

## SECTION V: TECHNIQUES FOR IMPLEMENTATION OF THE PROGRAM

### A. Local Laws and Regulations Necessary to Implement the LWRP

#### 1. Local Laws and Regulations

##### a. Zoning Ordinance

The Zoning Ordinance, Chapter 54 of the Town Code, regulates how land is to be used, at what intensity, and under what conditions.

Most of the Smithtown area within the LWRP boundary (as revised) is in the Town's most restrictive (e.g. one acre density) zoning district comprising those areas in Fort Salonga, North Smithtown, Kings Park Psychiatric Center and portions of Caleb Smith State Park. Higher density residential districts are located throughout the San Remo and Upper Dock Road areas. Small sections of the coastal area are zoned for commercial use and generally located in the Town's central business district area.

The Zoning Ordinance, including amendments outlined later in this section, implements those policies (1, 2, 5, 9, 10, 21, and 22) dealing with encouraging water-dependent, water-related, and water-enhanced uses, and those dealing with revitalization of unproductive, inappropriate or deteriorated use.

##### b. Coastal Floodplain Zoning and Management Regulations

Coastal floodplain regulations are incorporated in section 54-5.1, 10L and 14E of the Zoning Ordinance. These regulations regulate development within flood hazard areas defined on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency.

These regulations implement those policies of the LWRP that address protection of wetlands, as well as the various policies concerned with protection of waterfront recreation. This ordinance implements and enforces the Waterfront Revitalization Program by outlining methods to utilize in assuring that "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 ..." (Policy 11) and recommending that non-structural means to minimize damage to property from flooding include "the preservation of coastal land forms by restricting access to highly sensitive areas ..." (Policy 17).

##### c. Environmental Quality Review Local Law

The Environmental Quality Review Law, Chapter 15A of the Town Code, implements the State Environmental Quality Review Act.

It establishes procedures and thresholds for assuring full review of environmental impacts of all actions, improvements and development. As amended, it also implements the consistency provisions of the LWRP.

This ordinance implements and enforces many policies described in the Waterfront Revitalization Plan, most particularly: protection of fish and wildlife habitats; protection of fish and wildlife from introduction of hazardous wastes; flood and erosion hazards; protection of historic sites; scenic quality; and water and air resources as well as protecting and preserving tidal and freshwater wetlands. (Policies 7, 8, 11-17, 23-25, 31-39, and 44.)

d. Subdivision Regulations

Subdivision Regulations, Chapter 36 of the Town Code, specify how vacant land can be divided into building lots. The regulations include procedures for submitting plans, and policies regarding street layout, dedication of land for public purposes such as parks, water supply and distribution, drainage, regrading, preservation of natural features, etc. Subdivision Regulations are also significant because they are referred to in the Site Plan Review section of the Zoning Ordinance, and therefore regulate other types of development (e.g., commercial, industrial, institutional, multi-family).

Subdivision Regulations are important in implementing several policies of the LWRP including appropriate location of development with regard to public services and facilities; expediting permit procedures; activities undertaken in coastal erosion and flood hazard areas; controlling stormwater run-off; minimizing non-point discharge into coastal waters and protection of wetlands. (Policies 5, 6, 11, 12, 14, 17, 33, and 44.)

e. Historic Districts Local Law

This local law establishes a procedure for the conservation, protection, rehabilitation and perpetuation of places, sites, and structures of historic, architectural, or archeological significance. It establishes an Historical Advisory Board which advises the Town Board on matters relating to the preservation of the historical, architectural and cultural heritage, as well as an establishment and maintenance of Historic Land Use districts, which include specifically identified sites, properties, buildings or landmarks of special historical, cultural, or architectural interest which together form distinct geographical areas within the Town.

The law is particularly important in implementing Policy 23 which addresses the importance of historic and architectural preservation within the coastal zone.

f. Freshwater Wetlands Ordinance

Chapter 20 of the Town Code, Freshwater Wetlands, incorporates a series of procedures providing for the protection, preservation, and conservation of the freshwater wetlands within the Town. The ordinance regulates activities in freshwater wetlands and adjacent areas, in addition to establishing procedures and standards for the processing of permit applications.

