

SECTION III

WATERFRONT REVITALIZATION PROGRAM POLICIES

A. DEVELOPMENT POLICIES

POLICY 1 RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL, INDUSTRIAL, CULTURAL, RECREATIONAL, AND OTHER COMPATIBLE USES.

POLICY 1A REDEVELOP, THE FORMER BETHLEHEM STEEL PLANT FOR INDUSTRIAL, TRANSPORTATION, OFFICE AND PASSIVE RECREATION USES.

This policy applies to that area depicted on Map 3. Its intent is to focus capital resources on the redevelopment of the former Bethlehem Steel Plant site into a quality mixed-use development which capitalizes on its waterfront location and transportation linkages. The renewal area contains approximately 1,300 acres within the City's waterfront zone and is entirely in private ownership. Reference should be made to the Inventory and Analysis Section for a further description of the site.

The following guidelines will be used to review actions for consistency with this policy as it pertains to any future development of the Bethlehem Steel Site.

1. When an action is proposed to take place on the former Bethlehem Steel site, the following guidelines will be used:
  - a) Priority should be given to uses which are enhanced or dependent upon a location adjacent to the water.
  - b) The action should serve as a catalyst to private investment in the area.
  - c) The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline.
  - d) The action must lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use.
  - e) The action should have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base. For example, waterfront development meant to serve consumer needs would be inappropriate in an area where no increased consumer demands were expected and existing development was already meeting demand.
  - f) The action should improve adjacent and upland views of the water and shoreline, and, at a minimum, must not affect these views in an insensitive manner.
  - g) The action should have the potential to improve the possibilities for multiple use on the site.

If an action is proposed to take place outside the areas covered by this policy, and is either within the City of Buffalo or Town of Hamburg the agency proposing the action must first determine if it is feasible to take the action within the area covered by this policy. If such an action is feasible, the agency should give strong consideration to taking the action in that area. If not feasible, the agency must take the appropriate steps to ensure that the action does not cause deterioration of that area covered by this policy.

See Policy 25B.

**POLICY 2                    FACILITATE THE SITING OF WATER-DEPENDENT USES AND FACILITIES  
ON OR ADJACENT TO COASTAL WATERS.**

**POLICY 2A                    MAINTAIN WATER-DEPENDENT AND WATER-ENHANCED INDUSTRIAL AND  
PORT-RELATED FACILITIES AT APPROPRIATE LOCATIONS WITHIN THE  
FORMER BETHLEHEM STEEL PLANT SITE.**

Reference should be made to Map 7 for a graphic description as to where the policy applies.

This policy applies to the bulk storage, coke plant, and Gateway Metroport. While the demand for any given piece of property will fluctuate in response to varying economic and social conditions, on a regional basis the only reasonable expectation is that long-term demand for waterfront space will intensify.

To ensure that water-dependent uses can be accommodated within the City, local, federal and State agencies will avoid undertaking, funding or approving non-water-dependent uses when such uses would pre-empt the reasonably foreseeable development of water-dependent uses; furthermore, State, Federal and local agencies will utilize appropriate existing programs to encourage water-dependent activities.

As noted in the Inventory and Analysis Section, the City has an abundance of available land along the Lake which can be developed. There is ample space to accommodate water-dependent, as well as non-water-dependent uses along the shore. The application of this policy shall be applied within this context.

The following uses and facilities are considered as water-dependent.

1.    Uses which depend on the utilization of resources found in coastal waters (for example: fishing, mining of sand and gravel, mariculture activities);
2.    Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating, wildlife viewing);
3.    Uses involved in the sea/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities)

4. Structures needed for navigational purposes (for example: dams, beacons, lighthouses);
5. Flood and erosion protection structures (for example: breakwaters, bulkheads);
6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);
7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);
8. Uses that rely heavily on the waterborne transportation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);
9. Uses which operate under such severe time constraints that proximity to shipping facilities become critical (for example: firms processing perishable foods);
10. Scientific/educational activities which, by their nature, require access to coastal waters (for example: certain meteorological and oceanographic activities);
11. Support facilities which are necessary for the successful functioning of permitted water-dependent uses (for example: parking lots, snack bars, first aid stations, short-term storage facilities). Though these uses must be near the given water-dependent use they should as much as possible, be sited inland from the dependent use rather than on the shore; and
12. Water fowl hunting.

In addition to water-dependent uses, uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water-dependent uses. A water-enhanced use is defined as a use that has no critical dependence on obtaining a waterfront location, but the profitability of the use and/or the enjoyment level of the users would be increased significantly if the use were adjacent to, or had visual access to, the waterfront. A restaurant which uses good site design to take advantage of a waterfront view, and an industrial park which incorporates the waterfront into the site layout while providing for public access are two examples of water-enhanced uses.

If there is no immediate demand for a water-dependent or water-enhanced use at the former Bethlehem site but a future demand is reasonably foreseeable, temporary non-water-dependent uses should be considered preferable to a non-water-dependent or enhanced use which involves an irreversible or nearly

irreversible commitment of land. Parking lots, passive recreational facilities, outdoor storage areas, and non-permanent structures are uses or facilities which would likely be considered as "temporary" non-water-dependent uses.

In the actual choice of sites where water-dependent uses will be encouraged and facilitated, the following guidelines should be used:

1. Competition for space: Competition for space, or the potential for it, should be indicated before any given site is promoted for water-dependent uses. The intent is to match water-dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water-dependent use area. The choice of a site should be made with some meaningful impact on the real estate market anticipated. The anticipated impact could either be one of increased protection to existing water-dependent activities or else the encouragement of water-dependent development.
2. In-place facilities and services: Most water-dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water-dependent uses, consideration should be given to the following factors:
  - a) The availability of public sewers, public water lines and adequate power supply;
  - b) Access to the area for trucks and rail, if heavy industry is to be accommodated; and
  - c) Access to public transportation, if a high number of person trips are to be generated.
3. Access to navigational channels: If commercial shipping, commercial fishing, or recreational boating are planned, consideration should be given to setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.
4. Compatibility with adjacent uses and the protection of other coastal resources: Water-dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Consideration should also be given to such factors as the protection of nearby residential areas from odors, noise and traffic. Affirmative approaches should also be employed so that water-dependent uses must also be sited so as to avoid adverse impacts on the significant coastal resources.
5. Preference to underutilized sites: The promotion of water-dependent uses should serve to foster development as a result of the capital programming, permit expediting and other State and local actions that

will be used to promote the site. Nowhere is such a stimulus needed more than at the former Bethlehem Steel plant site.

