

**APPENDIX A**

**WATERFRONT CONSISTENCY LAW**

**Town of Delaware**

Local Law No. \_\_\_\_\_ of the year 199\_\_

Be it enacted by the Town Board of the Town of Delaware as follows:

**GENERAL PROVISIONS**

**I. Title**

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

**II. Authority and Purpose:**

1. This Local Law 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 Local Law is to provide a framework for agencies of the Town of Delaware to consider the policies and purposes contained in the Town of Delaware 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 Town of Delaware that the preservation, enhancement, and utilization of the natural and manmade 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, economic development, and attract the traveling public. Accordingly, this Local Law is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living estuarine resources and wildlife; 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 Local Law shall only apply while there is in existence a Town of Delaware Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. **Definitions:**

1. "Actions" 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:

- (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, 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;
- (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;
- (4) Any proposed action within the Town's Local Waterfront Revitalization Area that requires Site Plan Review and Approval by the Town of Delaware; and
- (5) any combinations of the above.

This law does not apply to Type II, excluded or exempt actions as defined in the S.E.Q.R.A. regulations 6 N.Y.C.R.R. Part 617.

2. "Agency" means any board, agency, department, office, other body, or officer of the Town of Delaware.
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 the boundaries of the Town of Delaware, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Town of Delaware Local Waterfront Revitalization Program.
4. "Coastal Assessment Form (CAF)" means the form used by an agency to assist it in determining the consistency of an action with the Town of Delaware 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 Town of Delaware, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Town of Delaware.

8. "Town of Delaware Local Waterfront Revitalization Program (LWRP) Advisory Committee" means the LWRP Advisory Committee of the Town of Delaware.

**IV. Town of Delaware Local Waterfront Revitalization Program (LWRP) Advisory Committee**

The LWRP Advisory Committee is authorized to review and make recommendations to appropriate agencies regarding the consistency of proposed actions with the Town of Delaware Local Waterfront Revitalization Program policy standards and conditions.

**V. Review of Actions:**

1. Whenever a proposed action is located within the Town's Coastal 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 10 herein.

2. Each agency of the Town shall be responsible for making its own consistency determinations.

3. Where more than one local agency is involved in reviewing a proposed action, the "lead agency" (as that term is defined in the SEQRA regulations) shall be responsible for making the determination that the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 10 herein.

4. The consistency determination process required by this local law shall be coordinated with the environmental review process set forth in SEQRA to the greatest extent possible.

5. 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 of the proposed action.

6. The agency shall refer a copy of the completed CAF to the LWRP Advisory Committee within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the LWRP Advisory Committee with reference to the consistency of the proposed action with the Town's Local Waterfront Revitalization Program.

7. After referral from an agency, the LWRP Advisory Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 10 herein. The LWRP Advisory Committee shall require the applicant to submit all completed applications, CAFs and any other information deemed to be necessary to its consistency review and recommendation.

8. The LWRP Advisory Committee 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 LWRP Advisory Committee and the applicant or in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the LWRP Advisory Committee, 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 LWRP Advisory Committee 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 LWRP Advisory Committee's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the LWRP Advisory Committee's recommendation.

9. The agency shall make the determination of consistency based on the CAF, SEQRA documents, the application and project documentation, the LWRP Advisory Committee recommendation and relevant recommendations from other agencies, and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within thirty (30) days following receipt of the LWRP Advisory Committee's recommendation and submission by the applicant of any additional required information. 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 Local Law.

10. Actions to be undertaken within the Town of Delaware 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 Town of Delaware LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:

- (1) Revitalize the deteriorated and underutilized waterfront areas of the Town of Delaware (Policy 1).
- (2) Facilitate the siting of water-dependent uses and facilities on or adjacent to the coastal waters of the Town of Delaware (Policy 2).
- (3) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 4).
- (4) Protect, preserve, and where practicable, restore significant and locally important fish and wildlife habitats so as to maintain their viability as habitats and prevent human disruption and chemical contamination (Policy 5).
- (5) Minimize flooding hazards through non-structural means, carefully-selected, long-term structural measures, and appropriate siting of structures (Policy 6).
- (6) Minimize erosion damage to natural resources and damage to property from erosion by directing development away from steeply sloped areas and through non-structural measures whenever possible (Policy 7).
- (7) Maintain and improve public access to the shoreline and the water-related recreational facilities while protecting the environment (Policy 8).
- (8) Protect and restore historic and archeological resources (Policy 9).
- (9) Protect and improve the visual quality of the waterfront area (Policy 10).

- (10) Conserve and protect agricultural lands in the waterfront area (Policy 11).
- (11) Municipal, industrial, and commercial discharge of effluent and pollutants into water bodies will conform to State and national water quality standards (Policy 12).
- (12) The Town of Delaware's Local Waterfront Revitalization Program will be considered while reviewing State water body classifications and while modifying water quality standards (Policy 13).
- (13) Best management practices will be used to ensure control of stormwater runoff, combined sewer outflows, and non-point discharge of excess nutrients, organics, and eroded soils into State waterways (Policy 14).
- (14) Encourage use of innovative sanitary waste systems where existing Town systems are not available (Policy 15).
- (15) Ensure that excavation, dredging, and dredge spoil disposal are undertaken in such a manner that protects fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and does not cause an increase in the erosion of such land (Policy 17).
- (16) Preserve and protect wetlands and the benefits derived from these resources (Policy 18).
- (17) Continue to support the goals of the Upper Delaware River Management Plan by enforcing the Town Zoning Law and updating its provisions as necessary to address changing development concerns (Policy 19).
- (18) Involve the public and local business owners in all revitalization efforts, particularly in any downtown improvement where such participation is essential to success (Policy 20).

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:

- (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 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 LWRP Advisory Committee. Such files shall be made available for public inspection upon request.

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 which is subject to review under this Local Law shall be commenced or undertaken until the Zoning Enforcement Officer has been presented with a written determination from an agency that the action is consistent with the Town's 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 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.

VII. **Violations:**

1. A person who violates any of the provisions of, or who fails to comply with any conditions imposed by this Local Law shall have committed a violation, punishable by a fine not exceeding five hundred dollars for a conviction of a first offense and punishable by a fine of one thousand dollars 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 offense.

2. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this Local Law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty. The Town may also enforce this Local Law by injunction or other civil proceeding.

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

IX. **Effective Date:**

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