

APPENDIX A

Amendments to the Village of Middleport Zoning Ordinance

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town

Village

of Middleport

Local Law No. 3 of the year 2002

A local law amending the Zoning Ordinance of the Village of Middleport

(Insert Title)

Be it enacted by the Village Board of the

(Name of Legislative Body)

County

City

Town

Village

of Middleport as follows:

The Zoning Ordinance as adopted on March 7, 1955, and as amended from time to time, and as codified as Chapter 200 of the Village of Middleport Code is hereby amended by adding the following section:

§200-13.5 SITE PLAN REVIEW

A. When required; exceptions.

Site plan review and approval shall be required for all uses, buildings and structures requiring a building permit prior to the issuance of a building permit or certificate of occupancy. This section shall not apply to one or two family dwellings, and their permitted accessory structures and uses.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

B. Procedure for review and approval.

Where site plan review is required, the enforcement officer of this chapter shall refer the application, site plan and supporting data to the Village Board. The Board shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall approve, approve with modification or disapprove the site plan. Approval of any site plans so deemed shall remain in effect for a period of not more than one year unless a successful application for a building permit has been made within that period or an extension has been granted by the Board.

C. Submission of site plan and supporting data.

The property owner or his agent shall submit five copies of a site plan and supporting data prepared by and bearing the official seal and signature of a licensed architect, landscape architect, civil engineer or land surveyor, which shall include the following information, presented in drawn form at a scale approved by the enforcement officer of this chapter and accompanied by a written text:

1. Survey of the property, showing existing topographic features, including contours, large trees, buildings, structures, streets, property lines, utility easements, rights-of-way and land use, and the zoning and ownership of surrounding property.
2. A site plan showing proposed lots, blocks, building locations and land use areas.
3. Traffic circulation, parking and loading spaces and pedestrian walks.
4. Landscaping plans, including site grading, drainage existing and proposed landscape materials, including trees and shrubs, and heir locations, identification of those materials to be removed, existing and proposed structures and all greenspace areas designed as part of the site environment. Natural site features and vegetation shall be preserved and integrated into the proposed site wherever feasible.

5. Preliminary engineering plans, including street improvements, storm drainage system, public utility extensions, water supply, sanitary sewer facilities, outdoor lighting and the location of existing and proposed fire hydrants.

6. Preliminary architectural drawings for buildings to be constructed.

7. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.

8. In addition to the required site plan and supporting data indicated above, the Village Board may require a property owner or his agent to provide additional supporting data or plans the Board deems necessary and pertinent to carry out its responsibility for site plan review as provided in this chapter.

D. Criteria for review recommendations.

1. The Village Board shall review the site plan and supporting data and take into consideration the following:

a. Harmonious relationship between proposed uses and existing uses.

b. Maximum safety of vehicular circulation between the site and street network.

c. Adequacy of interior and exterior traffic circulation and parking and loading facilities, with particular attention to vehicular and pedestrian safety.

d. Adequacy of landscaping and setbacks in regard to achieving maximum compatibility with and protection of adjacent property and land uses.

e. Aesthetic considerations.

f. Compliance with other Village Laws and Ordinances.

g. Density of improvements of the site.

2. Should changes or additional facilities be required by the Village Board, approval of the site plan shall be conditional upon satisfactory compliance by the property owner with the changes or additions. The Board may withhold approval until required site plan changes have been made and filed.

3. In cases where any action of the Zoning Board of Appeals is required, the site plan shall be the subject of a preliminary review by the Village Board, in accordance with the review procedure set forth above, before action is taken by the Zoning Board of Appeals. After such action by the Zoning Board of Appeals, the Village Board shall conduct a final review of the site plan.

4. The Village Board may take the following actions with respect to a submitted site plan: (i) approve, or (ii) approve with modifications, or (iii) defer action until required modifications have been presented.

E. Required improvements.

In furtherance of the purposes of this Ordinance and to assure public safety and general welfare, the Village Board shall require the following improvements:

1. The designation of pedestrian walkways or sidewalks for the safe and convenient movements of patrons from store to store within the site and with adjoining sites.

2. The dedication of rights-of-way and easements for all facilities to be publicly maintained for the full frontage of the lot or parcel prior to the issuance of any certificate of occupancy.