**POLICY 3**                    **FURTHER DEVELOP THE STATE'S MAJOR PORTS OF ALBANY, BUFFALO, NEW YORK, OGDENSBURG, AND OSWEGO AS CENTERS OF COMMERCE AND INDUSTRY, AND ENCOURAGE THE SITING IN THESE PORT AREAS, INCLUDING THOSE UNDER THE JURISDICTION OF STATE PUBLIC AUTHORITIES, OF LAND USE AND DEVELOPMENT WHICH IS ESSENTIAL TO OR IN SUPPORT OF THE WATERBORNE TRANSPORTATION OF CARGO AND PEOPLE.**

**POLICY 3A**                    **FURTHER DEVELOP THE GATEWAY METROPORT WITHIN THE FORMER BETHLEHEM STEEL PLANT SITE AS A CENTER OF COMMERCE AND INDUSTRY.**

The acquisition by Buffalo Crushed Stone of the former Bethlehem Steel Port area and surrounding lands provides an opportunity to rejuvenate an underutilized site. Now known as Gateway Metroport, it serves as the regional commercial port facility. The application of this policy will serve the public interest by retaining land in the local tax base, creating an environment where jobs can be promoted and fostered, and providing an anchor to the remaining undeveloped portions of the Lackawanna waterfront thereby increasing their market potential.

Reference should be made to Map 7 of this program for a graphic description of where this policy applies. It includes the former Bethlehem Ship Canal, as well as the Gateway harbor, bulk storage, tank farm and coke oven areas. It also includes that part of the Lake and Union Ship Canal which provides the necessary channelization for commercial ship traffic. Reference should be made to the Inventory and Analysis Section for a clear description of these areas.

Reference should be made to Policies 1, 1A, 2, and 2A for guidelines to be used in applying this policy.

**POLICY 4**                    **THE STATE COASTAL POLICY REGARDING THE STRENGTHENING OF SMALL HARBOR AREAS IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**

**POLICY 5**                    **ENCOURAGE THE LOCATION OF DEVELOPMENT IN AREAS WHERE PUBLIC SERVICES AND FACILITIES ESSENTIAL TO SUCH DEVELOPMENT ARE ADEQUATE, EXCEPT WHEN SUCH DEVELOPMENT HAS SPECIAL FUNCTIONAL REQUIREMENTS OR OTHER CHARACTERISTICS WHICH NECESSITATE ITS LOCATION IN OTHER COASTAL AREAS.**

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, development, particularly large-scale development, in the coastal area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate, where topography, geology, and other environmental conditions are suitable for and able to accommodate development.

The City of Lackawanna is an area of concentrated development where infrastructure and public services are generally adequate to support future land uses and development, as specified in the proposed uses and projects for the waterfront area (Section IV). However, certain capital improvements may be needed in the sewer facilities servicing the waterfront area. In this respect, maximum development by Buffalo Crushed Stone of their desired mixed-use scheme will likely exceed the capacity of the Lackawanna Sewage Treatment Plant. Due to the proximity of this redevelopment site to the Southtowns Sewage Treatment Plant, however, diversion of sanitary wastes to that facility is a possibility. Other alternatives need to be examined, as well as including the Buffalo Sewer Authority System. Local, State and federal agencies charged with allocating funds for investments in water and sewer facilities should give high priority to the needs of the waterfront area, so that full advantage may be taken of the rich array of existing infrastructure components in promoting waterfront revitalization.

For actions that would result in large scale development or which would facilitate or serve future development, the following guidelines shall be considered in assessing the adequacy of the infrastructure and public services:

1. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;
2. Development's water needs (consumptive and fire fighting) can be met by the existing water supply system;
3. Sewage disposal system can accommodate the wastes generated by the development;
4. Energy needs of the proposed land development can be accommodated by existing utility systems;
5. Storm water runoff from the proposed site can be accommodated by on-site and/or off-site facilities; and
6. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area as a result of the development.

**POLICY 6                   EXPEDITE PERMIT PROCEDURES IN ORDER TO FACILITATE THE SITING OF DEVELOPMENT ACTIVITIES AT SUITABLE LOCATIONS.**

The confusion, time delay, and costs associated with the issuance of permits required from all government levels prior to approval of waterfront development is not conducive to attracting public or private investment along the shoreline.

The City of Lackawanna will utilize existing and proposed laws to ensure compliance with the City LWRP, and for those new regulations, will coordinate

and combine review periods, as well as public hearing requirements, to the maximum extent possible.

For specific types of development activities, and in areas suitable for such development, the City will make every effort to coordinate and synchronize existing permit procedures and regulatory programs, and will work with Federal and State agencies to coordinate procedures as long as the integrity of the regulations' objectives is not jeopardized. These procedures and programs will be coordinated within each agency. Also, efforts will be made to ensure that each board's and agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures will be coordinated and synchronized between levels of government, and if necessary, legislative and/or programmatic changes will be recommended. When proposing new regulations, an agency will determine the feasibility of incorporating the regulations within existing procedures; if this reduces the burden on a particular type of development and does not jeopardize the integrity of the regulations' objectives.

## **B. FISH AND WILDLIFE POLICIES**

**POLICY 7                    SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS, AS IDENTIFIED ON THE COASTAL AREA MAP, SHALL BE PROTECTED, PRESERVED, AND WHERE PRACTICABLE, RESTORED SO AS TO MAINTAIN THEIR VIABILITY AS HABITATS.**

Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are critical to the maintenance of a given population and, therefore, merit special protection. Such habitats exhibit one or more of the following characteristics: (1) are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas); (2) support populations of rare and endangered species; (3) are found at a very low frequency within a coastal region; (4) support fish and wildlife populations having significant commercial and/or recreational value; and (5) would be difficult or impossible to replace.

A habitat impairment test must be met for any activity that is subject to consistency review under federal and State laws, or under applicable local laws contained in an approved local waterfront revitalization program. If that proposed action is subject to consistency review, then the habitat protection policy applies, whether the proposed action is to occur within or outside the designated area.

The specific habitat impairment test that must be met is as follows:

In order to protect and preserve a significant habitat, land and water uses or development shall not be under-taken if such actions would:

- destroy the habitat; or,
- significantly impair the viability of a habitat.

**Habitat destruction** is defined as the loss of fish or wildlife use through direct physical alteration, disturbance, or pollution of a designated area, or through the indirect effects of these actions on a designated area. Habitat destruction may be indicated by changes in vegetation, substrate, or hydrology, or increases in runoff, erosion, sedimentation, or pollutants.

