

Legal Framework: It Helps to Know the Rules

Introduction

Previous chapters in this book have already taught much about lakes and their associated watersheds, including the multitude of lake uses and of users who often have conflicting interests. Those interests affect lake water quality, water levels, navigation, fisheries, wildlife and the appearance and ambient character of the lake. No lake or pond is “typical.” Each has a unique mix of uses, users and environmental characteristics. When problems arise, as they inevitably will, demands for action follow.

This chapter covers the laws at the federal, state and local level that provide authority for regulatory action. It introduces the agencies that may assist in carrying out these laws. Most lake-management decisions are voluntary and do not rely on a regulatory framework. In fact, the impetus for lake management often begins with a citizen’s group, and this chapter concludes with a review of organized citizen approaches to accessing governmental programs. The role of lake associations is emphasized, and various ways they may be constituted is discussed.

No one governmental entity, federal, state or local, has absolute power over lake management. This has both benefits and drawbacks. On the plus side, every person, organization and constituency has some say over decisions that affect the lake and its watershed. The structure is disseminated and hence “democratic.” On the other hand, it seems that decisions could be made more efficiently if each lake and its watershed were managed by a single agency. Only one lake in New York State has such an agency. The Lake George Park Commission carries out, in cooperation with others, the laws and regulations of the state, Adirondack Park Agency (APA) and local government.

Governmental agencies seem to be quite capable of making decisions on issues when there is little disagreement between the major constituencies. If land

developers, anglers, hotel owners, lakeside property owners, and farmers in the watershed, academics and elected officials are all either neutral or on the same side of an issue, the only problem will be how to finance it. When constituencies disagree, however, the governmental decision-making process often breaks down. These disagreements can sometimes be mediated by bringing in “experts” to explain the “facts.” If the experts disagree, then look out! The likely outcome will be procrastination or no decision at all. Such non-decisions have the same effect as denying a proposal or project.

Government roles and responsibilities

Federal government

The federal government’s executive branch has many departments and agencies that are involved in natural-resource management and regulation. The cabinet level environmental agency is the U.S. Department of the Interior (DOI). It has responsibility for managing the national parks and regulating hunting and recreational fishing, and also contains the Bureau of Indian Affairs (BIA). The U.S. Geological Survey (USGS) is part of the Interior Department. When the USGS is hired to do a water-project study, they may also collect water-quality data. Key types of information available from the USGS include stream-flow data, topographic maps and groundwater data. Their information may also include specific types of water-quality data deemed to be of national concern.

The U.S. Environmental Protection Agency (EPA) is an independent agency responsible for enforcing national environmental laws such as the *Clean Water Act* and *Clean Air Act*. The EPA has jurisdiction over water and air pollution, pesticide usage, solid and

hazardous-waste management and related areas. The federal government has delegated many EPA activities to the states, and New York State is among the states that have accepted these responsibilities. The delegation of these responsibilities is sometimes accompanied by federal dollars, which allows for many of the staff in state agencies to be paid through federal grants. The EPA is responsible only for establishing the general direction of the state environmental regulatory program. The New York State Department of Environmental Conservation (DEC) manages day-to-day activities.

The U.S. Department of Agriculture (USDA) directs some additional environmental programs. The U.S. Forest Service manages national forests, the Natural Resources Conservation Service (NRCS) and the Farm Service Agency. These agencies work with farmers to improve the efficiency of agricultural operations and to protect the long-term condition of soil and water resources. Updating county soil maps is the responsibility of NRCS.

There are still other federal agencies involved in natural resource issues. The Army Corps of Engineers is responsible for maintaining navigation in inland and coastal waters and protecting wetlands from development. The National Weather Service, part of the U.S. Department of Commerce, provides weather forecasts and historical climate data. The Federal Energy Regulatory Commission regulates hydroelectric projects.

Congress, the federal legislative branch, passes new federal laws and amends existing laws. The judiciary branch, the federal courts, interprets these laws and how they are applied by federal departments and agencies.

In recent years, the U.S. Department of Homeland Security has played an increasing role in “peripheral” lake-management issues, from protection of raw water supplies to the administration of the Federal Emergency Management Agency (FEMA), which oversees the response to catastrophic environmental events, including dam breaches. As with other federal programs, at least some of these responsibilities have been delegated to the states.

The Public Health Security and Bioterrorism Preparedness and Response Act (better known as the *Bioterrorism Act*) was signed into law in 2002. It includes specific requirements for community drinking-water systems serving more than 3,300 people. These water systems are required to prepare and submit vulnerability assessments. Most of the nation’s water systems have met the security requirements of the Bioterrorism Act. Security requirements for smaller systems, serving less than 3,300 people, are voluntary. By the summer of 2005, there were no similar requirements for wastewater utilities.

Federal government and Indian tribes

Federally recognized tribes have sovereign status supported by special legal provisions and federal agency responsibility. The Bureau of Indian Affairs within the Department of the Interior administers and manages land held in trust for American Indians by the United States (see Appendix F “Internet resources”).

If watershed planning might affect tribal members or their lands or waters, the federal Bureau of Indian Affairs, a special EPA office and the tribal nonpoint source program should be contacted, as well as officials within affected tribal nations (see Appendix F “Internet resources”).

According to the EPA, a partial list of Federally Recognized tribes in New York State includes: Cayuga Nation; Oneida Nation; Onondaga Nation; Saint Regis Mohawk Tribe (formerly the St. Regis Band of the Mohawk Indians); Seneca Nation; Tonawanda Band of Seneca Indians; and the Tuscarora Nation.

EPA has an American Indian Environmental Office (AIEO) that strives to strengthen environmental protection in Indian Country, especially through building the capabilities of tribes to manage their own environmental programs. The AIEO provides contact information for federally recognized tribal governments, maintains a list of tribes that have developed water-quality standards, and provides lists of resources. EPA’s Tribal Nonpoint Source Program provides information on training workshops, grant funding for tribes and the Tribal Nonpoint Source Planning Handbook (EPA, 2008).

New York State government

It is not the purpose of this manual to describe the workings of government in New York State in great detail. An excellent book is available on this subject, the *Local Government Handbook*, available from the office of the New York State Secretary of State. The handbook describes the intricate and often puzzling relationships among federal, state and local government entities.

State government is divided into three branches similar to the federal government. The governor heads the executive branch. In this capacity, he appoints the heads of the state agencies that are answerable to the executive branch. The legislative branch passes new laws and amends existing ones. The judicial branch is the court system, with the court of appeals as the supreme body. It is the role of the courts to interpret whether the laws of the state, as passed by the legislature and enforced by the state agencies, are being carried out properly.

The environmental management structure in New York State differs from the federal model. Many of the activities of the U.S. Department of the Interior and the EPA are consolidated into one state agency, the New York State Department of Environmental Conservation (DEC). There are some exceptions. The Department of Health (DOH) has jurisdiction

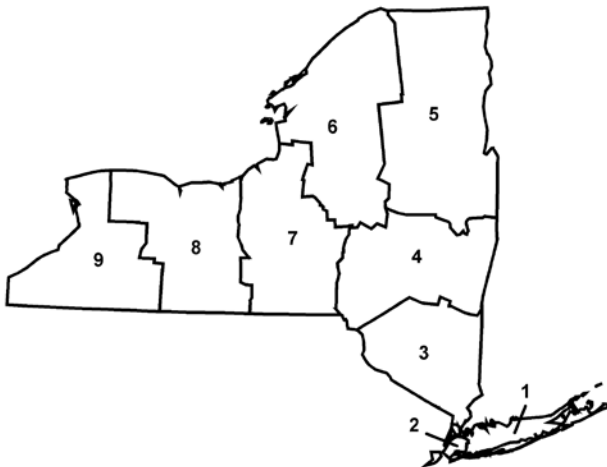


Fig. 10-1. Map of DEC regions. The regional office where a lake is located is the best place to start when there are questions about permits, regulations and natural-resource management. (CREDIT: DEC)

over public water supplies and on-site wastewater systems although DEC also has limited authority in these areas. A summary of key state laws that apply to lake management is presented later in this chapter.

