



**Office of Planning
and Development**

Coastal Consistency Review

Federal, State, and Local Consistency and Procedures

12-06-2023 Village of Hastings-on-Hudson Presentation

An Office of New York Department of State

December 7, 2023

Topics

- Federal Coastal Zone Management Act
 - NYS CMP
 - Special Management Areas
 - Significant Coastal Fish and Wildlife Habitats (SCFWH)
 - Scenic Areas of Statewide Significance (SASS)
 - Local Waterfront Revitalization Programs (LWRP)
- Roles and Procedures for:
 - Federal Consistency Review
 - State Consistency Review
 - Local Consistency Review

The Coastal Zone Management Act of 1972

- Passed in 1972
- Encourages Coastal States to develop a Coastal Management Program (CMP)
- Incentivized participation by providing funding and regulatory authority for implementation of the CMP (Consistency)
- Certain Federal Actions CANNOT be undertaken without a State's consent (15 CFR Part 930)

What is "Federal Consistency?"

Federal actions, in or outside the coastal zone, that **affect** any **land or water use or natural resource of a state's coastal zone** must be consistent with the **enforceable policies** of the state Coastal Management programs, See CZMA §307 (16 U.S.C. §1456), such as Direct (ACOE dredging), Authoritative (permit issuance), Funding to a state or local gov't (HUD Money), OCS plans

New York Coastal Management Program (NYS CMP)

- Adopted in 1982
- Incorporates multiple state laws into one set of policy statements (44 policies) for use in the NYS Coastal Area for federal direct, funding and permitting actions.
- Required the passage of Article 42 of the NYS executive law, which describes “State Consistency.” (more to follow)
- CMP incorporates LWRPs, SCFWHs, SASS, and LIS CMP

The Coastal Area

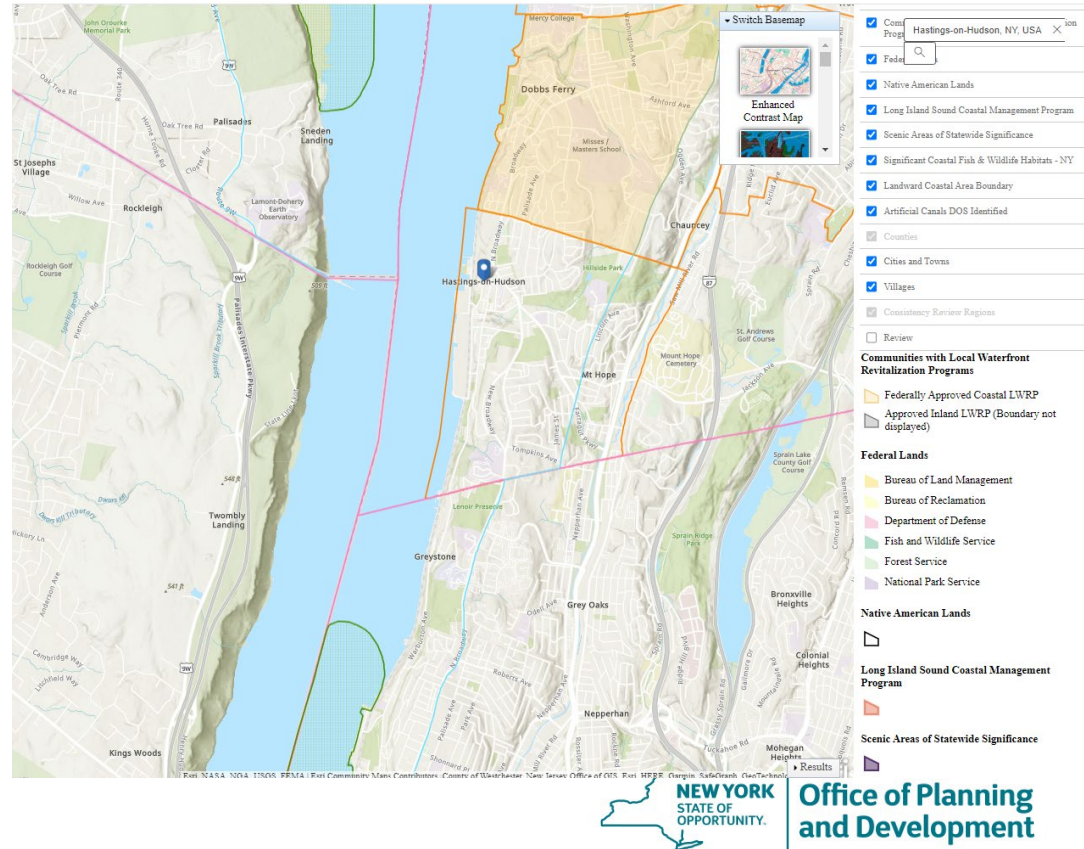
- All tidal waters (Hudson River up to Troy)
- Lakes Ontario and Erie
- St. Lawrence and Niagara Rivers
- Certain tributaries to these waters
- Roughly 1000 feet inland from these waters, generally follows a road, park boundary or natural feature