**Significant impairment** is defined as reduction in vital resources (e.g., food, shelter, living space) or change in environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism. Indicators of a significantly impaired habitat focus on ecological alterations and may include, but are not limited to, reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

The **tolerance range** of an organism is not defined as the physiological range of conditions beyond which a species will not survive at all, but as the ecological range of conditions that supports the species' population or has the potential to support a restored population, where practical. Either the loss of individuals through an increase in emigration or an increase in death rate indicates that the tolerance range of an organism has been exceeded. An abrupt increase in death rate may occur as an environmental factor falls beyond a tolerance limit (a range has both upper and lower limits). Many environmental factors, however, do not have a sharply defined tolerance limit, but produce increasing emigration or death rates with increasing departure from conditions that are optimal for the species.

The range of parameters which should be considered in applying the habitat impairment test include:

1. Physical parameters, such as living space circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (including loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates;
2. Biological parameters, such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, meristic features, behavioral patterns and migratory patterns; and
3. Chemical parameters, such as dissolved oxygen, carbon dioxide, acidity, dissolved solids, nutrients, organics, salinity, and pollutants (heavy metals, toxics and hazardous materials).

Significant coastal fish and wildlife habitats are evaluated, designated and mapped pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law of New York, Article 42). The New York State Department of Environmental Conservation (DEC) evaluates the significance of coastal fish and wildlife habitats, and following a recommendation from the DEC, the Department of State designates and maps specific areas.

**POLICY 7A**

**THE SMOKES CREEK SHOALS HABITAT SHALL BE PROTECTED, PRESERVED AND, WHERE PRACTICAL, RESTORES SO AS TO MAINTAIN ITS VIABILITY AS A HABITAT.**

Smokes Creek Shoals is located adjacent to the City within Lake Erie near the boundary with the Town of Hamburg. The fish habitat is a 500 acre area of open water, generally located within a one-half mile radius of the mouth of Smokes Creek.

Smokes Creek Shoals serves as a likely spawning area for a variety of warmwater fish species, especially walleye, along with yellow perch and smallmouth bass. A detailed description and map of the habitat is provided in the appendix to the Inventory and Analysis Section.

Although not comprehensive, examples of generic activities and impacts which could destroy or significantly impair the habitat are listed below to assist in applying the habitat impairment test to a proposed activity.

Any activity that would substantially degrade water quality, increase temperature or turbidity, alter water depth, or reduce physical diversity of bottom substrates at Smokes Creek Shoals could affect the fisheries resources of this area. Discharges of sewage, storm water runoff, or industrial waste water containing heavy sediment loads or chemical pollutants could result in significant impairment of the habitat. Activities such as dredging, oil and gas drilling, and solid waste disposal are all potential causes of permanent habitat degradation. Construction of breakwalls or jetties in the area may increase sedimentation, resulting in loss of suitable spawning habitat for walleye. Temporary habitat disturbances would be most detrimental during fish spawning and nursery periods (mid-March through July for most warmwater species); any necessary human disturbance of the littoral zone should be scheduled during fall or winter to minimize potential impacts on fisheries' use of the area. Thermal discharges, depending on the time of year, could also result in significant impairment of the habitat, since spawning activities and survival are directly affected by water temperature. Installation and operation of water intakes could have a significant impact on fish concentrations, through impingement of juveniles and adults, or entrainment of eggs and larval stages.

**POLICY 8**

**PROTECT FISH AND WILDLIFE RESOURCES IN THE COASTAL AREA FROM THE INTRODUCTION OF HAZARDOUS WASTES AND OTHER POLLUTANTS WHICH BIO-ACCUMULATE IN THE FOOD CHAIN OR WHICH CAUSE SIGNIFICANT SUBLETHAL OR LETHAL EFFECT ON THOSE RESOURCES.**

**POLICY 8A**

**PROTECT FISH RESOURCES IN THE SMOKE'S CREEK SHOALS AREA.**

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous waste is defined in Environmental Conservation Law (S27-0901(3)) as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a

substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed." A list of DEC-defined hazardous wastes can be found in 6NYCRR Part 371.

The handling (storage, transport, treatment and disposal) of the materials included on the hazardous waste list are being strictly regulated in New York State to prevent their entry or introduction into the environment, particularly into the State's air, land and waters. Such controls should effectively minimize possible contamination of and bio-accumulation in the State's coastal fish and wildlife resources at levels that cause mortality or create physiological and behavioral disorders.

Other pollutants refer to conventional wastes generated from point and non-point sources and not identified as hazardous wastes, but controlled through other State regulations.

Any activity that would substantially degrade water quality, increase temperature or turbidity, alter water depths, reduce the physical diversity of bottom substrate, or pose similar negative impacts on the Smoke's Creek Shoals habitat is of particular concern. See also Policy 7, and 7A for explanations.

**POLICY 9**                    **EXPAND RECREATIONAL USE OF FISH AND WILDLIFE RESOURCES IN COASTAL AREAS BY INCREASING ACCESS TO EXISTING RESOURCES, SUPPLEMENTING EXISTING STOCKS, AND DEVELOPING NEW RESOURCES. SUCH EFFORTS SHALL BE MADE IN A MANNER WHICH ENSURES THE PROTECTION OF RENEWABLE FISH AND WILD-LIFE RESOURCES AND CONSIDERS OTHER ACTIVITIES DEPENDENT ON THEM.**

**POLICY 9A**                    **EXPAND RECREATIONAL USE OF FISH RESOURCES AT THE SMOKE'S CREEK SHOALS.**

The educational and recreational value of coastal areas having a significant concentration of fish resources is of extreme importance to the general public. This is especially important at Smoke's Creek Shoals. The latter represents a high quality fishing spot. The combination of these factors presents a unique opportunity for public enjoyment.

Any efforts to increase recreational use of these resources will be made in a manner which ensures the protection of fish and wildlife resources and which takes into consideration other activities dependent on these resources. Also, such efforts must be done in accordance with existing State law and in keeping with sound management considerations. Such considerations include biology of the species, carrying capacity of the resources, public demand, costs and available technology.

