

## **SECTION VII CONSULTATION WITH OTHER AGENCIES**

### **Existing Authorities**

A number of public entities at the local, county, State and Federal levels have roles and authorities that involve or impact the Canal. Private entities are also concerned with the Canal. This section describes the public and private entities with authority or influence concerning the water or waterfront areas of the defined Water Revitalization Area.

### **Local Authorities**

The principal State statutes influencing the Village's jurisdiction are the Municipal Home Rule Law, the Navigation Law, and the Waterfront Revitalization and Water Revitalization Resources Act.

The Municipal Home Rule Law provides basic authorizations, requirements, and procedures to adopt local laws that are consistent with both the State Constitution and general laws enacted by the State Legislature. Local law power is restricted where the proposed local law action has been pre-empted by the State. Section 46-a of the State Navigation Law provides the Village with authority to regulate certain activities on any waters within or bounding the Village to a distance of 1,500 feet from the shore. The Waterfront Revitalization and Water Revitalization Resources Act (Article 42 of the New York Executive Law) authorizes municipalities to prepare Local Waterfront Revitalization Programs (LWRPs) to guide coastal area land use and resource conservation in a manner consistent with the State's coastal management policies. Article 42 of the Executive Law was amended in 1992 to authorize local preparation and adoption of comprehensive harbor management plans to address "problems of conflict, congestion and competition for space" pertaining to the use of harbors, surface waters and underwater lands. The 1992 amendments also allow municipalities implementing harbor management plans to regulate certain activities on any waters within or bounding their jurisdictions to a distance of 1,500 feet from the shore.

### **Village Board**

The Village Board is responsible for the general management and control of Village finances. The Village Board has the power to create and abolish offices, boards, agencies, and commissions, and to delegate powers to these units of the local government. The Board also appoints the members of the local boards, agencies, and commissions. The Village Board established the Whitehall LWRP Committee.

The Village Board may, after public hearing, also enact, amend, and repeal local laws, rules and regulations. As authorized by State statute, these laws may address navigation and other water-related activities in Whitehall Harbor as well as waterfront conditions that can have an important impact on the Harbor. All locally adopted laws must be filed with the Secretary of State. Any local law pertaining to navigation or boating safety must be approved by the New York State Office of Parks, Recreation and

Historic Preservation (acting as the State's boating safety agency) in accordance with the Navigation Law.

As authorized by Article 42 of the New York State Executive Law, the Village may adopt local laws, rules and regulations in the Harbor to:

- Regulate and restrict the speed and operation of vessels within 1,500 feet from the shore;
- Regulate and restrict the anchoring or mooring of vessels within 1,500 feet from the shore;
- Regulate and restrict the anchoring or mooring of vessels used or occupied as living or sleeping quarters;
- Restrict and regulate garbage removal from vessels; and
- Designate and regulate the use of public anchorage areas.

The Navigation Law does not grant to local governments the authority to regulate docks, piers, and other in-water structures below the mean high water (mhw) line. This authority (supported by court decisions and opinions of the Attorney General) is reserved for the State. However, local governments may request special legislative authorization to regulate boathouses and docks (generally interpreted to include piers) under Section 46-a of the Navigation Law.

The 1992 amendments to Article 42 of the Executive Law also authorize municipalities preparing harbor management plans to "adopt, amend and enforce local laws and ordinances to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures..." in or above the water, as well as the use of surface waters and underwater lands, to a distance of 1,500 feet from the shore. In other words, the Village now has the opportunity to regulate in-water work and structures without applying to the State Legislature, as described above, for authorization to do so.

#### Village Planning Board

The Village of Whitehall Planning Board consists of five members appointed by the Village Board. The Planning Board has jurisdiction over subdivisions in the Village and is involved with any amendments to the Comprehensive Plan.

