4.4.6 Coastal Resources

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4.4.6.1 Introduction

New York State's waterfronts are exciting and diverse, from Niagara Falls to Montauk Point, from New York Harbor to the lakes of the Catskills and the Adirondacks, from the Delaware River to the Finger Lakes, and from the Hudson River and the Canal system to the Great Lakes and the St. Lawrence River. The New York State’s coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources.

The Coastal Resources Management program involves three separate components: State Coastal Management Program, State Coastal Erosion Hazard Areas and Federal Coastal Barrier Resources System. Applicability of these components depends on location, existing conditions and funding source.

Table 1. Applicability of Coastal Resources Considerations by NYSDOT Region

<table>
<thead>
<tr>
<th>NYSDOT Region</th>
<th>State Coastal Management Program Areas</th>
<th>State Coastal Erosion Hazard Areas</th>
<th>Federal Coastal Barrier Resources System</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>All</td>
<td>3, 4, 5, 7, 8, 10, 11</td>
<td>3, 4, 5, 7, 10, 11</td>
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</tbody>
</table>

State Coastal Management Program

Under the federal Coastal Zone Management (CZM) Act the New York State Department of State (NYSDOS) implements the State Coastal Management Program. New York State Department of Transportation (NYSDOT) activities that are within or affecting the State's designated Coastal Area and/or within an area with an approved Local Waterfront Revitalization Program (LWRP) must be consistent with NYSDOS approved or locally adopted coastal policies. In some parts of the State, the coastal policies have been refined to take into account regional and local consideration (e.g., Long Island Sound Regional Coastal Management Program, NYC Waterfront Revitalization Program). The State Coastal Consistency Review process requires that NYSDOT certify to NYSDOS that the project is consistent with state’s Coastal Policies (State Coastal Management Program Areas).

NYSDOS administers the State Coastal Management Program that protects the following:

- designated Coastal Areas (including New York State's tidal coastal waters and the adjacent shorelands) to approximately one thousand feet inland;
- the Great Lakes;
- designated inland waterways through the Coastal Zone Management Program and through municipalities adopting their own LWRP; and
- other areas defined in 19 NYCRR Parts 600-601 and in Article 42 of the Executive Law, including Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill Van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, and their connecting waterbodies, bays, harbors, shallows and marshes.

Designated Inland Waterways, as defined by Article 42 § 911 of the Executive Law, include the...
state's major inland lakes consisting of lakes Big Tupper, Canandaigua, Cayuga, Champlain, Chautauqua, Conesus, Cranberry, George, Indian, Keuka, Long, Oneida, Onondaga, Otsego, Owasco, Raquette, Sacandaga, Saratoga, Schroon, Seneca, Skaneateles, and Upper Saranac; the state's major rivers comprised of the Chemung, Delaware, Hudson north of the federal dam at Troy, Mohawk and Susquehanna River; the Barge Canal system as defined in Article 1, § 2 of the Canal Law (Laws of New York, CAL - Canal Law); and the adjacent shorelands to the extent such inland waters and adjacent lands are strongly influenced by each other, including but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs and erosion prone areas.

Municipalities along designated inland waterways or in a designated Coastal Area may voluntarily develop a LWRP to refine the NYSDOS coastal area boundaries and coastal area policies. The LWRPs are reviewed and approved by NYS Secretary of State to ensure that they are consistent with State Coastal Policies. See Appendix D.4 for a list of qualifying waterways.

A Coastal Special Management Area is an area in the marine and coastal district in which the rules and regulations restrict the taking of fish and shellfish. Special Management Areas include one or more of the following areas: Regional Coastal Management Programs areas, LWRPs, Significant Coastal Fish and Wildlife Habitats (Appendix D.7), Scenic Areas of Statewide Significance (Appendix D.8) or areas with Harbor Management Plans.

State Coastal Erosion Hazard Areas
NYS Department of Environmental Conservation (NYSDEC) regulates certain activities within mapped coastal erosion hazard areas along Long Island Sound, Lake Erie, Lake Ontario, and the Atlantic Ocean (State Coastal Erosion Hazard Areas). A Coastal Erosion Management Permit (Appendix D.12) is required for regulated activities in coastal erosion hazard areas.

Coastal Erosion Hazard Areas include natural protective feature areas (e.g., beaches, dunes, sandbars, spits, shoals, barrier bars, barriers islands, bluffs and wetlands) and may include structural hazard areas (i.e., area receding at an average rate of one foot or more per year based on long term average annual recession rates).

The construction or placement of a structure, or any action or use of land which materially alters the condition of land, including grading, excavating, dumping, mining, dredging, filling or any disturbance of soil, is a regulated activity requiring a coastal erosion management permit from NYSDEC, or the county or local government, whichever has the jurisdiction.

Federal Coastal Barrier Resources System
The Coastal Barrier Resources System is comprised of distinct geographical areas, called units, within regulated undeveloped coastal barriers along the Atlantic, Gulf and Great Lakes coasts. The USFWS maintains the repository of Coastal Barrier Resources Act (CBRA) maps enacted by Congress.

The U.S. Fish and Wildlife Service (USFWS) prohibits certain federally-funded activities within the mapped Coastal Barrier Resources System in Nassau, Suffolk, Queens, Jefferson, Oswego,
Cayuga, Wayne, Monroe, and Erie Counties (Federal Coastal Barrier Resources System). If the project is not in one of these counties, no further procedures are required for the Federal Coastal Barrier Resources System.

The Coastal Barrier Resources Act (CBRA) prohibits spending federal funds on construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any Coastal Barrier Resources System. Federal funds may be spent on the maintenance, replacement, reconstruction or repair, but not expansion, of any publicly owned or operated roads, structures or facilities that are essential links in a larger network or system.

