

Appendix M

Sample NYSDOS Consistency Decision Records and Concurrences With Consistency Certifications and Determinations (updated as appropriate)

(No Objection and Decision Record Regarding Federal Funding For Development of Business Park In An Area With An Approved LWRP)



STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, NY 12231-0001

ALEXANDER F. TREADWELL
SECRETARY OF STATE

May 21, 1996

Honorable T.R. Gallo
Mayor
City of Kingston
City Hall
One Garraghan Drive
Kingston, New York 12401

Re: F-96-234
U.S. Department of Commerce, EDA funding for
Kingston Business Park
City of Kingston, Ulster County

Dear Mayor Gallo:

The Department of State has completed its review of the information which we received regarding the proposed financial assistance from the U.S. Department of Commerce for the Kingston Business Park.

Based upon the information submitted, the Department of State has determined that the proposed financial assistance activity would be consistent with and would advance the New York State Coastal Management Program as expressed in the City of Kingston's approved Local Waterfront Revitalization Program, and has no objection to the funding of the Kingston Business Park.

The U.S. Department of Commerce is being notified of this decision by copy of this letter.

This consistency decision is applicable to this federal financial assistance activity only, and is based upon all information and data submitted at this time. Any other federal agency involvement with this same project will be reviewed independently for its consistency with the Coastal Management Program, based upon all information available at that time.

Sincerely,

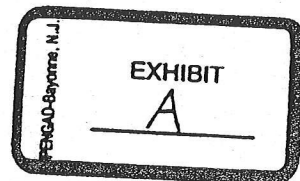
William F. Bartone
George R. Stafford
Director

Division of Coastal Resources
and Waterfront Revitalization

GRS:SCR

cc: U.S. Department of Commerce, EDA - Ed Hummel
NYS Clearinghouse - Mary Sampson
City of Kingston - Stephen M. Finkle

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CONSISTENCY DECISION RECORD

Project No. F-96-234 (Financial Assistance)

Applicant/Agency: City of Kingston

Project Description: The applicant has applied for U.S. Department of Commerce funding for the phased development of the Kingston Business Park. The initial phase of the project, which is the subject of this record, involves the development of approximately 142,200 square feet of building and associated utilities including water supplies, sewer and stormwater treatment, and electrical and telecommunications utilities, with provisions for future expansions and up to a total of 250,000 square feet of facilities. The development plan includes buffer and no-disturbance areas, facilities for water supply and disposal, utilities including electric power and telecommunications, and management measures for stormwater drainage.

The activities would be undertaken within the area covered by the City of Kingston's approved LWRP. The site is a considerable distance west of (approximately 2,000') and is separated from the Hudson River waterfront to the east by a quarry area adjacent to the river and roadways, and the Rondout Creek waterfront, and is separated from the Rondout Creek waterfront by roads and a residential area to the south. The area within which the site is located was extensively mined for limestone in the late 19th century. In addition to mining activities, former uses in the area included cement manufacturing.

The proposal has been reviewed pursuant to the State Environmental Quality Review Act (SEQRA). A Generic Environmental Impact Statement (EIS) was prepared for the development of the business park, with the City of Kingston as lead agency. The City's SEQRA findings include a determination by the City that the proposed activities would be consistent with the City's approved LWRP.

The proposed development site, consisting of an approximately 107.056 acre area, was rezoned by the City of Kingston for the development of the business park. The Zoning map contained in Appendix B of the City's LWRP indicates that the entire area within which the development is proposed consists of over 1,000 acres, which was zoned RRR for residential uses when the LWRP was adopted and approved by the State and federal government. The Proposed Land Use map in Appendix A of the City's LWRP indicates that the proposed land uses in this area include a mix of commercial, residential, and recreational uses. Much of the site surrounding the proposed construction would be undisturbed and retained as a buffer area. There would remain several hundred acres within the area where commercial, residential and recreational uses are proposed which could be developed for additional or other commercial as well as residential and recreational uses.

The site is heavily wooded, however, the woodland has no significant or unique ecological value. The site is topographically isolated from residential areas to the south by the site's elevation approximately 100 feet above the surrounding areas. The lands to the east and north of the site are primarily vacant and abandoned areas formerly used for industrial purposes such as cement mining and brick manufacturing.

The site is traversed by Central Hudson's Lincoln Park-Rhinebeck 115,000 volt (15 kV) transmission line. The EIS record indicates that Central Hudson's existing electric and gas distribution capacity

is adequate to accommodate the industrial and commercial energy demands of the proposal. Buildings would be required to meet State building and electric codes that encourage energy conservation. Site development and performance standards for the proposal require all transmission lines to be placed underground.