Significant Coastal Fish and Wildlife Habitats

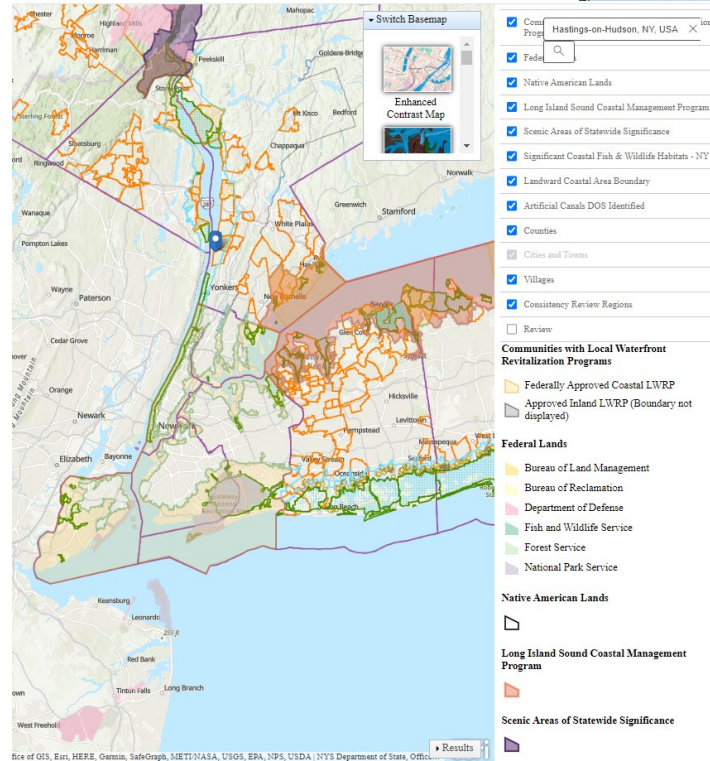
- Areas designated by DOS upon recommendation by DEC that have special characteristics
- Incorporates comments from federal agencies
- A specific coastal policy applies if action is within or affecting the SCFWH
- The whole habitat is considered, not an individual species. Species are considered during designation
- All SCFWHs provided the same protection (200+) under Policy 7

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Scenic Areas of Statewide Significance and Long Island Sound CMP

- Areas designated by DOS as having scenic importance
- Only areas are in the Hudson Valley and East Hampton
- If a project is conducted within a SASS then policy 24 applies
- LISCMP is a Regional Plan limited to the Long Island Sound



SCENIC AREAS OF STATEWIDE SIGNIFICANCE

COLUMBIA - GREENE NORTH
CATSKILL - OLANA
ESTATES DISTRICT
ULSTER NORTH
ESOPUS - LLOYD
HUDSON HIGHLANDS

NEW YORK STATE DEPARTMENT OF STATE
COASTAL RESOURCES AND WATERFRONT REVITALIZATION

JULY 1993
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Mario M. Cuomo, Governor
Gail S. Shaffer, Secretary of State

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Local Waterfront Revitalization Programs

- Municipality (1 or more) based local refinement of coastal policies
- Can be completed in the coastal area or on a designated inland waterway.
- Only those within the coastal area can be federally approved
- Only those that are federally approved are binding on federal actions
 - Secretary of State Approved Plans are binding on State and Local Actions
 - Locally Approved/Adopted Plans are binding only on Local Actions.
- Requires communities to develop local consistency laws for their own actions

