

APPENDIX B

LOCAL WATERFRONT CONSISTENCY LAWS

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underline to indicate new matter.

County
City
Town of KENDALL, ORLEANS COUNTY, NEW YORK
Village

Local Law No. 1 of the year 19 96

A local law To Implement and Provide for Consistency Review for the Towns of Kendall, Yates and Carlton Local Waterfront Revitalization Program

Be it enacted by the Town Board of the

County
City
Town of Kendall, Orleans County, New York as follows:
Village

SEE ATTACHED REGULATIONS:

TOWN OF KENDALL

A local law to implement and provide procedures for Consistency Review for the Towns of Kendall, Yates and Carlton Local Waterfront Revitalization Program.

Be it enacted by the Town Board of the Town of Kendall, as follows:

I. TITLE

This local law will be known as the Town of Kendall Waterfront Consistency Review Law.

II. AUTHORITY AND PURPOSE

- A. This Local Law is adopted under the authority of Section 10 of the Municipal Home Rule Law; the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law); Article IX, Section 1 of the New York State Constitution; and Article 5-G of the General Municipal Law of the State of New York and expressly supersedes any inconsistent general or local law regarding consistency review, zoning and waterways.
- B. The purpose of this Local Law is to provide a framework for agencies of the Town of Kendall to consider the policies, purposes and common interests contained in the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton when reviewing applications for actions or direct agency actions located in the Coastal Area; and to assure that such actions are consistent with those policies and purposes.
- C. It is the intention of the Town of Kendall that the preservation, enhancement and utilization of the natural and man-made resources of the unique Coastal Area of the Town 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, it is the purpose of this Local Law to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife, diminution of open space areas and 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 substantive provisions of this local law shall only apply while there is in existence a LWRP which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. APPLICABILITY

All boards, departments, offices, other bodies or officers of the Town of Kendall must comply with this local law, to the extent applicable, prior to carrying out, approving, or funding any action other than Type II, Exempt, or Excluded actions as those terms are defined in Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

IV. DEFINITIONS

- A. "Actions" shall mean either Type I or unlisted actions as defined in SEQR regulations (6 NYCRR Part 617) 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, which:
 - (a) are directly undertaken by an agency, or
 - (b) involve funding by an agency, or
 - (c) require one or more permits or 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 combination of the above.
- B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Kendall.
- C. "Applicant" means any person making an application or other request to an agency to provide funding or to grant approval or permit in connection with a proposed action.
- D. "Coastal Area" means that portion of the 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 Town of Kendall, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Kendall, Yates and Carlton LWRP.
- E. "Coastal Assessment Form" (CAF) means the form, contained in Appendix A to this local law, used by an agency to assist it in determining the consistency of an action with the LWRP.
- 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" means actions planned and proposed for implementation by a Town agency, such as, but not limited to capital projects, promulgation of rules, regulations, laws, codes or ordinances and policy making which commits an agency or the Town to a course of action.
- H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton, as 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 Town Clerk.

