

Appendix A – Waterfront Consistency Review Law and Waterfront Assessment Form

Chapter 270. WATERFRONT REVITALIZATION

[HISTORY: Adopted by the Town Board of the Town of Hamburg as indicated in article histories. Amendments noted where applicable.]

Attachments: 270a Waterfront Assessment Form

GENERAL REFERENCES

Beach control — See Ch. 70.

Coastal erosion hazard area — See Ch. 85.

Wetlands protection — See Ch. 272.

Zoning — See Ch. 280.

Article I. Local Waterfront Revitalization Program

[Adopted 5-23-2011 by L.L. No. 9-2011]

§ 270-1. Title.

This article will be known as the "Town of Hamburg Local Waterfront Revitalization Program (LWRP) Consistency Review Law."

§ 270-2. Authority and purpose.

A. This article 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).

B. The purpose of this article is to provide a framework for the agencies of the Town of Hamburg (Town) to incorporate the policies and purposes contained in the Town of Hamburg 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.

- C. It is the intention of the Town that the preservation, enhancement and utilization of the natural and man-made 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 article 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.
- D. The substantive provisions of this article shall only apply while there is in existence a Town of Hamburg Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

§ 270-3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACTION

Includes all the following, except minor actions:

A. Projects or physical activities, such as construction or any other activities that may affect natural, man-made or other resources in the waterfront area or the environment by changing the use, appearance or condition of any resource or structure, that:

- (1) Are directly undertaken by an agency; or
- (2) Involve funding by an agency; or
- (3) Require one or more new or modified approvals, permits, or review from an agency or agencies.

B. Agency planning and policymaking 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 waterfront resources or the environment; and

D. Any combination of the above.

AGENCY

Any board, agency, department, office, other body, or officer of the Town of Hamburg.

CODE ENFORCEMENT OFFICER

The Building Inspector and/or Code Enforcement Officer of the Town of Hamburg.

CONSISTENT

The action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance one or more of them.

DIRECT ACTIONS

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.

ENVIRONMENT

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.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)

The Local Waterfront Revitalization Program of the Town of Hamburg, 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 Hamburg.

MINOR ACTION

Includes the following actions, which are not subject to review under this chapter:

- A.** Repaving or widening of existing paved highways not involving the addition of new travel lanes;
- B.** Street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- C.** 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;
- D.** Granting of individual setback and lot line variances, except in relation to a regulated natural feature or a bulkhead or other shoreline erosion protection structure;
- E.** Minor temporary uses of land having negligible or no permanent impact on waterfront resources or the environment;
- F.** Installation of traffic control devices on existing streets, roads and highways;
- G.** Mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- H.** 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;
- I.** 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;
- J.** Routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- K.** 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;
- L.** Collective bargaining activities;
- M.** Investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- N.** Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- O.** 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;
- P.** Adoption of regulations, policies, procedures and local legislative decisions in furtherance of any action on this list;

Q. 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 article have been fulfilled;

R. 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;

S. Adoption of a moratorium on land development or construction;

T. Interpreting an existing code, rule or regulation;

U. Designation of local landmarks or their inclusion within historic districts;

V. 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 article;

W. Local legislative decisions such as rezoning where the Town of Hamburg determines the action will not be approved.

SHORELINE REVITALIZATION COMMITTEE

The permanent committee within the Town of Hamburg that is dedicated to review waterfront issues and advise the Town Board on the same. The Shoreline Revitalization Committee is authorized to coordinate and make recommendations to Town agencies regarding consistency reviews required under this article.

WATERFRONT AREA

That portion of Coastal Area as defined in Article 42 of the Executive Law that is located within the boundaries of the Town of Hamburg, as shown on the coastal area map on file in the office of the Secretary of State, and as delineated in the Town of Hamburg Local Waterfront Revitalization Program (LWRP).

WATERFRONT ASSESSMENT FORM (WAF)

The form used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

§ 270-4. Management and coordination of LWRP.

