

CODE UPDATE COMMITTEE

Public Meeting on Phase IV – April 3, 2019

Phase IV of the Code Update is the “PROCEDURES” Category. Within this category are 5 topics:

Procedures

1. Evaluate Permitting Conservation Easements/Façade Easement
2. Evaluate Outright Demolition of Existing Structure
3. Evaluate Permitting Conservation Subdivisions
4. Amend Subdivision Regulations
5. Evaluate Adopting Waterfront Consistency Review Law

The subsequent (and last) phase will deal with “CONSISTENCY AND CLARITY”. Topics within this category are:

Consistency and Clarity

- Amend the Village Code for Clarity and Consistency; and
- Revise the Zoning Map to include new zoning districts and revised boundaries for existing zoning districts based on the recommendations of the Village’s existing Comprehensive Plan and the Local Waterfront Revitalization Program

1. Evaluate Permitting Conservation Easements/Façade Easement

The Village of Cold Spring Code is silent on the topics of both conservation easements and façade easements.

Conservation Easements

In the United States, a conservation easement is a power invested in a qualified private land conservation organization or government to constrain, as to a specified land area, the exercise of rights otherwise held by a landowner so as to achieve certain conservation purposes.

The Village of Cold Spring has enjoyed a beneficial relationship with Hudson Highlands Land Trust and with Scenic Hudson, two land trust organizations in the area. Recently, Scenic Hudson entered into a conservation easement with purchasers of private land within the Village of Cold Spring when Scenic Hudson sold that land to the purchasers. Hudson Highlands Land Trust entered into a conservation easement with the owners of private land outside the boundaries of the Village to protect a water source on the land. The water source could become a part of the Village of Cold Spring's water system.

The conservation easements that have occurred within the Village boundaries have been implemented without the intervention of the Village of Cold Spring. Since conservation easements are legal agreements between the land owner and a land trust or government, there does not appear to be any need for the Village of Cold Spring to legislate conservation easements in the Village Code. In addition, conservation easements require the periodic monitoring of the land being protected by an easement to ensure that the land is being used according to the conservation principles in the easement. Land trusts are better suited to perform that monitoring than is the Village of Cold Spring.

Conservation easements are mentioned in the Comprehensive Plan and in the Local Waterfront Revitalization Strategy.

Comprehensive Plan Page 23 and LWRS Page 64:

1.5 Objective: Encourage preservation and adaptive re-use of historic structures.

1.5.2 Recommendation: Consider allowing the Village or an IRS-qualified land protection organization to be a recipient of conservation easements and building façade easements, which are voluntary agreements that can preserve land from development and may enable property owners who donate easements to receive tax deductions. Ensure that adequate resources exist to allow monitoring and enforcement of any such easements.

Status:

Both Hudson Highlands Land Trust and Scenic Hudson are allowed to be recipients of conservation easements. Both Hudson Highlands Land Trust and Scenic Hudson, as land trusts, have resources to monitor and enforce conservation easements.

Comprehensive Plan Page 40 and LWRS Pages 73 and 74:

3.1. Objective: Establish and implement a 20-year plan to protect and enhance the natural environment in the Village.

3.1.5. Recommendation: Allow the Village to accept conservation easements.

3.1.6. Recommendation: Consider enactment of a new "Land Conservation" District in the Zoning Law for lands that could be subject to conservation easements and other similar designations.

3.1.8. Recommendation: Build on the open space inventory conducted for the Comprehensive Plan and this LWRS and consider measures to preserve open space, such as conservation easements and incentive zoning.

Status:

The Village of Cold Spring is not prohibited from accepting conservation easements. Land trusts, prior to accepting conservation easements, have a rigorous process in place to ensure that the proposed conservation easement's principles are consistent with the conservation goals of the land trust. The Village of Cold Spring does not have personnel who have the expertise or skills to perform this evaluation. Land trusts are better suited to perform this work.

The Code Update Committee has proposed a new zoning district PR-1 – Parks and Recreation. The PR-1 district is defined as areas which provide opportunities for the enjoyment of the environment, including proximity to water, recreational opportunities, opportunities for relaxation and the opportunity to enjoy the scenery. In addition, PR-1 restricts building coverage to 1% of the lot area.

