

SECTION V: TECHNIQUES FOR IMPLEMENTING THE LOCAL WATERFRONT REVITALIZATION PROGRAM

The Villages of Head-of-the-Harbor and Nissequogue have traditionally been low density residential communities. This pattern is reflected in the zoning regulations and other local laws designed to maintain the character and to protect the environmental quality of each Village. The coastal management policies which guide land use and water use decisions in the Villages focus on existing local laws dealing with specific coastal development issues.

This section describes the techniques and procedures which will be used by the Villages to implement their Local Waterfront Revitalization Program.

A. EXISTING LOCAL LAWS AND REGULATIONS

1. Village of Head-of-the-Harbor

a) Zoning Law (Local Law #1 of 1974)

The Village adopted its zoning law in 1974 to conserve open space and ecological features, to control densities to protect public health in the absence of infrastructure, and to avoid congestion, among other purposes. The Village's zoning law has been amended seven times since 1974 to clarify certain provisions. The zoning law provides for three residential districts (A, A-1 and B) and a floating undeveloped park land district (U). The residential districts allow single family homes, municipal buildings and open space lands as permitted uses. Churches, non-profit schools, agriculture and guest houses are special permit uses. A range of customary accessory uses are also permitted with certain conditions. Minimum lot size in the A and A-1 districts is two acres and in the B district, one acre. There are special setback provisions of 100 feet from mean high water or 50 feet from the top edge of a bluff on Stony Brook Harbor. Standards for the approval of a special permit provide protection for neighboring land uses and also for the integrity of the rural character of the Village.

The Village has excluded environmentally sensitive lands (marshland, land underwater, land below mean high water or land below the edge of a bluff on Stony Brook Harbor) from the calculation of minimum lot size or setback requirements. It further prohibits dredging, filling, draining or excavating environmentally sensitive lands. The Planning Board is authorized to modify the area regulations, (Section 413 of the zoning ordinance), to protect environmentally sensitive areas during subdivision review.

The zoning law is a significant tool for implementing the Village's LWRP. The zoning law, together with the amendments outlined later in this section, implements Policies 2, 19, and 19A as they relate to the maintenance of public open space, recreational and nature preserve lands. Through requirements for the exclusion of lands underwater from the calculation of minimum lot size or setback requirements, and provisions for waiver of the area regulations to protect environmentally sensitive lands, the zoning law implements Policies 5, 7, 7A, 11, 11A, 12, 13B, 14 and 17. Policies 7, 11, 12, 14 and 17 are further implemented by setbacks established from Stony Brook Harbor, Mill Creek and the bluffs. Since the zoning law prohibits commercial and industrial uses, water quality is protected from pollution by storage of solid and hazardous wastes and general runoff from these uses (Policies 7, 8, 31, 36 and 38). It supports Policies 14, 17 and 25 by prohibiting removal, destruction or alteration of trees and other vegetation. Finally, the zoning law provides for the continuation of agricultural pursuits as a special permit use. (See Map 4A)

b) Subdivision Regulations

The Village's subdivision regulations provide for the orderly partitioning of large parcels of land into smaller building lots. The subdivision regulations include procedures for submitting plans and standards for street layout, lot configuration, dedication of open land, consideration of natural features, drainage, etc.

The subdivision regulations, including the amendments as proposed, implement Policy 22 with regard to providing open space easements and access to recreational land. The regulations support Policies 11, 12, 14, 17, 25, 33, 37 and 38 by protecting natural drainageways, requiring that lot layout reduces the need for alteration of topography and providing for retention of vegetative cover.

c) Exterior Design and Appearance of Buildings

Local Law #1 of 1965 establishes a Board of Architectural Review to review all applications for building permits in the Village. The purpose of the review is to ensure that all structures are compatible with surrounding properties and maintain the rural character of the Village and the natural beauty of its environs. The Board of Architectural Review examines each application to determine if the structure is uniform, markedly similar or incongruous with neighboring buildings or so incompatible with topographical features that it detracts from the overall character of the Village and the immediate surroundings. General

consideration is given to design and type of construction, including mass, height, line, color and texture of the materials to be used in relation to their surroundings; siting of structures; extent of natural screening; effect on vistas; historic features; and topographical and vegetational characteristics of the land.

This local law, together with its proposed amendments, is important in the implementation of Policies 23 and 25. Through review of development proposals, the Board of Architectural Review will ensure that construction does not detract from vistas or the surrounding neighborhood. Historic structures will be protected from alteration, unsympathetic new construction and demolition.

d) Vehicular Access to Beaches

Local Law #1 of 1972 provides for the regulation of vehicular traffic on all Village streets and public places. Article V, section 4, prohibits use of motorized vehicles on any beach without prior approval of the Village police department.

This local law is important in the implementation of Policies 12, 14 and 17 by preventing destruction of beaches and dunes and by allowing their continuation as natural protective features.

e) Building Administrative Law

This local law (Local Law #1 of 1976) establishes the Office of Building Inspector and provides for a system of ensuring that all structures meet standards from zoning and other local laws. The local law requires permits for construction as well as demolition. The local law also provides for repair, rehabilitation or demolition of unsafe structures.

Because it promotes coordination with and enforcement of the zoning ordinance and the architectural review law, this local law implements Policies 6, 2, 3, 7, 11, 11A, 12, 13B, 14, 17, 19, 19A, 23 and 25.

f) Flood Damage Prevention Law

This local law was enacted in 1978 to regulate construction within flood hazard areas defined by the Federal Emergency Management Agency. Projects within the flood hazard area are reviewed to ensure that hazards from flooding are minimized through appropriate construction techniques and materials, siting, protection and maintenance of drainage areas and

analysis of the impact of the proposal on the flood carrying capacity of the area.

The Flood Damage Protection Law implements Policy 11 by providing standards for development within flood hazard areas to minimize and mitigate flood damage.

g) Environmental Quality Review Law

The Village has enacted a Local Environmental Quality Review Law. This local law establishes procedures to review actions in the Village which may have a significant effect on the environment. The Village has modified the State Type I list to include thresholds more appropriate to the size of The Village. The Village has also included in its Type I list any action occurring in designated critical environmental areas, including tidal wetlands; freshwater wetlands; floodplains; wild, scenic and recreational rivers; farmlands; steep slope areas; watershed areas; Route 25A Historic District; and beach, bluff and dune areas. Clear-cutting or clearing of more than 3/4 acre is also a Type I action.

