

**TOWN OF NEWFANE  
LWRP**

**SECTION 5**

**Techniques for Local Implementation of the LWRP**

## **5.1 LOCAL LAWS AND REGULATIONS NECESSARY TO IMPLEMENT THE LWRP**

### **5.1.1 Existing Local Laws/Regulations**

a. **Freshwater Wetlands Act (Local Law No. 3, 1976)**

Provides for local management of wetlands consistent with Chapter 24, Section 24-0501 of the New York State Environmental Conservation Law and state wetlands mapping. The local law requires a permit authorized by the Town Board for any action affecting a freshwater wetland and a public hearing. Within the coastal area, this act regulates Eighteen Mile Creek and Hopkins Creek and promotes the protection of wetland resources (Policy 44).

b. **Newfane Sewer Ordinance (adopted 6/28/85)**

Establishes rules and regulations for the use of private sewers and disposal (Policy 5), installation and connection of sewers and discharge of waste into public sewer systems in the Town pursuant to Article 12 of State Municipal Law. The ordinance also requires private system compliance with Niagara County Health Department standards for discharge and disposal (Policy 38) and limits both residential and industrial discharge into public systems (Policy 8), via revokable permit, consistent with the Clean Water Act of 1977 and General Pretreatment Regulations (40 CFR Part 403). It also prohibits the discharge of hazardous or toxic wastes into any public sewer and details requirements/standards for industrial pretreatment (Policy 30). These regulations will enhance coastal water quality policies, specifically for Sewer District II which covers the majority of the coastal area and all of the coastal development including required treatment of vessel wastes from pump-out facilities (Policy 5) and the use of sewer hook-ups for density control in sensitive areas (eg: agricultural districts/Policy 26, wetlands/Policy 44).

c. **Environmental Quality Review Law (Local Law No. 1, 1977)**

Provides for the local review and implementation of the State Environmental Conservation Law (Article 8) consistent with Section 8-0105 and Part 617 of 6NYCRR (State Environmental Quality Review Act). It establishes local procedures for administration and determination of all environmental actions in the Town in accordance with state regulations (Policy 18).

d. **Town of Newfane Flood Insurance Study (Federal Emergency Management Agency 5/18/81)**

Identifies flood hazard areas along the coast and is used to convert the town to the regular Federal Insurance Administration program. The study complements the Town Zoning Ordinance in defining regulated flood areas and aids in the administration of the National Flood Insurance Act of 1968

and the Flood Disaster Protection Act of 1973. The study generally enhances the flood/erosion policies in the LWRP (#11, 17) and incorporates primary hydraulic data to guide shoreline protection structures (Policies 12, 13, 14).

e. **Town of Newfane Zoning Ordinance (7/1/72)**

This ordinance provides for the local regulation of land use, development and improvement within the coastal area and the Town. Town Zoning separately accommodates marine uses in the Olcott harbor area (designated Marine Business District). It provides locational preferences for boat launching and service by special exception to insure compatibility with adjacent uses and minimum design criteria. The ordinance also regulates development setback (100 feet, minimum) along Lake Ontario, Eighteen Mile Creek and other drainage channels (eg: Hopkins Creek, Keg Creek – 50 feet, minimum) to protect structures from flood inundation. This exceeds the 25 feet setback required for protection of natural features or the 65 feet required in the coastal erosion hazard area west of Phillips Road. Special exemptions and approvals are the responsibility of the Planning Board with the Building Inspector as the enforcement officer and the Zoning Board of Appeals as the authority to grant relief and variance from, and interpret ordinance provisions. This ordinance generally promotes Policies 1-6 (development), 11 (flood/erosion protection), 18 (general welfare) and 26 (agricultural).

The ordinance contains key procedures to be utilized in LWRP review/approval. These include:

- Review and permit approval of all development within the coastal area.
- Identification of acceptable and unacceptable uses (water-related) and procedures for abandonment or compulsory termination of a non-conforming use/structure.
- Incorporation of floodplain and environmental (SEQR) review procedures as part of the developmental control process.
- Administration procedures and site plan review that provide for minimum data requirements, coordination of engineering/planning reviews of actions and establish review procedures for coastal actions that include the Town Board, Planning Board, Zoning Board of Appeals and an enforcement officer (Building Inspector).
- The various functions will be modified to include coastal consistency and coordination of waterfront plans/projects with development and the entire Newfane administrative process.

f. Town of Newfane Subdivision Regulations (5/25/77)

The Subdivision Ordinance further regulates street, lot, block, drainage, utility and open spaces in accordance with topographic and preserved natural features as reviewed/determined by the Planning Board. The ordinance requires consistency with the zoning code, flood protection (Policy 11, 17), sanitary sewer connections (Policies 5, 8) and protection of natural features (beaches, bluffs, historic/scenic resources, etc.). It also requires full engineering review/inspection and coordination of County and State agencies. These will be utilized to incorporate consistency review with the LWRP and ordinance Policies 1-6, 11, 18, 22, 26, 30 and 37 as part of the subdivision review process exercised by the Planning Board.

**5.1.2 Additional Local Laws and Regulations Adopted and Proposed**

a. Town of Newfane Waterfront Consistency Review Law

It is the intention of the Town of Newfane that the preservation, enhancement and utilization of the natural and man-made resources of the unique Coastal Area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, it is the purpose of this Local Law to achieve such balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife, diminution of open space areas, and public access to the waterfront; impairing of scenic beauty; losses due to flooding, erosion, and sedimentation; or permanent adverse changes to ecological systems.

The purpose of this Local Law is to provide a framework for agencies of the Town of Newfane to consider the policies and purposes contained in the LWRP when reviewing applications for actions or direct agency actions located in the Coastal Area; and to assure such actions are consistent with those policies and purposes. (The complete text of this Law is appended to this document.)

b. Zoning Ordinance

The ordinance is amended to provide preference for water-dependent and water-enhanced uses over non-water related activities and establish consistency between local development regulations and LWRP policies and plans. The amendment (Appendix) includes an LWRP reference in the defined purposes of the ordinance to incorporate the LWRP in development reviews, additions to the special exception section for coastal uses and supplemental regulations for development setbacks along the shoreline consistent with flood/erosion hazard protection. Acceptable coastal uses are concentrated in the Marine Business District (MB) along Eighteen Mile

Creek in Olcott. The MB district provides for marinas, marine sales/services, boat launches, shoreline structures and other water-related facilities. The special permit section (Article VIII) is used to insure priority of these activities over other, non-related uses (all MB are by special permit consideration).