The Code Update Committee has also proposed a Scenic View Overlay District which is built on the Scenic Area of Statewide Significance (SASS). The purpose of this overlay district is to regulate new development and major changes to existing development, by ensuring that they are sited and planned in a manner that will protect the scenic beauty of the Village

Comprehensive Plan Page 68 and LWRS Page 92:

7.2 Objective: *Ensure that new development and redevelopment of the properties in the Marathon/Campbell/West Point Foundry Preserve/Kemble Avenue area (MCWPFK) results in improvements that:*

- Are well integrated in the fabric of the community;*
- Protect the natural environment and the health of residents;*
- Promote the economic health of the Village through positive tax impact and economic activity.*

7.2.8 Recommendation: *Protect views of the ridge from the Foundry trail and Foundry Cove through conservation easements, local enforcement of SASS guidelines, and /or creation of a ridgeline protection overlay district.*

Status:

The Code Update Committee has proposed a Scenic Viewshed Overlay District which is built on the Scenic Area of Statewide Significance (SASS). The purpose of this overlay district is to regulate new development and major changes to existing development, by ensuring that they are sited and planned in a manner that will protect the scenic beauty of the Village. The ridge visible from the Foundry Trail is identified as one of the areas to be included in the Scenic Viewshed Overlay District.

Comprehensive Plan Page 71 and LWRS Page 95:

7.10 Objective: Preserve St. Mary's Lawn.

7.10.1 Recommendation: *Work with St. Mary's Church to maintain the lawn as open space, possibly through conservation easements or through re-zoning.*

Status:

The Code Update Committee has proposed a Scenic Viewshed Overlay District which is built on the Scenic Area of Statewide Significance (SASS). The purpose of this overlay district is to regulate new development and major changes to existing development, by ensuring that they are sited and planned in a manner that will protect the scenic beauty of the Village. St. Mary's is identified as one of the areas to be included in the Scenic Viewshed Overlay District.

Conclusion:

The Code Update Committee has researched the topic of Conservation Easement and, for the reasons listed above, does NOT recommend modifying the Code of the Village of Cold Spring. Conservation easements can inform Planning Board decisions.

Façade Easements

Facade easements are essentially grants or donations of historic property to a qualified organization for the purpose of preserving the historic fabric and/or character of a building's facade. The easement serves to preserve the character of that building into perpetuity with the burden of preserving such building being borne by the grantor of the easement.

The obvious benefit is in preserving the historic nature of a property with the real boon being to the grantor, who typically is entitled to a tax benefit which is recognized as a "charitable tax deduction" by the IRS.

In theory, the encumbrance of a facade easement results in a diminution in market value to the encumbered property. The percentage of diminution is driven by two primary factors. Firstly, the extent of the restrictions and responsibilities contained in the easement agreement and secondly, the level of detail and type of material that the building consists of. The greater the restrictions and/or greater the detail that the building has, the greater the percentage of diminution.

The typical easement also requires the grantor to pay for periodic inspections and to maintain the building to a specific standard, keeping a certain maintenance level and using like materials for replacement and repairs.

A typical facade easement creates a number of impositions that can be summarized as follows:

- Limitation of development opportunities. The typical facade easement would prohibit

- the construction of any additions or to make any changes to the exterior of the building.
- Higher ongoing operating costs. Facade easements impose a higher level of maintenance which translates into greater expenses. Such costs include higher ongoing maintenance by product of maintaining what is typically a material intensive design and construction. Materials such as limestone, terra cotta and detailed wood facades are much more costly to build and maintain in comparison to the predominate building materials and standards used today.
- Periodic inspection costs are typically borne by the grantor.
- If the building were damaged or destroyed, the facade must be restored to the original condition. As a result, the grantor would be required to carry greater insurance to fulfill not just replacement, but a reproduction of the current detail which is far more costly in today's market.

Facade easements are mentioned in the Comprehensive Plan and in the Local Waterfront Revitalization Strategy.

Comprehensive Plan Page 23 and LWRS Page 64:

1.5 Objective: Encourage preservation and adaptive re-use of historic structures.

1.5.2 Recommendation: Consider allowing the Village or an IRS-qualified land protection organization to be a recipient of conservation easements and building façade easements, which are voluntary agreements that can preserve land from development and may enable property owners who donate easements to receive tax deductions. Ensure that adequate resources exist to allow monitoring and enforcement of any such easements.