4.4.6.2 Section Objectives

This section outlines procedures for documenting consistency with State Coastal Policies (State Coastal Management Program Areas), for ensuring compliance with the Coastal Erosion Hazard Areas program (State Coastal Erosion Hazard Areas), and for ensuring compliance with the Coastal Barrier Resources Act (Federal Coastal Barrier Resources System).

4.4.6.3 DOT Policy

The NYSDOT policy regarding management of coastal resources is to ensure that every NYSDOT project that is in or affecting the state’s coastal resources is consistent with the applicable coastal regulations and requirements. The Department activities are implemented to preserve, protect, and where possible, restore or enhance, the state’s coastal resources.

4.4.6.4 Legal Basis

Abstract of Law/Regulation

Various state and federal agencies have jurisdiction over the coastal resources in the State, including NYSDOS, NYSDEC, and USFWS.

The Coastal Zone Management Act (CZMA) of 1972 established the national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone. The CZMA requires that Federal agency activities that affect any land or water use of the coastal zone must be consistent to the maximum extent practicable with approved state management programs. To comply with provisions of the CZMA, NYSDOT is required to certify to NYSDOS that the project is consistent with state coastal policies. NYSDOT actions that are not consistent with state coastal policies or with an approved LWRP are not to be undertaken. If a municipality identifies a conflict between the Department action and its LWRP, the NYSDOT and the municipality should meet to resolve the issue.

Waterfront Revitalization of Coastal Areas and Inland Waterways - In section 910 of the NYS Executive Law (Article 42), the legislature found the New York state's coastal area and inland waterways are unique with a variety of natural, recreational, industrial, commercial, ecological, cultural, aesthetic and energy resources of statewide and national significance. One
The key policy declared in the Law is to assure consistency of state actions and, where appropriate, federal actions, with policies of the coastal area and inland waterways, and with accepted waterfront revitalization programs of the area defined or addressed by such programs.

**Coastal Erosion Hazard Areas** - Pursuant to 6 NYCRR Part 505 and Article 34 of the ECL, NYSDEC regulates activities within mapped coastal erosion hazard areas along Long Island Sound, Lake Erie, Lake Ontario, and the Atlantic Ocean. A coastal erosion management permit is required for regulated activities in coastal erosion hazard areas, as mapped by NYSDEC. Activities, development or other actions in these areas should be undertaken to minimize damage to property, and prevent the exacerbation of erosion hazards.

**Coastal Barrier Resources Act** - The 16 U.S.C Parts 3501 - 3510 prohibits federal expenditures that encourage development or modification of coastal barriers. The USFWS determines if project activities can be undertaken with federal funds within the mapped Coastal Barrier Resources System in Nassau, Suffolk, Queens, Jefferson, Oswego, Cayuga, Wayne, Monroe, and Erie Counties.

**Other Related Regulations**

In accordance with **Section 9 of the Rivers and Harbors Act**, if work involves bridges over navigable waters, a permit may be required from the US Coast Guard.

**Section 404 of the Clean Water Act** and/or **Section 10 of the Rivers and Harbors Act** require a permit from the USACE if work involves the discharge of dredged or fill material into waters of the United States, including wetlands, and/or work in or over any navigable waters of the United States. In accordance with **Section 401 of the Clean Water Act**, if the project activities are regulated under Section 404, the Water Quality Certification should be obtained from NYSDEC.

**Bridges, Structures, and Hydraulics** - Pursuant to 23 CFR Part 650 all highways projects funded in whole or in part, shall be located, designed, constructed and operated according to guidelines that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources.

**Lands Underwater: Grants, Easements, Leases, Permits** - Pursuant to 9 NYCRR Part 270 if a project involves activities in, on, or above State–owned land underwater, or fill placement on such land underwater, then a lease, easement, or permit should be obtained from the Commissioner of General Services. See section 4.4.2 of The Environmental Manual (TEM) for more information.
### 4.4.6.5 General Methodology Analysis and Evaluation

State Coastal Management Program Areas (CMP)

<table>
<thead>
<tr>
<th>PROJECT STAGE</th>
<th>ACTION / STEP</th>
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<tbody>
<tr>
<td>INITIATION</td>
<td>Review and comment on the Draft Initial Project Proposal (IPP) to determine if there are any special circumstances or/and special technical activities that may require additional attention. During this stage the funding source(s) is (are) identified (e.g., fully/partially federally-funded or 100% state-funded).</td>
</tr>
</tbody>
</table>
| SCOPING       | Existing Conditions/Affected Environment.  
STEP CMP1. Determine if project is in or may affect a Coastal Management Program Area.  
Review the Coastal Area maps, using one of the following, to determine if the project is wholly or partially in the State's designated Coastal Area, or in the Coastal Special Management Areas, or is in an area with approved or pending Local Waterfront Revitalization Programs (LWRP).  
1. NYSDOT Environmental Viewer  
2. The New York State Coastal Atlas shows the landward extent of New York State’s Coastal Area Boundary  
Review the list of Coastal Waterbodies and Designated Inland Waterways, see Appendix D.4. A project outside of a designated Coastal Area may affect the Coastal Area if, for example, it will:  
a) Cause changes in the manner in which land, water or other coastal area natural resources are used; cause limitations on the range of uses of coastal area natural resources; or cause changes in the quality of coastal area natural resources;  
b) Negatively affect physical features in the coastal area such as changing drainage or erosion rates or discharging toxic or hazardous substances;  
c) Negatively affect port development, traditional maritime activities, or other water dependent uses;  
d) Negatively affect coastal fish or wildlife resources or wetlands; or  
e) Obstruct public access to the coastal area.  
Typically the Regional Environmental/Landscape Architecture Units undertake the review and provide a determination.  
- If the project is outside of, and does not affect a designated Coastal Area, no review is required for any coastal resources (including designated Coastal Areas, Coastal Erosion Hazard Areas or Coastal Barrier Resources System). Document this determination in the
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<td>Refer to Appendix D.13 for Programmatic Agreement for the Coastal Zone Management (CZM) Process for Element-Specific Federal Aid Eligible Highway Work.</td>
</tr>
</tbody>
</table>

**STEP CMP2. State Environmental Quality Review (SEQR) Action.**

- If the project is a **SEQR Excluded Action**, no state coastal consistency review is required. No further processing is required under this section of the procedure. Document this in the Project Documentation.