DEC functions as both an environmental regulatory agency and a natural-resource management agency. It has divided the state into nine regions along county boundaries. Day-to-day activities are directed from regional offices, while the long-term management framework is developed by staff in the Central Office in Albany. DEC is organized along broad program lines such as Air Resources, Fish and Wildlife Management, Water, and Lands and Forests.

The executive department's Office of Parks, Recreation and Historic Preservation (OPRHP) manages state parks outside the Adirondack and Catskill regions. OPRHP also has responsibility for enforcing the navigation laws. Another unit of the executive department, the Adirondack Park Agency (APA), regulates the park land-use policy and administers regulations and policies associated with the management of lakes within the park. DEC manages the public lands within the Adirondack and Catskill parks, including campgrounds at lakes.

Interstate River Basin Commissions

New York State is a member of five Interstate River Basin Commissions. Lake associations located in these river basins may wish to consult the databases and activities of the Commission that includes their lake, especially where the lake drains into a tributary of the river system. (See Appendix E, "Interstate River Basin Commissions")

Local government

New York State laws authorize the formation and operation of local counties, towns, villages and cities. Different units of government have jurisdiction over specific activities. Although local governments have substantial involvement in natural-resource management, their efforts are not as comprehensive as the role of the state agencies.

Localities provide water supply and sewage treatment services, often through special revenue districts. Solid-waste disposal, planning and regulation of land uses by private owners are also the responsibility of local governments, although there are some exceptions. The state is authorized, for example, to regulate private land use in the Adirondack Park, a power bestowed in Article 8 of *New York State Executive Law*. The state also maintains ownership of the beds of most navigable waters in the state (see Appendix C, “Who owns New York State lakes?”).

Local government may organize groups of citizens and agency staff to serve in an advisory role on environmental matters. Discussed below are several groups that are logical partners for lake associations because they provide a significant link between local, county and state governments.

County Water Quality Coordinating Committees (WQCC) have been formed in each of the 62 New York State counties to coordinate water-quality management activities among the various county agencies. A staff person from the County Soil and Water Conservation District (SWCD) or planning department may provide leadership for the WQCC. Other local entities that may be involved include the county health department, cooperative extension, the Environmental Management Council, local citizen groups and regional DEC staff. These committees may select a unique name. Two examples from the Finger Lakes region are the Cayuga County Water Quality Management Agency and the Tompkins County Water Resource Council.

Environmental management councils (EMCs) can be established by the county governing body. About half of New York counties have an EMC that serves as an advisory agency and as a county-wide forum for environmental concerns. EMCs often work closely with planning and other agencies and have the authority to advise the county on all matters affecting the preservation, conservation and ecologically suitable use of natural resources of the county. They may engage in advocacy, education and planning activities such as the preparation of a wetland and open-space inventory. They may also prepare annual reports on the state of the environment in the county.

Towns, villages and cities may create *Conservation Advisory Councils* (CACs) and *Conservation Advisory Boards* (CABs) to assist in the protection of the environment and to provide environmentally sound management for the natural resources of a municipality.

CACs are usually created by local law or by resolution of the local governing body. In this context, they have resource-planning and project-review functions. They coordinate with organizations of a similar purpose and with other official municipal bodies active in community planning for that municipality. These bodies also have an educational role within the local community by providing a forum for citizens to address environmental issues. CACs are natural partners for lake associations.

A CAC may be designated to become a CAB by the local legislative body. The principle difference is that a CAB is authorized to review applications that seek approval for the use and development of any open area listed in the open-space index prepared by the CAC. This includes recommendations on appropriate action on each application. The CAB can also function as a CAC if authorized to do so by the local legislative body.

The activities of CACs and CABs also typically include conducting research into critical land areas of the municipality and production of a report and map of local land uses. A representative from each CAC or CAB is entitled to be a member of the county’s EMC if one exists.

Statutory authority: *NYS Environmental Conservation Law (ECL), Article 49, Title 3.*

NYS General Municipal Law, Section 247.

Responsible agencies: NYS Agencies; Local Governments; Not-for-Profit Organizations.

Role of private organizations

There are many established organizations with an interest in natural-resources management. See Appendix F, “Internet resources” for contact information. These organizations represent many public interest sectors and are often collectively referred to as “environmental” groups. They include national groups such as the Sierra Club, the Audubon Society,

the Natural Resources Defense Council and The Nature Conservancy. Professional societies, such as the Ecological Society of America (ESA) and the North American Lake Management Society (NALMS), are involved in lake-management issues that affect the entire country. They may be able provide expert witnesses to testify in judicial proceedings on local issues with national ramifications.

Many national organizations have chapters, affiliates or equivalent organizations at the state level. The New York State Federation of Lake Associations (NYSFOLA) is the umbrella organization for lake associations in New York State. It is also a chapter of NALMS. NYSFOLA has three major programs, the Citizens Statewide Lake Assessment Program (CSLAP), the Volunteer Pollution Control Program and an annual conference. NYSFOLA also provides technical and educational assistance, publishes the quarterly newsletter *Waterworks*, and maintains a website (see Appendix F “Internet resources”). NYSFOLA also networks with others, provides notice of grant opportunities for lake-management projects and is involved in statewide water-resources policy issues.

There are number of groups that focus on statewide issues, providing information or hosting regional gatherings, but they are rarely drawn into local conflicts. The New York State Conservation Council, for example, represents the interests of sporting groups, such as ducks and fisheries. The New York Rural Water Association (NYRWA) assists in the formation and operation of water and wastewater systems. There are also statewide groups that represent professionals such as civil engineers, geologists, planners and attorneys.

Role of lake associations

Lake associations are the only organizations that routinely become involved with local lake-management issues. The association may have originally been a social club or a fish-and-game group, but, over the years, many have evolved into a more scientifically based environmental group. Most work on small projects, become a partner in a project funded by larger agencies or organizations and help with education

and outreach. This limited role in implementation has often led to lake associations finding a niche as an environmental watchdog, calling the attention of local authorities to lake- and watershed-management issues and needs.

At minimum, a lake association should:

- Hold regular meetings and circulate a newsletter to its members.
- Collect available information on the lake and its watershed.
- Educate its members in the areas of lake ecology, restoration and management.
- Conduct educational efforts for the public on lake management or specific issues concerning the lake.
- Develop a working relationship with each local government around the lake, with state agencies, such as DEC, and with state legislators and environmental groups.
- Become an active member in NYSFOLA, attend the NYSFOLA Annual Conference and seek participation in the CSLAP program.
- Maintain a website with links to other appropriate sites.

There are between 150 and 250 lake associations in New York State, depending on the definition of “association.” Some are quite active, whereas others have long been dormant and exist only in name. A large or multi-county lake may be represented by more than one association. Most associations have fairly stable membership levels, while others become temporarily larger due to controversy surrounding water-quality issues or major development projects

Water law

Water laws that define the rights of landowners bordering lakes and streams are known as riparian rights. If traced back to their origins, one eventually finds what is known as common law. Common law is derived from a system of unwritten law that was developed in England. Court judges based

their decisions on these unwritten customs or the application of reason in the absence of precedents that applied to the circumstances of each case. This system of common laws was adopted from English law by the United States courts and state legislatures at the time of the American Revolution.