Federal Consistency Review

- Direct Actions – (rulemaking, development projects etc.)
 - Maximum Extent Practicable (60-75 day review)
- Permitting Actions (includes state agencies that need federal permit)
 - Fully Consistent
 - 6 months review
- Financial Assistance to State or Local gov't (up to 120 days)
- OCS Plans (variable and strict timelines for milestones, decision due within 3 or 6 months)

- **LWRP's Role in federal consistency is advisory, but the Policies within a federally approved plan are the enforceable policies used in the review. (Coordination procedures outlined in Section 5.4.3 of the LWRP).**

Federal Consistency & Permitting Actions

- An **APPLICANT** for a federal permit on this list must **CERTIFY** that they will conduct their activity in a manner fully consistent with all 44 coastal policies or policies within an applicable LWRP. **NO BALANCING!**
- DOS concurs with, conditionally concurs with, objects to, or objects with alternatives within 6 months of receipt of complete application
- Concurrence is “conclusively presumed” if longer than 6 months
- Can “stay” the time clock by mutual consent

Complete ‘Application’

- Completed FCAF
- Detailed description
- Site map
- Statement of purpose and need
- Analysis of alternatives
- Copies of any NYS application for permits
- Copy of Federal Application (i.e. Joint App)
- Location map
- Color photos
- ID of all abutting owners
- FEIS (if required by another agency)

Federal Consistency & Permitting Actions

- General Concurrence
 - Abbreviated, No PN required
- Nationwide Permits and Regional Permits (ACOE)
- Concurrence
 - PN required
 - If conditional, applicant's refusal of conditions turn it to objection
- Objections
 - PN required
 - Encouraged to ID alternatives that are consistent

Federal Consistency & Financial Assistance to State and Local Gov'ts

- A State or local agencies provides a copy of their federal application for funding and a policy analysis
- The federal agency cannot release funds if DOS objects.
 - No published time clock but permit clock followed (generally)
- Funding for individuals is considered a direct action
- Outside of Coastal Area jurisdiction the same as for permitting actions
- **LWRP's Role in federal consistency is advisory, but the Policies within a federally approved plan are the enforceable policies used in the review. (Coordination procedures outlined in Section 5 [5.4.3] of the LWRP).**

Appeals

- Federal Agency **CAN** undertake their Direct Action despite the State's objection in certain situations
- Federal Agency **CANNOT** issue permit or funds over State's objection unless the decision is overridden by US Sec. of Commerce
 - Consistent with the objectives or purposes of CZMA
 - Significantly and substantially furthers national interest
 - Interests outweigh adverse coastal effects
 - No reasonable alternatives
 - Necessary in the interest of national security

The Policies in the CMP

- Development
- Fish and Wildlife
- Flooding and Erosion
- General
- Public Access
- Rec
- Historic/Scenic
- Agricultural
- Energy and Ice Management
- Water and Air Resources
- Wetlands

The Policies - Implementation

- Not a parts/million decision
- A project must be consistent with all policies (or N/A)
- Guidance language advises but does not control
- Objections must be based on policy!

State Consistency Review

Article 42 NYS Executive Law

- Requirement for federal approval of CMP
- Establishes policies and procedures for NYS Agencies to follow to ensure their own actions are consistent
- Tied to SEQRA
- Two Parts
 - CAF
 - Certification

State Consistency (19 NYCRR Part 600)

- Only applicable to SEQRA Type I and Unlisted Actions (statewide SEQRA)
 - Planning and Rule Making Actions
 - Direct Actions
 - Permitting Actions
- DOT SEQRA Non-Type II (17 NYCRR Part 15.6, 15.7, 15.8)
 - Redirects to 19 NYCRR Part 600

State Consistency & LWRPs

- LWRP's Role in State consistency is advisory, but the Policies within a State approved plan (and Local CAF if applicable) are the enforceable policies used in the review. (Coordination procedures outlined in Section 5.4.4 of the LWRP).
 - If a municipality and State agency have a conflict, the NY Sec. of State can be requested to mediate.
- Types of projects requiring coordination are Type I and Unlisted pursuant to SEQRA. Examples:
 - DEC - Funding assistance with planning studies and/or design and construction of projects targeted to control the erosion of steep slopes in the Town's waterfront area.
 - DOT - Provide improvements which will improve circulation and access for pedestrians and bicyclists.