Status:

There is no known organization in the area which is qualified to be the recipient of façade easements.

As noted above, façade easements, while offering immediate tax benefits to the current owner of the building, can be costly to the current and future owners of the building in the long term. As a result, such arrangements may be less desirable to building owners. Façade easements result in lower market value and can have an effect on the real estate tax base.

Many properties in the Village of Cold Spring are listed in the National Register of Historic Places and in the local Historic District and are thereby protected by Chapter 64 of the Code of the Village of Cold Spring. The Village of Cold Spring has a very active Architectural and Historic District Review Board which reviews all exterior changes to any property within the National Register of Historic Places or within the local Historic District to encourage preservation.

Conclusion:

The Code Update Committee has researched façade easements and, for the reasons listed above, does NOT recommend modifying the Code of the Village of Cold Spring.

2. Evaluate Outright Demolition of Existing Structure

Chapter 134 Zoning

§ 134-18 J. Demolition

If the structure proposed for demolition is located in the Village's Local or the National Historic Districts, the alternate procedures in § 64 shall apply.

§ 134-18 J-1 Permit required.

No person shall demolish any structure, or any portion thereof, without a valid Building Permit issued by the Building Inspector.

§ 134-18 J-2 Intent.

The intent of this article is to provide for the orderly process of demolition of any structure and to assure proper review of safety considerations, as well as compliance with the building and zoning laws regarding future intended use of the property.

§ 134-18 J-3 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BUILDING INSPECTOR — The Village Official appointed pursuant to § 40.1 of the Village Code

DEMOLITION — The act of pulling down, destroying, removing, moving, or razing a structure or commencing the work of total or partial destruction with the intent of completing same.

EMERGENCY DEMOLITION — A demolition authorized when, after inspection, it is determined by the Building Inspector in consultation with the Village Engineer, that a structure poses an imminent threat to the health or safety of the community.

HISTORIC STRUCTURE — A structure listed on or eligible for listing on the Local, State or National Register of Historic Places.

STRUCTURE — Any combination of materials or anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

§ 134-18 J-4 Application for demolition of a structure located outside the Local or National Historic Districts.

The applicant shall complete the Building Permit form and submit it to the Building Inspector along with the following information:

- A. A statement regarding why the structure is planned for demolition. Plans regarding how the demolition process will take place, including safety measures, in the form prescribed by the Building Inspector.
- B. A restoration plan for the property following demolition including a description of the materials, grading, landscaping, and maintenance procedures to be utilized to ensure that the restoration conforms to the approved plan and that landscaping survives in a healthy condition and/or a treatment plan for any walls of adjoining buildings exposed as a result of the demolition.
- C. A statement addressing what the applicant intends to do with the property following the demolition, if known. This may include the construction of a new structure, leaving the land vacant or some other use. If the applicant plans to build a new structure, or propose a new use,

the applicant must provide a description of the new structure(s) or use, the dimensions of any new structure(s), and the siting of any new structure(s) on the property. A new proposed structure or use may trigger approvals by the Planning Board and/or Zoning Board of Appeals.

- D. A rodent control plan.
- E. A plan for the discontinuance and sealing of all utilities.
- F. Liability insurance in an amount not less than the \$1,000,000 (one million dollars) naming the Village as additionally insured.
- G. The application fee, as set forth in the Village's fee schedule. The Building Inspector shall review the application for completeness. In the event that the application is deemed incomplete, the Building Inspector shall notify the applicant of such in writing and provide the applicant with an opportunity to correct the deficiencies. The Building Inspector shall forward the complete application to the Village Board of Trustees with a report on the proposed safety measures to protect surrounding persons and property from damage and a complete restoration plan. The Building Inspector must be satisfied that the work will conform to all applicable state and local laws, rules and regulations, and that the work will be executed in a safe and expeditious manner before referring the application to the Village Board of Trustees. An applicant for a demolition permit may be required to submit to the Building Inspector additional plans and certifications prepared by a licensed structural engineer, at the applicant's sole expense.
- H. Should the Building Inspector determine that there is need for immediate demolition due to concerns about the health, safety or welfare to village residents, the Building Inspector can suspend all requirements in this article and approve immediate demolition. Within 10 days of demolition, the applicant shall provide all required documentation, plans, insurance and fees and the requirements of the article will be reinstated.
- I. The Village Board of Trustees may hold a public hearing on the application in its discretion.
- J. The Village Board of Trustees shall approve, deny, or approve with conditions the requested demolition permit within 62 days from the receipt of the complete application or the close of the public hearing, whichever is later. In determining whether to grant or deny the demolition permit, the Village Board shall consider the following criteria:
 - 1) Whether the demolition and subsequent plan for use of the property, if any, is consistent with the Village's Comprehensive Plan and zoning requirements;
 - (2) The existing condition of the structure and (if appropriate) certifications prepared by a licensed structural engineer as to the structural soundness of the building
 - (3) The relationship of the structure to the character of the neighborhood, such as the streetscape and its environs, or any adjacent or attached buildings;
 - (4) Whether the restoration plan and subsequent plan for use of the property is adequate to prevent the property from becoming a nuisance or blight; and
 - (5) Whether additional safety measures are needed to protect the public health, safety and welfare such as OSHA (Occupational Safety and Health Administration) regulations, best practices guidelines and the International Existing Building Code (IEBC).