The ordinance provides for the review of all development in the coastal area and triggers LWRP review as part of building permit or site plan consideration and, simultaneously, coastal assessment review (part of Local Law No. 1, 1977 as amended). This addresses Policies 1-6, 11, 12, 17, 18, 20-22, 25, 33, 37 and 44 through site plan review/approval and incorporation of related regulations. The Planning Board is responsible for administering the code and the Zoning Board of Appeals is the final authority of interpretation and relief.

If, and when the Olcott Outer Harbor Project is progressed, the Town will revise the Zoning Ordinance as follows:

c. **Subdivision Regulations**

Amendments to these regulations establish coordination with the LWRP and incorporates coastal resource preservation in subdivision design standards. The standards affect the layout of public services, lots, units and their treatment of coastal resources that must reflect LWRP plans and policies. Specifically, the potential use of these regulations in agricultural lands (Policy 26), along Lake Ontario (Policy 44) indicates the need to insure compliance with the LWRP. The amendment (Appendix) will guarantee that coastal policies will be included in subdivision considerations consistent with the review procedures and Local Law No. 1, 1977 (as amended).

Also, add cluster development within the LWRP area will be implemented. Please refer to cluster Subdivision regulations included in appendix, this section.

d. **Freshwater Wetlands Act (Local Law No. 3, 1976)**

The regulations provide for Town permit authority of development on Eighteen Mile Creek (as designated by NYSDEC). The Act regulates bridges, roads, docks, bulkheads, piers and other structures in and within 100 feet of a wetland (Policy 18, 44). The Town will use this authority to exclude development of marine and shoreline structures and remove (by permit revocation) structures inconsistent with LWRP policies and plans. This is used in conjunction with the zoning amendment for in-water structures to manage marine development in the wetland and relieve pressures on the creek. This provides for limited marine use concentrated at the north end of

Eighteen Mile Creek (as acceptable to NYSDEC) and Town commitments to protect the rest of the wetland (by permit revocation).

- e. Revisions to Proposed Rezoning (This revision is contingent on implementation of the outer harbor breakwaters project.)

Based on comments received during the DGEIS review and comment period this section has been revised as follows.

The implementation of the proposed comprehensive master plan will require revision of the current zoning regulations/ordinance. The intent of the proposed zoning revisions is to enable the town/hamlet to achieve the community development objectives summarized in Section 2.2 of this document.

In addition to revisions directly related to the implementation of the master plan, an analysis of the current zoning indicates that additional updates and revisions would be beneficial to the future growth and development of the hamlet.

The following areas have zoning changes recommended to implement the Olcott Hamlet Master Plan.

- Residential Zones
- Highway Commercial
- General Commercial (New District)
- Marine Business
- Village Commercial
- Waterfront Commercial (New District)
- Overlay Business (New District)
- Transitional Parking Overlay (New Zone)

## **5.2 OTHER PUBLIC AND PRIVATE ACTIONS NECESSARY TO IMPLEMENT THE LWRP**

### **5.2.1 Local Governmental Actions**

#### **a. East Federal Pier Access**

Public access to the East Federal Pier for scenic and fishing activities has been restored. This action is crucial to improving the recreation attractiveness of Olcott east of the harbor and complementing planned projects.

#### **b. Expansion of Parking Facilities in Olcott**

The Town will act to provide permanent parking on both sides of the harbor to reduce on-street congestion and enhance water-dependent facilities. Funds were used to create a 26 car parking lot at Franklin and East Main Streets to encourage activities in East Olcott. The Town has also created a permanent parking area (56± cars) in the Beach/Van Buren Street area.

#### **c. Improve Water Service in Olcott Hamlet**

Most of the local water mains in the Olcott waterfront are four (4) inch that will be inadequate for the commercial and water-dependent development planned in the hamlet. The Town is initiating a long-term improvement program for the Water District that includes replacement of the old four inch mains with six inch distribution lines and eight inch truck mains to provide the waterfront with adequate water services for future needs.

#### **d. Local Fishing Derby**

The establishment of a local fishing tournament has attracted fishermen and promoted local economic activity in Olcott. Experience of the local business community with professional and county derbies indicate that the local retail impact and registration revenues will far exceed costs. This will enhance coastal efforts and provide annual revenues designated to finance public improvements in the waterfront. The derby is jointly sponsored by the Town, county and local business and coordinated with other annual events to promote the coastal area.

#### **e. Great Lakes Science and Sportfishery Center**

Lake Ontario has become one of the premier sport fisheries in the Great Lakes and is an unparalleled asset to the communities that line its coast. In order to capitalize on this opportunity and the multi-faceted nature of the coastal program, it is proposed that Olcott be established as the locale for a Great Lakes Science and Sportfishing Center to develop a facility for unifying public and private resources to enhance the lake and its use. Its focus

includes research, education, cultural and recreation concepts to promote tourism, fish and fishing. The facility would utilize either single or multiple sites to present the lake environment, its history, biological cycles, habitat characteristics, water quality, species and their habits through exhibits, seminars and demonstrations. Potential participants include the Town, Sea Grants, SUNY faculty/students, NYSDEC, major industrial water users (eg: New York State Electric and Gas) and the local/regional business community (marine operators and services, tourism, etc.).

f. Hopkins Creek Fishing Access

The Town will negotiate with adjacent property owners along Hopkins Creek and to insure opening up the creek bank for seasonal fishing and help police/maintain the area.

g. Adoption of Local Ordinance Amendments

The approval of Town Zoning/SEQRA amendments will provide the local review capabilities and enforcement procedures to implement the LWRP. These will establish the means for determining LWRP consistency of coastal projects, identifying compliance with state coastal policies and administering the LWRP.