This local law implements and enforces many of the policies in the LWRP by providing for a detailed environmental review and the development of mitigation measures for development activities. Most particularly this law affects: protection of fish and wildlife habitats, reduction of flooding and erosion potentials, protection of scenic and historic resources, protection of water quality, placement of erosion protection structures, protection of agricultural lands, dredging activity, tidelands and natural protective features. (Policies 2, 5, 7, 8, 11, 12, 13, 14, 15, 17, 23, 25, 26, 33 and 37)

h) Local Law for Jointly Governing the Waterways

This local law regulates vessels in the Villages of Nissequogue and Head-of-the-Harbor and in the Town of Smithtown. It applies to all surface waters within the jurisdictional limits of the Villages and the Town. In Nissequogue, the law regulates mooring to prevent inter-ference with navigation or other boats. It also provides for the removal of derelict boats. Controls are placed on the length of time that boat can use a municipal dock. Operation of boats within 300 feet of any public or private recreation area is prohibited, and speeds must be kept below 5 mph. It is unlawful to operate a boat so seabirds or other boat passengers are frightened. Dumping of oil, sewage, garbage or other waste is prohibited.

This local law establishes uniform procedures for docking, mooring and operation of pleasure boats within the Nissequogue River, Smithtown Bay and Stony Brook Harbor. Water-dependent recreation Policies 19 and 21 are implemented by this local law because the operational rules it establishes regulate the safe use of the waters. The local law also implements Policy 7 because it prohibits disruption of waterfowl in the significant habitat areas of the Nissequogue River and Stony Brook Harbor. Low boat speeds set by this local law are important not only for maintaining habitat but also for reducing erosion, sedimentation and siltation from boat wakes. (Policies 17 and 44)

i) Animal Control Law

The animal control law (Local Law #1 of 1986) repeals earlier Village ordinances relating to the control of dogs. The new local law requires that dogs be confined to the owner's property unless leashed. In addition, fifteen minutes of barking or howling constitutes a disturbance of the peace. Fines are levied for violations.

2. Village of Nissequogue

a) Zoning Ordinance

In 1969, the Village adopted a comprehensive amendment to its zoning ordinance. The ordinance sets forth the Village's development policies which include conservation of natural beauty by encouraging low-density development with permanent preservation of natural features, by establishing a density pattern that will not require public water supply and sewers, and by maintaining the existing residential environment. The ordinance established two residential districts. The bulk of the Village is zoned for 2 acre lots. On the Long Beach peninsula, one acre lots are permitted. The ordinance provides that no portion of the minimum lot size may be achieved by including land underwater, land underwater at mean high tide or land subject to periodic flooding, except that land in a stream less than five feet wide or in a pond will not be considered underwater if it is less than 5% of the lot area at MHW. A 1985 amendment provides that lands which were formerly underwater but which have been filled shall be deemed land underwater and a building permit will not be issued. Permitted uses are single family houses, municipal uses and open space uses. Under certain controls, churches, farms and guest houses are allowed by special permit. A procedure is established to ensure that special permit uses do not adversely affect their environs. In 1982, the zoning ordinance was amended to permit equestrian centers on

a minimum of 25 acres and included standards for the operation of such centers.

The Village Zoning Ordinance is a cornerstone in the Village's ability to guide development and to implement its LWRP. The ordinance promotes the maintenance of public open space, recreational land and nature preserves by making them permitted uses. (Policies 2,7, and 19)

By controlling densities so development can be accommodated safely on individual wells and septic systems, the zoning ordinance supports Policies 5 (adequacy of protection public facilities), 7 and 38 (protection of water quality which affects fish and wildlife habitats and surface and groundwater resources). The zoning ordinance also prohibits placement of bulk oil storage facilities, storage of hazardous materials or other commercial/industrial land uses which protects water quality and implements Policies 7,8,31,36 and 38. Agriculture and equestrian centers are supported in the Village as special permitted uses (Policy 26). The zoning ordinance generally supports Policy 25 by establishing a low density environment with large setbacks to maintain the rural character of the Village. (See Map 4B)

b) Flood Damage Prevention

In 1983, the Village enacted a local law to control development in areas affected by flooding and to minimize the effects of flooding. The local law applies to all areas of special flood hazard identified by the Federal Emergency Management Agency on the Flood Insurance Rate Maps. A development permit is required before any activity which affects the land occurs in a flood area. The law requires that flood hazards be reduced by anchoring of construction to prevent movement, that construction methods and materials minimize flood hazard, that on-site sewage systems be constructed so they do not contaminate waterbodies during a flood, and that subdivision proposals have adequate drainage to reduce flood hazard. Within coastal high hazard areas, structures must be located landward of the mean high tide. Buildings must be elevated and designed so the flow of flood water is not impeded. Fill may not be used for structural support. Sand dunes cannot be altered.

This local law directly implements Policies 11, 14, and 17 relating to minimizing flood damage. The law also prevents alteration of dunes, a natural protective feature, thereby implementing Policy 12.

c) Regulation of Exterior Design and Appearance of Structures

The Village has enacted a local law to establish a Board of Architectural Review which reviews all building permits in the Village to ensure that structures do not detract from the rural character of the Village or from historic topographic or vegetative features. Proposals are examined in terms of their mass, line, height, color, texture and extent of natural screening.

The design review standards for development set forth in this local law implement Policies 23 and 25. The review will ensure that important vistas and the integrity of the natural and built environment are protected.

d) Local Law for Jointly Governing the Waterways

This local law regulates vessels in the Villages of Nissequogue and Head-of-the-Harbor and in the Town of Smithtown. It applies to all surface waters within the jurisdictional limits of the Villages and the Town. In Nissequogue, the law regulates mooring to prevent interference with navigation or other boats. It also provides for the removal of derelict boats. Controls are placed on the length of time that boat can use a municipal dock. Operation of boats within 300 feet of any public or private beach is prohibited, and speeds must be kept below 5 mph in Stony Brook Harbor and the Nissequogue River. It is unlawful to operate a boat so seabirds or other boat passengers are frightened. Dumping of oil, sewage, garbage or other waste is prohibited.

