A. INTRODUCTION

The federal Coastal Zone Management (CZM) Act of 1972 was established to support and protect the distinctive character of the waterfront, and to assist coastal states in establishing policies for managing their coastal zone areas. In 1982, New York adopted a state Coastal Management Program, designed to balance economic development and preservation in the coastal zone 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 state program is consistent with the federal CZM Act and contains 44 coastal policies. It also provides for local implementation when a municipality adopts a local waterfront revitalization program that is consistent with the federal CZM Act.

In accordance with the state program, New York City adopted a local waterfront revitalization program, the New York City Waterfront Revitalization Program (WRP), in 1982. The WRP, as amended, incorporates the State's 44 coastal policies, and contains an additional 10 policies. The program is administered by the New York City Department of City Planning (DCP). It establishes the city's policies for development and use of the waterfront and provides a framework for evaluating activities proposed in the Coastal Zone.

The coastal zone management program consistency review process is described in federal regulations at 15 Code of Federal Regulations (CFR) 930: Federal Consistency with Approved Coastal Management Programs, as amended, as well as in the WRP. Consistency review is required for any project that:

- Is in, or is expected to affect the resources or land or water uses of, the New York coastal zone; and
- Requires a state- or federal-listed permit, is federally, state, or locally funded, or is a direct activity of a federal, state, or local agency.

Portions of the proposed project's primary and secondary study areas are located within the coastal zone designated by New York City (Figure 12-1). The portion of the primary study area between East 10th and East 12th Streets from Avenues B to C is located within the coastal zone. Within the secondary study area, the area east of First Avenue and north of East 14th street, east of Avenue B north of East 10th Street, and east of Avenue D and Columbia Street between East 10th and Grand Streets are all located within the coastal zone.

The city's policy is to review a project's consistency with the WRP policies, if a proposed project is located within a coastal zone area. This chapter reviews the New York City Coastal Zone policies and assesses the consistency of the proposed actions with these policies.

B. CONSISTENCY OF THE PROPOSED ACTIONS WITH THE WATERFRONT REVITALIZATION PROGRAM POLICIES

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. Each policy is presented below, followed by a discussion of the policy's applicability to the proposed actions, and the consistency of the proposed actions to each policy.

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

Policy 1.1: Encourage commercial and residential redevelopment in appropriate coastal zone areas.

The proposed actions would promote residential and commercial retail development at densities and heights appropriate to the existing scale found within the East Village and Lower East Side neighborhoods. As discussed in Chapter 2, "Land Use, Zoning, and Public Policy," the proposed actions would preserve the neighborhoods' low-scale character, focus new development towards specific areas that are more suitable for new residential construction, and provide incentives for affordable housing. In addition, the proposed actions would protect the low- to mid-rise streetwall that characterizes much of the study area, reinforce use of several avenues as corridors for mixed retail/residential buildings, provide opportunities for housing development and incentives for affordable housing selected wide streets and major corridors, and protect existing commercial uses in proposed R8B residential zoning districts. One site met the criteria for a potential new development site and is located within the coastal zone boundary. This potential site would be developed as a residential building in both the future without and with the proposed actions. Four sites meet the criteria for projected new development sites and are located within the coastal zone boundary. Each of these projected sites would be constructed with either residential or mixed-use buildings with commercial and residential uses. The projected land uses, building height, and building bulk for the potential and projected development sites would not differ from the no-build condition. As a result, the proposed actions would promote development that is consistent with the policy stated above.

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

The proposed actions would change to primary study areas existing zoning to R7A, R7B, R8A, R8B, C4-4A, and C6-2A contextual zoning districts. As described in Chapter 1, "Project Description," these proposed actions would help to maintain a mixture of uses within the East Village and Lower East Side neighborhoods that are in context with the existing land uses. Avenue D, the portion of the primary study area closest to the waterfront, would be rezoned to R8A. This would allow for increased density of residential uses along Avenue D. The new commercial, residential, and community facility uses would be compatible and in keeping with the mixture of uses found throughout the primary study area and along Avenue D. As such, the land uses within the primary study area would continue to attract the public and would encourage non-industrial development that would enliven areas near the waterfront and attract the public. Therefore, the proposed actions are consistent with this policy.



