facilities and contain any releases to the surface waters, and shall use such systems when loading or unloading such heating oils, petroleum fuels, petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants.
 - i. Detergent materials are prohibited for use in the cleanup of discharges or releases in the surface waters.

- ii. Non-detergent chemical dispersants may be used only if such dispersants are approved for such use by the U.S. Coast Guard, the New York Department of Environmental Conservation and/or the Nassau County Department of Health having jurisdiction, and the most stringent standards protecting the Harbor surface waters and the environment shall apply.
 - iii. Non-sinkable absorbent materials may be used if they are readily recoverable from the surface of the water.
- d. Every heating oil and petroleum fuel and other chemical bulk storage facility operating a terminal facility, storage facility or fueling station in the HHPC Member Municipality shall provide and designate a person in charge during the transfer of any chemical or petroleum products from a vessel to the facility. Such person shall be in on site at all times during chemical or petroleum product transfer operations, and have authority to direct the transferring operations.
- e. In the event of a release, discharge or spill of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants to the ground or the surface waters of Hempstead Harbor, such person in charge shall be responsible for controlling and stopping the release, discharge or spill, and directing the necessary cleanup response actions and immediately notifying and alerting the appropriate HHPC Member Municipality representative, the Harbor Master, the New York State Department of Environmental Conservation, and the United States Coast Guard.
- f. The person, firm or corporation or association, owner, lessee or user of the vessel or facility causing the spillage of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants, resulting in an expenditure by the HHPC member municipality for the use of its personnel and equipment in the response, investigation, enforcement, and or cleanup of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants, shall be liable to the HHPC member municipality and shall reimburse the HHPC

member municipality upon due notice for the expenditures of the sums involved to remove the spillage and for any and all damage to HHPC member municipality property.

Section 3.9 Sewage Discharge

- a. The waters of Hempstead Harbor are designated by the USEPA as a No Discharge Zone. No marine toilet or sewage holding tank on any watercraft used or operated upon the waters of Hempstead Harbor shall be operated so as to discharge any untreated or treated sewage into said waters directly or indirectly.
- b. No person shall place, throw, deposit or discharge, or cause to be placed, thrown, deposited or discharged into the waters of Hempstead Harbor any sewage or other liquid or solid materials which render the water contaminated by toxic or hazardous materials, unsightly, noxious or otherwise unwholesome materials so as to be detrimental to water quality of Hempstead Harbor, health and welfare of the general public, natural resources, or to the recreation and enjoyment of the water-dependent uses from any vessel, watercraft, marina, dock or mooring.
- c. Every marine toilet on watercraft used or operated upon the waters of Hempstead Harbor shall be equipped with a Marine Sanitation Device, Type III, control device, for holding of sewage.
- d. Every marine toilet on watercraft used or operated upon the waters of Hempstead Harbor may be emptied at one of the following five free pump-out facilities located in Hempstead Harbor:
 - i. Tappen Marina in Glenwood Landing in the Town of Oyster Bay;
 - ii. Brewer's Marina in the City of Glen Cove;
 - iii. Sea Cliff Yacht Club in the Village of Sea Cliff;
 - iv. Town of Oyster Bay Pump-out Boat, Marine Channel 9, during the summer season only; and

- v. Town of North Hempstead Pump-out Boat, Marine Channel 9, during the summer season only.
- e. All pump-out facilities that provide for the handling and disposal of sewage from holding tanks of watercraft shall do so in a manner that will prevent the pollution of the waters of Hempstead Harbor. The facilities for the unloading of such sewage shall be approved by HHPC Member Municipality.
- f. All watercraft located upon the waters of the HHPC Member Municipality shall be subject to boarding and inspection by the Harbormaster, any police officer, or any peace officer acting pursuant to his or her special duties, for the purpose of determining whether such watercraft is equipped with approved marine toilet pollution control facilities operated in compliance with this section.

Section 3.10 Drift, Storm-Related Debris and Dilapidated Water-Side Structures

- a. The Harbor Master or the HHPC Member Municipality's marine enforcement agent shall declare the following conditions to be a public nuisance and, therefore, order that the same be removed, abated, altered or repaired by any identifiable responsible person or organization:
 - i. Solid materials and solid wastes in the form of debris carried by currents, tides, stormwaters or other means which may be placed or deposited on the banks of any waterway or which is likely to be washed into such waterway by any cause whatsoever, including but not limited to accidental or intentional acts, storm-related events, other natural disasters, fires, explosions, etc. is considered a source of drift which is a condition likely to hinder, impede or otherwise obstruct navigation; and
 - ii. Any structures, including but not limited to buildings, sheds, piers, docks, bulkheads, floating platforms, etc. located in a public waterway or immediately adjacent to a public waterway in the jurisdiction of the HHPC Member

Municipality, which is in such condition of dilapidation or deterioration as to be or become a source of debris liable to be washed into such waterway by any cause whatsoever is considered a source of drift likely to hinder, impede or otherwise obstruct navigation.

- b. The HHPC Member Municipality shall, upon such declaration referred to in Subsection 3.10 (a) immediately respond to and take necessary actions to ensure that any identifiable responsible person or organization remove such nuisance, or if no responsible person or organization can be immediately located or found take the necessary measures to eliminate such nuisance with its own forces.