Common law is derived from unwritten customs. It differs from statute law, which is an act of a legislative body. Administrative rules and regulations, derived from specific statute laws, are created by appropriate governmental agencies assigned the responsibility of carrying out statute laws. It is helpful to keep in mind that state and federal laws governing the use of lakes and streams, including prohibitions against contamination and destruction of habitat, set limits on a landowner's riparian rights, rather than supplanting them. An example is the federal *Clean Water Act*, which establishes maximum allowable discharges of pollutants into lakes, streams and groundwater.

Riparian water rights apply only to surface waters in lakes and streams. When common-law riparian rights originated, the courts did not have access to factual knowledge about underground waters. Surface waters could be seen. Underground water was called "percolating" water and could not be seen. Consequently, landowners were given almost unlimited rights to pump groundwater from wells on their lands, even when the pumping was so extensive that the water level in adjacent wells, lakes or streams was lowered. The connection between surface and groundwater as comprising one integrated hydrologic system was not well understood. Thus, there exist two bodies of common law, and statute laws have followed suit. One body of laws is for surface or riparian water, and one is for percolating or groundwater.

Application of riparian water rights to wetlands is an open question and remains to be tested in the courts. Current federal and New York State statutory laws take precedence and severely limit what landowners can do with their wetlands. Presumably, wetlands that contain open areas of water throughout the year would also be identified as riparian surface waters under common-law concepts. Federal and New York State wetland laws contain somewhat different definitions of what constitutes a wetland, based on the soils and vegetation suited to a wetland environment.

The interests of riparian landowners are not absolute. The courts have developed the doctrine of reasonable use, under which a riparian owner generally has the right to the use of a stream or lake without a substantial decrease in quality or quantity from the uses of adjacent landowners. Reasonable use is essentially the application of common sense in regard to a lake or stream that is shared in common with other landowners. If a landowner's use predominates to the disadvantage of others, then the landowner's use is usually deemed to be unreasonable. Reasonable use generally depends upon the particulars of each situation, especially the extent of injury to others. The common law doctrine of reasonable use, however, is more applicable to streams than lakes. For example, common law is difficult to apply when boat wakes interfere with the use and enjoyment of others. A statutory law is better suited to control boat wakes.

The question of "Who owns your lake?" is very complex and involves a host of old patents and acts. Much of this is encapsulated in *New York Public Lands Law* (Article 75, 9 NYCRR, Part 270). The New York State Office of General Services (OGS) in Albany maintains a list of the lakes in New York and can indicate whether the state owns a specific lake (see Appendix C, "Who Owns New York State Lakes?") They also maintain deeds and maps going back to the 1600s and will supply copies upon request. As a rule of thumb, lakes smaller than 12 acres are not necessarily owned by the state, but one needs to check with OGS to be sure. "Private ownership" of lakes applies only to the ground beneath some of the water. The people of New York State own all surface and ground water in the state and also the ground under the water of many navigable bodies of water.

A deed of land adjacent to a private lake generally conveys title to the center of the lake. There are several methods of establishing the center of the lake.

This ownership may be illusory if no efforts have been made to exclude the public through the years. If the public has had access to the lake over private property for a continuous period of at least 10 years with the knowledge of the lakefront owner, a prescriptive easement may be acquired. This is often referred to as **squatters' rights**. The courts have

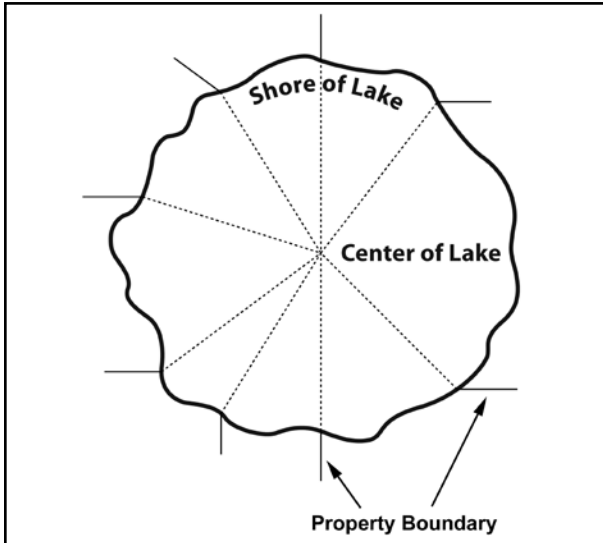


Fig. 10–2. Round lake (pie) method of measuring to the center of a lake. Property boundaries are established by the “pie method,” where a point is located at the center of the lake, and property boundaries are extended to this center point, similar to slices of a pie. The method is also used at the ends of long lakes.

(CREDIT: CHRIS COOLEY)

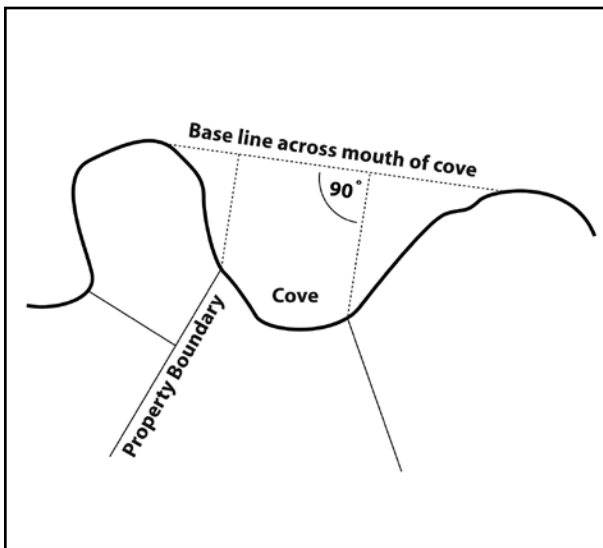


Fig. 10–3. Perpendicular method of measuring to the center of a lake. On a lake with **headlands** and penetrating coves, a baseline is drawn between the headlands of the cove, and property boundaries are extended perpendicular to the shore to intersect this baseline. A headland is defined as a height of land that juts into a body of water.

(CREDIT: CHRIS COOLEY)

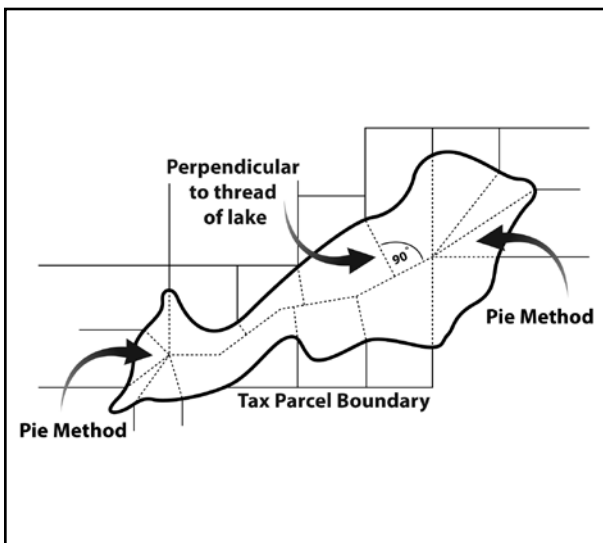


Fig. 10–4. Long lake method of measuring to the center of a lake. On a long, narrow lake, a baseline is established along the midpoints between the shores, and property boundaries are extended to intersect this midpoint baseline at right angles. The round or pie method is used at the ends of the lake.

(CREDIT: CHRIS COOLEY)

held that it was irrelevant that the use was seasonal in nature and not year-round. The courts have held that seasonal public use of Lake Nancy in Saratoga County was sufficient to give non-residents and the public a prescriptive easement for access to the lake. Historically, people who own property one row away from the lakeshore may be able to access the water via prescriptive access or deeded right of way.

Laws and regulations

There ought to be a law! To restrict an activity, there needs to be a federal, state or local law that can be enforced. An activity is not illegal just because it is annoying. This section covers specific federal, state and local laws relating to water-pollution control, wetlands regulations, environmental impact reporting requirements, protection of state waters and public water supply regulations. It also includes empowerment of towns, villages, and counties to create special districts and undertake various planning and zoning actions relative to lake watershed management. Citation for the laws is given after each discussion.

