



# TOWN OF EAST HAMPTON

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**FOR IMMEDIATE RELEASE**

## **Town Prevails at United States Court of Appeals in Lake Montauk Jetty Lawsuit**

A final decision by the United States Court of Appeals for the Second Circuit put to rest a longstanding lawsuit brought by eleven homeowners who claimed the Town was responsible for erosion caused by the jetties at Lake Montauk Harbor. A three-judge panel of federal appellate judges affirmed the decision of United States District Judge Joanna Seybert dismissing all claims against the Town of East Hampton and the United States government.

The September 7, 2021 decision effectively ends a highly contested ten-year litigation that originally included the United States Army Corps of Engineers, the State of New York, Suffolk County, and the New York State Department of Environmental Conservation as co-defendants alongside the Town. The Town requested at various stages of the litigation to have the claims against it dismissed since it has no control over the jetties, which constitute a Federal Navigation Project. Although Judge Seybert dismissed the federal claims against the Town at an early stage, she permitted state common law claims for public and private nuisance and trespass to proceed to trial.

Following a month-long trial in June 2018, a jury awarded the plaintiffs \$355,961.27 in damages for private nuisance and trespass, but rejected their claims for public nuisance. The Town, represented by the Carle Place, N.Y., firm of Sokoloff Stern LLP, persisted in arguing before, during, and afterwards in post-trial motions that the Town is not responsible for erosion caused by the jetties.

Following post-trial briefings, the district court agreed and dismissed all claims against the Town in a March 15, 2019 decision. Judge Seybert found the Town lacked the requisite control and intent necessary to hold it responsible for the erosion and that “because (1) the jetties were necessary and served a greater public good, (2) Plaintiffs bought their homes long after the jetties were built, and (3) the Town attempted to work with the Plaintiff landowners to address the erosion situation, the Town’s actions were reasonable.” The court accordingly entered judgment in favor of the Town.

The plaintiff homeowners appealed the post-trial decision in favor of the Town, as well as a prior holding that dismissed the claims against the United States Army Corps of Engineers on sovereign immunity grounds.

In its 51-page decision, the Second Circuit affirmed the decision. The court held that although the Town technically owns the property underneath the jetties, it is not responsible for them because the Federal government maintains exclusive control over the area. It also found that the plaintiffs “presented no evidence at trial that the Town knew or had any reason to believe that the Jetties would cause erosion to the private beaches to the west of the Jetties when the Town relinquished control of the Jetties in 1942.”

The Army Corps of Engineers plans to deepen the Lake Montauk harbor channel as part of a proposed enhanced navigation project, for which the Town has indicated its support. Dredged, beach-compatible sand would be placed on the shore immediately west of the jetty inlet.

Town Supervisor Peter Van Scoyoc said, “We are pleased that the appellate court recognized that the Town is not responsible for an Army Corps project over which the Town has no control. The jetties serve a tremendously important function in maintaining Montauk Harbor, an important commercial fishing port, and the Town has consistently supported efforts to maintain the inlet, increase its depth, and place the residual sand on the beaches to maintain areas of public access.”