APPENDIX C:
GUIDELINES FOR NOTIFICATION AND REVIEW OF FEDERAL AGENCY AND NEW YORK STATE AGENCY ACTIONS

C. GUIDELINES FOR NOTIFICATION AND REVIEW OF FEDERAL AGENCY AND NEW YORK STATE AGENCY ACTIONS[1]

Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect

I. PURPOSES OF GUIDELINES

A. The Waterfront Revitalization of Coastal Areas and Inland Waterways Act (the Act) (Article 42 of the Executive Law) and the Department of State's regulations (19 NYCRR Part 600) require certain state agency actions identified by the Secretary of State to be consistent to the maximum extent practicable with the policies and purposes of approved Local Waterfront Revitalization Programs (LWRPs). These guidelines are intended to assist state agencies in meeting that statutory consistency obligation.

B. The Act also requires that state agencies provide timely notice to the affected local government whenever an identified action will occur within an area covered by an approved LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist local governments in carrying out their review responsibilities in a timely manner.

C. The Secretary of State is required by the Act to confer with state agencies and local governments when notified by a local government that a proposed state agency action may conflict with the policies and purposes of its approved LWRP. These guidelines establish a procedure for resolving such conflicts.

II. DEFINITIONS

A. **Action** means:

1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);

2. Occurring within the boundaries of an approved LWRP; and

3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.

B. **Consistent to the maximum extent practicable** means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:

1. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;

2. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and

3. That will result in an overriding regional or statewide public benefit.

C. **Local Waterfront Revitalization Program** or **LWRP** means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man-

[1] This appendix appears in the form provided by the New York State Department of State.

made resources, proposed land uses and specific projects that are essential to program implementation.

D. **Municipal chief executive officer** is the City Mayor, or City Manager in cities where an appointed city manager is the administrative head of the city; the Village Mayor; or the Town Supervisor. The NYS DOS Local Government Handbook provides more information about who would be considered the chief executive officer under various municipal executive structures.[2]

E. **Local program coordinator** of a municipality with an approved LWRP could be a designated person or a Committee responsible for the preliminary review of proposed actions within the waterfront area for consistency with an approved LWRP and consistency recommendations for the final determination of consistency that will be made by the local government.

III. NOTIFICATION PROCEDURE

A. When a state agency is considering an action as described in II.DEFINITIONS, the state agency shall notify the affected local government.

B. Notification of a proposed action by a state agency:

1. Shall fully describe the nature and location of the action;

2. Shall be accomplished by use of existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and local government;

3. Should be provided to the local official identified in the LWRP of the affected local government as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. The timely filing of a copy of a

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[2] Excerpts from the NYS DOS Local Government Handbook 6th Edition (2009) related to chief executive officers:

I. Cities: "In general, city government falls into four broad categories:

- council-manager, under which an appointed professional manager is the administrative head of the city, the council is the policymaking body and the mayor, if the position exists, is mainly a ceremonial figure. The manager usually has the power to appoint and remove department heads and to prepare the budget, but does not have veto power over council actions;
- strong mayor-council, under which an elective mayor is the chief executive and administrative head of the city, and the council is the policy making body. The mayor usually has the power to appoint and remove agency heads, with or without council confirmation; to prepare the budget; and to exercise broad veto powers over council actions. This form sometimes includes a professional administrator appointed by the mayor and is then called the "mayor-administrator plan;"
- weak mayor-council, under which the mayor is mainly a ceremonial figure. The council is not only the policy making body, it also provides a committee form of administrative leadership. It appoints and removes agency heads and prepares budgets. There is generally no mayoral veto power; and
- commission, under which commissioners are elected by the voters to administer the individual departments of the city government and together form the policy making body. In some cases one of the commissioners assumes the ceremonial duties of a mayor, on a rotating basis. This plan sometimes includes a professional manager or administrator." P. 53

II. New York City: "The mayor serves as the chief executive officer of the city, and with the assistance of four deputy mayors, presides over many departments, offices, commissions and boards. The mayor may create, modify or abolish bureaus, divisions or positions within the city government. The mayor, who may be elected to serve a maximum of two four-year terms, is responsible for the budget and appoints and removes the heads of city agencies and other non-elected officials." P. 57

III. Towns: "The supervisor is more of an administrator than an executive. The supervisor's duties under law are to: act as treasurer and have care and custody of monies belonging to the town; disburse monies; keep an accurate and complete account of all monies; make reports as required; pay fixed salaries and other claims; and lease, sell, and convey properties of the town, when so directed by the town board." and "By delegating a few more specific powers, the Suburban Town Law gives the supervisor a bit more authority. Although designated as "chief executive officer," however, the Suburban Town supervisor has no major new executive powers." P. 62

IV. Villages: "The chief executive officer of most villages in New York State is the mayor." P. 70

completed Coastal/Waterfront Assessment Form with the municipal chief executive officer should be considered adequate notification of a proposed action.

C. If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the municipal chief executive officer can serve as the state agency's notification to the affected local government.

IV. LOCAL GOVERNMENT REVIEW PROCEDURE

A. Upon receipt of notification from a state agency, the affected local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local program coordinator identified in the LWRP, the state agency should promptly provide the affected local government with whatever additional information is available which will assist the affected local government to evaluate the proposed action.

B. If the affected local government cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

C. If the affected local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.

D. If the affected local government notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in V. RESOLUTION OF CONFLICTS shall apply. The local government shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

V. RESOLUTION OF CONFLICTS

A. The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP:

1. Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local program coordinator to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.

2. If the discussion between the local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

3. If the consultation between the local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion

between the local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.

4. Within 30 days following the receipt of a request for assistance, the Secretary, or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and local government.

5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.

6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

Procedural Guidelines for Coordinating NYS Department of State (DOS) and LWRP Consistency Review of Federal Agency Actions

I DIRECT ACTIONS

A. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the program coordinator and other interested parties.

B. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.

C. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with the LWRP policies.

D. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed direct action.

E. A copy of DOS' "agreement" or "disagreement" letter to the federal agency will be forwarded to the local program coordinator.

II PERMIT AND LICENSE ACTIONS

A. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the local program coordinator and will identify the Department's principal reviewer for the proposed action.

B. Within thirty (30) days of receiving such information, the local program coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with the LWRP policies.

C. When DOS and the local program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the local program coordinator upon receipt.

D. Within thirty (30) days of receiving the requested information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the local program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with the LWRP policies.

E. After the notification, the local program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with the LWRP policies.

F. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the local program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" to the applicant.

G. A copy of DOS' "concurrence" or "objection" letter to the applicant will be forwarded to the local program coordinator.

III FINANCIAL ASSISTANCE ACTIONS

A. Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the federal financial assistance action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a copy of the application documentation to the local program coordinator. A copy of this letter will be forwarded to the local program coordinator and will serve as notification that the proposed action may be subject to review.

B. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the local program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.

C. The review period will conclude thirty (30) days after the date on DOS' letter of acknowledgement or the receipt of requested additional information, whichever is later. The review period may be extended for major federal financial assistance actions.

D. The local program coordinator must submit the municipality's comments and recommendations on the proposed federal financial assistance action to DOS within twenty days (or other time agreed to by DOS and the local program coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed federal financial assistance action with the LWRP policies.

E. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the local program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency decision.

F. A copy of DOS' consistency decision letter to the applicant will be forwarded to the local program coordinator.