- If the project is a **SEQR Type II Action or Exempt Act**, and project will not require Federal Permit, no further processing is required under this section of the procedure. Document this in the Project Documentation.

- If the project is a **SEQR Type II Action or Exempt Act**, and project will require Federal Permit, the coastal consistency review will be required. Go to Step LWRP1.

- If the project is Non-Type II Action, go to Step LWRP1.

**STEP LWRP1. Determine if project is in an area with an approved or pending Local Waterfront Revitalization Program (LWRP).**

Review any approved or pending LWRPs (Appendix D.3).

- If the project is not in an area with an approved or pending LWRP, no LWRP consistency review is required. No further steps are required for consistency with LWRP. Document this determination in the Project Documentation. Continue to Step CMP3.

- If the project is in an area with an approved LWRP or with a pending LWRP, inform the municipality in writing that the project will occur within the boundaries of its LWRP. Document this in the Project Documentation. Go to Step CMP3.

- If project is in, or outside but affecting a Coastal Area, go to Step CMP2.
- If the project is not federally-funded, no federal aid documentation is needed. Go to Step LWRP2.

- If the project is fully or partially federally-funded and project activities are determined to qualify for “programmatic consistency”, a Federal Aid Notification (FAN) letter and concurrence from NYSDOS are not required. Document this in the Design Report. Go to Step LWRP2.

- If the project is fully or partially federally-funded, but “programmatic consistency” does not apply, complete and submit a Federal Aid Notification (FAN) letter to NYSDOS. Also, send a copy of FAN letter to the permitting Federal Agency, where applicable. The FAN should be sent to NYSDOS early in Preliminary Design. Document this in the Design Report. Go to Step LWRP2.

  Typically the Regional Environmental/Landscape Architecture Units complete and send FAN to NYSDOS.

**STEP LWRP2. Coordination with Municipality of an approved or pending Local Waterfront Revitalization Program (LWRP).**

- If the project is in an area with an approved or pending LWRP, coordinate with the responsible municipal government agency in writing that the project will occur within the boundaries of its LWRP and is consistent with its policies. Document in the Design Report. Go to Step CMP4.

- If the project is not in an area with an approved LWRP or a pending LWRP, document this in the Design Report. Go to Step CMP4.

**STEP CMP4. State Consistency Review for Coastal Management Program Areas: State Coastal Assessment Form.**

- If the project is a SEQR Non-Type II Action, state coastal consistency determination is required and a State Coastal Assessment Form (CAF) must be completed and send to NYSDOS. Document this in the Design Report. Go to Step CMP5.

  Typically the Regional Environmental/Landscape Architecture Units complete a CAF.

Federally permitted projects require that NYSDOT provide sufficient documentation for NYSDOS to determine consistency with State Coastal Policies or LWRP policies. This documentation includes a Federal Consistency Assessment Form (FCAF) and copies of correspondence with/from the LWRP (where applicable).

- If the project does not involve any federal permits, document this in the Design Report. No further processing is required under this section.

- If the project involves a USACE Nationwide Permit (not an Individual USACE Permit), regardless of Pre-Construction Notification (PCN) requirements, and the project is in or outside of a Coastal Special Management Area (areas with either 1) Regional Coastal Management Programs, 2) LWRPs, 3) Significant Coastal Fish and Wildlife Habitats, 4) Scenic Areas of Statewide Significance, or 5) Harbor Management Plans), refer to Appendix D.6 for consistency determination of authorized activities under NWPs and FCAF requirements. Document this in the Design Report. Go to Step CMP6.

- If the project involves any federal permits or approvals, such as U.S. Coast Guard Section 9 Permit, an Individual USACE Section 404/Section 10 Permit, and the project is in or affecting the state Coastal Areas, complete the FCAF. Document this in the Design Report. Go to Step CMP6.

Typically the Regional Environmental/Landscape Architecture Units undertake the coordination with LWRP and complete a FCAF.

<table>
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<th>FINAL DESIGN</th>
<th>STEP CMP6. Confirm Coastal Consistency</th>
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<tr>
<td></td>
<td>If required, send completed FCAF, appropriate Permit Application, and all information and data necessary to assess the effects of the proposed activity on and its consistency with the Coastal Management Program to NYSDOS. Document this in Project File.</td>
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</tbody>
</table>
State Coastal Erosion Hazard Areas (CEH)

<table>
<thead>
<tr>
<th>PROJECT STAGE</th>
<th>ACTION / STEP</th>
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</thead>
<tbody>
<tr>
<td>INITIATION</td>
<td>Review and comment on the Draft Initial Project Proposal (IPP) to determine if there are any special circumstances or/and special technical activities that may require additional attention. During this stage the funding source(s) is (are) identified (e.g., fully/partially federally-funded or 100% state-funded).</td>
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</tbody>
</table>
| SCOPING       | **Existing Conditions/Affected Environment.**

**STEP CEH1. Determine if project is potentially in a coastal erosion hazard area.**

- If the project is not within 1000 feet (mean low water) of: the lakeshore of Lake Erie or Lake Ontario, the shoreline of Long Island Sound, the shoreline of the Atlantic Ocean, and is not located on the Barrier Island section of Long Island, the project is not in a coastal erosion hazard area, thus no further steps are required for this procedure. Document this in the Project Documentation.