Section 3.11 Manner of Enforcement, Generally

- a. Each HHPC Member Municipality shall enforce this Model Code based on its municipal rules and regulations for enforcement, and allow the Harbor Master patrols to coordinate and extend their enforcement authority throughout the entire harbor, pursuant to the goals and purposes recited in Section 3.1 herein.

CHAPTER 4. GENERAL STANDARDS FOR WATERFRONT ACTIVITIES

Section 4.1 Statement of Purpose

- a. Within the Surface Waters or Hempstead Harbor, under the jurisdiction of the HHPC Member Municipality: No person or entity shall construct, erect or alter any structure; dredge, fill or alter any shoreline or surface water feature; permanently or temporarily place any structure, feature or object, whether floating or submerged, along any shoreline or surface water feature; or store and handle any hazardous material or pollutant except where such activities are in conformity with the provisions contained herein this Chapter or any other chapters of this Model Code.

Section 4.2 Permit Requirements for Construction, Excavation, Dredging or Filling within the Surface Waters of Hempstead Harbor, Generally

- a. Permit required; Application; Fee. Before commencing to construct, erect or alter any structure or to dredge, fill or alter the shoreline or permanently place any object, floating or submerged, the owner or proprietor or duly authorized agent of either of them shall submit an application to the HHPC Member Municipality for a permit. The application for a permit shall be in writing, accompanied by maps, plans and sketches of the proposed work and shall be addressed to the HHPC Member Municipality pursuant to its regulations. The fee as set forth from time to time by the HHPC Member Municipality shall accompany the application, payable to the HHPC Member Municipality.
- b. Contents of permit applications. At a minimum, the application to HHPC Member Municipality pursuant to its regulations shall include:
 - i. Plans and an explanation sufficiently detailed to enable the designated municipal branch or designated administrative representative of the HHPC Member Municipality to determine exactly what is proposed, and how the proposed action relates to the goals contained in Subsection 1.2 (a) of the Model Code.
 - ii. A written explanation sufficiently detailed to demonstrate that the construction, dredging, or filling operation and placement of any foundation, footing or structure is not likely to adversely affect the environmental quality of the surface waters, adversely affect any natural resources, or is likely fail and become a danger or obstruction to navigation or injure the navigable capacity of any of the surface waters under the jurisdiction of the HHPC Member Municipality.
 - iii. If dredging or dumping is proposed, the application shall provide the following additional information:
 - (1) The exact location of the work.
 - (2) The depth to which the proposed dredging is to be carried.

- (3) The approximate amount of material to be removed.
 - (4) The exact location of the deposit of the dredged material.
 - (5) The proposed depth to excavated or dredged surface.
 - (6) Laboratory test results of sediments in the area proposed to be dredged showing analysis for heavy metals, pesticides, volatile organic compounds and other constituents and from a number of sampling locations and depths typically required by the New York State Department of Environmental Conservation for disposal determinations for dredge sediments.
- iv. Where dredging or dumping is proposed in connection with other associated work, a separate application for dredging shall not be required; however, the above information shall be included in the application as a separate section, and clearly shown on the plans.
 - v. The application, attached papers and maps shall be complete, and shall include copies of any special authorizations for the work that is a prerequisite to the action of the HHPC Member Municipality, or shall identify any necessary subsequent authorizations, by another regulatory body, such as on the county, state or federal levels.
 - vi. The application shall be signed by the owner or proprietor of the proposed work, or by his or her duly authorized agent, and not by the contractor to perform the work. The application shall be submitted in duplicate, and all attached papers shall be furnished in duplicate.
- c. HHPC notification permit applications and opportunity for comment. The HHPC Member Municipality shall notify the HHPC of all applications under this Section, providing the Committee the opportunity to review and comment within a reasonable amount of time.

- d. Form of the permit. The duplicate copy of the application with the approval of the HHPC Member Municipality shall constitute the permit. The HHPC Member Municipality, at its discretion, may require a performance and completion bond.
- e. Enforcement and Penalties for Noncompliance. The provisions of this Section shall be enforced by the HHPC Member Municipality.

Section 4.3 Control of Stormwater Runoff and Erosion in Residential Zones, Generally

- a. Permits required by a HHPC Member Municipality for new construction or substantial site improvements shall comply with the requirements specified in Section 4.2 to ensure the following regulations stated herein this section are followed to minimize or eliminate the degradation of the quality of the Surface Waters of Hempstead Harbor.
- b. The following regulations shall apply to permits for new site improvements, new or substantially improved structures, or associated activities in residential zones located within the Hempstead Harbor watershed which may have the likelihood to produce or contribute to stormwater pollution of the Surface Waters of Hempstead Harbor:
 - i. No parking lot or private driveway shall be newly constructed or substantially improved unless it has either a permeable surface (e.g., dirt, sand, gravel, crushed stone, or shells) or an impermeable surface consisting of one or more of the following materials: masonry block or tiles, cut stone, poured concrete, hot plant mix asphalt, rapid-curing cut-back asphalt, or similar surfacing materials.
 - ii. No road, private driveway or parking lot with impermeable surfaces shall be constructed unless all stormwater runoff across such surfaces is directed into one or more catchment basins or handled through one or more green infrastructure practices including, but not limited to, drainage swales, rain gardens and biofilters. Said catchment basin or basins or green infrastructure practice(s) shall have a combined volume (in cubic feet) equal to the surface area of the road, driveway and/or parking area (in square feet), divided by six.