This local law establishes uniform procedures for docking, mooring and operation of pleasure boats within the Nissequogue River, Smithtown Bay and Stony Brook Harbor. Water-dependent recreation Policies 19 and 21 are implemented by this local law because the operational rules it establishes regulate the safe use of the waters. The local law also implements Policy 7 because it prohibits disruption of waterfowl in the significant habitat areas of the Nissequogue River and Stony Brook Harbor. Lower boat speeds set by this local law are important not only for maintaining habitat but also for reducing erosion, sedimentation and siltation from boat wakes. (Policies 17 and 44)

The Village Board passed a resolution on April 28, 1971 which stated that there was no delegation of the Village's regulatory jurisdiction to the Town of Smithtown in derogation of Town Law, Section 130(17).

e) Trees

The Village has enacted a local law to protect bluffs, shorelines and barrier beaches against erosion and to maintain watercourses and drainage ways within the Village. The law provides that no activity will lead to the eventual destruction of any tree or vegetation within 100 feet of a ridge line of a bluff. All land-disturbing activity within 100 feet of a bluff or the shoreline of Stony Brook Harbor requires an EIS analyzing the impact of the proposal upon the environment or upon erosion potentials. Removal or destruction of trees totalling 25% or more of the growth on a parcel or within 25 feet of a boundary line requires a permit and a showing that removal will not intensify erosion or affect natural stream courses. Commercial timber harvesting is prohibited.

This local law implements policies which are intended to reduce threats to natural protective features and mitigate erosion problems (Policies 12, 14, 17) by prohibiting activities which would undermine bluffs or unwisely eliminate vegetation which holds soils in place. This local law also implements scenic protection goals (Policy 25) by retaining vegetation on bluff ridges and limiting removal of vegetation on parcels.

f) Environmental Quality Review Law

In 1985, the Village passed an Environmental Quality Review Law to provide for local implementation of the State Environmental Quality Review Act (NYSECL, Article 8). The SEQRA Type I list was modified to better serve the needs of the Village. The Type I list includes any action within critical areas defined as tidal wetlands; freshwater wetlands; floodplains; wild, scenic and recreational river; farmland; steep slopes; watershed; beaches; bluffs; and dunes. Actions within historic and prehistoric sites or districts are also considered Type I actions.

This local law, by institutionalizing SEQRA on a local level and by expanding the list of activities for Type I actions, strengthens the Village's ability to require mitigation in sensitive areas. For this reason, this local law supports all policies included in the LWRP.

g) Subdivision Regulations

The Village's subdivision regulations establish standards to ensure new building lots are suited for development and that their arrangement promotes efficient use of land. Adequacy of access, flood reduction, and safe waste disposal are also considered. The regulations provide for control of stormwater drainage by prohibiting approval of a plot until the

Village Engineer is satisfied that the subdivision will not adversely impact downstream development during a fifty year storm. The regulations protect the rural character of the Village by maintaining existing natural features, topography and vegetation, and by allowing the Planning Board to require the planting of indigenous trees in a right-of-way. Easements to facilitate public access to recreational space and for drainage are also permitted.

The subdivision regulations are important in the implementation of Policies 11, 14, 17, 33, 37 as they relate to the control of stormwater runoff and erosion mitigation. The regulations also implement the scenic policy (25) by safeguarding existing vegetation and topographic features and also by promoting use of indigenous trees in public rights-of-way. Finally, public access Policies 19, 20 and 22 are implemented through the ability to obtain easements to public lands during subdivision review.

h) Satellite Antennas

The Village controls the use and placement of satellite dish antennas to protect the visual character of its roads. Only one dish antenna per household is permitted. Its visual impact is minimized by locating it in the rear yard with deep setbacks from property lines and by requiring substantial vegetative screening. The antenna cannot be higher than thirteen feet above grade.

This local law implements Policies 23 and 25 by preventing the visual intrusion of satellite dishes which would detract from historic sites and scenic areas in the Village.

i) Exterior Lights

Exterior lights are controlled to prevent their operation as a nuisance. The lights cannot shine on another property, must be shut off by 11 p.m., and cannot be flashing. Exceptions are made for lights used as part of seasonal holidays and for special events which have been given a permit by the Board of Trustees.

This local law implements the scenic policy (25) by preventing use of lighting which would detract from the rural character of the Village.

j) Regulation of Vehicles

This local law regulates all aspects of motor vehicle operation within the Village. In addition to speed and parking regulations, the law prohibits

use of a motorized vehicle on any beach within the Village without written permission of the police department. The law also prohibits the deposition of waste material including mud, dirt, silt, sand, gravel or other soil on Village roads or public places.

This local law implements Policy 12 by controlling vehicular access to beach and dune areas. It further implements Policy 7 by protecting habitat areas on beaches and dunes from disruption or destruction. This law implements Policies 7, 14, 17 and 37 by prohibiting activities which would increase erosion of soils and other materials into public waters.

k) Dog Control

This local law prohibits anyone from allowing his dog to defecate on a public area. Fines are provided to ensure compliance.

By eliminating dog wastes from public roads and other areas, this local law reduces the possibility of water quality degradation when stormwater carries road debris into the river or harbor. This implements Policies 7, 9, 10, 37, 38 and 44.

B. LOCAL LAWS AND REGULATIONS ADOPTED TO IMPLEMENT THE LWRP

During preparation of the LWRP, the Villages analyzed the array of existing local laws to determine whether the procedures and standards in place were sufficient to implement the LWRP. The following is a description of proposed or revised local laws and regulations which were revised or adopted to implement the LWRP:

1. Revision of the respective Village Environmental Quality Review Laws to include provisions for consistency of proposed actions with the LWRP policies and purposes.

