

MEMORANDUM

To: Richard Slingerland, Manager; Village of Mamaroneck

From: Barbara Beall, Chris Round; Chazen

Date: March 31, 2016

Re: NYSDOS Coastal Consistency Review Process and Timeframes
Corps Mamaroneck and Sheldrake Rivers Flood Risk Management Plan

Job #: 8160X.00

Today we spoke with the New York State Department of State (NYSDOS) representatives Jeff Zappieri, (Supervisor Consistency Review Unit) and Rosa Mendez (Review Staff) about the above referenced project. The purpose of the call was to discuss the NYSDOS review process and next steps relative to the NYSDOS's Consistency Certification for the project.

SUMMARY: This memorandum summarizes the salient points of the conversation. In short the NYSDOS indicated that there is a procedural issue regarding the information submitted by the USACOE and the timeclock on the review of the project has not been started. The NYSDOS has communicated this to the US Army Corps of Engineers (Corps) and anticipates the Corps will provide an updated submittal in the coming weeks (likely mid-April). If NYSDOS judges the new submittal complete, it will be forwarded to the Village and the review timeclock (60 days with possible 15 day extension) will commence. The NYSDOS encourages comments from the Village (as well as the advisory opinion from Mamaroneck's Harbor Zone and Coastal Management Commission (HZCMC)).

CURRENT STATUS: This project is a "Direct Federal Action." As such, the NYSDOS is responsible for determining consistency under Coastal Zone Policies, taking into account both the Mamaroneck's Local Waterfront Revitalization Plan (LWRP) policies as well as state and regional Coastal Management policies. The Corps DEIS for the Mamaroneck and Sheldrake Rivers Flood Risk Management Plan was submitted to the NYSDOS along with the Corps' Negative Determination that the project would not effect coastal resources. This information was also submitted to the Mamaroneck's HCZMC for an advisory opinion by that group. This is because the Village of Mamaroneck's LWRP identifies the HCZMC as the point of contact for providing an advisory opinion to NYSDOS on Federal Actions occurring within the Coastal Zone. The NYSDOS has received comments from the HCZMC and others on the determination.

On March 9, 2016 the NYSDOS issued correspondence to the Corps indicating a procedural disagreement on the Corps' "negative determination," based on the fact that the Corps' DEIS itself actually documented potential impacts to coastal resources. A Negative Determination can only be made if there are no effects and the NYSDOS therefore did not agree procedurally with that determination. This was not a substantive determination.

Subsequently the NYSDOS had telephone communications with the Corps to discuss NYSDOS' concerns. The NYSDOS suggested that the Corps reevaluate the Determination, requiring a Coastal Zone Consistency Assessment by providing additional information required under the Federal Action Review Process including review of additional alternatives. According to the NYSDOS the Corps indicated that the Consistency Assessment would be resubmitted within the next several weeks. When NYSDOS receives the new Consistency Assessment, it will be circulated to both the Mamaroneck HCZMC and the Village Manager. The NYSDOS will again ask the HCZMC to comment on the new submittal. The NYSDOS understands that Village Board of Trustees is also interested in this project and may wish to provide the NYSDOS additional information or may offer different opinions about project and its consistency with coastal policies and/or important public interest factors. The NYSDOS welcomes the Village's comments.

PROCEDURE: NYSDOS encourages early coordination and consultation, but the Applicant (in this case, the Corps) determines when the project is "ripe" for Coastal Consistency review. The Corps can ask for Consistency Review at any time in the process. Generally the Corps submits when they "select" a plan or alternative for further development. The review process begins when the Corps submits a procedurally complete application. There is a 60 day review period on federal actions, with the potential for a 15 day extension on request for comments.

The NYSDOS, who is responsible for determining Coastal Consistency on Federal Actions, encourages dialog with the federal agency and will often offer suggestions or solutions regarding the project that would aid in securing a favorable consistency determination. The NYSDOS can make a variety of consistency findings:

- Procedurally Object when insufficient information is provided or determination is not procedurally correct.
- Consistent with Coastal Policies.
- Conditional Concurrence, identifying conditions to alleviate certain policy concerns. Common conditions are construction timing windows to avoid impacts to species.
- Object to Consistency Determination but identify alternatives that could be consistent.

If the objection is substantive (last bullet item), the Federal Agency cannot resubmit that project, there needs to be modifications to remove the objection.

REVIEW OF SUBSTANTIVE ISSUES: The NYSDOS indicated that each project is reviewed in light of its physical and environmental context, the nature and scope of the project, and the potential consistency (or lack thereof) on particular coastal policies that are in relevant to the project being reviewed. That is to say, the process looks at the nature of the landscape, the nature of the problem, and potential solutions versus coastal policies.

The NYSDOS will look at the existing conditions in the river systems (hardened versus not hardened), the feasibility/ability of using non-structural versus structural (and soft versus hard structural) methods to arrive at the project purpose. The review will also look at methods to avoid and minimize impacts to areas of concern in coastal policies both during construction and operation to the maximum extent

practicable. Focusing first on the feasibility of non-structural methods to reduce flooding impacts is important as those alternatives may have reduced impacts.

The NYSDEC is a partner in this process. The USFWS prepared an Appendix to the DEIS. The NYSDOS views both NYSDEC and USFWS as advisory agencies. The NYSDOS is not bound to those agencies' comments, but does rely and take into consideration their technical expertise and comments.

NEXT STEPS: Chazen is ready to assist the Village in continuing the dialog with federal or state agencies as the Village might need, and to assist the Village in preparation of submittals that would convey the Board of Trustee's assessment of consistency with coastal policies and the vitally important nature of this flood management project.