The ordinance implements and enforces the Waterfront Revitalization Program and is especially relevant to Policy 44 in regard to protecting and preserving freshwater wetlands. The protection of freshwater and tidal wetlands is regulated by the New York State Department of Environmental Conservation pursuant to Articles 24 and 25 of the NYSECL.

g. Marine Law

Chapter 25B, Marine Law, is a local law regulating dredging operations, removal operations, dumping and filling operations and structures in the watercourses and wetlands of the Town of Smitncown. It also establishes permitting procedures.

The law implements and enforces the Waterfront Revitalization Program by: expediting permitting procedures (6); and regulating removal and/or deposition of material that may adversely affect watercourses and wetlands of the Town (7, 15, and 44).

h. Taking Clams and Shellfish

Chapter 38 of the Town Code, Taking of Clams and Shellfish, regulates the amount of clams and shellfish that can be taken from the Town's coastal waters, provides permitting procedures, and indicates prohibited taking areas.

This ordinance enforces and implements the LWRP particularly in regard to Policies 7, 9 and 10, which address fish and wildlife resources.

i. Tree Preservation and Land Clearing

This local law, Chapter 44A of the Town Code regulates the destruction and removal of trees to secure various benefits, such as stabilization of soil, prevention of soil erosion and flooding, provision of aesthetic quality, noise barriers and natural habitats for wildlife, and maintenance of ecological systems. The ordinance also aids in erosion prevention by providing procedures which permit the removal, destruction, or alteration of trees.

This ordinance enforces and implements the Waterfront Revitalization Program by utilizing non-structural measures to minimize damage to natural resources (Policy 17).

j. Joint Waterways Ordinance

Chapter 52 of the Town Code regulates boating speeds, operation and safety, and prohibits the molestation of water-fowl in all Town waters. It also prohibits the dumping of oil, refuse, sewage and waste in Town Waters. Regulations allow the Town and its Villages to jointly enforce the Ordinance.

k. Boat Basin and Mooring Areas

Chapter 25 of the Town Code, Boat Basin and Mooring Areas, designates mooring spaces and permitting procedures, as well as berthing requirements for boats. The ordinance prohibits the flushing of marine toilets or dumping of oil refuse, sewage, or garbage into or along all Town waters.

The sanitary requirements of this ordinance (Section 25-22) enforce and implement the LWRP in regard to Policy 34 which addresses the limiting of waste discharges from vessels into coastal waters.

l. Off-Road Vehicles

Chapter 5A of the Town Code limits the use of all off-road vehicles on roads, streets, public lands, beaches, or on private property, unless the operator has permission from the property owner. This supports Policy 21 which gives priority to water-dependent and water-related recreation over water-enhanced uses.

2. Local Laws and Regulations Adopted to Implement the LWRP

a. Zoning Ordinance (Chapter 54)

(1) The ordinance creates special purpose districts. One district is a "community facilities" district which ensures that there is adequate land available for open space, environmental, recreational, and institutional facilities and uses. In order to discourage development for inappropriate uses, the district must have a minimum lot area of 5 acres. The ordinance also prohibits the expansion, intensification or change of use of all non-residential areas except to water dependent uses.

(2) The Zoning Map has been modified to reflect the proposed land uses described in Section IV. See Map 12, which displays areas re-zoned to further implementation of the LWRP.