#### Village Zoning Board of Appeals

The Zoning Board of Appeals is a five member board appointed by the Village Board. It hears appeals from decisions of the Zoning Enforcement Officer and, when, there is question, interprets the zoning ordinance. Some of its decisions may impact properties with frontage on the Harbor or Canal.

#### Whitehall Historic Preservation Commission

This Commission was originally formed in 1985 to administer the Village's Historic Preservation Law (Local Law #2, 1985). This law's purpose is to:

Promote the economic and general welfare of the people of the Village of Whitehall and of the public generally by preserving historic and architecturally worthy structures, sites, districts and neighborhoods which serve as visible reminders of the role played by the Village of Whitehall...(page 1, Historic Preservation Law)

Historic Preservation Commission members review projects within locally designated historic districts and regarding historic landmarks. The area encompassed by the Urban Cultural Park is a locally designated historic district. In the early-mid 1990s, the Village combined the Historic Preservation Commission with the Planning Board.

#### Whitehall Volunteer Fire Company

Located at 161 Main Street, the Whitehall Volunteer Fire Company is a pumper/tanker company that responds to emergencies in the more rural areas. It also responds to mutual aid calls. Equipment that pertains to water-related emergencies include ice water rescue equipment (including six wet suits, ropes, and life vests) and one rescue boat with motor. Members have been trained in ice and water rescue and respond when called. Whitehall has a 911 system. Calls are dispatched from the Office of Emergency Services in Fort Edward.

#### Skenesborough Volunteer Fire Company

The Skenesborough Volunteer Fire Company is on Skenesborough Drive. It is a ladder company that responds to emergencies in the more developed areas. It is also a first responders unit; this unit provides medical assistance until transport arrives. Like the Whitehall Volunteer Fire Company, it responds to mutual aid calls. Water rescue equipment includes a rescue boat, dragging equipment and a portable water pump. The Office of Emergency Services in Fort Edward is the center for 911. Calls are dispatched from this location.

#### Skenesborough Emergency Squad

The Skenesborough Emergency Squad is on Skenesborough Drive. It responds to calls in the Village and Town of Whitehall, the Town of Dresden, and the Hamlet of Huletts Landing. It also responds to calls for mutual aid. Calls are dispatched from the Office of Emergency Services in Fort Edward. It is available to assist the local fire companies with water-related emergencies.

#### Whitehall Police Department

The Whitehall Police Department is at 8 Montcalm Avenue. There are five full-time officers and six part-time officers. Most calls are dispatched from the Office of Emergency Services in Fort Edward. Some calls do come in at the Whitehall station, though, this station is not staffed full-time. In cases of water-related emergencies, the police department works in conjunction with the Washington County Sheriff's boat team and/or dive team. The United States Coast Guard assists when available.

## Historical Society of Whitehall

This entity strives to enhance public knowledge and appreciation of the Village's historic resources. As noted earlier in this chapter, the Water Revitalization Area contains numerous historic sites and structures.

## Whitehall Local Waterfront Revitalization Committee

The Village Board established the Whitehall Local Waterfront Revitalization Committee in 1999. The Committee was responsible for overseeing preparation of the Village of Whitehall Local Waterfront Revitalization Program (LWRP), and worked to obtain local consensus and support for the LWRP. The Committee consists of six members representing the Village Board, the Planning Board, the Historical Society, the Washington County Planning Department, and area businesses. The Committee will be dissolved upon completion of the LWRP .

## **County Departments and Agencies**

### Washington County Planning Department

The primary functions of the Washington County Planning Department are to plan for countywide development and to provide technical assistance to local governments. For example, the Planning Office offers assistance, upon request, to local governments formulating land use controls such as zoning regulations, subdivision regulations, and special ordinances.

### Washington County Planning Board

Under Article 12-B of the State's General Municipal Law (Sections 239-1 and 239-m), the Planning Board has statutory authority to review certain land subdivision and zoning activities that might be undertaken in a municipality. Each municipal body with jurisdiction to adopt or amend zoning regulations, approve site plans, issue special permits, or grant variances, must, before taking some of these actions (such as those within 500 feet of the municipal boundary) refer the proposed action to the County Planning Board for its recommendation.

