

**APPENDIX F**

**LWRP CONSISTENCY ORDINANCE**

ARTICLE XIII  
WATERFRONT CONSISTENCY REVIEW LAW

DIVISION 1

**GENERAL PROVISIONS**

Section 27-161

**Title**

This ordinance will be known as the City of Albany Waterfront Consistency Review Law.

Section 27-162

**Authority and Purpose:**

1. This ordinance is adopted under the authority 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 ordinance is to provide a framework for agencies of the City of Albany to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions and direct actions are consistent with the said policies and purposes.
3. It is the intention of the City of Albany that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal area of the City take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living coastal resources; diminution of open space areas or public accesses to the waterfront; 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 ordinance shall only apply while there is in existence a Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

**Definitions:**

1. "Actions" mean either Type I or unlisted actions as defined in SEQRA regulations ( 6 N.Y.C.R.R. 617.2) which are undertaken by an agency and which include:
  - (a) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
    - (i) are directly undertaken by an agency; or
    - (ii) involve funding by an agency; or
    - (iii) require one or more new or modified approvals from an agency or agencies;
  - (b) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions
  - (c) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
  - (d) any combinations of the above.
2. "Agency" means any board, agency, department, office, other body, or any officer of the City of Albany.
3. "Coastal area" means that portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within boundaries of the City of Albany, as shown on the Coastal Area Map on file in the Office of the Secretary of State and as delineated in the City of Albany Local Waterfront Revitalization Program.
4. "Coastal Assessment Form (CAF)" means the form contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.
5. "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.
6. "Direct Actions" mean actions planned and proposed for implementation by an agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.

7. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the City of Albany, 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 City of Albany.

Section 27-164. **Review of Actions:**

1. With the exception of actions of the City Historic Resources Commission and the issuance of sign permits by the Buildings Department, which shall be exempt from the provisions of this ordinance, whenever a proposed action is located in the City's Waterfront Revitalization Area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein.
2. Whenever a 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 Waterfront Revitalization Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist the consistency of the proposed action.
3. The agency shall refer a copy of the completed CAF to the City Director of Planning within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the Director of Planning with reference to the consistency of the proposed action.
4. After referral from an agency, the Director of Planning shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein. The Director of Planning shall require the applicant to submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendations.
5. The Director of Planning shall render its written recommendation to the agency within thirty (30) days following referral of the CAF from the agency, unless extended by mutual agreement of the Director of Planning and the applicant or in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the Director of Planning, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for its opinion. The Director of Planning shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

In the event that the Director of Planning's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Director of Planning's recommendation.

6. The agency shall make the determination of consistency based on the CAF, the Director of Planning's recommendation and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within seven (7) days of the date of receipt of the Director of Planning's recommendation. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this Chapter.
7. Actions to be undertaken within the Waterfront Revitalization 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 City of Albany LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. In the case of direct actions, the agency shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:
  - (a) Revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C).
  - (b) Retain and promote water-dependent uses (Policy 2).
  - (c) Further develop the Port of Albany (Policies 3, 3A).
  - (d) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
  - (e) Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8).
  - (f) Maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities. (Policy 9).
  - (g) Minimize flooding and erosion hazards through non-structural means, carefully-selected long-term structural measures and appropriate siting of structures (Policies 13, 14, 16, 17, and 28).

- (h) Safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).
- (i) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 20, 21, and 22).
- (j) Protect and restore historic and archeological resources (Policy 23).
- (k) Protect and upgrade scenic resources (Policy 25).
- (l) Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 19, 27 and 40).
- (m) Undertake ice management practices in a manner which does not damage significant fish and wildlife or their habitats, cause erosion or flooding or interfere with hydroelectric generation (Policy 28).
- (n) Perform dredging and dredge spoil in a manner protective of natural resources (Policies 15, 35).
- (o) Handle and dispose of solid and hazardous wastes and effluent in a manner which will not adversely affect the environment nor expand existing landfills (Policy 39).
- (p) Protect air quality (Policies 41, 42, 43).

8. If the agency 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 agency makes a written finding with respect to the proposed action that:

- (a) 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;

- (b) the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
- (c) the action will advance one or more of the other LWRP policy standards and conditions; and
- (d) the action will result in an over-riding City, regional or state-wide public benefit.

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

9. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Director of Planning. Such files shall be made available for public inspection upon request.

Section 27-165. **Enforcement:**

The Commissioner of Buildings of the City of Albany shall be responsible for enforcing this Chapter. No work or activity on a project in the Waterfront Revitalization Area which is subject to review under this Chapter shall be commenced or undertaken until the Building Commissioner or his designee has been presented with a written determination from an agency that the action is consistent with the City's LWRP policy standards and conditions. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

Section 2. **Severability:**

The provisions of this ordinance 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.

Section 3. **Effective Date:**

This local law shall take effect immediately upon final passage.

**CITY OF ALBANY  
COASTAL ASSESSMENT FORM**

**INSTRUCTIONS:** This application must be completed in full, either typed or printed clearly, and filed with the Planning Office, City Hall, 4th Floor, by the reviewing agency or applicant.

The purpose of the Coastal Assessment Form is to insure that actions taken directly or indirectly by government agencies in the City's designated coastal areas are consistent with the policies and purposes outlined in Albany's Local Waterfront Revitalization Program (LWRP).

Upon receipt of the Coastal Assessment form and attachments, the Director of Planning will review the proposed action based on the waterfront policies set forth in the approved Local Waterfront Revitalization Program, to determine the consistency of the proposed action.

Within 30 days, the Director of Planning shall respond and indicate whether the proposed action is consistent or inconsistent with the policies of the LWRP. The Director may also recommend modifications or alternatives that would eliminate or diminish any features of the proposed action deemed to be inconsistent with the LWRP policies. However, the final consistency determination is to be made by the agency completing this form, in accordance with section 27-164 of the Waterfront Consistency Review Law.

If you have any questions about the application, please feel free to contact the Planning Office at 434-5190.

**SECTION I**

APPLICANT: \_\_\_\_\_ TEL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

APPLICANT'S INTEREST IN PROPERTY (OWNER/TENANT/OTHER SPECIFY):

\_\_\_\_\_

LOCATION OF PROPERTY: \_\_\_\_\_

ZONING DISTRICT: \_\_\_\_\_

SIZE OF PROPERTY: \_\_\_\_\_

EXISTING USE: \_\_\_\_\_

PROPOSED ACTION: \_\_\_\_\_

\_\_\_\_\_