### 5.2.2 Private Actions

a. Palmer Airport Improvement

This airport provides local charter and light plane service to the coastal area for tournament fishermen and tourists. To improve its transport capabilities, runway and lighting facilities have been upgraded and radio and radar equipment added.

b. Rehabilitation of Marine Structures

Many of the private marine facilities in Olcott Harbor are in need of renovation to expand docking efficiency, enhance harbor navigation and improve the aesthetics of the harbor. This effort will promote the visual quality of the area and enhance its economic attractiveness by increasing harbor capacity. Private initiative through the public effort of awareness in the LWRP and building code enforcement are required to achieve this action.

c. Bed and Breakfast

Private conversion of the old Olcott Hotel will create a thirty-six room bed and breakfast facility and restaurant on East Main Street. This action will restore a locally significant structure, create needed tourist services in the



coastal area and establish new economic improvements in the hamlet. Town approval of this action under the zoning ordinance is a logical extension of LWRP revitalization efforts.

d. **Olcott Shuttle Service**

The Hamlet of Olcott has been unavoidably severed by the relocation of Route 18 leaving two developed areas somewhat isolated to pedestrian traffic. The provision of local shuttle services can alleviate this problem and enhance exposure of local commerce and services to area visitors. Boaters would have easy access to area businesses, the airport, accommodations, restaurants, etc. Tourists/fishermen arriving by car can receive easy access to docks and area facilities without driving and adding to hamlet congestion. This action would be undertaken by area businessmen during tournaments and weekends in the fishing season when the need is greatest. Additional sponsorship by tourism groups may be required to initiate the service.

e. **Keg Creek Access**

Seasonal fishing access along the Keg Creek is currently provided by the adjacent property owner without fee or charge. This practice is adequate for annual fishing demand and is encouraged to continue under this program.

f. **Hopkins Creek Fishing Reef**

Promoters of the Lowrance Fishing Tournament in Olcott have donated part of the annual derby proceeds for the establishment of a fishing reef or other area facilities off the mouth of Hopkins Creek. This action has enhanced fish habitat resources in the coastal area and is consistent with LWRP objectives and policies.

g. **Burt Dam Renovation**

Private entrepreneurs in the area have restored the Burt Dam for hydroelectric power generation.

### **5.3 MANAGEMENT STRUCTURE NECESSARY TO IMPLEMENT THE LWRP**

Management of the LWRP involves the administration of coastal review for consistency with LWRP policies and plans and coordination of the development review process. Administrative procedures capitalize on the local environmental review law (SEQRA) to determine LWRP compliance. The Zoning Ordinance is used to provide a legal tool for development coordination and insure consistency of actions in the coastal area. These statutes represent existing local authority that are enhanced to provide for LWRP implementation.

### **5.3.1 Lead Agency/Designated LWRP Officer**

The agency responsible for overall management of the LWRP and coordination of review procedures will be the Town Board. The Board is currently responsible for zoning decisions and, as such, is the appropriate agency for coastal assessment and LWRP implementation. They will be assisted in this task by the Town Clerk, Planning Commission, Building Inspector and such other personnel as may be required to adequately carry out the LWRP.

The designated LWRP official will be the Town Clerk. This official coordinates Board functions and responsibilities and is a key organizational position within the Town government. Actions in the LWRA will be submitted to the Clerk for scheduling of Board consideration and coordination of review procedures, as appropriate.

### **5.3.2 Summary of Specific Responsibilities for Implementation of the LWRP**

#### **a. Supervisor and Town Board**

As the executive and legislative head of the Town, the supervisor and Town Board are responsible for municipal decision-making, fiscal programming and administrative implementation. The Board carries the legislative authority for execution of Town policy and directives through the staff.

The Town Board will be responsible for coastal determinations and certifications consistent with local SEQRA regulations. The Board will obtain advice from such other town boards, commissions and/or personnel as is deemed appropriate to process coastal actions. The supervisor will coordinate LWRP activities and carry out municipal actions necessary to advance the program.

#### **b. Planning Commission**

The Planning Commission is an advisory body to the Town Board and has approval authority for site plans, subdivisions and special exceptions as delegated by the Board. The Commission may also, upon request, advise the Board on waterfront improvements, public structures and public actions in the coastal area.

The Commission will be responsible for evaluating actions within the LWRA for consistency with LWRA policies/objectives and advise the Town Board within 15 days of referral. All actions that must be accompanied by a Coastal Assessment Form (Type I, Unlisted Actions) will be referred to the Commission and evaluated for completeness and compliance with the LWRP. Recommendations will be reported back to the Board as approval consistent with the LWRP, approval with modifications of use and/or design

(in accordance with the zoning ordinance to minimize effects on coastal policies) or as denial/inconsistent with the LWRP. Such recommendation and/or conditions shall be the basis for determination by the Town Board.

The Town Clerk will be responsible for receipt and requirements of the Coastal Assessment Form (CAF), and the coordination/scheduling of reviews for the evaluation of LWRP consistency. As the designated LWRP Official, the Clerk will make CAF's available, determine which projects will require a CAF based on SEQRA criteria, schedule administrative review with the Planning Board and handle the notification of the NYSDOS/other effected agencies. The Clerk will also issue a Certificate of Consistency with the LWRP as authorized by the Town Board.

d. Building Inspector

The Building Inspector is responsible for the certification of proper use in accordance with the Zoning Ordinance. No Zoning permit shall be issued in the LWRA for an action subject to coastal assessment that does not have a certificate of consistency with the LWRP prior to issuance. The Zoning Officer is charged with enforcement of LWRP uses in accordance with the Ordinance and the Coastal assessment/certification process.

The Building Inspector receives applications for building permits and Certificates of Occupancy. Applications for permits in the LWRA shall be referred to the Town Clerk for consideration of coastal assessment. No permit or certificate shall be issued until an evaluation of LWRP consistency has been made by the LWRP Officer and either waived or reviewed in accordance with coastal assessment procedures (SEQRA). The Building Inspector will also enforce the LWRP by monitoring compliance with approved provisions and withhold issuance of a Certificate of Occupancy or development not in compliance with coastal determinations of the Town Board and/or conditions thereof pursuant to coastal assessment/review.

e. Zoning Board of Appeals

The Zoning Board of Appeals is empowered to grant variances to the Zoning Ordinance and decide appeals from administrative decision including "third party" relief pursuant to local laws and ordinances. In accordance with proposed amendments to local codes, the Board will enforce LWRP provisions and render determinations based on the procedures and intent of coastal policies. The determination of actions in the LWRA brought before the Board will be referred to the Planning Commission for a review and opinion within 15 days of referral consistent with LWRP policies and objectives.