### Lake Champlain-Lake George Regional Planning Board

The Lake Champlain-Lake George Regional Planning Board (RPB) is one of nine regional planning boards in the State. There are 30 voting members representing five counties - Clinton, Essex, Hamilton, Warren and Washington. Its programs focus on supporting legal, economic and community development projects. The Board (1) provides access to information about domestic assistance programs; (2) prepares grant and loan applications on behalf of local municipalities; (3) maintains a census data resource center; (4) operates four revolving loans funds providing direct loans to new and expanding businesses; (5) works with agencies on regional and local transportation improvement projects; (6) offers technical assistance support services to municipal governments; and (7) manages regional development projects. The Board is an advisory body only. Its office is in Lake George.

## Washington County Sheriff's Department

The closest sheriff's station is in Fort Edward, approximately 20 minutes from Whitehall. It assists the Village Police Department if needed and if available. The County boat team patrols all county waterways. It patrols in Whitehall several times per year. It responds to calls and assists in water-related emergencies. It enforces the New York State Navigation Law and any local laws pertaining to boating activity in Washington County. The Sheriff's Department shares jurisdictional responsibility for marine law enforcement with the local, State and Federal entities.

## Washington County Soil and Water Conservation District

The Washington County Soil and Water Conservation District (SWCD) is an authorized agency of county government and is considered a subdivision of State government. The primary objective of the SWCD is to protect natural resources, specifically soil and water resources and agricultural resources dependent on soil and water.

## Washington County Local Development Corporation

This non-profit corporation is the economic development arm of the county. Its office is in the county office building in Fort Edward. It is involved in promoting and marketing the county for economic development. It administers three revolving loan funds, a micro-enterprise program, and a matching program. The micro-enterprise program assists small businesses throughout the county. The matching program strives to match available properties with tenants.

The Economic Development Corporation (EDC) is very active in Whitehall. Numerous small businesses have received assistance. Currently, the EDC is finalizing a loan with the purchaser of a local industry.

## **State Agencies**

### Department of State

The Department of State (DOS), through its Division of Coastal Resources and Waterfront Revitalization, administers the New York Coastal Management Program (CMP) and coordinates activities essential to the Program's implementation. Authority for the New York CMP was established by the State Waterfront Revitalization and Coastal Resources Act of 1981 (Article 42 of the New York Executive Law) which enables the State to manage its coastal resources pursuant to the provisions of the Federal Coastal Zone Management Act.

The CMP establishes 13 management policies to carry out the legislative intent that a balance be established between economic development and coastal resource protection in the State's coastal area. Under the CMP, each coastal area municipality may prepare a Local Water Revitalization Program (LWRP), based on local needs and objectives, to promote beneficial waterfront development and protect environmental resources.

Major responsibilities and interests of the DOS regarding Whitehall Harbor include review of proposed development activities for consistency with the CMP and assistance to the Village for preparation of the LWRP. These responsibilities and interests are as follows:

- **Protection of Coastal Resources through Consistency Review:** All major actions proposed in the Coastal Area of New York State by Federal agencies or by entities requiring Federal permits (e.g., Army Corps of Engineers) must be consistent with the management policies established by the New York Coastal Management Program. The DOS evaluates the consistency of Federal activities with the policies set forth in the CMP. If DOS deems a proposed action inconsistent, a permit cannot be issued.

In addition to Federal activities, State agency activities shall also be consistent with the Coastal Management Program. Each State agency that proposes to permit, fund or directly undertake an action in the Water Revitalization Area must determine the consistency of its action with the policies and purposes of the CMP.

Following final approval of the Whitehall LWRP, all major Federal, State, and local actions affecting the Water Revitalization Area of Whitehall, including Whitehall Harbor, must be judged for consistency with the Whitehall LWRP.