Stormwater runoff would be managed, collected and initially treated on-site. The record indicates that there would be no increase in the volume or rate of off-site stormwater discharges. First flush contaminants from impervious areas would be controlled by catch basin sumps and subsurface infiltration using DEC approved management measures and best management practices. A stormwater management plan is included in the proposal to: prevent flooding of abutting properties by limiting post-development off-site runoff to rates equal to or less than pre-existing rates; prevent excessive ponding and flooding in paved and other impervious areas; maintain to the greatest extent possible existing site drainage patterns; enhance the quality of storm water runoff; use on-site features such as caves and depressions to collect and dispose of stormwater originating on-site; and use existing on-site rock for construction of subsurface exfiltration areas under the proposed parking lots. There would be no direct discharges to coastal waters.

The EIS for the proposed activities, the descriptive and supporting materials submitted with it, and the City's SEQRA and LWRP consistency findings were considered in the review of this proposal, and constitute a part of this decision record.

Project Purpose: The stated purpose is economic development.

Applicable Policies: City of Kingston LWRP Policies 1, 5, 23, 23A, 25A, 30, 33, 37, 44.

LWRP and Proposed Land Use Analysis: The City's LWRP is a comprehensive land and water use plan for the LWRP area of the City of Kingston. The LWRP's Proposed Land Use plan is visually represented in Appendix A of the LWRP, which indicates that the proposed site of the Kingston Business Park is within an area where the proposed uses of the area include a mix of commercial, residential, and recreational uses. This general land use plan for the area does not contain a description of the specific ratios or types and levels of commercial, residential, or recreational uses proposed in the area. Rather, the Proposed Land Use plan for the subject area allows for a wide range of types and levels of commercial, residential, and recreational uses of the area, represented by the Proposed Land Use map in Appendix A of the LWRP, and supplemented by the LWRP policies and performance standards implemented through the City's zoning laws and other general and special purpose laws, as well as the regulatory standards of other agencies such as DEC.

The land use plan contained within the LWRP is a comprehensive plan for the LWRP area. The development of the LWRP and its subsequent adoption by the City and approval by the State was subjected to the SEQRA review process, and included the development of a generic EIS as part of the LWRP. During the LWRP development and SEQRA review process, it was determined that the appropriate use of the area within which this project is proposed should be a mix of commercial, residential, and recreational uses, as represented on the Proposed Land Use map in Appendix A of the LWRP. The incorporation of the LWRP into the State CMP, by amendment, was also subject to federal agency review and approval pursuant to the federal Coastal Zone Management Act's implementing regulations in 15 CFR 923, Subpart I. The incorporation of the LWRP into the State CMP was subsequently approved by the federal government.

The proposed land use plan contained in the LWRP was developed to guide City, State, and federal agency decision-making in the LWRP area. Although the area where this project is proposed was zoned for residential uses when the LWRP was approved, the LWRP Proposed Land Use map indicates that the proposed uses of the area include commercial, residential, and recreational uses. During the development, review, and approval of the LWRP, it was subsequently determined, as part of the SEQRA process and the adoption and approval of the LWRP, that these uses would be appropriate in this area.

The City subsequently rezoned that portion of the area where this project is proposed to allow commercial uses in the area. That action on the part of the City advanced the implementation of part of the land use plan for the LWRP by allowing commercial and industrial uses in an area where it has been determined that such uses are appropriate through the comprehensive planning process. Providing funds to develop the site for such uses would therefore be consistent with and would advance part of the proposed comprehensive land use plan contained in the City's adopted and State and federally approved LWRP.

Policy Analysis:

Policy 1 - RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL AND INDUSTRIAL, CULTURAL, RECREATIONAL, AND OTHER COMPATIBLE USES

The LWRP Policy 1 explanation indicates that local governments, through local waterfront revitalization programs, have the primary responsibility for implementing this policy, and are urged to identify areas suitable for redevelopment and to establish and enforce redevelopment programs. The applicable guidelines in the policy explanation indicate that when a federal action is proposed in an urban waterfront area, the action should: serve as a catalyst to private investment in the area; should have the potential to improve the existing economic base of the community; must not affect adjacent and upland views of the water in an insensitive manner (see also Policies 25 and 25A); and should have the potential to improve the potential for multiple uses of the site.

