

SECTION VIII
OBTAINING LOCAL COMMITMENT

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A. Introduction

A number of agencies at the local, county and regional levels of government have authorities that are applied in the LWRP area to manage the use and conservation of that area. These authorities are part of the institutional framework for waterfront planning and harbor management that includes planning initiatives as well as regulatory requirements.

It is also recognized that actions originating in or involving other municipalities in the Hudson River Valley can affect the Newburgh waterfront area, including actions originating in the towns with jurisdictions adjoining the LWRP area. In addition, the general public and waterfront property owners have important water-related rights to use the LWRP area; not-for-profit organizations, including regional environmental organizations, are also interested parties; so too are private businesses that use the waterfront.

This section identifies the local agencies and authorities, the county and regional agencies and the environmental organizations and private groups with authority or influence concerning the NHMA and waterfront. The significant rights of the general public and waterfront property owners are also described.

1. City Agencies and Authorities

The City's jurisdiction over the LWRP area is influenced by state legislation that requires, permits, or restricts the types of jurisdiction the City may carry out. Principal state authorizing laws influencing the City's harbor management jurisdiction are the Municipal Home Rule Law, the Navigation Law and the Waterfront Revitalization and Coastal Resources Act (Article 42 of the New York Executive Law).

The Municipal Home Rule Law provides basic authorizations, requirements and procedures whereby the City may adopt local laws that are not inconsistent with the State Constitution and with general laws enacted by the State Legislature. Local law power is also restricted where the proposed local law action has been pre-empted by the State. Section 46-a of the Navigation Law provides the City with authority to regulate certain activities on any waters within or bounding the City to a distance of 1,500 feet from the shore. (See below.)

The Waterfront Revitalization and Coastal Resources Act authorizes the City to prepare, amend and implement its Local Waterfront Revitalization Program (LWRP) to guide coastal area use and resource conservation in a manner consistent with the State's coastal management policies. The Act also authorizes preparation and implementation of the City's Harbor Management Plan (HMP) as

an essential element of the LWRP, and allows the City, in the course of implementing the HMP, to regulate certain activities on any waters within or bounding its jurisdiction to a distance of 1,500 feet from the shore. (See below.)

The City Charter and Code of Ordinances (Code) establish the powers, duties and regulations that guide the functions and operation of City government. The Charter and Code include, in addition to their sections that set forth the authorities of relevant City agencies, sections that specifically apply to the NHMA. The Charter defines the territorial boundaries of the City including the waters of the Hudson River extending to the centerline of the river. Within that jurisdiction, the City has established its Waterfront Area for the purpose of its LWRP. In addition, the LWRP defines the NHMA as that part of the Waterfront Area waterward of the mean high water (MHW) line in the Hudson River and Quassaick Creek and extending to the centerline of the Hudson River. The Waterfront Area is defined in Chapter 296 of the Code.

a. Administration of City Government

The two major components of the City's government are its legislative branch consisting of the City Council and its executive branch consisting of its various departments and agencies headed by the City Manager. The Council, comprised of the Mayor and four other members, is the legislative and policy-making body of the City, with the power, authority, and duty to make such local laws and adopt such resolutions as are deemed necessary for the conduct of the City's business. The Council also has final approval authority over the City's operating and capital projects budgets. The Council and Mayor provide leadership and direction for the City's waterfront revitalization and harbor management initiatives and help to set and advance the City's vision for use and conservation of its land and water resources.

As authorized by state statutes, the Council may adopt local laws to address navigation and other water-related activities in the NHMA as well as waterfront conditions that can have an important impact on the NHMA. All locally adopted laws must be filed with the New York Secretary of State. Any City law pertaining to navigation or boating safety must be approved by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP; see the later section on State Agencies and Authorities) in accordance with the state Navigation Law.