- iii. Any road, private driveway or parking lot which is constructed with an improved surface shall be maintained so that all stormwater generated by said structure is actually directed into the catchment basin or basins or green infrastructure practice(s) required by the preceding subsection. Any catchment basin or green infrastructure practices required by the preceding subsection shall be kept clean and maintained so that it recharges stormwater into the ground without overflowing.
- iv. No pipe, culvert, drain or similar conduit shall be constructed or installed which discharges stormwater into surface waters of Hempstead Harbor and its tributary streams and associated ponds, and from the upland boundary of any wetlands contiguous to the foregoing water bodies.
- v. Every principal building or addition to a principal building constructed or erected shall be furnished with gutters and leaders to direct stormwater from roofs into one or more catchment basins and/or green infrastructure practice(s). Said catchment basin or basins and/or green infrastructure(s) shall have a combined volume (in cubic feet) equal to the surface area of the roof (in square feet), divided by six.
- vi. Erosion Control. During construction work, the disturbance of natural vegetation and land contours shall be minimized. Fencing, siltation mesh, straw bales or similar devices for limiting land disturbance and retarding erosion and siltation shall be used during construction work and during any land clearing or grading in preparation for or associated with construction work.

Section 4.4 Stormwater and Erosion Control Requiring Stormwater Pollution Prevention Plans

- a. This Section shall be applicable to all land development and redevelopment activities within the Member Municipality that exceed [*threshold to be inserted by HHPC member municipality but in no case shall exceed one acre*], unless expressly exempted by the HHPC Member Municipality.

- b. Notwithstanding the foregoing, all stormwater management practices associated with land development activities that do not exceed the thresholds herein or are otherwise exempt from the requirements of this Section shall be maintained in good working condition and kept in good repair by the landowner and any owner and/or operator of the stormwater management practices.
- c. The HHPC Member Municipality shall designate a Stormwater Management Officer (SMO) who shall review all stormwater pollution prevention plans (SWPPP). The SMO may:
 - i. Review the SWPPP;
 - ii. Upon approval by the Member Municipality's board, engage the services of a professional engineer licensed by the State of New York to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or
 - iii. Accept the certification of a professional engineer licensed by the State of New York that the plans conform to the requirements of this Section and all relevant and applicable requirements.
- d. Notwithstanding the mechanism of review chosen, the SMO shall have the authority under this Section to inspect the progress of land development and redevelopment activities subject to the provisions of this Section with regard to conformance with the approved SWPPP. Should the project be found to be in noncompliance with the approved SWPPP, the SMO shall have the authority to halt construction activities until corrective measures are taken to bring the project into compliance with any applicable standards.
- e. All land development or redevelopment activities subject to review and approval by the HHPC Member Municipality's Planning Board pursuant to the Section, site plan and/or special exception review regulations shall be reviewed subject to the standards contained

in this Section. No authorization to proceed with development activities shall occur until all permits and approvals have been obtained.

- f. All land development or redevelopment activities subject to review and approval by the HHPC Member Municipality's Building Department pursuant to the HHPC Member Municipality's Building Code shall be reviewed subject to the standards contained in this Section. No authorization to proceed with development activities shall occur until all permits and approvals have been obtained.
- g. All land development activities subject to review as stated in this Section shall be required to submit a SWPPP to the SMO, who shall review the SWPPP and grant approval if it complies with the requirements of this Section.
- h. All land development or redevelopment activities meeting certain conditions contained in this Section shall obtain authorization under the SPDES General Permit for Stormwater Discharges from Construction Activity from the NYSDEC, prior to obtaining final HHPC Member Municipality approval and permits for the proposed land development or redevelopment activities.
- i. Enforcement and Penalties for Noncompliance. The provisions of this Section shall be enforced by the HHPC Member Municipality.

Section 4.5 Stormwater Pollution Prevention Plan Requirements

- a. No application for approval of a land development or redevelopment activity in excess of one acre [*note that HHPC member municipalities can reduce this threshold*] shall be approved until the SMO has received, reviewed, and accepted a SWPPP prepared in accordance with the specifications in this Section.
- b. The SWPPP and the Notice of Intent (NOI) shall be submitted to the NYSDEC. A copy of the NOI acknowledgement letter from the NYSDEC must be submitted to the HHPC Member Municipality Planning Board prior to the issuance of a building permit by the HHPC Member Municipality's building department.