Coastal Zone Boundary
Figure 12-1

Policy 1.3: Encourage redevelopment in the coastal area where public facilities and infrastructure are adequate or will be developed.

The primary and secondary study areas are located in an urban community with access to existing mass transit, highways, water and sewer lines, and health, educational, and social services. The primary and secondary study area are well-served by roadways, including the Franklin Delano Roosevelt (FDR) Drive, and mass transit including the F, J, M, V, and Z subway lines, and the M8, M9, M14A, M14D, M15, M21, and B39 bus routes. As described in Chapter 13, "Infrastructure," the primary study area is currently served by the Newtown Creek Water Pollution Control Plant (WPCP), which is operating below permitted capacity. In the future with the proposed actions, future user populations' needs would continue to be met. As described in Chapter 15, "Energy," any increased demand on energy systems would be minor compared to the future energy capacity and current levels of service. Therefore, development under the proposed actions would occur in an area where essential public services and facilities are available and adequate. As such, the proposed actions are consistent with this policy.

Policy 2: Support water-dependent and industrial uses in New York City coastal areas that are well-suited to their continued operation.

Policy 2.1: Promote water-dependent and industrial uses in Significant Maritime and Industrial Areas.

The primary and secondary study areas are not located within a Significant Maritime and Industrial Area; therefore, this policy does not apply.

Policy 2.2: Encourage working waterfront uses at appropriate sites outside the Significant Maritime and Industrial Areas.

The primary study area is located inland from the East River, and is separated from the shoreline by the FDR Drive and other uses, such as the East River Park. Only a small portion of the secondary study area is located along the waterfront, and this area is dedicated to the East River Park. Therefore, both study areas are not appropriate locations for working waterfront uses, and this policy does not apply.

Policy 2.3: Provide infrastructure improvements necessary to support working waterfront uses.

As indicated above, the primary and secondary study areas are located inland from the waterfront and are not appropriate for working waterfront uses. Therefore, this policy does not apply.

Policy 3: Promote use of New York City's waterways for commercial and recreational boating and water-dependent transportation centers.

Policy 3.1: Support and encourage recreational and commercial boating in New York City's maritime centers.

As stated above, the primary and secondary areas are located inland from the East River, and are separated from the shoreline by major roadways and other land uses. The proposed actions would not prohibit recreational and commercial boating from occurring in the East River. Therefore, the proposed actions are consistent with this policy.

Policy 3.2: Minimize conflicts between recreational, commercial, and ocean-going freight vessels.

The development resulting from the proposed actions does not involve recreational, commercial, or ocean-going freight vessels. Therefore, this policy does not apply.

Policy 3.3: Minimize impact of commercial and recreational boating activities on the aquatic environment and surrounding land and water uses.

Implementation of the proposed actions would not result in commercial or recreational boating activities. Therefore, this policy does not apply.

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

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.

The primary and secondary study areas are not located in a Special Waterfront Natural Area, Recognized Ecological Complex, or Significant Coastal Fish and Wildlife Habitat. Therefore, this policy does not apply.

Policy 4.2: Protect and restore tidal and freshwater wetlands.

There are no tidal or freshwater wetlands located within or in the vicinity of the primary or secondary study areas. As described in Chapter 10, "Natural Resources," the proposed actions would not result in significant adverse impacts to natural resources within either study area. As such, the proposed actions are 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.

The primary and secondary study areas are located within fully developed portions of Manhattan, with no natural areas, and are not located within a Special Waterfront Natural Area, Recognized Ecological Complex, or Significant Coastal Fish and Wildlife Habitat. The primary and secondary study areas contain a mixture of land uses, as described in Chapter 2, "Land Use, Zoning, and Public Policy." In a letter dated March 17, 2008, the New York Natural Heritage Program (NYNHP) identified potential habitat for the peregrine falcon (*Falco peregrinus*), a New York State endangered species, at or in the vicinity of the proposed rezoning area. Peregrines nest on ledges and small shallow caves on high cliff walls, man-made platforms, or bridges and tall buildings in urban areas. While NYNHP records indicate the potential presence of peregrine falcon nests in lower Manhattan, NYNHP does not anticipate any adverse impacts to these nest sites. Therefore, the proposed actions are consistent with this policy.

