

6 Amendment to Waterfront Consistency Review Law
(With Waterfront Assessment Form)

This is a proposed amendment to Town of Bolton Local Law # 3 of 2017 (adopted November 1, 2016) entitled **Waterfront Consistency Review Law**.

This proposed Local Law # 3 of 2019 upon its enactment shall constitute technical and procedural revisions and replacement language and those terms are herein stated as:

Be it enacted by the Town Board of the Town of Bolton, a global amendment and replacement to the existing Waterfront Consistency Review Law, intending to enact technical and procedural changes as follows:

GENERAL PROVISIONS

I. Title.

This Local Law # 3 of 2019 upon enactment shall be known as the Town of Bolton Waterfront Consistency Review Law and wherever this enactment shall be read or construed in conflict with the former Local Law # 3 of 2017, the terms and provisions of this new language shall prevail. Upon enactment of this Local Law # 3 of 2019 the prior enactment of Local Law # 3 of 2017 shall no longer be applied nor deemed to be in effect.

II. Legislative authority and purpose.

- A. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
- B. The purpose of this local law is to provide a framework for agencies of the Town of Bolton to incorporate the policies and purposes contained in the Town of Bolton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the Waterfront Revitalization Area (WRA) covered by the LWRP; and to assure that such actions and direct actions by Town agencies are consistent with the LWRP policies and purposes.
- C. It is the intention of the Town of Bolton that the preservation, enhancement and utilization of the unique waterfront of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate limited 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: degradation or loss of living waterfront resources and wildlife; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic, cultural or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.

- D. The substantive provisions of this local law shall only apply when there is in existence a Town of Bolton Local Waterfront Revitalization Program which has been locally adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. Definitions.

- A. "Actions" include all the following, except minor actions:

(1) Projects or physical activities, such as construction or any other activities that may affect natural, manmade or other resources in the WRA or the environment by changing the use, appearance or condition of any 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, permits, or review from an agency or agencies;

(2) Agency planning and policymaking activities that may affect the environment and commit the agency to a definite course of future decisions;

(3) Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect waterfront resources or the environment; and

(4) Any combination of the above.

- B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Bolton
- C. "Consistent" means that the action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance one or more of them.
- D. "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.
- E. "Environment" means all conditions, circumstances and influences surrounding and affecting the development of living organisms or other resources in the waterfront area.
- F. "Local Waterfront Revitalization Program" or "LWRP" means the Local Waterfront Revitalization Program of the Town of Bolton, 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 is on file in the Office of the Clerk of the Town of Bolton

- G. "Minor actions" include the following actions, which are not subject to review under this local law:
- (1) maintenance or repair involving no substantial changes in an existing structure or facility;
 - (2) repaving or widening of existing paved highways not involving the addition of new travel lanes;
 - (3) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
 - (4) maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected
 - (5) granting of individual setback and lot line variances, except in relation to a regulated natural feature or a bulkhead or other shoreline defense structure
 - (6) minor temporary uses of land having negligible or no permanent impact on waterfront resources or the environment;
 - (7) installation of traffic control devices on existing streets, roads and highways;
 - (8) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
 - (9) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any action;
 - (10) official acts of a ministerial nature involving no exercise of discretion, including building where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code.
 - (11) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
 - (13) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
 - (14) collective bargaining activities;
 - (15) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
 - (16) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
 - (17) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, storage of road de-icing substances, or other hazardous materials;

- (18) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
 - (19) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
 - (20) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
 - (21) adoption of a moratorium on land development or construction;
 - (22) interpreting an existing code, rule or regulation;
 - (23) designation of local landmarks or their inclusion within historic districts;
 - (24) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to waterfront resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;
 - (25) local legislative decisions where the Town Board determines the action will not be approved.
- H. "Waterfront area or WRA" means the waterfront revitalization area illustrated in Fig 1_WRA boundary and described in Section I of the Town of Bolton LWRP, pursuant to Article 42 of the Executive Law.
 - I. "Waterfront Assessment Form (WAF)" means the form, a sample of which is appended to this local law, used by an agency or other entity to assist in determining the consistency of an action with the Town of Bolton LWRP.

