APPENDIX D

CHAPTER 262 – WATERFRONT CONSISTENCY
CHAPTER 262 WATERFRONT CONSISTENCY REVIEW

[HISTORY: Adopted by the Board of Trustees of the Village of Ossining 11-16-1993 by L.L. No. 5-1993. Amendments noted where applicable.]

GENERAL REFERENCES
Environmental quality review — See Ch. 118.

Environmental advisory council — See Ch. 119.

Flood damage prevention — See Ch. 141.

Freshwater wetlands — See Ch. 149.

Stormwater management and erosion and sediment control — See Ch. 227.

Water — See Ch. 259.

§ 262-1 Title.
This chapter will be known as the "Village of Ossining Waterfront Consistency Review Law."

§ 262-2 Authority and purpose.
A. This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this chapter is to:

(1) Implement consistency review regulations and procedures for the Village of Ossining's Local Waterfront Revitalization Program (LWRP).

(2) Provide agencies of the Village of Ossining with a framework to consider the policies and purposes contained in the LWRP when reviewing private applications for actions or direct agency actions located within the LWRP boundaries which extend from Route 9 west to the middle of the Hudson River.

(3) Assure that proposed private and direct actions are consistent with said policies and purposes of the LWRP.

C. It is the intention of the Village of Ossining that the preservation, enhancement and utilization of the natural and man-made resources of the unique coastal area of the Village take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this chapter is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources; diminution of open space areas or public access to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

D. The substantive provisions of this chapter shall only apply while there is in existence a Village Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

§ 262-3 Applicability.
All private applicants and all boards, agencies, departments, offices, other bodies or officers of the Village of Ossining must comply with this chapter to the extent applicable, prior to carrying out, approving or funding any Type I or unlisted actions, as those terms are defined below (since the Ossining LWRP area is also a designated Critical Environmental Area, all unlisted actions become Type I actions). Type II, excluded or exempt actions, as defined in 6 NYCRR 617.2 (regulations which implement the State Environmental Quality Review Act), are hereby deemed consistent with the LWRP and do not require any further deliberation.
§ 262-4 Definitions.
As used in this chapter, the following terms shall have the meanings indicated:

ACTIONS
Either Type I or unlisted actions as defined in SEQRA regulations (6 NYCRR 617.2) which are undertaken by an agency and which include:

A. Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
   (1) Are directly undertaken by an agency;
   (2) Involve funding by an agency; or
   (3) Require one or more new or modified approvals from an agency or agencies.

B. Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.

C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment.

D. Any combinations of the above.

BOARD
The Board of Trustees, the Planning Board or the Zoning Board of Appeals of the Village of Ossining.

CERTIFICATE OF CONSISTENCY (COC)
The form used by the appropriate Board to certify that the requested action is consistent with LWRP policy standards and conditions.

COASTAL AREA
That portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law, which are located within boundaries of the Village of Ossining, as shown on the Coastal Area map on file in the Office of the Secretary of State and as delineated in the Village of Ossining Local Waterfront Revitalization Program.

COASTAL ASSESSMENT FORM (CAF)
The form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

CONSISTENT
The action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

DIRECT ACTIONS
Actions planned and proposed for implementation by an agency, such as, but not limited to, a capital project, rule-making, procedure-making and policy-making.

ENVIRONMENTAL ADVISORY COUNCIL or COUNCIL
The Waterfront Advisory Council of the Village of Ossining, pursuant to this chapter.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)

The Local Waterfront Revitalization Program of the Village of Ossining, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Village of Ossining.

OTHER LOCAL AGENCY

Any board, agency, department, office, other body or any officer of the Village of Ossining, with the exception of the Board of Trustees, the Planning Board and the Zoning Board of Appeals.

PRIVATE APPLICANTS

Any applicants, other than a board, agency, department, office, other body or officer of the Village of Ossining.

§ 262-5 Review of actions.

A. Responsibility for determining the consistency of actions.

(1) The Board of Trustees shall determine consistency with the LWRP of:

(a) Those actions which require Board of Trustee approval, including special permits and zoning changes; and

(b) Any remaining local agency actions which are not the responsibility of the Planning Board or the Zoning Board of Appeals as described in Subsections A(1) and (2) below.