The Village Environmental Quality Review Law for each Village has been amended to set up a review procedure to examine the consistency of proposed actions with the policies and purposes of the LWRP. Applicants are required to submit a coastal assessment form in addition to an environmental assessment form for proposed actions within the Village.

In addition, the EQRL has been amended to reflect appropriate procedures for lead agency decision-making.

2. **Creation of a Joint Village Coastal Management Commission.**

In order to ensure consistency of proposed actions with the LWRP and to manage other aspects of the implementation of the LWRP, the Village Boards of Trustees have established a Joint Village Coastal Management Commission. The Commission is responsible for reviewing and recommending approval, approval with modifications or denial of applications for activities within the Village's coastal areas; and for making LWRP consistency recommendations and determinations.

3. **Amendments to the respective zoning laws of each Village to address specific development concerns. (See Maps 10A and 10B).**

The zoning laws of both Villages have been strengthened to allow greater consideration of environmental, scenic and recreational concerns during the siting and development of projects.

Zoning law revisions in both Villages include:

- a) application of site plan review procedures to non-residential uses;
- b) establishment of standards for the construction of docks in Head-of-the-Harbor and shoreline erosion structures in both Villages to ensure that their location and construction protects environmental and scenic resources;
- c) setting a maximum square footage for the ground floor of structures, and providing for a sliding scale of lot size increase for increased lot coverage to promote scenic and rural qualities in the Village;
- d) establishing standards for access to and development of passive recreation uses;
- e) setting standards to control the location of septic systems and cesspools to reduce the potential for groundwater and surface water pollution;
- f) definition of wetlands protection districts and incorporation of performance standards for development adjacent to wetlands;
- g) within the Village of Nissequogue, establishment of a bluff management overlay district to control the placement of structures and the development of land adjacent to a bluff;



LEGEND

A Residential (2A)

A-1 Residential (2A --
less restrictive
setbacks)

B Residential (1A)

SCALE: 1" = 2000'

MAP 10A

**Proposed Zoning
Local Waterfront Revitalization Program
Village of Head-of-the-Harbor**

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- LEGEND**
- R2 Residential (2A)
 - R1 Residential (1A)
 - Bluff Overlay



MAP 10B

Proposed Zoning Local Waterfront Revitalization Program Village of Nissequogue

This map was prepared for the New York State Department of State Coastal Management Program with financial assistance from the Office of Ocean and Atmospheric Administration, provided under the Coastal Zone Management Act of 1972, as amended.

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- h) within both Villages, increasing the setback from the face of a bluff on Stony Brook Harbor and incorporating performance standards for development of land adjacent to bluffs;
- i) within the Village of Nissequogue, introduction of development standards and pumpout requirements for existing non-conforming marinas.

4. **Amendments to the respective subdivision regulations of each Village include the following:**

- a) strengthening and clarifying the relationship between proposed lot configuration and retention of natural topography, drainage ways, and vegetation;
- b) providing for incorporation of a habitat management plan into subdivision proposals involving parcels of ten or more acres or at the discretion of the planning boards for smaller parcels;
- c) providing for retention of trees existing on the site to the greatest extent practicable and requiring planting to enhance the wooded, rural characteristics of the Village roads;
- d) consideration of septic system and cesspool location contained in the zoning laws of each Village to lot configuration.

5. **Enactment of Beach Use Regulations within both Villages.**

Relying upon jurisdictional authority and Section 45-b of the Navigation Law, the Villages have enacted local laws governing the use of beaches, particularly with regard to maintaining protective dune structures, natural vegetation, habitat areas and prohibiting alteration of grade or placement of structures.

6. **Enactment of an Erosion, Sedimentation and Grading Control Ordinance in both Villages.**

An umbrella regulation has been adopted in both Villages to address the wide range of circumstances in which land development and use activities can adversely impact water quality in the Nissequogue River and in Stony Brook Harbor. Land clearing, alteration of topography, alteration of natural drainageways, disturbance of severe slopes or unstable soils and similar concerns have been addressed through development standards.

7. Enactment of Right-to-Farm Law in both Villages.

In order to protect existing agricultural businesses and to promote retention of active agriculture and prime soils in both Villages, right-to-farm laws are proposed. The laws would declare that existing farms operating according to generally accepted agricultural practices are not considered nuisances, unless operated in a negligent manner.

8. Enactment of local laws to regulate the use of firearms within both Villages.

Due to the enclosed and developed nature of the Villages and the proximity of public recreational land and water uses, the discharge of firearms is regulated to promote public safety.

9. Amendment to local laws regulating exterior design and appearance of buildings within both Villages.

Both Villages currently have Architectural Boards of Review which examine all applications for building permits. The Boards evaluate the proposal's impact on the character of the surrounding areas. The Boards have the authority to deny permits and to recommend modifications. The laws need to be strengthened to specifically protect archeological and historic resources. Amendments to the respective local laws will be made to incorporate standards from the Secretary of the Interior's Standards for Rehabilitation. Procedures for demolition of historic structures, providing for a showing of economic hardship, will also be included. Archeological resources are protected by requiring notification of the NYS Office of Parks, Recreation and Historic Preservation when any land disturbance is proposed in areas identified as archaeologically sensitive.

10. Submission of local laws regulating the operation of vessels within 1500 feet of the mean high water line of the Villages to the Commissioner of Parks, Recreation and Historic Preservation.

This local law includes regulations governing anchorage, mooring, and the general operation of boats in the Nissequogue River, Smittown Bay and Stony Brook Harbor. In addition, the Villages will seek special legislation permitting them to regulate the construction of docks in adjacent waters. Dock regulations will govern location, design and installation of docks.

C. OTHER PUBLIC AND PRIVATE ACTIONS NECESSARY TO IMPLEMENT THE LWRP

In addition to the responsibility of each Village to enforce and amend, as necessary, its local laws supporting the LWRP, other actions by public and private sectors are required for full implementation of the LWRP.