- If the project is within 1000 feet (mean low water) of: the lakeshore of Lake Erie or Lake Ontario, the shoreline of Long Island Sound, the shoreline of the Atlantic Ocean, or is located on the Barrier Island section of Long Island, the project is potentially in a coastal erosion hazard area. Go to Step CEH2.

Typically the Regional Environmental/Landscape Architecture Units undertake the review and provide a determination.

**STEP CEH2. Determine if project is in a mapped coastal erosion hazard area.**

To confirm if the project is in a mapped coastal erosion hazard area, contact the NYSDEC regional contact person. Describe project location (e.g., town name, road names, and distance from shore) to confirm whether the project is in a coastal erosion hazard area.

- If the project is not in a mapped coastal erosion hazard area, no further steps are required for this section of the procedure. Document in the Project Documentation that the project is not in a mapped coastal erosion hazard area.

- If the project is in a mapped coastal erosion hazard area, go to Step CEH3.
Typically the Regional Environmental/Landscape Architecture Units contact the NYSDEC to confirm if project is in a mapped coastal erosion hazard area.

<table>
<thead>
<tr>
<th>PRELIMINARY DESIGN</th>
<th>STEP CEH3. Determine if project requires a Coastal Erosion Management Permit.</th>
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<tbody>
<tr>
<td></td>
<td>Coordinate with NYSDEC and review the list of regulated activities in 6 NYCRR Parts 505.6 through 505.9 to determine if the project requires a Coastal Erosion Management Permit.</td>
</tr>
<tr>
<td></td>
<td>• If the project does not involve a regulated activity in a coastal erosion hazard area, no coastal erosion hazard permit is required. Document in Design Report that the project is in a coastal erosion hazard area and that the project activities are not regulated by the Coastal Erosion Hazard Areas program.</td>
</tr>
<tr>
<td></td>
<td>• If the project involves a regulated activity in a coastal erosion hazard area, a Coastal Erosion Management Permit or variance from NYSDEC will be required. Document in Design Report.</td>
</tr>
<tr>
<td></td>
<td>Typically the Regional Environmental/Landscape Architecture Units coordinate with NYSDEC to determine if project requires a Coastal Erosion Management Permit or variance.</td>
</tr>
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<thead>
<tr>
<th>FINAL DESIGN</th>
<th>STEP CEH4. Apply for a Coastal Erosion Management Permit or Variance.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Obtain a Coastal Erosion Management Permit or variance from NYSDEC for regulated activity in a coastal erosion hazard area. For permit/variance application, refer to Appendix D.12. Document this in Project File.</td>
</tr>
<tr>
<td></td>
<td>Typically the Regional Environmental/Landscape Architecture Units applies for Coastal Erosion Management Permit or variance.</td>
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Federal Coastal Barrier Resources System (CBR)

<table>
<thead>
<tr>
<th>PROJECT STAGE</th>
<th>ACTION / STEP</th>
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</thead>
<tbody>
<tr>
<td>INITIATION</td>
<td>Review and comment on the Draft Initial Project Proposal (IPP) to determine if there are any special circumstances or/and special technical activities that may require additional attention. During this stage the funding source(s) is (are) identified (e.g., fully/partially federally-funded or 100% state-funded).</td>
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</tbody>
</table>
| SCOPING       | **Existing Conditions/Affected Environment.**

**STEP CBR1. Determine if the Coastal Barrier Resources Act is applicable.**

- If the project is not a federally-aided project in Nassau, Suffolk (Region 10), Queens (Region 11), Jefferson (Region 7), Oswego (Region 9), Cayuga (Region 3), Wayne, Monroe (Region 4), Erie (Region 5) County, the Coastal Barrier Resources Act is not applicable and no further steps are required for this procedure. Document this in the Project Documentation.

- If the project is a federally-aided project in Nassau, Suffolk (Region 10), Queens (Region 11), Jefferson (Region 7), Oswego (Region 9), Cayuga (Region 3), Wayne, Monroe (Region 4), Erie (Region 5) County, the Coastal Barrier Resources Act may be applicable. Go to Step CBR2.

**STEP CBR2. Determine if project is in the Coastal Barrier Resources System**

Review [Coastal Barrier Resources Maps](#) to determine if the project is in the Coastal Barrier Resources System in New York State.

- If the project is not in the Coastal Barrier Resources System, state this in the Project Documentation. No further steps are required for this procedure.

- If the project is in the Coastal Barrier Resources System, state this in the Project Documentation, and identify the name and adoption date of the unit. Go to Step CBR3.

Typically the Regional Environmental/Landscape Architecture Units do review and determination.
<table>
<thead>
<tr>
<th>PRELIMINARY DESIGN</th>
<th>STEP CBR3. Determine if project activity is permitted within the Coastal Barrier Resources System.</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Consult with <a href="mailto:usfws.org">regional USFWS office</a> to determine if the project activity is permitted within the Coastal Barrier Resources System.</td>
</tr>
<tr>
<td></td>
<td>• If the project involves maintenance, replacement, reconstruction or repair, but not the expansion, of any publicly owned or operated roads, structures or facilities that are essential links in a larger network or system, the project may proceed with federal funding, subsequent to consultation between the federal funding agency and the USFWS. Document this in the Design Report. No further steps are required for this procedure.</td>
</tr>
<tr>
<td></td>
<td>• If the project involves construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit, or expansion of any publicly owned or operated roads, structures or facilities, the project may not proceed with federal funding. If the project cannot proceed with federal funds, alternative funding sources must be sought or the project must be modified to qualify for federal assistance. If federal funds are necessary, coordinate with Federal Highway Administration (FHWA) and modify the project, as appropriate, to qualify the project for federal assistance. Include any agency correspondence in appendices of the design approval document. Describe the project activities proposed in the Coastal Barrier Resources System or modifications to the project, such that no restricted activities are proposed within the system, in the Design Report.</td>
</tr>
<tr>
<td></td>
<td>Typically the Regional Environmental/Landscape Architecture Units consult with USFWS to determine if project activities are permitted within a Coastal Barrier Resource System.</td>
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</table>
4.4.6.6 Interagency Coordination and Agreements

NYSDOT projects affecting Regulated Coastal Resources must ensure compliance with the involved agencies’ regulations.