V. REVIEW OF ACTIONS

- A. Whenever an action is proposed in the Town's Coastal Area affecting any land or water use or any natural resource of such Coastal Area, the Town Board or the Zoning Board of Appeals (ZBA), as appropriate, prior to an agency or such Town Board approving, funding or undertaking the action, shall make a determination that it is consistent with the LWRP policy standards and conditions set forth in Section G herein. No action in the Coastal Area shall be approved, funded or undertaken without a determination that it is consistent.
- B. Whenever an agency 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 or outside 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. All agencies of the Town, except the ZBA, shall refer a copy of the CAF to the Town Board. All agencies, including the ZBA, shall also refer a copy of the CAF to the Town Board in the other two Towns participating in the LWRP. All referrals shall be made within ten days of receipt of the completed CAF.
- C. After referral from an agency, the Town Board shall consider whether the proposed action is consistent with the Kendall, Yates and Carlton LWRP policy standards and conditions set forth in Paragraph G below. The Town Board shall require the agency or applicant to submit all completed forms, applications, CAFs and any other information necessary to its consistency review. During its deliberations, the Town Board may solicit advisory opinions from other boards and departments in the Town, and from the Town Boards of the other two Towns participating in the LWRP. If an opinion is requested, a response shall be made by the entity receiving the request within fifteen days of receipt. If no response is received, the Town Board shall proceed without such advisory opinions.
- D. The Town Board shall make a written determination of consistency and forward it to the agency within thirty days following referral of the CAF from the agency, unless extended by mutual agreement of the Town Board and the applicant, or in the case of a direct action, the agency. The determination shall indicate in writing whether the action is consistent or inconsistent with all of the applicable LWRP policy standards and conditions. The Town Board may, along with its determination, impose conditions on the proposed action which would make it consistent with the LWRP policy standards and conditions or would greater advance them.
- E. The ZBA shall make its own consistency determinations as described above, and shall be governed by the time frames and the permissive referral of an action to other agencies and departments in the Town and referral to the Town Boards of the other two participating Town Boards for advisory opinions. Under no circumstances, however, shall the Town Board have the authority to overrule the decision of the ZBA on any matter within the ZBA's statutory jurisdiction to grant variances or decide appeals.
- F. Consistency determinations by a Town Board or ZBA shall be made based upon the CAF, the Environmental Assessment Form (EAF), any advisory opinions received, and any other information considered relevant.

Where it is determined that an action may have a significant affect on the environment, the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) each must contain a discussion of the effects of the action on, and its consistency with, the LWRP policy standards and conditions identified as applicable.

Where it is determined that the action will not have a significant affect upon the environment, the Town Board or the ZBA shall none the less make a written determination of consistency.

After receipt of the consistency determination of the Town Board the agency shall have the authority to impose conditions specified by the Town Board on an action to ensure it is conducted in accordance with this local law.

G. 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 Towns of Kendall, Yates and Carlton LWRP. In the case of direct actions by agencies, the Town Boards shall also consult with Section IV of the LWRP in making its consistency determination. The action shall be consistent with the policy to:

1. Revitalize deteriorated and underutilized waterfront areas through a mixture of uses (Policies 1, 1A, 1B and 1C);
2. Retain and preserve existing and promote new water dependent uses (Policies 2, 2A, 2B, 2C and 2D);
3. Ensure that development occurs where adequate public infrastructure is available (Policies 5, and 5A);
4. Streamline development permit procedures (Policy 6);
5. Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 7B, 7C, 7D and 8);
6. Maintain and expand recreational fishing opportunities (Policies 9, 9A and 9B);
7. Minimize flooding and erosion hazards through protection of natural features, non-structural means, carefully selected long term structural measures and appropriate siting of structures (Policies 11, 12, 13, 13A, 14, 15, 15A, 16, 17, and 17A);
8. Safeguard economic, social and environmental interests in the coastal area in which major actions are undertaken (Policy 18);
9. Maintain and improve public access to the shoreline and other water related recreational facilities while protecting the environment (Policies 1B, 2, 2A, 2B, 9B, 19, 19A, 19B, 19C, 19D, 20, 20A, 21, 21A and 22);

10. Protect and restore historic and archeological resources (Policy 23);
11. Protect and upgrade local scenic resources (Policy 25);
12. Protect and conserve agricultural lands (Policy 26);
13. Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront location (Policies 27 and 40);
14. Prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28);
15. Protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 30A, 31, 32, 33, 34, 35, 36, 37, 37A and 38);
16. Perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15, 15A and 35);
17. Handle and dispose hazardous wastes and effluent in a manner which will not adversely affect the environment (Policies 39, 39A and 40);
18. Protect air quality (Policy 41, 42, 43);
19. Preserve and protect freshwater wetlands (Policies 44 and 44A).

H. If the Town Board or the ZBA 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 such Town Board or ZBA 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 Town, regional or statewide public benefit.

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

- I. The Town Board or ZBA shall maintain a file for each action which is the subject of a consistency determination, and shall make these files available for inspection upon request under the Freedom of Information Law.

VI. ENFORCEMENT

The Town Building Inspector and/or Code Enforcement Officer shall be responsible for enforcing this local law. No work or activity on a project in the Coastal Area that is subject to review under this local law shall be commenced or undertaken until the Building Inspector and/or Code Enforcement Officer has been presented with a written determination from a Town Board or ZBA that the action is consistent with the LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this local law or any conditions imposed thereunder, the Building Inspector and/or Code 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.

