

Waterfront Consistency Review Law

Tioughnioga River LWRP (Name of Municipality), (Cortland County) New York

Local Law No. ____ of the year 2006

Be it enacted by the (Governing Body) of the (Name of Municipality), New York as follows:

GENERAL PROVISIONS

I. Title

This local law will be known as the (Name of Municipality) Tioughnioga River 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 the (Governing Body) of the (Name of Municipality) to consider the policies and purposes contained in the Tioughnioga River Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the waterfront area; and to assure that such actions and direct actions are consistent with the said policies and purposes.
- C. It is the intention of the (Name of Municipality) that the preservation, enhancement, and utilization of the natural and manmade resources of the unique river corridor of the County take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss of living estuarine resources and wildlife; diminution of open space areas or public access to the waterfront; losses due to flooding and erosion; impairment of scenic resources; or permanent adverse changes to ecological systems.
- D. The substantive provisions of this local law shall only apply while there is in existence a Tioughnioga River 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" mean either Type I or unlisted actions as defined in SEQRA regulations (6 N.Y.C.R.R. 617.2) which are undertaken by an agency and which include:
 1. projects or physical activities, such as construction or other activities that may

affect the environment by changing the use, appearance or condition of any natural resource or structure, that:

- a. are directly undertaken by an agency; or
 - b. involve funding by an agency; or
 - c. require one or more new or modified approvals from an agency or agencies.
2. agency planning and policy making 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 the environment; and
 4. any combinations of the above.
- B. "Agency" means any board, agency, department, office, commission, other body, or officer of the (Name of Municipality).
- C. "Consistent" means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.
- D. "Direct Actions" means 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.
- E. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Tioughnioga River, Cortland County, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inlands Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the (Name of Municipality).
- F. "LWRP Advisory Committee" means the Cortland County Planning Board , as created by General Municipal Law, Section 239 c.
- F. "Waterfront Assessment Form (WAF)" means the form used by an agency to assist it in determining the consistency of an action with the LWRP.
- G. "Waterfront Area" means that portion of the Tioughnioga River and it's branches including adjacent lands located in Cortland County as shown in the Tioughnioga River Local Waterfront Revitalization Program.

IV. LWRP Advisory Committee, Reviewing Entity

The LWRP Advisory Committee is authorized to review and make recommendations to appropriate agencies regarding the consistency of proposed actions with the policies and purposes of the LWRP.

V. Review of Actions

- A. Whenever a proposed action is to be located in the Tioughnioga River LWRP area within the (Name of Municipality), an agency shall, prior to approving, funding or undertaking the action, make a determination that is consistent with the LWRP policy standards and conditions set forth in Paragraph K herein.
- B. Whenever an agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action, to be located in the waterfront area, the applicant, or in the case of a direct action, the agency, shall prepare a Waterfront Assessment Form (WAF) to assist with the consistency review of the proposed action.
- C. The agency shall refer a copy of the completed WAF to the LWRP Advisory Committee within ten (10) days of applicants' submission to the agency, and prior to making its determination, shall consider the recommendation of the LWRP Advisory Committee with reference to the consistency of the proposed action.
- D. After referral from an agency, the LWRP Advisory Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph K herein. The LWRP Advisory Committee shall require the applicant to submit all completed applications, WAFs and any other information deemed to be necessary to its consistency recommendation.
- E. The LWRP Advisory Committee shall render its written recommendation to the agency within thirty (30) days following referral of the WAF form from the agency, unless extended by mutual agreement of the LWRP Advisory Committee and the applicant, or in the case of the direct action, the agency. The recommendation shall indicate whether, in the opinion of the LWRP Advisory Committee, the proposed action is consistent with, or inconsistent with, one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for its opinion.
- F. The LWRP Advisory Committee shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.
- G. In the event that the LWRP Advisory Committee's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the LWRP Advisory Committee's recommendation.
- H. If the agency concurs with the LWRP Advisory Committee in the consistency of the proposed action, the agency may proceed with the action. In the event that the agency, after reviewing the written recommendation of the LWRP Advisory Committee, finds that it disagrees with the consistency recommendation of the LWRP Advisory Committee, the agency shall, within fifteen (15) days, prepare a written finding detailing its position describing substantiating reasons why the LWRP Advisory Committee's recommendation is inconsistent with the LWRP standards, and transmit such finding to the LWRP Advisory Committee. The Committee and the agency shall meet to resolve their differences within thirty (30) days of the Committee's receipt of the agency's finding.

- I. If the LWRP Advisory Committee and the agency cannot reach a mutually agreeable determination of consistency, the matter will be referred to the (Governing Body) of (Name of Municipality) for a final determination of consistency. The agency shall take no action until the (Governing Body) of (Name of Municipality) has made a final determination of consistency with the LWRP.
- J. The provisions of IV. G. shall not apply to the Zoning Board of Appeals. Instead, where the Zoning Board of Appeals is the agency, the Zoning Board of Appeals shall consider the written consistency recommendation of the LWRP Advisory Committee when reviewing and considering an application for a variance.
- K. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Tioughnioga River LWRP, a copy of which is on file in the (Name of Municipality) Clerk's Office and available for inspection during normal business hours. In the case of direct actions, the agency shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policies to:
1. Foster a pattern of development in the waterfront area that enhances 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 Tioughnioga River Corridor.
 3. Enhance visual quality and protect scenic resources throughout the waterfront area.
 4. Minimize loss of life, structures, and natural resources from flooding and erosion.
 5. Protect and improve surface and ground water quality and supply in the Tioughnioga River Corridor.
 6. Protect and restore the quality and function of the ecosystem.
 7. Protect and improve air quality in the Tioughnioga River Corridor.
 8. Minimize environmental degradation in the waterfront area from solid waste and hazardous substances and wastes.
 9. Provide for public access to, and recreational use of, the waterway, public lands, and public resources of the waterfront area.
 10. Protect water-dependent and water-enhanced uses and promote siting of new water-dependent uses in suitable locations.
 11. Promote sustainable use of living aquatic resources.
 12. Protect agricultural lands.

13. Promote appropriate use and development of energy and mineral resources.
- L. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that:
1. No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 2. The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
 3. The action will advance one or more of the other LWRP policy standards and conditions; and
 4. The action will result in an overriding local government, regional or state-wide public benefit.
- Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.
- M. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the LWRP Advisory Committee. Such files shall be made available for public inspection upon request.

VI. Enforcement

1. The (Name of Municipality)'s Zoning Enforcement Officer and Building Inspector shall be responsible for enforcing this local law.
2. No work or activity on a project in the waterfront area which is subject to review under this local law shall be commenced or undertaken until the Zoning Enforcement Officer or Building Inspector has been presented with a written determination from an agency that the action is consistent with the (Name of Municipality) LWRP policy standards and conditions.
3. In the event that an activity is not being performed in accordance with this local law or any conditions imposed thereunder, the Zoning Enforcement Officer, Building Inspector or any authorized official of the (Name of Municipality) shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on this project so long as a stop work order is in effect.

VII. Violations

1. A person who violates any of the provisions of, or who fails to comply with any conditions imposed by, this chapter shall have committed a violation, punishable by a fine not exceeding five hundred (500) dollars for a conviction of a first offense and punishable by a fine of one thousand (1,000) dollars 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 violation.

2. The (Name of Municipality)'s 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 filing with the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.