Federal and State Pollution Discharge Elimination System

The *Federal Clean Water Act* was developed primarily to control water pollution. Its principle regulatory program is the *National Pollution Discharge Elimination System* (NPDES), which is administered by EPA. Section 301 of the act prohibits the discharge of any pollutant into the waters of the United States without a permit. Wetlands are covered under Section 404 of the *Clean Water Act*, which empowers the Army Corps of Engineers to regulate discharges of dredge and fill material.

The *Clean Water Act* authorized financial incentives and punitive actions to encourage the development and improvement of pollution controls by wastewater facilities. Section 402 authorizes permits for controlling stormwater runoff from municipal storm sewer systems, from construction sites exceeding one acre in size and from industrial sites.

In New York State, the NPDES program is administered by DEC and is known as the *State Pollution*

Discharge Elimination System (SPDES) pronounced “speedies.” A SPDES permit must be obtained before an owner or operator of any large wastewater system can legally discharge sanitary, industrial or commercial wastewater into New York State waters. “Large” is defined as a system discharging 1,000 gallons or more per day. Non-industrial sewage and effluent discharges from private dwellings of less than 1,000 gallons per day do not require a SPDES permit.

On-site wastewater systems of single-family dwellings with an estimated flow not exceeding 500 gallons per day are regulated by the state or county health department under the *New York State Sanitary Code, New York State Public Health Law*. The sanitary code requires a qualified engineer for new wastewater systems. Inspections of new wastewater systems are to be carried out every five years. These inspections have also been removed from the jurisdiction of local code enforcement officers (See also Chapter Four, “Problem Diagnosis”).

Compliance and self-monitoring reports are a major part of the SPDES program. DEC conducts surveillance, sampling and facility inspections and enforces penalties and corrective actions where necessary. DEC requires each SPDES permit holder to conduct effluent monitoring to assure that approved discharges meet the limits outlined in the permit, and penalties are imposed for noncompliance. Permits are reviewed and reissued every five years. Additional information on the SPDES process or on specific SPDES permits is available from DEC regional offices. DEC should also be contacted if a problem appears to exist with a local treatment plant discharge.

The permit also specifies the types and quantities of pollutants allowed in discharges, including schedules and conditions under which the discharges are permitted. Owners and operators of wastewater facilities must treat the wastewater to meet the limits listed in their SPDES permit. SPDES permits also require industries discharging into municipal collection systems to pre-treat their wastes if they are considered a Significant Industrial User (SIU).

Surface runoff stormwater that flows during and after land development can result in flooding and soil erosion that causes significant pollution of lakes, streams and rivers. Control of land uses and

development is vested in the powers of town, village and city governments. Under Section 404 of the federal *Clean Water Act*, many urbanized areas in New York State are required to establish management programs to control stormwater discharges from separate, municipal storm-sewer systems. This requirement is administered by DEC under the state SPDES program.

This requirement is being applied in phases. The phase most relevant to lake associations is Phase II. The first aspect of Phase II applies to all of New York State. Construction activities that disturb one or more acres, or are in a *Total Maximum Daily Load* (TMDL) watershed, will usually require a permit from DEC and a plan for preventing pollution from stormwater runoff. The second aspect applies only to certain areas of the state that meet population requirements and have sanitary sewers that are separate from stormwater runoff systems. These areas are referred to as municipal separate storm sewer systems (MS4s). In the future, DEC anticipates extending statewide the requirements that are currently required only of MS4s.

In 2003, each MS4 filed a notice of intent to comply with a statewide stormwater permit. This notice detailed activities to be undertaken by 2008 that would significantly reduce the pollutants discharged into water bodies. These activities are grouped into six categories, termed “minimum control measures.” They are:

- Public education and outreach on stormwater effects.
- Public participation and involvement.
- Illicit discharge detection and elimination.
- Construction-site stormwater runoff control.
- Post-construction stormwater management.
- Pollution prevention and good housekeeping at municipal operations.

Statutory authority: FEDERAL: *Water Pollution Control Act of 1972*, commonly known as the *Clean Water Act* under subsequent amendments, *Sections 301, 302, 306, 307, 402, 404;*

National Environmental Policy Act, Section 42, U.S.C. 4321 et seq., 1969.

STATE: *Environmental Conservation Law* (ECL) Articles 17, Titles 7 and 8. (6NYCRR Parts 652, 700-704, 750-757, 800-94).

Responsible agencies: EPA, DEC, City & County Health Departments.

State Environmental Quality Review Act

The *State Environmental Quality Review Act* (SEQRA) was passed in 1975 and is pronounced “seeker.” It requires individuals or groups to determine whether proposed projects they directly undertake, fund or approve may have a significant effect on the environment. SEQRA is most frequently applied to lakes when wetlands are involved.

Actions covered by SEQRA include SPDES discharge permits, dredging, construction activities, well drilling, benthic barriers and shoreline improvement. Applicants may be state or local agencies, local governments, districts, departments, authorities, boards, commissions, public or private corporations or individuals. The SEQRA Act helps to facilitate communication between government agencies, project sponsors and the general public to ensure that decisions are made in the preliminary stages of project planning that will avoid or minimize adverse environmental effects. SEQRA requires agencies to act on the information produced in the environmental review.

If a proposed action is determined to have a significant effect on the environment, then an *Environmental Impact Statement* (EIS) must be prepared. An EIS is a report containing a description of a proposed action, the environmental setting, potential environmental impacts, ways to minimize the effects, and reasonable alternatives. The EIS also serves as a public disclosure of the record used by an agency in its environmental decision-making process. The SEQRA objectives are accomplished through the general review guidelines of DEC. The guidelines are also used as a mechanism for coordinating interagency environmental review of a proposed project.

Two types of action are defined in SEQRA. A Type I action is likely to have a significant effect on the environment, and preparation of an EIS will

probably be required. A Type II action is not expected to have a significant effect on the environment, and an EIS will not be required.

A Type I action requires a fully coordinated review, a lead agency and preparation of an *Environmental Assessment Form* (EAF). The EAF is used by the agency to help determine the environmental significance or non-significance of an action. The EAF should contain information to describe the proposed action, its location and purpose, and the potential effects of the action on the environment.

A *Critical Environmental Area* (CEA) refers to a specific, designated geographic area that has exceptional or unique characteristics that make the area important to the local community. Actions undertaken in a critical environmental area must be treated as a Type I action under SEQRA. There are at least 25 lakes in New York State within CEAs. They range from small ponds such as Magid Pond in Westchester County to large lakes such as Lake George. While DEC is the main agency that designates an area as a CEA, local agencies may make recommendations. A listing of critical environmental areas can be found on the DEC website (see Appendix F, “Internet resources”).

Because many different agencies or groups may be involved with a given project, SEQRA requires that a local agency be designated as having primary responsibility for coordinating the environmental review of the proposed action. The lead agency is required by law to determine whether a project will have a significant effect on the environment. If it is determined that the proposed action will not have an adverse effect, then a negative declaration is recorded by the lead agency.

If it is determined that the action may have a significant effect on the environment, a draft environmental impact statement (DEIS) must be prepared. The DEIS is intended to be a source of environmental information used by other involved agencies during the period of preliminary project planning. The DEIS is circulated for public review and comment, and a hearing is held if the lead agency considers it to be necessary.

After the DEIS and possible public hearing are completed, the lead agency must determine whether a final environmental impact statement (EIS) is

required. The final EIS should reflect revisions and updating of the information contained in the DEIS with consideration given to agency reviews, comments received and the record of the public hearing if one is held. There are several opportunities for other agencies and the public to provide input throughout the EIS process. Public participation is also necessary to determine whether the project is consistent with community values.