The following additional guidelines should be considered by State, Federal, and City agencies as they determine the consistency of their proposed action with the above policy:

1. Consideration should be made by Federal, State and City agencies as to whether an action will impede existing or future utilization of the City's recreational fish and wildlife resources.
2. Efforts to increase access to recreational fish and wildlife resources shall not lead to over-utilization of that resource or cause impairment of the habitat. Sometimes such impairment can be more subtle than actual physical damage to the habitat. For example, increased human presence can deter animals from using the habitat area.
3. The impacts of increasing access to recreational fish and wildlife resources shall be determined on a case-by-case basis, and/or conferring with a trained fish and wildlife biologist.
4. Any public or private sector initiatives to supplement existing stocks (e.g., stocking the Lake with fish reared in a hatchery) or develop new resources (e.g., creating private fee-fishing facilities) must be done in accord with existing State law.

See also Policies 19, 21, and 22.

**POLICY 10                    THE STATE COASTAL POLICY REGARDING THE DEVELOPMENT OF  
COMMERCIAL FISHING IS NOT APPLICABLE TO THE CITY OF  
LACKAWANNA.**

**C.     FLOODING AND EROSION HAZARDS POLICIES**

**POLICY 11                    BUILDINGS AND OTHER STRUCTURES WILL BE SITED IN THE COASTAL  
AREA SO AS TO MINIMIZE DAMAGE TO PROPERTY AND THE ENDANGERING  
OF HUMAN LIVES CAUSED BY FLOODING AND EROSION.**

This policy shall apply to those areas identified as Areas of Special Flood Hazard within the Flood Insurance Study for the City of Lackawanna dated July 2, 1980 and generally illustrated on Map 5.

Guidelines for determining an action's consistency with this policy are as follows:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
3. All new and replacement water supply shall be constructed using methods and practices that minimize flood damage.

4. All new and replacement water supply shall be designed to minimize or eliminate infiltration of flood waters into the system.
5. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
6. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
7. All subdivision proposals shall be consistent with the need to minimize flood damage.
8. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
9. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
10. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five (5) acres (whichever is less). The term "base flood" is the flood having a one percent chance of being equalled or exceeded in any given year.

In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section 3.2 or 4.3-2 of the City Flood Damage Prevention Ordinance, the following standards are required:

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
2. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities, shall:
  - a) be floodproofed so that below the base level the structure is watertight with walls substantially impermeable to the passage of water; and
  - b) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Located within areas of special flood hazards established in Section 3 of the City's Flood Damage Prevention Ordinance are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood

waters which carry debris, potential projectiles, and erosion potential the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Section 5.3(1) of the City's Flood Damage Prevention Ordinance is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 5.0 of the same City Ordinance.

The City of Lackawanna has an adopted Disaster Preparedness Plan (3/4/80) which serves as the primary tool to guide relief efforts during periods of natural disasters.

**POLICY 12**                    **THE STATE COASTAL POLICY REGARDING PROTECTION OF NATURAL PROTECTIVE FEATURES IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**

**POLICY 13**                    **THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES SHALL BE UNDERTAKEN ONLY IF THEY HAVE A REASONABLE PROBABILITY OF CONTROLLING EROSION FOR AT LEAST THIRTY YEARS AS DEMONSTRATED IN DESIGN AND CONSTRUCTION STANDARDS AND/OR ASSURED MAINTENANCE OR REPLACEMENT PROGRAMS.**

Erosion protection structures are widely used throughout the State's coastal area. However, because of improper design, construction and maintenance standards, many fail to give the protection which they are presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will help ensure the reduction of such damage or loss.

**POLICY 14**                    **ACTIVITIES AND DEVELOPMENT, INCLUDING THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES, SHALL BE UNDERTAKEN SO THAT THERE WILL BE NO MEASURABLE INCREASE IN EROSION OR FLOODING AT THE SITE OF SUCH ACTIVITIES OR DEVELOPMENT, OR AT OTHER LOCATIONS.**

Erosion and flooding are processes which occur naturally. However, by his actions, man can increase the severity and adverse effects of those processes, causing damage to, or loss of property, and endangering human lives. Those actions include: (1) the use of erosion protection structures such as groins, jetties and bulkheads, or the use of impermeable docks which block the littoral transport of sediment to adjacent shorelands, thus increasing their rate of recession; (2) the failure to observe proper drainage or land restoration practices, thereby causing run-off and the erosion and weakening of shorelands; and (3) the placing of structures in identified floodways so that the base flood level is increased causing damage to otherwise hazard-free areas.

See explanation for Policy 11.

**POLICY 15**            **MINING, EXCAVATION OR DREDGING IN COASTAL WATERS SHALL NOT SIGNIFICANTLY INTERFERE WITH THE NATURAL COASTAL PROCESSES WHICH SUPPLY BEACH MATERIALS TO LAND ADJACENT TO SUCH WATERS AND SHALL BE UNDERTAKEN IN A MANNER WHICH WILL NOT CAUSE AN INCREASE IN EROSION OF SUCH LAND.**

Coastal processes, including the movement of beach materials or shoreline sediment by water, and any mining, excavation or dredging in nearshore or offshore waters which changes the supply and net flow of such materials can deprive shorelands of their natural regenerative powers. Such mining, excavation and dredging should be accomplished in a manner so as not to cause a reduction of supply, and thus an increase of erosion, to such shorelands. Offshore mining for sand and gravel deposits is a future alternative option to land mining for sand and gravel deposits which are needed to support building and other industries.

Dredging will be needed to maintain the commercial shipping channels serving the Gateway Metroport. These activities are regulated by existing federal and State law.

**POLICY 16**            **PUBLIC FUNDS SHALL ONLY BE USED FOR EROSION PROTECTIVE STRUCTURES WHERE NECESSARY TO PROTECT HUMAN LIFE, AND NEW DEVELOPMENT WHICH REQUIRES A LOCATION WITHIN OR ADJACENT TO AN EROSION HAZARD AREA TO BE ABLE TO FUNCTION, OR EXISTING DEVELOPMENT; AND ONLY WHERE THE PUBLIC BENEFITS OUTWEIGH THE LONG TERM MONETARY AND OTHER COSTS INCLUDING THE POTENTIAL FOR INCREASING EROSION AND ADVERSE EFFECTS ON NATURAL PROTECTIVE FEATURES.**

Public funds are used for a variety of purposes on the State's shorelines. This policy recognizes the public need for the protection of human life and existing investment in development or new development which requires a location in proximity to the coastal area or in adjacent waters to be able to function. However, it also recognizes the adverse impacts of such activities and development on the rate of erosion and on natural protective features and requires that careful analysis be made of such benefits and long-term costs prior to expending public funds for erosion protection measures.