3. The construction of all off-site curbs, gutters, sidewalks and road widening or construction as necessary to satisfy the criteria as set forth in Section D.

4. The construction of curbs, gutters and drives which will permit vehicular travel on the site and connection to and from adjacent parking areas and properties.

5. Screening, fencing, walls, berms and screen plantings adequate to screen views in accordance with requirement of this ordinance for adjacent prospective, contrasting development of less intensity and state highways of limited access. Designated plantings and landscaping shall be in accordance with the approved schedule and annually maintained by the property owner.

6. Adequate sewer, water and storm water drainage facilities in accordance with Village regulations including lines, connections, retention facilities, valves, hydrants and other facilities.

F. Performance Bond as condition of approval.

The Village Board may require, as a condition of site plan approval, that the property owner file a performance bond, in such amount as determined by the Village Engineer, to insure that the proposed development will be built in compliance with accepted plans.

G. Site Plan revisions.

A property owner wishing to make any changes in an approved site plan shall submit a revised site plan of the Village Board for review and approval.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2002 of the (County)(City)(Town)(Village) of Middleport was duly passed by the Village Board on April 15, 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.


Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Sent)

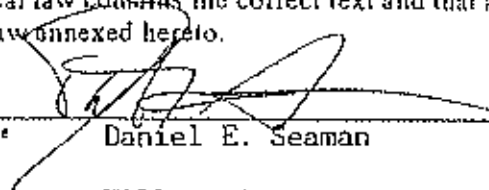
Date: April 15, 2002

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK

COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Signature Daniel E. Seaman

Village Attorney

Title

County
City of Middleport
Town
Village

Date: April 15, 2002

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town

Village

of Middleport

Local Law No. 4 of the year 2002

A local law amending the Zoning Ordinance of the Village of Middleport

(Insert Title)

Be it enacted by the Village Board of the

(Name of Legislative Body)

County

City

Town

Village

of Middleport as follows:

WHEREAS, the Village of Middleport adopted the Village of Middleport, New York, Zoning Ordinance on March 7, 1955, now codified as Chapter 200 of the Code of the Village of Middleport, and

WHEREAS, pursuant to the terms of § 200-5 of said Zoning Ordinance, a map entitled "Zoning Map of the Village of Middleport" was adopted on the same date and made a part of said Ordinance.

NOW, THEREFORE, said Zoning Ordinance and Zoning Map is hereby amended as follows: The following section is added:

§ 200-5. A.(5) I-1 DISTRICTS: I-2, Light Industrial Districts.

and said Zoning Ordinance and Zoning Map is hereby further amended as follows:

§ 200-10A. I-1, LIGHT INDUSTRIAL DISTRICTS

The following regulations shall apply to all I-1 Districts:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

A. INTENT. The intent of the light factory or light industrial district is to provide areas within the Village for the location of light industrial, manufacturing, assembly, compounding, processing, fabrication and packaging facilities, wholesale warehouses and storage facilities and research, development and laboratory facilities and certain compatible uses. This district is for selective uses that do not adversely impact the environment and quality of life of the residents and property owners of the Village or create an impact that is injurious to public health, safety or general welfare.

B. USES PERMITTED.

1. Uses of a light industrial nature are permitted, which involves only the manufacture, processing, assembly, packaging or storage of previously refined materials, provided that at no time will such use result in or cause:

a. dissemination of dust, smoke, smog, observable gas, fumes or odors or other atmosphere pollution, objectionable noise, glare or vibration.

b. a hazard of fire or explosion or chemical or nuclear pollution or other physical hazard to any adjacent building or to any plant growth on any land adjacent to the site or to any person working on the site, or working or living adjacent thereto.

2. Office buildings for executive, engineering and administrative purposes; scientific or research laboratories devoted to research, design and/or experimentation in the processing and fabricating incident thereto; the indoor warehousing and/or storage of goods and products, such as building materials, farm supplies and the like, which may be stored or sold from the premises to the general public; facilities for printing and/or publishing; essential services; and facilities for testing and development of processes planned for use in production elsewhere, stores and shops for the conducting of any retail business (except motor vehicles sales), personal service shops, banks, restaurants and similar establishments, theaters and assembly halls for a public recreation use, lodging house, motels, hotels, undertaking establishments.