- c. The SWPPP shall describe the erosion and sediment control practices and, where required, post-construction stormwater practices that will be used and/or constructed to reduce the pollutants in stormwater discharges and to assure compliance with the terms and conditions of this permit. In addition, the SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges.
- d. All SWPPPs that require the post-construction stormwater management practices more fully described in Subsection k herein shall be prepared by a qualified professional that is knowledgeable in the principles and practices of stormwater management and treatment.
- e. The owner or operator must keep the SWPPP current so that it at all times accurately documents the erosion and sediment control practices that are being used or will be used during construction and all post-construction stormwater management practices that will be constructed on the site. All amendments to the SWPPP shall be submitted to, and approved by, the HHPC Member Municipality in the same manner as originally submitted. At a minimum, the owner or operator shall amend the SWPPP:
 - i. Whenever the current provisions prove to be ineffective in minimizing pollutants in stormwater discharges from the site;
 - ii. Whenever this is a change in design, construction, or operation of the site that has or could have an effect on the discharge of pollutants; and
 - iii. To address issues or deficiencies identified during an inspection by the qualified inspector, the NYSDEC or any other regulatory authority or agency.
- f. The HHPC Member Municipality or NYSDEC may notify the owner or operator at any time that the SWPPP does not meet one or more of the minimum requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity. The notification shall be in writing and identify the provisions of the SWPPP that require

modification. Within fourteen (14) calendar days of such notification, or as otherwise indicated by the HHPC Member Municipality or NYSDEC, the owner or operator shall make the required changes to the SWPPP and submit written notification to the HHPC Member Municipality and NYSDEC that changes have been made. If the owner or operator does not respond to the Member Municipality or NYSDEC's comments in the specified time frame, the NYSDEC may suspend the owner's or operator's coverage under this permit.

g. Certification by the Contractor

- i. Prior to the commencement of construction activity, the owner or operator must identify the contractor(s) and subcontractor(s) that will be responsible for installing, constructing, repairing, replacing, inspecting, and maintaining the erosion and sediment control practices included in the SWPPP, and the contractor(s) and subcontractor(s) that will be responsible for constructing the post-construction stormwater management practices included in the SWPPP. The owner or operator shall have each of the contractors and subcontractors identify at least one person from his or her company that will be responsible for implementation of the SWPPP. This person shall be known as the "trained contractor." The owner or operator shall ensure that at least one trained contractor is on site on a daily basis when soil disturbance activities are being performed. The owner or operator shall have each of the contractors and subcontractors identified above sign a copy of the following certification statement before he or she commences any construction activity:

"I hereby certify that I understand and agree to comply with the terms and conditions of the SWPPP and agree to implement any corrective actions identified by the qualified inspector during a site inspection. I also understand that the owner or operator must comply with the terms and conditions of the most current version of the New York State Pollutant Discharges Elimination System ("SPDES") general permit for stormwater discharges from construction activities and that it is unlawful for any person to cause or contribute to a violation of water quality standards. Furthermore, I understand that certifying false, incorrect, or inaccurate information is a violation of the referenced permit and

the laws of the State of New York and could subject me to criminal, civil and/or administrative proceedings."

- ii. In addition to providing the certification statement above, the certification page must also identify the specific elements of the SWPPP for which each contractor and subcontractor will be responsible, and include the name and title of the person providing the signature; the name and title of the trained contractor responsible for SWPPP implementation; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification statement is signed. The owner or operator shall attach the certification statement(s) to the copy of the SWPPP that is maintained at the construction site. If new or additional contractors are hired to implement measures identified in the SWPPP after construction has commenced, they must also sign the certification statement and provide the information listed above.

- h. For projects where the NYSDEC requests a copy of the SWPPP or inspection reports, the owner or operator shall submit the documents in both electronic (pdf-document format only) and paper format within five (5) business days, unless otherwise notified by the NYSDEC.

- i. The SWPPP must include documentation supporting the determination of permit eligibility with regard to construction activities that adversely affect property that is listed or is eligible for listing on the State or National Registry of Historic Places, including archaeological sites. At a minimum, the supporting documentation shall include the following:
 - 1. Information on whether the stormwater discharge or construction activities would have an effect on a property listed or eligible for listing on the State or National Register of Historic Places.
 - 2. Results of historic resources screening determinations conducted. Information regarding the location of historic places listed, or eligible for listing on the State

or National Registers of Historic Places and areas of archaeological sensitivity that may indicate the need for a survey can be obtained from the New York State Office of Parks, Recreation and Historic Places (OPRHP).

3. A description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the State or National Register of Historic Places. If the owner or operator fails to describe and implement such measures, the stormwater discharge is ineligible for coverage under this permit; and
4. Where adverse effects may occur, any written agreements in place with OPRHP or other governmental agency to mitigate those effects, or local land use approvals evidencing the same.

j. Required SWPPP Contents

- i. All SWPPPs prepared pursuant to this permit shall include erosion and sediment control practices designed in conformance with the most current version of the NYSDEC Erosion Control Manual. Where erosion and sediment control practices are not designed in conformance with this technical standard, the owner or operator must demonstrate equivalence to the technical standard. At a minimum, the erosion and sediment control component of the SWPPP shall include the following:
 - ii. Background information about the scope of the project, including the location, type and size of the project;
 - iii. A site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s), wetlands, and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of

different soil types, with boundaries; material, waste, borrow or equipment storage areas located on adjacent properties; and location(s) of the stormwater discharge(s);

