

APPENDIX B
LOCAL CONSISTENCY LAW

CITY OF LACKAWANNA
LOCAL LAW NO. _____, 1989

A LOCAL LAW RELATING TO THE CITY OF LACKAWANNA, NEW YORK'S LOCAL WATERFRONT REVITALIZATION PROGRAM.

BE IT ENACTED by the City Council of the City of Lackawanna, New York, as follows:

This Local Waterfront Revitalization Program (LWRP) Consistency Law for the City of Lackawanna requires all Type I and Unlisted actions (as defined by the State Environmental Quality Review Act (SEQRA) implementing regulations) that would be directly undertaken, approved, or funded by the City to be reviewed by the City Council for consistency with the City of Lackawanna LWRP.

ARTICLE I - GENERAL PROVISIONS.

Section 1.1 - TITLE.

This Local Law shall be known and may be cited as the City of Lackawanna LWRP Consistency Law.

Section 1.2 - PURPOSE.

The purpose of this Local Law is to provide for the protection and beneficial use of the natural and man-made resources within the City of Lackawanna waterfront area by ensuring that certain actions to be undertaken, approved, or funded by the City will be done in a manner consistent with the policies and purposes of the City of Lackawanna LWRP. The consistency review, while triggered by SEQRA, is a free standing review conducted by the City Council.

Section 1.3 - AUTHORITY.

This Local Law is adopted under the authority of the Municipal Home Rule Law and Article 42 of the Executive Law.

Section 1.4 - APPLICABILITY.

All agencies of the City of Lackawanna shall comply with this Local Law, prior to directly undertaking, approving, or funding any action within the waterfront area when such action is classified as Type I or Unlisted under Part 617 of Title 6 of the official compilation of codes, rules and regulations of the State of New York (NYCRR).

Section 1.5 - SEVERABILITY.

The provisions of this Local Law are severable. If any part of this Local Law is found invalid, such findings will apply only to the particular provision and circumstances in question. The remainder of this Local Law, and the application of the disputed provision to other circumstance, will remain valid.

Section 1.6 - DEFINITIONS.

- a) "Action" means either a "Type I" or "Unlisted" action as defined in SEQR regulations at 6 NYCRR 617.2.
- b) "Consistent" means the action will be fully in compliance with and will not hinder any of the City of Lackawanna LWRP policy standards and conditions.
- c) "EIS" means Environmental Impact Statement as defined at 6 NYCRR 617.2(m).
- d) "Local Waterfront Revitalization Program (LWRP)" means the local program to implement the N.Y.S. Coastal Management Program within the City of Lackawanna approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law of New York State), a copy of which is on file in the office of the Clerk of the City of Lackawanna.
- e) "Part 617" means the State Environmental Quality Review Regulations. (Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.)
- f) "SEQR" means the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law, which is Chapter 43-b of the Consolidated Laws of the State of New York.)
- g) "City" means the City of Lackawanna.
- h) "City Agency" means any board, department, office, other bodies or officers of the City of Lackawanna.
- i) "City Council" means the City Council of the City of Lackawanna.
- j) "CAF" means Coastal Assessment Form as appended to this Local Law.
- k) "Waterfront Area" means that portion of the New York State Coastal Area within the City of Lackawanna as delineated in the City of Lackawanna Local Waterfront Revitalization Program.

1) All other terms for which definitions are given in SEQR and/or Part 617 shall have the same meanings in this Local Law.

m) "Planning Board" means the City of Lackawanna Planning Board.

ARTICLE II - CONSISTENCY REVIEW PROCEDURES.

Section 2.1 - INITIAL REVIEW.

2.1.1. As early as possible in the formulation of Type I or an Unlisted action, the agency shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review. However, when an applicant submits an application to a City agency for an approval of an action, the applicant shall prepare a CAF.

The City Council or a City agency when proposing to undertake, approve, or fund a Type I or Unlisted action in the waterfront area, shall prepare or cause to be prepared a Coastal Assessment Form (CAF) for the proposed action. Following preparation, the City Agency shall refer the CAF, and any other pertinent information for that action to the City Council for review and determination regarding the action's consistency with the policies and purposes of the LWRP.

Section 2.2 - CONSISTENCY DETERMINATION.

2.2.1. Prior to its undertaking, approving, or funding of a proposed Type I or Unlisted action in the waterfront area, and for each action referred by a City agency pursuant to Section 2.1, the City Council shall either:

- a) Determine that the action is consistent with the policies and purposes of the LWRP and will not substantially hinder achieving the policies and purposes of the LWRP; or
- b) Determine that the action will substantially hinder achieving the LWRP standards and conditions.