NYSDOT has developed a “Programmatic Agreement for the Coastal Zone Management (CZM) Process for Element-Specific Federal Aid Eligible Highway Work” (Appendix D.13). This agreement is intended to reduce the number of activities that require formal consistency review.

4.4.6.7 Project Development and Construction Guidance

Project Scoping Stage

During project scoping, the preliminary assessment of consistency with coastal management programs is required. The applicability of the coastal resource program(s) should be discussed in the project’s scoping and design approval documents as follows:

- Maintenance projects that are SEQR Type II using an Initial Project Proposal/Final Design Report (IPP/FDR) format should discuss coastal resource issues in the Environmental Documentation section.
- Simple projects using a Project Scoping Report (PSR)/FDR format should discuss coastal resource issues in section 3.3.
- Moderate and Complex projects should discuss coastal resource issues in a dedicated section of the Design Approval Document’s Chapter 4 beginning with the PSR.

The discussion should include all relevant information to the coastal resource program including federal or 100% state funding, coastal resources affected and programs that applies.

State Coastal Resources

Consistency documentation may include a State Coastal Assessment Form (CAF), a Federal Consistency Assessment Form (FCAF), and/or a Federal Aid Notification (FAN). In areas with a LWRP, NYSDOT actions must be consistent with LWRP policies; this will ensure consistency with State Coastal Policies.

In the project documentation, include a statement of whether the project is in or affecting a designated Coastal Area and/or an area with an approved or pending LWRP and conclusion of whether state or federal coastal consistency review is required.

If the project will occur within the boundaries of a LWRP, notify the responsible municipal government agency in writing and document it in the project report(s).

NYSDOT actions that are not consistent with State coastal policies or with an approved LWRP are not to be undertaken. The NYSDOT, NYSDOS and the municipality should meet to resolve the issue. If the issue cannot be resolved, either NYSDOT or the municipality may notify Department of State. The Department of State will confer with NYSDOT and the municipality to modify the proposed action to be consistent with the LWRP.
Coastal Erosion Hazard Area
If the project is in the vicinity of the lakeshore of Lake Erie or Lake Ontario, the shoreline of Long Island Sound, the shoreline of the Atlantic Ocean, or is located on the Barrier Island section of Long Island, document whether the project is in a mapped coastal erosion hazard area. Initial requests to determine whether or not the proposed activity is within Coastal Erosion Hazard Area jurisdiction can be forwarded by email to NYSDEC in a common format such as PDF file with an aerial or map image of the location, address and other information that would be useful in locating a specific site.

Coastal Barrier Resources System
If the project is in Nassau, Suffolk, Queens, Jefferson, Oswego, Cayuga, Wayne, Monroe or Erie County, document whether the project is in the Coastal Barrier Resources System, and whether the Coastal Barrier Resources Act applies.

Preliminary Design (Phases I - IV)

State Coastal Resources

FAN
Complete and submit a Federal Aid Notification (FAN) letter to NYSDOS that:
   a) States that the project is wholly or partially federally-funded;
   b) Briefly describes the nature of the work;
   c) States whether the project is in a Coastal Area, in a Coastal Special Management Area, or is outside but affects the Coastal Area;
   d) Briefly describes the project effects on the Coastal Area; and
   e) Includes appropriate location maps and project plans.

NYSDOT must document in the Design Report that project activities in or affecting the State's Designated Coastal Area and/or within a municipality with approved LWRPs are consistent with NYSDOS coastal policies. Include copy of FAN in Design Approval Document.

Coordinate with NYSDOS and municipalities with LWRPs as appropriate.

CAF
Projects within the Coastal Area or within a community with an approved LWRP that are SEQR Non-Type II Actions require NYSDOT to complete the State Coastal Assessment Form (CAF) and, if appropriate, providing a brief discussion of how the project is consistent with or advances each applicable State Coastal Policy (see Appendix D.10).

Complete the CAF to determine the significance of action resulting in either a Negative Declaration or a Positive Declaration, pursuant to 17NYCRR Part 15 (NYSDOT’s SEQR). The CAF should be completed before such a determination so that the effects of an action on the achievement of the coastal policies or the policies of an LWRP are considered in deciding whether an EIS should be required.
   a) Send the CAF and sufficient documentation that determine consistency with State Coastal Policies to NYSDOS if the project results in a Positive Declaration (i.e., project action may result in one or more significant environmental impacts).
b) Do not send the completed CAF to NYSDOS if project results in a Negative Declaration (project action as proposed will not result in any significant adverse environmental impacts). Document this in the design approval document and file the CAF with the project records.

**LWRP**

When a project is within a community with an approved LWRP, the responsible municipal government agency should be notified in writing during project scoping that the project will occur within the boundaries of its LWRP.

**Tip:**

Copies of this and all relevant correspondence with the municipality should be included in the design approval document.

During Preliminary Design, send a second notification to the municipality at least 60 days prior to the project’s environmental determination. The notification should include:

a) A map of the project site;
b) Proposed project plans;
c) Brief discussion of how the project is consistent with or advances each applicable policy of the LWRP;
d) A request that the municipality inform NYSDOT within 45 days of receipt of the notification whether it finds the project consistent or inconsistent with the policies and the purposes of the LWRP.

If the municipality determines that the proposed project is not consistent with the LWRP policies, the municipality will notify NYSDOT (and NYSDOS if within a Designated Coastal Area) in writing and will identify the specific policies and purposes of the LWRP with which the proposed action conflicts. The Region should continue to coordinate with the municipality to help work toward consistency with LWRP policies. NYSDOS will continue to serve in an advisory capacity within a Coastal Area.