The Proposed Land Use map in the City's LWRP indicates that the proposed land uses in the area within which the development would be located include a mix of commercial, residential, and recreational uses. Former uses of the area included industrial activities such as mining. The site is within the Kingston-Ulster Economic Development Zone and the Kingston Enterprise Community. The site has been rezoned by the City so that the proposed activities could be conducted in the area. The site is currently unused and underutilized.

Funding the proposed development of the business park would serve as a catalyst to private investment in the business park, leading to an improvement in the economic base of the community. It would not lead to development that would be incompatible with the character of the area or otherwise adversely affect views into or out of the area (see Policies 23, 23A, 25, and 25A). It would advance the City's LWRP by redeveloping the site for commercial industrial uses in an area where a mix of commercial, residential, and recreational uses are proposed as part of the City's comprehensive LWRP land use plan. Therefore, the proposed funding for this project and its associated activities would be consistent with and would advance this policy.

Policy 5 - ENCOURAGE THE LOCATION OF DEVELOPMENT IN AREAS WHERE PUBLIC SERVICES AND FACILITIES ESSENTIAL TO SUCH DEVELOPMENT ARE ADEQUATE.

The explanation of Policy 5 states that government, by its construction, taxing, funding and regulatory powers, has become a dominant force in shaping the course of development, and that through these actions, large scale development in particular will be encouraged to locate within, contiguous to, or in close proximity to existing areas of concentrated development where infrastructure, public services, and environmental conditions are suitable for and able to accommodate development. Although existing infrastructure in the City and near the site, including utility transmission and sewage and water services, are adequate to support the proposed business park, the site itself does not contain all of the infrastructure necessary to support the proposed redevelopment of the site as a business park. The proposed funding would provide the necessary infrastructure at the site to support such uses. That new infrastructure, combined with the existing infrastructure and other public services provided by the City, would be sufficient to support the first phase of the proposed business park.

The policy explanation also states that the City of Kingston is an area of concentrated development, where infrastructure and public services are generally adequate to support future land uses and development. The site is within the Kingston-Ulster Economic Development Zone and the Kingston Enterprise Community. Therefore, the proposed activities would be consistent with and would advance this policy.

Policy 23 - PROTECT, ENHANCE, AND RESTORE STRUCTURES, DISTRICTS, AREAS, OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHAEOLOGY OR CULTURE OF THE STATE, ITS COMMUNITIES, OR THE NATION.

Policy 23A - THE CHARACTER OF THE RONDOUT AND CHESTNUT STREET HISTORIC DISTRICTS SHALL BE PRESERVED WHILE ACCOMMODATING ECONOMIC GROWTH. INDIVIDUAL HISTORIC STRUCTURES OUTSIDE THESE DISTRICT SHALL BE PRESERVED IN LIKE MANNER.

The Ponckhockie Union Chapel at 91 Abruyn Street is located approximately 300 feet from the site of the proposed business park. The chapel is a very early example of poured concrete construction, and is listed in the National Register of Historic Sites. Certain activities proposed within 500' of such sites should be reviewed and designed so that the proposed activities would not adversely affect the historic integrity of such sites. Although the proposed development park would be near the chapel, the chapel and the site where the business park is proposed are separated by distinctly different topographic elevations. The elevation of the site where the business park is proposed is approximately 100' higher than the site where the chapel is located. Because of this topographic difference, dense vegetated buffer areas that would surround buildings in the business park, and the distance of the proposed business park from the chapel, the proposed activities would not adversely affect the chapel or the character of the area adjacent to it.

The State Historic Preservation Officer (SHPO) was consulted during the review of the proposal. A three phase archeological study and an archaeological mitigation plan for the site was conducted. In a letter dated October 17, 1995, the SHPO Field Services Bureau stated: "Based upon a review on the End-of-Field letter, it is the opinion of the SHPO that the Stage 3 archeological mitigation plan has been satisfactorily implemented. No further archeological investigations are warranted...".

Since the SHPO has determined that an archaeological mitigation plan was satisfactorily implemented, and since the proposed activities would not adversely effect on-site or off-site historic, archaeological, or cultural resource areas, the proposed activities would not adversely affect this policy. Therefore, the proposed activities would not be inconsistent with these policies.

Policy 25 - PROTECT, RESTORE, AND ENHANCE NATURAL AND MAN-MADE RESOURCES WHICH ARE NOT IDENTIFIED AS BEING OF STATEWIDE SIGNIFICANCE, BUT WHICH CONTRIBUTE TO THE SCENIC QUALITY OF THE COASTAL AREA.

