

 **Office of Planning and Development**

## Putting Together the Regulatory Pieces: Wise Management of the NY Coast and Waterways through Federal, State & Local Partnerships

An Office of the New York Department of State  
Spring 2016 Regional Local Government Workshop May 19, 2016

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## Legal and Program Background

Kari Gathen, Esq.

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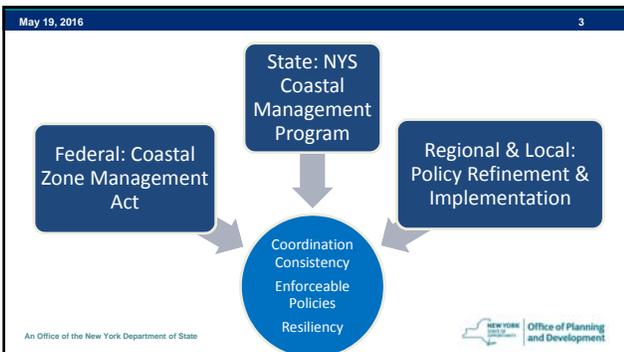
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### Coastal Zone Management Act

- Found at 16 U.S.C. 1451 et seq.
- Provides states with the option to develop a coastal management program to engage a federal-state partnership for the protection of coastal resources and uses. (15 C.F.R. Part 923).

1982

NYS Coastal Management Program was approved by the National Oceanic and Atmospheric Administration (federal govt.)  
 The beginning of the cooperative effort to address federal agency activities and the state's interest in maintaining and advancing resources and uses in the coastal area.

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### Waterfront Revitalization of Coastal Area and Inland Waterways Act

- Found at NYS Executive Law, Article 42
- Gave the Department of State (DOS) authority to:
  - Implement the NYS Coastal Management Program
  - Provide technical support to local governments
  - Assist eligible municipalities with the development of a Local Waterfront Revitalization Program and a Harbor Management Plan

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### NYS Coastal Management Program

The NYS Coastal Management Program (NYS CMP) is a land and water use management plan for the State's coastal area setting forth enforceable coastal policies to guide public and private uses of lands and waters in the coastal zone.

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### NYS Coastal Management Program Regulations

**19 NYCRR Part 600**

- Contains the statewide coastal policies and the 13 Long Island Sound coastal policies and State agency consistency procedures.

**19 NYCRR Part 601**

- Contains the procedures for review, submission, and approval of an LWRP
- LWRP must contain coastal policies enforceable by local laws.
- LWRP approval process has a public review component and consultation with state and federal agencies.
- The LWRP requires approval from the Secretary of State and must be consistent with the NYS CMP.

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### NYS Coastal Management Program Regulations

**19 NYCRR Part 602**

- Provides the procedures to identify the Coastal Area Boundary for the NYS CMP and to designate Significant Coastal Fish and Wildlife Habitats, Important Agricultural Lands, and Scenic Resources of Statewide Significance.

**19 NYCRR Part 603**

- Provides for the development and adoption of a Harbor Management Plan as a component of an LWRP.
- A city, town or village may adopt an HMP to regulate the surface waters and underwater lands within the city, town or village, or bounding it to a distance of 1,500 feet from shore, whichever is greater.
- Provides for a local government to adopt, amend, and enforce local laws or ordinances to regulate the construction, size, and location of structures (i.e. wharf, dock, pier jetty).

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### NYS Coastal Area

- Roughly 1000 feet inland from these waters:
  - All tidal waters (Hudson River up to Troy)
  - Lakes Ontario and Erie
  - St. Lawrence and Niagara Rivers
  - Certain tributaries to these waters
  - Includes designated inland waterways
- Generally follows a road, park boundary or natural feature



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### Designated Inland Waterways

- NYS Exec. Law 911(4) identifies inland waterways outside of the delineated coastal area
- Communities along the inland waterways are eligible to develop LWRPs
- DOS will provide technical and financial assistance to eligible communities

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### What is a Local Waterfront Revitalization Program?

