

**A. INTRODUCTION**

The Project Site is located within New York City's Coastal Zone Boundary as outlined in the New York City Department of City Planning's (DCP) Coastal Zone Boundary of New York City, June 1986 (see Figure 12-1). As such, this chapter assesses the consistency of the Proposed Action with the policies of New York City's *Waterfront Revitalization Program* (WRP).

The analysis concludes that the Proposed Action would be consistent with New York City's WRP.

**B. REGULATORY FRAMEWORK**

The federal Coastal Zone Management (CZM) Act of 1972 was established to support and protect the distinctive character of the waterfront, and set forth standard policies for reviewing proposed development projects along coastlines. In response to the CZM Act, New York State adopted its Coastal Management Program. This program was designed to balance economic development and preservation by:

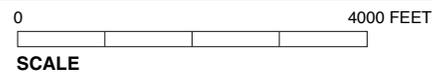
- promoting waterfront revitalization and water-dependent uses while protecting fish and wildlife, open space and scenic areas, public access to the shoreline and farmland; and
- minimizing adverse changes to ecological systems and erosion and flood hazards.

The program encourages coordination among all levels of government to promote sound waterfront planning and it requires consideration of the program's goals in making land use decisions. It also provides for local implementation when a municipality adopts a local waterfront revitalization program, as is the case in New York City. The New York State Department of State (NYS DOS) administers the program at the State level, and DCP administers it in the city.

The WRP is the City's principal coastal zone management tool. The WRP was originally adopted in 1982 and approved by NYSDOS for inclusion in the New York State Coastal Management Program. The WRP establishes the City's policies for development and use of the waterfront and provides a framework for evaluating discretionary actions in the coastal zone. The City's WRP was revised by DCP and approved by the City Council in October 1999. In August 2002, NYSDOS and federal (i.e., the U.S. Army Corps of Engineers [USACOE]) authorities adopted the City's 10 WRP policies for projects located within the City boundaries. This chapter reviews 52 questions under the 10 New York City coastal zone policies of the WRP, and assesses, where applicable, the general consistency of the project with these policies.



-  Project Site
-  Fresh Creek Urban Renewal Boundary
-  Coastal Zone



**C. CONSISTENCY DETERMINATION**

**CONSISTENCY ASSESSMENT FORM**

New York City’s WRP includes 10 policies designed to maximize the benefits derived from economic development, environmental preservation, and public use of the waterfront, while minimizing the conflicts among those objectives. The consistency determination begins with the completion of a Consistency Assessment Form (see Appendix D, “Waterfront Revitalization Program”). The form includes a checklist for WRP policies, and when “yes” is checked, further information is provided. Table 12-1 shows the Consistency Assessment Form checklist and the appropriate responses for the Proposed Project. Following Table 12-1 is further information for the policies that have been checked “yes.”

