

Appendix C

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 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 New York State 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 their approved LWRP. These guidelines establish a procedure for resolving such conflicts.

II. Definitions

- A. **Action** means:
 - a. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
 - b. Occurring within the boundaries of the approved Village of Cayuga LWRP; and
 - c. 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 Village of Cayuga 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 Village of Cayuga 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 Village of Cayuga LWRP, then the action must be one:
 - a. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
 - b. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and
 - c. 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-made resources, proposed land uses and specific projects that are essential to program implementation.
- D. **Municipal chief executive officer** is the Village Mayor. The NYS DOS Local Government Handbook provides more information about who would be considered the chief executive officer under various municipal executive structures.ⁱ
- E. **Local program coordinator** is the Village of Cayuga Planning Board which is responsible for the preliminary review of proposed actions within the waterfront area for consistency with the approved Village of Cayuga LWRP and consistency recommendations for the final determination of consistency that will be made by the Village of Cayuga.

III. Notification Procedure

- A. When a state agency is considering an action as described in II. DEFINITIONS, the state agency shall notify the Village of Cayuga Planning Board.
- B. Notification of a proposed action by a state agency:
 - a. Shall fully describe the nature and location of the action;
 - b. Shall be accomplished by use of existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and the Village of Cayuga Planning Board; and
 - c. Should be provided to the Village of Cayuga Planning Board 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 Coastal/Waterfront Assessment Form with the Village of Cayuga Planning Board 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 Village of Cayuga Planning Board can serve as the state agency's notification to the Village of Cayuga Planning Board.

IV. Local Government Review Procedure

- A. Upon receipt of notification from a state agency, the Village of Cayuga Planning Board will be responsible for evaluating a proposed action against the policies and purposes of the approved Village of Cayuga LWRP. Upon request of the Village of Cayuga Planning Board, the state agency should promptly provide the Village of Cayuga Planning Board with whatever additional information is available which will assist the Village of Cayuga Planning Board to evaluate the proposed action.
- B. If the Village of Cayuga Planning Board cannot identify any conflicts between the proposed action and the applicable policies and purposes of the approved Village of Cayuga LWRP, it should inform the state agency in writing of its finding. Upon receipt of the Village of Cayuga Planning Board'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 Village of Cayuga Planning 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 the Village of Cayuga's approved LWRP.
- D. If the Village of Cayuga Planning Board notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of the approved Village of Cayuga 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 Village of Cayuga Planning 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 Village of Cayuga Planning Board shall identify the specific policies and purposes of the Village of Cayuga LWRP with which the proposed action conflicts.

V. Resolution of Conflicts

- A. The following procedure applies whenever the Village of Cayuga Planning Board has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of the approved Village of Cayuga LWRP:
 - a. Upon receipt of notification from Village of Cayuga Planning Board that a proposed action conflicts with the approved Village of Cayuga LWRP, the state agency should contact the Village of Cayuga Planning Board to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and the Village of Cayuga Planning Board 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 Village of Cayuga Planning Board.
 - b. If the discussion between the Village of Cayuga Planning Board and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the Village of Cayuga

Planning 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.

- c. If the consultation between the Village of Cayuga Planning Board 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 Village of Cayuga Planning Board 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.
- d. 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 Village of Cayuga Planning Board.
- e. 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.
- f. 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.

¹ Excerpts from the NYS DOS Local Government Handbook 6th Edition (2009) related to chief executive officers:

1. 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
2. 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
3. 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
4. Villages: "The chief executive officer of most villages in New York State is the mayor." P. 70