As authorized by Section 46-a of the Navigation Law, the Council may adopt local laws, rules, and regulations for:

- regulating and restricting the speed and operation of vessels within 1,500 feet from the shore;

- regulating and restricting the anchoring or mooring of vessels within 1,500 feet from the shore;
- regulating and restricting the anchoring or mooring of vessels used or occupied as living or sleeping quarters;
- restricting and regulating garbage removal from vessels; and
- designating and regulating the use of public anchorage areas.

While the Navigation Law does not grant to local governments the authority to regulate docks, piers, and other in-water structures below the MHW line, Article 42 of the Executive Law enables the City, and all other municipalities in the state preparing and implementing harbor management plans, to “adopt, amend and enforce local laws and ordinances... to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures...” in or above the water, as well as the use of surface waters and underwater lands, to a distance of 1,500 feet from the shore.

Among the City ordinances affecting the NHMA are: Section 147 (Docks and Waterways) which establishes regulations for the use of City docks, including the Newburgh Landing dock; Section 296 (Waterfront Consistency Review) which provides the framework for City agencies to review proposals affecting the City's Waterfront Area for consistency with the LWRP and establishes the Newburgh Waterfront Advisory Committee (WAC), appointed by the City Council, and the WAC's powers and duties to review proposals for consistency with the LWRP; and Section 300 of the Code which establishes the City's Zoning Ordinance, including the Waterfront Mixed Use and Waterfront Industrial districts.

The City Manager, as the chief administrative and executive officer of the City, also provides leadership to advance the City's waterfront revitalization and harbor management initiatives. Among the City Manager's basic duties are to see that the laws of the state and the ordinances of the Council are enforced in the City; to appoint and remove the heads of departments and members of certain boards and commissions; and to exercise supervision and control over the administrative departments of the City. Examples of more specific responsibilities of the City Manager's office concerning the NHMA include coordination of special waterfront events and advance scheduling for use of the Newburgh Landing dock.

b. City Boards, Commissions and Departments

In addition to the Mayor, City, Council and City Manager, a number of other City agencies and officials have authorities directly or indirectly affecting the NHMA.

The **Newburgh Waterfront Advisory Committee**, established by Chapter 296 of the Code, is responsible for reviewing proposals affecting the Waterfront Area for consistency with the LWRP (including the LWRP's HMP) and making recommendations to the appropriate agencies. The **Planning Board** has the authority to conduct investigations and prepare maps, reports and recommendations relating to the planning and development of the City and reviews site plans for construction or reconstruction on all land parcels in the City. The **Zoning Board of Appeals** enforces the City's zoning laws, including those laws that affect waterfront use and development, and hears applications for variances to those laws. The **Parks and Recreation Commission** advises the City Council, City Manager and Recreation Department with respect to the maintenance of all City parks and recreational facilities, including the Newburgh Landing and Newburgh boat launch. The authorities of other boards and commissions, including the **Architectural Review Commission** and the **Arts and Cultural Commission**, may also affect the NHMA to the extent those authorities influence waterfront conditions and uses.

City departments with authorities and responsibilities affecting the NHMA include: the **Police Department** whose Marine Unit is responsible for law enforcement in the NHMA, including enforcement of City ordinances and state boating laws, and also provides boating-related services ranging from emergency response to boater education; the **Fire Department** which has emergency response functions as well as responsibilities regarding fire prevention and preparedness in and around waterfront facilities; the **Department of Public Works** which is responsible for construction, development, and maintenance of certain physical properties of the City, including the City's public waterfront areas, and whose responsibilities for stormwater management and sanitary sewers, including supervision of the operation of the City's Water Pollution Control Plant, are particularly significant with regard to the NHMA; the **Department of Planning and Development**, which provides technical assistance to the City Council, City Manager and the community at large on housing, community development, economic development, and land-use issues, administers federal and state grant programs, and is responsible for preparation of the City's Master Plan, approved by the City Council, which includes the City's major policies for land-use and future development, including policies for the beneficial use and conservation of the City's waterfront; the **Code Compliance Department** within which the City Building Inspector is responsible for enforcing the waterfront consistency review provisions set forth in Chapter 296 of the Code; and the **City Historian's Office** interested in documenting and promoting the City's maritime history associated with the Hudson River.