If the Village Board of Trustees denies the demolition permit, the applicant can appeal the decision. Unless the request for a demolition permit is not discretionary, the applicant can provide documentation detailing the economic hardship created by the denial.

3. Evaluate Permitting Conservation Subdivisions

The Village of Cold Spring Code is silent on the topic conservation subdivision.

Conservation Subdivisions

Conservation subdivisions are a design strategy that attempts to preserve undivided, buildable tracts of land as communal open space for residents. In a conservation subdivision, ideally 50 to 70 percent of the buildable land is set aside as open space by grouping homes on the developed portions of the land. One method to achieve this begins by identifying land to be conserved and ends with drawing in lot lines for the planned homes. These design steps occur in an order opposite that of conventional subdivisions.

Conservation subdivisions are mentioned in the Comprehensive Plan and in the Local Waterfront Revitalization Strategy.

Comprehensive Plan Page 67 and LWRS Page 91:

7.1 Objective: Ensure that proposed plans for any property that, because of its size, location, or historic significance is of special importance to the Village, are in compliance with this Comprehensive Plan and LWRS and are open to public review.

...

7.1.6 Recommendation: When such property is being developed:

- *Engage in dialog with the property owners to keep development on a scale in terms of streetscape and mix of structure size that is consistent with the character of the community, in part by limiting the number and size of residential units;*
- *Explore the possibility of a conservation development where a minimum amount of protected open space is mandated by the subdivision review process;*
- *Consider amending the Subdivision Regulations and Zoning Law to permit conservation subdivision, with the 4-step design process that identifies unbuildable lands, and special features of the site around which development is designed;*

LWRS Page 130:

Development should preserve the scenic viewshed of Kemble Ridge. Village residents overwhelmingly support protecting views of Kemble Ridge, which is identified as a contributing

feature of the Cold Spring Scenic Area of Statewide Significance (SASS). Local enforcement of the SASS policies during Planning Board review of any development proposed in this area is critical. Also of great concern is the protection of the archaeological resources on the Marathon site. One significant planning technique that could be used to conserve scenic and archaeological resources while allowing for development is [a] conservation subdivision, which employs a four-step design process to identify unbuildable lands and special features of the site around which development is designed, and where a minimum amount of protected open space is required. In this case, the ridgeline [Kemble Ridge] and archaeological sites could be identified as areas to preserve, and the open space lands could be placed under a conservation easement to permanently protect them. The current owner of the Marathon site has stated that he is willing to work with Scenic Hudson, which might hold the conservation easement, regarding protection of Kemble Ridge.

LWRS Page 162:

Conservation development: *A cluster development, as defined in § 7-738 of New York State Village Law, designed using a four-step process that makes livability and natural resource protection a priority. Conservation development rearranges subdivision development on each parcel, as it is being planned, so that most of the buildable land is set aside as permanent open space. Without losing density, the same number of homes or businesses can be built in a less land-consumptive manner than a conventional subdivision.*

In evaluating the topic of conservation subdivisions, the Code Update Committee considered such properties as Marathon and the Haldane School properties. The Committee's Planning Consultant, GreenPlan, cited Marathon as the only property where a conservation subdivision may be feasible.