Policy 4.4: Maintain and protect living aquatic resources.

Although the primary study area and much of the secondary study area are located in the coastal zone, these study areas are located inland from the East River and are separated from the shoreline by the FDR Drive and other land uses. The development resulting from the proposed actions would not involve the harvesting of fish, spawning habitat, aquaculture, or fish stocking; nor would they affect aquatic habitat. Therefore, this policy does not apply.

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

Policy 5.1: Manage direct or indirect discharges to waterbodies.

The sewer system within the study area consists of combined sewers, regulators, and interceptors. Each trunk sewer feeds into the interceptor sewer through a regulator chamber that controls the flow from the trunk sewer to the interceptor. Generally, the wastewater within the study area flows east in collector and trunk sewers toward the 108-inch intercepting sewer under Avenue D. The purpose of a regulator is to divert sanitary flow from the existing combined sewers to the intercepting sewer during normal flow periods (dry weather), and limit the flow to the intercepting sewer to twice dry weather flow during storm periods (wet weather). The existing tide gates placed on the combined sewer outfall (CSO) downstream of the regulators are designed to keep tide water from entering the existing combined sewers and the intercepting sewer. Tide gates can be part of the regulator structure or stand-alone chambers.

As detailed in Chapter 13, "Infrastructure," no measurable change to stormwater runoff is expected for the development sites as a result of the proposed actions. New developments would be required to provide stormwater detention measures such as dry wells and seepage basins, which would improve the current stormwater runoff patterns and flooding conditions in the study area. In addition, no new streets are proposed under the proposed actions, and New York City Department of Environmental Protection (DEP) would continue to move forward with its amended drainage plan for the area and upgrading the sewer system to relieve local street flooding. Therefore, proposed actions not expected to have a significant adverse impact on the New York City sewer system or on the water quality of the East River. Therefore, the proposed actions are consistent with this policy.

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

Projected and potential development associated with the proposed actions would utilize Best Management Practices to minimize the generation of any nutrients or pollutants or new contributions to non-point source pollution to the East River. Therefore, the proposed actions are consistent with this policy.

Policy 5.3: Protect water quality when excavating or placing fill in navigable waters and in or near marshes, estuaries, tidal marshes, and wetlands.

The proposed actions would not entail excavation in navigable waters or in or near marshes, estuaries, tidal marshes, or wetlands, nor would excavation fill be placed in navigable waters or in or near marshes, estuaries, tidal marshes, or wetlands. Therefore, this policy does not apply.

Policy 5.4: Protect the quality and quantity of groundwater, streams, and the sources of water for wetlands.

There are no streams or wetlands located in or adjacent to the primary study area. The East River is adjacent to the secondary study area. In Manhattan, groundwater is not used for drinking water or any other purposes. All on-site dewatering, if required, will be conducted in conformance with DEP regulations.

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

Policy 6.1: Minimize losses from flooding and erosion by employing non-structural and structural management measures appropriate to the condition and use of the property to be protected and the surrounding area.

Portions of the primary and secondary study area are located in the Federal Emergency Management Agency (FEMA) 100- and 500-floodplains (Figure 12-2). The proposed actions would not alter any natural features of the shoreline or any existing structural or non-structural flood or erosion control measures. In addition, all development within the primary and secondary study areas would comply with the New York City Building Code (Title 27, Subchapter 4, Article 10) and FEMA requirements regarding the lowest floor elevation, which would be at or above the base flood elevation (BFE)[1]. In addition, all development within each study area would comply with all applicable New York City and FEMA requirements for construction and occupancy.

Policy 6.2: Direct public funding for flood prevention or erosion control measures to those locations where the investment will yield significant public benefit.

Public funding for flood prevention or erosion control measures is not part of the proposed actions. Therefore, this policy does not apply.

Policy 6.3: Protect and preserve non-renewable sources of sand for beach nourishment.

The primary and secondary study areas do not contain any public or private beaches and do not have a non-renewable source of sand. Therefore, this policy does not apply.