IV. Management and Coordination of the LWRP

- A. The Town of Bolton Zoning Board of Appeals (the "ZBA"), Planning Board (the "Planning Board"), or Town Board where an action may be considered shall be responsible for coordinating review of actions in the Town's waterfront area for consistency with the LWRP, and will advise, assist and make consistency recommendations to the Town Board in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.
- B. The ZBA, Planning Board, and Town Board shall coordinate with State agencies regarding consistency review of their actions.
- C. As the Town Board may consider making applications for funding from State, Federal, or other sources to finance projects under the LWRP, the Town Board may seek assistance from the ZBA,

Planning Board and/or duly appointed advisory committees as they compile the necessary information for such an application.

- D. The Town Board shall perform other functions regarding the waterfront area and direct such actions or projects as may be deemed appropriate, to implement the LWRP.

V. Review of Actions.

- A. Whenever a proposed action is located within the Town's waterfront area (WRA), the Zoning Administrator shall, prior to approving, funding, or undertaking the action, make a determination that the action is consistent with the LWRP policies standards set forth in Section H herein. No action in the waterfront area shall be approved, funded, or undertaken by that agency without such a determination.
- B. Whenever the Town receives an application for approval or funding of an action, or as early as possible in the formulation of a direct action to be located in the WRA, the Zoning Administrator shall review the application with reference to the consistency of the proposed action.
- C. Upon referral from the Zoning Administrator, the ZBA, Planning Board or Town Board where the application is to be considered shall determine whether the proposed action is consistent with the LWRP policy standards set forth in Section H herein. Said Board shall require the applicant to submit all completed applications, WAFs, EAFs, and any other information deemed necessary to its consistency recommendation.

Said Board shall render a determination whether the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and shall elaborate in writing the basis for its opinion. Said Board may make any suggestions concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policies and objectives or to greater advance them as a prerequisite to consistency and approving the action for relief sought from the Board.

- D. If an action requires approval of more than one Town agency, decision making will be coordinated between the agencies to determine which agency will conduct the final consistency review, and that agency will thereafter act as designated consistency review agency. Only one WAF per action will be prepared. If the agencies cannot agree, the Town Board shall have the authority to make a final determination.
- E. Each Board shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Section H herein. The respective Board shall consider the decisions of a Board on an application seeking approval of a proposed action, the WAF and other relevant information in making its determination of consistency. No approval or decision shall be rendered for an action in the waterfront area without a determination of consistency having first been rendered by the appropriate Board.

The ZBA is the designated agency for the determination of consistency for variance applications subject to this law. The ZBA shall undertake its consistency review and at the time it makes a decision to grant such a variance and shall impose appropriate conditions on the variance to make the activity consistent with the objectives of this law.

- F. The Planning Board is the designated agency for the determination of consistency for applications for site plan review and approval, subdivision approval, approval of stormwater pollution prevention and erosion control programs and the grant of any waivers appropriate to its jurisdiction. The Planning Board shall undertake its own consistency review and at the time it makes a decision on a pending application and shall impose appropriate conditions to assure the action is consistent with the objectives of this law.
- G. The Town Board is the designated agency for the determination of consistency for all legislative acts, resolutions and determinations specific to the authority granted by statute and case law, including determinations made as a local board of health, local sewer or water district and on matters of all relief that may be considered and granted by the local legislative branch. The Town Board shall undertake its own consistency review and at the time it makes decision to grant relief or act upon a resolution or by legislative act shall impose appropriate conditions to assure the action is consistent with the objectives of this law.
- H. Where an EIS is being prepared or required, the draft EIS must identify applicable LWRP policies standards set forth in Section H and include a discussion of the effects of the proposed action on such policy standards.
- I. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following LWRP policy standards, which are further explained and described in the Town of Bolton LWRP, a copy of which is on file in the Town of Bolton Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions must also consult with Section IV-Proposed Land and Water Uses and Projects of the LWRP, in making their consistency determination. The action must be consistent with the policies to:

Policy	Policy Statement
Developed Waterfront Policies	
Policy 1	Foster a pattern of development in the waterfront area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development.
Policy 1.1	Concentrate development and redevelopment in or adjacent to traditional waterfront communities.
Policy 1.2	Ensure that development or uses take appropriate advantage of their waterfront location.
Policy 1.3	Protect stable residential areas.
Policy 1.4	Maintain and enhance natural areas, recreation, open space, and agricultural lands.
Policy 1.5	Minimize adverse impacts of new development and redevelopment.
Policy 2	Preserve historic resources of the waterfront area.
Policy 2.1	Maximize preservation and retention of historic resources.
Policy 2.2	Protect and preserve archaeological resources.

Policy 2.3	Protect and enhance resources that are significant to the waterfront culture.
Policy 3	Enhance visual quality and protect scenic resources throughout the waterfront area.
Policy 3.1	Protect and improve visual quality throughout the waterfront area.
Policy 3.2	Protect aesthetic values associated with recognized areas of high scenic quality.
Natural Waterfront Policies	
Policy 4	Minimize loss of life, structures, and natural resources from flooding and erosion.
Policy 4.1	Minimize losses of human life and structures from flooding and erosion hazards.
Policy 4.2	Preserve and restore natural protective features.
Policy 4.3	Protect public lands and public trust lands and use of these lands when undertaking all erosion or flood control projects.
Policy 4.4	Manage navigation infrastructure to limit adverse impacts on stream and lake processes.
Policy 4.5	Ensure that expenditure of public funds for flooding and erosion control projects results in a public benefit.
Policy 5	Protect and improve water quality and supply.
Policy 5.1	Prohibit direct or indirect discharges which would cause or contribute to contravention of water quality standards.
Policy 5.2	Manage land use activities and use best management practices to minimize non-point pollution of waterfront areas.
Policy 5.3	Protect and enhance the quality of waterfront area waters.
Policy 5.4	Limit the potential for adverse impacts of watershed development on water quality and quantity.
Policy 5.5	Protect and conserve the quality and quantity of potable water.
Policy 6	Protect and restore the quality and function of the ecosystem.
Policy 6.1	Protect and restore ecological quality.
Policy 6.2	Protect and restore significant fish and wildlife habitats.
Policy 6.3	Protect and restore freshwater wetlands.
Policy 6.4	Protect vulnerable fish, wildlife, and plant species, and rare ecological communities.
Policy 6.5	Protect natural resources and associated values in identified regionally important natural areas.
Policy 7	Protect and improve air quality in the waterfront area.
Policy 7.1	Control or abate existing and prevent new air pollution.
Policy 7.2	Limit discharges of atmospheric radioactive material to a level that is as low as practicable.
Policy 7.3	Limit sources of atmospheric deposition of pollutants to the waterway, particularly from nitrogen sources.

Policy 8	Minimize environmental degradation in the waterfront area from solid waste and hazardous substances and wastes.
Policy 8.1	Manage solid waste to protect public health and control pollution.
Policy 8.2	Manage hazardous wastes to protect public health and control pollution.
Policy 8.3	Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.
Policy 8.4	Prevent and remediate discharge of petroleum products.
Policy 8.5	Transport solid waste and hazardous substances and waste in a manner which protects the safety, well-being, and general welfare of the public; the environmental resources of the state; and the continued use of transportation facilities.
Policy 8.6	Site solid and hazardous waste facilities to avoid potential degradation of waterfront resources.
Public Waterfront Policies	
Policy 9	Provide for public access to, and recreational use of, the waterway, public lands, and public resources of the waterfront area.
Policy 9.1	Promote appropriate and adequate physical public access and recreation throughout the waterfront area.
Policy 9.2	Provide public visual access from public lands to waterfront lands and waters or open space at all sites where physically practical.
Policy 9.3	Preserve the public interest in and use of lands and waters held in public trust by the state, and other public entities.
Policy 9.4	Assure public access to public trust lands and navigable waters.
Working Waterfront Policies	
Policy 10	Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations.
Policy 10.1	Protect existing water-dependent uses.
Policy 10.2	Promote hamlet centers as the most suitable locations for water-dependent uses.
Policy 10.3	Allow for development of new water-dependent uses outside of hamlet centers.
Policy 10.4	Improve the economic viability of water-dependent uses by allowing for non-water-dependent accessory and multiple uses, particularly water-enhanced and support services.
Policy 10.5	Minimize adverse impacts of new and expanding water-dependent uses, provide for their safe operation, and maintain regionally important uses.
Policy 10.6	Provide sufficient infrastructure for water-dependent uses.
Policy 10.7	Promote efficient near shore water surface operation.
Policy 11	Promote sustainable use of living lacustrine resources.
Policy 11.1	Ensure the long-term maintenance and health of living resources in the waters of Lake George, Trout Lake, and their tributaries.
Policy 11.2	Provide for commercial and recreational use of lacustrine resources.
Policy 11.3	Promote recreational use of lacustrine resources.
Policy 11.4	Promote aquaculture.

