

SECTION V - Techniques for Local Implementation of the Program

A. Local Laws and Regulations Necessary to Implement the LWRP

The Town of Tonawanda has several local laws and regulations that help implement the provisions of the LWRP. The following discussion briefly describes existing implementation mechanisms, and lists additional mechanisms that can be used to achieve local policy objectives.

1. Building, Plumbing and Electrical Standards (Chapter 54)

This local law requires that all development be connected to sanitary sewers, and that any wastes entering the sewer system will be diluted or neutralized to meet the requirements of the Sewers Law (Chapter 165). The size, materials, location and other specifications of sewer lines are controlled to ensure proper disposal of wastes and prevent polluted waters from entering public waters. Regulations governing stormwater drainage are also provided. This law helps to implement LWRP provisions for maintaining and improving water quality, and minimizing environmental degradation from wastes.

2. Drainage Control Law (Chapter 73)

This law is intended to plan for the present and future use of natural drainage ways and watercourses in the Town of Tonawanda. It prohibits improper drainage, unwise diversion, use or obstruction of streams or natural drainage courses without approval. All owners and occupants of property are required to keep any natural drainage way clear and unobstructed. This law helps implement policies that protect and restore ecological resources, and helps to minimize damages from flooding.

3. Environmental Quality Review (Chapter 76)

This law establishes a procedure to incorporate environmental factors into town planning, review and decision-making processes. It requires that any action other than those classified as Type II must fully comply with the SEQRA requirements of this Chapter (Chapter 76) and Part 617 of Title 6 of NYCRR.

4. Flood Damage Prevention Law (Chapter 92)

This local law minimizes the likelihood of property damage due to flooding by strictly controlling development in areas where flooding may occur. As currently written, the law prohibits all development except parks, flood protection structures and municipal facilities in areas designated as 100-year floodplains. The Town is considering changes to this law to allow additional permitted uses within the floodplain if they conform to strict standards of construction designed to minimize potential property and personal damage due to flooding. If the change is adopted, the requirements will be consistent with the standards provided in Policy 11.

The law implements LWRP policies by controlling the siting of buildings and structures to minimize property and personal damage due to flooding. In conformance with the National Flood Insurance Program, and to qualify for participation in this program, the law mandates that all uses, including

utilities, be located and constructed to minimize or eliminate flood damage. A development permit is required prior to development. No development is allowed within the floodway, unless a technical evaluation demonstrates that it will not result in any increase in flood levels during the occurrence of the base flood discharge. The statute also sets forth penalties for offenses.

5. Local Waterfront Revitalization (Local Consistency Law) (Chapter 129)

(See Appendix B)

The Local Consistency Law for the Town of Tonawanda requires that all Type I and Unlisted Actions (as defined by the SEQRA implementing regulations) directly undertaken, approved or funded by the Town will be reviewed by the Town Board for consistency with the Town of Tonawanda LWRP. No actions may be implemented unless the Town Board finds that the actions are consistent with policies and purposes of the LWRP, and certifies their consistency. By adopting this local law, the Town has established a legal framework for reviewing actions within the LWRA, and has committed itself and its agents to comply with the provisions of the LWRP.

6. Sewers Ordinance (Chapter 165)

The Sewer Ordinance regulates wastewater disposal procedures in the Town of Tonawanda. The law classifies and regulates industrial and non-industrial discharges and establishes permit and pre-treatment requirements. All developments used for human occupancy, employment, recreation or other purposes must connect to public sewers. No sewage or other polluted waste may be discharged to any sewer or any natural outlet unless it has been treated to fall within acceptable standards. The law specifies what types of wastes are prohibited and restricted. The Sewer Ordinance prohibits any discharge of any sewage or other polluted waters to any natural outlet within the Town, except where suitable treatment has been provided or where a federal national pollutant discharge elimination system (NPDES) permit has been duly issued and is currently valid for such discharge. The statute enumerates many types of wastes that are prohibited, including any which would cause the effluent from the sewage treatment plant to be unable to meet clean water standards. The statute also provides the Town the right to restrict any discharges it deems may pollute the receiving stream. The Town is authorized to refuse wastes, require pretreatment of wastes, control the quantities or rate of discharge, or require payments to offset the additional cost of treating wastes that do not comply with these standards. The discharge of stormwater, groundwater, roof runoff, subsurface drainage and other non-polluted waters or wastes into sewers or a natural outlet is subject to approval by the Town Plumbing Inspector. Such waters may not be discharged into sanitary sewers if a closed storm sewer is available. This law implements policies that protect and improve water resources, and minimize environmental degradation from solid waste and hazardous substances and wastes.