- **Significant Coastal Fish and Wildlife Habitat Area and Scenic Area Designations:** The DOS is responsible for assuring the protection of coastal fish and wildlife habitats and scenic areas of Statewide significance. Once these types of areas are designated, the coastal management consistency requirements can be used to protect the fish, wildlife, and scenic resources of concern.

Significant Coastal Fish and Wildlife Habitats may be designated by the State if the habitat: (a) is essential to the survival of a large portion of a particular fish or wildlife population; (b) supports populations of species that are endangered, threatened or of special concern; (c) supports populations having significant commercial, recreational or educational value; or (d) exemplifies a habitat type that is not commonly found in the State or in a coastal region.

The significance of certain habitats increases in proportion to the extent they could not be replaced if destroyed.

In addition to the Significant Habitat Program, the DOS administers a program to identify, evaluate and recommend areas for designation as Scenic Areas of Statewide Significance.

- **Local Waterfront Revitalization Programs:** The Waterfront Revitalization and Coastal Resources Act of 1981 provides the authority for local governments to prepare and implement Local Waterfront Revitalization Programs (LWRPs). The DOS provides financial and technical support for the preparation of these programs, and must review and approve the programs for consistency with the State's Coastal Management Policies. LWRPs are intended to promote beneficial development enhanced by or dependent on the communities' waterfront resources, and to balance this development with the protection of important coastal resources. Whereas the policies contained in the State's Coastal Program address resource protection and water and waterfront use

from a general perspective, the LWRPs can add specificity to these policies, and provide a local basis for addressing important coastal management concerns.

#### Department of Environmental Conservation

The Department of Environmental Conservation (DEC) has the primary responsibility for protecting natural resources in the coastal area of New York State. The DEC exercises this responsibility through various permitting, review and management programs. For example, the DEC reviews proposed development activities with the potential for significant environmental impact in accordance with the requirements of the State Environmental Quality Review Act (SEQRA), the requirements of the Freshwater Wetlands Act, the Stream Protection Act, and the Water Pollution Control Act. The DEC also oversees several regulatory programs including the Clean Water/Clean Air Bond Act and the Coastal Erosion Hazard Areas Act.

The DEC's central office in Albany establishes Statewide policies and regulations and provides technical assistance to regional DEC offices. DEC Region 5, headquartered in Ray Brook, has jurisdiction in Whitehall.

- The State Environmental Quality Review Act (SEQRA): SEQRA States that no agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA. Activities that trigger the SEQRA process are specified in the Act. Under SEQRA, local governments and State agencies can designate "critical environmental areas" within which all development proposals automatically receive special review under the Act.
- Freshwater Wetlands Act (Article 24 of the Environmental Conservation Law): The State's Freshwater Wetlands Act authorizes regulation of the use and development of the State's freshwater wetlands. Under this Act, any activity that substantially impairs any of the several functions and benefits of freshwater wetlands (as specified in the law) are subject to regulation. DEC regulations set forth a system by which wetlands are mapped and classified according to the various functions and benefits provided. Four wetland classifications are established depending on the importance of the wetland cover types. Class I wetlands are of the highest value. There are approximately 180 acres of Class I wetlands in Whitehall's Water Revitalization Area.
- Protection of Water Law (Article 15, Title 5 of the Environmental Conservation Law): Under this Act, a permit is required from the DEC for: (a) altering the course, channel, or bed of a stream; (b) erecting a dam or dock on the waters of the State; and (c) dredging or filling in the navigable waters of the State or in adjacent marshes or wetlands.

The permitting program established by this Act is the State counterpart of the Federal Section 10 and Section 404 permitting programs carried out by the U.S. Army Corps of Engineers (see the later section on Federal Agencies). The section of the Stream Protection Act requiring a DEC permit for a dam across a stream or watercourse or for a permanent dock is the State counterpart to the Section 10 program. The section of the Act requiring a permit for excavating or placing fill in the navigable waters of the State or in adjacent marshes and wetlands is a counterpart to the Section 404 program.