**POLICY 17**            **WHENEVER POSSIBLE, USE NON-STRUCTURAL MEASURES TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION. SUCH MEASURES SHALL INCLUDE: (1) THE SET BACK OF BUILDINGS AND STRUCTURES; (2) THE PLANTING OF VEGETATION AND THE INSTALLATION OF SAND FENCING AND DRAINING; (3) THE RESHAPING OF BLUFFS; AND (4) THE FLOOD-PROOFING OF BUILDINGS OR THEIR ELEVATION ABOVE THE BASE FLOOD LEVEL.**

This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the coastal

area, as well as the costs of protection against those hazards which structural measures entail.

This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing activities and development. To ascertain consistency with this policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development and to the hazard. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible.

In determining whether or not non-structural measures to protect against erosion or flooding will offer appropriate protection, an analysis, and if necessary, other materials such as plans or sketches of the activity or development, of the site and of the alternative protection measures should be prepared to allow an assessment to be made.

See Policy 11.

#### D. GENERAL POLICY

**POLICY 18** TO SAFEGUARD THE VITAL ECONOMIC, SOCIAL AND ENVIRONMENTAL INTERESTS OF THE STATE AND OF ITS CITIZENS, PROPOSED MAJOR ACTIONS IN THE COASTAL AREA MUST GIVE FULL CONSIDERATION TO THOSE INTERESTS, AND TO THE SAFEGUARDS WHICH THE STATE HAS ESTABLISHED TO PROTECT VALUABLE COASTAL RESOURCE AREAS.

Proposed major actions may only be undertaken in the waterfront area if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State and City have established to protect those waters and resources. Proposed actions must take into account the social, cultural, economic and environmental interests of the State and City and their citizens in such matters that would affect natural resources, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

#### E. PUBLIC ACCESS POLICIES

**POLICY 19** PROTECT, MAINTAIN, AND INCREASE THE LEVEL AND TYPES OF ACCESS TO PUBLIC WATER-RELATED RECREATION RESOURCES AND FACILITIES SO THAT THESE RESOURCES AND FACILITIES MAY BE FULLY UTILIZED IN ACCORDANCE WITH REASONABLY ANTICIPATED PUBLIC RECREATION NEEDS AND THE PROTECTION OF HISTORIC AND NATURAL RESOURCES. IN PROVIDING SUCH ACCESS, PRIORITY SHALL BE GIVEN TO PUBLIC BEACHES, BOATING FACILITIES, FISHING AREAS AND WATERFRONT PARKS.

POLICY 19A            INCREASE THE LEVEL AND TYPE OF ACCESS TO LAKE ERIE VIA A PUBLIC CORRIDOR TO BE LOCATED ALONG THE LAKE BETWEEN SMOKE'S CREEK AND THE TOWN OF HAMBURG MUNICIPAL BOUNDARY.

POLICY 19B            INCREASE THE LEVEL AND TYPE OF ACCESS TO LAKE ERIE. IN PROVIDING SUCH ACCESS, PRIORITY SHALL BE GIVEN TO A PUBLIC ROAD PROVIDING ACCESS OFF ROUTE 5 TO THE PROPOSED PUBLIC CORRIDOR DESCRIBED IN POLICY 19A.

Policies 10A and 19B apply to the Buffalo Crushed Stone property south of Smoke's Creek.

The City has not had any public access to the Lake Erie waterfront since construction of the steel making plant. Although access has been denied, the demand for fishing facilities and passive waterfront recreation by City residents has increased over the past few years. With the closure of Bethlehem Steel and subsequent purchase by Buffalo Crushed Stone, it is in the public interest to insure that future plans for this area incorporate public access to the waterfront. This must also include provisions for vehicular access off New York State Route 5 to the water's edge. A further description of this proposal is described in Section IV.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access or unless such actions are found to be necessary or beneficial by the public body having jurisdiction over such access as the result of a reasonable justification of the need to meet systematic objectives.

The following is an explanation of the terms used in the above guidelines:

- a) Access - the ability and right of the public to reach and use public coastal lands and waters.
- b) Public lands or facilities - lands or facilities held by the State or City in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.
- c) An elimination of the possibility of increasing public access in the future includes, but is not limited to, the following:

- (i) Construction of public facilities, which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.
  - (ii) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.
  - (iii) Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.
2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:
    - a) The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
    - b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.
  3. The State and City will not undertake or fund any projects which increase access to a water-related resource or facility that is not open to all members of the public.
  4. Priority in capital construction activities at future City waterfront parks will be given to those facilities which increase public access to water-related activities.

**POLICY 20**

**ACCESS TO THE PUBLICLY-OWNED FORESHORE AND TO LANDS IMMEDIATELY ADJACENT TO THE FORESHORE OR THE WATER'S EDGE THAT ARE PUBLICLY-OWNED SHALL BE PROVIDED, AND IT SHOULD BE PROVIDED IN A MANNER COMPATIBLE WITH ADJOINING USES. SUCH LANDS SHALL BE RETAINED IN PUBLIC OWNERSHIP.**

While publicly-owned lands shall be retained in public ownership, traditional sales of easements on land, underwater lands, and lands immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety, military security, or the protection of fragile coastal resources.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. Existing or future access from adjacent or proximate public lands or facilities to existing or future public coastal lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be eliminated, unless such actions are demonstrated to be of overriding regional or Statewide public benefit or, in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access.

The following is an explanation of the terms used in the above guidelines:

- a) (See definitions under Policy 19 for "access" and "public lands or facilities").
  - b) A reduction in the existing or anticipated level of public access - includes, but is not limited, to the following:
    - (i) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
    - (ii) Pedestrian access is diminished or blocked completely by public or private development.
  - c) An elimination of the possibility of increasing public access in the future - includes, but is not limited to, the following:
    - (i) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.
    - (ii) Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.
    - (iii) Construction of private facilities which physically prevent the provision of convenient public access to public coastal lands and/or waters from public lands and facilities.
2. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated.

