



## **APPENDIX C: GUIDELINES FOR NOTIFICATION & REVIEW**

This appendix contains the guidelines for notification and review of state agency actions where local waterfront revitalization programs are in effect; and procedural guidelines for coordinating NYS Department of State and LWRP Consistency Review of federal agency activities.

---

## **GUIDELINES FOR NOTIFICATION AND REVIEW OF STATE AGENCY ACTIONS WHERE LOCAL WATERFRONT REVITALIZATION PROGRAMS ARE IN EFFECT**

### **I. PURPOSES OF GUIDELINES**

- A. The Waterfront Revitalization of Coastal Areas and Inland Waterways Act (the Act) (Article 42 of the Executive Law) and the Department of State's regulations (19 NYCRR Part 600) require certain state agency actions identified by the Secretary of State to be consistent to the maximum extent practicable with the policies and purposes of the approved Village of Union Springs Local Waterfront Revitalization Program (Village of Union Springs LWRP). These guidelines are intended to assist state agencies in meeting that statutory consistency obligation.
- B. The Act also requires that state agencies provide timely notice to the Village of Union Springs whenever an identified action will occur within an area covered by the approved Village of Union Springs LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist the Village of Union Springs Planning Board in carrying out their review responsibilities in a timely manner.
- C. The Secretary of State is required by the Act to confer with state agencies and the Village of Union Springs when notified by the Village of Union Springs that a proposed state agency action may conflict with the policies and purposes of their approved LWRP. These guidelines establish a procedure for resolving such conflicts.

### **II. DEFINITIONS**

- A. Action means:
  - 1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
  - 2. Occurring within the boundaries of the approved Village of Union Springs LWRP; and
  - 3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the approved Village of Union Springs LWRP.
- B. Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of the approved Village of Union Springs LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of the approved Village of Union Springs 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 Village of Union Springs LWRP to the maximum extent practicable; and
  - 3. That will result in an overriding regional or statewide public benefit.

- C. Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by the Village of Union Springs and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water, and man-made resources, proposed land uses and specific projects that are essential to program implementation.
- D. Municipal Chief Executive Officer is the Mayor of the Village of Union Springs.
- E. Local Program Coordinator is the Code Enforcement Officer. The Local Program Coordinator is the person responsible for the preliminary review of proposed actions within the waterfront area for consistency with the approved Village of Union Springs LWRP and consistency recommendations for the final determination of consistency that will be made by the Village Planning Board.

### **III. NOTIFICATION PROCEDURE**

- A. When a state agency is considering an action as described in II. DEFINITIONS, the state agency shall notify the Village Planning Board.
- B. Notification of a proposed action by a state agency:
  - 1. Shall fully describe the nature and location of the action;
  - 2. Shall be accomplished by use of existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and the Village of Union Springs;
  - 3. Should be provided to the Village of Union Springs, as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. The timely filing of a copy of a completed Waterfront Assessment Form with the Village Planning Board should be considered adequate notification of a proposed action.
- C. If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the Village Planning Board can serve as the state agency's notification to the Village of Union Springs.

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

- A. Upon receipt of notification from a state agency, the Village Planning Board will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the Code Enforcement Officer, the state agency should promptly provide the Village of Union Springs with whatever additional information is available which will assist the Village Planning Board to evaluate the proposed action.
- B. If the Village Planning Board cannot identify any conflicts between the proposed action and the applicable policies and purposes of the approved Village of Union Springs LWRP, it should inform the state agency in writing of its finding. Upon receipt of Village Planning Board finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
- C. If the Village Planning Board does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the approved Village of Union Springs LWRP.



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

## **V. RESOLUTION OF CONFLICTS**

- A. The following procedure applies whenever the Village Planning Board has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of the approved Village of Union Springs LWRP:
1. Upon receipt of notification from the Village Planning Board that a proposed action conflicts with its approved LWRP, the state agency should contact the Code Enforcement Officer to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and the Village of Union Springs 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 Village Planning Board.
  2. If the discussion between the Village Planning Board and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the Village Planning Board shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
  3. If the consultation between the Village of Union Springs and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the Village of Union Springs and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
  4. Within 30 days following the receipt of a request for assistance, the Secretary, or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and the Village of Union Springs.
  5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.
  6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.