(2) The Planning Board shall determine consistency with the LWRP of those actions which require Planning Board approval, including conditional use permits, site plans and subdivision plats for proposed developments.

(3) The Zoning Board of Appeals shall determine consistency with the LWRP of those actions which require Zoning Board of Appeals approval, including use and area variances.

(4) The Environmental Advisory Council shall make recommendations to the Board of Trustees, Planning Board or Zoning Board of Appeals regarding the consistency with the LWRP of proposed actions.

(5) Other local agencies shall refer actions to be reviewed for LWRP consistency, along with coastal assessment forms, to the Board of Trustees.

B. Commencement of review. The consistency review process shall commence as follows:

(1) When a private applicant is seeking Village approval or funding for an action, the applicant shall prepare a CAF and submit it, along with any other material relevant to the action (applications, environmental assessment forms and other information necessary to the review) to the Board of Trustees, Planning Board, Zoning Board of Appeals or other local agency, as appropriate; or

(2) When the Board of Trustees, Planning Board or Zoning Board of Appeals is planning to undertake a direct action, it shall prepare a CAF.

(3) When the proposed action (Village approval or funding or direct agency action) involves a local agency other than the Board of Trustees, Planning Board or Zoning Board of Appeals, that agency shall submit a CAF, along with other
relevant material, to the Board of Trustees. For actions requiring Village approval or funding, the CAF will have been prepared by a private applicant (see Subsection B(1) above); for actions to be directly undertaken by the local agency, that agency will prepare the CAF.

C. Referral of the coastal assessment form. The Board of Trustees, Planning Board or Zoning Board of Appeals shall refer a copy of the completed CAF to the Village Manager and the Environmental Advisory Council within 10 days of its submission to or completion by the responsible board. The Board shall also forward any completed applications, EAFs and any other information necessary to the consistency review.

D. Review by the Environmental Advisory Council. After receiving the CAF from the responsible board, the Council shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in § 262-7 herein. It shall base its determination on all completed applications, the CAF and other information it deems to be necessary to its consistency review.

E. Council recommendations.

(1) The Council shall render its written recommendation to the responsible board within 30 days following referral of the CAF from the responsible board, unless extended by mutual agreement of the Council and the Board. The recommendation shall indicate whether, in the opinion of the Council, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate, in writing, the basis for its opinion.

(2) The Council shall, along with its consistency recommendation, make any suggestions concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

(3) In the event that the Council's recommendation is not forthcoming within the specified time, the responsible board shall make its decision without the benefit of the Council's recommendation.

F. Determination of consistency. The Board of Trustees, the Planning Board or the Zoning Board of Appeals shall make a determination of consistency following its next regularly scheduled meeting after receiving the Council's recommendation, or, if no recommendation is forthcoming, the date of the conclusion of the thirty-day review period. The responsible board shall make and issue its determination of consistency based on the CAF, the Council's recommendation and such other information as is deemed to be necessary in its determination.

(1) An action may be determined to be consistent, consistent with conditions or inconsistent. If determined to be consistent with conditions, these conditions must be practicable and reasonable measures for carrying out the action in accordance with the policy standards and conditions of this chapter. If determined not to be consistent with one or more of the LWRP policy standards and conditions, the action shall not be undertaken unless the responsible board makes a written finding with respect to the proposed action that:

(a) No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;

(b) The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;

(c) The action will advance one or more of the other LWRP policy standards and conditions; and

(d)
The action will result in an overriding Village, regional or state-wide public benefit.

(2) Such a finding shall constitute a determination that the action is consistent to the maximum extent practicable with the LWRP policy standards and conditions.