7. Smoke and Air Pollution (Chapter 173)

This chapter regulates the emission of smoke and air pollution in the Town of Tonawanda. The emission of dense smoke is prohibited, and other types of emissions, such as dust, soot, cinders, fly ash, noxious acids, vapors, fumes or gases, are regulated. Any and all installations which involve or affect the discharge of fumes into the atmosphere are subject to review and approval. Approval is also required to

construct, alter or use any fuel- or refuse-burning plants, equipment or devices, which must meet certain standards specified in the law. A certificate of operation is required for such to operate, with annual inspections to ensure continued compliance. This law implements policies pertaining to air quality.

8. Soil Removal (Chapter 179)

This law prohibits any excavation, removal or storage of earth, sand, gravel, rock, topsoil or other similar material, except for excavation necessary for construction of improvements, without the approval of the Town Engineer or Supervising Building Inspector. Any excavated area must have an approved ground cover for protection from erosion. No excavation may affect town drainage facilities, water mains, sewer lines or streets without approval of the Town Engineer or Supervising Building Inspector, and no surface water or stormwater shall be discharged directly into municipal facilities or drainage systems without approval. This law implements flooding and erosion policies, water quality policies and protection of ecological resources.

9. Solid Waste Management (Chapter 181)

This law establishes requirements for solid waste management, including regulation of types of wastes to be collected and the establishment of a curbside recycling program. It defines what materials are to be recycled, and specifies the proper preparation and disposal methods to be utilized. It prohibits the collection of hazardous wastes. This law implements policies that pertain to environmental quality.

10. Trees and Shrubs (Chapter 197)

This law requires that maintenance, planting, care, removal and other activities related to trees or shrubs located within the Town's rights-of-way on any public street outside the limits of the Village of Kenmore are the responsibility of the Superintendent of Highways of the Town of Tonawanda. Replacement trees shall be planted whenever a tree has been removed or destroyed. Intentional damage to public trees is prohibited, and the statute requires adequate protective barriers around public trees that are in danger of injury due to construction. This law protects natural resources within the LWRA and the Town.

B. Proposed Local Laws Necessary to Implement the LWRP

To implement the policies and provisions of the Town of Tonawanda Local Waterfront Revitalization Program, the following amendments shall be made to the Town Code. In particular, the Town Zoning Ordinance and Zoning Map shall be revised.

1. Zoning Law (Chapter 215)

Existing zoning in the waterfront region does not effectively direct development in the waterfront region of the Town. Changing circumstances dictate that the vision upon which the zoning districts are premised is no longer viable. For example, the Waterfront Residential district is viable only if River Road was relocated, which is no longer being considered. Provisions intended to strictly control development are seen as too restrictive. The types of uses that are allowed are limited, and virtually all development

requires a special use permit. Particularly in the southern district, zoning boundaries split large parcels, complicating development plans. All these factors contributed to stagnation, inhibiting development, particularly in areas where redevelopment is already a challenge. Other areas of the Town are experiencing redevelopment, while essentially no new private development is occurring along the waterfront.

The zoning districts for the waterfront region in the Town of Tonawanda have been rewritten to implement the provisions of this proposed amendment to the Town's LWRP. In essence, the new zoning ordinance repeals the former waterfront zoning districts (W-1, W-2, W-R and W-ID), and creates new waterfront districts consisting of the Waterfront Mixed Use (WMU), Office/ Research and Development Use District (O-RD), Retail-Highway Commercial Use District (RHC) and a new Waterfront Industrial District (WID). Boundaries of the new districts were based on a new land use plan prepared for the waterfront district, and do not correspond to the boundaries of the previous districts. In addition, a River Road Overlay district is proposed to manage growth and provide additional standards for development for properties fronting on River Road. These zoning districts apply to the northern and central sectors of the waterfront revitalization area. Zoning remains unchanged in the southern sector, which is essentially fully developed.

