

APPENDIX A CONSISTENCY REVIEW LAW AND WATERFRONT ASSESSMENT FORM

Town of Evans Local Waterfront Revitalization Program Consistency Review Law

Local Law No. 1 of the year of 2011

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

GENERAL PROVISIONS

I. Title

This local law will be known as the Town of Evans Local Waterfront Revitalization Program (LWRP) 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 the agencies of the Town of Evans (Town) to incorporate the policies and purposes contained in the Town of Evans Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions located within the waterfront area; and to ensure that such actions and direct actions undertaken by Town agencies are consistent with the LWRP policies and purposes.
3. It is the intention of the Town of Evans that the preservation, enhancement and utilization of the natural and manmade resources of the waterfront area of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss and degradation of living waterfront resources and wildlife; adverse impacts to historic structures; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic, cultural or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; 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 Evans Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. 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, manmade or other resources in the waterfront 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 waterfront resources or the environment; and
 - (4) any combination of the above.
- B. "Agency" means any public board, agency, department, office, other body, or officer thereof.
- 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 Evans, as shown on the coastal area map on file in the office of the Secretary of State and as delineated in the Town of Evans Local Waterfront Revitalization Program (LWRP).
- D. "Code Enforcement Officer" means the Building Inspector and/or Code Enforcement Officer of the Town of Evans
- 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 Actions" mean actions planned and proposed for implementation by an applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.
- G. "Environment" means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.
- H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Town of Evans, 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 of the Town of Evans.

I. "Minor actions" include the following actions, which are not subject to review under this chapter:

- (1) repaving or widening of existing paved highways not involving the addition of new travel lanes;
- (2) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- (3) maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, or within Significant Coastal Fish and Wildlife Habitat areas;
- (4) granting of individual setback and lot line variances, except in relation to a regulated natural feature or a seawall or other shoreline erosion protection structure;
- (5) minor temporary uses of land having negligible or no permanent impact on waterfront resources or the environment;
- (6) installation of traffic control devices on existing streets, roads and highways;
- (7) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (8) 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;
- (9) official acts of a ministerial nature involving no exercise of discretion, including building permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code;
- (10) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (11) 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;
- (12) collective bargaining activities;
- (13) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

- (14) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
 - (15) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, storage of road de-icing substances, or other hazardous materials;
 - (16) adoption of regulations, policies, procedures and local legislative decisions in furtherance of any action on this list;
 - (17) 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;
 - (18) 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;
 - (19) adoption of a moratorium on land development or construction;
 - (20) interpreting an existing code, rule or regulation;
 - (21) designation of local landmarks or their inclusion within historic districts;
 - (22) 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 waterfront 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;
 - (23) local legislative decisions, such as rezoning, where the Town of Evans determines the action will not be approved.
- J. "Waterfront area" means the Waterfront Revitalization Area delineated in the Town's Local Waterfront Revitalization Program.
- K. "Waterfront Assessment Form (WAF)" means the form, a sample of which is appended to this local law, used by an agency or other entity to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

IV. Management and Coordination of the LWRP

- A. The Town of Evans Code Enforcement Officer, in consultation with the Planning Department, shall be responsible for coordinating the review of actions proposed within the Town's waterfront area for consistency with the LWRP. They will advise and assist applicants and make consistency determinations for the implementation of the LWRP,

its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program. No approval or decision shall be rendered for a proposed action in the Evans waterfront area without the issuance of a written determination of consistency from the Town.

- B. The Town Code Enforcement Officer shall coordinate with the New York State Department of State on the consistency review of actions proposed by Federal-and ~~and~~ with other State agencies.
- C. The Town Code Enforcement Officer, in consultation with the Planning Division, shall assist the Town Board in making applications for funding from State, Federal, or other sources to finance projects under the LWRP.
- D. The Town Code Enforcement Officer, in consultation with the Planning Division, shall perform other functions regarding the waterfront area and direct such actions or projects as the Town Board may deem appropriate to implement the LWRP.