C. USES PROHIBITED.

All other uses are prohibited; including, but not limited to the junk industry or motor vehicle wrecking operations; and any heavy industry, and motor vehicle sales.

D. PERMITTED ACCESSORY USES.

The following are permitted accessory uses in the light factory and light industrial use districts:

1. Garages and storage buildings which are necessary to store any vehicles, equipment or materials on the premises, used in connection with the principal use.
2. Signs in accordance with this chapter.
3. Off-street parking and loading.
4. Other reasonable accessory uses incidental to the permitted principal use.

E. ADDITIONAL RESTRICTIONS.

1. All industrial processes and other uses shall take place within an enclosed building.
2. Storage of materials out-of-doors shall not be permitted.

F. YARDS REQUIRED.

1. Each lot shall have a front yard of not less than 25 feet in depth.
2. There shall be a side yard along the side of every lot in an F-2 District of not less than 10 feet; provided, however, light factory or light industrial uses shall be located so as to be a minimum of 50 feet from any property line abutting a non-industrial district. This 50 foot buffer strip shall be perpetually maintained with plantings to provide a visual screen between industrial use and the adjoining non-industrial use.
3. There shall be a rear yard on every lot of an I-1 District of not less than 25 feet.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 2002 of the (County)(City)(Town)(Village) of Middleport was duly passed by the Village Board on April 15, 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)


I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.


Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

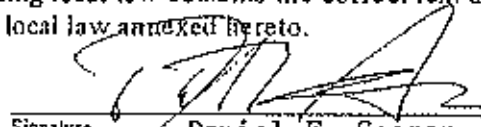
(Seal)

Date: April 15, 2002

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Signature Daniel E. Seaman

Village Attorney
Title

County
City of Middleport
Town
Village

Date: April 15, 2002

Accepted
Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

of

Middleport

Town

Village

Local Law No. 5 of the year 2002

A local law amending the Zoning Ordinance of the Village of Middleport
(Insert Title)

Be it enacted by the Village Board of the
(Name of Legislative Body)

County

City

of

Middleport

Town

Village

as follows:

WHEREAS, the Village of Middleport adopted the Village of Middleport, New York Zoning Ordinance on March 7, 1955; said Ordinance having been codified as Chapter 200 of the Code of the Village of Middleport; and

WHEREAS, pursuant to the terms of Section 200-5 of said Zoning Ordinance, a map entitled "Zoning Map of the Village of Middleport" was adopted on the same date and made part of said Ordinance; and

WHEREAS, various amendments to the Zoning Ordinance of the Village of Middleport, and map has adopted since the original adoption of said Ordinance changing district boundaries; and

WHEREAS, other boundary changes have become necessary, including, among other changes, the establishment of an L-1 District; and

WHEREAS, Wendel Duchscherer has prepared a revised zoning map of the Village of Middleport entitled "Zoning Map of the Village of Middleport 2001";

(If additional space is needed, attach pages the same size as this sheet, and number each.)

NOW, THEREFORE, said Zoning Ordinance and zoning map is hereby amended as follows:

§200-5(B) is hereby amended by adopting the following §200-5(B) which shall replace the existing §200-5(B) in its entirety:

§200-5(B). Said districts are defined as shown on a map entitled "Zoning Map of the Village of Middleport 2001" prepared by Wendel-Duchscherer and certified by the Village Clerk of the Village of Middleport, which map accompanies, and with all explanatory matter thereon, is hereby made a part of this Chapter.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2002 of the (County)(City)(Town)(Village) of Middleport was duly passed by the Village Board on April 15, 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____, having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.


Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: April 15, 2002

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature


Daniel E. Seaman

Title

Village Attorney

County

City

Town

Village

of Middleport

Date: April 15, 2002

APPENDIX B

Waterfront Assessment Form

VILLAGE OF MIDDLEPORT

WATERFRONT ASSESSMENT FORM

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants or, in the case of direct actions, municipal agencies, shall complete this Waterfront Assessment Form (WAF) for proposed actions that are subject to the LWRP consistency review. This assessment is intended to supplement other information used by an agency in making a determination of consistency with the Village of Middleport Local Waterfront Revitalization Program.
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 Village Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the waterfront 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 and conditions contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making determination that it is consistent to the maximum extent practicable with the LWRP policy standards and conditions. If an action cannot be certified as consistent with the LWRP policy standards and conditions, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of agency action (check all appropriate responses):

(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: ☐ _____

(e) Action is a: Type I Action ☐

Unlisted 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. bluffs, ground depressions, other geological formations):

8. Percentage of site that contains slopes of 15% or greater: _____

9. Streams, lakes, ponds or wetlands existing within or continuous to the project area?

(1) Name _____

(2) Size (in acres) _____

10. Applicant Information:

(a) Name of applicant (or agency): _____

(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).

1. Will the proposed action have a significant effect upon:

	YES	NO
(a) Commercial or recreation use of fish and wildlife resources?	_____	_____
(b) Scenic quality of the waterfront 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 municipality, state or nation?	_____	_____

2. 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 or more acres of land located elsewhere in the local waterfront revitalization area?	_____	_____
(c) Expansion of existing public services or infrastructure in underdeveloped or low density areas of the waterfront area?	_____	_____

- | | | |
|--|-------|-------|
| (d) Energy facility not subject to Article VII or VIII of the Public Service Law? | _____ | _____ |
| (e) Mining, excavation, filling or dredging? | _____ | _____ |
| (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 designated flood hazard area? | _____ | _____ |
| (i) Development on a natural feature that provides protection against flooding or erosion? | _____ | _____ |
| (j) Diminished surface or groundwater quality? | _____ | _____ |
| (k) Removal of ground cover from the site? | _____ | _____ |

3. Project Information

- | | YES | NO |
|---|-------|-------|
| (a) If project is to be located adjacent to the shore: | | |
| (1) Will water-related recreation be provided? | _____ | _____ |
| (2) Will public access to the shoreline be provided? | _____ | _____ |
| (3) Does the project require a waterfront site? | _____ | _____ |
| (4) Will it supplant a recreation or maritime use? | _____ | _____ |
| (5) Do essential public services and facilities presently exist at or near the site? | _____ | _____ |
| (6) Is the project site located in an area of high erosion? | _____ | _____ |
| (7) Is project located in a flood prone area? | _____ | _____ |
| (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 stream electric generating and industrial facilities into a waterway? | _____ | _____ |
| (c) Is the project site presently used by the community as an open space or recreation area? | _____ | _____ |
| (d) Does the site offer or include scenic views or vistas known to be important to the community? | _____ | _____ |
| (e) Will the surface area of any waterways or wetland areas be increased or decreased by the proposal? | _____ | _____ |
| (f) Will the project involve any waste discharges? | _____ | _____ |
| (g) Does the project involve surface or subsurface liquid waste disposal? | _____ | _____ |
| (h) Does this project involve transport, storage, treatment or disposal of solid waste or hazardous material? | _____ | _____ |
| (i) Does the project involve shipment or storage of petroleum products? | _____ | _____ |
| (j) Does the project involve discharge of toxins, hazardous substances or other pollutants? | _____ | _____ |
| (k) Will the project affect any area designated as a freshwater wetland? | _____ | _____ |
| (l) Will the project alter drainage flow patterns or surface water runoff on to or from the site? | _____ | _____ |
| (m) Will best management practices be utilized to control stormwater runoff into waterways? | _____ | _____ |
| (n) 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 necessary to complete this form).
Note: The Village may require additional or supplemental information at its discretion.

If assistance or further information is needed to complete this form, please contact the Village Building Inspector at (716) 772-7826 or Village Clerk at (716) 735-3303.

Name of Applicant: _____

Preparer's Name: _____ Telephone Number: () _____

Title: _____ Agency: _____ Date: _____

APPENDIX C

Flood Damage Prevention Law

Chapter 102

FLOOD DAMAGE PREVENTION

- | | |
|--|--|
| § 102-1. Statutory authorization; findings. | § 102-10. Establishment of development permit. |
| § 102-2. Purpose. | § 102-11. Designation of Zoning Enforcement Officer. |
| § 102-3. Objectives. | § 102-12. Duties and responsibilities of Zoning Enforcement Officer. |
| § 102-4. Definitions. | § 102-13. General standards. |
| § 102-5. Applicability. | § 102-14. Specific standards. |
| § 102-6. Basis for establishing the areas of special flood hazard. | § 102-15. Floodways. |
| § 102-7. Interpretation; conflict with other provisions. | § 102-16. Appeals Board. |
| § 102-8. Penalties for offenses. | § 102-17. Conditions for variances. |
| § 102-9. Warning and disclaimer of liability. | |

[HISTORY: Adopted by the Board of Trustees of the Village of Middleport 5-4-1987 by L.L. No. 1-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 97.