- A.** The Town of Hamburg Shoreline Revitalization Committee (the "Committee") shall be responsible for coordinating review of actions in the Town's waterfront area for consistency with the LWRP, and will advise, assist and make consistency recommendations to other Town agencies in the implementation of the LWRP and its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.
- B.** The Committee shall coordinate with the New York State Department of State regarding consistency review of actions by federal agencies and with state agencies regarding consistency review of their actions.
- C.** The Committee shall assist the Town Board in making applications for funding from state, federal, or other sources to finance projects under the LWRP.
- D.** The Committee 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.

270-5. Review of actions.

- A.** Whenever a proposed action is located within the Town's waterfront area, each 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 Subsection **I** of this section. No action in the waterfront area shall be approved, funded or undertaken by that agency without such a determination of consistency.
- B.** Whenever a Town 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 area, the agency shall refer a copy of the completed WAF to the Committee within 10 days of its receipt. Prior to making its consistency determination, the agency shall consider the recommendation of the Committee with reference to the consistency of the proposed action.
- C.** After referral from an agency, the Committee shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Subsection **I** of this section. The Committee shall require the applicant to submit all completed applications, WAFs, environmental assessment form (EAFs), and any other information deemed necessary to its consistency recommendation.
 - (1)** The Committee shall render its written recommendation to the agency within 30 days following referral of the WAF from the agency, unless extended by mutual agreement of the Committee, the agency, and the applicant or, in the case of a direct action, the agency. The Committee's recommendation shall indicate whether the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and shall elaborate in writing the basis for its opinion. The Committee shall, along with a 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 or to greater advance them. In the event that the Committee's recommendation is not forthcoming within the specified time, the agency shall make its consistency decision without the benefit of the Committee's recommendation.
 - (2)** The Town shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Committee. Such file shall be kept in the office of the Planning Division and made available for public inspection upon request.
- D.** If an action requires approval of more than one Town agency, decision-making will be coordinated between the agencies to determine which agency will conduct the consistency review, and that agency will thereafter act as designated consistency review agency. Only one WAF per action will be prepared. If the agencies cannot agree, the Town Board shall designate the consistency review agency.
- E.** Upon receipt of the Committee's recommendation, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Subsection **I** of this section. The agency shall consider the Committee's consistency recommendation, the WAF, and other relevant information in making its written determination of consistency. No approval or decision shall be issued for an action in the waterfront area without a written determination of consistency having first been rendered by a Town agency.
- F.** The Zoning Board of Appeals is the designated agency for the determination of consistency for variance applications subject to this law. The Zoning Board of Appeals shall consider the written consistency recommendation of the Committee in the event and at the time it makes a decision to grant such a variance and shall impose appropriate conditions on the variance to make the activity consistent with the objectives of this law.
- G.** Where an Environmental Impact Statement (EIS) is being prepared or required, the draft EIS must identify applicable LWRP policies standards in Subsection **I** of this section, and include a discussion of the effects of the proposed action on such policy standards.
- H.** In the event the Committee'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.

I. 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 3 of the Town of Hamburg 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 must also consult with Section IV in making their consistency determination. The action must be consistent with the policies to:

- (1) Foster a pattern of development in the Town of Hamburg that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development (LWRP Policy 1).
- (2) Preserve historic resources in the Town of Hamburg (LWRP Policy 2).
- (3) Enhance visual quality and protect outstanding scenic resources (LWRP Policy 3).
- (4) Minimize loss of life, structures, and natural resources from flooding and erosion (LWRP Policy 4).
- (5) Protect and improve water resources (LWRP Policy 5).
- (6) Protect and restore the quality of ecological resources throughout the Town of Hamburg (LWRP Policy 6).
- (7) Protect and improve air quality (LWRP Policy 7).
- (8) Minimize environmental degradation from solid waste and hazardous substances and wastes (LWRP Policy 8).
- (9) Improve public access to the waterfront and the use of public lands (LWRP Policy 9).
- (10) Protect existing water-dependent uses in the Town of Hamburg and promote the siting of new water-dependent uses in suitable locations (LWRP Policy 10).
- (11) Protect sustainable use of living marine resources in the Town of Hamburg (LWRP Policy 11).
- (12) Protect existing agricultural lands (LWRP Policy 12).
- (13) Promote appropriate use and development of energy and mineral resources (LWRP Policy 13).