If the City Council determines that the action will cause a substantial hindrance to the achievement of the LWRP policy standards and conditions, such action will not be undertaken unless the City Council determines with respect to the proposed project that:

- i) 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;
- ii) The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions to the maximum extent practicable; and
- iii) The action will advance one or more of the other coastal policies; and

- iv) The action will result in an overriding City, regional or statewide public benefit.

Such a finding shall constitute a determination that the action is consistent.

2.2.2. The City Council shall complete its review of the proposed action's consistency and prepare a written finding to the referring City agency within thirty (30) days of the referral date. This time may be extended by agreement of the City Council and the Agency or as may be necessary to coordinate with SEQR review. The City Council may refer such actions for review to any municipal agency. Such agencies include but are not limited to the City Attorney, Department of Public Works, Planning Board and Department of Development.

2.2.3. The written findings of the City Council shall be filed with the City Clerk before the action is undertaken, approved or funded.

2.2.4. No action shall be undertaken, approved or funded unless the City Council determines its consistency with the policies and purposes of the LWRP by a finding pursuant to either 2.2.1(a) or 2.2.1(b), above.

Section 3.1 - EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the New York State Secretary of State.

Dated : June _____, 1989
Lackawanna, New York

APPROVED : June _____, 1989

THOMAS E. RADICH, MAYOR

APPENDIX C

M-D ZONING DISTRICT

Section 20-30 Mixed Development District (M-D)

30.1 Purpose

The purpose of the M-D District is to provide certain limited areas within the City with flexible land use requirements to encourage the best redevelopment of mixed uses in an integrated, controlled environment. The district is designed as a planned unit development (PUD) for a full range of residential, commercial and industrial uses, to permit great flexibility in the use and design of structures and land in situations where modification of specific provisions of this Ordinance will not be contrary to its intent and purpose or significantly inconsistent with the planning on which it is based and will not be harmful to the areas of the City in which they occur. Each M-D District shall be organized and located in such a manner that it:

- A. Creates projects that contain both individual building sites and common property and open space, all of which is planned and developed as a unit, with buildings related to common areas.
- B. Protects resident uses, inhabitants and adjacent properties from the harmful effects of its own commercial and industrial operations, and encourages the maintenance of high environmental quality throughout the District.
- C. Encourages a mix of residential uses including clustering, in a manner that is compatible with business and industrial developments that are also located within the M-D District.
- D. Provides for inclusion of water-dependent and water-enhanced uses along the City's Lake Erie shoreline, allowing for public access and recreation in the coastal area.
- E. Prevents encroachment on surrounding uses, and prevents surrounding uses from interfering with its development and operations.

To accomplish a successful mixed-development strategy, it is necessary in some cases to expand the scope of land planning and development beyond a concept of homogeneous use within formally defined districts and beyond a concept of individual lots with separate structures, to include the planning and development of larger areas with groups of structures erected thereon to create a diversified and coordinated entity. In this manner, topography, existing infrastructure and other site features can be utilized to best advantage to obtain creative and coordinated designs. The district is designed to generate a balanced mix of productive land uses within each M-D District, and thereby improve the City's employment and tax base and redevelopment potentials.

30.2 Permitted Principal Uses.

- A. Any combination or mix of permitted uses in R-2, R-3, R-4, B-2, B-3 and P-1 is permitted within an M-D District, provided that each use, and all uses, meet the following requirements:
1. Such use must comply fully with the requirements of an approved, consolidated development plan for that specific district, in accordance with the provisions of Article XII of this Ordinance, and with all requirements and covenants pertaining to M-D provisions in this Ordinance, including requirements for site plan review and approval in Article XI.
 2. Such use must be conducted entirely within completely enclosed buildings, except as is permitted herein.
 3. Such use shall not violate the limitations on permitted M-D uses that are presented in this Ordinance in Section 20.30.6 of this part.
- B. Uses which depend on proximity, access and/or utilization of the water, or which are enhanced by a waterfront location and proximity to water-dependent uses, are permitted within an M-D District, provided that such uses are subject to the same requirements as all other M-D uses, with the exception of being located within completely enclosed buildings. Such uses include, but are not limited to, the following:
1. Marinas, boat launch and docks.
 2. Marine service, repair, rental and accessories.
 3. Fishing and tackle equipment.
 4. Public recreation and swimming.
 5. Cultural facilities.
 6. Motels and hotels.
 7. Tourist facilities.
 8. Flood and erosion protection structures.
 9. Any other use which in the opinion of the Planning Board is similar in nature and effect to the water-dependent and water-enhanced uses prescribed in this Section, and which are consistent with the City's comprehensive plan.