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.

None of the uses envisioned under the proposed actions would involve the use or discharge of hazardous or toxic pollutants. Any toxic or hazardous substances uncovered during construction would be managed in accordance with all applicable state and federal standards to prevent impacts on surrounding areas. Solid waste generated by proposed development would be disposed of according to applicable laws and regulations. As such, the proposed actions are consistent with this policy.

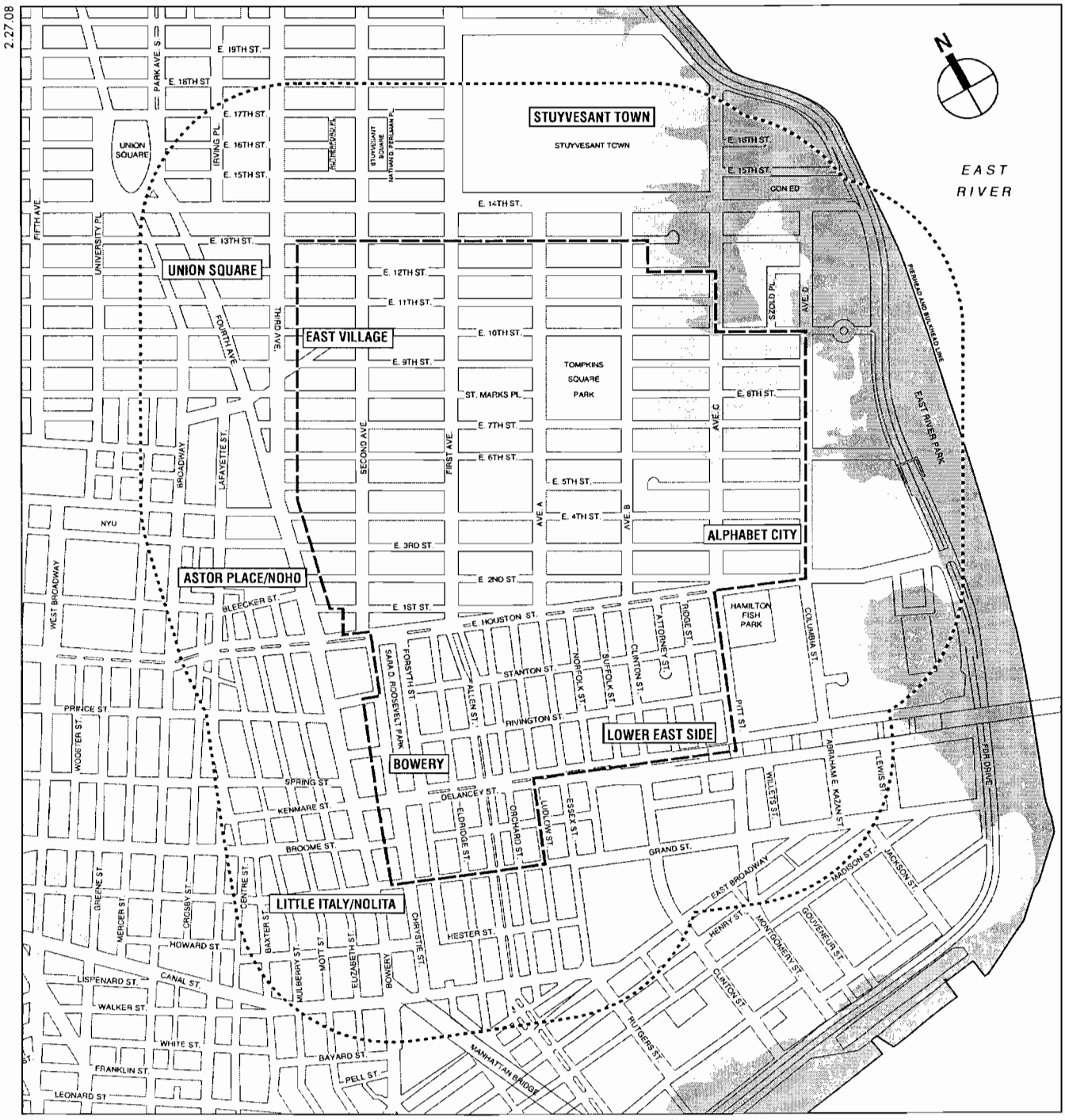
Policy 7.2: Prevent and remediate discharge of petroleum products.

