



APPENDIX D

WATERFRONT CONSISTENCY REVIEW

SECTION 1. TITLE

This chapter will be known as the "Town of Poughkeepsie Waterfront Consistency Review Law".

SECTION 2. AUTHORITY AND PURPOSE

A) This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law).

B) This chapter is intended to provide a framework for agencies of the Town of Poughkeepsie to consider the policies and purposes contained in the Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions and also when considering undertaking direct agency actions; and to assure to the maximum extent practicable that such actions are consistent with the said policies and purposes.

C) It is the intention of the Town of Poughkeepsie that the preservation, enhancement and utilization of the natural and man-made resources of the Town's unique coastal area 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, it is the purpose of this chapter to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living marine resources and wildlife; diminution of open space areas or public access to the waterfront; shoreline erosion; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

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

SECTION 3. APPLICABILITY

All boards, departments, offices, other bodies or officers of the Town of Poughkeepsie are responsible for the implementation of the LWRP within the bounds of their jurisdiction and must comply with this chapter, to the extent applicable, prior to carrying out, approving or funding any action other than Type II, exempt or excluded actions, as those terms are defined in Part 617 of Title 6 of the Official compilation of Codes, Rules and Regulations of the State of New York.

SECTION 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 the following activities. This chapter does not apply to Type II, excluded or exempt actions as defined in the SEQRA Regulations (6 NYCRR 617.2).

A. Projects or physical activities, such as construction or other activities which 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 (1) or more new or modified approvals from any agency or agencies.

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

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

D. Any combination of the above.

AGENCY -- Any board, agency, department, office, other body or officer of the Town of Poughkeepsie.

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

COASTAL AREA -- The New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law. The boundaries of the Town's coastal area as shown on the Coastal Area Map on file in the office of the Secretary of State and as delineated in the Town of Poughkeepsie Local Waterfront Revitalization Program.

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.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP) -- The Local Waterfront Revitalization Program of the Town of Poughkeepsie, as approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Town Clerk of the Town of Poughkeepsie.

SECTION 5. REVIEW OF ACTIONS

A. Each agency of the Town shall be responsible for making its own consistency determinations.

B. Where more than one (1) local agency is involved in reviewing a proposed action, the lead agency (as that term is defined in the SEQRA Regulations) shall be responsible for making a determination that the proposed action is consistent with the LWRP policy standards and conditions set forth in Section 6 herein.

C. The consistency determination process required by this chapter shall be coordinated with the environmental review process set forth in SEQRA to the greatest extent possible.

D. Whenever an agency receives an application for approval or funding for an action or as early as possible in the Agency's formulation of a direct action to be located in the Coastal Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review process.

E. The lead agency shall make the determination of consistency based upon the CAF, the SEQR documents, the application and project documentation and such other information as is deemed to be necessary in its determination. Said agency shall have the authority, in its findings of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in a manner consistent with the LWRP policy standards and conditions set forth in Section 6 herein. These standards are derived from and further explained in Sections III and IV of the Town of Poughkeepsie LWRP.

F. The application for a consistency determination shall not be considered complete until a negative declaration has been issued or a Final Environmental Impact Statement (FEIS) has been filed by the lead agency.

G. The consistency determination may be made at the time that SEQRA findings are issued by the agency.

SECTION 6. CONSISTENCY STANDARDS AND CONDITIONS

A. Actions to be undertaken within the Town's Coastal Area 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 Town of Poughkeepsie LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:

(1) Restore, revitalize and redevelop deteriorated and under-utilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses (Policy 1).

(2) Facilitate the siting of water-dependent uses on or near coastal waters and preserve and retain existing water dependent uses (Policies 2 and 2A).

(3) Expedite permit procedures in order to facilitate the siting of development activities at suitable locations (Policy 6).

(4) Protect, preserve and restore fish and wildlife resources and their habitats (Policies 7 and 8),

(5) Expand the recreational use of existing fish and wildlife resources and the use of commercial fishing resources (Policy 9).

(6) Minimize flooding and erosion hazards through proper siting of buildings and structures; construction of carefully selected long-term structural measures; and the use of appropriate non-structural means (Policies 11, 14 and 17).

(7) Public funds shall be used for erosion protection structures only where necessary and in an appropriate manner (Policy 16).

(8) Safeguard vital economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).

