

NOTICE OF ADOPTION

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the City Planning Commission by Sections 192 and 1043 of the New York City Charter, that the City Planning Commission hereby adopts the repeal of and addition of a new rule under Chapter 4 of Title 62 of the Rules of the City of New York, regarding procedures for the New York City Waterfront Revitalization Program consistency review by the City Coastal Commission and the Department of City Planning. This rule was first published for comment in the City Record on June 24, 2016, and a public hearing thereon was held on July 27, 2016. On July 27, 2016, Cal. No. 40, the hearing was closed. This rule shall take effect 30 days from the date hereof.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Chapter 4 of Title 62 of the Rules of the City of New York is REPEALED and a new Chapter 4 is added, to read as follows:

Title 62: Department of City Planning

Chapter 4: Procedures for New York City Waterfront Revitalization Program (WRP) Consistency Review by the City Coastal Commission and the Department of City Planning

§4-01 Applicability.

This chapter sets forth the procedures applicable to the review of actions located in the New York City Coastal Zone by the City Planning Commission (the Commission), in its capacity as the City Coastal Commission (CCC), and by the Department of City Planning (the Department) as provided in the WRP. Three separate categories of actions are subject to such review process:

- (a) Local discretionary actions that are classified as Type 1 or Unlisted pursuant to the State Environmental Quality Review Act (SEQRA) or City Environmental Quality Review (CEQR);
- (b) State actions that are subject to WRP consistency review by the relevant state agency pursuant to the applicable laws and regulations referenced in subdivision b of section 4-03 of this chapter;
- (c) Federal direct actions, permit and license actions, and financial assistance actions that are subject to WRP consistency review by the New York State Department of State (DOS) for the relevant federal agency pursuant to the applicable laws and regulations referenced in subdivision b of section 4-03 of this chapter.

The Department’s or the CCC’s review of state and federal actions, as referenced herein, is advisory and for the purpose of consultation in accordance with state and federal laws and regulations.

§4-02 CCC and Department Review.

As the administrator of the WRP with the CCC, the Department is responsible for coordinating all WRP consistency reviews. The Department evaluates all actions covered by section 4-01 of this chapter to determine which warrant CCC review, in accordance with the criteria set forth in

this section. The Department reviews all actions covered by this chapter that do not warrant CCC review.

The CCC reviews:

- (a) Local actions that are subject to Commission approval pursuant to the Uniform Land Use Review Procedure (ULURP) or other provision of the City Charter, including those for which the Commission is the designated CEQR lead agency; and
- (b) Local, state or federal actions that, in the Department's view, would substantially hinder the achievement of one or more policies of the WRP.

§4-03 Reviews for Consistency with the WRP.

(a) **Local actions.** Except as provided in section 4-04(a) of this chapter, no CEQR lead or involved agency may make a final decision to undertake, fund, or approve an action unless and until the lead agency, or the CCC when the lead agency is the Commission, finds that such action will not substantially hinder the achievement of any WRP policy and determines that the action is consistent with the WRP, in accordance with the standards set forth in the WRP. When the lead agency is other than the Commission, the Department must concur with such finding.

(1) **Local actions subject to Commission approval.** The CCC's review of actions for consistency with the WRP is incorporated into the Commission's existing review procedures pursuant to ULURP or other provision of the Charter, or pursuant to CEQR.

(2) **Local actions not subject to Commission approval.**

(i) The CEQR lead agency shall provide the Department with its draft Environmental Impact Statement (EIS) or draft Environmental Assessment Statement (EAS), whichever is applicable, containing the agency's draft WRP consistency assessment and determination, at the earliest possible date, and in no event less than thirty (30) days before issuance of a Negative Declaration, a Conditional Negative Declaration or, if the agency has prepared a draft EIS, a Notice of Completion. The Department may request additional information to assist in the evaluation of the proposed action, which the agency shall promptly provide.

(ii) Within thirty (30) days of receipt of the lead agency's draft WRP consistency assessment and determination, the Department will notify the lead agency as to whether the Department concurs or does not concur with the proposed consistency determination and will provide written comments on the assessment, if any.

(iii) When the lead agency has prepared an EAS, if the Department is properly notified of such agency's consistency assessment and determination and does not respond to such agency in writing within thirty (30) days of receipt, the lead agency may deem its consistency determination to have been accepted by the Department.

(b) **State and federal actions.** The coordination of the Department's or the CCC's review of state and federal actions with the relevant state agency and DOS, respectively, including review periods and the procedures for transmission of comments and findings, shall be in accordance with the relevant state and federal laws and regulations, including Article 42 of the New York State Executive Law (§§910 through 922) and 16 U.S.C. §§ 1451 et seq, respectively, and shall follow the guidelines for notification and review of federal and state actions, which are appended to the WRP.

(c) **Inconsistency with the WRP.** For all actions, where an inconsistency with one or more policies of the WRP has been identified, the Department or the CCC, as applicable, may recommend alternatives or modifications to the action or mitigation measures in order to

avoid or minimize the inconsistency. If, in the Department's or the CCC's view, an inconsistency presents a substantial hindrance to the achievement of one or more policies of the WRP, the provisions of section 4-04 shall apply.

- (d) **Public Notice.** All actions will be subject to any applicable procedures for public notice for the action under review. There are no additional public notice or participation requirements pursuant to this chapter.

§4-04 Substantial Hindrance to the WRP.