2. Neighboring Towns

It is recognized by the City that actions originating in or involving the municipalities with jurisdictions adjoining the LWRP area, including the City of Beacon and the towns of Newburgh and New Windsor, can affect the LWRP area. In addition, actions originating in other towns located on the Hudson River and in the upstream watershed of the river may also affect the waterfront area.

3. County Departments and Agencies

County departments and agencies concerned with the NHMA include the Orange and Dutchess County Sheriff's Departments, the Orange County Planning Department and the Orange County Tourism office. The two Sheriff's Departments carry out law enforcement responsibilities in the Hudson River, including enforcement of the state Navigation Law and any local laws pertaining to boating activity, within the jurisdictions of the two counties. The Sheriff's Departments share jurisdictional responsibility for marine law enforcement in the river with the City's Police Department, State Police and other state law enforcement agencies, including law enforcement divisions of the Department of Environmental Conservation (DEC) and the OPRHP.

The primary functions of the Orange County Planning Department are to plan for countywide development and to provide technical assistance to local governments in the county. In addition, any proposed action by the City to adopt or amend zoning regulations, approve site plans, issue special permits, or grant variances within 500 feet of its boundaries must be referred to the County Planning Department for recommendations prior to final action by the City.

The Orange County Tourism office provides visitors with information on waterfront activities, boat trips, and other attractions in the City and along the Hudson River.

4. The General Public

The waters of the LWRP area and the Hudson River are public waters; the general public has important rights to use them for navigation, recreation, and other purposes in accordance with the Public Trust Doctrine – the body of law pertaining to waters subject to the ebb and flood of the tide as well as navigable freshwaters. Under the Public Trust Doctrine, the title to tidewaters, navigable freshwaters, submerged lands beneath those waters, and the plant and animal life inhabiting those waters is held by the State of New York in trust for the benefit of the general public, except in those instances where ownership of the submerged land may have been previously granted to private ownership by the State of New York or by colonial patent or charter. The Public Trust Doctrine is not embodied in statute or the constitution, but is viewed as a sovereign right of the state.

The concept of the Public Trust Doctrine is based in English common law and on the principle, dating back to Roman civil law, that certain lands and resources are so important to the public that private ownership or other impediments to public use should not be permitted. English common law established a distinction between public and private waters and that distinction was applied in the 13 colonies. Essentially, tidal water courses connected with the sea were deemed so important for transportation and commerce that their ownership, including ownership of the underlying soil, was retained by the King. After the American Revolution, the 13 original states succeeded to the "rights of sovereign prerogative," including the right of title to tidewaters and submerged lands. Since that time, state and federal courts, including the U.S. Supreme Court, have consistently held that the states hold that title in trust for the public's benefit.

Private ownership of upland areas adjoining the Public Trust area (including ownership by a municipality or any governmental agency) may not extend past the MHW line. With respect to tidal bodies of water such as the Hudson River, the state generally owns the land seaward of MHW. The public rights most commonly associated with public trust lands and waters have included navigation, fishing and commerce. Use of public waters for navigation is the central and essential public right and generally takes precedence over other rights. The public has the right to pass and repass on navigable waters without interference or obstruction. Where an obstruction does occur, it constitutes a public nuisance. The right of free navigation is subject to lawfully enacted restrictions (concerning the operation of vessels in the interest of public safety, for example) and includes the right to anchor.

To the extent that members of the public can gain access to navigable waters without trespassing on the adjoining uplands of riparian owners (see below) they may use navigable waters for recreational purposes, including boating, swimming and related activities.