1. Local Government Actions

a) Internal Coordination

The Villages have established a Joint Village Coastal Management Commission to serve as lead agency for the implementation of the LWRP. The Commission is formulating its operating procedures, application forms, etc., to carry out its responsibilities most effectively.

b) Formulation of Navigation Maintenance Plans for Stony Brook Harbor

The Villages are coordinating with the Towns of Brookhaven and Smithtown, Suffolk County and the NYS Department of State's Coastal Management Program to develop comprehensive plans to guide decisions on maintaining navigation channels in Stony Brook Harbor. These plans will incorporate the findings of studies completed by the Marine Sciences Research Center at SUNY-Stonybrook.

c) Harbor Management Study

The Villages are undertaking a water quality monitoring study and program in Stony Brook Harbor utilizing the services of the Marine Sciences Center of SUNY - Stony Brook. This study will identify pollution from land and water sources which is causing water quality in the harbor to decline. Remedial steps (legislative, structural, etc.) will be taken to reduce or eliminate the pollution once the sources have been adequately identified. This study is the first step in a larger effort to identify the carrying capacity of Stony Brook Harbor to ensure its balanced use for environmental, recreational and scenic purposes, and to develop a detailed harbor management plan for the harbor.

d) Use of Cesspools and Septic Systems in Areas of High Water Table

Under current Suffolk County Health Department regulations, alternative septic systems are not approved for use in the County. The Villages will work closely with the County Health Department to develop a mutually

satisfactory alternative to cesspools and traditional septic systems in areas where the depth to seasonal high water table is less than three feet.

e) Land Acquisitions/Farmland Retention

The Village Boards and the Joint Village Coastal Management Commission will establish contacts with private land trusts, such as the Nature Conservancy, to purchase easements or fee title to lots designated environmentally sensitive in the Villages of which are being threatened by development and which would contribute to the destruction of wetland habitat and create water quality problems.

The Commission will also study the location of farm parcels, their soils characteristics, abutting land uses and other salient factors. This information, together with information on preservation options, will be used to retain as much productive agricultural land as possible in the Villages.

f) Harbor and River Protection Handbook

The Joint Village Coastal Management Commission will work with the Village Boards and interested citizens to prepare handbooks for Village residents on how to be a responsible waterfront landowner. The handbooks will contain information on ways of reducing fertilizer use, using native vegetation, erosion control and other environmentally sound measures to protect the river and the harbor.

2. General Education in and Support of the LWRP

To a large degree, the success of the LWRP in achieving its purposes will depend upon the interest and support of the Village residents. Residents must be willing to learn about ways of protecting natural and man-made resources and to support the Village governments in pursuing those goals.

D. MANAGEMENT STRUCTURE FOR IMPLEMENTING THE LWRP

The Villages undertook joint preparation of a LWRP in recognition of their shared responsibility for the long-term health of Stony Brook Harbor, in addition to individual concerns about the Nissequogue River, Smithtown Bay, the Mill Pond and Stony Brook Creek. Design of an effective management structure for the implementation of this Program must take into account its bi-municipal character, as well as the fact that no existing municipal or intermunicipal body in this area has overall responsibility for the wide range of activities covered by the policies in Section III and the actions in Sections IV and V.

Each of the Villages act independently of the other in terms of direct governmental activity (i.e. road reconstruction and maintenance) and land use decisions (e.g. Boards of Architectural Review, zoning and subdivision approvals). Agencies such as the County Health Department and the Suffolk County Planning Board also affect land use and water quality in the Villages through issuance of septic system permits and zoning and subdivision reviews under the General Municipal Law. All of these bodies work in cooperation with local non-governmental groups and with local schools, as required.

The working relationship cultivated by the Villages during their preparation of the joint LWRP has reinforced the benefits of a coordinated implementation structure for an approved LWRP.

1. Lead Agency and Responsible Official

To serve as lead agency, the municipal governments of the Villages of Nissequogue and Head-of-Harbor have jointly established a Joint Village Coastal Management Commission of 12 members. The Chairman of the Commission is designated as the local official responsible for overall management and coordination of the LWRP. With the establishment of the Joint Village Coastal Management Commission, the Joint Committee on Coastal Zone Management, a planning body which prepared the LWRP, was dissolved.

2. Joint Village Coastal Management Commission

The Commission is constituted as follows:

- a) Appointment. Six members are appointed by the Village of Head-of-the-Harbor and six by the Village of Nissequogue. Members are appointed for a term of three years and are eligible for reappointment; except that at the outset four members are appointed for a term of three years, four for a term of two years, and four for a term of one year.
- b) Quorum. Six (6) members constitute a quorum provided it consists of three (3) members from each Village.

Each member serving an appointment by a Village must be a resident of that Village. Members chosen are selected for their demonstrated knowledge, ability, and readiness to serve the Commission in the functions described below, and with due regard to maintaining among the membership a range of special aptitudes and expertise relevant to the Commission's work.

- c) Functions and powers. The Commission's basic task is the implementation of the LWRP, its policies and projects, including physical,

legislative, regulatory, administrative, and other actions included in the Program. In pursuance of this task the Commission:

- i) Reviews all proposed actions by, or subject to the approval of, any agency of either Village and advises as to the consistency or inconsistency of the action with the LWRP. The Commission may recommend modifications to the proposal which would make it consistent with the LWRP.
- ii) Monitors and reviews in a timely fashion the planned actions of State and Federal agencies within the Coastal Zone in order to assure consistency of such actions with the LWRP, and recommends remedial action where necessary.
- iii) Advises the municipal governments on implementation priorities, work assignments, timetables, and budgetary requirements of the Program.
- iv) Consults with the appropriate departments and officials of the two municipalities concerning the matters in subparagraph (1), obtaining reports from them as necessary to assure implementation of the Program and consistency of local actions with it.
- v) Maintains liaison with related municipal bodies including, but not limited to, the Planning and Zoning Boards and concerned nongovernmental bodies, in order to further the implementation of the LWRP.
- vi) Subject to the approval of the municipal governments, makes application for funding from State, Federal, or other sources to finance projects which implement or further the policies, goals and standards of the LWRP.
- vii) Develops and maintains liaison with neighboring municipalities, and with State and County agencies concerned, with a view to strengthening and developing cooperation in, and common management of, shared drainage basins for flood and pollution control and other purposes.
- viii) Prepares an annual report to the municipal governments on progress achieved and problems encountered during the year, and recommends such actions as the Commission considers necessary for the further implementation of the LWRP.

