

## **Chapter 220**

### **WATERFRONT CONSISTENCY REVIEW**

#### **GENERAL REFERENCES**

**Waterfront Conservation and Development Environmental quality review — See Ch. 107.  
Commission — See Ch. 71.**

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#### **§ 220-1. Title.**

This chapter will be known as the "City of Beacon Waterfront Consistency Review Law."

#### **§ 220-2. 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 City of Beacon 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 City of Beacon that the preservation, enhancement and utilization of the natural and man-made resources of the City'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 this 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.

#### **§ 220-3. Applicability.**

All boards, departments, offices, other bodies or officers of the City of Beacon 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.

#### **§ 220-4. 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 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 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 combinations of the above.

**AGENCY** — Any board, agency, department, office, other body or officer of the City of Beacon.

**COASTAL AREA** — The New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law. The boundaries of the City's coastal area are coincident with the City's municipal boundary as shown on the Coastal Area Map on file in the office of the Secretary of State and as delineated in the City of Beacon Local Waterfront Revitalization Program.

**COASTAL ASSESSMENT FORM (CAF)** — The form contained in Appendix A,<sup>1</sup> used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

**CONSISTENT** — The action will conform to the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

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1. Editor's Note: Appendix A is on file at the office of the City Clerk.

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 City of Beacon, 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 City Clerk of the City of Beacon.

**§ 220-5. Review of actions.**

- A. Each agency of the City shall be responsible for making its own consistency determinations.
- B. Where more than one 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 § 220-6 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 Management Zone, 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 SEQRA 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 finding 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 § 220-6 herein. These standards are derived from and further explained in Sections III and IV of the City of Beacon 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.

**§ 220-6. Consistency standards and conditions.**

- A. Actions to be undertaken within the City's Coastal Management Zone 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 City of Beacon LWRP, a copy of which is on file in the City 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 underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses (Policy 1).
  - (2) Establish waterfront commercial and residential uses on Long Dock Peninsula to serve as a catalyst for the economic and physical revitalization of the entire waterfront area (Policy 1A).
  - (3) Structurally and aesthetically improve the harbor area between Long Dock and Riverfront Park to a level compatible with surrounding residential uses (Policy 1B).
  - (4) Develop the parcel between the Southern Dutchess Country Club and the Hudson River for low-density residential use (Policy 1C).
  - (5) Establish uses and streetscapes in the Urban Renewal Project No. 1 Area that provide visual, physical and economic linkages between the waterfront and the central business district and that will help redevelop the Urban Renewal Area in an environmentally sensitive manner (Policy 1D).
  - (6) Develop the underutilized parcel on Dennings Avenue for residential and light industrial uses compatible with the existing adjacent sewage treatment plant (Policy 1E).
  - (7) Facilitate the siting of water-dependent uses on or near coastal waters (Policy 2).
  - (8) Encourage location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitate its location in other coastal areas (Policy 5).
  - (9) Improve water and sewer services at Dennings Point, Long Dock and Riverfront Park (Policy 5A).
  - (10) Expedite permit procedures in order to facilitate the siting of development activities at suitable locations (Policy 6).
  - (11) Protect, preserve and restore fish and wildlife resources and their habitats (Policies 7, 8 and 8A).

- (12) Expand the recreational use of existing fish and wildlife resources and the use of commercial fishing resources (Policy 9).
- (13) Improve public access to the water for fishing and passive recreation uses through the acquisition of land and/or easements on the Hudson between Long Dock and Dennings Point and on the bank of the Fishkill Creek (Policy 9A).
- (14) Minimize flooding and erosion hazards through proper siting of buildings and structures; protection of natural protective features; construction of carefully selected, long-term structural measures; and the use of appropriate nonstructural means (Policies 11, 13, 14, and 17).
- (15) Public funds shall be used for erosion protection structures only where necessary and in an appropriate manner (Policy 16).
- (16) Safeguard vital economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).
- (17) Maintain and improve public access to the shoreline and to water-related recreational resources, while protecting natural and historic resources and adjacent land uses (Policy 19).
- (18) Improve pedestrian access to the Hudson Riverfront through the provision of pedestrian bridges over or tunnels under the railroad tracks (Policy 19A).
- (19) Repair or replace the bridge over the railroad tracks at Long Dock to serve Riverfront Park, the railroad station and Long Dock (Policy 19B).
- (20) Restore water access to the Beacon Riverfront to enable larger vessels (e.g. Sloop Clearwater) to dock in the harbor through a program of careful dredging and stabilization of the harbor (Policy 19C).
- (21) The possibility of a pedestrian path should be explored along the railroad right-of-way on the west bank of the Fishkill Creek. A pedestrian path should also be encouraged from Dennings Point to Riverfront Park in a manner which provides significant opportunities to view the shoreline.
- (22) 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).
- (23) Establish support facilities at Riverfront Park to increase its attractiveness and its capacity as an open space site for passive recreational uses, including boating and fishing; develop the north, south and west shorelines of the Long Dock Peninsula, including