“Navigable waters of the State” is defined in the State Navigation Law to include all lakes, rivers, streams, and waters within the boundaries of the State that are not privately owned, that are navigable in fact, or upon which vessels can operate.

- Water Pollution Control Act (Article 17 of the Environmental Conservation Law): In accordance with this Act and pursuant to the Federal Clean Water Act, New York has classified its coastal waters, and its rivers, streams, lakes, and ponds according to considerations of best usage, and has adopted water quality standards for each class of waters. The classifications are used by DEC in issuing permits to industrial and commercial uses for effluent discharge into surface waters and range from AA (the highest classification) to D (the lowest).

Under the State Pollution Discharge Elimination System (SPDES), the DEC regulates all industrial, commercial and municipal discharges as well as discharges from residential subdivisions of five or more lots into the State’s surface and ground waters. The Village’s sewage treatment plant operates under the conditions established in a SPDES permit issued by the DEC.

- Clean Water/Clean Air Bond Act: This 1996 bond act is referred to as the centerpiece of New York’s environmental program. It provides funding for projects to protect and restore the State’s environment. Under the Bond Act, there are five types of projects that are eligible for funding: clean water, safe drinking water, solid waste, municipal environmental restoration, and air quality.

- Coastal Erosion Hazard Areas Act (Article 34 of the Environmental Conservation Law): This Act applies throughout the coastal area of New York State, including the Hudson River, and provides for local, county, or State regulation of certain activities and development within mapped erosion hazard areas. There are no designated Coastal Erosion Hazard Areas in Whitehall.

#### Office of Parks, Recreation and Historic Preservation

The main responsibility of the Office of Parks, Recreation and Historic Preservation (OPRHP) is to operate and maintain a statewide system of parks and historic sites that meets the recreational needs of the people of the State. The OPRHP is mandated to protect and conserve historic resources, including archeological resources. The agency is responsible for marine and recreational vehicles programs and facilities, and for administration of the State’s Navigation Law. The OPRHP’s Bureau of Marine and Recreational Vehicles has general responsibility for boating safety in New York State and provides funding and training for marine law enforcement as well as boating education programs. Section 79-b of the Navigation Law provides for State financial assistance to a county, city, town, or village for authorized expenditures (e.g., vessel, personnel, and training costs) for enforcement of the Navigation Law.

The OPRHP conducts a Marine Law Enforcement School each year.

#### Adirondack Glens Falls Transportation Council



The Adirondack Glens Falls Transportation Council (AGFTC) is New York State Department of Transportation Metropolitan Planning Organization for a region including Warren and Washington Counties and the northern part of Saratoga County. Its mandate entails the development of five year transportation plans for the region.

#### Office of General Services

Grants of underwater lands are now issued only for lands that have been filled for a long period of time. Easements and leases are more commonly issued. Most of the leases and easements now being issued are for a maximum of ten years. Municipalities and utility companies, however, may be issued leases in perpetuity. The fee for leases and easements is worked out by a formula that takes into consideration fair market value, commercial revenue, and other factors.

The application procedure for an easement or lease from the State is initiated after the necessary Army Corps of Engineers (ACOE) and DEC permits are obtained, along with certification of consistency with the State of New York's Coastal Management Program. As part of the application procedure, the applicant is required to serve adjoining owners and the municipality with notice of intention to secure a lease or easement. Adjacent owners and the municipality then have over 20 days to file any objections. If a project infringes on the rights of adjacent property owners, an easement or lease may still be granted if the applicant obtains an assignment of consent from the affected owners.