- ix) Makes or prepares such reports and communications concerning the LWRP to the Department of State and other agencies of the State of New York, by or on behalf of the municipal governments, as may be appropriate or required.
- x) Performs such other functions regarding the coastal zone as may from time to time be required or assigned by the Village Boards.

d) Other Provisions

- i) Members of the Commission serve without compensation. They are entitled to reimbursement for necessary expenditures in the performance of their work, subject to budgetary limitations.
- ii) The Commission may engage such professional and clerical help and purchase such supplies and services as are necessary for its work, subject to prior budgetary approval by the two municipalities as the latter may direct.
- iii) The Commission meets at the call of the Chairman, however, the Commission shall not meet less than six (6) times per year. Its meetings are open to the public. It will keep and distribute minutes of its proceedings. A majority of its members constitute a quorum.

e) Limitation

Notwithstanding any other provision of this Program, no powers, duties, or functions are conferred by it on the Joint Village Coastal Management Commission other than those set forth in paragraphs (c) and (d) above; and no provision of this Program shall be construed as altering the powers, duties, and functions of the existing municipal planning and zoning boards or commissions of the Villages of Head-of-the-Harbor and Nissequogue.

3. Consistency Procedures for Local Agency Actions

Each proposed action* directly undertaken, funded, permitted or otherwise approved by a Village agency for a given public or private project, use or activity within the Local Waterfront Revitalization Area (LWRA) of the Villages of Head-of-the-Harbor and Nissequogue shall be reviewed for compliance with the LWRP pursuant to appropriate provisions of the laws of each Village. The following procedures shall be integrated into the Villages' procedures for compliance with SEQR.

The specific compliance procedures are as follows:

- a) Whenever an agency proposes a direct action or receives an application for review and approval, it shall prepare or require the applicant to prepare an Environmental Assessment Form (EAF) and a Coastal Assessment Form (CAF).
- b) A copy of the EAF and the CAF, together with copies of the application and any supporting material shall be forwarded to the Joint Village Coastal Management Commission within five (5) days of receipt from the applicant.
- c) The Chairman of the Commission shall determine if the application or direct action description, and any supporting material submitted, constitutes a full statement for the purpose of determining the consistency with the LWRP. The Chairman may request any other material deemed necessary for a complete review.

***An action means:**

- 1) a project or physical activity, such as construction or other activities, which changes the use or appearance of any natural resource or structure classified as a Type I or Unlisted Action pursuant to Local Law #5 of 1978 of the Village of Head-of-the-Harbor and Local Law #2 of 1985 of the Village of Nissequogue, which is:
 - a) directly undertaken by an agency;
 - b) involves funding by an agency; or
 - c) requires one or more permits or approvals from an agency or agencies;
- 2) planning activities of an agency that commit the agency to a course of action or future decisions;
- 3) agency rule, regulations, procedure and policy making; and
- 4) combinations of the above.

- d) If the Chairman determines that there are other interested agencies, a copy of the application and all supporting material, including the EAF and CAF, shall be forwarded to each interested agency.
- e) The Commission shall review the proposed action to determine whether it is consistent, consistent if conditions are met, or inconsistent with the LWRP. If inconsistent, the Commission shall include modifications that might be made to make the project consistent.
- f) While the Commission is determining the consistency of a proposed action with the LWRP, the originating agency (i.e. planning board, architectural review board, zoning board of appeals, Village Board, etc.) shall conduct its review as provided for in the applicable local laws of that Village.
- g) Within thirty (30) days of its receipt of the application, the Commission shall send its findings, in writing, to the originating agency. An originating agency may not take action on an application or a direct action until it has received and considered the consistency recommendation of the Commission in its decision.
- h) If the originating agency, after reviewing the written recommendations of the Commission finds that it disagrees with the consistency recommendation of the Commission, it shall prepare a written finding detailing its position within fifteen (15) days. The Commission and originating agency shall upon completion of the originating agency's findings, meet to resolve their differences.
- i) If the Commission and the originating agency cannot reach a mutually agreeable consistency determination, the matter will be referred to the Village Board of the Village in which the action occurs for final resolution. The originating agency may take no action until the Village Board has made its determination.

4. Procedures for an Integrated Review of Municipal Actions Within the Local Waterfront Revitalization Area of Stony Brook Harbor, Smithtown Bay, and the Nissequogue River.

- a) This procedure shall be used to implement an intermunicipal cooperative agreement for the consistency review of actions by the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue, and is in addition to the LWRP consistency laws of the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue, and applies to the LWRP areas of Stony Brook Harbor, the Nissequogue River from the southernmost municipal and jurisdictional boundaries of the Village of

Nissequogue and the Town of Smithtown northward to Smithtown Bay, and Smithtown Bay fifteen hundred feet (1500') offshore from the Nissequogue River's confluence with Smithtown Bay, easterly 1500' from shore to the confluence of Stony Brook Harbor with Smithtown Bay.

An action is defined as:

- 1) A project or physical activity, such as construction or other activities, which changes the use or appearance of any natural resource or structure classified as a Type I or an Unlisted Action pursuant to 6NYCRR Part 617, which is:
 - (a) directly undertaken by an agency;
 - (b) involves funding by an agency; or
 - (c) requires one or more permits or approvals from an agency or agencies.
 - 2) Planning activities of an agency that commit the agency to a course of future decisions;
 - 3) Agency rule, regulations, procedure and policy making; and
 - 4) Combination of the above.
- b) Notification procedures
- 1) When a Town of Smithtown agency is considering an action in the areas described above in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay, the Town Planning Director or Chief Building Official as the case may be, shall notify the Villages of Head-of-the-Harbor and Nissequogue Joint Village Coastal Management Commission of such action; when a Village of Nissequogue agency is considering an action in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay, or a Village of Head-of-the-Harbor agency is considering an action in Stony Brook Harbor, the Joint Village Coastal Management Commission shall notify the Town of Smithtown Planning Director of such action.
 - 2) Notification of a proposed action
 - (a) Shall fully describe the nature and location of the action;