30.3 Permitted Accessory Uses

- A. Accessory uses and structures permitted and as regulated in the R-2, R-3, R-4, B-2, B-3 and P-I Districts.
- B. Accessory uses and structures customarily incidental to water-dependent and water-enhanced uses.

30.4 Conditional Uses Requiring a Special Permit Issued by the Planning Board Subject to Supplemental Regulations, Article VII, and Special Permit Use Regulations, Article X

- A. Cargo handling, freight transfer, port and rail terminal operations.
- B. Any additional use as may be adopted in an approved development plan, in accordance with the provisions of Article XII of this Ordinance.

30.5 Area and Bulk Requirements

The area and bulk requirements of each specific district shall apply whenever such district is part of an approved development plan for an M-D District. See Article V, "Schedule of Regulations," limiting the height and bulk of buildings, and presenting the minimum size and frontage of lot permitted by land use, the maximum density permitted and providing minimum yard setback requirements. Alternative requirements may be adopted for an M-D District as part of an approved development plan, in accordance with the provisions of Article XII of this Ordinance.

30.6 Limitations on Uses in the M-D District

- A. All uses in an M-D District shall be subject to the same limitations as are provided for L-1 District, in Section 20-28.6 of this part.
- B. All uses in an M-D District shall comply fully with all additional limitations as may be adopted in an approved development plan, in accordance with the provisions of Article XII of this Ordinance.

APPENDIX D

GUIDELINES FOR LOCAL REVIEW OF
STATE AND FEDERAL ACTIONS

NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM

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

I. PURPOSES OF GUIDELINES

- A. 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.
- B. The Act also requires that state agencies provide timely notice to the situs local government 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.
- C. 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.

II. DEFINITIONS

A. Action means:

- 1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQR);
- 2. Occurring within the boundaries of an approved LWRP; and
- 3. 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.

- B. 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:

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

III. NOTIFICATION PROCEDURE

- A. When a state agency is considering an action as described in II above, the state agency shall notify the affected local government.
- B. Notification of a proposed action by a state agency:
 1. Shall fully describe the nature and location of the action;
 2. 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;
 3. Should be provided to the local official identified in the LWRP of the situs local government 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 local LWRP official should be considered adequate notification of a proposed action.)
- C. If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the chief executive officer can serve as the state agency's notification to the situs local government.

IV. LOCAL GOVERNMENT REVIEW PROCEDURE

- A. Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should

promptly provide the situs local government with whatever additional information is available which will assist the situs local government to evaluate the proposed action.

- B. If the situs local government 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.
- C. If the situs local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.
- D. If the situs local government 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 V below shall apply. The local government 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 local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

V. RESOLUTION OF CONFLICTS

- A. 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.
 - 1. 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.
 - 2. If the discussion 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.

3. If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party 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.
4. 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.
5. 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.
6. 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.

2/1/85

**Procedural Guidelines for Coordinating NYS DOS & LWRP
Consistency Review of Federal Agency Actions**

DIRECT ACTIONS

1. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the program coordinator (of an approved LWRP) and other interested parties.
2. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.
3. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with local coastal policies.
4. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed direct action.
5. A copy of DOS' "agreement" or "disagreement" letter to the federal agency will be forwarded to the local program coordinator.

PERMIT AND LICENSE ACTIONS

1. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the program coordinator and will identify the Department's principal reviewer for the proposed action.
2. Within thirty (30) days of receiving such information, the program coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with local coastal policies.
3. When DOS and the program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the program coordinator upon receipt.
4. Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with local coastal policies.

5. After that notification, the program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with local coastal policies.
6. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant will be forwarded to the program coordinator.
7. A copy of DOS' "concurrence" or "objective" letter to the applicant will be forwarded to the program coordinator.

FINANCIAL ASSISTANCE ACTIONS

1. Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a copy of the application documentation to the program coordinator. A copy of this letter will be forwarded to the coordinator and will serve as notification that the proposed action may be subject to review.
2. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.
3. the review period will conclude thirty (30) days after the date on DOS' letter of acknowledgement or the receipt of requested additional information, whichever is later. The review period may be extended for major financial assistance actions.
4. The program coordinator must submit the municipality's comments and recommendations on the proposed action to DOS within twenty days (or other time agreed to by DOS and the program coordinator) from the start of the review period received within this period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed financial assistance action with local coastal policies.
5. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency decision.
6. A copy of DOS' consistency decision letter to the applicant will be forwarded to the program coordinator.