



**Testimony of Roland Lewis, President and CEO
on the Waterfront Permitting Process**

THE METROPOLITAN WATERFRONT ALLIANCE

Before the Committee on Waterfronts

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Good afternoon and thank you for the opportunity to submit this written testimony. I am Roland Lewis, president of the Metropolitan Waterfront Alliance. The Metropolitan Waterfront Alliance is a coalition of over 380 organizations working together to transform the New York Harbor and its waterways into a world class resource for work, play, transit and education.

The protection, conservation, and best use of the water resources of New York and New York City are matters of utmost public importance. Waterways such as streams, rivers, lakes, bays, and estuaries not only provide water for domestic and industrial use, but also provide habitats for aquatic life, avenues for transportation and commerce, and sites for many forms of public recreation. Wetlands provide water storage for flood protection, filtering of pollutants, and habitats for many plant, fish, and other wildlife. These aquatic resources are vital to the region's economy and the well being of society.

We all depend on the health of our wetlands and waterways in one way or another. To provide for the best possible use of water resources, we must strike a balance between protection and human use. This is the central purpose of the regulations that govern activities in waterways, wetlands, and riparian areas in New York.

Navigating the waterfront permitting process can be a confusing and time consuming. In the New York Harbor there are dozens of governmental agencies that have some hand in regulating waterfront use. It is a complicated, non-transparent, system that stymies even the most sophisticated land owners and waterfront developers.

For the small business owner, community program, individual landowner, and even government agencies, the system governing waterfront projects can be overwhelming, time consuming and costly.

MWA's task force meetings in 2007 and 2008 brought the complications of the system into relief and led to a year long study, conducted by the MWA and funded by the Robert Sterling Clark Foundation. There are two goals to this study: 1) provide consolidated information about the waterfront permitting process and 2) make recommendations for how to improve the process.

MWA has developed two important sources of information, the first of their kind, that provide consolidated permitting information and cover all waterfront permitting

regulations. These resources are MWA's *Users Guide to Waterfront Permitting* and the "Waterfront Permitting Made Simple" website. MWA's goal is to encourage the many agencies responsible for permitting to collaborate to update and maintain the Users Guide and website. A collaboration will help permittees better understand the permitting process and how it works, and will help permittees plan for the steps they must take in completing the process successfully.

Our testimony today centers on a basic description of the process and the tips MWA has developed for permittees on how they can best work through the process to obtain a permit. Additional detailed information about the permitting process is found in our Users Guide and website.

There are five basic steps that govern waterfront permitting. The end goal of the waterfront permitting process is to first acquire the necessary State and Federal permits and approvals so you can receive a building permit from the New York City Department of City Planning. The building permit will be conditioned on you showing that you have all of the other permits and approvals lined up. Once you have a building permit and have complied with any other municipal regulations, you can begin construction of your project.

The basic steps of the process are:

Step 1: Contact your local municipal planning department or use the department's online resources to identify the zoning on your site.

Step 2: Contact your state environmental agency and schedule a pre-application meeting or telephone conference.

Step 3: Contact the U.S. Army Corps of Engineers to schedule a pre-application meeting.

Step 4: Once you have received the required State and Federal permits, you can apply for approval to use state lands.

Step 5: Once you have secured the necessary state and federal permits, you can apply for a building permit from your municipal building department.

Permittees should begin these steps as early as possible and before incurring the costs of designing expensive architectural and engineering plans.

Although these steps are labeled "1, 2, 3, etc" some can be taken simultaneously. For example, it is helpful to contact all relevant agencies at the beginning of the process to notify them of your project and seek their input.

As I stated, the goal of this process is to first acquire the necessary State and Federal permits and approvals so you can receive a building permit from the municipal building

department. The building permit will be conditioned on you showing that you have all of the other permits and approvals lined up. Once you have a building permit and have complied with any other municipal regulations you can begin construction of your project.

I will now describe each of these steps more fully.

Step 1: Contact your local municipal planning department or use the department's online resources to identify the zoning on your site.