- (b) Shall stipulate the dates and times of hearings, meetings, and review and comment periods;
- (c) Shall be accomplished by the exchange of Coastal Assessment Forms, Environmental Assessment Forms, copies of all applications and all supporting documentation;
- (d) Should be provided as early in the planning stages of the action as possible, but in any event at least thirty (30) days prior to the agency's decision on the action.

c) Review Procedures

1) Village Action

- (a) Upon receipt of the notification by the Town Planning Director from the Villages' Joint Coastal Management Commission, the Town Planning Director shall forward a copy of the notification to other interested and involved Town agencies and to the Town Board for review and comment.
- (b) The Town Board shall review the notification describing the proposed Village action against the policies and standards of the Town's approved LWRP, and shall receive and review comments from any other interested and involved Town agency on the consistency of such action within fifteen (15) days of such referral from the Town Planning Director.
- (c) If the Town Board can not identify any conflicts between the proposed Village action and the applicable policies and standards of the Town's approved LWRP, it shall notify the Town Planning Director of such finding, who will notify the Joint Village Coastal Management Commission of the Town Boards' finding.
- (d) If the Town Planning Director does not notify Village Officials in writing of the Town's finding within twenty five (25) days of receipt of the notification, the Village may assume that the proposed action does not conflict with the Town's approved LWRP.

- (e) If the Town Planning Director notifies Village officials in writing that the proposed action does conflict with the policies and standards of the Town's approved LWRP, the Village shall not proceed with the action until identified conflicts have been resolved in accordance with the procedures set forth herein.

2) Town Action

- (a) Upon receipt of notification by the Villages' Joint Coastal Management Commission from the Town Planning Director, the Commission Chairperson or the Chairperson's designee shall forward a copy of the notification to other interested and involved agencies.
- (b) The Joint Village Coastal Management Commission shall review the notification of the proposed Town action against the policies and standards of the Villages' approved LWRP.
- (c) If the Joint Village Coastal Management Commission can not identify any conflicts between the proposed Town action and the applicable policies and standards of the Villages' approved LWRP, the Chairperson shall notify the Town Planning Director of the Villages' finding.
- (d) If the Chairperson does not notify Town Officials in writing of the Villages' finding within twenty five (25) days of receipt of the notification, the Village may assume that the proposed action does not conflict with the Villages' approved LWRP.
- (e) If the Chairperson notifies Town officials in writing that the proposed action does conflict with the policies and standards of the Villages' approved LWRP, the Town shall not proceed with the action until identified conflicts have been resolved, in accordance with the procedures set forth herein.

d) Resolution of Conflicts

- 1) The following procedures shall apply whenever a proposed action conflicts with the policies and standards of the Villages of Head-of-the-Harbor and Nissequogue LWRP, or the Town of Smithtown LWRP.

- (a) The Chairperson of the Joint Village Coastal Management Commission or the Chairperson's designated representative and the Supervisor of the Town Board or the Supervisor's designated representative within fifteen (15) days of receipt of written notification of a finding that a proposed action conflicts with an LWRP policy or standard, may meet to resolve such conflicts with respect to the consistency of the proposed action with the relevant LWRP.
- (b) If the Chairperson of the Joint Village Coastal Management Commission or the Chairperson's designated representative and Supervisor of the Town or the Supervisor's designated representative can settle the conflicts by a mutually agreeable decision, and their respective Commission and Town Board approve of such decision by resolution, the originating agency may proceed with the implementation of the action. In passing the resolution approving such decision, the Commission and Town Board shall act within fifteen (15) days from the date of referral of the proposed conflict settlement decision: failure to act within this time frame shall be deemed to be an approval of the action.
- (c) If the conflicts can not be resolved by a mutually agreeable decision, or the Chairperson of the Joint Village Coastal Management Commission or the Chairperson's designated representative and the Supervisor of the Town or the Supervisor's designated representative shall fail to have met within the required time as set forth in this chapter, then the matter will be referred to the respective Village Board of Trustees and Town Board for resolution pursuant to the procedures of the Chapter.

The municipality which determines that the proposed action conflicts with its LWRP may prepare and file with the clerk of the municipality proposing the action a memorandum of protest with regard to the inconsistency of the proposed action. The memorandum of protest must contain a statement indicating the reasons for the inconsistency of the proposed action and recommend reasonable alterations, alternatives or modifications to the proposed action. When such memorandum of protest is filed, the municipality proposing the action shall not act contrary to such memorandum of protest except by a vote of a majority plus one of all the Board members thereof.

Such action shall be subject to judicial review pursuant to the law providing for review of acts of such municipal agencies, commenced within thirty (30) days of its adoption or passage.

- (d) The Town Board and the Joint Village Coastal Management Commission may mutually agree to extend any time limitation designated in this Chapter. Failure to act within the time requirement of this Chapter shall be deemed to be the equivalent of approval of such action by the non-acting municipality.

5. Procedures to Review State Actions for Consistency with LWRP

a) Notification Procedure

- 1) When a State agency is considering an action, the State agency shall notify the Mayor of the Village in which the action is located.
- 2) Notification of a proposed action by a State agency:
 - (a) Shall fully describe the nature and location of the action;
 - (b) Shall be accomplished by use of either the State Clearinghouse, other existing State agency notification procedures, or through any alternative procedure agreed upon by the State agency and local government;
 - (c) Should be provided to the Mayor 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.
- 3) If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the Mayor in each Village can serve as the State agency's notification to the local government.

b) Local Government Review Procedure

- 1) Upon receipt of notification from a State agency, the Mayor will refer the notification to the Commission which will be responsible for evaluating a proposed action against the policies and purposes

of the approved LWRP. It shall notify the Mayor of the Village in which action occurs of its findings.