VII. VIOLATIONS

- A. Any person who violates any of the provisions of, or who fails to comply with any condition imposed by, this local law shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine not exceeding one thousand dollars (\$1,000.00) 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 Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law for violations which occur within their jurisdiction. 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 shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~ of YATES, ORLEANS COUNTY, NEW YORK
Town
~~Village~~

Local Law No. 1 of the year 19 96

A local law TO IMPLEMENT AND PROVIDE PROCEDURES FOR CONSISTENCY REVIEW
~~(REPEAL)~~ FOR THE TOWNS OF KENDALL, YATES AND CARLTON LOCAL
WATERFRONT REVITALIZATION PROGRAM

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of YATES, ORLEANS COUNTY, NEW YORK as follows:
Town
~~Village~~

SEE ATTACHED REGULATIONS

I. TITLE

This local law will be known as the Town of Yates Waterfront Consistency Review Law.

II. AUTHORITY AND PURPOSE

- A. This Local Law is adopted under the authority of Section 10 of the Municipal Home Rule Law; the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law); Article IX, Section 1 of the New York State Constitution; and Article 5-G of the General Municipal Law of the State of New York and expressly supersedes any inconsistent general or local law regarding consistency review, zoning and waterways.
- B. The purpose of this Local Law is to provide a framework for agencies of the Town of Yates to consider the policies, purposes and common interests contained in the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton when reviewing applications for actions or direct agency actions located in the Coastal Area; and to assure that such actions are consistent with those policies and purposes.
- C. It is the intention of the Town of Yates that the preservation, enhancement and utilization of the natural and man-made resources of the unique Coastal Area of the Town 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, it is the purpose of this Local Law to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife, diminution of open space areas and 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 substantive provisions of this local law shall only apply while there is in existence a LWRP which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. APPLICABILITY

All boards, departments, offices, other bodies or officers of the Town of Yates must comply with this local law, to the extent applicable, prior to carrying out, approving, or funding any action other than Type II, Exempt, or Excluded actions as those terms are defined in Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

IV. DEFINITIONS

- A. "Actions" shall mean either Type I or unlisted actions as defined in SEQR regulations (6 NYCRR Part 617) 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, which:
 - (a) are directly undertaken by an agency, or
 - (b) involve funding by an agency, or
 - (c) require one or more permits or 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 combination of the above.
- B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Yates.
- C. "Applicant" means any person making an application or other request to an agency to provide funding or to grant approval or permit in connection with a proposed action.
- D. "Coastal Area" means that portion of the 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 Town of Yates, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Kendall, Yates and Carlton LWRP.
- E. "Coastal Assessment Form" (CAF) means the form, contained in Appendix A to this local law, used by an agency to assist it in determining the consistency of an action with the LWRP.
- 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" means actions planned and proposed for implementation by a Town agency, such as, but not limited to capital projects, promulgation of rules, regulations, laws, codes or ordinances and policy making which commits an agency or the Town to a course of action.
- H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton, as 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 Town Clerk.