No petroleum products are expected to be disturbed or discharged as a result of the proposed actions. In the unlikely event that petroleum is disturbed or discharged, it would be remediated in conformance with all applicable laws, rules, and regulations, thereby complying with the goals of this policy.

Policy 7.3: Transport solid waste and hazardous substances and site solid and hazardous waste facilities in a manner that minimizes potential degradation of coastal resources.

Solid waste resulting from potential and projected development associated with the proposed actions would be hauled by the New York City Department of Sanitation (DSNY) or a

[1] 10 feet above the borough datum.



FEMA Flood Hazard Areas
Figure 12-2

private contractor according to applicable laws and regulations. Hazardous materials uncovered during construction would either be removed or capped, minimizing the potential for adverse impacts to coastal resources. Potential and projected development would also not entail the siting of solid or hazardous waste facilities. Therefore, the proposed actions are consistent with this policy.

Policy 8: Provide public access to and along New York City's coastal waters.

Policy 8.1: Preserve, protect and maintain existing physical, visual, and recreational access to the waterfront.

Although the primary and secondary study areas are located in the coastal zone, they are separated from the waterfront by the existing road network and residential, industrial, and open space uses. The proposed actions would protect the low- to mid-rise streetwall within the primary and secondary study areas, which would help to maintain visual corridors. These corridors provide vistas of the waterfront, as well as other visual resources within each study area, and physical access to the waterfront would be available through the existing road network. The proposed actions are consistent with this policy.

Policy 8.2: Incorporate public access into new public and private development where compatible with proposed land use and coastal location.

The proposed actions would not affect public access to any existing open spaces or to the waterfront. As such, the proposed actions are consistent with this policy.

Policy 8.3: Provide visual access to coastal lands, waters, and open space where physically practical.

The proposed actions would preserve the low- to mid-rise character of the East Village and Lower East Side neighborhoods and the anticipated development as a result of the proposed actions. Therefore, the proposed actions are consistent with this policy.

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

The primary study area is not located on the waterfront. The small portion of the secondary study area that is located on the waterfront is occupied by a portion of the East River Park. This portion of the secondary study area would not be affected by the proposed actions, and the existing physical and visual links to the waterfront would be maintained. As such, the proposed actions are 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.

As part of the proposed actions, the New York City Housing and Preservation Department is proposing disposition of a city-owned property located within the primary study area at the corner of Avenue D and East Houston Street. The site would be developed as a residential building with 97 dwelling units (19 of which would be affordable to low to moderate income households) and ground-floor retail uses. Therefore, the proposed actions are consistent with this policy.

Policy 9: Protect scenic resources that contribute to the visual quality of the New York City coastal area.

Policy 9.1: Protect and improve visual quality associated with New York City's urban context and the historic and working waterfront.

The primary and secondary study areas are not located within an area that is part of the New York City's historic and working waterfront. The new land uses that are expected to result from the proposed actions would represent a continuation of current land use trends in a manner compatible with the existing established medium-density residential neighborhoods. The proposed actions are consistent with this policy.

Policy 9.2: Protect scenic values associated with natural resources.

Anticipated development as a result of the proposed actions would not reduce existing views or the scenic value of East River. Therefore, the proposed actions are 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.

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

Although located in a coastal zone area, most of the primary and secondary study areas are not located on a waterfront and do not contain resources significant to the historical, archaeological, and cultural legacy of the New York City coastal area, which would include shipwrecks, lighthouses, or other maritime navigation structures. The proposed actions would not result in development that would affect resources significant to the City's coastal culture. Therefore, the proposed actions are consistent with this policy.

Policy 10.2: Protect and preserve archaeological resources and artifacts.

The proposed project would not result in substantial in-ground disturbance on the projected development sites that would not otherwise occur in the future without the proposed action. Therefore, the proposed actions are consistent with this policy. ✷