- LWRPs are a locally prepared, comprehensive land and water use plans for a community's waterfront area.
- The LWRP process is based on public participation to create a shared vision for the long-term revitalization of the waterfront.
- LWRPs include an inventory of natural and cultural resources and conditions.
- LWRPs analyze waterfront issues, opportunities and constraints and resource protection needs.



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### Legal Authority to Develop an LWRP

NYS Executive Law 919 contains:

- Secretary of State's approval
- Ease of public access to the waterfront
- Promotion and preservation of scenic, historic, cultural and natural resources
- Strengthen economic position of harbors
- Local government program implementation
- Protection of ecologically sensitive areas
- LWRP components

NYS Executive Law 922 contains:

- Harbor Management Plans requirements

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### Local Waterfront Revitalization Programs

Refine state coastal policies to reflect local needs and conditions.

Include strategies for addressing critical waterfront issues

- Enhancing public access
- Revitalizing underutilized waterfront areas
- Protecting natural and historic resources
- Improving water quality
- Protecting open space and scenic resources
- Developing resiliency measures (i.e. critical infrastructure)

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### Enforceable Coastal Policies

- The key regulatory feature of the NYS CMP and LWRPs is the inclusion of enforceable coastal policies for consistency decisions
- NYS CMP includes 44 enforceable coastal policies and 13 Long Island Sound regional coastal policies that address a range of management issues:
  - o flooding
  - o public access
  - o commercial and recreational fisheries
  - o wetlands
  - o energy
  - o erosion
- Enforceable through a network of New York State laws including Executive Law Article 42

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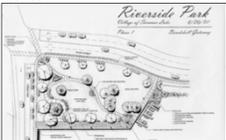
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### Legal Tools to Implement an LWRP

- Once approved by the Secretary of State and NOAA/ OCM, permitting, funding, and actions by federal and state agencies must be consistent with LWRP coastal policies.
- Contains local laws to enforce the coastal policies.
- Include strategies for addressing critical waterfront issues:
  - enhancing public access
  - revitalizing underutilized waterfront areas
  - protecting natural and historic resources
  - improving water quality
  - protecting open space and scenic resources
  - resiliency planning



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### Local Consistency Review Law

- Adoption of a local consistency law is required to implement an LWRP.
- Contains procedures for what types of actions must undergo review and which board is responsible for review.
- Many require local agencies to submit certain actions to planning, zoning, waterfront advisory, or town board for review/approval or recommendations to some other body.
- Similar to Article 42 requirements for State consistency.

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### Benefits of Participation

- Increases a community's ability to attract appropriate development.
- Increases a community's chances to obtain public and private funding for projects.
- Establishes long-term partnerships among local government, community based organizations, and agencies.
- Once approved by the Secretary of State, permitting, funding, and actions by federal and state agencies must be consistent with the LWRP.

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### Federal Activities are Subject to Consistency Review

- Federal approval of NYS CMP and LIS CMP provides the State with federal consistency review authority over federal agency activities (15 C.F.R. Part 930).
- Review authority is a form of reverse federalism allowing the State to review and approve federal agency activity.
- DOS is the designated State agency which reviews federal agency activities.

**Standard of Review:**  
Conducted for activities that have reasonably foreseeable effects on a State's coastal resources and uses whether in or outside of State's coastal zone

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### Review of DOS Federal Consistency Objections

Administrative appeals from a DOS objection are elevated to the Secretary of the U.S. Department of Commerce for review and decision

Appeals review standard:

- Is the activity consistent with the objectives or purposes of CZMA?
- or
- Is the activity in the interest of national security?

Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of

Broadwater Energy LL and Broadwater Pipeline LLC [April 13, 2009]

Millennium Pipeline Company, L.P. [Dec. 12, 2003]

John K. Delyser [Feb. 26, 1988]

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### State Agency Consistency Review

Review of State agency actions within the boundaries of a LWRP will use LOCAL coastal policies

- State agencies are responsible for conducting consistency review of their own actions (19 NYCRR 600.4).
- The consistency review is a component of a determination of significance for Type I and Unlisted actions under SEQRA.
- Challenges to State agency decisions are undertaken pursuant to CPLR Article 78.

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## Local Waterfront Revitalization Program

Steve Ridler

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### LWRP Status

- 932 communities throughout NYS are eligible to prepare and participate in the LWRP. Includes the State's Coastal Area and designated Inland Waterways.
- To date, there are **100 approved LWRPs**.
- Currently, there are **49 LWRPs in production** (new programs + amendments to existing local programs).



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### Approved LWRPs by Region

Long Island:	10
New York City:	1
Mid-Hudson:	25
Capital Region:	10*
North Country:	15*
Mohawk Valley:	2*
Central New York:	2*
Southern Tier:	1*
Finger Lakes:	11*
Western New York:	23*



\*Includes Inland Waterways

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### Evolving LWRPs

New guidance will evolve the approach we have taken with municipal partners in the development of LWRPs:

- Regional nature of waterfront revitalization
- Economic development
- Community resilience
- Resource protection issues
- Cumulative and secondary impacts

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### Funding for LWRPs

- Title 11 of the Environmental Protection Fund
- 50/50 matching reimbursement grant program

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ENVIRONMENTAL PROTECTION FUND GRANTS

ELIGIBLE COMMUNITY STATUS

- Agreement
- Participating
- Eligible
- Not Eligible
- Coastal Localities

CITY OF BUFFALO

DOWNSTATE REGION

CAPITAL REGION

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**Eligible Applicants:**

- Villages, towns, or cities, located along New York's coasts or designated inland waterways
- Counties with the consent and on behalf of one or more eligible villages, towns, or cities

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### EPF LWRP Grant Categories

- Preparing or Implementing a Local Waterfront Revitalization Program (LWRP)
- Updating an LWRP to Mitigate Future Physical Climate Risks
- Redeveloping Hamlets, Downtowns and Urban Waterfronts
- Planning or Constructing Land and Water-based Trails
- Preparing or Implementing a Lakewide or Watershed Revitalization Plan
- Implementing a Community Resilience Strategy
- Celebrating the Bicentennial of the Erie Canal – Improving Public Waterfront Access for Canal Communities

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## Encouraging Regional and Intermunicipal Cooperation



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### First Wilderness Heritage Corridor

- Involves
  - 9 communities and 2 counties along the northern Hudson River
- Purpose
  - Unified tourism & economic development approach
  - Enhanced access to river
  - Better linkages



- Funding
  - \$1.5 M from DOS
  - \$21 M other State & Federal Govt.

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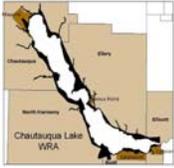
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### Chautauqua Lake Local Waterfront Revitalization Program



- 5 towns and 4 villages
- Long-term management program for the shores of Chautauqua Lake
- Develops a regional identity
- Provides a framework for addressing:
  - Critical issues
  - General development concerns
  - New economic opportunities



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## Lakewide or Watershed Revitalization Plan

- Plan for the protection and promotion of natural assets
- Plan to capitalize on human and financial resources in planning area
- Address concerns to achieve shared goals

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## Chautauqua Lake Watershed Plan

Involves

- Chautauqua County
- Lake Management Commission
- Lake Association,
- Watershed Conservancy
- 9 Towns and 5 Villages

Watershed Plan

- Characterizes watershed resources
- Identifies key issues
- Evaluates current practices and programs
- Recommends actions

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## Updating an LWRP to Mitigate Future Physical Climate Risks

As part of updating an existing LWRP, an eligible community may consider planning activities such as:

- incorporating of a NYRCR Plan or NY Rising Countywide Resiliency Plan
- assessment of risks associated with coastal/riverine flooding and erosion
- assessment of risks to critical infrastructure and systems

New grant program for Countywide Resiliency

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### Improving Public Waterfront Access for Erie Canal Communities

Applicants with an approved LWRP, or relevant LWRP component substantially completed, may be eligible for grants to create new waterfront public access sites or improve and/or expand existing sites along the New York State Canal System.