§ 270-6. Enforcement.

No action within the Town's waterfront area which is subject to review under this article shall proceed until a written determination has been issued from a Town 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 article or any conditions imposed thereby, the Town Code Enforcement Officer shall issue a stop-work order and all work must immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect. The Town Attorney, Code Enforcement Officer and Police Department shall be responsible for enforcing this article.

§ 270-7. Penalties for offenses.

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this article shall have committed a violation punishable by a fine not exceeding \$350 for a conviction of a first offense and punishable by a fine of \$2,000 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 article. Any civil penalty shall be in addition to and not in lieu of any criminal

prosecution and penalty. The Town may also enforce this article by injunction or other civil proceeding.

§ 270-8. Applicability.

This article shall supersede and repeal any previous local regulations regarding consistency with LWRP. This article 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.

§ 270-9. Severability.

The provisions of this article are severable. If any provision of this article is found invalid, such finding shall not affect the validity of this article as a whole or any part or provision hereof other than the provision so found to be invalid.

270 Attachment 1

**Town of Hamburg
Waterfront Assessment Form**

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, Town of Hamburg agencies, shall complete this WAF for proposed actions which are subject to the consistency review law. This assessment is intended to supplement other information used by the designated Town agency in making a determination of consistency with the Town of Hamburg Local Waterfront Revitalization Program.
2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the Town Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the waterfront area.
3. If any questions in Section C on this form are answered "yes", then the proposed action may affect the achievement of the LWRP policy standards contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination regarding its consistency with the LWRP policy standards. If an action cannot be certified as consistent with the LWRP policy standards, it shall not be undertaken.
4. This form should be filled out by the applicant and submitted to the Town of Hamburg Planning Division

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of Town of Hamburg agency action (check appropriate response):

- (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) _____
 - (b) Financial assistance (e.g. grant, loan, subsidy) _____
 - (c) Permit, approval, license, certification _____
 - (d) Agency undertaking action _____
2. Describe nature and extent of action: _____

3. Location of action (Street or Site Description. Please include the parcel(s) tax map number(s)): _____

4. Size of site: _____
5. Present land use: _____
6. Present zoning classification: _____
7. Describe any unique or unusual landforms on the project site (i.e. bluffs, wetlands, ground depressions, other geological formations): _____

8. Percentage of site which contains slopes of 15% or greater: _____
9. Streams, lakes, ponds or wetlands existing within or continuous to the project area?
- (a) Name _____
 - (b) Size (in acres) _____
10. Is the property serviced by public water? Yes _____ No _____
11. Is the property serviced by public sewer? Yes _____ No _____
12. If an application for the proposed action has been filed with the Town of Hamburg agency, the following information shall be provided:
- (a) Name of applicant: _____
 - (b) Mailing address: _____

- (c) Telephone number: Area Code () _____
- (d) Application number, if any: _____
- (e) Property tax number: _____

(Please attach copy of tax map with parcel highlighted)

13. 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? _____

C WATERFRONT ASSESSMENT (Check either "Yes" or "No" for each of the following questions)

- | | | | |
|----|--|------------|-----------|
| 1. | Will the proposed action be located in, or contiguous to, or have a potentially adverse effect upon any of the resource areas identified on the waterfront area map? | <u>YES</u> | <u>NO</u> |
| | | ___ | ___ |
| | (a) Significant fish or wildlife habitats? | ___ | ___ |
| | (b) Scenic resources of local or statewide significance? | ___ | ___ |
| | (c) Important agricultural lands? | ___ | ___ |
| | (d) Natural protective features in an erosion hazard area | ___ | ___ |

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.