Zoning — See Ch. 200.

§ 102-1. Statutory authorization; findings.

- A. Statutory authorization. The Legislature of the State of New York, having delegated to local governmental units the responsibility of adopting regulations designed to promote the public health, safety and general welfare of its citizenry, the Village Board of the Village of Middleport, Niagara County, New York, does hereby ordain the following chapter.
- B. Findings of fact. Potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Middleport and such damages may include: loss of property; destruction or loss of private and public housing; damage to public facilities, both publicly and privately owned; disruption of commerce and governmental services; public expenditure for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

§ 102-2. Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify and maintain for participation in the National Flood Insurance Program.

§ 102-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. To provide that developers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 102-4. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

APPEAL — A request for a review of the Zoning Enforcement Officer's interpretation of any provision of this chapter or a request for a variance.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, AI through 99, V, VO, VE or VI

through 30. It is also commonly referred to as the base floodplain or one-hundred-year floodplain.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BUILDING — Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR — The same meaning as "basement."

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

ELEVATED BUILDING — A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters.
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevations of the base flood.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — The same meaning as "regulatory floodway."

FLOOR — The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR — Lowest level, including basement or cellar of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel or contiguous parcel of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) — As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD — The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — At least 51% of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 102-12B of this chapter.

START OF CONSTRUCTION — The initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages,

sheds), storage trailers and building materials. For manufactured homes the actual start means affixing of the manufactured home to its permanent site.

STRUCTURE — A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- A. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- B. Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 102-5. Applicability.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the Village of Middleport.

§ 102-6. Basis for establishing the areas of special flood hazard. [Amended 1-20-1997 by L.L. No. 1-1997]

The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Insurance Rate Map (FIRM), Community Panel Nos. 3605050001 and 360505001B, effective August 1, 1983, together with all maps contained therewith are hereby declared to be a part of this chapter. The FIRM is on file at the office of the Clerk of the Village of Middleport, Main Street, Middleport, New York.

§ 102-7. Interpretation; conflict with other provisions.

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any

other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

§ 102-8. Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Middleport from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under §§ 102-16 and 102-17 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 102-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Village of Middleport, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 102-10. Establishment of development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 102-6. Application for a development permit shall be made on forms furnished by the Zoning Enforcement Officer and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing.

A. Application stage. The following information is required where applicable:

- (1) Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures.
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.

- (3) When required a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 102-13C(1).
 - (4) Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 102-14.
 - (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. Construction stage. Upon placement of the lowest floor, or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the Zoning Enforcement Officer a certificate of the elevation of the lowest floor, or floodproofed elevation, in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Zoning Enforcement Officer shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

§ 102-11. Designation of Zoning Enforcement Officer.

The Zoning Enforcement Officer is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 102-12. Duties and responsibilities of Zoning Enforcement Officer.

Duties of the Zoning Enforcement Officer shall include but not be limited to:

A. Permit application review.

- (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
- (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.

- (4) Review all development permits for compliance with the provisions of § 102-13E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 102-6, Basis for establishing the areas of special flood hazard, the Zoning Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer § 102-14, Specific standards.
- C. Information to be obtained and maintained.
- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
 - (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in §§ 102-13 and 102-14.
 - (3) Maintain for public inspection all records pertaining to the provisions of this chapter.
- D. Alteration of watercourses.
- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, NY 10278.
 - (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- E. Interpretation of FIRM boundaries.
- (1) Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). An applicant contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in §§ 102-16 and 102-17.
 - (2) Base flood elevation data established pursuant to § 102-6 and/or § 102-12B, when available, shall be used to accurately delineate the area of special flood hazards.
 - (3) The Zoning Enforcement Officer shall use flood information from any other authoritative source, including historical data, to establish the limits of the area of special flood hazards when base flood elevations are not available.
- F. Stop-work orders.
- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the Zoning Enforcement Officer.