Policy 13	Promote appropriate use and development of energy and mineral resources.
Policy 13.1	Conserve energy resources.
Policy 13.2	Promote alternative energy sources that are self-sustaining, including solar energy generation.
Policy 13.3	Ensure maximum efficiency and minimum adverse environmental impact when siting major energy generating facilities.
Policy 13.4	Minimize adverse impacts from fuel storage facilities.
Policy 13.5	Minimize adverse impacts associated with mineral extraction.

- I. If the agency determines that an action will be inconsistent with one or more LWRP policy standards or objectives, such action shall not be undertaken unless modified to be consistent with the LWRP policies.
- J. The Town shall maintain a file for each action made the subject of a consistency determination, including any recommendations attendant to the action. Such files shall be made available for public inspection upon request.

VI. Enforcement.

No action within the Town of Bolton waterfront area, which is subject to review under this local law, shall proceed until a written determination has been issued from a Town agency that the action is consistent with the Town's LWRP policy standards. In the event that an activity is being performed in violation of this law or any conditions imposed thereunder, the Zoning Enforcement Officer or any other authorized official of the Town shall issue a stop work order and notice to remedy and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order and notice to remedy is in effect.

VII. Violations.

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this local law shall have committed a violation, punishable by a civil penalty not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a civil penalty of one thousand dollars (\$1000.00) for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
- B. The Town shall be authorized to direct its legal counsel to institute any and all actions and proceedings necessary to enforce this local law. Any civil action and relief provided for therein shall be in addition to and not in lieu of any criminal prosecution and penalty.

VIII. Severability.

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

IX. Effective Date.

This local law shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

TOWN OF BOLTON
WATERFRONT ASSESSMENT FORM

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, Town of Bolton agencies, shall complete this Waterfront Assessment Form (WAF) for proposed actions which are subject to the Waterfront Consistency Review Law. This assessment is intended to supplement other information used by a Town of Bolton agency in making a determination of consistency with the policy standards set forth in the Waterfront Consistency Review Law.
2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the approved Town of Bolton Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the Town of Bolton Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the waterfront area and its consistency with the policy standards.
3. If any questions in Section C on this form are answered "yes", then the proposed action may affect the achievement of the LWRP policy standards contained in the Waterfront Consistency Review Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination that it is consistent with the LWRP policy standards. If an action cannot be certified as consistent with the LWRP policy standards, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Describe nature and extent of action:

2. Type of agency action (check appropriate response):

- Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) _____
- Financial assistance (e.g. grant, loan, subsidy) _____
- Permit, approval, license, certification _____
- Agency undertaking action: _____

3. If an application for the proposed action has been filed with a Town of Bolton, the following information shall be provided:

a) Name of applicant: _____

b) Mailing address

c) Telephone number & email : _____

d) Property tax number: _____

e) Application number, if any _____

4. 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? _____

5. Location of action (Street or Site Description and nearest intersection):

6. Size of site (acres): _____

Amount (acres) of site to be disturbed: _____

7. Present land use: _____

8. Present zoning classification: _____

9. Describe any unique or unusual land forms on the project site (i.e. steep slopes, swales, ground depressions, other geological formations):

