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Jurisdiction Type: Municipal
Municipality: Village of Croton-on-Hudson
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Community Type - applicable to: Suburban; Rural
Title: Village of Croton-on-Hudson Local Waterfront Revitalization Program Consistency Review
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Abstract

The Village of Croton-on-Hudson, New York approved a Local Waterfront Revitalization Program Consistency Review Ordinance (or Chapter 225 of the Municipal Code) to ensure a proper balance between protection of natural resources and the need to accommodate population growth and economic development within the Village. The Law establishes a Waterfront Advisory Committee (WAC) in the Village of Croton-on-Hudson. First, a Village agency must prepare a coastal assessment form (CAF) to assist with the consistency review for any program approval or funding. Next, the law outlines the process the WAC must follow when reviewing applications and making recommendations of consistency. Additionally, the law outlines the LWRP policy standards and conditions, which the applications must be consistent with including, among other policy standards and conditions: minimizing flooding and erosion hazards through nonstructural means, select long-term structural measures and appropriate siting and protecting tidal and freshwater wetlands. The WAC's recommendation of consistency shall indicate whether, in its opinion, the proposed action is consistent or inconsistent with the LWRP policy standards and conditions and exceptions will only be granted if (1) no reasonable alternative exists, (2) the action will minimize all adverse effects, (3) advance one or more of the other LWRP policy standards and conditions, or (4) result in an overriding village, regional or statewide public benefit.

Resource

Village of Croton-on-Hudson NY Waterfront Revitalization
Code of the Village of Croton-on-Hudson NY
Chapter 225: Waterfront Revitalization

§ 225-1. Title.

This chapter will be known as the "Village of Croton-on-Hudson Local Waterfront Revitalization Program (LWRP) Consistency Review Law."

§ 225-2. Statutory authority; purpose; legislative intent.

A. This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Resources and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this chapter is to provide a framework for agencies to consider the policies and purposes contained in the Village of Croton-on-Hudson LWRP when reviewing applications for actions or direct agency actions located in the village coastal boundary area and to ensure that such actions are consistent with said policies and purposes.

C. It is the intention of the Village of Croton-on-Hudson that the preservation, enhancement and utilization of the natural and man-made resources of the unique coastal area of the Village of Croton-on-Hudson take place in a comprehensive manner to ensure a proper balance between protection of 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 estuarine resources and wildlife; diminution of open space areas and of public access to the waterfront; erosion of shoreline; impairment of water quality and scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

§ 225-3. Definitions.

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

ACTION — Either Type 1 or unlisted actions as defined in SEQR regulations (6 NYCRR 617.2).

AGENCY — Any board, agency, department, office, other body or officer of the Village of Croton-on-Hudson.

COASTAL ASSESSMENT FORM (CAF) — The form, contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the LWRP.

CONSISTENT — That the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

DETERMINATION OF CONSISTENCY — The decision that is made regarding whether the action complies with the policy standards and conditions set forth in the LWRP.

DIRECT ACTION — An action planned and proposed for implementation by an agency, such as but not limited to a capital project, rule-making, procedure-making and policy-making.

LEAD AGENCY — An involved agency principally responsible for carrying out, funding or approving an action and therefore responsible for determining whether an environmental impact statement is required in connection with this action and for the preparation and filing of the statement if one is required, in accordance with SEQR.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP) — The local program approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law Article 42), a copy of which is on file in the office of the Manager-Clerk of the Village of Croton-on-Hudson.

PRELIMINARY RECOMMENDATION OF CONSISTENCY — The recommendation regarding whether the action complies with the policy standards and conditions set forth in the LWRP that is made by the WAC to the lead agency prior to the lead agency's determination of environmental significance.

RECOMMENDATION OF CONSISTENCY — The recommendation that is made by the WAC regarding whether the action complies with the policy standards and conditions set forth in the LWRP.

SEQR — The State Environmental Quality Review Act, codified as Article 8 of the Environmental Conservation Law, and its implementing regulations, 6 NYCRR Part 617.

WATERFRONT ADVISORY COMMITTEE (WAC) — The Committee that will make a recommendation as to the consistency of an action with the Local Waterfront Revitalization Program (LWRP). **[Amended 6-27-1994 by L.L. No. 3-1994]**

§ 225-4. Applicability; authority of LWRP.

A. The boundary of the Coastal Zone for the purposes of the LWRP and this chapter shall be all that area that encompasses the entire Village of Croton-on-Hudson.

B. No village agency shall approve, fund or undertake an action without a determination that the action is consistent with the policy standards and conditions set forth in the LWRP of the Village of Croton-on-Hudson.

§ 225-5. Waterfront Advisory Committee.

