

APPENDIX D

Waterfront Consistency Review Law

I. Title

This Local Law will be known as the Town of Essex Waterfront Consistency Review Law.

II. Authority and Purpose

1. This Local Law is adopted under the authority of Section 10 of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).

2. The purpose of this Local Law is to provide a framework for agencies of the Town of Essex to consider the policies and purposes contained in the Town of Essex Local Waterfront Revitalization Program when funding, approving, or directly undertaking actions located in the waterfront area; and to assure that such actions are consistent with the said policies and purposes.

3. It is the intention of the Town of Essex that the preservation, enhancement, and utilization of the natural and historic resources of the unique waterfront area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between natural and historic resources and the need to accommodate reasonable population growth, economic development, and attract the traveling public. Accordingly, this Local Law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss of fish and wildlife resources; diminution of open space areas or public accesses to the waterfront; loss of historic resources; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

4. The substantive provisions of this Local Law shall only apply while there is in existence a Town of Essex 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

1. "Actions" means any action other than a minor action, actions include:

projects or physical activities, such as construction or any other activities that may affect natural, manmade or other resources in the waterfront area by changing the use, appearance or condition of any resource or structure, that:

- (i) are directly undertaken by an agency; or
- (ii) involve funding by an agency; or
- (iii) require one or more new or modified approvals, permits, or review from an agency or agencies;

2. "Agency" means any board, agency, department, office, other body, or officer of the Town of Essex.

3. "Waterfront area" means any land or water area that lies within the Waterfront Boundary established in the Town of Essex Local Waterfront Revitalization Program.

4. "Consistent" means that the action will fully comply with the LWRP policies and purposes and, whenever practicable, will advance one or more of them.

5. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Town of Essex, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Town of Essex.

6. "Minor actions" include the following actions, which are not subject to review under this chapter:

maintenance or repair involving no substantial changes in an existing structure, facility, or landscape;

repaving of existing paved highways not involving the addition of new travel lanes;

street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;

official acts of a ministerial nature involving no exercise of discretion;

routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;

civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;

emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to coastal resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part.

"Planning Board" means the Planning Board of the Town of Essex.

IV. Review of Actions

A. Town Board Written Determination of Consistency

Whenever a proposed action is located within or affects the Town's waterfront area, a Town agency, other than the Planning Board, shall, prior to approving, funding, or undertaking the action, refer the proposed action to the Town Board for a determination whether it is consistent with the LWRP.

The Town Board may request any information reasonably necessary to make its consistency determination and may seek the advice of the Planning Board prior to making its determination.

The Town Board shall review the proposed action referred to it and make its consistency determination within 30 days of the first regular meeting of the Town Board following receipt of the referral and any necessary information the Board requested. If the Town Board has sought the advice of the Planning Board the time period for making its determination may be extended 30 days.

The Town Board's determination may be that the action is either:
Consistent with the LWRP,
Consistent with the LWRP if stated conditions are met, or
Inconsistent with the LWRP.

If the Town Board determines that the action is inconsistent with the LWRP, it may suggest alternative actions that would be consistent.

B. Planning Board Written Determination of Consistency

Prior to making its decision to approve or disapprove any action located within or affecting the waterfront area, the Planning Board shall make a determination whether the action is consistent with LWRP.

The Planning Board may request from an applicant information reasonably necessary to make a determination of consistency with the LWRP.

The Planning Board shall as much as practical integrate its consistency determination into its existing decision making procedures.

The Planning Board's determination may be that the action is either:
Consistent with the LWRP,
Consistent with the LWRP if stated conditions are met, or
Inconsistent with the LWRP.

If the Planning Board determines that the action is inconsistent with the LWRP, it may suggest alternative actions that would be consistent.

C. Consistency Standards

The Town Board's and the Planning Board's evaluation of consistency with the LWRP shall be in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Town of Essex LWRP, a copy of which is on

file in the Town Clerk's office and available for inspection during normal business hours. The action shall be consistent with the policies to:

Foster a pattern of development in the waterfront area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development.

Protect water-dependent uses, promote siting of new water dependent uses in suitable locations, and support efficient harbor operation.

Protect agricultural lands.

Promote sustainable use of fish and wildlife resources.

Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands, and rare ecological communities.

Protect and improve water resources.