G. Policy standards and conditions. Actions to be undertaken shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Village of Ossining LWRP, a copy of which is on file in the Village Clerk's office and available for inspection during normal business hours. In the case of direct actions, the responsible board shall also consult with Section IV of the LWRP in making its consistency determination. The action shall be consistent with the policy to:

(1) Redevelop the Sing Sing Prison property; continue to revitalize the Crescent Business District and surrounding areas, including Main Street between the Crescent and the Hudson River; revitalize the downtown waterfront and lower Snowden area by encouraging new water-dependent and enhanced uses and protecting such existing uses; develop the upland Snowden area for moderately low-density development; improve the Old Croton Aqueduct so as to encourage associated commercial activities in the Crescent (Policy Nos. 1, 1A, 1B, 1C, 1D and 1E).

(2) Protect existing water-dependent uses in the downtown waterfront and facilitate siting of new water-dependent uses on the downtown waterfront and in the lower Snowden area, on the prison land and at Sparta Dock (Policy Nos. 2, 21, 22 and 22A).

(3) Develop large acre parcels north of Snowden Avenue and at the prison site to preserve open space, protect natural features and minimize impacts, particularly traffic on Village streets (Policy No. 5).

(4) Protect, preserve and, where practicable, restore the Croton River and Bay habitat so as to maintain viability as a habitat (Policy Nos. 7 and 7A).

(5) Protect fish and wildlife resources from contamination (Policy No. 8).

(6) Prevent erosion of filled land west of the railroad tracks (Policy Nos. 13 and 13A).

(7) Undertake activities or development in the upland portions of the Snowden area and other areas to be developed so that there will be no increase in erosion or flooding at the site of such activities or at other locations (Policy No. 14).

(8) Maintain the existing level of access to existing public water-related recreational facilities and Crawbuckie Nature Preserve and improve access to Sparta Dock, retain the possibility of increasing public access to the waterfront at the prison property and maintain and improve bridges and streets which serve as links to Ossining's waterfront; public water-related recreational facilities via a linear trail along the waterfront (Policy Nos. 9, 19, 19A, 19B, 19C, 19D, 20 and 20D).

(9) Protect, enhance and restore historic and archaeological resources (Policy No. 23).

(10) Protect, restore and enhance visual quality, including views from Route 9 and Revolutionary Road (Policy Nos. 25 and 25A).

(11) Protect water quality (Policy Nos. 30, 31, 32, 33, 34 and 34A) and pump-out facilities (Policy Nos. 35, 36, 37, 38, 39 and 40).
Protect air quality (Policy Nos. 41, 42 and 43).

Preserve and protect freshwater wetlands (Policy No. 44).

H. Filing and transmitting the consistency determination. The Village Clerk shall maintain a file of each action, including a consistency determination and any recommendations received from the Environmental Advisory Council. Such files shall be made available for public inspection upon request. The determination shall also be transmitted to the Building Inspector and the applicant.

§ 262-6 Coordinated review.
The responsible board and Environmental Advisory Council shall coordinate the consistency determination process required by this chapter with the environmental review process required by SEQRA and 6 NYCRR Part 617, to the extent possible.

§ 262-7 Enforcement.
The Village Building Inspector shall be responsible for enforcing this chapter. No action in the coastal area which is subject to review under this chapter shall be commenced or undertaken until the Building Inspector has been presented with a written certificate of consistency from the responsible board. Such certificate must state that the action is consistent with the Village's LWRP policy standards and conditions in accordance with § 262-6 of this chapter. In the event that an activity is not being performed in accordance with this chapter or any conditions imposed thereunder, the Building Inspector shall issue a stop-work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect.

§ 262-8 Penalties for offenses; civil penalties.
A. A person who violates any of the provisions of or who fails to comply with any conditions imposed by this chapter shall be guilty of a violation, punishable by a fine not exceeding $500 for a conviction of a first offense and punishable by a fine of $1,000 for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.

B. The Village Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this chapter. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

C. The Village of Ossining shall have the power to seek relief by injunction and to impose civil penalties equal to the cost of enforcement and any damages caused by noncompliance.

§ 262-9 Construal of provisions.
Where there is a conflict or discrepancy in the application, interpretation or effect of the provisions of this chapter with any other law, ordinance, rule, regulation or policy of the Village, the provisions of this chapter shall govern.