Within a Designated Coastal Area NYSDOT may not proceed with its consideration of, or decision on, the proposed action as long as the conflict exists. Under the Resolution of Conflicts procedure (see Appendix D.11), the Secretary of State will try, upon request by either party, to mediate resolution of conflicts between NYSDOT and the municipality. Ultimately, the Secretary may issue findings or recommendations to resolve the conflict, at which time the conflict resolution procedure ends.

If the municipality indicates in writing that the project is consistent with the LWRP policies, include the correspondence in the design approval document.

**Tip:**

If municipality fails to respond within 60 days of receipt of the notification, NYSDOT may presume that the project is consistent with the LWRP policies. However, a consistency determination from NYSDOS is still required.
Send all applicable documentation and correspondence from the preceding steps to NYSDOS.

NYSDOS concurrence shall not be presumed unless NYSDOS fails to concur with or object to a NYSDOT consistency certification within six (6) months of commencement of NYSDOS review of NYSDOT consistency certification and all necessary data and information in accordance with 15 CFR Parts 930.62 or 930.63.

**Coastal Erosion Management**
If the project does not involve a regulated activity in a coastal erosion hazard area, no coastal erosion hazard permit is required. Document that the project is in a coastal erosion hazard area and that the project activities are not regulated by the Coastal Erosion Hazard Areas program.

In the Design Report, describe proposed regulated activity in the coastal erosion hazard area, effects and mitigation measures. Provide rationale to support issuance of the NYSDEC Coastal Erosion Management Permit. Any permit conditions or mitigation should be reflected in contract documents.

**Coastal Barrier Resources System**
Document in the Design Report that project activities proposed in the Coastal Barrier Resources System and any modifications to the project, are not prohibited. Include any agency correspondence in appendices of the design approval document.

Describe the project activities proposed in the Coastal Barrier Resources System, include the name of the Coastal Barrier System unit and the date the unit was adopted into the system.

State that such activities are an exception citing the appropriate exemption citation (refer to Legal Citation subsection, P.L. 108-204) and therefore permitted in the system for federally-aided projects.

**Final Design (Phases V & VI)**

**State Coastal Resources**

**FCAF**
The determination of consistency with State Coastal Policies or LWRP policies includes a submittal of a Federal Consistency Assessment Form (FCAF) to NYSDOS (Appendix D.9).

Follow instructions on the FCAF regarding responses to questions answered “YES”. When a permit application is submitted to the permitting agency, the FCAF should accompany the application and a copy of this application should be sent to NYSDOS.

For projects that involve a USACE Nationwide Permit (not an Individual USACE Permit), regardless of Pre-Construction Notification (PCN) requirements, refer to Appendix D.6 to ensure that the NWPs and activities authorized by them would be consistent with the Coastal Management Program and approved LWRPs.

For projects that involve a USACE Individual Permit or other federal permits or approvals,
complete and send to NYSDOS the FCAF, a completed joint NYSDEC and USACE Permit Application, and all information and data necessary to assess the effects of the proposed activity on and its consistency with the Coastal Management Program.

As noted in Appendix D.6, within thirty (30) days of receipt of the submission, NYSDOS will inform the NYSDOT and the USACE whether:

1) Necessary data and information is missing from the submission. If so, the NYSDOS will state that the NYSDOS review will not commence until the date the necessary data and information is provided; Or

2) The activity meets the General Concurrence criteria set forth in the Coastal Management Program and therefore, further review of the proposed activity by the NYSDOS, and the NYSDOS concurrence with an individual consistency certification for the proposed activity, are not required; Or

3) NYSDOS review of the proposed activity and NYSDOS concurrence with the NYSDOT consistency determination is necessary. If NYSDOS indicates review of the activity and a consistency determination for it is necessary, the activity shall not be authorized by NWP or other form of USACE authorization unless NYSDOS concurs with NYSDOT, in accordance with 15 CFR Part 930, Subpart D, or unless NYSDOS indicates the activity meets Coastal Management Program General Concurrence criteria.

**Coastal Erosion Management**

If the project involves a regulated activity in a coastal erosion hazard area, obtain a Coastal Erosion Management Permit from NYSDEC. Permit applications (Joint Application Form) are available from the NYSDEC Regional Office, or from the NYSDEC website (see Appendix D.12). The NYSDEC regional permit administrator can provide assistance with the permit application. If plans are being submitted, it is preferred that at least 2 paper copies are sent by mail. In order to receive a permit, the regulated activity must not be prohibited and NYSDEC must find that the regulated activity is:

a) Reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the activity requires a shoreline location;

b) Will not likely cause a measurable increase in erosion at the proposed site or at other locations; and

c) Prevents, if possible, or minimizes adverse effects on:

- natural protective features and their functions and protective values;

- existing erosion protective structures; and

- natural resources, including, but not limited to significant fish and wildlife habitats and shellfish beds.

If the project involves a regulated activity in a coastal erosion hazard area that is prohibited or does not meet permit issuance standards, variances as per 6 NYCRR Part 505.13 apply. All variance applications require the demonstration of a practical difficulty or hardship and that all of the following criteria are met:

1) No reasonable or prudent alternative site is available;

2) All responsible means and measures to mitigate adverse impacts on natural systems and
the functions and protective values described in Section 505.3 of this part have been incorporated into the project design and will be implemented at the developers expense;
3) The development will be reasonably safe from flood and erosion damage;
4) The variance requested is the minimum necessary to overcome the practical difficulty or hardship which was the basis for requesting it;
5) Where public funds are utilized, the public benefits clearly outweigh the long-term adverse effects for any proposed activities and development.