Minimize loss of life, structures, and natural resources from flooding and erosion.

Minimize environmental degradation from solid waste and hazardous substances.

Provide public access to and along the Town's coastal waters.

Protect scenic resources that contribute to the visual quality of the Essex Town waterfront.

Protect, preserve, and enhance resources significant to the historical, archeological, and cultural legacy of the Essex waterfront.

D. Determination That an Action is Not Consistent with the LWRP

If the Town Board or the Planning Board determines that an action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the Town Board or the Planning Board makes a written finding with respect to the proposed action that:

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.

The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions.

The action will advance one or more of the other LWRP policy standards and conditions: and

The action will result in an overriding Town, regional or state-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policies and purposes.

V. Enforcement:

The Town Zoning Enforcement Officer shall be responsible for enforcing this Local Law. No work or activity on a project in the Waterfront area which is subject to review under this Local Law shall be commenced or undertaken until the Zoning Enforcement Officer has been presented with a written determination from the Town Board or Planning Board that the action is consistent with the Town's LWRP policies and purposes. In the event that an activity is not being performed in accordance with this Local Law or any conditions imposed thereunder, the Zoning Enforcement Officer 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.

VI. Violations:

A person who violates any of the provisions of, or who fails to comply with any conditions imposed by this Local Law shall have committed a violation, punishable by a civil penalty not exceeding one hundred dollars. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional offense. Thus, when a violation of any of the provisions of, or with any conditions imposed by, this Local Law is continuous, each day shall constitute a separate and distinct violation subjecting the offender to an additional civil penalty of one hundred dollars a day.

The Town 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. The Town may also enforce this Local Law by injunction or other civil proceeding.

For the purposes of enforcement and prosecution of violations of this Local Law, where a "person" is an entity other than an individual, the principal executive officer or partner or agent or manager of such entity may be considered to be such person.

VII. 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 of provision hereof other than the provision so found to be invalid.

VIII. Effective Date:

This Local Law shall take effect immediately upon filing with the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

APPENDIX E

A. Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect.

1. Purposes of Guidelines - The Waterfront Revitalization and Coastal Resources Act (Article 42 of the Executive Law) and the Department of State's regulations (19 NYCRR part 600) require certain state agency actions identified by the Secretary of State to be consistent to the maximum extent practicable with the policies and purposes of approved Local Waterfront Revitalization Programs (LWRPs). These guidelines are intended to assist state agencies in meeting that statutory consistency obligation.

The Act also requires that state agencies provide timely notice to the Town whenever an identified action will occur within an area covered by an approved LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist local governments in carrying out their review responsibilities in a timely manner.

The Secretary of State is required by the Act to confer with state agencies and local governments when notified by a local government that a proposed state agency action may conflict with the policies and purposes of its approved LWRP. These guidelines establish a procedure for resolving such conflicts.

2. Definitions

Action means

A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA); occurring within the boundaries of an approved LWRP; and being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.

Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:

- a. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
- b. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and
- c. That will result in an overriding regional or statewide public benefit.

Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to the Executive law, Article 42; which program contains policies on the management of land, water and man-made resources, proposed land uses and specific projects that are essential to program implementation.

3. Notification Procedure

When a state agency is considering an action as defined above, the state agency shall notify the Supervisor (Planning Board Chairman) of the Town of Essex.

Notification of a proposed action by a state agency:

Shall fully describe the nature and locations of the action; Shall be accomplished by use of either the State Clearinghouse, other existing state agency notification procedures, or through any alternative procedure agreed upon by the state agency and local government;

Should be provided to the Supervisor (Planning Board Chairman) as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. (The timely filing of a copy of a completed Coastal Assessment Form with the Supervisor (Planning Board Chairman) should be considered adequate notification of a proposed action.)

If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the Supervisor (Planning Board Chairman) can serve as the state agency's notification to the Town.

4. Local Government Review Procedure

Upon receipt of notification from a state agency, the Town will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the Supervisor (Planning Board Chairman), the state agency should promptly provide the Town with whatever additional information is available which will assist the Town to evaluate the proposed action.

If the Town cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

If the Town notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in Section 5 below shall apply. The Town shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the Town shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

5. Resolution of Conflicts

The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP.

Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.

If the consultation between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

If the consolidation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either part may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.

Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.

If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.

The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.