The Waterfront Mixed Use District (W-MU) is proposed on the shore of the Niagara River, extending from the northern border of the Town of Tonawanda with the City of Tonawanda, southward to the northern boundary of the parcel currently occupied by Niagara River World. It incorporates lands between the Niagara River and River Road. District regulations permit a variety of public and private water- related park uses, marinas, boatyards, hotels, retail stores and restaurants and other water-related commercial activities. Water-dependent facilities, such as docks or pipelines, are allowed as a specially permitted use, if they are accessory to an industrial development in the adjacent WID or G-I districts. Provisions within the district ensure that views are protected and that pedestrian access is encouraged.

The Office/Research and Development Use District (O-RD) is proposed on the land side of River Road at the northern end of the waterfront district. This district allows a variety of commercial uses, such as offices, laboratories, or research and development facilities. Additional uses, such as restaurants, retail, lodging, schools and a limited amount of warehousing are allowed with a special use permit. Development must be set back a minimum of 50 feet from Rattlesnake Creek and its tributaries. The provision of pedestrian access is encouraged in the required open space.

The Retail-Highway Commercial Use District (RHC) is proposed on the land side of River Road between the O-RD district and the Grand Island Bridges. Allowed uses include restaurants, retail stores, motels and other commercial uses. It is designed primarily to provide for highway-related uses while protecting pedestrian access and promoting higher design standards.

The Waterfront Industrial District (WID) is proposed to allow controlled industrial development at appropriate locations in the waterfront area. Permitted uses include public and private parkland, light industry, wholesale businesses, warehousing, research facilities, offices and other business and

professional uses. Development must be set back a minimum of 50 feet from Two-Mile Creek, Rattlesnake Creek and their tributaries, with public access encouraged in the buffer area.

In addition, a River Road Zoning Overlay is proposed for properties that front on River Road within the waterfront revitalization area. The intent of the Overlay is to better manage and accommodate business growth along the River Road corridor in a manner that improves visual character, protects adjoining environmental resources and enhances the character of the area as an important gateway to the Town of Tonawanda and its waterfront. The Overlay, which is divided into three subareas to reflect varying character along the corridor, supplements the underlying zoning districts by requiring additional design and landscaping standards for development within the Overlay area.

Under the proposed zoning, only uses which are preferred are allowed by-right. Uses which are acceptable, but require greater controls must receive special use permits. To promote future flexibility, other uses not specifically listed may be allowed with a special use permit, if the Town Board, in consultation with the Planning Board, deems them consistent with the purpose and intent of the district, and compatible with other permitted uses. Under existing zoning districts, virtually all non-park uses require special use permits, which tend to inhibit private sector investment in the waterfront region.

The proposed regulations provide standards for landscaping, fencing, parking, storage and other design issues. For properties in the WMU district, which encompasses the waterfront side of River Road for all of the northern and most of the central sectors of the waterfront revitalization area, setbacks from the Niagara River (50 feet) and viewshed protections are incorporated. Height, front setbacks and lot coverage requirements are set for all waterfront districts.

In addition to the requirements contained in the district regulations, all development within 500 feet of the right-of-way of River Road must conform to additional design and aesthetic regulations contained in the River Road Overlay district. This district is intended to better manage and accommodate growth along River Road, improve the visual character of the waterfront area along its main access road, and provide additional protection to environmental resources. Recognizing that the character of the River Road corridor varies along its length, the Overlay establishes three separate subareas, and design regulations are tailored to each subarea.

By allowing preferred uses by right, the proposed districts encourage appropriate development along the waterfront. The regulations provide sufficient flexibility to promote new investment in the waterfront area in Tonawanda. The types of allowed uses were based on goals for the waterfront and policies of the LWRP, balanced with a realistic understanding of local and regional development trends as voiced by local economic development specialists and real estate professionals. They are, therefore, supportive of realistic, achievable redevelopment. At the same time, the regulations contain enough standards and guidelines to provide for attractive, high quality development. Structures must be scaled to be appropriate to the capacity of the site.

The proposed zoning regulations give precedence to water-dependent or water-enhanced uses on properties located along the river. Permitted uses in the Waterfront Mixed Use district that

encompasses all of the riverfront from Niagara River World north include water-dependent uses such as parklands, docks, fishing facilities, marina, boatyards and boat storage facilities, commercial excursion and charter fishing boat facilities. Water-enhanced uses that are allowed include visitor centers, lodging and small-scale retail stores and restaurants, with the intent that these commercial uses act as support services for visitors to the recreational assets in the area. The Waterfront Industrial District encourages water-dependent or water-enhance industrial or commercial uses on lands located along the Niagara River. Other waterfront zoning districts that allow a greater variety of uses are located on the inland side of River Road and not adjacent to coastal waters. By allowing preferred uses by right, the proposed zoning regulations simplify permitting procedures required for approval of development proposals in the waterfront area while still providing adequate protections.

