

## APPENDIX F GUIDELINES FOR NOTIFICATION AND REVIEW

### 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 the approved Town of Huron Local Waterfront Revitalization Programs (Huron LWRP). 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 Town of Huron whenever an identified action will occur within an area covered by the approved Huron LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist the Town Board of the Town of Huron 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 the Town of Huron when notified by the Town of Huron 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 the approved Town of Huron 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 approved Town of Huron 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 the approved Town of Huron 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 the approved Huron 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 Huron 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 the Town of Huron 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-made resources, proposed land uses and specific projects that are essential to program implementation.
- D. **Municipal chief executive officer** is the Town Board of the Town of Huron.
- E. **Local program coordinator** or the **Building Inspector** of the Town of Huron is the designated person responsible for the preliminary review of proposed actions within the waterfront area for consistency with the approved Huron LWRP and consistency recommendations for the final determination of consistency that will be made by the Town Board.

### III. **NOTIFICATION PROCEDURE**

- A. When a state agency is considering an action as described in II.DEFINITIONS, the state agency shall notify the Town of Huron Town Board.
- 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 Town of Huron;
  3. Should be provided to the Town of Huron 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 completed Waterfront Assessment Form with the Town Board of the Town of Huron 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 Town Board can serve as the state agency's notification to the Town of Huron.

### IV. **LOCAL GOVERNMENT REVIEW PROCEDURE**

- A. Upon receipt of notification from a state agency, the Town Board will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the Building Inspector, the state agency should promptly provide the Town of Huron with whatever additional information is available which will assist the Town Board to evaluate the proposed action.

- B. If the Town Board cannot identify any conflicts between the proposed action and the applicable policies and purposes of the approved Huron LWRP, it should inform the state agency in writing of its finding. Upon receipt of the Town Board finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
- C. If the Town Board 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 Huron's approved LWRP.
- D. If the Town Board notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of the approved Town of Huron 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 Town Board 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 Town Board 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 the Town Board has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of the approved Huron LWRP:
  - 1. Upon receipt of notification from the Town Board that a proposed action conflicts with its approved LWRP, the state agency should contact the Building Inspector to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and the Town of Huron 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 Town Board.
  - 2. If the discussion between the Town Board and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the Town Board 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 Town of Huron 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 Town of Huron 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 the Town of Huron.
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 Activity

### **I FEDERAL AGENCY ACTIVITIES**

- 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 federal activities to the Building Inspector and the Town Board.
- 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 federal activity.
- 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 federal activity with the approved Huron LWRP policies.
- D. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the Town of Huron, DOS will contact the Building Inspector and the Town Board to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed federal activity.
- E. A copy of DOS' "concurrence" or "objection" letter to the federal agency will be forwarded to the Building Inspector and the Town Board.

### **II ACTIVITIES REQUIRING FEDERAL LICENSES, PERMITS AND OTHER REGULATORY APPROVALS**

- 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 Building Inspector and will identify the Department's principal reviewer for the proposed federal activity.
- B. Within thirty (30) days of receiving such information, the Building Inspector 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 federal activity with the approved Huron LWRP policies.

- C. When DOS and the Building Inspector 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 Building Inspector upon receipt.
- D. Within thirty (30) days of receiving the requested information or discussing possible problems of a proposed federal activity with the principal reviewer for DOS, whichever is later, the Building Inspector of the Town of Huron will notify DOS of the reasons why a proposed federal activity may be inconsistent or consistent with the approved Huron LWRP policies.
- E. After the notification, the Building Inspector will submit the Town of Huron written comments and recommendations on a proposed federal activity 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 Town of Huron has "no opinion" on the consistency of the proposed federal activity with the Huron LWRP policies.
- F. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the Town of Huron on a proposed federal activity, DOS will contact the local Building Inspector 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 Building Inspector.

### **III FEDERAL FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS**

- A. Upon receiving notification of a proposed federal financial assistance, DOS will request information on the federal financial assistance 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 Building Inspector. A copy of this letter will be forwarded to the Building Inspector and will serve as notification that the proposed federal financial assistance may be subject to review.
- B. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the Building Inspector. 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.
- D. The Building Inspector must submit the municipality's comments and recommendations on the proposed federal financial assistance to DOS within twenty days (or other time agreed to by DOS and the Building Inspector) from the start of the review period. If

comments and recommendations are not received within this period, DOS will presume that the Town of Huron has "no opinion" on the consistency of the proposed federal financial assistance with the approved Huron 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 local Building Inspector 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 Building Inspector.