- a) All wetlands in the waterfront area near Fresh Pond have been re-zoned to R-43 to minimize potential input to the environment.
  - b) Re-zoned all land that was previously subdivided into lots larger than 1 acre to R-43.
  - c) The area on the east side of 25A in Smithtown has been changed from Neighborhood Business, Shopping Center Business, Office Business and 1/2 acre residential to R-6 (Town House Structure) to reduce impacts on the river.
  - d) The area on the west side of 25A in the same vicinity should be re-zoned to R-43 (1 acre residence) to protect environmentally sensitive land.
  - e) The large properties on Main Street west of Edgewood Avenue have been rezoned from NB and HI to R6. The remaining central business property west of Edgewood Avenue has been rezoned to NB to facilitate the location of water-dependent uses.
- (3) The ordinance has been amended to encourage water-dependent and water-related uses in the waterfront area. This has been done by defining water-dependent and water-related uses and preventing the location of other uses in the NB district.
  - (4) The ordinance requires that flood hazard, wetland areas, and other environmentally sensitive areas be excluded from computations of minimum lot areas density, building coverage and yield..
  - (5) The ordinance requires erosion control and management techniques for all phases of development including construction. The ordinance contains erosion regulations relating to construction, and requires that all structures be set back at least one hundred feet (100') from any wetland, escarpment, natural surface water feature, or significant wildlife habitat, nor shall any structure be enlarged, altered, or replaced within ten (10) feet of any slope higher than five (5) feet having a slope greater than fifteen percent (15%), or any A or V Flood Hazard Zone.
  - (6) The ordinance prohibits all uses from the waterfront area that discharge toxic and hazardous substances.
  - (7) The ordinance requires all new developments to conform with ZAR (Zero Additional Run-off) policy. Under ZAR, developments are required to limit storm water run-off after construction to the same quantity and quality as that which existed prior to construction.

- (8) The ordinance has been amended to eliminate all non-water dependent uses related to the storage and/or transport of petroleum and oil unless such uses are sited outside of the local waterfront area.
- (9) The ordinance requires all uses and development within the waterfront area to be consistent with applicable State and local policies established in the Smithtown LWRP. The regulations establish procedures for an initial review of proposed actions to determine their compatibility with SEQR and the LWRP requirements and referral to appropriate boards, departments, offices, officers and other bodies of the Town regarding the policies.
- (10) The ordinance requires consistency with the LWRP as a prerequisite for all special exception uses.

b. Subdivision Regulations (Chapter 36)

- (1) The Subdivision Regulations encourage the retention of natural vegetation and discourage high maintenance landscaping near the shoreline.
- (2) The regulations require cluster development in the waterfront area.
- (3) The regulations require consistency with the LWRP.

c. Environmental Quality and Coastal Consistency Review Law

A local law has been enacted which implements the provisions of the State Environmental Quality Review Act and the Waterfront Revitalization and Coastal Resources Act, thereby incorporating environmental factors and consideration of coastal resources into planning and decision making processes, and requiring the consistency of action with the LWRP

B. Other Private and Public Actions Necessary to Implement the LWRP

- 1. Local Government Actions Necessary to Implement the LWRP - local government actions may include the work of Town agencies and the Town's implementation of proposed projects within the coastal area.

a. Internal Coordination

In order for the Local Waterfront Advisory Committee to serve as the coordinator of the implementation of the LWRP, a procedure to refer coastal matters to the Committee has been established. (See Section C - Management)

b. State Parkland Acquisition

The Town is encouraging the State to undertake this program which will involve the acquisition of 19 parcels near Caleb Smith State Park. State involvement in this program will help preserve valuable wildlife habitats and provide better access to the waterfront.

c. Suffolk County Parkland Acquisition

The County has agreed to acquire ±40-50 acres near Fresh Pond and Landing Avenue in an effort to protect wetland areas by restricting development. The County is in the process of reviewing real estate appraisals; upon completion of the reviews the acquisition process will encourage the County to begin the acquisition process as expeditiously as possible.

d. Town Acquisition Program

Prior to program implementation, the Town needs to prepare program guidelines and procedures, identify properties for acquisition, order and review appraisals, and secure acquisition financing through bonding.

e. NYS ROUTE 25/25A Reconstruction

The reconstruction of Main Street is currently underway by the NYSDOT. The Town is proposing that the project be expanded to include the adequate treatment of stormwater run-off from the highway. The Town is actively pursuing an agreement from the NYSDOT to construct a sediment basin at the northeast corner of Main Street and the Nissequogue River.

f. San Remo Drainage Improvements

The purpose of this project is to correct sanitation problems and reduce non-point pollution. The Town needs to complete engineering studies and secure project funding through capital bonding prior to project bidding.

g. Kings Park Commons Community Park

This project will result in the development of a 20 acre community park on the southern end of the Kings Park Psychiatric Center property. Acquisition negotiations with the State have begun; the Town will shortly bond for the land acquisition and proceed with site design studies and site development.

