

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.