

**APPENDIX H**  
**LOCAL CONSISTENCY LAW**

**WHEREAS**, a public hearing was held by the Town Board of the Town of East Hampton on June 16, 2005, and held open for public comments until July 1, 2005, regarding a proposed Local Law adding Chapter 150 ("LWRP Local Consistency Review Law") to the Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct agency actions by the Town are consistent with the LWRP policies and purposes; and

**WHEREAS**, the Town Board has considered the comments of all persons regarding this Local Law, both as submitted in writing during the comment period and as presented orally at the public hearing; and

**WHEREAS**, the adoption of this local law is an unlisted action pursuant to the State Environmental Quality Review Act (SEQRA); and

**WHEREAS**, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

**WHEREAS**, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment;

**NOW, THEREFORE, BE IT RESOLVED**, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

**NOW, THEREFORE, BE IT RESOLVED**, that the said Local Law is hereby enacted to read as follows:

**LOCAL LAW NO.   22   OF 2005**

**INTRODUCTORY NO.   16   OF 2005**

A Local Law providing for the addition of Chapter 150 ("LWRP Local Consistency Review Law") to the East Hampton Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct actions by the Town are consistent with the LWRP policies and purposes, said Local Law to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

**SECTION I: Findings and Objectives:**

The Town Board has determined to add Chapter 150 ("LWRP Local Consistency Review Law") to the Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) adopted , when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct agency actions by the Town are consistent with the LWRP policies and purposes.

**SECTION II: Town Code Amended:**

**Section 150-10. Title.**

This Local Law will be known as the Town of East Hampton Local Waterfront Revitalization Program Consistency Review Law

**Section 150-20. Authority.**

This local law is adopted as a local law pursuant to the authority conferred in Article IX of the New York State Constitution; Section 10 of the New York Statute of Local Governments; Article 2, Section 10 of the Municipal Home Rule Law and Article 42 of the Executive Law, Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York. Section 150-50(H) is hereby adopted using the supercession authority under New York State Town Law, § 23 of the Municipal Home Rule Law.

**Section 150-30. Purpose.**

- A. The purpose of this Local Law is to provide a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct actions by the Town are consistent with the LWRP policies and purposes.
- B. It is the intention of the Town of East Hampton that the preservation, enhancement and utilization of the unique coastal area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between protection of 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 and wildlife; diminution of open space

areas or public access to the waterfront; disruption of natural coastal processes; impairment of scenic or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.

- C. The substantive provisions of this Local Law shall only apply while there is in existence a Town of East Hampton Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

### **Section 150-35. Definitions.**

- A. "Actions" include all the following, except minor actions:

- (1) projects or physical activities, such as construction or any other activities that may affect natural, man-made or other resources in the coastal area or the environment by changing the use, appearance or condition of any 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, permits, or review from an agency or agencies;
- (2) agency planning and policymaking 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 coastal resources or 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 East Hampton.

- C. "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 East Hampton, as shown on the coastal area map on file in the office of the Secretary of State and as delineated in the Town of East Hampton Local Waterfront Revitalization Program (LWRP).

- D. "Coastal Assessment Form (CAF)" means the form, a sample of which is appended to this local law, used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

- E. "Consistent" means that the action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance one or more of them.
- F. "Direct Agency 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.
- G. "Environment" means all conditions, circumstances and influences surrounding and affecting the development of living organisms or other resources in the coastal area.
- H. "Local Waterfront Revitalization Program, or LWRP" means the Local Waterfront Revitalization Program of the Town of East Hampton, 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 East Hampton.
- I. "Minor actions" include the following actions, which are not subject to review under this chapter:
  - (1) maintenance or repair involving no substantial changes to an existing structure or facility;
  - (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, except for structures in areas designated by local Coastal Erosion Hazard Area law where structures may not be replaced, rehabilitated or reconstructed without a permit;
  - (3) repaving of existing paved highways not involving the addition of new travel lanes;
  - (4) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
  - (5) maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, or in Nature Preserves or within the Harbor Protection Overlay District (HPOD);
  - (6) granting of individual setback and lot line variances, except in relation to a regulated natural feature;
  - (7) minor temporary uses of land having negligible or no permanent impact on coastal resources or the environment;

- (8) installation of traffic control devices on existing streets, roads and highways;
- (9) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (10) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any action;
- (11) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (12) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (13) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (14) collective bargaining activities;
- (15) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (16) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (17) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
- (18) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (19) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;

- (20) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
- (21) adoption of a moratorium on land development or construction;
- (22) interpreting an existing code, rule or regulation;
- (23) designation of local landmarks or their inclusion within historic districts;
- (24) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to coastal resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;
- (25) local legislative decisions such as rezoning where the Town Board determines the action will not be approved.