- iv. A description of the soil(s) present at the site, including an identification of the hydrologic soil group;
- v. A construction phasing plan and sequence of operations describing the intended order of construction activities, including clearing and grubbing, excavation and grading utility and infrastructure installation and any other activity at the site that results in soil disturbance;
- vi. A description of the minimum erosion and sediment control practices to be installed or implemented for each construction activity that will result in soil disturbance. A schedule that identifies the timing of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented shall be included;
- vii. A temporary and permanent soil stabilization plan that meets the requirements of the most current version of the Erosion Control Manual, for each stage of the project, including initial land clearing and grubbing to the project completion and achievement of final stabilization.
- viii. A site map/construction drawing(s) showing the specific location(s), size(s), and length(s) of each erosion and sediment control practice;
- ix. The dimensions, material specifications, installation details, and operation and maintenance requirements for all erosion and sediment control practices. The location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils shall be included;

- x. An inspection and regular maintenance schedule for the contractor(s) to ensure continuous and effective operation of the erosion and sediment control practices. The maintenance inspection schedule shall be in accordance with the requirements in the most current version of the Erosion Control Manual;
 - xi. A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in the stormwater discharges; and
 - xii. Identification of any elements of the design that are not in conformance with the requirements in the most current version of the Erosion Control Manual. The reason for the deviation or alternative design shall be included, and information which demonstrates that the deviation or alternative design is equivalent to the technical standards shall be provided.
- k. All construction projects subject to the SWPPP requirements contained in this Section shall include post-construction stormwater management practices designed in conformance with the most current version of the NYSDEC Stormwater Design Manual. Where post-construction stormwater management practices are not designed in conformance with this technical standard, the owner or operator must demonstrate equivalence to the technical standard. At a minimum, the post-construction stormwater management practice component of the SWPPP shall include the following:
- i. Identification of all post-construction stormwater management practices to be constructed as part of the project;
 - ii. A site map/construction drawing(s) showing the specific location and size of each post-construction stormwater management practice;
 - iii. The dimensions, materials specifications and installation details for each post-construction stormwater management practice;

- iv. Identification of any elements of the design that are not in conformance with the NYSDEC Stormwater Design Manual. The reason for the deviation or alternative design shall be included, and information which demonstrates that the deviation or alternative design is equivalent to the technical standards shall be provided;
- v. A hydrologic and hydraulic analysis for all structural components of the stormwater management control system;
- vi. A detailed summary (including calculations) of the sizing criteria that was used to design all post-construction stormwater management practices. At a minimum, the summary shall address the required design criteria from the applicable chapter of the NYSDEC Stormwater Design Manual, including the identification of and justification for any deviations from the Design Manual and identification of any design criteria that are not required based on the design criteria or waiver criteria included in the Design Manual; and
- vii. An operations and maintenance plan that includes inspection and maintenance schedules and actions to ensure continuous and effective operation of each post-construction stormwater management practice. The plan shall identify the entity that will be responsible for the long-term operation and maintenance of each practice.

Section 4.6 Sanitary Systems , Generally

- a. It shall be unlawful for any person on public or private property within the jurisdictional boundaries of the HHPC Member Municipalities to:
 - i. discharge, place, or deposit sewage, garbage or objectionable waste onto the ground surface or discharge it in a way that allows it to reach to the ground surface, surface waters of Hempstead Harbor or the Harbor itself, except as allowed by the laws of the HHPC Member Municipality or as allowed by a valid permit from the New York State Department of Environmental Conservation;

- ii. connect a private sewage system a storm sewer or into a drain intended exclusively for stormwater;
 - iii. discharge into any active or abandoned well; or
 - iv. discharge wastewater to any man-made or natural water conveyance in any area under the jurisdiction of the HHPC Member Municipality, any wastewater or other polluted waters, except where suitable treatment has been provided or such discharge has been approved according to the laws of the HHPC Member Municipality, and in compliance with all applicable federal, State and other local laws.
- b. New and replacement sanitary septic systems. The following regulations shall govern the installation of all septic systems, except for septic systems installed replacing preexisting septic systems which are compliant with applicable sanitary codes prior to the initial enactment of this Model Code.
- i. No new septic system shall be installed or constructed unless it is set back a minimum of 200 feet from the surface waters of Hempstead Harbor and its tributary streams and associated lakes and ponds, and from the upland boundary of any jurisdictional wetlands contiguous to the foregoing water bodies. To the extent that any provision of the HHPC Member Municipality's regulations imposing a lesser wetland setback for septic systems, the requirements of this Section shall be controlling with respect to lands within the Hempstead Harbor Protection Overlay District.
 - ii. No septic system leaching pool shall hereafter be installed unless the bottom of the leaching pool is situated a minimum of four feet above the groundwater table.
- c. Replacement of existing septic systems. For preexisting septic systems which are compliant with some but not all of the applicable sanitary codes prior to the voluntary adoption of some or all of the provisions of this Model Code, these systems shall be replaced or upgraded under the following circumstances and according to the following requirements:

- i. Every septic system regulated by this subsection shall be replaced or upgraded:
 - 1. Where any other special permit relating to the protection of wetlands or any other natural resource is required for work to be performed on the lot or parcel containing the septic system; and
 - 2. Where the work to be performed will increase the habitable floor area of a principal building on the lot or will increase the number of bathrooms within a building on the lot; and
 - 3. Where the septic system in question does not meet the minimum requirements of the Nassau County Department of Health for vertical separation to groundwater; for setback to surface waters or for septic system capacity; or in that it lacks a septic tank.

