

APPENDIX B

WATERFRONT CONSISTENCY REVIEW LAW

GENERAL PROVISIONS

I. Title:

This law will be known as the Incorporated Village of Lloyd Harbor (“Village”) Waterfront Consistency Review Law, Article XII of Chapter 8, Administrative Code.

II. Authority and Purpose:

- A. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (*Article 42 of the Executive Law*).
- B. The purpose of this local law is to provide a framework for agencies of the Village to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to ensure that such actions and direct action are consistent with the said policies and purposes.
- C. It is the intention of the Village that the preservation, enhancement and utilization of the natural and manmade resources of the unique coastal area of the Village take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living estuarine resources and wildlife; diminution of open space area or public access to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
- D. The provisions of this local law shall only apply while there is in existence a Village Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. Definitions:

- A. “*Actions*” mean either Type I or unlisted actions as defined in SEQRA regulations (6 N.Y.C.R.R. 617.2) which are undertaken by an agency and which include:
1. Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - a. are directly undertaken by an agency; or
 - b. involve funding by an agency; or
 - c. require one or more new or modified approvals from an agency or agencies;
 2. Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;
 3. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
 4. Any combinations of the above.
- B. “*Agency*” means any board, agency, department, office, other body, or officer of the Village.
- C. “*Board*” means the Board of Trustees or any board of the Village which has been designated by the Board of Trustees to be responsible for administering the provisions of this Article.
- D. “*Coastal area*” means that portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the Village, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Village of Lloyd Harbor Local Waterfront Revitalization Program.
- E. “*Coastal Assessment Form (CAF)*” means the form, contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

- F. “*Consistent*” means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.
- G. “*Direct Actions*” mean actions planned and proposed for implementation by an agency, such as, but not limited to a capital project, rule making, procedure making and policy making.
- H. “*Local Waterfront Revitalization Program (LWRP)*” means the Local Waterfront Revitalization Program of the Village, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (*Executive Law, Article 42*), a copy of which is on file in the Office of the Clerk of the Village.

IV. Consistency Determination:

Each Board, having jurisdiction over an application, shall conduct LWRP consistency reviews of actions within the LWRA, in accordance with the procedures outlined in this Article.

V. Review of Actions:

- A. Whenever a proposed action is located in the Village’s Coastal Area, the Board shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Section E herein.
- B. Whenever the Board receives an application for approval or funding of an action or as early as possible in the agency’s formulation of a direct action to be located in the Coastal Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review.
- C. The Board shall make the determination of consistency based on the CAF and such other information as is deemed to be necessary in its determination. The Board shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this Article.
- D. Actions to be undertaken within the Coastal Area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Village’s LWRP, a copy of which is on file in the Village Clerk’s office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section

IV of the LWRP in making their consistency determination. The action shall be consistent with the following policies, as applicable:

1. Revitalize deteriorated and underutilized waterfront areas (*Policy 1*).
2. Retain and promote recreational water-dependent uses (*Policy 2*).
3. Develop the State's major ports (*Policy 3*).
4. Strengthen economic base of smaller harbor areas by encouraging traditional uses and activities (*Policy 4*).
5. Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (*Policy 5*).
6. Streamline development permit procedures (*Policy 6*).
7. Protect significant locally important fish and wildlife habitats from human disruption and chemical contamination (*Policies 7,8*).
8. Maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (*Policies 9, 10*).
9. Minimize flooding and erosion hazards through non-structural means, carefully-selected, long-term structural measures and appropriate siting of structures (*Policies 11, 12, 13, 14, 16, 17, 28*).
10. Safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (*Policy 18*).
11. Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (*Policies 2, 19, 20, 21, 22*).
12. Protect and restore historic and archeological resources (*Policy 23*).
13. Protect and upgrade scenic resources (*Policy 25*).
14. Conserve and protect agricultural lands (*Policy 26*).

15. Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront or water location (*Policies 27, 29, 40*).
 16. Prevent ice management practices which could damage significant fish and wildlife and their habitats (*Policy 28*).
 17. Protect surface and groundwaters from direct and indirect discharge of pollutants and from overuse (*Policies 30, 31, 32, 33, 34, 35, 36, 37, 38*).
 18. Perform dredging and dredge spoil disposal in a manner protective of natural resources (*Policies 15, 35*).
 19. Handle and dispose of hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (*Policy 39*).
 20. Protect air quality (*Policies 41, 42, 43*).
 21. Protect tidal and freshwater wetlands (*Policy 44*).
- E. If the Board determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the Board makes a written finding with respect to the proposed action that:
1. No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 2. The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
 3. The action will advance one or more of the other LWRP policy standards and conditions; and
 4. The action will result in an overriding Village, regional or State-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

- F. Each Board shall maintain a file for each action made the subject of a consistency determination. Such files shall be made available for public inspection upon request.

VI. Enforcement:

The Village Building Inspector shall be responsible for enforcing this Article. No work or activity on a project in the Coastal Area which is subject to review under this Article shall be commenced or undertaken until the Village Building Inspector has been presented with a written determination from the Board that the action is consistent with the Village's LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this Article or any conditions imposed thereunder, the Village Building Inspector shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

VII. Violations:

- A. A person who violates any of the provision of, or who fails to comply with any condition imposed by, this Article shall have committed a violation, punishable by a fine not exceeding five hundred dollars for a conviction of a first offense and punishable by a fine of one thousand dollars for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
- B. The Village Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

VIII. Severability:

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

IX. Effective Date:

This local law took effect immediately upon the adoption of the Village's Local Waterfront Revitalization Program (LWRP).