In Phase II, the Code Update Committee proposed a new zoning district – MU-1 (Mixed Use-1) for some properties, including the Marathon property. The lot coverage for the MU-1 district would vary based upon the use of each parcel. The MU-1 proposal is consistent with the recommendations in the Comprehensive Plan.

Kemble Ridge, which has an elevation of approximately 40 feet to 70 feet over the West Point Foundry Park walking path, is mentioned in the LWRS and Comprehensive Plan as an area to be protected. Kemble Ridge is located on the Marathon property.

As mentioned previously, conservation subdivision provisions are development planning based, and are costly to implement. Better tools are available to protect specific property features, e.g., conservation easements, local enforcement of the SASS policies.

Conclusions

The Code Update Committee concluded that:

- 1) There is only one location in the Village where such a provision might be appropriate.
- 2) Adopting the provision would consume Village time and funds, and such a provision is very costly to implement.
- 3) There are other processes or methods that are more suitable and could be applied to specific areas of the property, e.g., conservation easement.
- 4) This would apply to the property feature cited in the LWRS and Comprehensive Plan, the Kemble Ridge.
- 5) Conservation Subdivision code provision is not appropriate for the Village of Cold Spring and would not necessarily protect Kemble Ridge
- 6) Recommend Village Board pursue a different remedy, such as conservation easements and/or local enforcement of SASS guidelines

4. Amend Subdivision Regulations

Create a Scenic Viewshed Overlay District

PROPOSED NEW CODE TEXT

Cold Spring Scenic Viewshed Overlay District – ADD TO Village Code (Zoning Law) 134-18 (Supplementary regulations applying to all districts)

A. Findings and purpose

1. Pursuant to the New York Scenic Area of Statewide Significance (“SASS”) regulations (19 NYCRR Part 602, Policy 24), special protection of the features of the Cold Spring Subunit of the Hudson Highlands SASS, as identified in the Inventory below, is necessary to preserve the attractive scenic quality of the Village.
2. The purposes of this section are:
 - a. To ensure that new development and major changes to existing development in the Village are sited and planned in a manner that will protect the scenic beauty of the Village and surrounding areas;
 - b. To protect public views from public places (as used hereafter in this section, “views”), consistent with the New York DEC Program Policy on Assessing and Mitigating Visual Impacts¹;
 - c. To protect views of certain properties within the Village; and
 - d. To protect views from within the Village of certain areas outside the Village.

B. Applicability

1. The Scenic Viewshed Overlay (“SVO”) District is overlaid onto the Village’s underlying zoning districts, as shown on the Zoning Map. All provisions of the underlying districts shall be applied except where provisions of the SVO District differ. In such cases, the more restrictive provision shall apply.
2. The provisions of this section apply only to applications for subdivision of a property, and those applications that require a site plan or special use permit.
3. In order to grant approval for subdivision of property, site plan or special use permit within the SVO District, the Planning Board must find that the use or alteration is in compliance with the regulations of this Article and all other applicable regulations of this Law.

¹ https://www.dec.ny.gov/docs/permits_ej_operations_pdf/vispolfinaldraftoct18.pdf.

C. Inventory

The following elements, parcels and structures form an integral part of the scenic viewshed of the Village of Cold Spring and comprise the Inventory for purposes of this section, including views of:

1. Dockside Park
2. The riverfront park and bandstand
3. Historic waterfront buildings on West Street (north of Main Street) and Lower Main Street
4. The Chapel Restoration (formerly known as the Chapel of Our Lady)
5. The West Point Foundry, including the foundry path from the northbound MTA platform to Kemble Avenue
6. Foundry Cove
7. Foundry Dock Park
8. Kemble Ridge (including the Kemble overlook)
9. St. Mary's Episcopal Church and lawn
10. Mount Taurus (Bull Hill), including from:
 - a. Route 9D south of Main Street
 - b. West of Route 9D
11. Crow's Nest and Storm King Mountain, including from:
 - a. Kemble Avenue south of the Boulevard
 - b. Upper and lower Main Street
 - c. The waterfront area from Dockside Park to the southern boundary of the Village
12. The United States Military Academy at West Point
13. Mayor's Park
14. McConville Park, including the Tot Park

D. Procedures

For any subdivision application, or application for site plan or special permit (a "proposed action"), the Planning Board shall determine that the proposed action is not likely to impair the scenic beauty of the elements, parcels and structures listed in the Inventory. Examples of impairment include:

1. The irreversible modification of geologic forms, when the geologic forms are significant to the scenic quality of an identified scenic resource;
2. The destruction or removal of vegetation, when the vegetation is significant to the scenic quality of an identified scenic resource;
3. The modification, destruction, or removal of structure(s), when the structure(s) are significant to the scenic quality of an identified scenic resource; and
4. The addition of structure(s) which because of siting or scale, will reduce identified views or which because of scale, form, or materials, will diminish the scenic quality of an identified scenic resource.