**Table 12-1  
Coastal Zone Consistency Assessment**

Question		Yes	No
<b>Location Questions</b>			
1.	Is the project site on the waterfront or at the water's edge?	X	
2.	Does the proposed project require a waterfront site?		X
3.	Would the action result in a physical alteration to a waterfront site, including land along the shoreline, land underwater, or coastal waters?	X	
<b>Policy Questions</b>			
4.	Will the proposed project result in revitalization or redevelopment of a deteriorated or under-used waterfront site? (1)	X	
5.	Is the project site appropriate for residential or commercial redevelopment? (1.1)	X	
6.	Will the action result in a change in scale or character of a neighborhood? (1.2)	X	
7.	Will the proposed activity require provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (1.3)	X	
8.	Is the action located in one of the designated Significant Maritime and Industrial Areas (SMIA): South Bronx, Newtown Creek, Brooklyn Navy Yard, Red Hook, Sunset Park, or Staten Island? (2)		X
9.	Are there any waterfront structures, such as piers, docks, bulkheads or wharves, located on the project sites? (2)		X
10.	Would the action involve the siting or construction of a facility essential to the generation or transmission of energy, or a natural gas facility, or would it develop new energy resources? (2.1)		X
11.	Does the action involve the siting of a working waterfront use outside of a SMIA? (2.2)		X
12.	Does the proposed project involve infrastructure improvement, such as construction or repair of piers, docks, or bulkheads? (2.3, 3.2)		X
13.	Would the action involve mining, dredging, or dredge disposal, or placement of dredged or fill materials in coastal waters? (2.3, 3.1, 4, 5.3, 6.3)		X
14.	Would the action be located in a commercial or recreational boating center, such as City Island, Sheepshead Bay or Great Kills or an area devoted to water-dependent transportation? (3)		X
15.	Would the proposed project have an adverse effect upon the land or water uses within a commercial or recreation boating center or water-dependent transportation center? (3.1)		X
16.	Would the proposed project create any conflicts between commercial and recreational boating? (3.2)		X
17.	Does the proposed project involve any boating activity that would have an impact on the aquatic environment or surrounding land and water uses? (3.3)		X
18.	Is the action located in one of the designated Special Natural Waterfront Areas (SNWA): Long Island Sound-East River, Jamaica Bay, or Northwest Staten Island? (4 and 9.2)	X	
19.	Is the project site in or adjacent to a Significant Coastal Fish and Wildlife Habitats? (4.1)	X	
20.	Is the site located within or adjacent to a Recognized Ecological Complex: South Shore of Staten Island or Riverdale Natural Area District? (4.1 and 9.2)		X
21.	Would the action involve any activity in or near a tidal or freshwater wetland? (4.2)	X	
22.	Does the project site contain a rare ecological community or would the proposed project affect a vulnerable plant, fish, or wildlife species? (4.3)	X	
23.	Would the action have any effects on commercial or recreational use of fish resources? (4.4)		X

**Chapter 12: Waterfront Revitalization Program**

**Table 12.1 (cont'd)  
Coastal Zone Consistency Assessment**

	Question	Yes	No
<b>Policy Questions (cont'd)</b>			
24.	Would the proposed project in any way affect the water quality classification of nearby waters or be unable to be consistent with that classification? (5)		<b>X</b>
25.	Would the action result in any direct or indirect discharges, including toxins, hazardous substances, or other pollutants, effluent, or waste, into any waterbody? (5.1)		<b>X</b>
26.	Would the action result in the draining of stormwater runoff or sewer overflows into coastal waters? (5.1)	<b>X</b>	
27.	Will any activity associated with the project generate nonpoint source pollution? (5.2)	<b>X</b>	
28.	Would the action cause violations of the National or State air quality standards? (5.2)		<b>X</b>
29.	Would the action result in significant amounts of acid rain precursors (nitrates and sulfates)? (5.2C)		<b>X</b>
30.	Will the project involve the excavation or placing of fill in or near navigable waters, marshes, estuaries, tidal marshes or other wetlands? (5.3)		<b>X</b>
31.	Would the proposed action have any effects on surface or ground water supplies? (5.4)		<b>X</b>
32.	Would the action result in any activities within a Federally designated flood hazard area or State designated erosion hazards area? (6)	<b>X</b>	
33.	Would the action result in any construction activities that would lead to erosion? (6)		<b>X</b>
34.	Would the action involve construction or reconstruction of flood or erosion control structure? (6.1)		<b>X</b>
35.	Would the action involve any new or increased activity on or near any beach, dune, barrier island, or bluff? (6.1)		<b>X</b>
36.	Does the proposed project involve use of public funds for flood prevention or erosion control? (6.2)		<b>X</b>
37.	Would the proposed project affect a non-renewable source of sand? (6.3)		<b>X</b>
38.	Would the action result in shipping, handling, or storing of solid wastes; hazardous materials, or other pollutants? (7)		<b>X</b>
39.	Would the action affect any sites that have been used as landfills? (7.1)	<b>X</b>	
40.	Would the action result in development of a site that may contain contamination or has a history of underground fuel tanks, oil spills, or other form or petroleum product use or storage? (7.2)	<b>X</b>	
41.	Will the proposed activity result in any transport, storage, treatment, or disposal of solid wastes or hazardous materials, or the siting of a solid or hazardous waste facility? (7.3)		<b>X</b>
42.	Would the action result in a reduction of existing or required access to or along coastal waters, public access areas, or public parks or open spaces? (8)		<b>X</b>
43.	Will the proposed project affect or be located in, on, or adjacent to any federal, state, or city park or other land in public ownership protected for open space preservation? (8)	<b>X</b>	
44.	Would the action result in the provision of open space without the provision for its maintenance? (8.1)		<b>X</b>
45.	Would the action result in any development along the shoreline but NOT include new water enhanced or water dependent recreational space? (8.2)		<b>X</b>
46.	Will the proposed project impede visual access to coastal lands, waters and open space? (8.3)		<b>X</b>
47.	Does the proposed project involve publicly owned or acquired land that could accommodate waterfront open space or recreation? (8.4)	<b>X</b>	
48.	Does the project site involve lands or waters held in public trust by the state or city? (8.5)	<b>X</b>	
49.	Would the action affect natural or built resources that contribute to the scenic quality of a coastal area? (9)		<b>X</b>
50.	Does the site currently include elements that degrade the area's scenic quality or block views to the water? (9.1)		<b>X</b>
51.	Would the proposed action have a significant adverse impact on historic, archeological, or cultural resources? (10)	<b>X</b>	
52.	Will the proposed activity affect or be located in, on, or adjacent to an historic resource listed on the National or State Register of Historic Places, or designated as a landmark by the City of New York? (10)		<b>X</b>