Information sources concerning the status of a proposed project under SEQR are the local newspaper and the *Environmental Notice Bulletin*, available free from the DEC website or by paid subscription for a paper version (See also Chapter Six: “Aquatic Plants”). Additional information concerning specific aspects of SEQR may be found in the *SEQR Cookbook*, a DEC reference manual that provides a step-by-step discussion of the basic SEQR process and is available on the DEC website (see Appendix F, “Internet resources”).

Statutory Authority: *Environmental Conservation Law (ECL), Article 8.*
NY Code of Rules & Regulations: 6 NYCRR Part 617.
Responsible agency: DEC.

Wetlands

Freshwater wetlands are recognized for their invaluable benefits for flood control, fish and wildlife habitat, water-pollution treatment, erosion control and esthetic resources. They can serve as sinks (traps) for removal of nutrients in runoff from the surrounding watershed. Wetlands stabilize lake levels by their highly retentive capacity and provide extensive recreational and educational opportunities to the public.

Federal laws and regulations

From the 1800s through the 1960s, wetlands in the United States were regarded as wastelands or a public nuisance. Congress made draining and filling wetlands national policy under the *Swamp Lands Acts* of 1849, 1850 and 1860 in 15 western states. In 1967, the first national regulations to protect wetlands were issued using provisions in the 1899 *Rivers and Harbors Act*.

This act applied only to wetlands below the mean high-water mark on navigable waterways.

Under the *Rivers and Harbors Act*, the U.S. Army Corps of Engineers has jurisdiction over navigable waters. It has jurisdiction over wetlands on inland tributaries under “waters of the United States” as defined in the *Clean Water Act*. This has been interpreted to mean all freshwater wetlands of one acre or more in size. The corps has jurisdiction over wetlands permits as an extension of its role over wetlands associated with navigable waters. Although the corps is the lead agency, wetlands permits are also subject to approval by EPA and review by the Fish and Wildlife Service.

As the result of a Supreme Court case in 1980, the EPA issued final guidelines for evaluating Section 404 permits under the *Clean Water Act*. In 1986, the corps issued a comprehensive set of regulations for issuing permits affecting wetlands (51 Federal Register 41, 206). In 1990, the EPA and the corps completed a Memorandum of Agreement about compensation through mitigation for unavoidable impacts on wetlands.

The federal authority to protect “isolated” wetlands that are not directly connected by surface-water flow to a river, stream or lake remains under contention. The only definitive way to determine whether an area is subject to Corps of Engineers permit jurisdiction is to seek a determination from the appropriate district office. The districts correspond to major stream watersheds. The five Corps of Engineers district offices relevant to watersheds that have part of their drainage in New York State are located in Buffalo, New York City, Pittsburgh, Philadelphia and Baltimore.

Statutory authority: *Clean Water Act, 1972, Section 404, U.S.C. 1344.*

Rivers & Harbors Act, 1899, Section 10, U.S.C. 403.

Responsible agency: U.S. Army Corps of Engineers.

New York State Freshwater Wetlands Act

New York State passed the *Freshwater Wetlands Act* in 1975 to regulate the use and development of the state’s freshwater wetland resources and to preserve, protect and conserve wetlands and the benefits derived from them.

The *Freshwater Wetlands Act* provides for the regulation of all freshwater wetlands in the state over 12.4 acres (5 hectares) in size. Maps are available from DEC and local government jurisdictions showing the locations of regulated wetlands in New York State. The act also provides for the regulation of smaller wetland areas if they have been determined by DEC to be of unusual ecological importance and regulates activities in adjacent areas within 100 feet of the vegetative boundary of the wetland.

The DEC Division of Fish and Wildlife plays a leading role in the inventory, mapping and classification of the state’s wetland resources. Permits are required, according to best-use classifications, which are designed to regulate draining, dredging, filling or polluting designated wetland areas. Other lake-management activities may require wetland, SEQR or SPDES permits, including many aquatic plant-management actions, benthic barriers and shoreline improvements.

Responsibility for the regulation of wetlands within the Adirondack Park is given to the APA under the *Freshwater Wetlands Act*. Authority is also delegated to local governments for administering certain parts of the permitting program. The APA regulates freshwater wetlands of one acre or more in size, whereas wetlands outside the park are regulated if they are 12.4 acres or larger. Smaller-size wetlands, both within and outside of the park, can be regulated if they have unique characteristics. Under APA regulations, many underwater plant communities are designated as deepwater wetlands even if these came into existence only by invasion of exotic aquatic plants. As in the rest of the state, most normal agricultural activities are exempt from the regulatory requirements.

In addition to administering regulations under the *Freshwater Wetlands Act*, DEC uses a variety of methods to preserve and protect the state’s wetlands. These include purchases of significant or vulnerable wetlands, cooperative easements and agreements with landowners and restoration or enhancement of municipally owned wetlands that have already been degraded.

Statutory authority: *Environmental Conservation Law (ECL) Article 24, Article 7.*

NY Code of Rules & Regulations (6 NYCRR Parts 662, 663, 66).

Responsible agency: DEC.

Protection of Waters Program

The New York State Protection of Waters Program is administered by DEC under the *Stream Protection Act* (Title 5, Article 15, ECL). It is designed to prevent undesirable activities on waterbodies by establishing and enforcing regulations that:

- Are compatible with the preservation, protection, land enhancement of the present and potential values of water resources for protecting the health and propagation of fish, wildlife, and waterfowl inhabiting streams;
- Will protect the public health; and
- Will be consistent with reasonable economic and social development of New York State.

Under this Program, all waters in the State, including lakes and their tributary streams, are assigned a class designation based on existing or expected best use. (Also see Appendix B, "New York State Water Quality Classifications")

- Class AA or A is for waters used as a source of drinking water.
- Class B indicates a best usage for swimming and other contact recreation, but not for drinking water.
- Class C is for waters supporting fisheries and is suitable for non-contact activities.
- Class D is for waters meeting none of the above criteria.

Classes A, B and C may have a further "T" added, indicating it may support a trout population, or a "TS" indicating it may support trout spawning. Small ponds or lakes with surface area of 10 acres or less, located within the course of a stream, are usually considered to be part of the stream for classification purposes.

Activities requiring permits under the Protection of Waters Program include:

- Disturbance of the bed or banks of protected streams and other watercourses;
- Construction, reconstruction or repair of dams and other impoundment structures;
- Construction, reconstruction or expansion of docking and mooring facilities;
- Excavation or placement of fill in navigable waters and their adjacent and contiguous wetlands; and
- Water-quality certifications for projects that require a federal permit.

As this book is going to publication, the DEC Dam Safety Office is proposing new rules to amend Dam Safety Regulations. The new rules would apply to dams 15 feet or more in height or with a maximum impoundment capacity of three million gallons or more. Dams are classified as A, B or C depending on how much damage would be caused if they failed. The proposed amendments require more dam inspections, better record keeping, planning for emergencies and heavy financial assurance requirements. See the DEC website for updated information.

Public water supply regulations

State laws require a permitting system to assure the sufficiency and quality of water supplies and to ensure that the withdrawal and use of water does not adversely affect existing supplies and uses, human health or the environment. Responsibility for protecting public water-supply sources is shared by DEC and DOH.

DEC has authority for ensuring that a public water supply is not contaminated, that there is a sufficient quantity for public use, that conservation measures will be used and that environmental effects from withdrawals will not endanger other water supplies or has other undesirable effects. A permit application to DEC is automatically given to DOH, which has regulatory authority for ensuring that the water supply

meets sanitary requirements for human consumption under the New York State Sanitary Code.