- 2) If the Commission cannot identify any conflicts between the proposed action and the applicable policies and purposes of the approved LWRP. The Mayor should inform the State agency in writing of the Commission's finding. Upon receipt of the Commission's finding, the State agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
- 3) If the Mayor does not notify the State agency in writing of the Commission's 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 LWRP.
- 4) If the Mayor notifies the State agency in writing that the proposed action does conflict with the policies and/or purposes of the approved LWRP, the State agency shall not proceed with the action for a period of 90 days or until the identified conflicts have been resolved, whichever is earlier. The Mayor 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 shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

c) Resolution of Conflicts

- 1) In accordance with the procedural guidelines issued by the Department of State: the following procedure shall apply whenever the Mayor has notified the Secretary of State and the State agency that a proposed action conflicts with the policies and purposes of its approved LWRP.
 - (a) Upon receipt of notification from the Mayor that a proposed action conflicts with its approved LWRP, the State agency should contact the Mayor to discuss the content of the identified conflicts and the means for resolving them. A meeting of State agency and Village 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 Mayor.

- (b) If the discussion between the Village and the State agency results in the resolution of the identified conflicts, the State agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600. The Mayor 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.
- (c) If the consultation between the Village 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 and the State agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
- (d) Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the State agency and Village.
- (e) If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of the Secretary's findings and recommendations.
- (f) The State agency shall not proceed with the proposed action until either the Secretary's findings and recommendations have been received, or 90 days from the date a notification of a conflict was received from the Mayor, whichever is earlier.

6. **Procedures for Department of State and Villages of Head-of-the-Harbor and Nissequogue Review of Federal Actions for Consistency with the LWRP.**

a) **Permits and Licenses**

- 1) The Department of State (DOS) will acknowledge the receipt of an applicant's consistency certification and application materials, and

at the time forward a copy of the submitted documentation to the Mayor.

- 2) Within thirty (30) days of receiving such information, the Mayor, or the Mayor's designated representative will contact the assigned DOS reviewer to discuss: (1) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with local coastal policies.
- 3) When the DOS and Village agree that additional information is necessary, the DOS will request the applicant to provide the information. A copy of this information will be provided to the Mayor upon request.
- 4) Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the DOS reviewer, whichever is later, the Mayor will notify DOS of the reasons why a proposed action may be inconsistent or consistent with Village coastal policies.
- 5) After that notification, the Mayor will submit any written comments and recommendations on a proposed permit action to the DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the Village has "no opinion" on the consistency of the proposed action with Village coastal policies.
- 6) If the DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the Mayor on a proposed permit action, DOS will contact the Commission Chairman to discuss any differences of opinion prior to issuing its letter of "concurrence" or "objection" to the applicant.
- 7) A copy of DOS' "concurrence" or "objection" letter to the applicant will be forwarded to the Mayor.

b) Direct Actions

- 1) After acknowledging the receipt of a consistency determination and supporting documentation from a Federal agency, DOS will forward copies of the determination and other descriptive

information on the proposed direct action to the Mayor and other interested parties.

- 2) This notification will state the date by which all comments and recommendations must be submitted to DOS and will identify the assigned DOS reviewer.
- 3) The review period will be about twenty-five (25) days. If comments and recommendations are not received by the end of the established review period, DOS will presume that the Village has "no opinion" on the consistency of the proposed direct Federal agency action with Village coastal policies.
- 4) If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the Mayor, DOS will contact the Mayor to discuss any differences of opinion or questions prior to agreeing or disagreeing with the Federal agency's consistency determination on the proposed direct action.
- 5) A copy of DOS' "agreement" or "disagreement" letter to the Federal agency will be forwarded to the Mayor.

c) Financial Assistance

- 1) DOS will request information on a proposed financial assistance action from the applicant (State or Village agency) for consistency review purposes. A copy of this letter will be forwarded to the Mayor and will serve as notification that the proposed action may be subject to review.
- 2) If the applicant is a Village agency, the Mayor will contact the agency and request copies of any application documentation for consistency review purposes. If the proposed action has already been reviewed by the Commission for consistency with the LWRP, the Mayor will notify DOS of the outcome of that review.
- 3) The Mayor will acknowledge receipt of the requested information and send a copy to the DOS.
- 4) If the applicant is a State agency, DOS will request the agency to provide a copy of the application documentation to the Mayor.
- 5) The DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the Mayor.

- 6) The review period will conclude thirty (30) days after the date of the Mayor's or DOS' letter of acknowledgement.
- 7) The Mayor must submit any comments and recommendations on the proposed action to DOS within twenty (20) days from the start of the review period. If comments and recommendations are not received within that twenty-day period, DOS will presume that the Village has "no opinion" on the consistency of the proposed financial assistance action with local coastal policies.
- 8) If the DOS does not fully concur with or has any questions on the comments and recommendations submitted by the Mayor, the DOS will contact the Mayor to discuss any differences of opinion prior to agreeing or objecting to the Federal agency's consistency determination on the proposed financial assistance or action.
- 9) A copy of DOS' "no objection" or "objection" letter to the applicant will be forwarded to the Mayor.

E. FINANCIAL RESOURCES NECESSARY TO IMPLEMENT THE LWRP

Financing the implementation of the LWRP falls into the following two broad categories: (1) day-to-day management of the program and (2) development of long-term projects and program refinement.

The Villages have traditionally operated on the basis of residents volunteering to serve on boards to implement local laws, such as zoning and architectural review, or to promote important activities such as the Conservation Advisory Council. The LWRP was prepared by such a volunteer citizen group. The operating costs of these local boards are provided by the Village government. The operating expenses of the Joint Village Coastal Management Commission are a part of the regular budgets of the two Villages. Operating expenses will be offset by instituting a fee structure and by coordinating the activities of the Commission with existing boards.

The long-term projects and program refinement activities described in Part IV qualify for funding support from state, federal and private sources. The Villages, with the guidance of the Commission, will pursue support from these other sources. The Commission and the municipal governments will work closely with the DOS Division of Coastal Resources and Waterfront Revitalization to secure these outside funds.

F. SUMMARY CHART OF ACTIONS IMPLEMENTING LWRP POLICIES

Sections IV and V presented discussions of projects, laws and other activities necessary to implement the LWRP. These methods are summarized in the following charts.

