

CHAPTER 2

POLITICAL AND REGULATORY JURISDICTIONS

Hempstead Harbor and its surrounding uplands fall under the jurisdiction of governmental entities at multiple levels, including the local municipalities (of which there are eight), as well as various County, State, and federal agencies. In many cases, more than one review, permit, and/or approval are required to undertake a given action within the harbor or along its waterfront. This multidimensional regulatory authority can make it more difficult, as well as more time consuming and expensive, to obtain permits and approvals necessary to undertake projects and other actions in the harbor area.

Understanding the relationships and distinctions among the involved regulatory entities is critical to achieving success in advancing the goals and objectives of any comprehensive management plan, including this HMP. This chapter provides a synopsis of the roles played by the public agencies that are expected to be involved in actions to implement this HMP, as well as private organizations that typically contribute to the process by providing a crucial avenue of public input regarding such actions.

2.1 LOCAL GOVERNMENT

Local governments have primary jurisdiction over actions and activities that occur on the landward side of the Hempstead Harbor waterfront. Water-side jurisdiction is more complex, and is divided among multiple levels of government, especially the two towns, the City of Glen Cove, and various New York State and federal agencies.

In harbors that contain more than one local jurisdiction, as obviously is true for the Hempstead Harbor area, efforts to effectively manage resources can be complicated. Traditionally, individual municipalities have tended to act independently of one another, focusing narrowly on the specific issues of concern to their respective constituents, and have carefully guarded their independence and autonomy. Although tangible benefits on a broad scale can result from the initiatives undertaken by an individual municipality, the cooperation of all involved municipalities is necessary to maximize attainment of overall management goals, such as the institution of consistent surface water use regulations throughout the harbor, improvement of water quality, and the enhancement of ecological resources.

As discussed in Section 1.1, the Hempstead Harbor communities have successfully established a mechanism for cooperative problem-solving, namely by means of the Hempstead Harbor Protection Committee. Still, the individual municipalities retain their

full authority under applicable law, and must act individually, though in concert, to attain the goals of this HMP. This will include the official adoption of the HMP by all of the involved municipalities, but also will extend to the adoption of common or joint local laws, execution of inter-municipal agreements, and/or similar actions to ensure that HMP implementation is properly coordinated.

2.1.1 Incorporated Villages

The incorporated villages along the shoreline of Hempstead Harbor have the authority to regulate land use activities within their boundaries, primarily by means of the local zoning codes, as well as other activities that are governed by their respective municipal codes, in accordance with State law. Under Section 46-a of the New York State Navigation Law, each village also has the authority to regulate the speed, operation, anchoring, and mooring of vessels upon waters within the respective village, and outside of the village to a distance of 1,500 feet from the mean low water line. Importantly, however, this extra-territorial jurisdiction of the villages does not extinguish the proprietary rights of the underwater land owners.

The villages do not have the authority to regulate docks or other structures or physical changes to the environment outside of their municipal boundaries. Instead, this authority lies with the town(s) in which the structures would be located, in addition to the State and federal agencies which have regulatory authority in such matters. However, to the extent that a proposed docking structure includes an onshore section that lies within the municipal boundary of a given village, said village would have the authority to regulate the structure.

The harbor-side municipal boundary of the incorporated villages in the study area generally runs along the mean high water line, as is the case for most incorporated villages on Long Island. For most of these Villages, the location of the municipal boundary was verified by referring to the respective incorporation papers.

Certain maps and charts (e.g., U.S. Geological Survey topographic quadrangle map) which were examined as part of the HMP inventory phase of this project suggested that the municipal boundary of the Village of Sands Point may extend offshore and include a portion of the water area in Hempstead Harbor. However, further research into the Village's incorporation documents procured from the New York State Archives confirmed that the water-side boundary of the Village of Sands Point coincides with the mean high water line.

2.1.2 Towns and City of Glen Cove

The Towns of North Hempstead and Oyster Bay and the City of Glen Cove exercise multi-faceted jurisdiction with respect to activities within Hempstead Harbor, summarized as follows:

- Each has the authority to regulate land use activities within its boundaries, primarily by means of the local Zoning Code, as well as other activities that are governed by their respective Codes, in accordance with State law.
- Each has the authority to regulate or control the use of underwater lands within its boundaries, whether or not the town or city owns the underwater lands.
- The City, in accordance with Section 46-a of the New York State Navigation Law, and each of the Towns, in accordance with Section 130.17 of the New York State Town Law, have the authority to regulate the speed, operation, anchoring and mooring of vessels upon waters within the respective municipality, or up to 1,500 feet from the shore, except on waters within a Village or within 1,500 feet from the shore of a Village. Villages have this authority in the Villages and up to 1,500 feet from the shore of a Village.
- Each has the proprietary authority to control the placement of structures on underwater lands it owns.
- The City of Glen Cove operates a sewage treatment plant which is located on the south side of Glen Cove Creek. This facility serves the sewage disposal needs of the vast majority of the residential uses and all of the non-residential uses in the City, as well as some areas outside the City.