J. "Waterfront Advisory Committee" (WAC) means the Waterfront Advisory Committee of the Town of East Hampton, as created pursuant to this Chapter.

#### **Section 150-40. Management and Coordination of the LWRP**

- A. The Town Supervisor shall be responsible for overall management and coordination of the LWRP. In performing this task the Supervisor shall:
- (1) Inform the Town Board, Town Trustees and other Town agencies or boards on implementation, priorities, work assignments, timetables, and budgetary requirements of the LWRP.
  - (2) Make applications for funding from State, Federal, or other sources to finance projects under the LWRP.
  - (3) Coordinate and oversee liaison between Town agencies and departments, including but not limited to the Town Board, Town Trustees, Planning Board, Zoning Board of Appeals, and Planning, Natural Resources and Harbormasters Departments of the Town, and with other non-governmental bodies, to further implementation of the LWRP.
  - (4) Prepare an annual report on progress achieved and problems

encountered in implementing the LWRP, and recommend actions necessary for further implementation to the appropriate Town agency or the Town Board.

- (5) Perform other functions regarding the coastal area and direct such actions or projects as are necessary, or as the Town Board may deem appropriate, to implement the LWRP.
- B. In order to foster a strong relationship and maintain an active liaison among the Town agencies responsible for implementation of the LWRP, the Town Supervisor shall convene at least annually a Town LWRP coordinating council, including but not limited to representatives of the Town Board, Town Trustees, Planning Board, Zoning Board of Appeals, Waterfront Advisory Committee, and such other Town departments or individuals charged with LWRP implementation as the Senior Harbormaster, Highway Superintendent, Natural Resources Director, Planning Director, Director of Parks and Recreation, Director of the Town Shellfish Hatchery, Director of Emergency Services and Civil Defense Coordinator.

#### **Section 150-45. Waterfront Advisory Committee.**

- A. A Committee is created and shall be hereafter known as the "Waterfront Advisory Committee of the Town of East Hampton" (WAC). The WAC shall meet at least annually to review the Supervisor's annual progress report and shall advise the Town Board on LWRP implementation and on policy, project and budget priorities, as well as on amendments to the LWRP. The WAC may also perform other functions regarding the coastal area as the Supervisor or Town Board may assign to it from time to time.
- B. The Town Board of the Town of East Hampton is hereby authorized to appoint five (5) persons to said Committee, all of whom shall be residents of the Town of East Hampton. Of the members of the Committee first appointed, one (1) shall hold office for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years and one (1) for a term of five (5) years from and after the expiration of the terms of their predecessors in office. Thereafter, all members shall be appointed for a term of five (5) years. Vacancies shall be filled by the Town Supervisor by appointment for the unexpired term. Members may be removed by the Town Board for cause and after public hearing.
- C. The Town Board shall annually appoint one (1) committee member to serve as chairperson of the Committee. Upon failure of the Town Board to appoint a chairperson, the members of the Committee shall elect a chairperson.
- D. The Committee may employ such persons as may be needed, as authorized by the Town Board, and shall have the power to adopt rules of procedure for the

conduct of all business within its jurisdiction.

**Section 150-50. Review of Actions.**

- A. Whenever a proposed action is located in the Town's coastal area, a Town agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in Section I herein. No action in the coastal area shall be approved, funded or undertaken by an agency without such a determination.
- B. The Town Planning Department shall be responsible for coordinating review of actions in the Town's coastal area for consistency with the LWRP, and will advise, assist and make consistency recommendations for other Town agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program. The Planning Department will also coordinate with NYS DOS regarding consistency review for actions by State or Federal agencies.
- C. The Planning Department will assist each agency with preliminary evaluation of actions in the coastal area, and with preparation of a Coastal Assessment Form (CAF). 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 agency shall refer to the Planning Department for preparation of a CAF, a sample of which is appended to this local law. The Planning Department staff will coordinate their preliminary evaluation with permitting or other review by each agency or the agencies considering an action.
- D. The Planning Department shall require the applicant to submit all completed applications, EAFs, and any other information deemed necessary to its consistency recommendation. The recommendation shall indicate whether, in the opinion of the Planning Department, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and objectives and shall elaborate in writing the basis for its opinion. The Planning Department shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards and objectives or to greater advance them.
- E. If an action requires approval of more than one agency, decision making will be coordinated between agencies to determine which agency will conduct the final consistency review, and that agency will thereafter act as designated consistency review agency. Only one CAF per action will be prepared. If the agencies cannot agree, the Planning Director shall designate the consistency review agency.
- F. Upon recommendation of the Planning Department, the agency shall consider

whether the proposed action is consistent with the LWRP policy standards summarized in Section I herein. Prior to making its determination of consistency, the agency shall consider the consistency recommendation of the Planning Department. The agency shall render a written determination of consistency based on the CAF, the Planning Department recommendation and such other information as is deemed necessary to its determination. No approval or decision shall be rendered for an action in the coastal area without a determination of consistency. The designated agency will make the final determination of consistency.

