



**Office of Planning  
and Development**

# **Coastal Consistency Review**

## **Federal State and Local Procedures**

**An Office of New York Department of State**

April 06, 2016

# Federal Consistency Review

# Federal Coastal Zone Management Act

- Passed in 1972
- Encourages Coastal States to develop a Coastal Management Program
- Incentivized participation by providing funding and regulatory authority (Consistency)
- Certain Federal Actions CANNOT be undertaken without a State's consent (15 CFR Part 930)

# New York CMP and Federal Consistency

- Adopted in 1982
- Incorporates multiple state laws into one set of policy statements (44 policies) for use in the NYS Coastal Area for federal direct (15 CFR Part 930 Subpart C), funding (Subpart F), and permitting (Subpart D) actions.
- Required the passage of Article 42 of the NYS executive law which describes “State Consistency.” (more to follow)
- CMP incorporates LWRPs, SCFWHs, SASS, and LIS CMP

# The Coastal Area

- All tidal waters (Hudson River up to Troy)
- Lakes Ontario and Erie
- St. Lawrence and Niagara Rivers
- Certain tributaries to these waters
- Roughly 1000 feet inland from these waters
  - Generally follows a road, park boundary or natural feature



# Federal Consistency

- A Federal Agency ***Determines*** that their proposed DIRECT action is consistent to the “*maximum extent practicable*” with the 44 policies or policies within a federally approved LWRP
  - DOS concurs or objects within 60 days.
- An **APPLICANT** for a federal permit must **CERTIFY** that they will conduct their activity in a manner fully consistent with all 44 coastal policies or policies within an applicable LWRP.
  - DOS decides within 6 months of receipt of complete application
  - Concurrence is “conclusively presumed” if longer than 6 months
  - Can “stay” the time clock by mutual consent

NEW YORK STATE DEPARTMENT OF STATE  
COASTAL MANAGEMENT PROGRAMFederal Consistency Assessment Form

An applicant, seeking a permit, license, waiver, certification or similar type of approval from a federal agency which is subject to the New York State Coastal Management Program (CMP), shall complete this assessment form for any proposed activity that will occur within and/or directly affect the State's Coastal Area. This form is intended to assist an applicant in certifying that the proposed activity is consistent with New York State's CMP as required by U.S. Department of Commerce regulations (15 CFR 930.57). It should be completed at the time when the federal application is prepared. The Department of State will use the completed form and accompanying information in its review of the applicant's certification of consistency.

A. **APPLICANT** (please print)

1. Name: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Telephone: Area Code (    ) \_\_\_\_\_

B. **PROPOSED ACTIVITY:**

1. Brief description of activity:

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2. Purpose of activity:

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3. Location of activity:

_____	_____	_____
County	City, Town, or Village	Street or Site Description

4. Type of federal permit/license required: \_\_\_\_\_

5. Federal application number, if known: \_\_\_\_\_

6. If a state permit/license was issued or is required for the proposed activity, identify the state agency and provide the application or permit number, if known:

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# Federal Consistency & Permitting Actions

- General Concurrence
  - Abbreviated, No PN required
- Nationwide Permits and Regional Permits (ACOE)
  - DOS Reviews entire program/permit as a direct federal action
  - Established conditions on certain permits
  - Some require DOS review, some do not.

<http://www.dos.ny.gov/opd/programs/consistency/federalpermits.html>

- <http://www.lrb.usace.army.mil/Missions/Regulatory/NYRegionalPermits.aspx>



# Federal Consistency & Permitting Actions

- Concurrence
  - PN required
  - If conditional, applicant's refusal of conditions turn it to objection
- Objections
  - PN required
  - Encouraged to ID alternatives that are consistent

# Federal Consistency & Financial Assistance to State and Local Gov'ts

- A State or local agencies provides a copy of their federal application for funding and a policy analysis
- The federal agency cannot release funds if DOS objects.
  - No published time clock but permit clock followed
- Funding for individuals is considered a direct action
- Outside of Coastal Area jurisdiction the same as for permitting actions

# Federal Consistency & LWRPs

- When a federal action would occur within or effect an LWRP, the policies within that document control the review
- DOS consults with the municipality and formally requests comments
- DOS considers comments and makes the decision.