- ii. Where this subsection requires that an existing septic system be replaced or upgraded, the new or upgraded septic system shall meet the following requirements:
 - 1. The newly replaced system shall comply with the requirements of the Nassau County Department of Health for new septic systems and shall be installed under the supervision of the Nassau County Sanitation Inspector and a HHPC Member Municipality inspector; and
 - 2. The newly replaced system shall be set back a minimum of 150 feet from the surface waters of Hempstead Harbor and its tributary streams and associated lakes and ponds, and from the upland boundary of any jurisdictional wetlands contiguous to the foregoing water bodies, or if not feasible, it shall be set back the maximum practicable distance from the surface waters of Hempstead Harbor and its tributary streams and associated lakes and ponds, and from the upland boundary of any wetlands contiguous to the foregoing water bodies, taking into consideration such

factors as the physical constraints of the site and other controlling municipal regulations.

Section 4.7 Petroleum and Chemical Storage Systems , Generally

- a. Properties proposed to be developed with one or more petroleum fuel or chemical storage tanks with a combined storage capacity not to exceed 1,100 gallons shall be subject to the following requirements:
 - i. Tanks installed underground shall be constructed of fiberglass, and with a double wall construction, with an appropriate overfill protection warning device.
 - ii. Aboveground tanks shall only be installed on a flat, impermeable surface, such as a concrete pad, extending at least six inches beyond the tank sides, and associated piping, with a spill containment berm, or wall, designed to hold 100% of the tank capacity, and be accessible for regular visible inspections.
- b. Properties proposed to be developed with one or more petroleum fuel or chemical storage tanks with a combined storage capacity in excess of 1,100 gallons shall be subject to the applicable federal, NYSDEC and Nassau County Article XI requirements for petroleum fuel or chemical storage tanks.

Section 4.8 Petroleum and Chemical Storage Systems , Commercial and Industrial Zones

- a. All industrial and commercial facilities on or adjacent to the surface waters of Hempstead Harbor shall fully comply with all federal and state laws and rules and regulations of any appropriate federal, state, Nassau County, or HHPC Member Municipality having jurisdiction over the use, handling, transportation, storage and disposal of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants.

- b. The discharge of petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants into or upon any surface water, waterways, beaches and lands adjoining the shorefront under the jurisdiction of the HHPC Member Municipality from any associated facility is strictly prohibited.

- c. Any new construction, or substantial redevelopment activities, subject to permitting by the HHPC Member Municipality's Building Department shall include site plans and drawings for all on-site storage conditions relating to petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants, and a spill prevention, control and countermeasures plan (SPCC Plan) which shall include:
 - i. Designation of responsible personnel possessing the authority to commit the appropriate resources necessary for implementation of the SPCC Plan;

 - ii. A diagram of the facility;

 - iii. A contact list and current contact telephone numbers for the facility response coordinator, cleanup contractors, and regulatory authorities who must be contacted in the event of a discharge/release;

 - iv. General Spill Trajectory analysis for each type of anticipated major equipment failure, including: the maximum potential discharge volume, flow direction and flow rate;

 - v. A discussion of secondary containment and/or diversionary structures or equipment to prevent a discharge (where appropriate) or a demonstration that secondary containment and/or diversionary structures or equipment are not practical;

 - vi. Contingency plan(s) per 40 CFR 112.7 (d);

- vii. Discussion of inspections, tests, and recordkeeping (including periodic integrity/leak testing of bulk containers, valves and piping);
 - viii. Personnel training and discharge prevention procedures;
 - ix. Facility security;
 - x. Facility tank car and tank truck loading/unloading procedures;
 - xi. A written commitment of manpower, equipment and materials that will be used to control and remove spilled hazardous wastes;
 - xii. A discussion of spill prevention and control measures for the facility; and
 - xiii. Certification of the plan and storage conditions by a licensed professional engineer.
- c. All heating oil and petroleum fuel companies, fuel retailers, and heating oil and petroleum fuel and other bulk storage facilities carrying petroleum products, chemicals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants on or adjacent to the surface waters of Hempstead Harbor shall have available in appropriate locations product retention and/or containment devices or system sufficient to completely contain any releases to the surface or surface waters.
- d. Every heating oil and petroleum fuel and other chemical bulk storage facility operating a terminal facility, storage facility or fueling station in the HHPC Member Municipality shall provide and designate a person in charge having the authority to respond to and report any releases of hazardous materials.