2. Zoning Map Revisions

As discussed above, there are significant changes proposed to the districts and their boundaries. [Map 7](#) depicts proposed new zoning districts, and the boundaries of the River Road Overlay district. Zoning district boundaries were determined through the process of developing a land use plan for the northern waterfront region.

3. Revisions to Local Consistency Law

To be consistent with this amendment to the LWRP, the Local Consistency Law has been amended to remove references to residential development.

C. Management Structure Necessary to Implement the LWRP

1. Official Overall LWRP Coordination

The Town Board is the Lead Agency for all LWRP activities, and the Town Supervisor is designated as the local official responsible for overall management and coordination of the LWRP. Successful implementation of the Local Waterfront Revitalization Program will require the participation of the Town Board, the Planning Board, the Environmental Review Committee, the Engineering Department and the Building Department.

2. LWRP Management Process

The Local Consistency Law dictates that any action which is a Type I or Unlisted action within the coastal area must have a Waterfront Assessment Form (WAF) prepared.

When an application for approval or funding comes before any agency, department, office of other body of the Town of Tonawanda, the applicant shall fill out a WAF. The agency receiving the WAF shall provide it, with all relevant supporting documentation (maps, EAFs, plans, etc.), to the Town Board within ten days of its submission. The Town Board has thirty days to make a determination of consistency, unless an EIS is being prepared, in which case the SEQRA requirements supercede this timeline. The Town Board has the authority, in issuing a ruling on consistency, to impose practicable and reasonable conditions on any action to ensure its consistency.

3. LWRP Management Responsibilities

A number of agencies and departments are directly involved in ensuring that consistency reviews are completed for projects within the Local Waterfront Revitalization Area (LWRA). These agencies, with their responsibilities are:

- a. Town Planning Board is authorized to review and submit comments on applications for site plan review in the LWRA.
- b. Town Building Department, which reviews all applications for site plan review, shall be responsible for providing WAFs to individuals desiring to undertake certain work within the district pursuant to the Town Zoning Ordinance requirements. The Building Department shall require applicants to provide a completed WAF for consistency with the LWRP.
- c. Environmental Review Committee, reviews all Type I and unlisted actions as defined by SEQRA regulations, and shall evaluate consistency with the LWRP.
- d. Town Engineering Department shall provide waterfront assessment forms to applicants proposing activities within the coastal zone pursuant to SEQRA requirements.
- e. Town Board has the authority to certify all actions subject to SEQRA requirements within the coast zone as to their consistency with the LWRP.

4. Consistency Provision for Local Actions

All proposed Type I and Unlisted actions as defined by the State Environmental Quality Review Act within the Waterfront Revitalization Area will be subject to scrutiny by the Town Board for consistency with adopted waterfront policies.

5. Local Review of Proposed State and Federal Actions

Any proposed State and federal actions within the Town of Tonawanda's waterfront revitalization area are subject to review in accordance with the guidelines established by the New York State Department of State, as set forth in Appendix C.

6. Project Implementation

The Town of Tonawanda will work with the Town of Tonawanda Development Corporation (TTDC) to coordinate implementation of key projects for the waterfront area. As the local governmental entity, the Town Board and its several departments will be responsible for the exercise of powers and contribution of resources (i.e. staff and funding) in their respective jurisdictions (e.g. community development, engineering, parks and recreation, building). The TTDC, as the Town's primary economic development agency, will function as the main catalyst for business and industrial development, including the possible extension of economic development zone benefits, as appropriate, to new development within the waterfront area.

D. Financial Resources Necessary to Implement the LWRP

The implementation of the proposed projects identified under Section IV will take a mix of funding from private and public sectors. The Town has successfully accomplished many valuable projects in its waterfront area, and will continue to pursue outside funding sources and creative financing mechanisms to assist in its efforts to revitalize the Town of Tonawanda waterfront. Potential funding sources include economic development funds, parks development funds, and transportation funding for enhancements and trails.

The Town is committed to directly funding portions of the proposed projects, including the extension of water lines to interior lands to facilitate commercial and light industrial development in the lands identified for this use. The Town will also seek additional grant funding, particularly for important public access projects, such as Cherry Farm Park.