

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

Editor's note: Pursuant to City Record 8/30/2016, effective 9/29/2016, this chapter was repealed and reenacted in its entirety.

§ 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 62 RCNY § 4-03(b);
- (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 62 RCNY § 4-03(b).

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.

(Added City Record 8/30/2016, eff. 9/29/2016)

§ 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 62 RCNY § 4-01 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.

(Added City Record 8/30/2016, eff. 9/29/2016)

§ 4-03 Reviews for Consistency with the WRP.

(a) *Local actions.* Except as provided in 62 RCNY § 4-04(a), 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 62 RCNY § 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.

(Added City Record 8/30/2016, eff. 9/29/2016)

§ 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 theWRP 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 62 RCNY § 4-03.

(Added City Record 8/30/2016, eff. 9/29/2016)