E. Site Development Standards

To the extent possible, all structures to be built within the SVO District shall be sited and clustered in such a way as to avoid or minimize the obstructing of views of elements, parcels and structures listed in the Inventory. This is to be accomplished by the following:

1. Building Design and Placement. The Planning Board shall use the following siting and facility-related guidelines in reviewing and proposing modifications to a proposed action:
 - a. Structures shall be clustered or oriented to retain views and save open space and provide visual organization to a development;
 - b. Development shall be clustered near existing trees or other buildings whenever possible or on the down-slope of existing tree clusters instead of creating new view obstructions;
 - c. Structures and other development such as power lines and signs shall be sited so as not to interfere with views, for example, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;
 - d. Development shall be located in a manner that maintains the existing landscape features to the greatest extent feasible by locating buildings on natural topography.
 - e. Long, unbroken planes of building frontage shall be avoided whenever feasible if public views will be obstructed. For example, the gabled ends of buildings may be oriented toward the road to mitigate view obstruction;
 - f. Colors and materials shall be compatible with surrounding structures and natural features to blend buildings into the landscape;
 - g. Vegetation shall be maintained or added to provide interest, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters; and
 - h. Original geologic forms shall be maintained or restored, except when changes screen unattractive elements and/or add appropriate interest.
2. Lighting: Off-site lighting impacts shall be minimized, consistent with the Village of Cold Spring Outdoor Lighting Standards.
3. Roads and Driveways: Roads and Driveways shall take into consideration existing contours and, to the extent practical, contours following existing linear features such as tree lines or stone walls.
4. Utilities: All on-site utilities shall be located underground. The Planning Board may waive this requirement as part of Site Plan approval where the applicant can demonstrate that site conditions make undergrounding impractical or where required by the Utility

Company to be otherwise located. If this provision is waived by the Planning Board, every attempt shall be made to establish utility corridors that are shared with other utilities and shall be located to minimize site disturbance, and any adverse impacts to the natural, cultural or scenic resources in the SVO district.

5. Evaluate Adopting Waterfront Consistency Review Law

Chapter 00. Waterfront Consistency Review

Adopted by the Board of Trustees of the Village of Cold Spring XX-YY-20ZZ by L.L. No. A-20ZZ.

§ 00-1. Title.

This chapter will be known as the "Village of Cold Spring Waterfront Consistency Review Law."

§ 00-2. 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 Cold Spring's Local Waterfront Revitalization Program (LWRP).
 - (2) Provide Agencies of the Village of Cold Spring with a framework to consider the policies and purposes contained in the LWRP when reviewing private applications for actions or when reviewing Direct Agency Actions which are proposed to occur within the Village boundaries.
 - (3) Assure that proposed private actions and Direct Agency Actions are consistent with said policies and purposes of the LWRP.
- C. It is the intention of the Village of Cold Spring 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.

§ 00-3. Applicability.

All private applicants and all boards, agencies, departments, offices, other bodies or officers of the Village of Cold Spring 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 Cold Spring 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), and in this article (see list of actions) are hereby deemed consistent with the LWRP and do not require any further deliberation.

§ 00-4. 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; or
- B. Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions; or
- C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; or
- D. Any combinations of the above.

AGENCY

Any board, agency, department, office, other body or any officer of the Board of Trustees, the Planning Board, the Zoning Board of Appeals or the Historic District Review Board of the Village of Cold Spring.

CERTIFICATE OF CONSISTENCY (COC)

The form used by the appropriate Agency 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 the boundaries of the Village of Cold Spring, as shown on the Coastal Area map on file in the Office of the Secretary of State and as delineated in the Village of Cold Spring 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.