NYSDEC will make a permit/variance decision on minor projects within 45 days of determining the application complete.
For major projects, if no hearing is held, NYSDEC makes its final decision on the application within 90 days of its determination that the application is complete. If a hearing is required, NYSDEC will notify NYSDOT and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination. Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

It is desirable to have received consistency determination from NYSDOS prior to the environmental determination. NYSDOS consistency determination must be received by Plans, Specifications and Estimate (PS&E) approval. If the project has a PS&E date within 180 days of final document submission to NYSDOS, the Region should state the PS&E date in the correspondence to inform NYSDOS of the urgency of the consistency determination. Summarize and document NYSDOS coordination in the project file.

When preparing the Environmental Commitments and Obligations Package for Construction (ECOPAC), ensure that all necessary environmental commitments related to coastal resources are met and documented before transmitting the ECOPAC to the Regional Construction Office.

Construction Considerations

Construction operations should minimize damage by debris, sedimentation, and other foreign materials being carried into the coastal waters. Areas of exposed soil should be minimized, and erosion and sediment control items should be used as shown in the contract documents.

It is important that construction activities in the coastal resource area be carried out in accordance with the contract documents. If changes are necessary, they should occur only after consultation with the Regional Construction Environmental Coordinator and Project Designer.

4.4.6.8 Operations Guidance

Operation and maintenance operations must comply with all applicable laws, regulations and requirements.

4.4.6.9 Flow Chart
**Federal Coastal Consistency Process**

- **During Scoping Review Coastal Area Maps to determine the presence of Coastal Resources**
  - Yes → **Does the project receive Federal Funding?**
    - Yes → **Do the project activities qualify for programmatic consistency?**
      - Yes → *Document in the Design Report*
      - No → **Does the project require any Federal Permits?**
        - Yes → **During Preliminary Design complete the Federal Consistency Assessment Form (FCAF)**
        - No → *End*
    - No → **Is the project in or affect a designated coastal area?**
      - Yes → *No consistency review process required*
      - No → *Document in the Project Documentation*
  - No → **End**

*Legend:*  
- Scoping Stage
- Scoping and/or Preliminary Design
- Preliminary Design
- Final Design

*Note:* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.

The flow chart is a graphical presentation of the Federal Coastal Consistency and FAN process. Refer to State Coastal Management Program Areas subsection for additional details about the required steps.
New York State Coastal Consistency Process

During Scoping Review Coastal Area Maps to determine the presence of Coastal Resources

Is the project in or affect a designated coastal area?

No

No consistency review process required

Document in the Project Documentation

End

Yes

Is the project a SEQR Excluded Action, Type II or Exempt Act?

Yes

During Preliminary Design Receive consistency determination from NYSDOS

Document in the Design Report

End

No

* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.

Note: The flow chart is a graphical presentation of the New York State Coastal Consistency process. Refer to State Coastal Management Program Areas subsection for additional details about the required steps.
* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.

**Note:** The flow chart is graphical presentation of the Local Waterfront Revitalization Program process. Refer to subsection State Coastal Management Program Areas for additional details about the required steps.
State Coastal Erosion Hazard Areas Process (NYSDEC)

Is the project potentially in a coastal erosion hazard area?

- Yes
  - Document in the Project Documentation
  - End

- No
  - No further steps are required

Is the project in a mapped coastal erosion hazard area?

- Yes
  - During Preliminary Design Consult with NYSDEC and/or delegated authority
  - Document in the Project Documentation
  - End

- No
  - No consistency review process required

Does the project require a Coastal Erosion Management Permit?

- Yes
  - During Final Design apply for a Coastal Erosion Management Permit or Variance from NYSDEC
  - Obtain Permit Or Variance
  - Document in the Project File
  - End

- No
  - Document in the Design Report
  - End

Note: The flow chart is graphical presentation of the Coastal Erosion Hazard Areas process. Refer to State Coastal Erosion Hazard Areas subsection for additional details about the required steps.

* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.
Federal Coastal Barrier Resources System Process (USFWS)

Is the project Federally funded?

- No
  - No consistency review process is required
  - Document in the Project Documentation

- Yes
  - Is the project in the Coastal Barrier Resources System?

  - No
    - No further steps are required under this section of the procedure

  - Yes
    - During Preliminary Design Consult with USFWS

      - Yes
        - Is the project Activity permitted within the Coastal Barrier Resources System?

          - No
            - Can project be modified to qualify for federal assistance?

              - No
                - Document in the Project File

              - Yes
                - The project may proceed with federal funding

          - Yes
            - Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.

Note: The flow chart is graphical presentation of the Coastal Barrier Resources System process. Refer to Federal Coastal Barrier Resources System subsection for additional details about the required steps.
4.4.6.10 Local Projects Guidance

The locally administered federal aid projects should follow procedures provided in this section to address the Coastal Resources Management concerns.

4.4.6.11 Appendices

Appendix A. Legal Citations

The following state and federal laws and regulations are used as a source for this procedure.

COASTAL AREAS

STATE STATUTES

Article 42 of the Executive Law - Waterfront Revitalization of Coastal Areas and Inland Waterways Act
Laws of New York, CAL - Canal Law

STATE REGULATIONS

9 NYCRR Part 270 – Lands Underwater: Grants, Easements, Leases, Permits
17 NYCRR Part 15 – Procedures for Implementation of State Environmental Quality Review (SEQR) Act
19 NYCRR Part 600 - NYSDOS Waterfront Revitalization and Coastal Resources: Policies and Procedures
19 NYCRR Part 601 - NYSDOS Local Government Waterfront Revitalization Programs

FEDERAL STATUTES

16 U.S.C 1451-1464 - Coastal Zone Management Act of 1972, as amended

FEDERAL REGULATIONS

15 CFR Part 930 - Coastal Zone Management Program Consistency Regulations
23 CFR Part 650 - Bridges, Structures, and Hydraulics. Subpart B - Erosion and Sediment Control on Highway Construction Projects. For more information refer to Erosion and Sediment Control Section of the TEM Chapter 4.4.8.