### 5.3.3 Procedures for Management of the LWRP

Management of the Newfane LWRP depends on the coordination of Town operating agencies and the legislative authority of the community for administration and review (Figure 5.1). Regulatory requirements embodied in the State Environment Quality Review Act (6NYCRR, Part 617, SEQRA) and General Municipal Law are utilized as expressed in the town environmental review law (Local Law No. 1, 1977) and the Zoning Ordinance. These procedures capitalize on available town laws and bind town agencies and personnel to insure that public and private actions in the coastal area will be consistent with the LWRP. In addition, the process uses established town governmental functions without creating increased staff or costs.

The LWRP administrative process follows existing environmental and development review procedures. Public and private actions that occur within or will impact the coastal must seek town approval through either the building Inspector (application for a building permit or zoning certification) or the Town Clerk (environmental review or request for legislative authorization/funding). Those actions in the LWRA will require a Coastal Assessment Form (CAF) to be completed and filed with the action. The CAF will be submitted to the Town Clerk for consideration and determination of significance by the Town Board within 15 days of submission. All other reviews/evaluations required will proceed simultaneously. However no final approvals will be made until LWRP consistency and certification, if applicable, is satisfied.

LWRA actions identified as Type II in accordance with Local Law No. 1 (1977) by the Town Board will be certified without further need for processing. The Town Clerk will issue a statement of certification and maintain a public file of such determinations. The applicant will be sent a copy of the certification, if applicable, and the Building Inspector will be authorized to issue a permit (if applicable).

LWRA actions identified as Type I or Unlisted in accordance with Local Law No. 1 (1977) will be reviewed for consistency with LWRP policies, plans and uses. The CAF and any supportive material as may be required will be referred to the Planning Board for evaluation of consistency with the LWRP. The Planning Board may obtain such additional information as may be required to properly assess the action and report findings to the Town Board within 30 days of referral. The Town Board will make a determination of significance based upon the submitted CAF, the recommendations of the Planning Board and consistency of the action with the approved LWRP and other applicable town ordinances.

The determination of the Town Board is predicated on SEQRA as embodied in Local Law No. 1, 1977. Where a determination for a Type I or Unlisted action in the LWRA is considered to have no significant effect on the coastal area and LWRP policies, the Board will so certify in writing, authorize the action (exclusive of other applicable ordinances) and maintain a public record of such determinations. Where a determination is made that an action may have an impact on the coastal area or is

potentially inconsistent with LWRP policies, plans and uses, the Town Board will either:

- Deny certification and document the reason for denial;
- Certify the action based on specified conditions/modifications that will substantially remove LWRP inconsistencies;
- Certify that the action will minimize all adverse effects, advance one or more LWRP policies and result in an overall benefit to the coastal area and its resources; or
- Certify that the action has been subject to and satisfied the requirements of Local Law No. 1, 1977 (SEQRA).

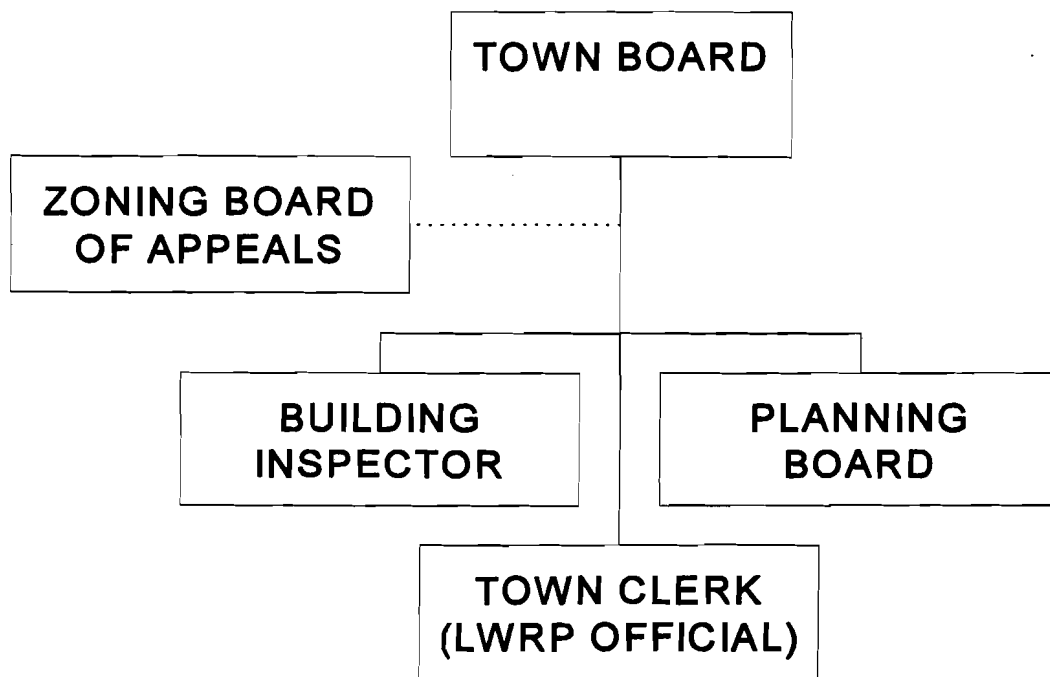
Actions subject to the above certifications will be documented to record Town Board determinations by the Town Clerk. A public record will be maintained and copies periodically forwarded to the New York State Department of State as an involved agency in coastal actions subject to SEQRA review. No approval to fund or proceed with an action in the LWRA will be authorized by the Town without compliance with the above procedures and a proper certification of LWRP consistency.