h. Landing Avenue Drainage Improvements

The project involves construction of a detention pond to reduce pollution of the river. The Town will need to undertake

engineering design studies, and possibly land acquisition, depending on engineering study results. The Town will use bonding as the financing mechanism.

i. Kings Park Bluff Improvements

Erosion control measures will be designed periodically as needed; if additional boat trailer parking is created, site design work will be completed in compliance with LWRP policies. Both projects will be financed by the Town.

j. Callahan's Beach Improvements

Plans and specifications to repair erosion damage to escarpments have been completed. In addition, the Town will undertake reconstruction of the parking lot. The Town will finance the activities through municipal bonding.

k. Long Beach Marina Improvements

Marina improvements have been completed.

l. New York State Wild, Scenic, and Recreational Rivers System Program

In an effort to protect the State's major rivers, this program establishes a rivers system with three classes of rivers--wild, scenic, and recreational--and establishes basic criteria for the designation and management of rivers and river areas included in the Rivers System. In Smithtown, the program includes an approximate 7.6 mile section of the Nissequogue River from New Mill Pond north to the River's confluence with the Long Island Sound. (The designation also includes the tributaries and ponds connected with the River.) The Nissequogue River has been designated as a scenic and recreational river.

The Town forwarded copies of the Draft and Final LWRP to the NYS DEC to ensure consistency in the implementation of the two State programs.

The Town has the financial capability to manage the implementation of its LWRP through existing local officials, boards and personnel. One additional staff member in the Planning Department will be needed for the administration and coordination of capital projects, management and advocacy activities. The cost of this position will be defrayed from the Town General Fund.

2. Private Actions Necessary to Implement the LWRP

In addition to the actions by various agencies in the public sector, several actions from the private sector are necessary to implement the LWRP. These actions consist of supporting the preservation of the waterfront by adhering to the policies regarding the waterfront.



Private developers of remaining vacant land are required to cluster development to the maximum extent feasible to permit public access to the waterfront and to preserve sensitive environmental characteristics of the area. Generally, cluster development must be located as far from the shoreline as possible so that the open space would be adjacent to or close to the shoreline and other public properties. Financing for private development principally includes resources such as private lending institutions.

C. Management Structure Necessary to Implement the LWRP

1. The lead agency in the Town of Smithtown for the implementation of the LWRP will be the Town Board, and the Town Supervisor is responsible for the implementation of the LWRP.
2. Specific Responsibilities:
  - a. Supervisor - Provision of overall LWRP supervision and management; and intergovernmental coordination on LWRP policy.
  - b. Town Board - Development and evaluation of LWRP policies and contractual requirements; review state and federal actions for consistency with LWRP and advise Secretary of State of its determination; determines the consistency of actions with the LWRP; makes recommendations regarding improvements and amendments to the LWRP; acts on proposed zoning changes; site plan review and approval; and execution of assigned categorical responsibilities (as assigned by the Supervisor) for aspects such as infrastructure capacity, coordination with volunteer groups, recreation, zoning, engineering, etc.
  - c. Planning Board - Makes final determinations on subdivision related matters and ensures that subdivisions are consistent with the LWRP; reviews proposed zone changes and makes recommendations on LWRP policies.
  - d. Board of Zoning Appeals - Reviews all actions in the waterfront area referred to it for consistency with the LWRP; evaluates recommendations from the Planning Director; and prepares resolutions regarding the consistency of proposed projects with the LWRP.
  - e. Conservation Board - Reviews matters referred to it under Town policy pursuant to SEQR; maintains open space index, natural resource inventory; and advises other agencies on environmental matters.
  - f. Local Waterfront Advisory Committee - Reviews matters relating to the LWRP and LWRP consistency; advises other Town agencies and the Town Board on the consistency of projects with the LWRP; makes recommendations to the Town Board regarding improvements and amendments to the LWRP.