V. Review of Actions.

- A. Prior to approving, funding or undertaking an action proposed within the Town's waterfront area, the Code Enforcement Officer and the Planning Department will collaborate to evaluate the proposed action and make a determination that the action is consistent with the LWRP policy standards summarized in Subparagraph I herein. No action in the waterfront area shall be approved, funded or undertaken without such a determination.
- B. Whenever the Town receives an application for approval or funding of an action, or as early as possible in a Town Department's formulation of a direct action to be ~~located~~ undertaken in the waterfront area, the application or project information shall referred to the Code Enforcement Officer, along with a copy of the completed within ten (10) days of its receipt.
- C. Upon receipt of an application for approval or funding, the Town Code Enforcement Officer shall coordinate with the Planning Department to consider whether the proposed action is consistent with the LWRP policy standards set forth in Subparagraph I herein. The Town Code Enforcement Officer shall require the applicant to submit all completed applications, Waterfront Assessment Form (WAF), Environmental Assessment Form (EAF), and any other information deemed necessary for the consistency-review and determination.

The Town Code Enforcement Officer, in consultation with the Planning Department, shall render its written determination to the applicant within thirty (30) days following receipt of the WAF, unless extended by mutual agreement of the Town Code Enforcement Officer and the applicant or Town. The written consistency determination shall indicate whether the proposed action is consistent or inconsistent with one or more of the LWRP policy standards, and shall elaborate in writing the basis for this

determination. In addition, any recommendations concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards shall be provided.

The Town shall maintain a file for each action made the subject of a consistency determination, including any recommendations made for mitigation. Such file shall be kept in the office of the Planning Division and made available for public inspection upon request.

- D. The Zoning Board of Appeals is the designated agency for making the determination of consistency for variance applications subject to this law. The Zoning Board of Appeals shall consider the written consistency determination of the Town Code Enforcement Officer and Planning Department in the event, and at the time, it makes a decision to grant such a variance and may impose appropriate conditions on the variance to make the proposed action consistent with the objectives of this law.
- E. Where an Environmental Impact Statement (EIS) is being prepared or required, the draft EIS must identify applicable LWRP policies standards in Subparagraph I and include a thorough discussion of the effects of the proposed action on such policy standards.
- F. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following summary of LWRP policy standards, which are derived from and further explained and described in Section III of the Town of Evans LWRP, a copy of which is on file in the Town Clerk's office and the Planning Office, and available for review during normal business hours. Applicants that undertake direct actions must also consult Section IV in making their consistency determination.

As appropriate, an action shall be consistent with the policy to:

- 1) Revitalize deteriorated and underutilized waterfront areas (Policy 1).
- 2) Retain and promote water-dependent uses (Policy 2, 21, 22).
- 3) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
- 4) Streamline development permit procedures (Policy 6).
- 5) Protect significant and locally important fish and wildlife habitats from human disruption and contamination from hazardous substances (Policies 7, 8).
- 6) Maintain, promote and expand recreational fishing opportunities (Policies 9, 10).
- 7) Minimize flooding and erosion hazards through non-structural means, carefully-selected, long-term structural measures and the appropriate siting of structures (Policies 11, 12, 13, 14, 16, 17).
- 8) Safeguard economic, social and environmental interests in the waterfront area when major actions are undertaken (Policy 18).