Policy 25A - PROTECT, RESTORE AND ENHANCE SCENIC VIEWS OR VISTAS OF LOCAL IMPORTANCE, INCLUDING VIEWS FROM HASBROUCK PARK, KINGSTON POINT, RONDOUT 2 LIGHTHOUSE, ISLAND DOCK, AND THE PORT EWEN SUSPENSION BRIDGE

The proposed Kingston Business Park would not be located within a State designated Scenic Area of Statewide Significance (SASS). However, activities outside of designated SASSs could affect the scenic quality of the coastal area by creating breaks in the tree line resulting from the clearing of canopy trees. In this instance, the view of the area where the business park is proposed is already affected by discordant features, including an oil tank farm and abandoned brick yard. Clearing the site as proposed, and the retention of buffer areas around the site, would not result in a significant reduction in the quality of views to the site or the area from other locations.

A visual simulation analysis was performed in order to evaluate the potential visual effects of the project. The analysis utilized photographs from eight sensitive viewpoints. Photographic simulations demonstrate that the view of the business park from the south would be screened by vegetated buffer areas. The view from the west would be open, and views of the area from the Hudson River and both east and west shores would be partially screened at distances of one-half to three miles. The proposed incorporation of on-site landscaping, low profile buildings and the use of muted earth tones in building facades avoids adverse effects on visual quality in the area.

The effects of artificial lighting at the site were addressed in the EIS. In order to minimize the off-site effects of artificial lighting, lights other than street lights at the site would have a 20 foot maximum height. Street lights along the access road would be at a 30 foot height. Fixtures would minimize glare and shield artificial lighting.

Existing vegetation around the construction area at the site will be undisturbed as a visual buffer. Site plans for the project were developed to prevent excessive visual "notches" or gaps in vegetative canopy, texture, line, or discordant features along the ridge line of the area viewed from outside of the area. Since the scenic quality and views of the area would not be adversely affected, and since the proposal has been designed to prevent impairments to visual quality, the proposed activities would not be inconsistent with these policies.

Policy 30 - MUNICIPAL, INDUSTRIAL, AND COMMERCIAL DISCHARGE OF POLLUTANTS INCLUDING BUT NOT LIMITED TO TOXIC AND HAZARDOUS SUBSTANCES INTO COASTAL WATERS WILL CONFORM TO STATE AND NATIONAL WATER QUALITY STANDARDS.

Policy 30B - SOURCES OF POTABLE WATER SUPPLY AND THE WATER TABLE SHOULD

BE SAFEGUARDED.

These policies are implemented primarily by DEC's regulation of industrial and stormwater discharges. A State Pollutant Discharge Elimination System (SPDES) permit from DEC would be required for the proposed activities. Prior to the issuance of SPDES permits, DEC must determine that the regulated discharges would meet State and national water quality standards to protect surface and groundwater quality.

Potable water supplies in the area are provided by a municipal water supply system that draws water from Cooper's Lake more than ten miles west of Kingston. The proposed activities would not affect that water supply.

Since the discharge of pollutants associated with the proposed activities would be required to meet State and national surface and groundwater quality standards, and the City's water supply would not be affected, the proposed activities would be undertaken in a manner consistent with these policies.

Policy 37 - BEST MANAGEMENT PRACTICES WILL BE UTILIZED TO MINIMIZE THE NON-POINT DISCHARGE OF EXCESS NUTRIENTS, ORGANICS, AND ERODED SOILS INTO COASTAL WATERS.

The proposed activities would not result in the direct discharge of nonpoint source pollution to either the Hudson River or to the Rondout Creek. The nonpoint discharge of stormwater and sheet runoff from developed portions of the site will be contained and treated on-site.

The site plan for the proposal includes undisturbed buffer areas and natural drainage swales. The use of buffers, natural drainage swales, and other management practices including the retention of runoff from pervious areas are included in the State's list of best management practices to minimize the nonpoint discharge of pollutants into coastal waters (see DEC's Stormwater Management Guidelines for New Development). Such practices are also included in the U.S. Environmental Protection Agency's January 1993 Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters. The record indicates that an erosion and sedimentation control plan for the proposed activities would be implemented for the proposed activities. These management measures and practices would be implemented in the design of the final project. Therefore, the proposed activities would be undertaken in a manner consistent with this policy.