**Source:** CEQR Technical Manual (2001).

**FURTHER INFORMATION**

For each “yes” response presented above, the following describes the applicable policy and further information with respect to the Proposed Action’s consistency with the policy. The parenthetical number corresponds to the applicable question in the Consistency Assessment Form checklist.

**Policy 1: Support and facilitate commercial and residential development in areas well-suited to such development (4).**

The Proposed Project would result in redevelopment of an underused site. It would result in mixed-use development within the Fresh Creek Urban Renewal Area (FCURA), including residential and retail uses, community and public facilities, public parkland, and new streets and infrastructure. Therefore, the Proposed Project is consistent with this policy.

*Policy 1.1: Encourage commercial and residential redevelopment in appropriate coastal zone areas (5).*

The Project Site is within the FCURA. Consistent with the Fresh Creek Urban Renewal Plan (FCURP), the Project Site is appropriate for residential and commercial redevelopment, and the Proposed Project would comprise up to 2,385 residential units, a 630,000-square-foot shopping center, 68,000 square feet (sf) of local retail, a public school for intermediate and high school grade levels, a day care, 30,000 sf of community and public facilities, and 36.5 acres of newly developed public parkland. Therefore, the Proposed Project is consistent with this policy.

*Policy 1.2: Encourage non-industrial development that enlivens the waterfront and attracts the public (6).*

The Proposed Project would replace vacant, underused land with active residential, commercial, and community and public facility uses. Furthermore, the Proposed Project would develop 36.5 acres of public open space within the FCURA. These proposed uses would generate new residents, workers, and visitors to the Project Site. Therefore, the Proposed Project is consistent with this policy.

*Policy 1.3: Encourage redevelopment in the coastal area where public facilities and infrastructure are adequate or would be developed (7).*

The Proposed Project would include new streets and sidewalks as well as water, sewer, gas, electric, and other utility lines to serve the new uses on the Project Site. It would also include a bus layover and turnaround facility within the parking lot of the expanded shopping center. This facility would allow New York City Transit (NYCT) to provide direct and increased bus service within the FCURA. Therefore, the Proposed Project is consistent with this policy.