- 9) Maintain and improve public access to the waterfront and to water-related recreational facilities, while protecting the environment (Policies 2, 19, 20, 21, 22).
- 10) Protect, enhance and restore historic and archaeological resources (Policy 23).
- 11) Protect and upgrade scenic resources (Policy 25).
- 12) Conserve and protect agricultural lands (Policy 26).
- 13) Site and construct energy facilities that are dependent upon the need for a waterfront or water location in a manner that would be compatible with the environment (Policies 27, 29, 40).
- 14) Prohibit ice management practices that could adversely impact significant fish and wildlife and their habitats and other waterfront resources (Policy 28).
- 15) Protect surface and ground waters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 32, 33, 34, 35, 36, 37, and 38).
- 16) Perform dredging and dredge spoil disposal in a manner that is protective of natural resources (Policies 15, 35).
- 17) Handle and dispose of hazardous wastes and effluent in a manner that will not adversely affect the environment (Policies 8, 30, 36, 39).
- 18) Protect air quality (Policies 41, 42, 43).
- 19) Protect tidal and freshwater wetlands (Policy 44).

VI. Enforcement

No action within the Town of Evans waterfront area, which is subject to review under this Law, shall proceed until a written determination has been issued indicating 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 law or any conditions imposed therewith, the Town Code Enforcement Officer shall issue a stop work order for all work to immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect. The Code Enforcement Officer shall be responsible for enforcing this Law.

VII. Violations

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by this Law shall have committed a violation punishable by a fine not exceeding three hundred and fifty dollars (\$350.00) and/or a term of imprisonment not to exceed 15 days for a conviction of a first offense and punishable by a fine not to exceed two thousand dollars (\$2,000.00) and/or a term of imprisonment not to exceed 15 days 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 and additional violation.

- B. The Code Enforcement Officer and the Town Attorney are authorized 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. Applicability

This Local law shall supersede and replace Chapter 98 – Environmental Quality Review.

IX. 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.

X. 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.

Town of Evans Waterfront Assessment Form

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, Town of Evans Departments, shall complete this WAF for proposed actions that are located within the Evans Local Waterfront Area and are subject to the consistency review law. This assessment is intended to supplement other information used by the Town of Evans in making a determination that the proposed action will be consistent with the policies of the Town of Evans Local Waterfront Revitalization Program. It is also helpful for making a determination of significance pursuant to the State Environmental Quality Review Act (SEQR).
2. Before answering the questions in Section C, the preparer of this form should review the policies and policy explanations contained in Section III of the Town of Evans Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the Town Clerk's office and the Planning office. A proposed action should be evaluated as to its potential significant effects upon resources in the waterfront area.
3. If any questions in Section C on this form are answered "yes", then the proposed action may contravene the LWRP policy standards, as contained in the Town of Evans LWRP. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a final determination of consistency with the LWRP policy standards. If an action cannot be certified as consistent with the LWRP policy standards, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of Approval Action Requested (check all, as appropriate):

<input type="checkbox"/> Site Plan Approval	<input type="checkbox"/> Variance
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Building Permit
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Other
<input type="checkbox"/> Special Use Permit	_____
2. Name of applicant: _____
Mailing address: _____
Telephone number: () _____
Property tax number: _____
3. Describe nature and extent of action:

4. Will the action be directly undertaken, require funding, or approval by a State or federal agency? Yes _____ No _____

If yes, which State or federal agency? _____

5. Location of action (Street or Site Description and nearest intersection):

6. Size of site (acres): _____

7. Amount (acres) of site to be disturbed: _____

8. Present land use: _____

9. Present zoning classification: _____

10. Describe any unique or unusual landforms on the project site (i.e. bluffs, wetlands, other geological formations):

11. Percentage of site that contains slopes of 15% or greater: _____

12. Streams, lakes, ponds or wetlands existing within or continuous to the project area?

(a) Name _____

(b) Size (in acres) _____

13. Is the property serviced by public water? Yes _____ No _____

14. Is the property serviced by public sewer? Yes _____ No _____

C. WATERFRONT ASSESSMENT (Check either "Yes" or "No" for each of the following questions). If the answer to any question above is yes, please explain in Section D any measures which will be undertaken to mitigate any adverse effects.