Federal and state actions in the LWRA will undergo similar review/evaluation for town assessment of local impact on coastal plans and uses. The Town Clerk will be the local contact for notification of Federal and State actions and coordinate local coastal consistency review. For Federal actions, the New York State Department of State (as the agency responsible for determination of consistency with coastal policies in Federal actions) will be notified of local concerns/reviews. For state actions, the appropriate state agency (or designated lead agency) will be notified of local consistency review results by the Town Clerk.

Compliance of LWRP certification conditions and or consistency requirements will be monitored by the Building Inspector as the local enforcement officer. Any problem or differences in implementation will be reported to the Town Clerk for consideration by the Town Board of any punitive action in accordance with provisions of local law.

The Zoning Board of Appeals will provide for enforcement of local action. As a quasi-legal body, it possesses the authority for appeal of administrative decision and offers the forum for "third party" release of municipal actions. The Board is bound under the Zoning Ordinance to act consistent with the LWRP on actions in the coastal area and make interpretations that comply with LWRP plans, as approved. Article 78 of the Civil Practice Laws of New York State provide further legal means to obligate municipal actions and strengthen the protection of coastal policies/objectives.

**FIGURE 8**  
**MANAGEMENT STRUCTURE FOR**  
**REVIEW OF ACTIONS IN THE LWRP**  
**TOWN OF NEWFANE**



**5.4 FINANCIAL RESOURCES NECESSARY TO IMPLEMENT THE LWRP**

The financial resources of the Town are quite limited and must be coordinated and supplemented with outside assistance to promote private initiative and further waterfront investments. For example, the Town will participate in the Town Marina expansion to help meet area dockage/launch demand, attempt to secure easement/access to the West Beach foreshore and acquire land for launch access to the west harbor basin and for private development along Ontario Street. However, these investments will require Federal/State assistance to completed (e.g.: a outer harbor breakwall at the mouth of Olcott Harbor to protect west basin mooring from northerly winds, Town Marina improvements) as the funds

required are beyond Town resources. In addition, key recreation facilities at Krull Park depend on County assistance (as the park owner) and/or state participation to expand tourist authorizations and further encourage private investments in the Olcott area. These outside efforts are critical to compensate for the limited economic opportunities in the area.

Total costs for LWRP activities are estimated at \$33,387,000 excluding design and contingencies (Figure 5.2). Approximately \$2,350,000 in Town resources will be required along with \$23,662,000 in other public funds and \$7,375,000 in private funds.

#### **5.4.1 Proposed Projects**

LWRP projects comprise the majority of program financing. They total \$33,197,000 and focus on revitalization of Olcott Harbor and the adjacent waterfront area. Two key projects concentrate on harbor renovation and expansion of facilities – town Marina improvement and harbor marine renovation. These are designed to increase harbor launching and mooring capability and address local demand and congestion problems. Town investments in these projects total nearly \$250,000 for marina and launch improvements to initiate \$3.3 million in private renovations and marine expansion. The Outer Harbor project represents 60% of financial needs and depends on Federal authorization of breakwalls (50% Federal and 50% state financing). This project cannot proceed without such assistance, and is the only alternative to marine expansion.

Upland revitalization efforts focus on the renovation of Ontario Street and Krull Park. The Ontario Street project requires Town participation in the acquisition of lakefront property, demolition of residential structures and abandonment of Ontario Street (Lockport Street to Franklin Street). This will cost about \$1,000,000 and provide a developable waterfront parcel to attract \$4 million in water-enhanced private development. Town ownership of the north side of Ontario Street will guarantee public control of the foreshore and waterfront access consistent with LWRP policies. The expansion of Krull Park facilities will consolidate area recreation activities and enhance adjacent private development. Principal funding resources are expected from the county as owner/operator of the park and/or the state through the Office of Parks, Recreation and Historic Preservation.

#### **5.4.2 Proposed Actions**

Actions proposed to promote implementation of the LWRP rely on public and private resources and cooperation. The Town will commit \$100,000 in funds to encourage private development in the waterfront and initiate revitalization efforts. Actions involving the Town include expansion of parking on both sides of the harbor, land acquisition and development of a launch ramp in the West Basin to attract private mooring, and hamlet water line improvements. Federal participation in LWRP actions represent \$10,000,000 for the Outer Harbor breakwall to enable West Basin development (50% USCOE), Federal Pier navigational aids (USCOE) and existing commitments for parking on the east side of the harbor (HUD Small Cities Program). State involvement is anticipated for the Hopkins Creek fishing access (NYSDEC).

easement program), the Outer Harbor breakwall (50%), the Great Lakes Science and Sportfishery Center and West Beach access assistance.

Private actions encouraged by the public investments are a significant part of the program. They include crucial services and facilities to expand and revitalize Olcott development consistent with the LWRP. The provision of a shuttle service throughout the hamlet will re-integrate the area and expose water-dependent and support services to tourists and fishermen. The rehabilitation of marine structures will be undertaken by marina owners and expand slips as well as improve the scenic quality of the harbor. Private revenues were committed to the Hopkins Creek Fish Reef. Sponsors of the Lowrance Fishing Tournament pledged \$5,000 per year from proceeds to create the reef and promote other future fishing projects. This will be an annual contribution coordinated with the Town for local LWRP activities.

The total funding requirements of LWRP actions is \$190,000. These actions will promote the projects and attract \$7,375,000 in private investment in the Olcott harbor area for waterfront revitalization.

#### **5.4.3 Management of the LWRP**

The Town of Newfane will assume primary responsibility for planning, administration and implementation of the LWRP. Since these functions rely on existing personnel and town regulatory procedures, no additional resources are anticipated to carry out the program. Current staffing and advisory boards will facilitate LWRP evaluations/certification without the need for increases or changes in composition.

One area of project/action implementation unaccounted for is the preparatory design and engineering costs associated with proper project administration. While private efforts will absorb these costs as part of project activity, public actions (particularly town projects) may be protracted if only local resources are depended upon. Town funds are inadequate to accommodate these costs within the anticipated time schedule. As a result, dollars will be required for design/engineering of town-sponsored actions and projects. These include the Ontario Street renovation efforts, parking lots, Town Marina expansion and Krull Park designs to expedite this project with Niagara County. These costs are estimated at \$584,273.