**Policy 4: Protect and restore the quality and function of ecological systems within the New York City coastal area (18).**

*Policy 4.1: Protect and restore the ecological quality and component habitats and resources within the Special Natural Waterfront Areas, Recognized Ecological Complexes, and Significant Coastal Fish and Wildlife Habitats (19).*

NYSDOS has designated Jamaica Bay as a Significant Coastal Fish and Wildlife Habitat. The Proposed Project would not result in significant adverse impacts to wetlands, plant communities, wildlife, water quality, or the aquatic biota of Jamaica Bay. Therefore, the Proposed Project would not affect the resources of Jamaica Bay responsible for its designation as a Significant Coastal Fish and Wildlife Habitat. Therefore, the Proposed Project is consistent with this policy.

*Policy 4.2: Protect and restore tidal and freshwater wetlands (21).*

Tidal wetlands have been identified along Hendrix Creek, and an approximately 3.5-acre freshwater wetland is located south of the Project Site adjacent to the Shore Parkway.

During construction, the Proposed Project would not directly impact tidal wetlands, and stormwater generated within the Project Site would be directed to the existing outfalls. Discharges would comply with the requirements of a New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPEDS) permit, and implementation of erosion and sediment control measures consistent with the “New York Standards and Specifications for Erosion and Sediment Control,” would minimize potential impacts to tidal wetlands.

When operational, the Proposed Project would not impact tidal wetlands. The amount of impervious cover within the Project Site would be greater than in the No Build condition, but the stormwater BMPs would control the quality and rate of discharge of stormwater to Hendrix Creek and to Spring Creek Basin and would minimize potential impacts on their tidal wetlands. Furthermore, the Proposed Project would not impact the wetlands and salt marsh restoration programs being undertaken in the vicinity of the Project Site nor would it alter the approximately 3.5-acre created freshwater wetland west of the Erskine Street interchange.

Therefore, the Proposed Project is consistent with this policy.

*Policy 4.3: Protect vulnerable plant, fish, and wildlife species, and rare ecological communities. Design and develop land and water uses to maximize their integration or compatibility with the identified ecological community (22).*

The state-listed endangered short-eared owl (*Asio flammeus*) has been identified at or near the Project Site (Seoane 2007). The construction of the Proposed Project would result in the loss of all foraging habitat within the Project Site, and new parkland within the FCURA would not be expected to support foraging activity by short-eared owls since its open grassy areas would undergo regular mowing and would not provide the necessary cover for prey species. Although short-eared owls are known to use the grassland habitats on the Pennsylvania and Fountain Avenue Landfills, and may have the potential to forage occasionally within the degraded open grassland habitat found within the Project Site, foraging activity in this lower quality habitat would be expected to be limited. Therefore, the loss of this possible foraging habitat for short-eared owls would not result in significant adverse impacts to this species. Terrestrial and intertidal grassland habitats known to be suitable for, and used by, this species would continue to be available within the Jamaica Bay area. Although the Fountain and Pennsylvania Avenue Landfill restoration projects are not intended as offsets for any adverse impacts from the Proposed Project, it is important to note that these projects will add over 250 acres of new grasslands that would be expected to provide suitable foraging habitat for this species. Therefore, the Proposed Project is consistent with this policy.

**Policy 5: Protect and improve water quality in the New York City coastal area.**

*Policy 5.1: Manage direct or indirect discharges to waterbodies (26).*

Stormwater generated within the Project Site would be discharged through existing stormwater outfalls, and the use of stormwater BMPs would minimize potential impacts on aquatic resources. The discharge of stormwater with completion of the Proposed

Project would not result in further impairment of the water quality of Hendrix Creek and Spring Creek Basin for their designated use as Class I waters nor would it affect future water quality and aquatic habitat improvements to these waters that will result from the water quality and aquatic habitat improvements that will occur in the No Build condition.

The lawns and plantings that will be added to the perimeter park would allow some infiltration of rainwater, but will result in a small increase in stormwater runoff over the existing condition due to the paved pathways and other impervious surfaces. Implementation of an Integrated Pest Management strategy would minimize potential impacts to stormwater quality from surface runoff generated within the perimeter park and the interior parks.