# Appeals

- Federal Agency **CAN** undertake their Direct Action despite the State's objection in certain situations
- Federal Agency **CANNOT** issue permit or funds over State's objection unless the decision is overridden by US Sec. of Commerce
  - Consistent with the objectives or purposes of CZMA
    - Significantly and substantially furthers national interest
    - Interests outweigh adverse coastal effects
    - No reasonable alternatives
  - Necessary in the interest of national security

# The Policies

- Development
- Fish and Wildlife
- Flooding and Erosion
- General
- Public Access
- Rec
- Historic/Scenic
- Agricultural
- Energy and Ice Management
- Water and Air Resources
- Wetlands

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# Special Management Areas

# Local Waterfront Revitalization Programs

- Municipality (1 or more) based local refinement of coastal policies
  - Can be completed in the coastal area or on a designated inland waterway.
  - Only those within the coastal area can be federally approved
  - Only those that are federally approved are binding on federal actions
- Requires communities to develop local consistency laws for their own actions

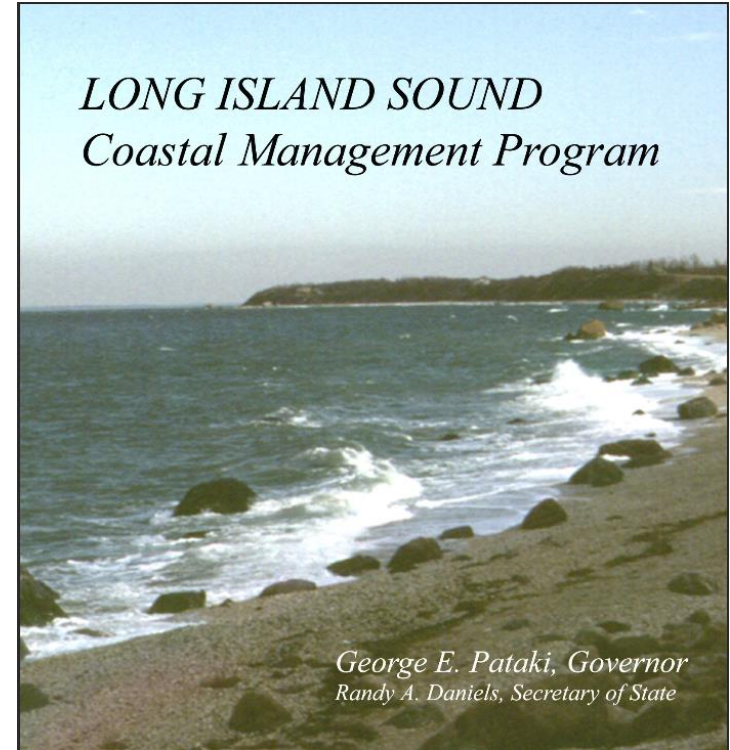
# Significant Coastal Fish and Wildlife Habitats

- Areas designated by DOS upon recommendation by DEC that have special characteristics
- Incorporates comments from federal agencies
- A specific coastal policy applies if action is within or affecting the SCFWH
- The whole habitat is considered, not an individual species.
- Species considered during designation
- All SCFWHs provided the same protection (200+) under Policy 7