Disregard of a stop-work order shall be subject to the penalties described in § 102-8 of this chapter.

- (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the Zoning Enforcement Officer. Disregard of a stop-work order shall be subject to the penalties described in § 102-8 of this chapter.

G. **Inspections.** The Zoning Enforcement Officer and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of this chapter.

H. **Certificate of compliance.**

- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Zoning Enforcement Officer stating that the building or land conforms to the requirements of either the floodplain development permit or the approved variance.
- (2) All other development occurring within the designated flood hazard area will have upon completion a certificate of compliance issued by the Zoning Enforcement Officer.

§ 102-13. General standards.

In all areas of special flood hazards the following standards are required:

A. **Anchoring.**

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. **Construction materials and methods.**

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

- (1) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either 50 lots or five acres.

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood carrying capacity of the area of special flood hazards set forth in § 102-12A(3), Permit review. This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 102-12B or § 102-13D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to § 102-12B the requirements of § 102-15, Floodways, shall apply.

§ 102-14. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 102-6, Basis for establishing the areas of special flood hazards, and § 102-12B, Use of other base flood data, the following standards are required:

- A. Residential construction. New construction and substantial improvements of any resident structure shall:
- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
 - (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- B. Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation, or be floodproofed to the base flood level.
- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - (2) If the structure is to be floodproofed:
 - (a) A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

- (b) A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
 - (3) The Zoning Enforcement Officer shall maintain on record a copy of all such certificates noted in this section.
- C. Construction standards for areas of special flood hazards without base flood elevations.
- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor (including basement) elevated at least two feet above the highest adjacent grade next to the proposed foundation of the structure.
 - (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 102-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways (see definition, § 102-4). The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by § 102-6 and § 102-12B, all encroachments, including fill, new construction, substantial improvements and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 102-16. Appeals Board.

- A. The Zoning Board of Appeals as established by Village of Middleport shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
- (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the services provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (11) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The Village Clerk shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 102-17. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of $\frac{1}{2}$ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that § 102-16D(1) through (11) have been fully considered. As the lot size increases beyond the $\frac{1}{2}$ acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the contributing structures procedures set forth in the remainder of this section.

- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- (1) The criteria of Subsections A, D, E and F of this section are met.
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
- (1) A showing of good and sufficient cause.
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. Any applicant to whom a variance is granted or a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

APPENDIX D

Village of Middleport Waterfront Consistency Law

Accepted
Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~COUNTY~~

~~CITY~~

~~TOWN~~

Village

of Middleport

Local Law No. 2 of the year 2002

A local law entitled the Village of Middleport Waterfront Consistency
(Insert Title)
Law.

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

~~COUNTY~~

~~CITY~~

~~TOWN~~

Village

of Middleport as follows:

I. Title

This local law will be known as the Village of Middleport Waterfront Consistency Law.

II. Authority and Purpose

1. 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).
2. The purpose of this local law is to provide a framework for agencies of the Village of Middleport to consider the policies and purposes contained in the 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.
3. It is the intention of the Village of Middleport that the preservation, enhancement and utilization of the natural and manmade resources of the unique waterfront area of the Village occur in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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 fish and wildlife; adverse impacts to historic structures; diminution of open space areas or public access to the waterfront; erosion of shoreline; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

4. The substantive provisions of this local law shall only apply while there is in existence a 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

1. "Actions" means either Type I or unlisted actions as defined in SEQRA regulations which are undertaken by an applicant and which include:
 - (a) 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:
 - (i) are directly undertaken by an agency; or
 - (ii) involve funding by an agency; or
 - (iii) require one or more new or modified approvals from an agency or agencies;
 - (b) agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;
 - (c) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
 - (d) any combinations of the above.
2. "Agency" means any board, agency, department, office, other body, or officer of the Village of Middleport.
3. "Waterfront area" means the Waterfront Revitalization Area delineated in the Village's Local Waterfront Revitalization Program.
4. "Waterfront Assessment Form (WAF)" means the form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.
5. "Consistent" means that the action will comply with the LWRP policy standards and conditions.