A. The Waterfront Advisory Committee (WAC) in the Village of Croton-on-Hudson will consist of five total members appointed by the Mayor consisting of members of the Board of Trustees, the Water Control Commission, the Planning Board and, in the Mayor's discretion, the environmental consultant. The Board of Trustees, the Water Control Commission and the Planning Board shall each be represented on the WAC by at least one and no more than two members. The five WAC members will select the Chairperson on a yearly basis. **[Amended 6-27-1994 by L.L. No.3-1994]**

B. Any vacancy shall be filled by the Mayor for the balance of the expired term within 60 days of receiving notice of the vacancy. **[Amended 6-27-1994 by L.L. No. 3-1994]**

C. The WAC may employ such persons to assist in these reviews as may be needed, as authorized by the Village Board of Trustees and pursuant to law. The Chairperson of the WAC shall submit the request for employment to the Village Board of Trustees for approval.

D. The members of the WAC shall serve without compensation and shall be charged with the duties as set forth in this chapter.

E. For making a preliminary recommendation of consistency and recommendation of consistency, a quorum shall consist of three members of the WAC. **[Amended 6-27-1994 by L.L. No. 3-1994]**

§ 225-6. Consistency review.

A. The Local Waterfront Revitalization Program consistency review shall, as much as possible, be conducted simultaneously and in coordination with any SEQR review of the same action.

B. Whenever a village agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action, the applicant or, in the case of a direct action, the agency shall prepare a coastal assessment form (CAF) to assist with the consistency review. The CAF shall be prepared and submitted with the environmental assessment form (EAF) and any other documents required by SEQR.

C. For any actions, the agency that receives or prepares the EAF/CAF shall refer the EAF/CAF along with any accompanying application and other documentation, within three business days of establishment of the lead agency to the WAC.

D. Preliminary recommendation.

(1) Once the lead agency has been established, the WAC shall have 14 days from receipt of the EAF/CAF to make its written preliminary recommendation of consistency to the lead agency. The WAC preliminary consistency recommendation shall state the manner and extent to which the proposed action is likely to be consistent and/or inconsistent with LWRP policy standards and conditions. It may advise the lead agency of any additional information it believes is necessary for its own consistency recommendation and for the lead agency to make a determination of consistency. The lead agency shall make a determination of consistency pursuant to Subsections J, K, L and M of this section.

(2) When the lead agency is other than a village agency, the WAC shall make its preliminary recommendation of consistency within 14 days of receipt of the EAF/CAF to the Village Board of Trustees and advise the Board of any additional information it believes is necessary to the consistency review. In such instances, the Village Board of Trustees shall make the determination of consistency pursuant to Subsections J, K, L and M of this section.

(3) When the Village Board of Trustees proposes to make a legislative decision, or when the Zoning Board of Appeals (ZBA) is considering applications for use and area variances, the Village Board of Trustees or, as appropriate, the ZBA will make the determination of consistency for those actions which are within its scope of authority. The Village Board of Trustees or, as appropriate, the ZBA shall submit to the WAC the CAF and other information the Board has regarding the action before it. Within 14 days of receiving the CAF and any accompanying information, the WAC shall make a preliminary recommendation of consistency, in writing, to the Village Board of Trustees or, as appropriate, the ZBA. The Village Board of Trustees or the ZBA, as appropriate, shall make their determinations of consistency pursuant to Subsections J, K, L and M of this section.

(4) If the WAC's preliminary recommendation of consistency indicates that the action is not consistent with the LWRP policy standards and conditions, the WAC may work with the applicant or the agency to identify measures which would make the action consistent.

E. If the lead agency makes a negative declaration of environmental significance or a conditioned negative declaration, the WAC shall have 20 calendar days after the filing of the declaration to render its written recommendation of consistency to the lead agency, if the lead agency is a village agency, or, if not, to the Village Board of Trustees or the ZBA as appropriate, regarding the consistency of the proposed action with the LWRP policy standards and conditions. The consistency determination shall be based on the EAF, the CAF, the WAC's preliminary consistency recommendation, such further advice as the lead agency may receive from the WAC and such additional information as the lead agency may request on its own initiative and/or on the advice of the WAC. The lead agency, the Village Board of Trustees or the ZBA, as appropriate, shall make the determination of consistency within 10 days of the date for receipt of the WAC's recommendation of consistency.

F. If the lead agency makes a positive declaration of environmental significance and an environmental impact statement (EIS) is required, then the WAC shall participate in the public review and comment regarding consistency of the proposed action with LWRP policy standards and conditions.

G. If the lead agency makes a positive declaration of environmental significance, then the WAC shall have 20 calendar days after filing of the notice of completion of the draft environmental impact statement (DEIS) to render its written recommendation to the lead agency, if the lead agency is a village agency, or to the Village Board of Trustees or the ZBA, as appropriate, regarding the consistency of the proposed action with the LWRP policy standards and conditions. The lead agency, Village Board of Trustees or ZBA, as appropriate, shall make the determination of consistency when it issues its written findings statement pursuant to 6 NYCRR Part 617.9 or within 10 days after a negative declaration has been filed.