In 1992, the Public Lands Law was amended to enable the Office of General Services (OGS), in conjunction with the DEC and DOS, to establish regulations governing the use of State lands under water, as well as appropriate terms and conditions for conveyances (i.e., grants, easements and leases) of the State's interest to those who would place certain structures and conduct other work on State-owned underwater land. Those using State underwater lands for structures above a certain threshold must apply for a conveyance of the State's interest within one year of the effective date of the regulations. The conveyances are subject to environmental conditions Stated by the DEC, and reservation, by the OGS, of the interests necessary to (a) protect the public use of State lands for navigation, commerce, fishing, and bathing, and (b) serve the public interest in environmental protection, with due regard for the need of affected property owners to safeguard their property.

#### New York State Canal Corporation

In the Whitehall Water Revitalization Area the New York State Canal Corporation, a subsidiary of the Thruway Authority, owns the underwater lands of the Canal. The State has sovereign title to the bed of Lake Champlain. In 1991, the people of New York State ratified an amendment to the State's Constitution allowing long-term leasing of Canal System lands. In 1992, legislation known as "Thruway 2000" was enacted in New York State transferring responsibility for the New York State Canal System from the New York State Department of Transportation to the New York State Thruway Authority. The legislation established the New York State Canal Corporation as a subsidiary of the Authority, and created the Canal Recreationway Commission, a 24-member body to advise the Authority on its canal-related activities. The legislation

directed the Commission to prepare a comprehensive plan for the development of the Canal System. The Commission completed the Canal Recreationway Plan in August 1995 and sent it to the Canal Corporation Board for its consideration. It was adopted by the Canal Board in September 1995 with the stipulation that a detailed schedule of costs, funding and phasing be prepared prior to implementation.

#### Empire State Development Corporation

The Empire State Development Corporation's (ESDC) goals are to create jobs and encourage economic prosperity by strengthening and supporting New York State businesses. ESDC acts as the business ambassador for New York State-providing information about various locations (e.g., comprehensive site and building information, community life), technical assistance, financial incentives and multi-faceted analyses. It also oversees the State's Economic Development zone Program. This program offers the most comprehensive package of technical assistance and financial incentives available in New York State.

#### **Federal Agencies**

##### Army Corps of Engineers

Whitehall Harbor is within the jurisdiction of the Army Corps of Engineers' (ACOE) New York City District. An ACOE field office is located in Albany. The ACOE has several important responsibilities relating to Whitehall Harbor, including regulation of any permanent or temporary structures below the mean high water line, and regulation of dredging or filling of wetlands and navigable waters. All regulatory and planning functions are carried out from the New York City office. The principal duties of the field office involve conducting surveys for navigation, and drift and snag removal.

- ACOE's Regulatory Authorities: Most of ACOE's regulatory authorities originate from Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act of 1977. Under Section 10, the ACOE regulates structures in, or affecting, navigable waters of the United States as well as the excavation or deposition of material in navigable waters. Under Section 404, the ACOE is responsible for evaluating applications for Department of the Army permits to deposit dredged and/or fill material into waters of the United States, including adjacent wetlands.

The ACOE issues two types of permits: individual permits and general permits. An individual permit is issued following evaluation of a specific proposal, and involves public notice of the proposed activity, review of comments and, if necessary, a public hearing. In general, an individual permit must be received from the ACOE for the following activities:

- Filling of wetlands and navigable waters;
- Placement of structures, including docks, piers, pilings, and bulkheads, in navigable waters; and
- Dredging and disposal of dredged material.

A general permit is issued for categories of activities judged to be substantially similar in nature and to cause only minimal individual and cumulative adverse environmental impacts. General permits include nationwide permits and regional permits. Activities that conform to the requirements of a nationwide or regional permit require neither a full application to the ACOE nor a public notice.

Examples of activities permitted (subject to various conditions and restrictions) under the nationwide general permit include: aids to navigation authorized by the Coast Guard; noncommercial single-boat mooring buoys; temporary buoys and markers placed for recreational uses such as water skiing and boat racing; duck blinds; outfall systems where a wastewater discharge permit has been obtained; and repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill.