The zoning designation of your site will give you an indication as to whether your project is likely to conform with the current zoning requirements, or whether it will require a variance or amendment.

Be aware that there are often special zoning overlays for waterfront or coastal areas. The zoning designation of your site will influence the design of your project. For example, the zoning may regulate the height of a structure, the structure's footprint, access to the water, blockage of sightlines, etc.

If your project requires a "discretionary action" or "Type I" action from the City Planning Commission (e.g. a special variance, change to the city map, change to a zoning district) the project will likely require an environmental review. This can be a lengthy process

and you should begin coordinating this review with the Department of City Planning, which operates as staff to the City Planning Commission, as early as possible.

Step 2: Contact the New York State Department of Environmental Conservation (NYSDEC) and schedule a pre-application meeting or telephone conference.

If your project encroaches into the water at all, or is in or near a wetland, you will likely need to obtain State and Federal permits before you can apply for municipal building permits.

In the New York-New Jersey Harbor Estuary, waterfront projects often require several State environmental permits. NYSDEC requires a wetlands permit for most activities in or near a wetland. Many waterfront projects also require a Protection of Waters Permit in New York.

Unlike as-of-right permits such as building permits, obtaining environmental permits is a discretionary process. In other words, permit eligibility is not simply a matter of following a set of rules and submitting the necessary forms. These agencies have “discretionary authority,” to deny your permit request even if you have submitted the proper forms. For example, if NYDEC feels your project may harm local species and or unnecessarily degrade the functions of a wetland, they can require dramatic alterations in your design, or can flatly deny the permit request.

NYS DEC has a joint application that can be used to apply for several permits and aid the agencies in State environmental reviews, coastal management plan consistency reviews and applications to use State lands.

Applications for State and Federal permits may require an environmental review and coastal zone consistency determination. See the relevant sections of MWA's Users guide to learn more about these processes and ask NYSDEC officials to explain how they may impact your project.

Step 3: Contact the U.S. Army Corps of Engineers to schedule a pre-application meeting.

If your project requires State water-related development permits, it will likely require one or more permits from the U.S. Army Corps of Engineers (ACOE). Applications for ACOE permits may be incorporated into State environmental permit applications, or may be separate depending on the state and the permit. Either way, ACOE staff can help you identify the necessary Federal permits and outline the application procedures.

If your project requires Federal permits, you will have to fill out a Federal Consistency Assessment Form for the New York State Department of State. This form helps NYSDOS staff determine if the Federal action (i.e. ACOE permits) is consistent with the New York Coastal Management Plan. This form can be found on the NYSDOS website.

Step 4: Once you have received the required State and Federal permits, you can apply for approval to use state lands.

If your project extends onto or over public land (e.g. most submerged land is public), you will require a land grant, lease or easement or other approval for use of the public property (if your project does not use public land, skip this step). In New York, this process is administered through the New York State Office of General Services (or NYSDOS during the consistency determination for smaller projects). Contact the agency and ask which type of grant is appropriate for your project and how to proceed with an application.

Step 5: Once you have secured the necessary State and Federal permits, you can apply for a building permit from your municipal building department.

Building permits are not subject to the same type of "discretionary review" as are environmental permits. As long as you comply with the building code and the zoning text, you will receive your permit. In New York City, building permit applications are reviewed by either the New York City Department of Buildings, or the Department of Small Business Services.

Determining which of these two agencies will conduct the review can be complicated, and it is better to contact the Department of Buildings and ask them which agency has jurisdiction.

I will now describe tips for successfully navigating the permitting process:

1. Contact Agencies Early.

The most important recommendation for avoiding delays and unforeseen costs is to contact the relevant permitting agencies in the very early stages of project planning, particularly State environmental agencies. Some agencies allow for pre-application meetings. Schedule such a meeting before incurring expensive planning and design costs. Ideally, an applicant will initially approach an agency with only an idea, a map, a site photo, and a napkin sketch. Many applicants make the mistake of approaching permitting agencies after paying for expensive designs and renderings, and making other preparations for construction. These applicants are often disappointed to learn that many of their assumptions about what would be allowed at their site were false.