## 5.0 APPENDIX

A local law to implement and provide procedures for Consistency Review for the Town of Newfane Local Waterfront Revitalization Program.

Be it enacted by the Town Board of the Town of Newfane, as follows:

### I. TITLE

This local law will be known as the Town of Newfane Waterfront Consistency Review Law.

### II. AUTHORITY AND PURPOSE

- A. This Local Law is adopted under the authority of Section 10 of the Municipal Home Rule Law; the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive law); Article IX, Section 1 of the New York State Constitution; and Article 5-G of the General Municipal Law of the State of New York and expressly supersedes any inconsistent general or local law regarding consistency review, zoning and waterways.
- B. The purpose of this Local Law is to provide a framework for agencies of the Town of Newfane to consider the policies and purposes contained in the Local Waterfront Revitalization Program of the Town of Newfane when reviewing applications for actions or direct agency actions located in the Coastal Areas; and to assure that such actions are consistent with those policies and purposes.
- C. It is the intention of the Town of Newfane that the preservation, enhancement and utilization of the natural and man-made resources of the unique Coastal Area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, it is the purpose of this Local Law to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife, diminution of open space areas and public access to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
- D. The substantive provisions of this local law shall only apply while there is in existence a LWRP which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

### III. APPLICABILITY

All boards, departments, offices, other bodies of officers of the Town of Newfane must comply with this local law, to the extent applicable, prior to carrying out, approving, or funding any action other than Type II, Exempt, or Excluded actions as those terms are

defined in Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, except as provided in Section V.F. of this local law.

#### IV. DEFINITIONS

- A. "Actions" shall mean either Type I or unlisted actions as defined in SEQR regulations (6NYCRR Part 617) which are undertaken by an agency and which include:
1. projects or physical activities, such as construction for other activities, that may affect the environment by changing the use, appearance or condition of any natural resource or structure, which:
    - (a) are directly undertaken by an agency, or
    - (b) involve funding by an agency, or
    - (c) require one or more permits or approvals from an agency or agencies;
  2. agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions:
  3. adoption of agency rules, regulations, and procedures including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
  4. any combination of the above.
- B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Newfane.
- C. "Applicant" means any person making an application or other request to an agency to provide funding or to grant approval or permit in connection with a proposed action.
- D. "Coastal Area" means that portion of the New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the Town of Newfane, as show on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Newfane LWRP.
- E. "Coastal Assessment Form" (CAF) means the form, contained in Appendix A of this local law, used by an agency to assist it in determining the consistency of an action with the LWRP.
- F. "Consistent" means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.
- G. "Direct Actions" means actions planned and proposed for implementation by a Town agency, such as, but not limited to capital projects, promulgation of rules,

regulations, laws, codes or ordinances and policy making which commits an agency or the Town to a course of action.

- H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Town of Newfane, as approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Town Clerk.

## V. REVIEW OF ACTIONS

- A. Whenever an action is proposed in the Town's Coastal Area affecting any land or water use or any natural resource of such Coastal Area, the Planning Board or the Zoning Board of Appeals (ZBA), as appropriate, prior to an agency or such Board approving, funding or undertaking the action, shall make a determination that is consistent with the LWRP policy standards and conditions set forth in Section G herein. No action in the Coastal Area shall be approved, funded or undertaken without a determination that it is consistent.
- B. Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the Coastal Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review. All agencies of the Town, except the ZBA, shall refer a copy of the CAF to the Planning Board within ten days of receipt of the completed CAF.
- C. After referral from an agency, the Planning Board shall consider whether the proposed action is consistent with the Newfane LWRP policy standards and conditions set forth in Paragraph G below. The Planning Board shall require the agency or applicant to submit all completed forms, applications, CAFs and any other information necessary to its consistency review. During its deliberations, the Planning Board may solicit advisory opinions from other boards and departments in the Town. If an opinion is requested, a response shall be made by the entity receiving the request within fifteen days of receipt. If no response is received, the Planning Board shall proceed without such advisory opinions.
- D. The Planning Board shall make a written determination of consistency and forward it to the agency within thirty days following referral of all completed forms, applications, CAFs and any other information necessary for the consistency determination from the agency or the applicant, unless extended by mutual agreement of the Planning Board and the applicant, or in the case of a direct action, the agency. The determination shall indicate in writing whether the action is consistent or inconsistent with all of the applicable LWRP policy standards and conditions. The Planning Board may, along with its determination, impose conditions on the proposed action which would make it consistent with the LWRP policy standards and conditions or would greater advance them.

- E. The ZBA shall make its own consistency determinations as described above, and shall be governed by the time frames and the permissive referral of an action to other agencies and departments in the Town for advisory opinions, and shall have the authority to impose conditions on the action to ensure it is conducted in accordance with this local law. Under no circumstances, however, shall the Planning Board have the authority to overrule the decision of the ZBA on any matter within the ZBA's statutory jurisdiction to grant variances or decide appeals.
- F. Consistency determinations by the Planning Board or ZBA shall be made based upon the CAF, the Environmental Assessment Form (EAF), any advisory opinions received, and any other information considered relevant.

Where it is determined that an action may have a significant affect on the environment, the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) each must contain a discussion of the effects of the action on, and its consistency with, the LWRP policy standards and conditions identified as applicable.

Where it is determined that the action will not have a significant effect upon the environment, the Planning Board or the ZBA shall nonetheless make a written determination of consistency.

After receipt of the consistency determination of the Planning Board, the agency shall have the authority to impose conditions specified by the Planning Board on an action to ensure it is conducted in accordance with this local law.