- g. Director of Planning - Grants preparation and administration for comprehensive LWRP project funding; administration and coordination of LWRP review; Planning Department acts as staff to Town Board and Local Waterfront Advisory Committee; reviews all applications in waterfront area; screens applications and conducts initial reviews for LWRP consistency.
  - h. Town Engineer - Prepares or reviews design of Town facilities in the waterfront area to be compatible with the LWRP.
  - i. Building Official - Enforces the NYS Uniform Fire Prevention and Building Code; enforces Chapter 54 (Building Zone Ordinance, including Flood Hazard Regulations) of the Town Code.
  - j. Superintendent of Highways - Coordinates maintenance of all public highway and drainage facilities in the waterfront area; is responsible for insuring that all highway programs are consistent with the LWRP.
  - k. Supervisor of Environmental and Waterways - Conducts initial SEQRA reviews; conducts EIS scoping; and advises Conservation Board regarding SEQR.
  - l. Parks Supervisor - Responsible for maintenance of all Town facilities within the local waterfront area; ensures consistency of park maintenance activities with the LWRP.
3. Procedures to Review Local Actions for Consistency with the LWRP

Each proposed action\* directly undertaken, funded, permitted or otherwise approved by a Town agency for a given public or private project, use or activity within the Local Waterfront Revitalization Area (LWRA) of the Town of Smithtown will be reviewed for compliance with the LWRP pursuant to provisions of the appropriate chapters of the Town Code. The following procedures will be integrated into the Town's procedures for compliance with SEQR.

\*An action means:

- 1. A project or physical activity, such as construction or other activities, which changes the use or appearance of any natural resource or structure classified as a Type I or an Unlisted Action pursuant to 6NYCRR Part 617, which is:
  - a) directly undertaken by an agency;
  - b) involves funding by an agency; or
  - c) requires one or more permits or approvals from an agency or agencies.
- 2. Planning activities of an agency that commit the agency to a course of future decisions;
- 3. Agency rule, regulations, procedure and policy making; and
- 4. Combinations of the above.

a. Initial Review of Proposed Actions

- (1) Any Town agency which receives an application for an action involving funding or approval by that agency, or proposes an action to be directly undertaken by that agency shall determine whether the action is a Type I or an Unlisted Action as defined in Chapter 15A of the Town Code.
- (2) If the application or direct action is for a Type I or an Unlisted Action, the Town agency shall determine if the proposed action is located in or directly affects the Town of Smithtown Local Waterfront Revitalization Area (LWRA), as defined in Section I of the LWRP.
- (3) If the action is located within or directly affects the Town of Smithtown LWRA, the Town agency will require a completed CAF, in addition to the EAF required of all actions. The Town agency will send a copy of the application or direct action description, the EAF and the CAF for all actions within the LWRA to the Planning Director. For actions outside the LWRA, the Town agency shall proceed with a determination of environmental significance or insignificance as provided for in Chapter 15A of the Town Code.
- (4) The Planning Director shall determine if the application or direct action description, and any supporting materials submitted constitutes a full statement for the purpose of determining consistency with the LWRP. The Planning Director may request any other material he/she feels is necessary for a complete review.
- (5) If the Planning Director determines that there are other interested agencies, he/she shall forward a copy of the application and all supporting material including the EAF and CAF, to each interested agency.
- (6) The Planning Director will make a preliminary review of the proposed action, and may refer the action to Town Board for a determination on the consistency or inconsistency of the action with the LWRP.
- (7) The Town Board shall review the proposed actions referred to it and make a a determination of consistency or inconsistency to the Town agency within thirty (30) days after receipt of the complete application. The determination shall be that the proposal is consistent, consistent if conditions are met, or inconsistent with the LWRP. If inconsistent, the Town Board shall include modifications which might be made to make the project consistent.

- (8) Regardless of whether the action has been referred to the Town Board, the Town agency shall not issue a permit or fund or undertake an action unless it makes a written finding that the action is consistent with the LWRP to the maximum extent practicable.

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

This local law is adopted pursuant to Article 9, Section 1 of the NYS Constitution, Article 5.G. of the General Municipal Law, and Section 10 of the Municipal Home Rule Law of the State of New York, and expressly supercedes any inconsistent general or local law regarding consistency review, zoning, and waterways (Chapters 15A, 54, or 52 of the Code of the Town of Smithtown). Town Board consistency reviews of proposed actions to be undertaken in the Village of Head--of--the--Harbor and Nissequogue shall be considered to be Type II actions under 16 NYCRR Part 617.