V. REVIEW OF ACTIONS

- A. Whenever an action is proposed in the Town's Coastal Area affecting any land or water use or any natural resource of such Coastal Area, the Town Board or the Zoning Board of Appeals (ZBA), as appropriate, prior to an agency or such Town Board approving, funding or undertaking the action, shall make a determination that it is consistent with the LWRP policy standards and conditions set forth in Section G herein. No action in the Coastal Area shall be approved, funded or undertaken without a determination that it is consistent. The ZBA shall make consistency determinations only for variance applications which are subject to the provisions of this Local Law.
- B. Whenever an agency 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. All agencies of the Town, except the ZBA, shall refer a copy of the CAF to the Town Board. All agencies, including the ZBA, shall also refer a copy of the CAF to the Town Board in the other two Towns participating in the LWRP. All referrals shall be made within ten days of receipt of the completed CAF.
- C. After referral from an agency, the Town Board shall consider whether the proposed action is consistent with the Kendall, Yates and Carlton LWRP policy standards and conditions set forth in Paragraph G below. The Town Board shall require the agency or applicant to submit all completed forms, applications, CAFs and any other information necessary to its consistency review. During its deliberations, the Town Board may solicit advisory opinions from other boards and departments in the Town, and from the Town Boards of the other two Towns participating in the LWRP. If an opinion is requested, a response shall be made by the entity receiving the request within fifteen days of receipt. If no response is received, the Town Board shall proceed without such advisory opinions.
- D. The Town Board shall make a written determination of consistency and forward it to the agency within thirty days following referral of all completed forms, applications, CAFs and any other information necessary for its consistency review from the agency and the applicant, unless extended by mutual agreement of the Town Board and the applicant, or in the case of a direct action, the agency. The determination shall indicate in writing whether the action is consistent or inconsistent with all of the applicable LWRP policy standards and conditions. The Town Board may, along with its determination, impose conditions on the proposed action which would make it consistent with the LWRP policy standards and conditions or would greater advance them.
- E. The ZBA shall make its own consistency determinations as described above, and shall be governed by the time frames and the permissive referral of an action to other agencies and departments in the Town and referral to the Town Boards of the other two participating Town Boards for advisory opinions. Under no circumstances, however, shall the Town Board have the authority to overrule the decision of the ZBA on any matter within the ZBA's statutory jurisdiction to grant variances or decide appeals.

- F. Consistency determinations by a Town Board or ZBA shall be made based upon the CAF, the Environmental Assessment Form (EAF), any advisory opinions received, and any other information considered relevant.

Where it is determined that an action may have a significant affect on the environment, the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) each must contain a discussion of the effects of the action on, and its consistency with, the LWRP policy standards and conditions identified as applicable.

Where it is determined that the action will not have a significant affect upon the environment, the Town Board or the ZBA shall none the less make a written determination of consistency.

After receipt of the consistency determination of the Town Board the agency shall have the authority to impose conditions specified by the Town Board on an action to ensure it is conducted in accordance with this local law.

- G. 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 Towns of Kendall, Yales and Carlton LWRP. In the case of direct actions by agencies, the Town Boards shall also consult with Section IV of the LWRP in making its consistency determination. The action shall be consistent with the policy to:

1. Revitalize deteriorated and underutilized waterfront areas through a mixture of uses (Policies 1, 1A, 1B and 1C);
2. Retain and preserve existing and promote new water dependent uses (Policies 2, 2A, 2B, 2C and 2D);
3. Ensure that development occurs where adequate public infrastructure is available (Policies 5, and 5A);
4. Streamline development permit procedures (Policy 6);
5. Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 7B, 7C, 7D and 8);
6. Maintain and expand recreational fishing opportunities (Policies 9, 9A and 9B);
7. Minimize flooding and erosion hazards through protection of natural features, non-structural means, carefully selected long term structural measures and appropriate siting of structures (Policies 11, 12, 13, 13A, 14, 15, 15A, 16, 17, and 17A);
8. Safeguard economic, social and environmental interests in the coastal area in which major actions are undertaken (Policy 18);

9. Maintain and improve public access to the shoreline and other water related recreational facilities while protecting the environment (Policies 1B, 2, 2A, 2B, 9B, 19, 19A, 19B, 19C, 19D, 20, 20A, 21, 21A and 22);
10. Protect and restore historic and archeological resources (Policy 23);
11. Protect and upgrade local scenic resources (Policy 25);
12. Protect and conserve agricultural lands (Policy 26);
13. Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront location (Policies 27 and 40);
14. Prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28);
15. Protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 30A, 31, 32, 33, 34, 35, 36, 37, 37A and 38);
16. Perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15, 15A and 35);
17. Handle and dispose hazardous wastes and effluent in a manner which will not adversely affect the environment (Policies 39, 39A and 40);
18. Protect air quality (Policy 41, 42, 43);
19. Preserve and protect freshwater wetlands (Policies 44 and 44A).

H. If the Town Board or the ZBA 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 such Town Board or ZBA 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 Town, regional or statewide public benefit.

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

- I. The Town Board or ZBA shall maintain a file for each action which is the subject of a consistency determination, and shall make these files available for inspection upon request under the Freedom of Information Law.