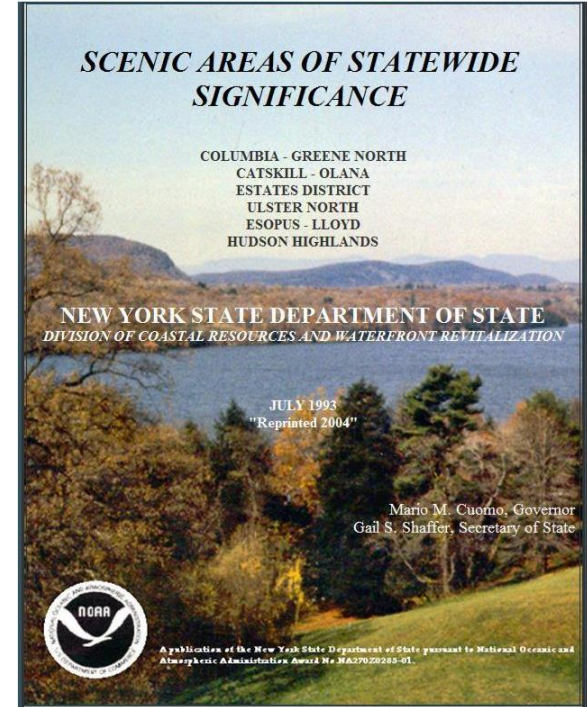
# Long Island Sound Regional Coastal Management Program

- Regional refinement of coastal policies by DOS for LIS (19 NYCRR 600.6)
- Fully enforceable for federal and state consistency



# Scenic Areas of Statewide Significance

- Areas designated by DOS as have scenic importance
- Only areas are in the Hudson Valley and East Hampton
- If a project is conducted within a SASS then policy 24 applies



# State Consistency Review (19 NYCRR Part 600)

# State Consistency

- Only applicable to SEQRA Type I and Unlisted Actions (statewide SEQRA)
  - Planning and Rule Making Actions
  - Direct Actions
  - Permitting Actions
- DOT SEQRA Non-Type II (17 NYCRR Part 15.6, 15.7, 15.8)
  - Redirects to 19 NYCRR Part 600

# State Consistency & LWRPs

- When SEQRA Type 1 or Unlisted State actions would occur within an LWRP, the policies within that document control the review
- The State agency follows the procedures in regulation
- If EIS required specific findings are required
- If no EIS required State agency cannot undertake the action if an LWRP policy would be substantially hindered unless
  - No reasonable alternatives exist
  - All adverse effects will be minimized to the MEP
  - Action will result in an overriding regional or statewide public benefit

# State Consistency & LWRPs

- If municipality and State agency have a conflict NY Sec. of State can be requested to mediate.
- I.E.
  - DOT building a road
  - DEC building a park
  - Dormitory Authority constructing a building

# Local Consistency Review

# Local Consistency Law

- Required municipal legislative action to implement LWRP
- Similar to Article 42 of the Exec. Law where State actions must be consistent
  - Town of Wheatfield Chapter 200 Article XVIII
- Local law provides procedures for what types of actions must undergo review and which entity is responsible for review

## Town of Wheatfield Local Waterfront Revitalization Program Consistency Review Law

Local Law No. \_\_\_\_\_ of the year of 2012

Be it enacted by the Town Board of the Town of Wheatfield as follows:

### GENERAL PROVISIONS

#### I. Title

This local law will be known as the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) Consistency Review Law.

#### II. Authority and Purpose

1. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this local law is to provide a framework for the agencies of the Town of Wheatfield (Town) to incorporate the policies and purposes contained in the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions located within the waterfront area; and to ensure that such actions and direct actions undertaken by Town agencies are consistent with the LWRP policies and purposes.
3. It is the intention of the Town of Wheatfield that the preservation, enhancement and utilization of the natural and manmade resources of the waterfront area of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss and degradation of living waterfront resources and wildlife; adverse impacts to cultural resources; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.
4. The substantive provisions of this local law shall only apply while there is in existence a Town of Wheatfield Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

#### III. Definitions

- A. "Actions" include all the following, except minor actions:



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## Welcome to the NYS Coastal Boundary Map

Help

Search

Address:

Enter Address Here

Find Address

Please note that the address marker is automatically placed along the street while certain activities may take place along the waterward property boundary. Please make sure to click and drag the marker to the exact location of the proposed activity for an accurate assessment of whether or not the activity would be located

Layers

- ☐ Landward Coastal Boundary
- ☐ Scenic Areas
- ☐ Local Waterfront Revitalization Areas
- ☐ Local Waterfront Revitalization Program Communities
- ☐ Significant Coastal Fish and Wildlife Habitats
- ☐ DOS Identified Canals
- ☐ Long Island Sound CMP (excludes LWRP communities)
- ☐ Federally Owned Lands
- ☐ Native American Lands



