

Appendix 1 Town of Wilmington Waterfront Consistency Review Law

Be it enacted by the Town Board of the Town of Wilmington follows:

GENERAL PROVISIONS

I. Title.

This Local law will be known as the Town of Wilmington Waterfront Consistency Review Law.

II. Authority and Purpose.

- A. 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).
- B. The purpose of this local law is to provide a framework for agencies of the Town of Wilmington to incorporate the policies and purposes contained in the Town of Wilmington 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 Town agencies are consistent with the LWRP policies and purposes.
- C. It is the intention of the Town of Wilmington 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 limited 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 and degradation 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, 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 local law shall only apply when there is in existence a Town of Wilmington 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.

- 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 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 Wilmington.
- C. "Waterfront area" means the Waterfront Revitalization Area as delineated in the Town of Wilmington Local Waterfront Revitalization Program.
- D. "Waterfront Assessment Form (WAF)" 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 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 Wilmington, 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 Wilmington.

- I. "Minor actions" include the following actions, which are not subject to review under this chapter:
- (1) maintenance or repair involving no substantial changes in 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;
 - (3) repaving or widening 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 within Significant Coastal Fish and Wildlife Habitat areas;
 - (6) granting of individual setback and lot line variances, except in relation to a regulated natural feature, a bulkhead or other shoreline defense structure;
 - (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 where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code.
 - (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, storage of road de-icing substances, 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.

IV. Management and Coordination of the LWRP

- A. The Town of Wilmington Planning Board 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 to 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.
- B. The Planning Board 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 Planning Board shall assist the Town Board in making applications for funding from State, Federal, or other sources to finance projects under the LWRP.
- D. The Planning Board shall perform other functions regarding the coastal area and direct such actions or projects as the Town Board may deem appropriate, to implement the LWRP.

V. Review of Actions

- A. Whenever a proposed action is located within the Town's coastal 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 Section H herein. No action in the coastal area shall be approved, funded or undertaken by that agency without such a determination.
- 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 coastal area, the agency shall refer a copy of the completed WAF to the Planning Board within ten (10) days of its receipt and prior to making its determination, shall consider the recommendation of the Planning Board with reference to the consistency of the proposed action.
- C. After referral from an agency, the Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Section H herein. The Planning Board shall require the applicant to submit all completed applications, WAFs, EAFs, and any other information deemed necessary to its consistency recommendation.

The Planning Board shall render its written recommendation to the agency within thirty (30) days following referral of the WAF from the agency, unless extended by mutual agreement of the Planning Board and the applicant or in the case of a direct action, the agency. The Planning Board'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 Planning Board 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 Planning Board's recommendation is not forthcoming within the specified time, the agency shall make its consistency decision without the benefit of the Planning Board's recommendation.

- 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 final consistency review, and that agency will thereafter act as designated consistency review agency for the specific action being reviewed. 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 Planning Board's recommendation, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Section H herein. The agency shall consider the consistency recommendation of the Planning Board, the WAF and other relevant information in making its written determination of consistency. No approval or decision shall be rendered for an action in the coastal area without a written determination of consistency having first been rendered by a Town agency.

The Planning Board 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 Planning Board 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.
- F. Where an Environmental Impact Statement (EIS) is being prepared or required, the draft EIS must identify applicable LWRP policies standards in Section H and include a thorough discussion of the effects of the proposed action on such policy standards.
- G. In the event the Planning Board'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.
- H. Actions to be undertaken within the coastal 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 (Policies) of the Town of Wilmington 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 (Proposed Uses and Projects), in making their consistency determination. The action must be consistent with the policies to:

1. Foster a pattern of development in the waterfront area that enhances the community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development.
 2. Preserve historic resources of the waterfront area
 3. Enhance visual quality and protect scenic resources throughout the waterfront area
 4. Minimize loss of life, structure, and natural resources from flooding and erosion.
 5. Protect and improve water quality and supply
 6. Identify, protect and restore the quality and function of the ecosystem
 7. Protect and improve air quality in the waterfront area
 8. Minimize environmental degradation in the waterfront area from solid waste and hazardous substances and waste
 9. Provide for public access to, and recreational use of, waterfront waters and public lands in the waterfront area
 10. Protect water-dependent uses in suitable locations
 11. Promote sustainable use of fish and wildlife resources
 12. Protect agricultural lands
 13. Promote appropriate use and development of energy and mineral resources
- I. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Planning Board. Such files shall be made available for public inspection upon request.

VI. Enforcement.

No action within the Wilmington coastal area which is subject to review under this Chapter shall precede 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 law or any conditions imposed thereunder, the Code Enforcement Officer 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. The Town

Attorney, Code Enforcement Officer and Police Department shall be responsible for enforcing this Chapter.

VII. 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 two hundred and fifty dollars (\$250.00) for a conviction of a first offense and punishable by a fine of two thousand dollars (\$500.00) 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.

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

IX. 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.

WATERFRONT ASSESSMENT FORM (WAF)

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, Town of Wilmington 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 a Town of Wilmington agency in making a determination of consistency.
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 of Wilmington Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the coastal area.
3. If any question in Section C on this form is 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 that it is consistent 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 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
4. Size of site:

5. Present land use:

6. Present zoning classification:

7. Describe any unique or unusual land forms on the project site (i.e. steep slopes, swales, 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 contiguous to the project area?
- (1) Name:

- (2) Size (in acres):

10. If an application for the proposed action has been filed with the agency, the following information shall be provided:
- (a) Name of applicant:

- (b) Mailing address:

- (c) Telephone number: Area Code ()

- (d) Application number, if any:

11. 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)

	YES	NO
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 coastal area map:	___	___
(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:		
	YES	NO
(a) Commercial or recreational use of fish and wildlife resources?	___	___
(b) Scenic quality of the coastal 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 Wilmington, State or nation?	___	___
3. Will the proposed action involve or result in any of the following:		
	YES	NO
(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 coastal 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 coastal 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 under water?	___	___
(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	YES	NO
(a)	If a project is to be located adjacent to shore:		
(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?	___	___
		YES	NO

- (b) If the project site is publicly owned:
 - (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 coastal facilities? ___ ___
- (c) Is the project site presently used by the community neighborhood as an open space or recreation area? ___ ___
- (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 to complete this form.)

If assistance or further information is needed to complete this form, please contact Town of Wilmington Clerk at _____

Preparer's Name: _____ Telephone Number: ()

Title: _____ Agency _____