DIRECT AGENCY 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 Village of Cold Spring, 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 Cold Spring.

PRIVATE APPLICANTS

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

§ 00-5. Review of actions.

A. Responsibility for determining the consistency of actions.

(1) The Board of Trustees shall designate a board or committee to function as the Consistency Review Law Council to determine consistency with the LWRP (hereafter referred to as “the Council” in the remainder of this document).

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

- (1) When a private applicant is seeking Village approval for an action, the applicant shall prepare a Coastal Assessment Form (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 Village Clerk. The Village Clerk will forward to the Council.
- (2) When the Board of Trustees, the Planning Board, the Zoning Board of Appeals or the Historic District Review Board is planning to undertake an action, each board shall prepare a CAF and submit it, along with other relevant materials, to the Village Clerk.
- (3) When the proposed action involves a local agency other than the Board of Trustees, the Planning Board, the Zoning Board of Appeals or the Historic District Review Board, that agency shall prepare and submit a CAF, along with other relevant material, to the Village Clerk.
- (4) The Village Clerk will refer all CAFs to the Council.

C. Determination of Consistency

After receiving the CAF, the Council shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth herein. It shall base its determination on the CAF, other relevant materials provided with the CAF and another other information it deems to be necessary to its consistency review.

- (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 Council 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.
 - (3) The Council shall render a written determination to the submitting applicant (a private applicant or an Agency) within 30 days following the receipt of the CAF from the Village Clerk. The determination shall indicate whether 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.
 - (4) The Council shall, along with its consistency determination, make any suggestions concerning modification of the proposed action to make it consistent with the LWRP policy standards and conditions, or to greater advance them.
 - (5) The Council will complete the Certificate of Consistency (COC) and provide a copy to the applicant.
- D. Filing and transmitting the consistency determination. The Village Clerk shall maintain a file of each action, including any consistency determinations and any recommendations received from the Council. Such files shall be made available for public inspection upon request. The determination shall also be transmitted to the Building Inspector.
- E. Policy standards and conditions.
- Actions to be undertaken shall be evaluated for consistency with the following LWRP policy standards and conditions and with the objectives and recommendations which are explained and described in the Village of Cold Spring LWRP, a copy of which is available on the Village website and is on file in the Village Clerk's office and available for inspection during normal business hours.

Developed Waterfront Policies

Policy 1: Foster a pattern of development in the Village of Cold Spring that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development.

Policy 2: Preserve historic resources of the Village of Cold Spring.

Policy 3: Enhance visual quality and protect outstanding scenic resources.

Natural Waterfront Policies

Policy 4: Minimize loss of life, structures and natural resources from flooding and erosion.

Policy 5: Protect and improve water quality and supply in the Village of Cold Spring.

Policy 6: Protect and restore the quality and function of ecological resources throughout the Village of Cold Spring

Policy 7: Protect and improve air quality in the Village of Cold Spring.

Policy 8: Minimize environmental degradation from solid waste and hazardous substances and wastes.

Public Waterfront Policies

Policy 9: Improve public access to the waterfront and recreational use of public lands.

Working Waterfront Policies

Policy 10: Protect water-dependent uses in the waterfront and promote the siting of new water dependent uses in suitable locations.

Policy 11: Promote sustainable use of living marine resources in the waterfront.

Policy 12: Protect agricultural lands in the Village

Policy 13: Promote appropriate use and development of energy and mineral resources.

§ 00-6. 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. Such certificate must state that the action is consistent with the Village's LWRP goals in accordance with § 00-5 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.

§ 00-7. 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 Cold Spring 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.

§ 00-8. 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.

In conjunction with the adoption of the Waterfront Consistency Review Law (WCRL), the following list of State Environmental Quality Review Act (SEQRA) Type II actions are intended to clarify actions that do not require the review under the WCRL.