VI. ENFORCEMENT

The Town Building Inspector and/or Code Enforcement Officer shall be responsible for enforcing this local law. No work or activity on a project in the Coastal Area that is subject to review under this local law shall be commenced or undertaken until the Building Inspector and/or Code Enforcement Officer has been presented with a written determination from a Town Board or ZBA that the action is consistent with the LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this local law or any conditions imposed thereunder, the Building Inspector and/or Code 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.

VII. VIOLATIONS

- A. Any person who violates any of the provisions of, or who fails to comply with any condition imposed by, this local law shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine not exceeding one thousand dollars (\$1,000.00) 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 Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law for violations which occur within their jurisdiction. 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

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~~County~~
~~City~~
Town of CARLTON
~~Village~~

Local Law No. 3 of the year 19 98

A local law, TO IMPLEMENT AND PROVIDE PROCEDURES FOR CONSISTENCY REVIEW
(Insert title)
FOR THE TOWNS OF KENDALL, YATES AND CARLTON LOCAL WATERFRONT REVITALIZATION PROGRAM.

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

County
City of TOWN OF CARLTON as follows:
Town
Village

I. TITLE
This local law will be known as the Town of Carlton Waterfront Consistency Review Law.

II. AUTHORITY AND PURPOSE
A. This Local Law is adopted under the authority of Section 10 of the Municipal Home Rule Law; the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law); Article IX, Section 1 of the New York State Constitution; and Article 5-G of the General Municipal Law of the State of New York and expressly supersedes any inconsistent general or local law regarding consistency review, zoning and waterways.
B. The purpose of this Local Law is to provide a framework for agencies of the Town of Carlton to consider the policies, purposes and common interests contained in the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton when reviewing applications for actions or direct agency actions located in the Coastal Area; and to assure that such actions are consistent with those policies and purposes.

(If additional space is needed, please attach sheets of the same size as this and number each)

C. It is the intention of the Town of Carlton that the preservation, enhancement and utilization of the natural and man-made resources of the unique Coastal Area of the Town 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, it is the purpose of this Local Law to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife, diminution of open space areas and 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 substantive provisions of this local law shall only apply while there is in existence a LWRP which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

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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 combination of the above.

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

C. "Applicant" means any person making an application or other request to an agency to provide funding or to grant approval or permit in connection with a proposed action.

D. "Coastal Area" means that portion of the 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 Town of Carlton, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Kendall, Yates and Carlton LWRP.

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" means actions planned and proposed for implementation by a Town agency, such as, but not limited to capital projects, promulgation of rules, regulations, laws, codes or ordinances and policy making which commits an agency or the Town to a course of action.

H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Towns of Kendall, Yates and Carlton, as 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 Town Clerk.

V. REVIEW OF ACTIONS

A. Whenever an action is proposed in the Town's Coastal Area affecting any land or water use or any natural resource of such Coastal Area, the Town Board or the Planning Board as appropriate, prior to an agency or such Town Board approving, funding or undertaking the action, shall make a determination that it is consistent with the LWRP policy standards and conditions set forth in Section G herein. No action in the Coastal Area shall be approved, funded or undertaken without a determination that it is consistent.

B. Whenever an agency 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 or outside 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. All agencies of the Town, except the Planning Board, shall refer a copy of the CAF to the Town Board. All agencies, including the Planning Board, shall also refer a copy of the CAF to the Town Board in the other two Towns participating in the LWRP. All referrals shall be made within ten days of receipt the completed CAF.

C. After referral from an agency, the Town Board shall consider whether the proposed action is consistent with the Kendall, Yates and Carlton LWRP policy standards and conditions set forth in Paragraph G below. The Town Board shall require the agency or applicant to submit all completed forms, applications, CAF's and any other information necessary to its consistency review. During its deliberations, the Town Board may solicit advisory opinions from other boards and departments in the Town, and from the Town Boards of the other two Towns participating in the LWRP. If an opinion is requested, a response shall be made by the entity receiving the request within fifteen days of receipt. If no response is received, the Town Board shall proceed without such advisory opinions.