Section 4.9 Swimming Pools, Generally

- a. The following regulations shall govern the construction or installation of swimming pools.
 - i. No swimming pool shall hereafter be constructed or installed unless it is furnished with a system to reduce the use of chlorine disinfectant, such as an ozonator, ionizer or ultraviolet disinfectant system.
 - ii. No swimming pool shall hereafter be constructed or installed unless the bottom of the swimming pool is situated a minimum of two feet above the groundwater table. The HHPC Member Municipality building inspector shall require proof of compliance with this provision before issuing a certificate of occupancy.
 - iii. No swimming pool shall hereafter be constructed or installed unless it is provided with one or more dry wells which are easily accessible for the evacuation of water from the swimming pool. Such dry wells shall have a total volume at least equal to 10% of the volume of the pool, and in any case not less than 450 gallons (or approximately the volume of a three-foot-deep by five-foot-wide dry well). In the case of a vinyl-lined swimming pool, the total volume of dry wells shall be at least equal to one-half (1/2) of the dry well volume required for a gunite pool of the same size.
 - iv. No swimming pool shall be drained or have its water discharged into a driveway, storm drain, public or private street or into wetlands (including surface waters), nor shall any swimming pool be drained or have its water discharged into any receptacle other than a dry well installed as required by this subsection.
 - v. The cleaning of swimming pools or swimming pool surfaces by means of an acid wash is prohibited unless the acids used are completely neutralized before discharge from the swimming pool.

CHAPTER 5. MODEL HEMPSTEAD HARBOR WATERSHED PROTECTION OVERLAY DISTRICT

Section 5.1 Model Hempstead Harbor Watershed Protection Overlay District

- a. In addition to the measures set forth elsewhere within this Model Code, HHPC Member Municipalities are encouraged to adopt Watershed Protection Overlay Districts which are applicable to all properties within the Hempstead Harbor watershed areas within their municipal boundaries. Watershed Protection Overlay Districts establish additional requirements over and above the existing underlying zoning requirements which are intended expressly to provide additional protections to the water quality of Hempstead Harbor and its tributaries or enhancements that facilitate the use and enjoyment of the harbor by the public. Whenever the provisions of any other statute, law, rule, or regulation imposes stricter standards that are protective of the Hempstead Harbor watershed, said stricter standard shall govern.

Section 5.2 Model Watershed Protection Overlay District Map

- a. A HHPC Member Municipality shall develop a Watershed Protection Overlay District Map showing the boundaries of the Watershed Protection Overlay District. The map shall contain all those areas that directly or indirectly drain to Hempstead Harbor or one of its tributaries. This shall include areas which drain to the harbor or its tributaries due to storm drain piping or similar structures.
- b. The Watershed Protection Overlay District shall include all buildings and properties within the boundaries of the Overlay District Map developed by the HHPC Member Municipality at a future date.
- c. The regulatory provisions of any underlying HHPC Member Municipality zoning districts located within the boundaries of the Watershed Protection Overlay District shall remain in full force and effect.

Section 5.3 Permitted Uses, Generally

- a. Without the approval of any other special permit granting authority, all uses permitted in the underlying HHPC Member Municipality zoning districts are also permitted in the Watershed Protection Overlay District.

Section 5.4 Specific Watershed Protection Overlay District Requirements

- a. In addition to the requirements contained in Subsection 1.2 (a) and other applicable regulatory provisions of this Model Code, all properties located in the Watershed Protection Overlay District shall comply with the following:
 - i. Stormwater Management - All stormwater shall be retained on site and shall comply with the requirements specified in Sections 4.2 and 4.3 of this Model Code to minimize or eliminate the degradation of the quality of the surface waters of Hempstead Harbor.
 - ii. Consideration of Green Infrastructure - Applicants for permits for new construction or substantial reconstruction or additions to existing construction, pursuant to the requirements of Section 4.2 of this Model Code and any other applicable permit requirements imposed by the HHPC Member Municipality, shall evaluate the use of green infrastructure practices including but not limited to: green roofs, porous paving materials, rain barrels, rain gardens, and bioswales, and incorporate such use(s) wherever feasible.
 - ii. Fertilizer Usage – No fertilizers shall be applied at any time between the dates of November 1st and March 31st. Otherwise, during the period when fertilizer use is permitted, such fertilizer shall be limited to slow release formulations and shall not be used when any rain is forecast for the 24 hour period following the intended time of usage.

- iii. Vehicle Washing – Vehicles may not be washed on any street. Commercial vehicle washing is prohibited within the Hempstead Harbor Watershed Protection Overlay District, unless otherwise permitted by other regulatory provisions specifically promulgated by the HHPC Member Municipality. Noncommercial vehicle washing is permitted if all wash water is retained on site, pursuant to the requirements of Section 4.3 of this Model Code and any other applicable requirements imposed by the HHPC Member Municipality.

- iv. Parking Lots and Driveways – No parking lot or private driveway shall hereafter be constructed unless it has either an unimproved surface (e.g. dirt, gravel, crushed stone, or crushed shells) or an improved surface consisting of porous asphalt, porous concrete, porous pavers or any other surface designed to allow stormwater to be absorbed within the parking lot or driveway itself; or if constructed with an impermeable surface, then such construction shall comply with the requirements of Sections 4.2 and 4.3 of this Model Code and all stormwater runoff across such surfaces shall be directed into one or more catchment basins or handled through one or more green infrastructure practices including, but not limited to, drainage swales, rain gardens and biofilters. Any catchment basin or green infrastructure practices shall be kept clean and maintained so that it recharges stormwater into the ground without overflowing.