- a) A reduction in the existing level of public access includes, but is not limited to, the following:
  - (i) Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
  - (ii) Access is reduced or blocked completely by any public developments.
3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development, except where (1) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (2) adequate access exists within one-half mile; or (3) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
4. The State will not undertake or directly fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the boundaries of the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.
6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:
  - (a) The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
  - (b) The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

#### **F. RECREATION POLICIES**

**POLICY 21            WATER-DEPENDENT AND WATER-ENHANCED RECREATION WILL BE ENCOURAGED AND FACILITATED, AND WILL BE GIVEN PRIORITY OVER**

NON-WATER-RELATED USED ALONG THE COAST, PROVIDED IT IS CONSISTENT WITH THE PRESERVATION AND ENHANCEMENT OF OTHER COASTAL RESOURCES AND TAKES INTO ACCOUNT DEMAND FOR SUCH FACILITIES. IN FACILITATING SUCH ACTIVITIES, PRIORITY SHALL BE GIVEN TO AREAS WHERE ACCESS TO THE RECREATION OPPORTUNITIES OF THE COAST CAN BE PROVIDED BY NEW OR EXISTING PUBLIC TRANSPORTATION SERVICES AND TO THOSE AREAS WHERE THE USE OF THE SHORE IS SEVERELY RESTRICTED BY EXISTING DEVELOPMENT.

**POLICY 21A** WATER-DEPENDENT AND WATER-ENHANCED RECREATION WILL BE ENCOURAGED VIA A PUBLIC CORRIDOR ALONG THE LAKE BETWEEN SMOKE'S CREEK AND THE TOWN OF HAMBURG MUNICIPAL BOUNDARY.

**POLICY 21B** WATER-DEPENDENT RECREATION SHALL BE ENCOURAGED WITHIN AND ADJACENT TO SMOKE'S CREEK.

Presently, City of Lackawanna residents have no access to Lake Erie. As noted in the Inventory and Analysis Section, the coastal zone is entirely in private ownership. Buffalo Crushed Stone has proposed a redevelopment plan for the former Bethlehem Plant site which is reflected on Map 8. Due to the lack of water access, it is in the public interest to facilitate a public water-dependent recreation facility within the redevelopment plans being promoted by Buffalo Crushed Stone. A detailed feasibility study will be needed to ensure such a proposal is properly integrated with long-term private development needs. A key part of the study must be the adequate provision of vehicular access off Route 5. This policy shall apply to that area depicted on Map 8. The actual implementation of the policy will be achieved through the fee simple or easement purchase of the land paralleling the Lake. Since the area is presently being worked for slag removal, it will be 8-10 years before the project could be moved forward. Discussions should begin, however, in the near future with Town of Hamburg and Buffalo Crushed Stone officials to determine appropriate access opportunities and integrate the concept into the redevelopment plans of Buffalo Crushed Stone.

The proposed water recreational area in the City would be accessible by public transit. The frequency of service is noted in the Inventory and Analysis Section. During the detailed feasibility studies necessary for further project development, pedestrian access to the site from the public transit stop would need further definition. The distance between the public transit stop and the proposed waterfront recreation area is approximately one-half mile.

See Policy 19A and 19B.

Smoke's Creek has a long-term potential as a water access corridor to Lake Erie for car-top boats and shallow draft fishing boats. The development of such facilities would have to correspond with the redevelopment of the former Bethlehem Steel Plant site to uses which would not conflict with the new activity proposed for the stream. In addition, a detailed analysis of location for such launching needs to occur.

**POLICY 22** DEVELOPMENT, WHEN LOCATED ADJACENT TO THE SHORE, WILL PROVIDE FOR WATER-RELATED RECREATION, AS A MULTIPLE USE, WHENEVER SUCH RECREATIONAL USE IS APPROPRIATE IN LIGHT OF REASONABLY ANTICIPATED DEMAND FOR SUCH ACTIVITIES AND THE PRIMARY PURPOSE OF THE DEVELOPMENT.

**POLICY 22A** THE INCORPORATION OF WATER-RELATED RECREATION FOR PUBLIC ENJOYMENT INTO PRIVATE REDEVELOPMENT PLANS BETWEEN SMOKE'S CREEK AND THE TOWN OF HAMBURG/CITY OF LACKAWANNA BOUNDARY LINE WILL BE ACTIVELY PURSUED.

Many developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore, whenever developments are located adjacent to the shore, they should, to the fullest extent permitted by existing law, provide for some form of water-related recreation use unless there are compelling reasons why any form of such recreation would not be compatible with the development, or a reasonable demand for public use cannot be foreseen.

The City of Lackawanna shall negotiate with developers of the former Bethlehem Steel Plant site regarding the development of a public corridor along the water's edge between Smoke's Creek and the Town of Hamburg municipal boundary.

Prior to taking action relative to any development in the City, State agencies should consult with the State Office of Parks, Recreation, and Historic Preservation (OPRHP), and with the City to determine appropriate recreation uses. The agency should provide OPRHP and the City with the opportunity to participate in project planning.

Appropriate recreation uses which do not require any substantial additional construction shall be provided at the expense of the project sponsor provided the cost does not exceed 2% of total project cost.

In determining whether compelling reasons exist which would make recreation inadvisable as a multiple use, public safety should reflect a recognition that some risk is acceptable in the use of recreation facilities.

Whenever a proposed development is compatible would be consistent with LWRP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore.

See Policy 21A.

#### **G. HISTORIC AND SCENIC RESOURCES POLICIES**

**POLICY 23** PROTECT, ENHANCE AND RESTORE STRUCTURES, DISTRICTS, AREAS OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHAEOLOGY OR CULTURE OF THE STATE, CITY OF LACKAWANNA, OR THE NATION.

**POLICY 23A                    PROTECT, ENHANCE AND RESTORE THE ARCHAEOLOGICALLY SIGNIFICANT SITE IN THE VICINITY OF SMOKE'S CREEK IN THE CITY OF LACKAWANNA.**

An area of archaeological significance may exist in the vicinity of Smoke's Creek, as described in Chapter B-9 of the Inventory and Analysis Section. Prior to undertaking major construction activities in this area, anyone proposing such activity shall consult with the NYS Office of Parks, Recreation and Historic Preservation to determine whether significant archaeological resources are present at the site and what measures are necessary to preserve these resources. All practicable means shall be used to preserve significant archaeological resources.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthwork, or component thereof which has been officially certified as being imminently dangerous to public health and safety.

There are no other resources located in the local waterfront area to which the policy applies.

**POLICY 24                    THE STATE COASTAL POLICY REGARDING THE PROTECTION OF SCENIC RESOURCES OF STATEWIDE SIGNIFICANCE IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**

**POLICY 25                    PROTECT, RESTORE OR ENHANCE NATURAL AND MAN-MADE RESOURCES WHICH ARE NOT IDENTIFIED AS BEING OF STATEWIDE SIGNIFICANCE, BUT WHICH CONTRIBUTE TO THE OVERALL SCENIC QUALITY OF THE COASTAL AREA.**

When considering a proposed action, agencies shall ensure that the action will be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. This is especially applicable to the Route 5 corridor.