H. Recommendation of consistency.

(1) The WAC's recommendation of consistency shall indicate whether, in its opinion, the proposed action is consistent or inconsistent with the LWRP policy standards and conditions set forth in Subsection L of this section. The recommendation of consistency shall address:

(a) Potentially significant adverse impacts on coastal resources and the consistency of the action with the Village of Croton-on-Hudson LWRP policy standards and conditions.

(b) Alternative actions which would avoid the potential adverse impacts on coastal resources and ensure consistency with the LWRP policy standards and conditions.

(c) Measures to mitigate potential adverse impacts on coastal resources and resolve inconsistencies.

(2) The WAC shall approve its recommendation of consistency by a majority vote of a quorum of its members.

I. Failure of the WAC to make a preliminary recommendation or a recommendation of consistency within the allotted time period shall not preclude the lead agency, the Village Board of Trustees or the ZBA, as appropriate, from making its own determination of consistency. However, the allotted time period for the WAC's consistency recommendation may be extended by mutual consent by the WAC, the applicant and, as appropriate, the lead agency, Village Board of Trustees or ZBA.

J. Actions to be undertaken within the village shall be evaluated for consistency in accordance with the LWRP policy standards and conditions as set forth below, which are further explained and described in Section III of the Village of Croton-on-Hudson LWRP. A copy of the LWRP is on file in the Village Clerk's office and is available for inspection during normal business hours. Agencies which directly undertake actions shall also consult with Section IV of the LWRP, regarding land and water uses and projects in making their consistency determination. The LWRP policy standards and conditions shall be as follows:

(1) To revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).

(2) To retain and promote recreational water-dependent uses (Policies 2 and 2A).

(3) To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policies 5, 5A, 5B and 5C).

(4) To streamline development permit procedures (Policies 6 and 6A).

(5) To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 7B, 7C, 7D, 7E, 7F, 7G and 8).

(6) To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A, 9B and 10).

- (7) To minimize flooding and erosion hazards through nonstructural means, carefully selected long-term structural measures and appropriate siting of structures (Policies 11, 11 A, 12, 12A, 13, 13A, 14, 16, 16A, 17, 17A, 28 and 28A).
- (8) To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).
- (9) To maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 19B, 19C, 19D, 19E, 20, 21, 21A and 22).
- (10) To protect and restore historic and archaeological resources (Policy 23).
- (11) To protect and upgrade scenic resources (Policies 24, 25, 25A, 25B, 25C and 25D).
- (12) To site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29 and 40).
- (13) To prevent ice management practices which could damage significant fish and wildlife and their habitats (Policies 28 and 28A).
- (14) To protect surface and ground water from direct and indirect discharge of pollutants and from overuse (Policies 30, 30A, 30B, 31, 31A, 32, 33, 33A, 33B, 34, 34A, 35, 36, 37, 37A, 37B and 38).
- (15) To perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15 and 35).
- (16) To handle and dispose of hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39, 39A and 39B).
- (17) To protect air quality (Policies 41, 41A, 42, 43, 43A and 43B).
- (18) To protect tidal and freshwater wetlands (Policies 44 and 44A).

K. If the WAC makes any recommendation of consistency other than that the project is consistent with the LWRP standards and conditions, the lead agency or, as appropriate, the Village Board of Trustees or ZBA shall not overrule its recommendation with regard to the action unless it makes a written determination of its reasons for a contrary determination.

L. Basis for exception.

(1) If it is determined that the action would not be consistent with one or more of the LWRP policy standards and conditions, the action shall not be undertaken unless the lead agency or, as appropriate, the Village Board or ZBA makes a written finding that, on balance, the action should nevertheless be undertaken, taking into consideration each of the following factors:

- (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.
- (d) The action will result in an overriding village, regional or statewide public benefit.

(2) Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

M. The lead agency or, as appropriate, the Village Board of Trustees or ZBA shall have the authority, in its findings of consistency, to impose reasonable conditions on an action to ensure that it is carried out in accordance with this chapter.

§ 225-7. Notice; filing.

All notices, CAF's, EAF's, EIS's and all other documents shall be prepared, filed, circulated and made available as prescribed under 6 NYCRR Section 617.10 and this chapter.

§ 225-8. Enforcement.

The Village Building Inspector shall be responsible for enforcing this chapter. No work or activity on a project in the village which is subject to review under this chapter shall be commenced or undertaken until the Building Inspector has been presented with a written determination of consistency from the lead agency, Village Board of Trustees or ZBA, as appropriate. In the event that an activity is not being performed in accordance with this chapter or any condition 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.

§ 225-9. Penalties for offenses.

A. A person who violates any of the provisions of or who fails to comply with any condition imposed by this chapter shall have committed 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.

§ 225-10. When effective.

This chapter shall take effect immediately after the following have occurred:

A. Filing of the chapter in the office of the Secretary of State in accordance with § 27 of the Municipal Home Rule Law; and

B. Approval of the Village of Croton-on-Hudson Local Waterfront Revitalization Program by the Secretary of State in accordance with Article 42 of the Executive Law of New York State.