1. Will the proposed action be located in, or contiguous to, YES NO
or have a potentially adverse effect upon any of the resource areas
found within the waterfront area (as identified in the Evans LWRP)? ____ ____

(a) Significant fish or wildlife habitats? ____ ____

		<u>YES</u>	<u>NO</u>
(b)	Scenic resources of local or State-wide significance?	____	____
(c)	Important agricultural lands?	____	____
(d)	Natural protective features in a coastal erosion hazard area	____	____
(e)	Designated State or federal freshwater wetlands	____	____
(f)	Commercial or recreational use of fish and wildlife resources?	____	____
(g)	Existing or potential public recreation opportunities?	____	____
(h)	Structures, sites or districts of historic, archaeological or cultural significance to the Town of Evans, State or nation?	____	____

2. Will the proposed action involve or result in any of the following:

(a)	Physical alteration of land along the shoreline, underwater land or surface waters?	____	____
(b)	Physical alteration of two (2) acres or more of land located elsewhere in the waterfront area?	____	____
(c)	Expansion of existing public services or infrastructure in undeveloped or low density areas of the waterfront area?	____	____
(d)	Siting or construction of an energy generation facility not subject to Article VII or VIII of the Public Service Law?	____	____
(e)	Excavation, filling or dredging in surface waters?	____	____
(f)	Reduction of existing or potential public access to, or along, the shoreline?	____	____
(g)	Sale or change in use of publicly-owned lands located on the shoreline or underwater?	____	____
(h)	Development within a designated flood or erosion hazard area?	____	____
(i)	Development on a beach, dune, bluff or other natural feature that provides protection against flooding or erosion?	____	____
(j)	Construction or reconstruction of erosion protective structures?	____	____
(k)	Diminished or degraded surface or groundwater quantity and/or quality?	____	____
(l)	Removal of ground cover from the site?	____	____

3. PROJECT	<u>YES</u>	<u>NO</u>
(a) If a project is to be located adjacent to shore:		
(1) Does the project require a waterfront location?	____	____
(2) Will water-related recreation be provided?	____	____
(3) Will public access to the foreshore be provided?	____	____
(4) Will it eliminate or replace a water-dependent use?	____	____
(5) Will it eliminate or replace a recreational or maritime use or resource?	____	____
(b) Is the project site presently used by the community neighborhood as an open space or recreation area?	____	____
(c) Will the project protect, maintain and/or increase the level And types or public access to water-related recreation Resources or facilities?	____	____
(d) Does the project presently offer or include scenic views or Vistas that are known to be important to the community?	____	____
(e) Is the project site presently used for commercial or recreational fishing or fish processing?	____	____
(f) Will the surface area of any local creek corridors or wetland areas be increased or decreased by the proposal?	____	____
(g) Is the project located in a flood prone area?	____	____
(h) Is the project located in an area of high coastal erosion?	____	____
(i) Will any mature forest (over 100 years old) or other locally important vegetation be removed by the project?	____	____
(j) Do essential public services or facilities presently exist at or near the site?	____	____
(k) Will the project involve surface or subsurface liquid waste disposal?	____	____
(l) Will the project involve transport, storage, treatment or disposal of solid waste or hazardous materials?	____	____
(m) Will the project involve shipment or storage of petroleum products?	____	____

		<u>YES</u>	<u>NO</u>
(n)	Will the project involve the discharge of toxics, hazardous substances or other wastes or pollutants into coastal waters?	____	____
(o)	Will the project involve or change existing ice management practices?	____	____
(n)	Will the project alter drainage flow, patterns or surface water runoff on or from the site?	____	____
(p)	Will best management practices be utilized to control storm water runoff into coastal waters?	____	____
(q)	Will the project cause emissions that would exceed federal or State air quality standards or generate significant amounts of nitrates or sulfates?	____	____

**D. REMARKS OR ADDITIONAL INFORMATION TO SUPPORT OR DESCRIBE ANY ITEM(S) CHECKED
“YES” (Add any additional sheets necessary)**

If you require assistance or further information in order to complete this form, please contact the Evans Planning Department.