The DOH is also responsible for the New York State Source Water Assessment Program. This program was mandated by the 1974 federal *Safe Drinking Water Act*, as amended in 1986 and 1996, to provide national standards for drinking water. Drinking-water sources include lakes and reservoirs used for this purpose. The New York State program is not a water-source protection program but is a DEC program to compile and organize information on existing water-protection programs. No new mandates or regulations were imposed by the state program. The DOH Water Assessment Program is also intended to provide guidance in administering existing regulatory programs.

Questions that DEC will consider in processing an application for a new community water-supply source,

whether surface or groundwater or for expanding an existing source include:

- Is the proposed project justified by public necessity?
- Have other water-supply sources been adequately considered?
- Will the water supply be adequate to meet the demands of the proposed or existing service area?
- Will there be proper protection of the water supply and watershed?
- Is the proposed project just and equitable for all affected municipalities with regard to present and future needs?
- Has the applicant included a water-conservation plan in accordance with local water resource needs and conditions?

Who owns your dam?

Is your lake created or controlled by a dam? Do you or the members of the lake association own, maintain or use that dam? Do you use or own property on that lake? Does your association have a good liability policy in place? If a municipality owns the dam, does the association have good relationships with them?

As this book goes to publication, the Dam Safety Office of the new York State Department of Environmental Conservation (DEC) is in the process of revising existing regulations “..to ensure that dam owners provide proper operation, maintenance, inspection, repair and emergency planning...” The proposed revisions might include stringent requirements based on the size of the lake behind the dam and, in some situations, heavy financial assurance requirements.

The proposed regulations are available from the DEC website (see Appendix F, “Internet resources”) or go to www.ny.gov, search for “dam safety” and look for “Part 673—Dam Safety Regulations.” Appendix F also includes an internet address where updates are posted.

Dam owners, lake property owners and lake associations are strongly encouraged to remain aware of this issue.

The DOH administers the Watershed Protection Rules and Regulations Program, under which a public water supplier develops rules and regulations to protect the entire watershed upstream from the intake point from unwanted contamination sources. These rules and regulations have been adopted by about 200 water-supply systems in New York State. It is always wise to check whether a specific lake is in one of these protected watersheds and what rules may apply. Many of these watershed regulations are over 40 years old, do not address many of today’s contamination threats and are not vigorously enforced, relying instead on a treatment facility at the intake site.

Statutory authority: *Environmental Conservation Law (ECL), Article 15, Title 15.*

NYS Public Health Law, Article 11, Title I.

Responsible agencies: DEC; NYS DOH and county health departments.

Dock and mooring regulations

New York State *Navigation Law* and the *Public Lands Law* require permits for residential or commercial docks and moorings from the Office of General

DIET FOR A SMALL LAKE

Services (OGS) for public lakes resting on underwater land owned by the State of New York. In addition, these laws require permits from DEC and, in some cases, the U.S. Army Corps of Engineers and the town or village of residence. The *Public Lands Law* spells out exemptions for some residential docks.

The *Parks and Recreation Law* (Section 13.13) defines the authority to regulate the mooring of boats in waters in parks or reservations within the jurisdiction of the Office of Parks, Recreation and Historic Preservation (OPRHP) or any other state agency. The *Public Lands Law* includes regulations on the size, shape and number of docks. In general, docks may extend no farther than 40 feet offshore and may not exceed a surface area of 700 square feet (sq. ft.).

Statutory authority: *Navigation Law, Public Lands Law, Parks and Recreation Law (Section 13.13)*

Responsible agencies: Office of General Services (public lakes), DEC.

Boating regulations

New York State *Navigation Law* applies to all of the navigable fresh waters of the state and to their tributaries and outlets, even if they are not themselves navigable. The navigation laws are quite detailed and should be checked if there is a question about a specific body of water. Parts of the navigation law are administered by DEC, and parts are administered by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP).

The law deals with the regulation of excessive boating speeds but has specific speed limits for only a few lakes in the state. On Canandaigua or Keuka lakes, for example, boats cannot exceed 45 mph during the day or 25 mph at night. Noise from pleasure boats has also been limited on these lakes.

The law is limited in providing statewide control of boating and other recreational activities. Through local law, towns, villages and counties may have authority to impose speed limits near the shoreline, provided they maintain jurisdiction of the lake and that existing state or federal laws do not impose stricter limits. The number of boats on a lake can be addressed through restrictions of docks, moorings or access (See also Chapter eight: “User Conflicts”).

Navigation Law also governs the discharge of wastes from pleasure boats. No discharges are allowed in some lakes, including Lake George, Lake Champlain and Greenwood Lake. Since 1988, the law has also restricted the sale or use of quick-release **tributyltin (TBT)** anti-fouling bottom paint for boats. TBT has been determined to be toxic to aquatic life at very low concentrations.

The *Parks and Recreation Law* provides for other boating restrictions related to recreational water sports, boating speed and mooring for lakes under the jurisdiction of the OPRHP or any other state agency.

Laws dealing with navigation are difficult to pass and even more difficult to enforce. Furthermore, navigation, parks and recreation laws and town, village and county laws are very confusing and difficult to understand. Lake associations interested in the regulatory approach to boating restrictions should elicit the help of a knowledgeable attorney to determine which laws apply to their lake.

Special districts

Special districts provide service to and levy a tax on property owners in a geographically defined area. In New York State, the special districts created by counties or towns and villages are different and are discussed separately.

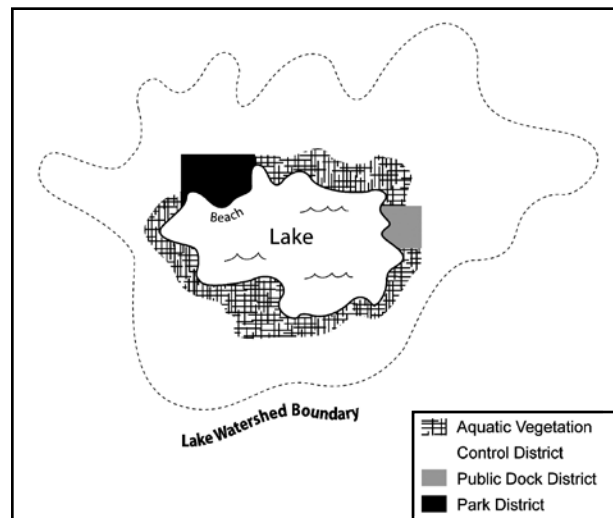


Fig. 10–5. Examples of Special Districts created to provide service to and levy tax on property owners in a geographically defined area. (CREDIT: CHRIS COOLEY)

County

Under articles 5-A, 5-B, and 5-D of county law, counties can establish special districts for water, sewer, drainage, refuse, wastewater management, lake protection and rehabilitation, hurricane protection, flood and shoreline erosion control and small-watershed protection. The responsible agencies are county or regional health departments and DEC. County districts may be created or extended by presenting a petition by the municipality that has at least 25 owners of taxable real property of record located within each proposed district to the county legislative body. The county may also present a petition on its own.

Improvement districts may be established by petition of 50 percent of the residents and owners within a proposed district or simply by a resolution of the board. The petition to set up a district requires description of the geographical boundaries of the proposed district and a statement of the manner of raising the taxes to support it. A public hearing is held, and the resolution is subject to a public referendum. If the vote on the referendum is positive, application for approval is made to the state comptroller and the New York State Department of Audit and Control.

Ad valorem taxation is collected based on assessed valuation of the properties, so more valuable lots pay higher fees. Benefit taxation establishes a fixed-amount unit fee that is then charged per parcel so everyone pays the same amount. Different rates can be set for multi-family properties and for commercial establishments. Tiered-payment taxation charges the highest rate to property owners nearer to the lake and properties with access to the beach or docks.