(a) **Local actions.**

- (1) **Local actions subject to Commission approval.** The Commission may not approve an action that will substantially hinder the achievement of one or more policies of the WRP, unless, in its capacity as the CCC, it makes the following four findings:

- i. No reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;
- ii. The action taken will minimize all adverse effects on such policies to the maximum extent practicable;
- iii. The action will advance one or more of the other coastal policies; and
- iv. The action will result in an overriding local or regional public benefit.

- (2) **Local actions not subject to Commission approval.** A CEQR lead or involved agency may not undertake, fund, or approve an action that will substantially hinder the achievement of one or more policies of the WRP unless the CEQR lead agency makes the four findings in paragraph 1 of this subdivision with the concurrence of the CCC.

Where the findings set forth in paragraph 1 of this subdivision are met, the action shall be deemed consistent with the WRP.

- (b) **State and federal actions.** The CCC shall provide an advisory determination as to whether the four findings set forth in paragraph 1 of subdivision a are met. The Department shall transmit the CCC's findings to the relevant state agency or DOS for the purpose of consultation in accordance with the WRP and applicable state and federal laws, regulations and published guidelines, as referenced in subdivision b of section 4-03 of this chapter.

Statement of Basis and Purpose of Rule

The Federal Coastal Zone Management Act (16 U.S.C., CZMA) was enacted by Congress on October 27, 1972 to encourage coastal states to develop comprehensive programs to manage and balance competing uses of and impacts to coastal resources. New York State developed and received approval of its statewide Coastal Management Program (CMP) in 1982. Article 42 of the Executive Law, entitled Waterfront Revitalization of Coastal Areas and Inland Waterways is the main statute that implements the State CMP by establishing the:

- Boundaries of the Coastal Area within which the CMP applies;
- Statewide policies that would be enforceable on all State agencies which address significant coastal issues and manage resources along the State's coastline;
- Authorization for localities to prepare and adopt local waterfront revitalization programs which in turn, would provide more detailed implementation of the State's Program.

New York City adopted a local waterfront revitalization program (WRP), to more specifically define the New York City Coastal Zone Boundary and local coastal area management policies pursuant to which applicable local, state and federal projects or actions within the Coastal Zone must be reviewed for consistency. Section 192(e) of the City Charter (Charter) provides that the City Planning Commission (the Commission) "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." Section 191(b)(2) of the City Charter provides that the director of the Department of City Planning (the Department) shall "provide staff assistance to the City Planning Commission in all matters under its jurisdiction." The WRP designates the City Planning Commission as the City Coastal Commission (CCC), which is, with the Department, responsible for administering the WRP for New York City.

The Department, on behalf of the Commission, is proposing to amend Chapter 4 (City Coastal Commission Procedures) of Title 62 of the Rules of the City of New York (Rules) pursuant to its authority under Sections 191(e) and 191(b)(2) of the New York City Charter. The purposes of the amendments may generally be described as follows:

- (1) make the rule consistent with State procedures in terms of the local discretionary actions to which it applies;
- (2) streamline the threshold for when the Department will refer state and federal actions to the CCC for review, which threshold shall also be applied to local actions that do not otherwise come before the Commission;
- (3) reestablish and clarify the role of the Department and CCC in local actions subject to City Environmental Quality Review (CEQR) but not subject to Commission approval;
- (4) and remove from the existing rule outdated references and other provisions regarding internal or inter-agency procedures.

Specifically, the amendments will ensure that the Department or the CCC reviews all local discretionary actions located within the Coastal Zone as provided in the WRP, for their consistency with the WRP. In addition, because under the current rule there are some local discretionary actions which require Commission approval but which are not subject to CEQR, the rule clarifies that the local discretionary actions subject to WRP review only include those classified as Type I or Unlisted under the State Environmental Quality Review Act (SEQRA) and, thus, subject to CEQR, consistent with the intent of the WRP as well as State practice in terms of how it undertakes WRP consistency reviews of its actions subject to SEQRA. Also, as provided in the WRP and as reflected in the existing rule, the Department or the CCC will continue to provide an advisory analysis of state and federal actions which are subject to state or federal consistency review using the coastal policies in the WRP by the relevant state agency or the New York State Department of State (DOS) or the relevant federal agency, and will convey any related comments and findings to the state agency or DOS for the purpose of consultation, in accordance with relevant state and federal laws and regulations.

Also, there are currently four thresholds in the existing rule for federal and state actions which, if met, require review by the Commission, as CCC, and the Department reviews all others. These thresholds are to be streamlined into a single threshold for federal and state

actions, as well as for local actions that do not otherwise come before the Commission for approval. Actions that the Department believes present a substantial hindrance to one or more policies of the WRP must be referred to the Commission, as CCC. When a substantial hindrance has been identified, local actions may not be approved unless or until the CCC finds, or concurs with the CEQR lead agency's finding, that the following four requirements, as set forth in the approved WRP, are met:

- (1) no reasonable alternatives exist that would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;
- (2) the action taken will minimize all adverse effects on such policies to the maximum extent practicable;
- (3) the action will advance one or more of the other coastal policies; and
- (4) the action will result in an overriding local or regional public benefit.

Such finding shall constitute a determination that the action is consistent with the WRP. With respect to state and federal actions, the Department will transmit the findings of the CCC to the relevant state agency for state consistency and DOS for federal consistency for the purpose of consultation.

The rule also adds references to state and federal regulations to ensure that the inter-agency coordination of WRP consistency review, including the resolution of conflicts, occurs in accordance with those regulations and any applicable guidance, such as the guidelines for notification and review of federal agency and New York State agency actions appended to the approved WRP. Finally, any provisions regarding intra-agency coordination between the Department and the CCC and other "in-house" standards are to be removed from the rule, and references to the no longer extant Board of Estimate are to be removed.