Following receipt of an application for an individual permit, the ACOE sends out a public notice describing the project to appropriate Federal, State and local agencies, as well as to interested groups and individuals. The information received by ACOE from these agencies and groups following their reviews of the project includes written recommendations and appropriate certifications. After the specified comment period, the ACOE evaluates the proposed activity using guidelines developed by the U.S. Environmental Protection Agency.

In New York State, the ACOE and the DEC use a joint application form for the various permits (e.g., permits for dock construction and dredge and fill operations) required from both agencies.

- **ACOE's Navigation Responsibilities:** The ACOE is also responsible for constructing and maintaining Federal navigation projects specifically authorized by Acts of Congress. In exchange for using Federal funds to construct and maintain navigation projects, the Federal government, acting through the ACOE, requires that no private, commercial activities (such as marina development) occur within the project; that there be no encroachments (such as docks and moorings) into a designated channel or anchorage; and, that equitable opportunities for access to the navigation project by the general public are maintained. The ACOE may prepare basic guidelines regarding placement of moorings, piers, piles, and other structures adjacent to a channel. These guidelines typically include minimum distances that docks and piers should be set back from the boundaries of navigation channels to help ensure boating safety.

#### U.S. Coast Guard

Whitehall Harbor is within the jurisdiction of the First District headquartered in Boston, Massachusetts. The boundaries of this District encompass New England, the eastern half of New York State and the northern half of New Jersey. Its missions include stopping illegal migration, drug interdiction, fisheries enforcement, search and rescue, ice breaking, environmental protection, flood relief, and boater education.

The Coast Guard regularly conducts a Waterways Analysis Program through which the adequacy of aids to navigation is evaluated. The Coast Guard also establishes

requirements for the marking, lighting, and standardization of all nonfederal (“private”) aids to navigation.

Coast Guard search and rescue operations are carried out cooperatively with local, county, and State agencies. The Coast Guard shares responsibility for responding to oil and hazardous materials spills with the U.S. Environmental Protection Agency, in cooperation with State and local offices. By law, all oil spills must be reported to the Coast Guard, and the Coast Guard has the authority to close a harbor to navigation in the event of an emergency.

The Coast Guard has the primary responsibility for enforcing Federal boating laws and regulations, including the proper use of marine sanitation devices, and has authority to board and inspect vessels to ensure compliance with Federal boating laws and regulations. Law enforcement responsibilities are shared with State, county, and local enforcement authorities.

#### Fish and Wildlife Service

The Fish and Wildlife Service (FWS) provides advice and comments to the ACOE on the potential impacts that proposed development activities requiring an ACOE Section 10 or 404 permit would have on fish and wildlife resources. The FWS reviews and comments on the permit applications placed on public notice by the ACOE and would comment on and review any proposal for use of dredged material disposal sites.

The FWS is not a permitting agency. Its recommendations with regard to the potential impacts of development proposals subject to Section 10 and 404 permitting programs, however, must be considered by the ACOE and given equal weight to other environmental and socioeconomic factors in evaluating the permit application.

#### National Marine Fisheries Service

The National Marine Fisheries Service (NMFS) within the Department of Commerce has authority to comment to the ACOE on the potential impacts that proposed development activities requiring an ACOE Section 10 or 404 permit would have on marine fisheries resources. Like the FWS, the NMFS reviews and comments on the permit applications placed on public notice by the ACOE.

Also like the FWS, the NMFS is not a permitting agency but its recommendations with regard to the potential impacts of development proposals must be considered by the ACOE and given equal weight to all other factors in evaluating the permit application.

#### Environmental Protection Agency

The Environmental Protection Agency (EPA) has several responsibilities that indirectly impact Whitehall Harbor, particularly with regard to water quality. For example, the EPA is responsible for establishing standards for discharge of municipal and industrial wastewater, providing grants for construction of municipal sewerage systems, and administering the National Pollution Discharge Elimination System (NPDES). In New York, responsibilities for administration and enforcement of the NPDES, in accordance with the provisions of the Federal Clean Water Act, has been turned over to the DEC.