Please submit completed form, along with one copy of a site/sketch plan to:

Town of Evans Planning Department
8787 Erie Road
Angola, NY 14006
(716) 549-0945

Preparer's Name (Please print) : _____

Affiliation: _____

Telephone Number: (_____) _____

Date: _____



TOWN OF EVANS

8787 Erie Road • Angola, NY 14006-9600
www.townofevans.org

JONICA B. DiMARTINO, TOWN CLERK
Telephone: (716) 549-8787

COUNCILMEN
KEITH E. DASH
PAUL T. COOPER

FRANCIS J. PORDUM, SUPERVISOR
Telephone: (716) 549-5787

Supervisor Pordum moved and Councilman Cooper seconded,

WHEREAS, the Town of Evans originally adopted a Local Waterfront Revitalization Program (LWRP) in March 1986, and has recently undertaken the preparation of an amendment to update this program in cooperation and coordination with the New York State Department of State, and in accordance with the provisions of Article 42 of the New York State Executive Law; and

WHEREAS, the LWRP Consistency Review Law has been prepared under the review and guidance of the Town of Evans Waterfront Advisory Committee, with consultant planning services provided by Wendel Companies, the Town Planning Consultant; and

WHEREAS, Chapter 98 of the Evans Town Code (Environmental Quality Review) was adopted by the Town Board to implement the State Environmental Quality Review Act and to ensure that actions within the Town's Waterfront Area are consistent with policies and purposes of the LWRP; and

WHEREAS, the Evans Town Board, as Lead Agency, prepared an Environmental Assessment Form to identify and evaluate the potential impacts of adopting the Consistency Review Law, in accordance with the requirements of the State Environmental Quality Review Act (SEQRA) and Part 617 of the implementing regulations of Article 8 of the New York State Environmental Conservation Law; and

WHEREAS, the Town Board has determined that this action will not result in any anticipated adverse impacts to the natural, institutional, economic, developmental, or social resources of the Town, and prepared and adopted a SEQR Negative Declaration in this regard; and

WHEREAS, the Town Board held a public hearing on March 29, 2011 to gather public questions and comments on the Consistency Review Law and, in evaluation of this input, has determined that the Consistency Review Law is complete and ready for required review by all appropriate public agencies.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Evans adopts proposed Local Law No. 1 of the year 2011, the Consistency Review Law, as Local Law No. 8 of the year 2011 to replace Chapter 98 of the Evans Town Code; and

BE IT FURTHER

RESOLVED, that two certified copies of this resolution be given to the Planning Office.

VOTE RESULT: ADOPTED BY ROLL CALL

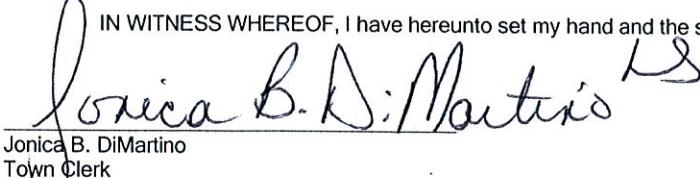
Councilman Dash	Aye
Councilman Cooper	Aye
Supervisor Pordum	Aye

STATE OF NEW YORK
COUNTY OF ERIE
TOWN OF EVANS

I, Jonica B. DiMartino, Town Clerk of the Town of Evans, County of Erie, New York, DO HEREBY CERTIFY, that I have compared the foregoing with the original resolution adopted by the Town Board of the Town of Evans at a meeting of said Board held on the 19th day of October, 2011, and the foregoing is a true and correct transcript of said original resolution and of the whole thereof, and that said original resolution is on file in my office.

I DO FURTHER CERTIFY that each of the members of said Town Board had due notice of said meeting, and that Francis J. Pordum, Supervisor & Paul T. Cooper; Keith Dash, Councilmen, were present at such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Evans, this 20th day of October, 2011.


Jonica B. DiMartino
Town Clerk