COASTAL EROSION HAZARD AREAS

STATE STATUTE

Article 34 of the Environmental Conservation Law - Coastal Erosion Hazard Areas

STATE REGULATION

6 NYCRR Part 505 - Coastal Erosion Management Regulations

COASTAL BARRIER RESOURCES ACT

FEDERAL STATUTES
Appendix B. Scope of Services

Base Scope of Services Section 5110 – Coastal Zone Management

Appendix C. Definitions

Coastal Area: As defined by NYSDOS Coastal Zone Management regulations, 19 NYCRR 600.2(c), the area of land and water described in the state Coastal Zone Management Program as including New York State's tidal coastal waters and the adjacent shorelands to approximately one thousand feet inland. It also includes Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill Van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, and their connecting waterbodies, bays, harbors, shallows and marshes.

Coastal Management Program: Under the federal Coastal Zone Management Act, the program adopted by New York State that sets forth objectives, policies and standards to guide public and private uses of coastal lands and water.

Coastal Special Management Areas include:
1. Regional Coastal Management Programs area
2. Local Waterfront Revitalization Programs area
3. Significant Coastal Fish and Wildlife Habitats
4. Scenic Areas of Statewide Significance
5. Harbor Management Plans

Consistency Determination: A determination by the NYSDOS that a project is consistent with the Coastal Management Program.

Designated Inland Waterways: As defined by the Article 42 § 911 of the Executive Law:
   a. The state's major inland lakes consisting of lakes Big Tupper, Canandaigua, Cayuga, Champlain, Chautauqua, Conesus, Cranberry, George, Indian, Keuka, Long, Oneida, Onondaga, Otsego, Owasco, Raquette, Sacandaga, Saratoga, Schroon, Seneca, Skaneateles, and Upper Saranac;
   b. The state's major rivers comprised of the Chemung, Delaware, Hudson north of the federal dam at Troy, Mohawk and Susquehanna River;
   c. The Barge Canal system as defined in Canal Law, Art.1, § 2; and
   d. The adjacent shorelands to the extent such inland waters and adjacent lands are strongly influenced by each other, including but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs and erosion prone areas.

Local Waterfront Revitalization Program (LWRP): A program prepared and adopted by a local government and approved by the Secretary of State. The approved program contains policies on the management of land, water and man-made resources. LWRP areas can be located
either in the Coastal Area or along Designated Inland Waterways.

**Navigable Waters:** The term navigable waters encompasses more than bodies of water large enough to accommodate a boat. The term may also include streams, creeks, and wetlands that empty into larger rivers and lakes as well as their adjoining shorelines (USCG).

33 CFR PART 329 define **Navigable Waters** of the United States as waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity. The USACE Buffalo District lists of navigable waters under Section 10.

**NYS Department of State (NYSDOS):** The agency that administers the state's coastal management program.

**Pending Local Waterfront Revitalization Programs:** Programs that have been completed by communities and accepted by the Division of Coastal Resources, as complete and ready for public review during a required 60-day review period.

**Project is a Federal Action** if it is wholly or partially funded with federal monies or requires a federal permit.

**Appendix D. References/Technical Documents**

1. Summary of Applicable Laws and Regulations:  

2. New York State Coastal Policies:  

3. Approved LWRPs:  
   Pending LWRPs:  

4. Coastal Waterbodies and Designated Inland Waterways:  

5. Coastal Barrier Resources System Maps:  

6. USACE/NYSDOS Consistency Determination in the Coastal Special Management Area - NYSDOS Restatement of Consistency Decision:  
guidance/epm/repository/4_4_6_NWP_RC_PN7-28-08rev.pdf
- USACE NY District NWP Regional Conditions, Section II.F:

7. Designated Significant Coastal Fish and Wildlife Habitats:
   http://www.nyswaterfronts.com/waterfront_natural_narratives.asp

8. Scenic Areas of Statewide Significance:
   http://www.nyswaterfronts.com/waterfront_developed_SASS.asp

   www.nyswaterfronts.com/downloads/pdfs/fcaf2.pdf

10. Coastal Assessment Form (CAF):

11. Consistency with LWRP
    http://www.nyswaterfronts.com/consistency_state.asp
    NYSDOS Guidelines for Notification and Review of State Agency Actions where Local Waterfront Revitalization Programs are in Effect. Section V: Resolution of Conflicts

12. NYSDEC Coastal Erosion Management Permit, permit applications, including Joint Application Form: http://www.dec.ny.gov/permits/6222.html

13. Programmatic Agreement for the Coastal Zone Management (CZM) Process for Element-Specific Federal Aid Eligible Highway Work:
Appendix E. Contacts

**Environmental Science Bureau**  
**Program Area Contact**  
Dave Graves (518) 457-5672  
Dave.Graves@dot.ny.gov

**New York State Department of State**  
Office of Coastal, Local Government and Community Sustainability  
One Commerce Plaza  
99 Washington Avenue, Suite 1010  
Albany, New York 12231-0001

**New York State Department of Environmental Conservation**  
Division of Water Bureau of Flood Protection and Dam Safety  
[http://www.dec.ny.gov/about/556.html](http://www.dec.ny.gov/about/556.html)  
625 Broadway  
Albany, NY 12233-3504  
(518) 402-8151  
NYSDEC Regional Offices: [http://www.dec.ny.gov/about/558.html](http://www.dec.ny.gov/about/558.html)

**U.S. Fish and Wildlife Service**  
Division of Habitat and Resources Conservation  
4401 N. Fairfax Drive  
Arlington, VA 22203  
(703) 358-2161  
USFWS Regional Field Offices: [http://www.fws.gov/northeast/nyfo/info/intro.html](http://www.fws.gov/northeast/nyfo/info/intro.html)