The following siting and facility-related guidelines are to be used to achieve this policy, recognizing that each development situation is unique and that the guidelines will have to be applied accordingly.

Guidelines include:

1.    Siting structures and other development such as highways, power lines and signs, back from shoreline or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;
2.    Clustering or orienting structures to retain views, save open space and provide visual organization to a development;

3. Incorporating sound, existing structures (especially historic buildings) into the overall development scheme;
4. Removing deteriorated and/or degrading elements;
5. Maintaining or adding vegetation to provide interest, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;
6. Using appropriate materials, in addition to vegetation, to screen unattractive elements; and
7. Using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape.

- POLICY 25A** RESTORE THE SCENIC QUALITIES OF THE NEW YORK STATE ROUTE 5 CORRIDOR.
- POLICY 25B** ENHANCE THE NEW YORK STATE ROUTE 5 AND RIDGE ROAD INTERSECTION AS AN ATTRACTIVE GATEWAY TO THE CITY OF LACKAWANNA.
- POLICY 25C** PROTECT AND RESTORE THE HISTORIC AND ARCHITECTURAL QUALITIES OF THE FORMER BETHLEHEM STEEL PLANT EMPLOYMENT OFFICE BUILDING.

As noted in the Inventory and Analysis Section, the former employment office of the Bethlehem Steel Plant represents a unique architectural form within the former steel plant complex. Due to the importance of steel making operations to the growth and development of the City, it is in the public interest to promote the preservation of locally significant structures which can serve as a reminder to area residents of the site's history.

Public and private dollars shall be used, when appropriate and consistent with the Buffalo Crushed Stone redevelopment plans, to rehabilitate the structure into a regional trade center.

#### H. AGRICULTURAL LANDS POLICY

- POLICY 26** THE STATE COASTAL POLICY REGARDING THE PROTECTION OF IMPORTANT AGRICULTURAL LANDS IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.

#### I. ENERGY AND ICE MANAGEMENT POLICIES

- POLICY 27** DECISIONS ON THE SITING AND CONSTRUCTION OF MAJOR ENERGY FACILITIES IN THE COASTAL AREA WILL BE BASED ON PUBLIC ENERGY

**NEEDS, COMPATIBILITY OF SUCH FACILITIES WITH THE ENVIRONMENT,  
AND THE FACILITY'S NEED FOR A SHOREFRONT LOCATION.**

Demand for energy in New York will increase, although at a rate lower than previously predicted. The State expects to meet these energy demands through a combination of conservation measures; traditional and alternative technologies; and use of various fuels, including coal, in greater proportion.

A determination of public need for energy is the first step in the process for siting new facilities. The directives for determining this need are set forth in the New York State Energy Law. With respect to transmission lines, Articles VII and VIII of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for a shorefront location. The policies derived from these proceedings are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization and Coastal Resources Act. That Act is used for the purposes of ensuring consistency with the Coastal Management Program.

In consultation with the City, the Department of State will comment on State Energy Office policies and planning reports as may exist; present testimony for the record during relevant certification proceedings under Articles VII and VIII of the PSL; and use the State SEQR and DOS regulations to ensure that decisions on other proposed energy facilities (other than transmission facilities and steam electric generating plants) which would impact the waterfront area, are made consistent with policies and purposes of this Local Waterfront Revitalization Program.

**POLICY 28**                    **ICE MANAGEMENT PRACTICES SHALL NOT DAMAGE SIGNIFICANT FISH AND WILDLIFE AND THEIR HABITATS, INCREASE SHORELINE EROSION OR FLOODING, OR INTERFERE WITH THE PRODUCTION OF HYDROELECTRIC POWER.**

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydroelectric power, fish and wildlife and their habitats in Lake Erie offshore of the City of Lackawanna, flood levels and damage, and rates of shoreline erosion damage.

Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

**POLICY 29**                    **ENCOURAGE THE DEVELOPMENT OF ENERGY RESOURCES ON THE OUTER CONTINENTAL SHELF, IN LAKE ERIE AND IN OTHER WATER BODIES, AND ENSURE THE ENVIRONMENTAL SAFETY OF SUCH ACTIVITIES.**

The State recognizes the need to develop new indigenous energy sources. It also recognizes that such development may endanger the environment. Among the various energy sources being examined are those which may be found on the Outer

Continental Shelf (OCS) or in Lake Erie. The State has been encouraging the wise development of both.

The Department of Environmental Conservation has examined the potential impacts of Lake Erie gas drilling and is instituting reasonable guidelines so that activities can proceed without damage to public water supplies and other valuable coastal resources. State law prohibits development of wells nearer than one-half mile from the shoreline, two miles from public water supply intakes, and one thousand feet from any other structure or installation in or on Lake Erie. Further, State law prohibits production of liquid hydrocarbons in Lake Erie, either alone, or in association with natural gas. The Department has not, however, reached a decision as to whether or not the lands under Lake Erie will be leased for gas exploration purposes.

#### J. WATER AND AIR RESOURCES POLICIES

**POLICY 30                    MUNICIPAL, INDUSTRIAL, AND COMMERCIAL DISCHARGE OF POLLUTANTS, INCLUDING BUT NOT LIMITED TO, TOXIC AND HAZARDOUS SUBSTANCES, INTO COASTAL WATERS WILL CONFORM TO STATE AND NATIONAL WATER QUALITY STANDARDS.**

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater but also plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which empty directly into Lake Erie and Smoke's Creek and those which pass through the regional treatment system before reaching the State's waterways.

**POLICY 31                    STATE COASTAL AREA POLICIES AND PURPOSES OF APPROVED LOCAL WATERFRONT REVITALIZATION PROGRAMS WILL BE CONSIDERED WHILE REVIEWING COASTAL WATER CLASSIFICATIONS AND WHILE MODIFYING WATER QUALITY STANDARDS; HOWEVER, THOSE WATERS ALREADY OVERBURDENED WITH CONTAMINANTS WILL BE RECOGNIZED AS BEING A DEVELOPMENT CONSTRAINT.**

Pursuant to the Federal Clean Water Act of 1977 (PL 95-217) the State has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Local Waterfront Revitalization Programs and State coastal management policies shall be factored into the review process for coastal waters. However, such consideration shall not affect any water pollution control requirement establishment by the State pursuant to the Federal Clean Water Act.