D. The Town Board shall make a written determination of consistency and forward it to the agency within thirty days following referral of the CAF from the agency, unless extended by mutual agreement of the Town Board and the applicant, or in the case of a direct action, the agency. The determination shall indicate in writing whether the action is consistent or inconsistent with all of the applicable LWRP policy standards and conditions. The Town Board may, along with its determination, impose conditions on the proposed action which would make it consistent with the LWRP policy standards and conditions or would greater advance them.

E. The Planning Board shall make its own consistency determinations as described above, and shall be governed by the time frames and the permissive referral of an action to other agencies and departments in the Town and referral to the Town Boards of the two participating Town Boards for advisory opinions.

F. Consistency determinations by a Town Board or Planning Board shall be made based upon the CAF, the Environmental Assessment Form (EAF), any advisory opinions received, and any other information considered relevant.

Where it is determined that an action may have a significant affect on the environment, the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) each must contain a discussion of the effects of the action on, and its consistency with, the LWRP policy standards and conditions identified as applicable.

Where it is determined that the action will not have a significant affect upon the environment, the Town Board or the Planning Board shall none the less make a written determination of consistency.

After receipt of the consistency determination of the Town Board the agency shall have the authority to impose conditions specified by the Town Board on an action to ensure it is conducted in accordance with this local law.

G. 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 Towns of Kendall, Yates and Carlton LWRP. In the case of direct actions by agencies, the Town Boards shall also consult with Section IV of the LWRP in making its consistency determination. The action shall be consistent with the policy to:

1. Revitalize deteriorated and underutilized waterfront areas through a mixture of uses (Policies 1, 1A, 1B and 1C);
2. Retain and preserve existing and promote new water dependent uses (Policies 2, 2A, 2B, 2C and 2D);
3. Ensure that development occurs where adequate public infrastructure is available (Policies 5, and 5A);
4. Streamline development permit procedures (Policy 6);
5. Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 7B, 7C, 7D and 8);
6. Maintain and expand recreational fishing opportunities (Policies 9, 9A and 9B);
7. Minimize flooding and erosion hazards through protection of natural features, non-structural means, carefully selected long term structural measures and appropriate siting of structures (Policies 11, 12, 13, 13A, 14, 15, 15A, 16, 17 and 17A);
8. Safeguard economic, social and environmental interests in the coastal area in which major actions are undertaken (Policy 18);
9. Maintain and improve public access to the shoreline and other water related recreational facilities while protecting the environment (Policies 1B, 2, 2A, 2B, 9B, 19, 19A, 19C, 20, 20A, 21, 21A and 22);
10. Protect and restore historic and archeological resources (Policy 23);
11. Protect and upgrade local scenic resources (Policy 25);
12. Protect and conserve agricultural lands (Policy 26);
13. Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront location (Policies 27 and 40);
14. Prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28);
15. Protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 30A, 31, 32, 33, 34, 35, 36, 37, 37A and 38);
16. Perform dredging and dredge soil disposal in a manner protective of natural resources (Policies 15, 15A and 35);

17. Handle and dispose hazardous wastes and effluent in a manner which will not adversely affect the environment (Policies 39, 39A and 40);
18. Protect air quality (Policy 41, 42, 43);
19. Preserve and protect freshwater wetlands (Policies 44 and 44A);

H. If the Town Board or the Planning 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 such Town Board or Planning 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 on or more of the other LWRP policy standards and conditions; and
4. the action will result in a overriding Town, regional or statewide public benefit.

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

I. The Town Board or Planning Board shall maintain a file for each action which is the subject of a consistency determination, and shall make these files available for inspection upon request under the Freedom of Information Law.

VI. ENFORCEMENT

The Town Zoning Enforcement Officer shall be responsible for enforcing this local law. No work or activity on a project in the Coastal Area that 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 a Town Board or Planning Board that the action is consistent with the LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this local law or any conditions imposed hereunder, 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.

V. VIOLATIONS

A. Any person who violates any of the provisions of, or who fails to comply with any condition imposed by, this local law shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) 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 violation.

B. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law for violations which occur within their jurisdiction. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

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 or provision hereof other than the provision so found to be invalid.

IX. EFFECTIVE DATE

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