---

## **PROCEDURAL GUIDELINES FOR COORDINATING NYS DEPARTMENT OF STATE AND LWRP CONSISTENCY REVIEW OF FEDERAL AGENCY ACTIVITY**

### **I. FEDERAL AGENCY ACTIVITIES**

- A. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, the NYS Department of State will forward copies of the determination and other descriptive information on the proposed federal activities to the Village of Union Springs Planning Board.
- B. This notification will indicate the date by which all comments and recommendations must be submitted to the NYS Department of State and will identify the Department's principal reviewer for the proposed federal activity.
- C. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, the NYS Department of State will presume that the municipality has "no opinion" on the consistency of the proposed federal activity with the approved Village of Union Springs LWRP policies.
- D. If the NYS Department of State does not fully concur with and/or has any questions on the comments and recommendations submitted by the Village of Union Springs, the NYS Department of State will contact the Code Enforcement Officer to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed federal activity.
- E. A copy of the NYS Department of State "concurrence" or "objection" letter to the federal agency will be forwarded to the Village Planning Board.

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

- A. The NYS Department of State will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, the NYS Department of State will forward a copy of the submitted documentation to the Village of Union Springs Planning Board and will identify the Department's principal reviewer for the proposed federal activity.
- B. Within thirty (30) days of receiving such information, the Code Enforcement Officer will contact the principal reviewer for the NYS Department of State to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed federal activity with the approved Village of Union Springs LWRP policies.
- C. When the NYS Department of State and the Code Enforcement Officer agree that additional information is necessary, the NYS Department of State will request the applicant to provide the information. A copy of this information will be provided to the Code Enforcement Officer upon receipt.
- D. Within thirty (30) days of receiving the requested information or discussing possible problems of a proposed federal activity with the principal reviewer for the NYS Department of State, whichever is later, the Village of Union Springs will notify the NYS Department of State of the reasons why a proposed federal activity may be inconsistent or consistent with the approved Village of Union Springs LWRP policies.

- E. After the notification, the Village of Union Springs will submit the written comments and recommendations on a proposed federal activity to the NYS Department of State before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to the NYS Department of State by the end of the public comment period, the NYS Department of State will presume that the municipality has "no opinion" on the consistency of the proposed federal activity with the Village of Union Springs LWRP policies.
- F. If the NYS Department of State does not fully concur with and/or has any questions on the comments and recommendations submitted by the Village of Union Springs on a proposed federal activity, the NYS Department of State will contact the Code Enforcement Officer to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" to the applicant.
- G. A copy of the NYS Department of State's "concurrence" or "objection" letter to the applicant will be forwarded to the Village of Union Springs.

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

- A. Upon receiving notification of a proposed federal financial assistance, the NYS Department of State will request information on the federal financial assistance from the applicant for consistency review purposes. As appropriate, the NYS Department of State will also request the applicant to provide a copy of the application documentation to the Village of Union Springs Code Enforcement Officer. A copy of this letter will be forwarded to the Village of Union Springs and will serve as notification that the proposed federal financial assistance may be subject to review.
- B. The NYS Department of State will acknowledge the receipt of the requested information and provide a copy of this acknowledgment to the Village of Union Springs Code Enforcement Officer. The NYS Department of State may, at this time, request the applicant to submit additional information for review purposes.
- C. The review period will conclude thirty (30) days after the date on the NYS Department of State's letter of acknowledgment or the receipt of requested additional information, whichever is later. The review period may be extended for major federal financial assistance.
- D. The Village of Union Springs Code Enforcement Officer must submit the municipality's comments and recommendations on the proposed federal financial assistance to the NYS Department of State within twenty days (or other time agreed to by the NYS Department of State and the Village of Union Springs) from the start of the review period. If comments and recommendations are not received within this period, the NYS Department of State will presume that the municipality has "no opinion" on the consistency of the proposed federal financial assistance with the approved Village of Union Springs LWRP policies.
- E. If the NYS Department of State does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, the NYS Department of State will contact the Code Enforcement Officer to discuss any differences of opinion or questions prior to notifying the applicant of the NYS Department of State's consistency decision.
- F. A copy of the NYS Department of State's consistency decision letter to the applicant will be forwarded to the Village of Union Springs Code Enforcement Officer.