the harbor area, for water-dependent recreational uses such as fishing, walking and boating; preserve the underdeveloped green valley floor of the Fishkill Creek for passive recreational uses, including a trailway; establish a linear recreational path along the narrow strip of land west of the railway between Long Dock and Dennings Point; establish linear and open space recreational uses on the perimeter of Dennings Point while preserving the rest of the peninsula as a wildlife sanctuary; establish an access path on Fisherman's Point at Riverfront Park (Policies 21A, 21B, 21C, 21D, 21E and 21F).

- (24) Encourage the development of water-related recreational resources and facilities, as multiple uses, in appropriate locations within shorezone (Policy 22).
- (25) New developments along the riverfront, especially at Long Dock and Fishkill Creek, should provide for water-related recreation and should also set aside open space for passive recreation (Policy 22A).
- (26) Protect, restore and enhance historic resources; encourage the restoration and adaptive re-use of large historic buildings such as the mills on Fishkill Creek (Policy 23 and 23A).
- (27) Protect and enhance scenic and aesthetic resources (Policy 25).
- (28) The following view sheds shall be protected:
  - (a) Main Street and Route 9D.
  - (b) Beacon Street and Route 9D.
  - (c) Rombaut Avenue and Route 9D.
  - (d) Route 9D and Wolcott Avenue.
  - (e) South Avenue and Route 9D.
  - (f) South Avenue and Dennings Avenue.
  - (g) Sargent Avenue and St. Lawrence Seminary.
  - (h) South Avenue one-fourth (1/4) mile west of Dennings Avenue.
  - (i) Paye Street.
  - (j) Wolcott Avenue 200 feet downhill from Bayview Avenue.
  - (k) River Street and Beekman Street.
  - (l) Bayview Avenue and Wolcott Avenue.
  - (m) Bayview Avenue and Wolcott Avenue west (Policy 25A).

- (29) Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a shorefront location and in such a manner as to avoid adverse environmental impacts when in operation (Policies 27 and 40).
  - (30) Undertake ice management practices in a manner which will avoid adverse impacts (Policy 28).
  - (31) Protect coastal waters from direct and indirect discharge of pollutants (Policies 30, 31, 32, 33, 34, 36 and 37).
  - (32) Ensure that dredging and dredge spoil disposal are undertaken in a manner protective of natural resources (Policies 15 and 35).
  - (33) The discharge of pollutants from the former Beacon landfill should be eliminated; discharges from the Beacon Sewage Treatment Plant will meet New York State standards for secondary treatment (Policies 30A and 30B).
  - (34) Encourage the use of alternative or innovative sanitary waste systems at Riverfront Park, the harbor area, Long Dock and Dennings Point (Policy 32A).
  - (35) Regulate construction in steeply sloped and high erosion areas to control excessive stormwater runoff (Policy 33A).
  - (36) New Marinas will be required to provide pumpout facilities (Policy 34A).
  - (37) Protect the quality and quantity of surface and ground water supplies (Policy 38).
  - (38) 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).
  - (39) Protect air quality (Policies 41 and 42).
  - (40) Land use or development in the coastal area must not cause the generation of significant amounts of acid rain precursors, nitrates and sulfates (Policy 43).
  - (41) Preserve and protect tidal and freshwater wetlands (Policy 44).
- B. If the agency determines that the action does not conform with the LWRP policy standards and conditions, such action shall not be undertaken unless the agency determines the following with respect to the proposed action. Such finding shall constitute a determination that the action is consistent.
- (1) No reasonable alternatives exist which would permit the action to be undertaken in a manner which conforms with such LWRP policy standards and conditions.

- (2) The action 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 coastal policies.
  - (4) The action will result in an overriding City, regional or state-wide public benefit.
- C. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Board. Such files shall be made available for public inspection upon request.

**§ 220-7. Enforcement and violations.**

- A. No work or activity on a project in the Coastal Management Zone 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 \$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.
- D. The City of Beacon 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.

**§ 220-8. Severability and law to govern.**

- A. The provisions of this chapter are severable. If any provision is found invalid, such finding shall not affect the validity of any part or provision hereof other than the provision so found to be invalid.
- B. 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 or regulation of the City, the provisions of this chapter shall govern.