10. Percentage of site which contains slopes of 15% or greater: _____

11. Streams, lakes, ponds or wetlands existing within or contiguous to the project area?

▪ Name: _____

▪ Size (in acres): _____

12. Is the property serviced by public water? Yes _____ No _____

13. Is the property serviced by public sewer? Yes _____ No _____

C. WATERFRONT ASSESSMENT

If the answer to any question is yes, please explain in Section D any measures which will be undertaken to mitigate any adverse effects.

1. Will the proposed action be located in, or contiguous to, or have a potentially adverse effect upon any of the resource areas identified in the Bolton LWRP?	Yes	No
Significant fish or wildlife habitats.		
Scenic quality of the waterfront environment.		
Important agricultural lands.		
Stability of the shoreline.		
Designated state or federal freshwater wetlands.		
Commercial or recreational use of fish and wildlife resources.		
Existing or potential public recreation opportunities.		
Surface or groundwater quality.		
Development of future, or existing water dependent uses.		
Structures, sites or districts of historic, archeological or cultural significance to the Town of Bolton, State or nation?		
2. Will the proposed action involve or result in any of the following:	Yes	No
Physical alteration of land along the shoreline, land under water or waterfront waters.		
Physical alteration of two (2) acres or more of land located elsewhere in the waterfront area.		
Expansion of existing public services or infrastructure in undeveloped or low density areas of the WRA.		
Energy facility not subject to Article VII or VIII of the Public Service law.		
Mining, excavation, filling or dredging in WRA waters.		
Reduction of existing or potential public access to or along the shore.		
Sale or change in use of publicly-owned lands located on the shoreline or under water.		
Development within a designated floor or erosion hazard area.		
Development on a beach or other natural feature that provides protection against flooding or erosion.		
Construction or reconstruction of erosion protective structures.		
Diminished or degraded surface or groundwater quality and /or quality.		
Removal of ground cover from the site.		
3. Project	Yes	No
If a project is to be located adjacent to shore, does the project require a waterfront location/site?		
If a project is to be located adjacent to shore, do essential public services and facilities presently exist at or near the site?		
If a project is to be located adjacent to shore, is it located in a flood prone area?		

If a project is to be located adjacent to shore, is it located in an area of high erosion?		
Project Continued	Yes	No
If a project is to be located adjacent to shore, will water-related recreation be provided?		
If a project is to be located adjacent to shore, will public access to the foreshore be provided?		
If a project is to be located adjacent to shore, will it supplant a recreational use?		
If project site is publicly owned, will the project protect maintain and/or increase the level and types of public access to water- related recreation resources and facilities?		
If located in the foreshore, will access to those and adjacent lands be provided?		
If located in the foreshore, will it involve the siting and construction of major energy facilities?		
If located in the foreshore, will it be transforming industrial facilities into waterfront facilities?		
Is the project site presently used by the community neighborhood as an open space or recreation area?		
Does the project site offer or include scenic views or vistas known to be important to the community?		
Is the project site presently used for commercial fishing or fish processing?		
Will the surface area of any waterways or wetland areas be increased or decreased by the proposal?		
Does any mature forest (over 100 years old) or other locally important vegetation exist on this site which will be removed by the project?		
Will the project involve any waste discharges into WRA waters?		
Does the project involve surface or subsurface liquid waste disposal?		
Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials?		
Does the project involve shipment or storage of petroleum products?		
Does the project involve discharge of toxics, hazardous substances or other pollutants into WRA waters?		
Does the project involve or change existing ice management practices?		
Will the project affect any area designated as a freshwater wetland?		
Will the project alter drainage flow, patterns or surface water runoff on or from the site?		
Will best management practices be utilized to control storm water runoff into WRA waters?		
Will the project utilize or affect the quality or quantity of sole source or surface water supplies?		
Will the project cause emissions which exceed federal or state air quality standards or generate significant amounts of nitrates or sulfates?		