617.5 Type II actions.

- (a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part, except as otherwise provided in this section. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.
- (b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision (c) of this section. No agency is bound by an action on another agency's Type II list. The fact that an action is identified as a Type II action in an agency's procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:
 - (1) in no case, have a significant adverse impact on the environment based on the criteria contained in section 617.7(c) of this Part; and
 - (2) not be a Type I action as defined in section 617.4 of this Part.
- (c) The following actions are not subject to review under this Part (NOTE: HOWEVER, A BUILDING PERMIT APPLICATION MAY STILL BE REQUIRED TO PERFORM SUCH WORK):
 - (1) maintenance or repair involving no substantial changes in an existing structure or facility;

- (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;
- (3) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure;
- (4) repaving of existing highways not involving the addition of new travel lanes;
- (5) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- (6) installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles;
- (7) maintenance of existing landscaping or natural growth;
- (8) construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 500 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;
- (9) routine activities of educational institutions, including expansion of existing facilities by less than 1,000 square feet of gross floor area and school closings, but not changes in use related to such closings;
- (10) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (13) of this subdivision and the installation and conveyances of land in connection therewith;
- (11) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;
- (12) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;
- (13) The installation of solar energy arrays where such installation involves 2 acres or less of physical alteration on the following sites:

- (i) closed landfills;
 - (ii) brownfield sites that have received a Brownfield Cleanup Program certificate of completion (COC) pursuant to ECL section 27-1419 and section 375-3.9 of this Title or environmental restoration project sites that have received a COC pursuant to section 375-4.9 of this Title, where the COC under either program for a particular site has an allowable use of commercial or industrial, provided that the change of use requirements in section 375-1.11(d) of this Title are complied with;
 - (iii) sites that have received an inactive hazardous waste disposal site full liability release or a COC pursuant to section 375-2.9 of this Title, where the department has determined an allowable use for a particular site is commercial or industrial, provided that the change of use requirements in section 375-1.11(d) of this Title are complied with;
 - (iv) currently disturbed areas at publicly-owned wastewater treatment facilities;
 - (v) currently disturbed areas at sites zoned for industrial use; and
 - (vi) parking lots;
- (14) installation of solar energy arrays on an existing structure provided the structure is not:
- (i) listed on the National or State Register of Historic Places;
 - (ii) located within a district listed in the National or State Register of Historic Places;
 - (iii) been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law; or
 - (iv) within a district that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law;
- (15) granting of individual setback and lot line variances and adjustments;
- (16) granting of an area variance for a single-family, two-family or three-family residence;
- (17) reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a

permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part;

- (18) the recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n;
- (19) public or private best forest management (silviculture) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
- (20) minor temporary uses of land having negligible or no permanent impact on the environment;
- (21) installation of traffic control devices on existing streets, roads and highways;
- (22) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (23) information collection including basic data collection and research, water quality and pollution studies, traffic counts,
- (24) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (25) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (26) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (27) collective bargaining activities;
- (28) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (29) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;

- (30) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
- (31) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;
- (32) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (33) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
- (34) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
- (35) adoption of a moratorium on land development or construction;
- (36) interpretation of an existing code, rule or regulation;
- (37) designation of local landmarks or their inclusion within historic districts;
- (38) an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement;
- (39) sale and conveyance of real property by public auction pursuant to article 11 of the Real Property Tax Law;
- (40) construction and operation of an anaerobic digester, within currently disturbed areas at an operating publicly-owned landfill, provided the digester has a feedstock capacity of less than 150 wet tons per day, and only produces class A digestate (as defined in section 361-3.7 of this Title) that can be beneficially used or biogas to generate electricity or to make vehicle fuel, or both;
- (41) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

- (42) actions undertaken, funded or approved prior to the effective dates set forth in SEQRA (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978), except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;
- (43) actions requiring a certificate of environmental compatibility and public need under Major Steam or Generating Facilities article VII, VIII, X or 10 of the Public Service Law and the consideration of, granting or denial of any such certificate;
- (44) actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained.

CROSS REFERENCES:

Preparation of environmental impact statement, Environmental Conservation Law § 8-0109.
Coordination of reporting; limitations; lead agency, Environmental Conservation Law § 8-0111.
Rules and regulations, Environmental Conservation Law § 8-0113.
Phased implementation, Environmental Conservation Law § 8-0117.

RESEARCH REFERENCES AND PRACTICE AIDS:

National Environmental Policy Act of 1969, Generally. 42 U.S.C.A. § 4321.
12 NY Jur 2d, Buildings, Zoning, and Land Controls § 83.
55 NY Jur 2d, Environmental Rights and Remedies §§ 57, 60, 61, 62, 64, 65.
61A Am Jur 2d, Pollution Control §§ 46, 47.
6 CRR-NY 617.5
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