The harbor-side municipal boundary of the two Towns and the City of Glen Cove is shown in Map 3-1. This boundary places the entire lower harbor area, to the south of Bar Beach, in the Town of North Hempstead. To the north of Bar Beach, the boundary between the Town of North Hempstead (on the west) and the Town of Oyster Bay and City of Glen Cove (on the east) runs approximately up the central axis of the harbor. The boundary between the Town of Oyster Bay (to the south) and the City of Glen Cove (to the north) is not well defined in the law which created the City (Chapter 787 of the Laws of New York of 1917, “AN ACT to incorporate the city of Glen Cove”), which identifies the City’s water-side boundary only as including “all the lands under water lying in Hempstead harbor and Long Island sound adjacent to said premises [i.e., the upland portion of the City] to the centre of said harbor and sound respectively.” This boundary line between the Town of Oyster Bay and City of Glen Cove extends on a perpendicular

from the boundary running up the central axis of the harbor between the Town of North Hempstead to the west and the Town of Oyster Bay/City of Glen Cove to the east.

2.2 NASSAU COUNTY

2.2.1 Nassau County Department of Health (NCDH)

The NCDH has authority over determining the wastewater disposal requirements of new development in the HMP area. In a large portion of this area, sewage disposal entails the use of on-site subsurface systems (i.e., septic systems and cesspools). New systems of this type must be approved by the NCDH and the local municipality, based on testing to demonstrate the suitability of on-site soils.

2.2.2 Nassau County Planning Commission (NCPC)

The NCPC has discretionary approval authority over subdivision applications, in accordance with the provisions in its *Regulations for the Subdivision of Land*. Under Section 239-m of the General Municipal Law of New York State, the NCPC also is authorized to review and comment upon any application involving a local zoning action, special permit, or site plan that lies within 500 feet of a municipal boundary, a state or county park, the right-of-way of a state or county roadway, county drainage way, or public building or institution on state or county-owned land. NCPC is also responsible for conducting planning research and preparing regional/county-wide plans.

2.2.3 Nassau County Department of Public Works (NCDPW)

The NCDPW is responsible for the maintenance of County roadways and corresponding drainage infrastructure, as well as for the municipal sewage collection and conveyance infrastructure serving the Village of Roslyn and the Port Washington Sewage Collection and Disposal District. The NCDPW also reviews drainage plans for subdivision applications to ensure that such plans conform to the County's standard for stormwater control.

2.3 NEW YORK STATE

2.3.1 New York State Department of State (NYSDOS)

The NYSDOS Division of Coastal Resources is responsible for administering New York State's Coastal Management Program. In voluntary cooperation with local municipalities, the Coastal Management Program strives to meet the needs of coastal residents and visitors, while working toward the advancement of economic development

and protection of valuable coastal resources. The Division of Coastal Resources also provides financial and technical assistance to local governments and works with local governments, residents, and coastal resource users to promote the beneficial use and protection of New York's coastal resources in accordance with Article 42 of the New York State Executive Law. This HMP is being prepared within the context of the Coastal Management Program with oversight and funding provided by NYSDOS.

NYSDOS also has a number of other branches – including Division of Local Government Services, Division of Community Services, and Office of Regional Affairs – which provide valuable assistance to governmental agencies and community organizations. Both the Division of Local Government Services and Office of Regional Affairs provide technical information and educational opportunities to governmental agencies and civic organizations and the Division of Community Services provides guidance to individuals involved in the administration and implementation of community services block grants.

2.3.2 New York State Department of Environmental Conservation (NYSDEC)

NYSDEC is charged with the responsibility of administering many of the State's environmental protection, monitoring, enforcement, and permitting and licensing programs. The Department has a number of divisions which have jurisdiction over a vast array of natural resources such as water bodies, waterfronts, wetlands, and other natural environments. Within the Hempstead Harbor area, NYSDEC has regulatory authority over: tidal and freshwater wetlands; State Pollution Discharge Elimination Systems (SPDES) permits (covering some point discharges and stormwater systems, as well as the newly implemented Phase II regulations governing municipal stormwater discharges and stormwater discharges from construction sites greater than one acre in area); large underground fuel storage tanks, surface and groundwater quality protection and monitoring; protection and management of fish, wildlife and their habitats; administration of pollution prevention programs; environmental education and public outreach; air resources; solid waste disposal and hazardous materials control; reclamation of brownfields, and operation and management of certain state parklands.