- v. Disturbance of Natural Features – During construction work, the disturbance of natural vegetation, wildlife habitats, and land contours shall be minimized. Fencing, siltation mesh, straw bales or similar devices for limiting land disturbance and retarding erosion and siltation shall be used during construction work and during any land clearing or grading in preparation for or associated with construction work.

- vi. Swimming Pools – No swimming pool shall hereafter be constructed or installed unless it is completed pursuant to the requirements of Section 4.9 of this Model

Code and any other applicable permit requirements imposed by the HHPC Member Municipality.

- vii. Petroleum and Chemical Storage Tanks – The installation and use of Petroleum and Chemical storage tanks in the Hempstead Harbor Watershed Protection Overlay District shall be subject to Sections 4.7 and 4.8 of this Model Code, as well as to the applicable federal, NYSDEC and Nassau County Article XI requirements for petroleum fuel or chemical storage tanks.
- viii. Public Access and Interpretive Signage. Wherever feasible and appropriate, Commercial or Multi-Family Housing Structures which are located adjacent to the harbor or one of its tributaries shall provide and maintain public access to the waterfront in the form of walkways, esplanades, kayak launch areas as well as information in the form of signs, markers and monuments, and/or gazebos and seating areas.
- ix. Control of Invasive Plants – property owners shall annually survey their properties and use good faith efforts to remove or cause to be removed, all invasive plants including, but not limited to the following: *Phragmites* (*Phragmites* spp), English ivy (*Hedera helix*), Oriental bittersweet (*Celastrus orbiculatus*), Porcelain berry (*Ampelopsis brevipedunculata*), Japanese knotweed (*Fallopia japonica* (*Polygonum cuspidatum*), Multiflora rose (*Rosa multiflora*), Japanese virgin’s bower (*Clematis terniflora*), and any bamboo species, including but not limited to the genus *Phyllostachys*. A plant shall be deemed to be an invasive plant if it is listed as such in regulations promulgated by either Nassau County or the New York State Department of Environmental Conservation.
- x. Maintenance of Sanitary Cesspools and Septic Systems – All owners of private sanitary systems in the Hempstead Harbor Watershed Protection Overlay District shall be subject to the requirements of Section 4.6 of this Model Code, and any other applicable federal, State, County, or HHPC Member Municipality laws. The

discharge of petroleum products, regulated chemicals, toxic materials, pharmaceuticals, hazardous materials, hazardous and toxic wastes, and other pollutants into private sanitary systems is strictly prohibited. All private sanitary systems shall be properly maintained, and regularly pumped-out by a licensed contractor no less frequently than once every three (3) to five (5) years, depending on the size of the household or building and the extent of usage. Additionally, all sanitary wastes shall be removed from all sanitary structures upon the sale or transfer of ownership of such property. The transferor shall provide to the transferee and the designated representative of the HHPC Member Municipality, prior to or at the time of the transfer of ownership, written certification from a licensed professional engineer or a licensed sanitary waste company that the sanitary cesspool and/or septic system is properly functioning.

- xi. Animal Waste Management – It shall be unlawful for any person on public or private property within the jurisdictional boundaries of the in the Hempstead Harbor Watershed Protection Overlay District to discharge, place, or deposit animal waste or objectionable associated waste onto the ground surface or discharge it in a way that allows it to reach to the ground surface, surface waters of Hempstead Harbor or the Harbor itself, except as allowed by the laws of the HHPC Member Municipality or as allowed by a valid permit from the New York State Department of Environmental Conservation. Owners or occupants of properties within the Watershed Protection Overlay District shall promptly remove and properly dispose of all animal feces and other materials impacted by feces or urine from their animals whether on public property or on their own property. Proper disposal shall include at the minimum either placing a sealed or tied plastic bag containing feces and other materials impacted by feces or urine into the ordinary garbage for disposal, placing the feces directly into a sanitary system for disposal, or disposing such wastes through a licensed contractor. Small quantities of animal wastes are permitted for soils composting for small gardens.

- xii. All owners and occupants of properties within the Watershed Protection Overlay District, or otherwise adjacent to the surface waters of Hempstead Harbor shall fully comply with all laws and rules and regulations of any appropriate federal, state, Nassau County, or HHPC Member Municipality having jurisdiction over the use, handling, transportation, storage, and disposal of petroleum products, regulated chemicals, toxic materials, pharmaceuticals, hazardous materials, hazardous and toxic wastes, and other pollutants. In the event of a release, discharge or spill of petroleum products, regulated chemicals, pharmaceuticals, toxic materials, hazardous materials, hazardous and toxic wastes, and other pollutants to the ground or the surface waters of Hempstead Harbor, such property owner or occupant shall be responsible for controlling and stopping the release, discharge or spill, and completing the necessary cleanup response actions, and immediately notifying and alerting the appropriate HHPC Member Municipality representative, the Nassau County Department of Health, the New York State Department of Environmental Conservation, and the United States Environmental Protection Agency.

- xiii. The bulk storage of salt for de-icing and snow removal is strictly prohibited within the Watershed Protection Overlay District unless such bulk storage is maintained in impervious containers or structures.

Section 5.6 Severability

- a. The provisions of this Chapter are severable, and in the event that any provision of this Chapter is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.