- G. Actions to be undertaken within the Coastal Area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Town of Newfane LWRP. In the case of direct actions by agencies, the Planning Board or the ZBA shall also consult with Section IV of the LWRP in making its consistency determination. The action shall be consistent with the policy to:
1. Revitalize deteriorated and underutilized waterfront areas through a mixture of uses (Policies 1, 1A, 1B, 1C and 1D);
  2. Retain and preserve existing and promote new water dependent uses (Policies 2, 2A, 2B, 2C and 2D);
  3. Ensure that development occurs where adequate public infrastructure is available (Policies 5, 5A, and 5B);
  4. Streamline development permit procedures (Policy 6);
  5. Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 7B, 7C, 8, 8A and 8B);

6. Maintain and expand recreational fishing opportunities (Policies 9, 9A and 9b);
7. Minimize flooding and erosion hazards through protection of natural features, non-structural means, carefully selected long term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 15, 16 and 17);
8. Safeguard economic, social and environmental interests in the coastal area in which major actions are undertaken (Policy 18);
9. Maintain and improve public access to the shoreline and other water related recreational facilities while protecting the environment (Policies 1, 1A, 2, 2A, 2B, 9, 9A, 19, 19A, 19B, 19C, 19D, 19E, 20, 20A, 20B, 20C, 21, 21A and 22);
10. Protect and restore historic and archeological resources (Policies 23 and 23A);
11. Protect and upgrade local scenic resources (Policy 25);
12. Protect and conserve agricultural lands (Policy 26);
13. Site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront location (Policies 27 and 27A).
14. prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28);
15. Protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 32, 33, 34, 35, 35A, 35B, 36, 37, 37A and 38);
16. Perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15, 35, 35A and 35B);
17. handle and dispose hazardous wastes and effluent in a manner which will not adversely affect the environment (Policy 39); and
18. Preserve and protect freshwater wetlands (Policies 44 and 44A).

H. If the Planning Board or the ZBA determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the Planning Board or ZBA makes a written finding with respect to the proposed action that:

1. no reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
2. the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
3. the action will advance one or more of the other LWRP policy standards and conditions; and
4. the action will result in a overriding Town, regional or statewide public benefit. Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

- I. The Planning Board or ZBA shall maintain a file for each action which is the subject of a consistency determination, and shall make these files available for inspection upon request under the Freedom of Information Law.

## VI. ENFORCEMENT

The Town Building Inspector and/or Code Enforcement Officer shall be responsible for enforcing this local law. No work or activity on a project in the Coastal Area that is subject to review under this law shall be commenced or undertaken until the Building Inspector and/or Code Enforcement officer has been presented with a written determination from the Planning Board or ZBA that the action is consistent with the LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this local law or any conditions imposed thereunder, the Building Inspector and/or Code Enforcement Officer shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

## VII. VIOLATIONS

- A. Any person who violates any of the provisions of, or who fails to comply with any condition imposed by, this local law shall have committed a violation, punishable by a fine not exceeding two hundred fifty dollars (\$250.00) for a conviction of a first offense and punishable by a fine not exceeding two hundred fifty dollars (\$250.00) for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
- B. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law for violations which occur within their jurisdiction. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

VIII. SEVERABILITY

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

IX. EFFECTIVE DATE

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

For the:

Town of Newfane Subdivision Regulations

**Article I ..... Declaration of policy**

.... and shall be properly related to the proposals shown in the Master Plan, if such exists, and shall be consistent with the policies and proposals of the Local Waterfront Revitalization Program, if such exists, and shall be of such width ....

**Article IV ..... General Requirements and Design Standards**

**Section 7. Parks, Open Space and Natural Features**

**F. Preservation of Natural Features --**

The Planning Board shall, whenever possible, establish the preservation of all natural features and coastal resources which add value to the community, such as large trees or groves, water courses and falls, beaches, fish and wildlife habitats, wetlands, historic spots, vistas and similar irreplaceable assets.

**Section 8.** As provided in section 278 of the Town Law, the Town Board authorized the Planning Board to approve a cluster development, as defined in the Town Law, simultaneously with the approval of a subdivision plat or plats. Approval of a cluster development shall be subject to the conditions specified in the Town Law and the following:

- A. The Planning Board may require a subdivision to be platted and submitted by the developer as a cluster subdivision whenever, in the Planning Board's judgment, this procedure would benefit the Town. The purposes of the cluster development shall be to allow the subdivision to be placed on the land in a more flexible manner in order to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural, cultural, agricultural, forestry, historic or scenic qualities of structures and open lands, and to implement the Town of Newfane Local Waterfront Revitalization Program.
- B. Cluster developments may be required on lands in the following zoning districts in the towns: areas within the LWRA where applicable conditions exist to support cluster development ig: available water and sewer.

A cluster development shall result in a permitted number of building lots of dwelling units in structures of any type which in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were



subdivided into lots conforming to the minimum lot size and density requirements of the zoning applicable in the districts in which the land is located and conforming to all other applicable requirements. Where the platted land falls within two or more zoning districts, the Planning Board may approve a cluster development representing the cumulative density derived from adding all units allowed in such districts, and may provide that any construction take place in all or any area of one or more of such zoning districts. The Planning Board is not, however, authorized to change the uses permitted by the zoning districts in which the land is located.

- C. The cluster development plat may include areas within which structures may be located, the height and spacing of buildings, open spaces, park lands, landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the Planning Board. Dwelling units in residential plats may be, at the discretion of the Planning Board, in detached, semi-detached, attached or multi-story structures. The Planning Board may, as a condition of plat approval, establish conditions of the ownership, use and maintenance of any lands shown on the plat for park, recreation, open space or any other purpose directly related to the plat.
- D. Development, submission, review, approval and filing of the proposed cluster development plat shall be in accordance with the procedures of these regulation, as modified by the provisions of the Town Law.

To the:

Town of Newfane Zoning Ordinance

**Article I ..... Title and Short Title**

1 -3. Declaration of Purpose

1-3-11 To protect and enhance the coastal resources of the waterfront in accordance with the adopted Local Waterfront Revitalization Program and consistent with its policies, maps and uses.

**Article VI ..... Business District Regulations**

6-2 Table of Regulations

All uses in the Marine Business District (MB) are to be Special Exception Use (SE) in the table.

**Article VIII ..... Special Exception Uses**

8-3 General Standards

(b) Uses and proposals in the coastal area will be consistent with the adopted Local Waterfront Revitalization Program and promote the location of facilities along the waterfront that depend on proximity, access and/or utilization of water resources over other less-dependent uses.

(1) Water-dependent uses afforded principal consideration in the coastal area include, but are not limited to marinas/marine facilities (dock, launches, service, rental/charter and accessories), fishing equipment, public recreation and flood/erosion structures.