When discussing public rights for use of tidal and navigable waters, questions concerning the public's right of access to these waters are particularly important. Where title to the land adjoining navigable waters is in private ownership, the property owner may deny access across his or her land to the Public Trust area. Described below, the right of access to public waters is one of the most significant rights associated with the ownership of lands bordering navigable water; possession of this right distinguishes the waterfront property owner from members of the general public.

5. Waterfront Property Owners

Certain rights – referred to as riparian or littoral rights – are inherent in the ownership of lands bordering navigable water. One of the most important of these rights is the right of access to navigable water. (With regard to water rights law, water rights arise when property either abuts or contains water. If the water in question is flowing (e.g., river or stream) the rights are said to be riparian. If the

property is subject to the ebb and flow of the tide, or is located on a lakeshore, the rights are said to be littoral rights. Despite these distinctions, the terms “riparian” and “littoral” are commonly used interchangeably. The term littoral rights is herein used to describe the rights of the owners of property adjoining the NHMA.)

The riparian right of access to a navigable water course is totally distinct from the right of the general public to use that watercourse. New York courts have held that the owner of upland property adjacent to navigable water has certain exclusive yet qualified rights and privileges in the adjoining submerged land and navigable waters, including the exclusive right to build docks and piers from the upland to reach deep water (often referred to as “wharfing out”). These structures, however, must not unreasonably interfere with the public's right of navigation and must be acceptable under applicable regulatory statutes, including the statutes that protect natural resources. In other words, the exercise of the riparian right must not interfere with the rights and interests of the state and the general public and with the federal interest in navigation.

Described above, both the USACOE and DEC regulate the construction of docks and piers and other activities waterward of the MHW line in tidal and navigable waters. The State and federal regulatory programs help to ensure that the exercise of riparian rights is consistent with the public's interest in those waters.

A waterfront property owner can not exclude the general public from lawful uses of the Public Trust area adjoining the owner's property. Also, all riparian rights must be exercised with due regard for the rights of other riparian owners; the waterfront property owner can not wharf out from the shore, for example, in a manner that encroaches on the riparian area of an abutting waterfront property owner.

In the LWRP area, the owners of waterfront properties supporting recreational marinas and marine-commercial facilities have riparian rights of access to the LWRP area. The wharf and pier structures at these facilities were constructed in accordance with those rights. The City, as the owner of waterfront property also has riparian rights of access to the waterfront area.

6. Private Groups and Organizations

Several private groups and nongovernmental organizations also have significant interests concerning use of the LWRP area and protection of the environmental quality associated with it. These include not-for-profit groups and organizations such as Scenic Hudson, the Hudson River Sloop Clearwater, Inc., the Hudson River Valley National Heritage Area, Sustainable Hudson Valley, the Hudson River Foundation and the Hudson Riverkeeper Fund concerned with preserving and restoring the ecological, scenic, historic and recreational resources of the Hudson River.

Other interested organizations include the Orange County Land Trust which is working with governmental agencies and other not-for-profit groups to plan and establish a public park and trail system in the Quassaick Creek stream corridor; and Newburgh Rowing Club, which operates its programs from the City's Ward Brothers Memorial Rowing Park; and the Coast Guard Auxiliary based in Kingston, New York, a voluntary organization that assists the U.S. Coast Guard with search and rescue efforts and with education for boating safety in this part of the Hudson River.

In addition, the Metro-North Railroad operates its ferry-rail link across the river between the City and Beacon, New York; the CSX Transportation company which carries freight on the West Shore rail line that generally follows the City's waterfront; the Newburgh Yacht Club which provides boating facilities for its members and guests; and the operators of water-dependent and water-enhanced businesses on the City's waterfront, including recreational marinas, excursion boats, marine-commercial facilities, and waterfront restaurants.