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opdgid.os.ny.gov/#/map

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- ▶ Energy, Utilities & Disposal
- ▶ Physical Environment
- ▶ Recreation
- ▶ Transportation

**Legend**

☒ all on/off ☒ remove all ☒ download checked

No layers currently in map  
(use Browse or Search tabs to add layers)

The map displays New York State with major cities like Albany, Buffalo, Rochester, and Syracuse. Lake Ontario is prominent to the west. Surrounding areas include Ontario, Canada, and parts of Vermont, New Hampshire, Massachusetts, and Connecticut. The map interface includes a search bar, a legend, and a list of data categories on the left.

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## Division of Planning



Note: If you need assistance viewing any of the linked materials, you may contact the Office of Planning and Development

Click on the community name in the table below to access PDF files of the approved Local Waterfront Revitalization Programs (LWRP), which are grouped by Regional Economic Development Council.

Each community prepares its **LWRP** in partnership with the New York State Department of State (**DOS**), and in accordance with the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (NYS Executive Law, **Article 42**). With local adoption and approval by the New York State Secretary of State, the LWRP serves to coordinate local and State actions needed to achieve the community's goals for its waterfront. For coastal communities, the incorporation of the LWRP into the New York State Coastal Management Program (**CMP**), also serves to coordinate federal actions needed to achieve the community's goals for its waterfront.

Local Waterfront Revitalization Programs	Approval date
<b>Capital Region</b> (Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington)	
Albany (C)	10/08/1991
Athens (V)	9/20/2001
North Greenbush (T)	9/06/1990
Rensselaer (C)	3/13/1987
Schodack (T)/Castleton on Hudson (V)	3/17/1995
West Coxsack (T)	4/20/2010

### Resources for Local Communities and Governments

[Local Waterfront Revitalization Program](#)
[Brownfield Redevelopment](#)
[Designated Waterways \(pdf\)](#)
[Laws and Regulations](#)
[Consistency Decisions](#)
[Public Notices](#)
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# Useful links

- FCAF - [http://www.dos.ny.gov/opd/programs/pdfs/Consistency/FCAF\\_fillable.pdf](http://www.dos.ny.gov/opd/programs/pdfs/Consistency/FCAF_fillable.pdf)
- CAF - <http://www.dos.ny.gov/opd/programs/pdfs/caf2.pdf>
- NYS Coastal Management Program and EIS (table 2 found in this document) - [http://www.dos.ny.gov/opd/programs/pdfs/NY\\_CMP.pdf](http://www.dos.ny.gov/opd/programs/pdfs/NY_CMP.pdf)
- NYS Coastal Management Program Policies (for federal consistency) - <http://www.dos.ny.gov/opd/programs/pdfs/CoastalPolicies.pdf>
- LIS CMP - <http://www.dos.ny.gov/opd/programs/pdfs/LISCMP.pdf>
- 19 NYCRR Policies and LIS Policies (for state consistency) - [http://www.dos.ny.gov/opd/programs/pdfs/19NYCRR\\_Part\\_600-603.pdf](http://www.dos.ny.gov/opd/programs/pdfs/19NYCRR_Part_600-603.pdf)
- Approved LWRPs (for state and federal consistency as applicable)- [http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP\\_status.html](http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html)
- Coastal Map (coastal boundary, SCFWHs, LWRP, SASS, etc)- [http://appext20.dos.ny.gov/coastal\\_map\\_public/map.aspx](http://appext20.dos.ny.gov/coastal_map_public/map.aspx)
- SCFWHs - <http://www.dos.ny.gov/opd/programs/consistency/scfwhhabitats.html>
- SASS - <http://www.dos.ny.gov/opd/programs/consistency/scenicass.html>
- Consistency Website - <http://www.dos.ny.gov/opd/programs/consistency/index.html>
- Consistency shared mailbox – [cr@dos.ny.gov](mailto:cr@dos.ny.gov)

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