(2) Water-enhanced uses and services that support waterfront uses including tourist facilities, restaurants, complementary retail, parking, temporary/seasonal marine storage and other similar uses as determined by the Planning Board to be consistent with coastal objectives.

[Re-enumerate (b) through (1)]

**Article IX ..... Supplemental Use and Dimensional Regulations**

**9-10 Waterfront and Stream Setbacks**

Along the shore of Lake Ontario, all buildings and structures shall be setback at least 100 feet from the top of high bank or as regulated by Article 34 of the State Environmental Conservation Law, Sections 3-0301 and 34-0108, whichever is more stringent.

## **NEWFANE ZONING AMENDMENT – EIGHTEEN MILE CREEK**

1-3-4 To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate.

2-2-66 Structure Land - Anything constructed, erected, or attached to or on or under the ground including any shoreline or underwater ground, whether or not the same extends into the water or upon another structure or building which itself is erected, constructed, or attached to the ground including underwater ground.

**FIGURE 9: CAPITAL SCHEDULE AND RESOURCES, TOWN OF NEWFANE  
LWRP**

<b>LWRP PROJECTS:</b>	<b>IMPLEMENTATION SCHEDULE</b>	<b>ESTIMATED COST</b>	<b>FUNDING RESOURCES</b>
1. Town Marina Expansion EPF	1998	\$ 250,000	TN/State
2. Ontario Street Renovation	2000	5,000,000	TN/Private
3. Outer Harbor Development	1998	20,000,000	Fed/State/Local
4. Krull Park Improvements			
Phase I	2000	80,000	County
Phase II	2002	2,067,000	County
Phase III	2004	2,500,000	County/State
Golf Course	2002	3,300,000	Private
<b>Subtotal</b>		<u>\$33,197,000</u>	
<b>LWRP ACTIONS:</b>			
1. Olcott Water Service Improvements	1996-2001	\$100,000	TN
2. Great Lakes Science and Sports Fishery Center	2001-2005		TN/State
3. Hopkins Creek Fishing Access	1999	15,000	State
4. Local Ordinance Amendments	1995		Town
5. Palmer Airport Improvements	1986-1997		Private
6. Rehab. Marine Structures	1993-1997	75,000	Private
7. Bed and Breakfast	1999		Private
8. Olcott Shuttle Service	1996		Private
9. Keg Creek Access	1995		Private
<b>Subtotal</b>		<u>\$190,000</u>	
<b>LWRP MANAGEMENT:</b>			
1. Planning Coordination	1995-1999		Town
2. LWRP Administration	1995-2006		Town
3. Enforcement/Monitoring	1995-2006		Town
<b>Total</b>		<u>\$33,387,000</u>	
(25% design/contingencies)		8,346,750	
<b>GRAND TOTAL</b>		<u><b>\$41,733,750</b></u>	

**NEW YORK STATE DEPARTMENT OF STATE  
COASTAL MANAGEMENT PROGRAM**

**Guidelines for Notification and Review of State Agency Actions  
Where Local Waterfront Revitalization Programs are in Effect**

**I. PURPOSES OF GUIDELINES**

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

**II. DEFINITIONS**

- A. Action means:
  - 1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
  - 2. Occurring within the boundaries of an approved LWRP; and
  - 3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.
- B. Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of an

approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:

1. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
  2. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and
  3. That will result in an overriding regional or statewide public benefit.
- C. Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man-made resources, proposed land uses and specific projects that are essential to program implementation.

### **III. NOTIFICATION PROCEDURE**

- A. When a state agency is considering an action as described in II above, the state agency shall notify the affected local government.
- B. Notification of a proposed action by a state agency:
1. Shall fully describe the nature and location of the action;
  2. Shall be accomplished by use of either the State Clearinghouse, other existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and local government;
  3. Should be provided to the local official identified in the LWRP of the situs local government as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. (The timely filing of a copy of a completed Coastal Assessment Form with the local LWRP official should be considered adequate notification of a proposed action.)
- C. If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the chief executive officer can serve as the state agency's notification to the situs local government.

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

- A. Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should promptly provide the situs local government with whatever additional information is available which will assist the situs local government to evaluate the proposed action.
- B. If the situs local government cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
- C. If the situs local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.
- D. If the situs local government notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in V. below shall apply. The local government 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 local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

#### **V. RESOLUTION OF CONFLICTS**

- A. The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP:
  - 1. Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government 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 local government.



2. If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
3. If the consultation between the situs local government 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 situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
4. Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.
5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.
6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

**PROCEDURAL GUIDELINES FOR COORDINATING  
NYS DEPARTMENT OF STATE (DOS) & LWRP  
CONSISTENCY REVIEW OF FEDERAL AGENCY ACTIONS**

**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 program coordinator (of an approved LWRP) and other interested parties.
2. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.
3. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with local coastal policies.
4. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality 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 local program coordinator.

**PERMIT AND LICENSE ACTIONS**

1. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the program coordinator and will identify the Department's principal reviewer for the proposed action.
2. Within thirty (30) days of receiving such information, the program coordinator will contact the principal reviewer for DOS to discuss: (a) 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 DOS and the program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the program coordinator upon receipt.

4. Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with local coastal policies.
5. After the notification, the program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to 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 municipality has "no opinion" on the consistency of the proposed action with local coastal policies.
6. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant.
7. A copy of DOS' "concurrence" or "objective" letter to the applicant will be forwarded to the program coordinator.

#### **FINANCIAL ASSISTANCE ACTIONS**

1. Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a copy of the application documentation to the program coordinator. A copy of this letter will be forwarded to the coordinator and will serve as notification that the proposed action may be subject to review.
2. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.
3. The review period will conclude thirty (30) days after the date on DOS' letter of acknowledgement or the receipt of requested additional information, whichever is later. The review period may be extended for major financial assistance actions.
4. The program coordinator must submit the municipality's comments and recommendations on the proposed action to DOS within twenty days (or other time agreed to by DOS and the program coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed financial assistance action with local coastal policies.

5. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency decision.
  
6. A copy of DOS' consistency decision letter to the applicant will be forwarded to the program coordinator.