(9) Protect, maintain and increase public access to the shoreline and to water-related recreational resources, while protecting natural and historic resources and adjacent land uses (Policy 19).

(10) Provide access to the publicly-owned foreshore and to public lands immediately adjacent to the water's edge in a manner compatible with adjoining uses and retain such land in public ownership (Policy 20).

(11) Water-dependent and water-enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast, provided that it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities (Policy 21).

(12) The development of public access to water-related recreation facilities at Bowdoin Park, Hudson River Psychiatric Center and Marist College waterfronts shall be a high propriety (Policy 21A).

(13) Encourage the development of water-related recreational resources and facilities, as multiple uses, in appropriate locations (Policy 22).

- (14) Protect, restore and enhance significant historic resources (Policy 23).
- (15) Prevent impairment of identified scenic resources of statewide significance (Policy 24).
- (16) Protect, restore and enhance other natural and manmade resources which contribute to the scenic quality of the coastal area (Policy 25).
- (17) Site and construct energy facilities contingent upon a shorefront location in a manner which will be compatible with the environment and to avoid adverse environmental impacts when in operation (Policies 27 and 40).
- (18) Undertake ice management practices in a manner which will avoid adverse impacts (Policy 28).
- (19) Protect coastal waters from direct and indirect discharge of pollutants (Policies 30, 31, 32, 33, 34, 36 and 37).
- (20) Ensure that dredging and dredge spoil disposal are undertaken in a manner protective of natural resources (Policies 15 and 35).
- (21) Protect and conserve the quality and quantity of surface and ground water supplies and prohibit actions which cause the salt front in the Hudson River to move northward (Policies 38 and 38A).
- (22) Ensure that any transportation, handling or disposal of hazardous wastes and effluent is undertaken in a manner which will not adversely affect the environment (Policy 39).
- (23) Prevent violation of air quality standards (Policy 41).
- (24) Preserve and protect tidal and freshwater wetlands (Policy 44).

B. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that:

[1] 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.

[2] The actions would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions to the maximum extent practicable.

[3] The action will advance one or more of the other LWRP policy standards and

[4] The action will result in an overriding Town, regional or state-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

C. Each agency shall maintain a file for each action made the subject of a consistency determination including any recommendations received. Such files shall be made available for public inspection upon request.

SECTION 7. ENFORCEMENT AND VIOLATIONS

A. No work or activity on a project in the Coastal Area which is subject to review under this chapter shall be commenced or undertaken until the lead agency has made a positive consistency determination.

B. In the event of a violation of this chapter, the Building Inspector is authorized to issue a stop-work order, and all work shall immediately cease.

C. A person who violates any of the provisions of or who fails to comply with any condition imposed by this chapter shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine of one thousand dollars (\$1,000.00) 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.

D. The Town of Poughkeepsie may also enforce this chapter by obtaining an injunction or other civil proceeding. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

SECTION 8. ROLE OF THE TOWN BOARD

1. As chief implementation and consistency agency of the Town for the purposes of the LWRP, and as the Legislative body of the Town, the Town Board will review the LWRP, the Town's zoning and other land use regulations, from time to time as it deems appropriate, and may determine, from time to time, to amend, modify or change one or more of the above policies, laws or regulations.

2. The Town Board will evaluate in timely fashion a proposed action of a State agency within the Coastal Zone in order to assure consistency of such actions with policies of the LWRP.

3. The Town Board will evaluate in timely fashion a proposed Federal action within the Coastal Zone in order to assure consistency of such actions with policies of the LWRP.

SECTION 9. JURISDICTION

Nothing in the above shall be deemed to change existing jurisdiction of or between agencies, or to require any agency to take any particular action, or to exchange existing rules of standing, nor shall be it deemed to empower any Town agency to require the cession of land or easements to the public unless such requirements are otherwise authorized by law.

SECTION 10. SEVERABILITY

The provisions of this local law are severable. If any provision of this local law is found invalid, such findings shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

SECTION 11. EFFECTIVE DATE

1. This local law shall take effect immediately after the following have both occurred:

[a] Filing of the local law in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law, and

[b] Approval of the Town of Poughkeepsie LWRP by the Secretary of State in accordance with Article 42 of the Executive Law of New York State.

Motion by: Councilman Patrick Hinkley

Seconded by: Supervisor Thomas Murphy

Ayes: 6 Nays: 0

(Absent Councilman Michael Dunagan)

Date: November 18, 1998