Under Section 312 of the Clean Water Act, if a State or municipality wishes to establish a no-discharge zone within which marine sanitation devices cannot be discharged directly to the water, the EPA must determine if there are adequate pump-out facilities available to permit such a prohibition on direct discharges. Also under Section 312 of the Clean Water Act, the EPA is responsible for establishing Federal standards of performance for marine sanitation devices.

The EPA also has responsibility for reviewing and commenting on applications submitted to the ACOE for dredging and filling in navigable waters. The EPA may veto an ACOE permit for dredging or filling if it determines that the proposed development would have an unacceptable adverse effect on environmental resources.

#### Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) is responsible for conducting studies (flood insurance studies) and publishing maps (flood insurance rate maps) to determine flood vulnerability. The flood insurance rate maps are also prepared for the purpose of providing flood insurance to residents of the communities that participate in the National Flood Insurance Program (NFIP). FEMA establishes the minimum floodplain regulations that a community must adopt to participate in the NFIP.

#### The General Public, Waterfront Owners, Private Interests

The general public and waterfront property owners have important rights and interests in Whitehall. The rights of the general public are in accordance with the Public Trust Doctrine. Waterfront property owners have important riparian rights of access.

#### The General Public

In general, navigation rights take precedence over other in-water rights. Boaters have the right of free navigation (generally interpreted to include fishing) subject to lawfully enacted restrictions. The right of navigation includes the right to anchor, but does not include the right to a mooring (a mooring is a structure subject to a permit from the ACOE).

In New York State, the general public also has the right of access along the foreshore (between mean high water and mean low water), even if the adjacent upland is in private ownership. The general public, however, does not have the right of access across privately owned upland to reach the publicly-owned foreshore or open tidal waters.

#### Waterfront Property Owners

Certain rights – referred to as riparian or littoral rights – are inherent in the ownership of land that borders on navigable waters. The right of access to navigable water is a fundamental riparian right of waterfront property owners. This right is distinct from, and in addition to, the general right of the public to use these waters in accordance with the Public Trust Doctrine.

The riparian owner has certain rights not available to the general public, including “a right of access to the water body adjoining his land ... [and a right to] wharf out to the point of navigability or channel, subject to reasonable State regulations intended to preserve the public’s interest in the flow of water and in subaqueous land.” State regulations include, for example, DEC permit requirements for the construction of docks, piers, and wharves. In addition, where a wharf or pier is to be constructed in navigable waters of the United States, a permit from the ACOE must also be obtained.

With regard to shoreline changes (such as result from erosion and accretion) “it is a generally well-recognized principle of riparian law that whatever is added to riparian land as a result of gradual and imperceptible growth through the operation of natural causes belongs to the riparian owner. And conversely, whatever is taken away from the riparian lands under similar circumstances is lost to the upland owner.”

Limitations on the riparian or littoral property owner’s rights “are based on concepts of nuisance or of police power regulation rather than on any theory of public rights”, as well as on limitations related to the Federal Navigation Servitude.

### **Private Interests**

- Whitehall Chamber of Commerce

The Whitehall Chamber of Commerce is an organization dedicated to the promotion of business in the area. Its office is located on Route 4 at the southern end of the Water Revitalization Area.

- Downtown Business Association

The Downtown Business Association is a group of individuals dedicated to positive action in the downtown area. It recently issued a report, ECO’99, that sets forth ideas for the future of the area. Some of the ideas relate to cruises, partnerships with Amtrak, infrastructure efforts, and the Bridge Theater. The Bridge Theater is built on what is now the pedestrian bridge near Lock 12.

- Arts and Recreation Committee of Whitehall, New York, Inc.

To pursue the Bridge Theater, a not-for-profit corporation, Arts and Recreation of Whitehall, New York, Inc. was formed. At this time, the theater is scheduled to open in May of 2000. The New York State Department of Transportation is leasing the bridge to the not-for-profit group.