Sanitary sewage generated by the Proposed Project would be directed to the 26th Ward Water Pollution Control Plant (WPCP). The increase in sewage generation would not adversely affect the 26th Ward WPCP's ability to meet the effluent limitations of its SPDES permit, would not result in an increase in the frequency or volume of CSO events at the 26th Ward WPCP, nor would it adversely affect the water quality of Hendrix Creek, Spring Creek Basin, or Jamaica Bay.

Therefore, the Proposed Project is consistent with this policy.

*Policy 5.2: Protect the quality of New York City's waters by managing activities that generate non-point source pollution.*

See policy 5.1, above.

**Policy 6: Minimize the loss of life, structures, and natural resources caused by flooding and erosion.**

The Proposed Project would not result in new construction within the 100- or 500-year floodplain. Therefore, the Proposed Project is consistent with this policy.

**Policy 7: Minimize environmental degradation from solid waste and hazardous substances.**

*Policy 7.1: Manage solid waste material, hazardous wastes, toxic pollutants, and substances hazardous to the environment to protect public health, control pollution, and prevent degradation of coastal ecosystems (39).*

As described in the Phase I Environmental Site Assessment for the Project Site, the entire site has historic fill, much of which was landfill. The deeper fill especially (beneath the sand cover), as occurs throughout New York City, frequently contains levels of metals (including lead) and Semivolatile Organic Compounds (SVOCs) above Recommended Soil Cleanup Objectives (RSCOs). The shallower fill also sometimes exhibited exceedances of RSCOs. At some locations Volatile Organic Compound (VOCs), including acetone and methylene chloride, were found in the soil, and methane was found at several on-site locations where soil gas samples were collected. Tetrachloroethene (a common solvent also known as perchloroethylene or "perc") was found in soil gas at one location in the northwest of the site.

The development of the Proposed Project would include appropriate health and safety and remedial measures (conducted in compliance with all applicable laws and regulations and conforming to appropriate engineering practice) that would precede or govern both soil disturbance activities and subsequent construction at the site. These

measures would include development of a Remedial Action Plan (RAP) and environmental Health and Safety Plan (HASP) for soil disturbance.

The RAP and HASP would also address procedures for stockpiling, testing, loading, transporting (including truck routes), and properly disposing of all excavated material. The extent and parameters of any required testing are dependent on the type of material and the requirements of the waste disposal facilities, each of which may have different requirements for representative waste sampling and laboratory analysis prior to accepting material for disposal. All excavated material would be handled and disposed of properly to comply with federal, state, and local environmental laws. Among the pertinent regulatory requirements are those found in 6 NYCRR Parts 360 through 376, which identify hazardous waste and other waste management requirements. Any waste disposal that would occur outside of New York State would be regulated by similar federal and individual state requirements. According to Toxic Characteristic Leaching Procedure (TCLP) results of soil testing performed as a part of the prior subsurface investigations, soils generally did not exceed the United States Environmental Protection Agency's (EPA's) threshold for hazardous waste, except for lead in a composite sample collected from the northern portion of the site (near the intersection of Vandalia Avenue and Elton Street) and in some of the soils encountered during construction of the Nehemiah housing units at the northern/northeastern portion of the site.

Wastes containing hazardous materials require special handling, storage, transportation, and disposal methods to prevent releases that could impact human health or the environment. Depending on the nature of the material, federal, state, and local regulations require the use of special containers or stockpiling practices for on-site storage of the material to prevent the release of hazardous materials to the environment. The federal, state, and local departments of transportation have requirements for transporting wastes containing hazardous materials. Facilities that receive hazardous materials require federal, state, and local permits to accept the waste, and generally require that specific representative waste sampling and laboratory analysis protocols be conducted prior to accepting material for disposal.

Therefore, the Proposed Project is consistent with this policy.