2. Schedule Personal Meetings Between the Project Owner/Principal and Agency Officials.

It can be helpful to have the project owner or principal (rather than consultants or lawyers) meet directly with agency officials whenever possible. This establishes a personal relationship that can facilitate open communications and a collaborative spirit. Anecdotal evidence suggests that disagreements and misunderstandings are resolved more easily when project owners or principals, rather than consultants, meet directly with agency staff.

3. *If You Hire a Professional Permitting Consultant or Lawyer, Make Sure That Individual Has Experience With the Relevant Agencies and Has an Incentive to Work Quickly.*

Conversations with State permitting staff reveal that the quality of permitting consultants varies dramatically. They suggest hiring a consultant that has a history of successful interactions with permitting agencies and a list of happy clients. Permitting staff also suggest negotiating a consulting fee that provides an incentive for the consultant to help obtain permits quickly. If consultants are paid by the hour, they may have less of an incentive to collaborate with the permitting agency to resolve the process quickly. Under the hourly fee arrangement, the longer the process takes, the more the consultant earns. Permitting officials suggest trying to create a fee arrangement that creates a financial incentive for the consultant to negotiate a quick resolution of the permitting process.

a. *Avoid Making Assumptions About Your Project and What Will Be Allowed.*

There are many factors that affect the regulation of a waterfront project. Characteristics of the site, the presence of habitat and species, the degree of intrusion into the water, and many other factors all play a role in agency decision-making. Some of the factors that are important to officials are not obvious to the layperson. Here are some common issues that take applicants by surprise:

b. *Do not assume your project is “water-dependant.”*

Under certain permitting regulations, projects that are deemed to be “water-dependant” are given strong preference to non-water-dependant projects. While you may feel your

project depends on waterfront access, agencies often use a very strict interpretation of the term that might not include your use. Typically, if your project does not literally rely on immediate access and the use of water in its operation, it is not water-dependant. In other words, a project is not water-dependant if a similar type of project or concept could exist inland from the waterfront.

4. *Do not assume your site lacks important habitat or species.*

Applicants often underestimate the degree to which their site supports life. The waters around New York and New Jersey host vibrant ecosystems that are often undetected by the untrained eye. An agency may require an applicant to hire a professional to examine the site for the presence of endangered species, critical habitat, or archeological artifacts. The undertaking of these studies can significantly impact the project design and permitting cost and duration.

5. *Make Environmental Impacts an Early Priority in the Project Design, and Demonstrate Environmental Consciousness to Permitting Officials from the Outset.*

Permitting officials do not like to see environmental considerations as an afterthought. Too often, they say, permit applicants approach agency officials with the mentality of “this is what I’m going to build. What is the minimum that I have to do concerning environmental impacts?” This mentality will not foster a good relationship with your permit reviewers. A better approach is to ask agency officials about their environmental priorities early in the design process so that the final design achieves your goals and those of the agency.

6. *Try to Support The Ecological Benefits of Your Design With Scientific Evidence*

Many of the permits required for waterfront projects are designed to safeguard water resources. The agencies that administer the permits are charged with the task of ensuring that projects are beneficial to the public and the surrounding environment. If you have designed your project to diminish negative ecological impacts or to enhance the surrounding ecosystem or wetland, demonstrate the effectiveness of your designs with scientific findings. Agencies typically do not have the resources to conduct detailed studies on the ecological effects of various designs. If you believe your design has a particular benefit, work to prove it to the agency.

This concludes our testimony regarding the waterfront permitting process. In addition to MWA's User's Guide and website, MWA is in the final stages of completing an analysis of the permitting system. This report contains approximately 25 recommendations for how to improve the waterfront permitting process and will be released in the coming weeks. MWA looks forward to working with the affected agencies and elected officials who will play an important role in this project. Together we can ensure our waterfront is governed by a permitting system that works for a broader vision of our waterfront.

Thank you for the opportunity to testify today and I'd be happy to answer any questions you might have.