County small watershed protection districts (SWPDs) are created under Article 5-D of the county law and PL-566 of the federal law administered through USDA and NRCS. SWPDs are established for the purpose of constructing and maintaining projects and improvements for flood prevention and land treatment and for conservation, development, disposal and utilization of water. Where a County Soil and Water Conservation District (SWCD) exists, it serves as the designated agency. DEC, the New York State Soil and Water Conservation Committee and the U.S. Secretary of Agriculture grant assistance toward approval of the project application.

For more information, see *Legal Requirements and Administrative Procedures for Approval of County Districts*, NYS Department of Audit and Control, Division of Municipal Affairs. It includes a guide for the preparation of applications to be submitted to the state comptroller for approval of county districts. Questions relating to Special District formation should be directed to the Department of Audit and Control, Division of Legal Services, Special District Unit. See Appendix F, "Internet resources" for more information.

Town

Subject to a permissive referendum, towns can establish special improvement districts under Article 12 of town law by petition of the people or Article 12-A by motion of the town board. Town districts of interest to lake managers include sewer, water, wastewater disposal, drainage, park, water supply, aquatic plant growth control and water storage and distribution. Harbor improvement, public dock and beach erosion and control districts can be formed in towns bordering upon or containing within their boundaries any navigable waters of New York State.

A town does not need to form a district if the town board chooses to provide sewer, water, drainage or water improvements in the entire area of the town, in an area within the town or outside a village. The responsibility of the town board then involves the management, maintenance, operation and repair of any sewer, drainage or water improvements within the designated area.

If a town board chooses to form a special district, the steps are basically similar to the county process above. The town board adopts a resolution appropriating funding for an engineer to prepare a map, estimate cost and indicate compliance with SEQRA procedures. A petition is circulated for signature by 50 percent of the resident owners and owners of 50 percent of the assessed valuation covered by the proposed district. The petition is presented to the board. They act on a resolution that is either approved or denied. Within 10 days of approval, filing is made seeking approval from the state comptroller and the Department of Audit and Control.

Village

A village does not need to form a district in order to provide sewer or water services. The village should have a public hearing, however, if the property owners are to be charged through an assessment for sewer or water improvements. Additional information can be obtained by referring directly to the *New York State Village Law*, Section 22.2200 and Section 14-1416.

District operation

There are three types of improvement districts of special interest to lake associations. A park district may be established to maintain a park area, including a beach or lakefront area. An aquatic vegetation control district is set up to reduce both rooted weeds and algae through managing the lake and its watershed. A lake protection and rehabilitation district may be set up to:

- Coordinate research and surveys for data collection and analysis of the lake, related shorelines and the drainage basin.
- Plan and implement rehabilitation projects.
- Secure the cooperation of local government officials for the purpose of enacting ordinances relating to lake protection.
- Maintain liaison with state and local government officials involved in lake protection and rehabilitation.

Whether or not a special district is needed for maintaining a dam depends upon who has authority to do so and, especially, who is responsible for the maintenance costs. If required, a dam-maintenance special district would be set up under the same rules as for other special districts.

In establishing special districts, there are always people who object because they don't want more taxes or because they do not use the resource or both. Attempts may be made to create a so-called "donut district" by carving out an objecting landowner. The general consensus among town attorneys has always been that you cannot create a donut district because

all the properties within the area of the district are benefited by the establishment of the district, and that is that. Recent indications from the comptroller, attorney general, and the New York State Association of Towns, however, are that such donut districts will be allowed. If so, it will make it much easier to create improvement districts.

Special districts are run by towns, which generally rely on a volunteer advisory committee comprised of concerned citizens. The special district advisory committee may supersede a lake association, although it often involves the same people. The committee commonly holds monthly meetings to create a management plan, and to propose a budget used to determine the special district tax. The town board approves final decisions and usually provides staff support to handle all taxes and filings. Most towns also cover the insurance and pass through to the district a fair charge plus five percent for administrative expenses.

Local land-use planning and regulation

Local governments have been authorized under New York State law to establish planning boards and zoning boards of appeal. Municipalities also have the authority to prepare and adopt comprehensive plans, zoning and subdivision regulations. In the process of passing and enforcing these laws, local governments must work cooperatively with both federal and state levels of government that share in the responsibility for the planning and management of land and water resources.

Land-use planning is a voluntary approach, and local governments are frequently in the best position to decide what land-use issues will be addressed and what standards will be used. Ideally, local governments should have a current comprehensive plan or master plan outlining the use of land resources within the area of its jurisdiction. This plan should be somewhat flexible because goals and objectives will change as the community grows and develops or as other changes occur in the makeup of the community.

Land-use programs in a lake community are written to effectively manage growth and development or other changes within the watershed. These programs will vary from one community to the next depending on local needs. Land-use controls offer an excellent opportunity for protecting lakes as well as valuable aquifer-recharge areas. Subdivision regulations, building codes, floodplain management, slope-development restrictions, contractual access to the shoreline, height restrictions, seasonal dwelling conversions, clustering, performance bonding and vegetation-cutting restrictions are just a few examples of existing land-use programs found in New York State.

Zoning is a method by which local governments can protect natural resources by using regulations to control land-use activities. An area is divided into districts through zoning. The local government then establishes laws that govern the use of

land within each district. Zoning can protect water resources through protection districts for watersheds, wetlands and aquifer recharge areas. Indirect means include performance zoning, cluster zoning and other techniques. Through zoning laws, community development around a lake can be controlled by provisions such as defining minimum setback distances, percentage of a lot that can be occupied or covered and minimum lot sizes.

Zoning variances can be developed in some areas to facilitate unusual landscape features such as steep hillsides, scenic vistas, erosive sites and natural drainage that may restrict development. To address these environmental limitations, special zoning provisions can be established such as “incentive zoning,” which allows for cooperative arrangements between an individual property owner and the community. These same concepts can be applied to recreational activities on lakes (See Chapter Eight, “User Conflicts”).