*Policy 7.2: Prevent and remediate discharge of petroleum products (40).*

Residences and businesses in the vicinity of (and possibly historically within) the Project Site currently have, or likely once had, both known and undocumented above-ground storage tanks and/or underground storage tanks for fuels, including heating oil and gasoline. Some of them may have been removed, and others, although no longer in use, may remain buried in place. Some of the tanks are known to have leaked, and others have possibly leaked despite no record of a spill to date.

The development of the Proposed Project would include appropriate health and safety and remedial measures (conducted in compliance with all applicable laws and regulations and conforming to appropriate engineering practice) that would precede or govern both soil disturbance activities and subsequent construction at the site. These measures are discussed more fully below, but would include development of a RAP and environmental HASP for soil disturbance, as described in Policy 7.1 above. Therefore, the Proposed Project is consistent with this policy.

**Policy 8: Provide public access to and along New York City’s coastal waters (43).**

The Proposed Project would result in the completion of undeveloped portions of the parkland within the FCURA, which would abut Hendrix Creek, an inlet of Jamaica Bay. Therefore, the Proposed Project is consistent with this policy.

*Policy 8.4: Preserve and develop waterfront open space and recreation on publicly owned land at suitable locations (47).*

Undeveloped land along Hendrix Creek is City-owned. This land would be developed as parkland and would include areas of both active recreation (i.e., playgrounds) and passive recreation (i.e., benches and lawns). The City would own and operate these parks. Therefore, the Proposed Project is consistent with this policy.

*Policy 8.5: Preserve the public interest in and use of lands and waters held in public trust by the State and City (48).*

Implementation of the Proposed Project requires the disposition of state- and City-owned land for conveyance to residential developers and Gateway Center Properties, Phase II, LLC. However, areas of the Project Site adjacent to water bodies would continue to be owned by the City, and furthermore, the future development of these parcels would be undertaken consistent with the City-approved, amended FCURP. Therefore, the Proposed Project is consistent with this policy.

**Policy 10: Protect, preserve, and enhance resources significant to the historical, archaeological, and cultural legacy of the New York City coastal area (51).**

*Policy 10.1: Retain and preserve designated historic resources and enhance resources significant to the coastal culture of New York City.*

The Project Site does not include historic resources that are listed or are eligible for listing on the State and National Registers of Historic Places nor does it include listed or eligible New York City Landmarks. Therefore, the Proposed Project is consistent with this policy.

*Policy 10.2: Protect and preserve archaeological resources and artifacts.*

Construction of the Proposed Project would involve disturbance in the area determined in the 1996 FEIS to be sensitive for precontact period resources. As per Landmarks Preservation Commission (LPC) correspondence dated November 11, 2007 (see Appendix B, “Historic Resources”), archaeological field testing (Phase 1B testing) would be required in advance of construction in order to determine the presence or absence of archaeological resources in the portion of the Project Site which has been determined to possess archaeological sensitivity and that would be affected by the Proposed Project.

The Phase 1B testing shall be conducted in accordance with guidance promulgated by the Advisory Council on Historic Preservation (*Protection of Historic and Cultural Properties* [36 CFR 800]) and New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) (New York Archaeological Council [NYAC 2002]). The archaeological consultants who will perform this work will satisfy the qualifications specified in 36 CFR 61, Appendix A and the Principal Investigator for the Phase 1B archaeological investigations will be an archaeologist certified by the Register of Professional Archaeologists (RPA). A Testing Protocol that outlines specific testing

procedures for the Project Site would be developed in coordination with LPC and approved by LPC prior to construction activities on this portion of the Project Site.

If Phase 1B testing results in the identification of intact archaeological deposits, further field testing may be required to determine the significance (State/National Register-eligibility) of archaeological resources. If significant archaeological resources cannot be avoided by the Proposed Project, mitigation (such as data recovery) would be undertaken in coordination with LPC in order to avoid adverse impacts to archaeological resources.

Therefore, the Proposed Project is consistent with this policy.

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