- | | | | |
|----|--|------------|-----------|
| 2. | Will the proposed action have a significant effect upon: | <u>YES</u> | <u>NO</u> |
| | (a) Commercial or recreational use of fish and wildlife resources? | ___ | ___ |
| | (b) Scenic quality of the waterfront environment? | ___ | ___ |
| | (c) Development of future, or existing water dependent uses? | ___ | ___ |
| | (d) Stability of the shoreline? | ___ | ___ |
| | (e) Surface or groundwater quality? | ___ | ___ |
| | (f) Existing or potential public recreation opportunities? | ___ | ___ |
| | (g) Structures, sites or districts of historic, archeological or cultural significance to the Town of Hamburg State or nation? | ___ | ___ |

- | | | | |
|----|--|------------|-----------|
| 3. | Will the proposed action involve or result in any of the following: | <u>YES</u> | <u>NO</u> |
| | (a) Physical alteration of land along the shoreline, land under water or coastal 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 coastal area?	___	___
(d)	Energy facility not subject to Article VII or VIII of the Public Service Law?	___	___
(e)	Mining, excavation, filling or dredging in waterfront waters?	___	___
(f)	Reduction of existing or potential public access to or along the shore?	___	___
(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, barrier island or other natural feature that provides protection against flooding or erosion?	___	___
(j)	Construction or reconstruction of erosion protective structures?	___	___
(k)	Diminished surface or groundwater quality?	___	___
(l)	Removal of ground cover from the site?	___	___
4.	PROJECT		
(a)	If a project is to be located adjacent to shore:	YES	NO
(1)	Will water-related recreation be provided?	___	___
(2)	Will public access to the foreshore be provided?	___	___
(3)	Does the project require a waterfront site?	___	___
(4)	Will it supplant a recreational or maritime use?	___	___
(5)	Do essential public services and facilities presently exist at or near the site?	___	___
(6)	Is it located in a flood prone area?	___	___
(7)	Is it located in an area of high erosion?	___	___
(b)	If the project site is publicly owned:	YES	NO
(1)	Will the project protect, maintain and/or increase the level and types of public access to water-related recreation resources and facilities?	___	___
(2)	If located in the foreshore, will access to those and adjacent lands be provided?	___	___
(3)	Will it involve the siting and construction of major energy		

	facilities?	___	___
(4)	Will it involve the discharge of effluents from major steam electric generating and industrial facilities into waterfront facilities?	___	___
(c)	Is the project site presently used by the community neighborhood as an open space or recreation area?	YES	NO
(d)	Does the present site offer or include scenic views or vistas known to be important to the community?	___	___
(e)	Is the project site presently used for commercial fishing or fish processing?	___	___
(f)	Will the surface area of any waterways or wetland areas be increased or decreased by the proposal?	___	___
(g)	Does any mature forest (over 100 years old) or other locally important vegetation exist on this site which will be removed by the project?	___	___
(h)	Will the project involve any waste discharges into coastal waters?	___	___
(i)	Does the project involve surface or subsurface liquid waste disposal?	___	___
(j)	Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials?	___	___
(k)	Does the project involve shipment or storage of petroleum products?	___	___
(l)	Does the project involve discharge of toxics, hazardous substances or other pollutants into coastal waters?	___	___
(m)	Does the project involve or change existing ice management practices?	___	___
(n)	Will the project affect any area designated as a tidal or freshwater wetland?	___	___
(o)	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 utilize or affect the quality or quantity of sole source or surface water supplies?	___	___

(r) Will the project cause emissions which exceed federal or state air quality standards or generate significant amounts of nitrates or sulfates? _____

D. **REMARKS OR ADDITIONAL INFORMATION** (Add any additional sheets necessary to complete this form)

Preparer's Name (Please print) : _____

Title: _____

Agency: _____

Telephone Number: (_____) _____

Date: _____

If assistance or further information is needed to complete this form, please contact Hamburg Engineering Department at (716) 649-6111.