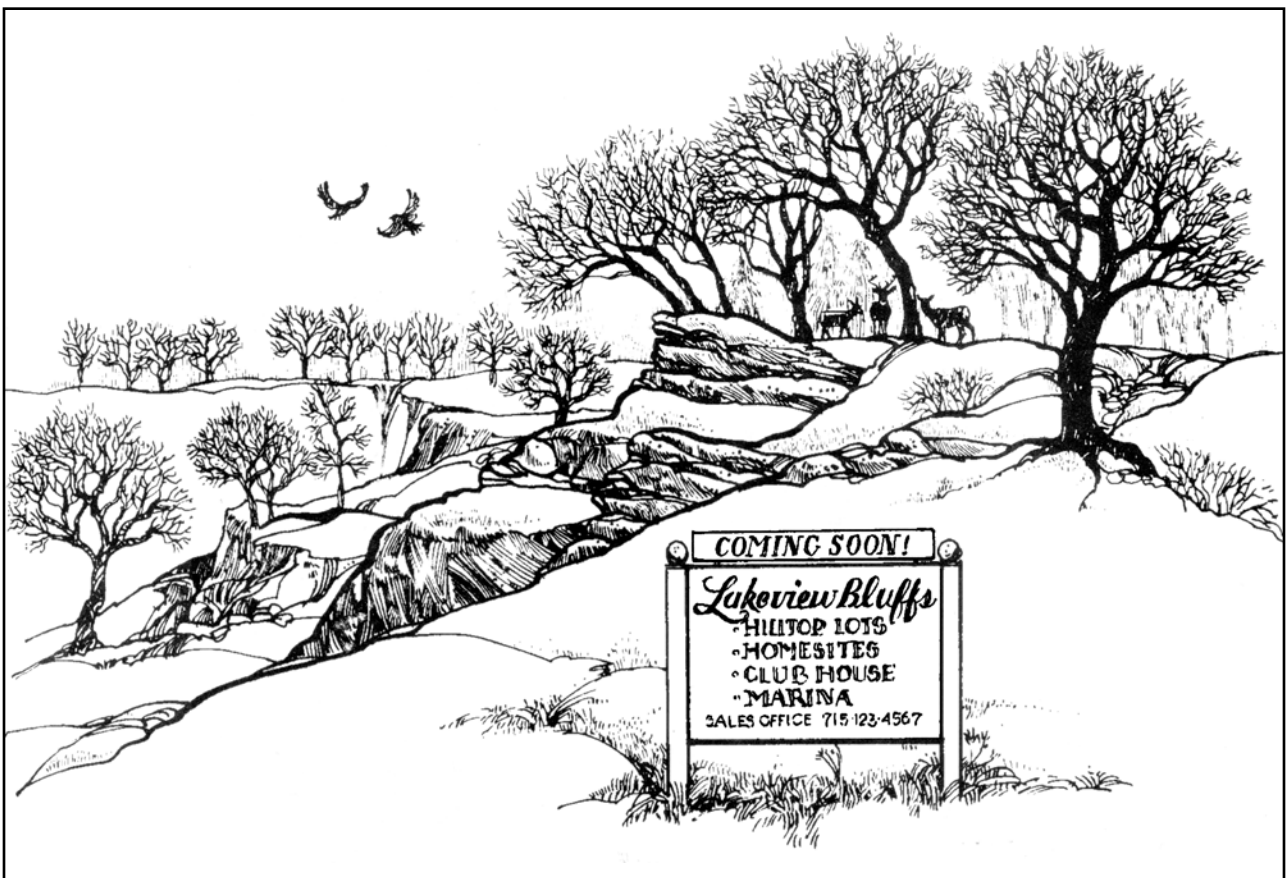


Fig. 10–6. Land-use controls offer an excellent opportunity for protecting lakes as well as valuable aquifer-recharge areas. (CREDIT: HOLDREN ET AL, 2001)

Role of lake associations

A lake association is the most common route for citizens to become involved in protecting a lake. Most lakes in New York State now have a lake association. They range from strong, well-organized associations complete with professional staffs, to loosely organized, largely social groups of interested stakeholders. The stronger organizations have substantial support and operating budgets and are found on the larger lakes. The less well-organized groups are more characteristic of the smaller lakes. Each type has specific advantages and disadvantages.

An unincorporated association is easy to form and is probably the most common type of structure for a lake association. A name is chosen, and a tax ID number obtained. The association can then open a bank account and carry on its operations.

What if the association wants to hire an employee, or rent an office or purchase some office equipment? What if the association gets sued? Under New York State law, an unincorporated association has no legal existence separate from that of its members. To hold the individual members liable, a plaintiff must show that the defendant-member actually authorized the specific acts in advance or ratified those acts after the fact (*Martin v. Curran*, 303 N.Y. 276, 1951). The plaintiff also has procedural hurdles. A suit must be brought against the association, a judgment taken and proof it cannot be satisfied. A second suit is then brought against the officers or members claimed to be liable for the acts.

This is all very comforting, but it is not difficult for a plaintiff's attorney to claim that members of the association had specific knowledge and authorized the allegedly negligent acts in question. For example, if the association votes to operate a beach, and then someone drowns, a lawyer may be able to show that everyone in the lake association "authorized" the negligent acts that led to the drowning.

The major liability concern of lake associations is being sued for "all they are worth" because of a traumatic accident. The lake association's assets probably are not that large. That is why a lawsuit also names the officers, agents, employees and persons acting for or on behalf of the association. Lake associations

may decide to become a not-for-profit corporation to protect the individual members by limiting their liability (see Appendix D, "Incorporating and insuring a lake association").

Although a corporation may have limited liability, anyone on the board of directors or who participates in the management of the corporation will have some exposure. In the past, a one-million dollar general liability **insurance** policy could be purchased for a reasonable sum by even the smallest lake association. Prices have skyrocketed, however, and many New York State lake associations are finding that they cannot obtain general liability insurance at any price. This is particularly true for lake associations that own or maintain dams, swimming beaches, buoys or other "obstacles" in the lake. Some associations are even finding it difficult to obtain affordable directors and officers insurance that previously served as a "second best" alternative to a general liability policy.

A major benefit of having a corporation is the credibility it provides. Unlike the unincorporated lake association, there is a clearer structure for the association with recognized rules. This is especially useful in applying for grants where a not-for-profit corporation has a major advantage. Some grants actually require some form of corporate entity. See Appendix D for information on incorporating and insuring a lake association.

Land protection for lake protection

Land trusts are an effective way to preserve the environmental quality of both land and water resources. A land trust is a private not-for-profit group controlled by local citizens. It acquires land or interests in land for protection of open space, recreation or resource lands, including rare or endangered species, scenic vistas, farm land and unique natural habitats. Some land trusts are small with activities confined to limited areas such as a particular watershed, community or county. Others are larger in scope, such as the Finger Lakes Land Trust. Some are national in scope, such as The Nature Conservancy (see Appendix F, "Internet Resources"). Land trusts have grown in number and expanded the range of their activities in the last 20 years. A land trust may

acquire outright ownership of the land or make use of a conservation easement that is negotiated with the landowner.

Conservation easements (CE) provide land-use protection that is stronger than the local zoning or land-use laws, while leaving the land in private ownership. CEs restrict the type and amount of development that can take place on a parcel of land without a land trust or other entity having to purchase the land outright. CEs are often developed for open-space preservation, historic preservation or protection of natural habitats, or are developed for public recreation or educational purposes. Agreements designed for lake-watershed protection vary from “forever wild” easements to those that allow limited residential use, farming or properly managed commercial timber harvesting.

The CE is individually tailored to meet the specifications of the landowner and the recipient organization or agency. A CE clearly defines the limits on the number and location of structures and the types of commercial and industrial activity. They may specify what can be done to the surface of the land and its natural growth. The landowner assigns the right to enforce the restrictions to a qualified conservation recipient such as a public agency or a land trust.

A CE is a legal agreement that is transferred with any future sale of the land. It “runs with the land,” not with the owner of the land. This means that the original owner and all subsequent owners are bound by the restrictions of the easement, which are recorded in the county or town records office. The landowner benefits by knowing the land will be protected even when ownership changes. When the CE is donated, its value may be deductible as a charitable contribution on federal and state income taxes. If the local assessor determines the CE has reduced the value of the parcel, the landowner’s property taxes may be lowered. They may also result in a reduction in estate taxes, and landowners may receive monetary compensation for the easement itself.

Statutory authority: *Environmental Conservation Law (ECL), Article 49, Title 3.*

General Municipal Law, Section 247.

Responsible agencies: NYS Agencies; local governments; not-for-profit organizations.

Summing it up

No one governmental entity has absolute power over all aspects of a lake or its watershed. Lake management requires shared roles by federal and state agencies, local governments and the local citizens. A lake association needs to understand the principal agencies involved and the laws and regulations that govern their actions (Wright, 2004).

Lake associations are the only organizations that routinely become involved with local lake management issues, often finding a niche as an environmental watchdog, calling attention to watershed management issues, goals and needs. Nongovernmental organizations carry out educational activities and work toward the preservation of critical environmental areas, including lakes and streams.

The federal *Clean Water Act* includes a broad array of water pollution control regulations. Authority to carry out the federal regulations and related state regulations is delegated to DEC. Wetlands are protected under both Section 404 of the federal *Clean Water Act* and New York State *Freshwater Wetlands Act*. Responsibility for protecting public water supplies is shared by DEC and DOH.

Local governments have broad powers to provide services such as water supply, waste disposal, sewage treatment and lake protection and rehabilitation. Towns also regulate land uses through zoning and other means. The formation of special districts is a common device for meeting these needs. Land trusts or conservation easements are other tools that may be useful to protect unique areas or property.