B. LWRP Process

The City of Newburgh appointed a Waterfront Advisory Committee (WAC) to prepare its first draft Local Waterfront Revitalization Program (LWRP). Members of the WAC represented the main community sectors interested in the coastal area, namely commercial marine interests, real estate agents and developers, historic preservationists, and general businessmen. City agencies represented on the WAC were the Recreation Department, the Fire Department, and the Office of Economic Development. The Planning Board Chairman, the Chairman of the Zoning Board of Appeals, and a City Councilman were also members.

The WAC met with the City Manager and with the Mayor and City Council on several occasions to discuss the direction of the LWRP. The City also hosted a meeting for Hudson River municipalities which was conducted by Scenic Hudson. The meeting addressed the assessment of visual impacts of proposed development projects.

The WAC met regularly, including on the following dates:

- May 20, 1987
- July 13, 1987
- October 6, 1987
- November 9, 1987
- February 29, 1988
- March 14, 1988
- April 11, 1988
- May 16, 1988
- November 9, 1988
- May 4, 1989

A draft LWRP was prepared in 1992 and adopted by the City of Newburgh. In 1999, because of redevelopment initiatives, the City determined it was timely to revise and update its locally adopted LWRP. This update was prepared by staff from several City departments and reflected current land uses, economic, natural, infrastructure and community service policies as they related to the City's local waterfront revitalization area. The revised LWRP was adopted by the City Council and approved by the State in 2001.

In 2007, again because of redevelopment initiatives – including the public-private Newburgh Waterfront Redevelopment Project being developed by Leyland Alliance – the City determined it was appropriate to update its LWRP as well as prepare a HMP. This update has been prepared by the City's planning consultant, BFJ Planning and Geoffrey Steadman, HMP Consultant, with assistance from City staff and the WAC. This amendment to the existing LWRP updates the existing conditions within the LWRP area to reflect changes experienced in the area since 2001, with the following objectives:

- Preserving open space and increasing public access to the waterfront
- Linking of the waterfront to the historic district, Washington's Headquarters and the Broadway commercial area
- Addressing parking issues on the waterfront by planning for and integrating inter-modal and multi-modal transportation links to the waterfront
- Identifying contaminated sites in and adjacent to the LWRP area and planning for contaminant remediation
- Preparation of a Harbor Management Plan, as set forth in 19 NYCRR Part 603 and further described in guidelines prepared by the Department of State

The WAC met regularly throughout 2007 and into 2008 to prepare the amendments to the 2001 LWRP. The Committee met with Robert Mckenna, Director of Planning and Development and with members of his staff, as well as with the City's LWRP and HMP consultants, on numerous occasions to discuss the direction of the LWRP and HMP; all of these meetings were open to the public. The City also hosted a public workshop to present the preliminary sections of the amended LWRP. The City's LWRP consultants also met extensively with City staff.

The WAC met regularly, including the following dates:

- April 18, 2007
- May 9, 2007
- May 23, 2007
- June 13, 2007
- August 15, 2007
- September 19, 2007 (Public Workshop)
- October 11 and 13, 2007 [Generic Environmental Impact Statement (GEIS) Scoping Sessions]
- October 17, 2007
- November 28, 2007
- December 5, 2007
- January 16, 2008

In addition to the WAC meetings listed above, the City's HMP consultant also conducted the following meetings with stakeholders and research sessions:

- April 3, 2007: Planning meeting with City officials and planning team
- June 13, 2007: Boat trip to conduct in-water reconnaissance of the Newburgh Harbor Management Area
- September 7, 2007: Aerial reconnaissance and photo flight of the Newburgh Harbor Management Area
- December 10, 2007: Waterfront reconnaissance of existing conditions
- December 17, 2007: Waterfront reconnaissance of existing conditions and opportunity areas
- December 28, 2007: Planning review meeting with Department of State Division of Coastal Resources
- January 3, 2008: Waterfront reconnaissance of existing conditions and project opportunity areas with consulting engineer
- January 15, 2008: Planning meeting with City officials
- February 4, 2008: Planning meeting with City officials
- February 5, 2008: Waterfront reconnaissance to review project opportunity areas