

# Chapter 132

## Waterfront Consistency Review

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

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§ 132-1. Title.

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

§ 132-2. 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's Costal Area.
  - (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.

### § 132-3. 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 1 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 consistency review.

### § 132-4. 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 officer 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.

## § 132-5. Review of Actions.

A. Responsibility for determining the consistency of actions.

- (1) The Board of Trustees designates the Planning Board to function as the Consistency Review Law Committee to determine consistency with the LWRP (hereafter referred to as “the Waterfront Advisory Committee” in the remainder of this document).

The Planning Board otherwise designated the Waterfront Advisory Committee, shall be responsible for coordinating the review of actions in the Village's Coastal Area for consistency with the LWRP, and will advise, assist and make consistency recommendations to other Village Agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.

- (2) The Village Board, with the assistance of the Planning Board, shall coordinate with the New York State Department of State regarding review of their actions.
- (3) The Village Board, with the assistance of the Planning Board, shall make applications for funding from State, Federal or other sources to finance projects under the LWRP.

B. Commencement of Review

- (1) Whenever a proposed action is located within the Village's Coastal Area, each Village Agency shall, prior to approving, funding, or undertaking the action, make a determination that it is consistent with the LWRP policy standards set forth in § 132-6 herein. No action in the Coastal Area shall be approved, funded, or undertaken by that Village Agency without such a determination.
- (2) As early as possible in a Village Agency's formulation of a direct action to be located in the Coastal Area, the Village Agency shall complete a Coastal Assessment Form (CAF) to assist the Planning Board with the LWRP consistency review.
- (3) Whenever an applicant prepares and submits an application for approval or funding of an action to be located in the Coastal Area to a Village Agency, the applicant shall prepare and submit a CAF as part of the application to assist the Planning Board with the LWRP consistency review.
- (4) The Village Agency proposing a direct action to be located in the Coastal Area on its own behalf, or receiving an application for authorization or funding from an applicant shall forward a copy of the completed CAF together with a description of the direct action by a Village Agency, or an application for authorization or funding, to the Planning Board within ten (10) days of the completion of the CAF by the Agency or receipt of the CAF from the applicant. No Village Agency shall make a final determination on an application or an action during the time allowed for the Planning Board review, prior to receiving a recommendation on the application from the Village Board.

After having received a referral from the Village Agency, the Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in this local law. An applicant or a Village Agency, as the case may be, shall submit to the Planning Board at its request, any additional information that the Planning Board decides it material and necessary to make its consistency recommendation. Any such requests for additional information shall be reasonably related to the subject of the Planning Board's authority.

- (5) If the Planning Board determines that it is necessary for other involved agencies to review the action, a copy of the CAF, the SEQRA Environmental Assessment Form, application, and any other pertinent supporting materials shall be forwarded to each such involved Agency for its review and comment. If there is no response from an involved Agency within thirty (30) days, the Planning Board shall presume that the involved Agency has not identified any conflict(s) or has no comment.

- (6) After review of the CAF and related materials and any comment received from involved Agencies or other interested parties, the Planning Board shall render its written consistency recommendation. Such recommendation shall be made within thirty (30) days following receipt of the completed CAF, unless such time is extended by mutual agreement of the Planning Board and the Village Agency or applicant. The recommendation shall indicate whether the proposed action is consistent with the LWRP policy standards or conditions. The Planning Board may, along with its consistency recommendation, make recommendations to the Village Agency concerning modification of the proposed action to make it consistent with, or to better advance, the LWRP policy standards. [If an Environmental Impact Statement (EIS) is required for a proposed action pursuant to SEQRA, the Planning Board's decision may be deferred until the EIS has been completed.]

Determination by the Planning Board

- (1) If the Planning Board determines that the action is not consistent with one or more of the LWRP policy standards or purposes, the Planning Board shall provide the Village Agency, involved Agency, or applicant with a written statement identifying the policies or purposes of the LWRP with which the proposed action conflicts and make any suggestions concerning modification of the proposed action to make it consistent with or greater advance LWRP policies or purposes. The Planning Board may also provide an alternative to the proposed action, if practicable, which would advance any of the LWRP policies or purposes.
  - (2) Where an action has been determined to be inconsistent with the policies or purposes of the LWRP, the Village Agency or applicant may propose modifications in writing, which if determined to be sufficient by the Planning Board, may result in a finding of consistency.
  - (3) Any modification agreed to by the Village Agency or applicant and the Planning Board shall be binding on the Village Agency, involved Agency or applicant and shall be included as a condition in writing any approvals and/or authorizations.
- C. If an Environmental Impact Statement (EIS) is required for an action in the LWRP, the Draft EIS (DEIS) shall contain a discussion of the effects of the action on all applicable LWRP policies and purposes. The DEIS shall be reviewed by the Planning Board, which shall provide comments to the lead agency (as defined in SEQRA regulations (6 NYCRR 617.2) on the consistency of the action with the LWRP policies and purposes. A written consistency recommendation shall be provided in the Final EIS for the action.
- D. If the Planning Board determines that the action would not be consistent with one or more of the LWRP policies and purposes, such action shall not be undertaken unless the Planning Board certifies in writing, that the proposed action meets all of the following four requirements:
- (1) The action would be undertaken in a manner which would minimize all adverse effects on such LWRP policies and purposes to the maximum extent practicable; and
  - (2) No reasonable alternative exists which would permit the action to be undertaken in a manner that will not substantially hinder the achievement of such LWRP policies and purposes.
  - (3) The action advances on or more of the other LWRP policies and purposes; and
  - (4) The action will result in overall Village, Regional and Statewide public benefit.

Such written certification shall constitute a determination that the action is consistent with the LWRP.

- E. The Planning Board shall maintain a file for each action made the subject of a consistency determination. This file shall be made available for public inspection upon request, subject to the requirements of the Freedom of Information law.

## § 132-6. Policy Standards and Conditions.

- A. 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.
- B. 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.
- C. 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.
- D. Public Waterfront Policies:
- Policy 9: Improve public access to the waterfront and recreational use of public lands.
- E. 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.

## § 132-7. Enforcement.

No Action within the Village Coastal Area which is subject to review under this Local Law shall proceed until a written determination has been issued from the Planning Board that the action is consistent with the Village's LWRP policy standards. In the event that an activity is being performed in violation of this law or any conditions imposed there under, the Village Building Inspector or any other authorized official of the Village 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. The Village Building Inspector, Village Attorney and Village Police Department shall be responsible for enforcing this Local Law.

## § 132-8. 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.

## § 132-9. Severability.

The provisions of this local law are severable. If any provision(s) of this local law are found to be invalid or otherwise unenforceable, such finding shall not affect the validity of this local law as a whole, or any part of provision hereof other than the provision(s) found to be invalid.

## § 132-10. Effective Date.

This local law shall take effect upon adoption by the Village of Cold Spring, and ten days after filing with the Secretary of State.