Grants may be awarded for projects such as:

- improving public access to and along the Canal, such as through land and water based trails, boat launches, boat docks, boater facilities and amenities
- providing linkages between the Canal and communities, parks, open spaces, and cultural sites
- marketing materials and campaigns to promote canal activities to strengthen and extend the tourism season

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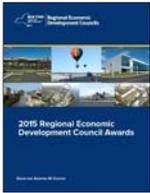
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## Leveraging OPD Programs with other State Programs



2015 Regional Economic Development Council Awards

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### Regional Economic Development Councils



- Strategic Planning Support
- Program Development and Support
- Coordination of State Agency Resource Teams

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### Village of Rouses Point Community Revitalization

Development & Waterfront Revitalization Plan  
Village of Rouses Point

Design Guidelines  
Village of Rouses Point

OPD HCR OPRHP OPD

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### Village of Clayton Waterfront Revitalization

- 2003 – Frink America site remediation & feasibility study
- 2007 - Concept Master Plan for site
- 2008-09 – Riverwalk & Frink Park improvements
- 2011 – Utility funds & hotel start up
- 2012 - Frink Pavilion done
- 2013 – LWRP revised
- 2014 – Hotel opened

1000 Islands Harbor Hotel

Frink Park

Funding Sources: OPD, DEC, HCR, ESD, Northern Border Commission, Private

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## Brownfield Opportunity Areas Program

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## Brownfield Opportunity Areas Program



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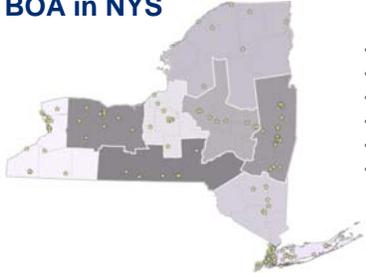
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## BOA in NYS



- \$45M BOA grants awarded
- 176 grants
- 90 open grant contracts
- 120 BOA study areas
- Over 50,000 acres
- More than 5,000 brownfields

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## Designation



First BOAs designated in 2015  
26 Designated BOAs  
3 pending requests  
10 more expected in 2016

Designation benefits:

- BCP tax credit bump-up
- Priority and preference
- Ongoing DOS support

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### Wyandanch Rising



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### The Vacuum Oil South Genesee River Corridor



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### Fort Edward Northeast Industrial BOA



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Governor Andrew Cuomo's  
**Downtown  
Revitalization Initiative**

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**The State will invest  
\$100 million in the  
Downtown Revitalization Initiative**

10 communities will win \$10 million  
+ priority CFA funding



 Office of Planning and Development  Homes and Community Renewal

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**Urban centers  
are where young  
people and jobs  
are moving –  
they're a catalyst  
for economic  
growth**



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## Evaluation Criteria

Selected Downtown should have:

- ✓ Compact, Well-Defined Boundaries
- ✓ Sufficient Population
- ✓ Potential to Build on and Increase Public and Private Investment
- ✓ Recent or Impending Job Growth
- ✓ Characteristics that Increase Livability
- ✓ Local Policies that Advance Revitalization
- ✓ Community Support




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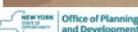
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## Together, we will create downtowns with...



- A strong sense of place
- Diverse new businesses, high-paying jobs, and skilled workers
- Arts and cultural attractions
- A diverse population, with residents and workers supported by affordable housing and employment opportunities
- Enhanced local property tax base
- Amenities to support and enhance downtown living and quality of life




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