Policy 44 - PRESERVE AND PROTECT TIDAL AND FRESHWATER WETLANDS AND PRESERVE THE BENEFITS DERIVED FROM THESE AREAS

The proposed activities would not take place within a State designated freshwater wetland. A wet area has been identified on the site, consisting of a .25 acre isolated area consisting of hydric soils at the extreme northwest corner of the site, which drains to the southwest. This site is wholly within the area set aside as a buffer area, and would remain undisturbed. Therefore, the proposed activities would not affect or be inconsistent with this policy.

SUMMARY OF COMMENTS FROM ALL FEDERAL, STATE AND LOCAL INTERESTS:

- A. Federal Agencies - The U.S. Department of Commerce issued a Finding of No Significant

Impact (FONSI) for the proposed activities. The City of Kingston's LWRP consistency determination is referenced in Commerce's FONSI. No other federal agency comments have been received.

- B. **State Agencies** - The Hudson River Valley Greenway Communities Council expressed support for the proposed development in writing, indicating that development of the project is consistent with the Greenway's goal of focusing economic development in urban areas that are served by adequate infrastructure, citing Kingston's environmental/economic balance as a model for other cities in the Hudson Valley.
- C. **Local Agencies** - The Ulster County Planning Board expressed support for the proposal in writing, indicating that after examination of the project, the Board found it to be consistent with the City's LWRP.

The Mayor of the Kingston indicated in writing: that the proposal would involve the redevelopment of the site for commercial and industrial uses consistent with Kingston's LWRP; that it would further the goals of the LWRP; that strict development standards that exceed basic zoning regulations have been incorporated in the design of the proposal; that the site was not open to the public while it supported mining activities; that the site was purchased by the City's Economic Development Corporation in order to advance this proposal; and that the proposal would help retain the City's largest private commercial employer.

The City of Kingston's Office of Planning and Engineering supports the proposal, and stated that it is consistent with the LWRP, and that it incorporates specific initiatives and controls to minimize impacts such as noise and visual impacts.

Kingston City Alderwoman Kate Fiore indicated in writing that she was a member of the Kingston LWRP Committee when the LWRP was drafted, that supports the proposal, that "The Kingston Business Park project is the type of re-use project that the Committee had in mind when we developed the LWRP", and that it would "...help Kingston retain its viability while providing a base for LWRP implementation".

D. **Public Comments**

1. **Interest Groups** - Robert H. Feller, an attorney representing Save Our Forest Action Coalition, Inc., (SOFAC) called DOS within two hours of the closure of DOS's public notice comment period for the proposal to request an extension of the comment period. His call was followed by a written request forwarded to DOS by FAX. In that written request he indicated that SOFAC and others brought suit in State Supreme Court against the City of Kingston and several of its agencies. His letter indicates that "...suit concerns the inconsistencies of the rezoning of the parcel where the project is proposed to be built with the Local Waterfront Revitalization Plan." He transmitted portions of the papers filed on behalf of the plaintiffs, which summarizes the plaintiffs argument that the proposed rezoning of the site is not consistent with the LWRP and was not in accord with a well considered plan.

2. General Public Reaction to the Project - R. Abel Garraghen, formerly Chairman of the Kingston LWRP Committee, supports the proposal.

CMP STAFF RECOMMENDATION

Local and Regional Program and Consistency Review staff recommends that the Department find the proposed activities to be consistent with the CMP, and that it has no objection to the funding of the proposed business park.

LEGAL REVIEW

Legal staff met with and has been involved with Program staff in the review of the proposal. Legal staff agrees with the recommendations of the reviewers.

REVIEWERS: W. Meyer, S. Resler.

DATE: 5/21/96.

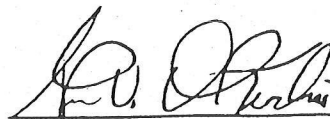
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 1996, I caused to be mailed by Federal Express, postage prepaid, true and correct copies of the foregoing CROSS MOTION BY THE U.S. DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION FOR SUMMARY JUDGMENT AND TO DISMISS PLAINTIFFS' CAUSES OF ACTION AGAINST THE FEDERAL DEFENDANTS; MEMORANDUM OF LAW IN SUPPORT OF THE CROSS MOTION BY THE UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION FOR DISMISSAL AND SUMMARY JUDGMENT, AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; STATEMENT OF MATERIAL FACTS BY UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION IN SUPPORT OF ITS CROSS MOTION FOR DISMISSAL AND SUMMARY JUDGMENT, AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; OBJECTIONS OF THE U.S. DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION UNDER LOCAL RULE 7.1(f) AS TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS; DECLARATION OF RUSSELL W. CRAIG; AND DECLARATION OF STEVEN C. RESLER, addressed to: ||

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