2.3.3 New York State Department of Transportation (NYSDOT)

NYSDOT is primarily responsible for designing and maintaining roads and related drainage infrastructure in the State's Highway system and for the administration of a variety of transportation-related programs. NYSDOT administers the Transportation Equity Act for the 21st Century (TEA-21) which provides funding for a number of transportation-related projects including transportation enhancements such as stormwater control that will improve environmental quality.

The NYSDOT Environmental Analysis Bureau, Water/Ecology Section, provides a number of services to the various divisions of NYSDOT, including the development of policies, procedures and technical assistance to ensure that projects comply with Federal and State environmental regulations. The bureau specifically provides technical and advisory support in regard to storm water management, groundwater protection, wetlands and surface waters issues, coastal zone management, and ecological preservation, and provides such services as endangered species surveys, wetland delineations and characterizations, and assistance with environmental permitting.

2.3.4 New York State Emergency Management Office (SEMO)

SEMO is responsible for responding to natural disasters, calamities, and other state emergencies by engaging in pro-active preparedness planning, disaster mitigation, education, and stockpiling emergency equipment, as well as immediate response and recovery actions including financial assistance to ensure safe and sanitary residential conditions and temporary housing. SEMO strives to protect private and public property as well as the environment.

2.4 FEDERAL GOVERNMENT

2.4.1 United States Army Corps of Engineers (ACOE)

The ACOE undertakes federal civil works projects and has regulatory jurisdiction over all construction or filling activities taking place in the waters and wetlands of the United States. The enabling legislation granting regulatory authority to the agency is Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates structures in navigable waters of the United States, and Section 404 governs the permitting process for the discharge of dredged or filled material. The ACOE also retains primary authority over Federal flood and coastal erosion projects.

2.4.2 United States Environmental Protection Agency (EPA)

Congress created the EPA in order to oversee the protection of human health and to ensure the quality and integrity of the country's natural resources. The EPA is charged with the responsibility of developing federal environmental programs, establishing national policy and standards, and administering funding for environmental programs. The EPA also is responsible for implementing a variety of environmental legislation including, but not limited to: the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund); and National Environmental Policy Act (NEPA); and

numerous other pollution control programs. Also of particular significance to the study area is the National Estuary Program, under the overall authority of the EPA, which was the impetus for the multi-jurisdictional Long Island Sound Study.

2.4.3 United States Fish and Wildlife Service (FWS)

The FWS has jurisdiction over the protection of migratory birds, federally-listed endangered species, marine mammals, and freshwater and anadromous fish. The FWS's mission is to work with individuals, public and private agencies to preserve, protect, and enhance the viability of fish, wildlife, and natural habitats within the United States. Other responsibilities include, but are not limited to: management and operation of the National Wildlife Refuge System and numerous national fish hatcheries, fishery resource offices, and wildlife field stations; enforcement of national wildlife laws; and restoration of wetlands and implementation of wetlands protection regulations.

2.4.4 National Oceanic and Atmospheric Administration (NOAA)

The overall mission of NOAA is to assess and forecast alterations in environmental conditions and to conserve and appropriately manage the coastal and marine resources of the United States. The Office of Coastal Resource Management administers the national Coastal Management Program, in accordance with the Coastal Zone Management Act. In order to implement its many marine resource management objectives, a subunit was created in NOAA, called the National Marine Fishery Service (NMFS), which is responsible for rebuilding and maintaining sustainable fisheries, promoting the recovery of protected species, and protecting and maintaining the health of coastal marine habitats.

2.4.5 United States Coast Guard

The U.S. Coast Guard maintains an important presence in Hempstead Harbor and the greater Long Island Sound area and provides a variety of valuable services to promote the safety and security of the nation's waters. The Coast Guard is responsible for: patrolling off-shore areas; enforcing maritime laws, including recreational vessel and commercial shipping controls and illegal drug trade interdiction; performing emergency searches and rescues; national security; and assuming military duties during times of war.

2.5 PRIVATE ORGANIZATIONS

Private organizations developed at the grassroots level also are very important in the development, implementation, and enforcement of resource management plans such as this HMP. Members of these organizations are intimately familiar with their surroundings, existing land use and environmental conditions, area history, and key issues of public concern. They have a vested interest in the outcome of land use and other planning decisions. Such organizations can include environmental protection groups, neighborhood preservation committees, civic organizations, business alliances, special issue groups which may disband subsequent to achieving a particular mission, and school board committee members, to name a few.