- G. Where an EIS is being prepared or required, the draft EIS must identify applicable LWRP policies and standards and include a discussion of the effects of the proposed action on such policy standards. No agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written finding regarding the consistency of the action with the local policy standards referred to in Section I herein.
- H. In the event the Planning Department's recommendation is that the action is inconsistent with the LWRP, and the agency makes a contrary determination of consistency, the agency shall elaborate in writing the basis for its disagreement with the recommendation and state the manner and extent to which the action is consistent with the LWRP policy standards. No agency except the Town Board or Town Trustees shall issue such an overruling determination without a majority plus one vote of all members qualified to vote.
- I. Actions to be undertaken within the coastal area shall be evaluated for consistency in accordance with the following summary of LWRP policies, which are derived from and further explained and described in the Town of East Hampton 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 Town of East Hampton LWRP Section XIV, Projects of the LWRP, in making their consistency determination. The action shall be consistent with the policies to:
  - (1) Revitalize deteriorated and underutilized waterfront areas (Policy 1).
  - (2) Retain and promote recreational water-dependent uses (Policy 2).
  - (3) Strengthen economic base of small harbor areas by encouraging traditional uses and activities (Policy 4).
  - (4) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
  - (5) Streamline development permit procedures (Policy 6).

- (6) Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 8).
- (7) Maintain, promote and expand commercial fishing opportunities (Policies 9, 10).
- (8) Minimize flooding and erosion hazards through non-structural means, carefully-selected, long-term structural measures and appropriate siting of structures (Policies 11, 12, 13, 14, 16, 17).
- (9) Safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).
- (10) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 20, 21, 22).
- (11) Protect and restore historic and archeological resources (Policy 23).
- (12) Protect and upgrade scenic resources (Policy 25).
- (13) Conserve and protect agricultural lands (Policy 26).
- (14) Site and construct energy facilities in a manner which will be compatible with the environment, which are dependent upon the need for a waterfront or water location (Policies 27, 29, 40).
- (15) Prevent ice management practices which could damage significant fish and wildlife and their habitats (Policy 28).
- (16) Protect surface and groundwaters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 32, 33, 34, 35, 36, 37, 38).
- (17) Perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15, 35).
- (18) Handle and dispose of hazardous wastes and effluent in a manner which will not adversely affect the environment (Policies 8, 30, 36, 39).
- (19) Protect air quality (Policies 41, 42, 43).
- (20) Protect tidal and freshwater wetlands (Policy 44).

J. If the agency determines that an action will be inconsistent with one or more LWRP policy standards or objectives, such action shall not be undertaken unless

the agency makes a written finding that:

- (1) no reasonable alternative exists to the proposed action which will not substantially hinder the achievement of such LWRP policy standards or objectives; and
- (3) the action will be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards or objectives; and
- (3) the action will advance one or more other LWRP policy standards or objectives; and
- (4) the action will result in a benefit to the project sponsor that is greater than any detriment to the Town.

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

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

#### **Section 150-55. Enforcement.**

The Town Building Inspectors, Town Attorney, Code Enforcement Officers, Marine Patrol Personnel, Sanitation Inspector and Natural Resource Director shall be responsible for enforcing this Chapter. No action in the coastal area which is subject to review under this Chapter shall proceed until a written determination has been issued from the designated agency that the action is consistent with the Town's LWRP policy standards. In the event that an activity is being performed in violation of this Chapter or any conditions imposed thereunder, the Building Inspector or any other authorized official of the Town 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.

#### **Section 150-60. Violations.**

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter 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 of one thousand dollars (\$1000.00) 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. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

**Section 150-65. 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.

**Section 150-70. 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.

**SECTION III. - SEVERABILITY:**

Should any part or provision of this Local Law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

**SECTION IV. - EFFECTIVE DATE:**

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

***AND BE IT FURTHER RESOLVED,*** that the Town Clerk is directed to forward copies of this resolution to: Town Attorney Laura Molinari; Planning Director Marguerite Wolffsohn; Chief Building Inspector Donald T. Sharkey; the Director of Natural Resources Larry Penney; the East Hampton Town Trustees; Ordinance Enforcement Director Dominic Shirrippa; Superintendent of Parks and Recreation Ken Scott; Planning Board; Zoning Board of Appeals; Architectural Review Board; Senior Harbormaster Ed Michels; and Superintendent of Highways Christopher Russo.

BY ORDER OF THE TOWN BOARD  
TOWN OF EAST HAMPTON, NEW YORK

FRED L. OVERTON, TOWN CLERK