6. "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.
7. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Village of Middleport, 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 shall be on file in the Office of the Village Clerk of the Village of Middleport.
8. "Building Inspector" means the building inspector or, if none, the code enforcement officer of the Village of Middleport.
9. "Applicant" means any person, corporation, partnership, or other entity requesting approval or funding of an action, or undertaking any action for which approval is required pursuant to this Law.

IV. Review of Actions

1. Whenever a proposed action is located in the village's waterfront area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in paragraph 4 below.
2. 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.
3. Whenever an agency shall make a determination that an action is not consistent with the LWRP policy standards and conditions, it shall notify the applicant of such findings and the reason therefor within 45 days of filing of the application.
4. 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 Village of Middleport LWRP, a copy of which shall be on file in the Village 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 its consistency determination:
 - (a) Fostering a pattern of development in the Village of Middleport that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of a waterfront locations, and minimizes potential adverse impacts of development.
 - (b) Protecting existing water-dependent uses in the Village of Middleport and promoting the siting of new water-dependent uses in suitable locations.

- (c) Protecting existing agricultural land in the Village of Middleport.
 - (d) Promoting the sustainable use of living marine resources in the Village of Middleport.
 - (e) Protecting and restoring ecological resources, including significant fish and wildlife habitats, wetlands and rare ecological communities.
 - (f) Protecting and improving water resources.
 - (g) Minimizing loss of life, structures and natural resources from flooding and erosion.
 - (h) Protecting and improving air quality.
 - (i) Promoting appropriate use and development of energy and mineral resources.
 - (j) Minimizing environmental degradation from solid waste and hazardous substances and wastes.
 - (k) Improving public access to the waterfront and the use of public lands.
 - (l) Enhancing visual quality and protecting outstanding scenic resources.
 - (m) Preserving and protecting historic resources.
5. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such actions shall not be undertaken unless the determining agency makes a written finding with respect to the proposed action that:
- (a) 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;
 - (b) the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions; and
 - (c) the action will advance one or more of the other LWRP policy standards and conditions; and
 - (d) the action will result in an over-riding village, regional or state-wide public benefit.
6. Each agency shall maintain a file for each action made the subject of a consistency determination. Such files shall be under the control of the Village Clerk.

V. Enforcement

The Village Building Inspector shall be responsible for enforcing this Chapter. No work or activity on an action in the waterfront area which is subject to review under this Chapter shall be commenced or undertaken until the Building Inspector has been presented with a written determination from an agency that the action is consistent with the Village's LWRP policy standards and conditions.

In the event that any construction, action or other activity is being performed in violation of this Chapter or any conditions imposed thereunder, the Building Inspector 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. Posting of a stop work order at any work site, or delivery to any individual shall constitute issuance. Issuance of a stop work order shall not be a prerequisite to prosecution for violating this law.

VI. Violations

1. The undertaking or performing, or exercising, any action as defined, herein, without agency approval shall constitute a violation of this Local Law and shall be punishable by a fine not to exceed \$250.00 or imprisonment for not more than 15 days, or both such fine and imprisonment.
2. Each week of continuing violation of this Law shall constitute a separate violation.
3. This law may be enforced by a civil action and any violation thereof may be enjoined by a court of competent jurisdiction.

VII. Severability

The provisions of this local law are severable. If any provision of this 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.

VIII. Effective Date

This local law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2002 of the (County)(City)(Town)(Village) of Middleport was duly passed by the Village Board on March 18 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.


Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body


(Seal)

Date: March 18, 2002

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Signature Daniel E. Seaman

Village Attorney

Title _____

County
City of Middleport
Town
Village

Date: March 18, 2002

APPENDIX E

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

**NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM**

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

III. NOTIFICATION PROCEDURE

- A. When a state agency is considering an action as described in II above, 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 either the State Clearinghouse, other 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 situs 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 completed Coastal Assessment Form with the local LWRP official 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 chief executive officer can serve as the state agency's notification to the situs local government.

IV. LOCAL GOVERNMENT REVIEW PROCEDURE

- A. Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should promptly provide the situs local government with whatever additional information is available which will assist the situs local government to evaluate the proposed action.
- B. If the situs 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 situs 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 situs 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. below 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 LWRP official 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 situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs 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 situs 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 situs 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 situs 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.