Local Consistency Law

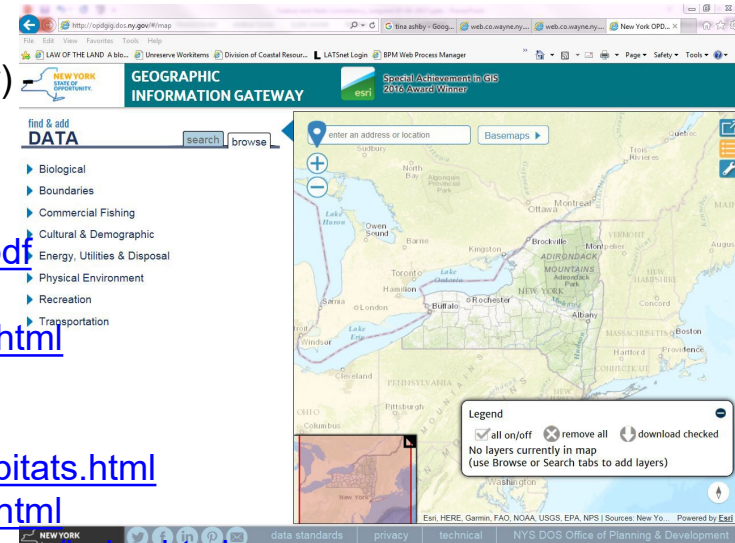
- Required municipal legislative action to implement LWRP
 - Once the LWRP is approved by NOAA/OCM – the local policies become federally enforceable
- Similar to Article 42 of the Exec. Law where State actions must be consistent
- Local law provides procedures for what types of actions must undergo review and which entity is responsible for review

The screenshot shows the website for the New York State Department of State Office of Planning & Development. The page is titled "Local Waterfront Revitalization Programs" and includes a table listing various programs and their approval dates. The table is organized by region, with the Capital Region section visible.

Local Waterfront Revitalization Programs	Approval date
Capital Region (Albany, Columbia, Greene, Rensselaer, Saratoga, Schoenectady, Warren, Washington)	
Albany (C)	10/08/1991
Athens (V)	9/20/2001
North Greenbush (T)	9/06/1990
Rensselaer (C)	3/13/1987
Schodack (T)/Castleton on Hudson (V)	3/17/1995
	4/20/2010

Useful Resources and Links

- FCAF - http://www.dos.ny.gov/opd/programs/pdfs/Consistency/FCAF_fillable.pdf
- CAF - <http://www.dos.ny.gov/opd/programs/pdfs/caf2.pdf>
- NYS Coastal Management Program and EIS - http://www.dos.ny.gov/opd/programs/pdfs/NY_CMP.pdf
- NYS Coastal Management Program Policies (for federal consistency) <http://www.dos.ny.gov/opd/programs/pdfs/CoastalPolicies.pdf>
- LIS CMP - <http://www.dos.ny.gov/opd/programs/pdfs/LISCMP.pdf>
- 19 NYCRR Policies and LIS Policies (for state consistency) - http://www.dos.ny.gov/opd/programs/pdfs/19NYCRR_Part_600-603.pdf
- Approved LWRPs (for state and federal consistency as applicable)- http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html
- Coastal Map (coastal boundary, SCFWHs, LWRP, SASS, etc.)- http://appext20.dos.ny.gov/coastal_map_public/map.aspx
- SCFWHs - <http://www.dos.ny.gov/opd/programs/consistency/scfwhhabitats.html>
- SASS - <http://www.dos.ny.gov/opd/programs/consistency/scenicass.html>
- Consistency Website - <http://www.dos.ny.gov/opd/programs/consistency/index.html>
- **Consistency shared mailbox** cr@dos.ny.gov – for any questions or submissions
- NYS Geographic Information Gateway - <http://opdgig.dos.ny.gov>



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