The existing water quality classifications in the City of Lackawanna shore area should be maintained. However, in the long term the "D" classification assigned to Smoke's Creek should be re-evaluated to reflect changing conditions along the stream bank and better accommodate future recreation opportunities.

**POLICY 32**            **THE STATE COASTAL POLICY REGARDING THE USE OF ALTERNATIVE WASTE SYSTEMS IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**

**POLICY 33**            **BEST MANAGEMENT PRACTICES WILL BE USED TO ENSURE THE CONTROL OF STORMWATER RUNOFF AND COMBINED SEWER OVERFLOWS DRAINING INTO COASTAL WATERS.**

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of stormwater runoff and sewer overflows. At present, the stormwater and sanitary sewer system within the City waterfront area is separate.

**POLICY 34**            **DISCHARGE OF WASTE MATERIALS INTO COASTAL WATERS FROM VESSELS WILL BE LIMITED SO AS TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATIONAL AREAS AND WATER SUPPLY AREAS.**

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated. Priority will be given to the enforcement of this law in significant habitats and public water supply intakes which need protection from contamination by vessel wastes. Also, specific effluent standards for marina toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part 657).

**POLICY 35**            **DREDGING AND DREDGE SPOIL DISPOSAL IN COASTAL WATERS WILL BE UNDERTAKEN IN A MANNER THAT MEETS EXISTING STATE DREDGING PERMIT REQUIREMENTS, AND PROTECTS SIGNIFICANT FISH AND WILDLIFE HABITATS, SCENIC RESOURCES, NATURAL PROTECTIVE FEATURES, IMPORTANT AGRICULTURAL LANDS, AND WETLANDS.**

State dredging permits will be granted if it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to levels which satisfy State dredging permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, 25, and 34).

**POLICY 36**            **ACTIVITIES RELATED TO THE SHIPMENT AND STORAGE OF PETROLEUM AND OTHER HAZARDOUS MATERIALS WILL BE CONDUCTED IN A MANNER THAT WILL PREVENT OR AT LEAST MINIMIZE SPILLS INTO COASTAL WATERS; ALL PRACTICABLE EFFORTS WILL BE UNDERTAKEN TO EXPEDITE THE CLEANUP OF SUCH DISCHARGES; AND RESTITUTION FOR DAMAGES WILL BE REQUIRED WHEN THESE SPILLS OCCUR.**

See Policy 39 for definition of hazardous wastes. All activities within the City of Lackawanna waterfront which are subject to this policy shall comply with all State and Federal regulations.

**POLICY 37**            **BEST MANAGEMENT PRACTICES WILL BE UTILIZED TO MINIMIZE THE NON-POINT DISCHARGE OF EXCESS NUTRIENTS, ORGANICS AND ERODED SOILS INTO COASTAL WATERS.**

See Policy 33.

**POLICY 38**            **THE QUALITY AND QUANTITY OF SURFACE WATER AND GROUND-WATER SUPPLIES, WILL BE CONSERVED AND PROTECTED, PARTICULARLY WHERE SUCH WATERS CONSTITUTE THE PRIMARY OR SOLE SOURCE OF WATER SUPPLY.**

Surface water is the source of drinking water in the City of Lackawanna and therefore must be protected. The City waterfront area is serviced by a high technology water treatment and sanitary sewer system, and all commercial and industrial discharges are regulated by State and Federal Law.

**POLICY 39**            **THE TRANSPORT, STORAGE, TREATMENT AND DISPOSAL OF SOLID WASTES, PARTICULARLY HAZARDOUS WASTES, WITHIN COASTAL AREAS WILL BE CONDUCTED IN SUCH A MANNER SO AS TO PROTECT GROUNDWATER AND SURFACE WATER SUPPLIES, RECREATION AREAS, AND SCENIC RESOURCES.**

The definitions of terms "solid wastes" and "solid waste management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludges from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes.

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous waste is defined in Environmental Conservation Law (Section 27-0901[3]), as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) has been adopted by DEC (6 NYCRR Part 371).

Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include: filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

**POLICY 40**            **THE STATE COASTAL POLICY REGARDING EFFLUENT DISCHARGED FROM MAJOR STEAM ELECTRIC GENERATING FACILITIES IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**

**POLICY 41**            **LAND USE OR DEVELOPMENT IN THE COASTAL AREA WILL NOT CAUSE NATIONAL OR STATE AIR QUALITY STANDARDS TO BE VIOLATED.**

The City's Local Waterfront Revitalization Program incorporates the air quality policies and programs developed for the State by the Department of Environmental

Conservation pursuant to the Federal Clean Air Act and State laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the coastal area.

**POLICY 42                    COASTAL MANAGEMENT POLICIES WILL BE CONSIDERED IF THE STATE RECLASSIFIES LAND AREA PURSUANT TO THE PREVENTION OF SIGNIFICANT DETERIORATION REGULATIONS OF THE FEDERAL CLEAN AIR ACT.**

Reclassification of an area from non-attainment to attainment allows for construction of new major sources of air pollution, when Prevention of Significant Deterioration (PSD) requirements are met. Should an area remain non-attainment, no new major sources of air pollution are allowed to be built. Permit requirements for construction of a new major source in a non-attainment area are more restrictive than for construction of the same source in an attainment area. Therefore, it is the policy of New York State to have areas classified as attainment as soon as possible to allow for future industrial growth.

NYSDEC has submitted a State Implementation Plan to the U.S. Environmental Protection Agency to achieve air quality standards for the Lackawanna area as required by the Clean Air Act. In addition, DEC has requested the USEPA to reclassify the Lackawanna/South Buffalo area to attainment for particulates, since air quality sampling has shown the area to be in compliance for particulates. The area has already been classified as attainment for the remaining criteria contaminants (SO<sub>2</sub>, NOX, CO, and Ozone) and PSD must be considered.

**POLICY 43                    LAND USE OR DEVELOPMENT IN THE COASTAL AREA MUST NOT CAUSE THE GENERATION OF SIGNIFICANT AMOUNTS OF THE ACID RAIN PRECURSORS: NITRATES AND SULFATES.**

The New York State Coastal Management Program and this Local Waterfront Revitalization Program incorporates the State's policies on acid rain. As such, these programs will assist in the State's efforts to control acid rain. Such efforts will enhance the continued viability of coastal fisheries, wildlife, agricultural, scenic and water resources.

**POLICY 44                    THE STATE COASTAL POLICY REGARDING THE PROTECTION OF WETLANDS IS NOT APPLICABLE TO THE CITY OF LACKAWANNA.**