This law shall be effective only when there is in effect within the Town of Smithtown Village of Head-of-the-Harbor and Village of Nissequogue an approved LWRP and an identical intermunicipal agreement to this law.

- A. This procedure shall be used to implement an intermunicipal cooperative agreement for the consistency review of actions by the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue, and is in addition to the LWRP consistency laws of the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue, and applies to the LWRP areas of Stony Brook Harbor, the Nissequogue River from the southernmost municipal and jurisdictional boundaries of the Village of Nissequogue and the Town of Smithtown northward to Smithtown Bay, and Smithtown Bay fifteen hundred feet (1500') offshore from the Nissequogue River's confluence with Smithtown Bay, easterly 1500' from shore to the confluence of Stony Brook Harbor with Smithtown Bay.

An Action is defined as:

1. A project or physical activity, such as construction or other activities, which changes the use or appearance of any natural resource or structure classified as a Type I or an Unlisted Action pursuant to 6NYCRR Part 617, which is:
  - a) directly undertaken by an agency
  - b) involves funding by an agency; or
  - c) requires one or more permits or approvals from an agency or agencies.
2. Planning activities of an agency that commit the agency to a course of future decisions;
3. Agency rule, regulations, procedure and policy making; and
4. Combinations of the above.

B. Notification Procedures

- 1) When a Town of Smithtown agency is considering an action in the areas described above in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay, the Town Planning Director or Chief Building Official, as the case may be, shall notify the Villages of Head-of-the-Harbor and Nissequogue Joint Village Coastal Management Commission; when a Village of Nissequogue agency is considering an action in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay, or a Village of Head-of-the-Harbor agency is considering an action in Stony Brook Harbor, the Joint Village Coastal Management Commission shall notify the Town of Smithtown Planning Director of such action.
- 2) Notification of a proposed action
  - (a) Shall fully describe the nature and location of the action;
  - (b) Shall stipulate the dates and times of hearings, meetings, and review and comment periods;
  - (c) Shall be accomplished by the exchange of Coastal Waterfront Assessment forms, Environmental Assessment Forms, and copies of applications and supporting documentation;
  - (d) Should be provided as early in the planning stages of the action as possible, but in any event at least thirty (30) days prior to the agency's decision on the action.

C. Review Procedures

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

- (d) If the Town Planning Director does not notify Village Officials in writing of the Town's finding within twenty five (25) days of receipt of the notification, the Village may presume that the proposed action does not conflict with the Town's approved LWRP.
- (e) If the Town Planning Director notifies Village officials in writing that the proposed action does conflict with the policies and standards of the Town's approved LWRP, the Village shall not proceed with the action until identified conflicts have been resolved in accordance with the procedures set forth herein.

2) Town Action

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

D. Resolution of Conflicts

- 1) The following procedures shall apply whenever a proposed action conflicts with the policies and standards of the Villages of Head-of-the-Harbor and Nissequogue LWRP, or the Town of Smithtown LWRP.
  - (a) The Chairperson of the Joint Village Coastal Management Commission and the Town Supervisor, within fifteen (15) days of receipt of written notification of a finding that a proposed

action conflicts with an LWRP policy and standard, shall meet to resolve such conflicts with respect to the consistency of the proposed action with the relevant LWRP.

(b) If the Chairperson of the Joint Village Coastal Management Commission, and the Town Supervisor can settle the conflicts by a mutually agreeable decision, and their respective and Town Board approve of such decision by resolution, the originating agency may proceed with the implementation of the action. In passing a resolution approving such decision, the Commission and the Town Board shall have fifteen (15) days from the date of referral of the proposed conflict settlement decision: failure to act within this time frame shall be deemed to an approval of the action.

(c) If the conflicts can not be resolved by a mutually agreeable decision, the matter will be referred to the respective Village Board of Trustees and Town Board for resolution pursuant to the procedures of this subparagraph. The municipality which determines that the proposed action conflicts with its LWRP may prepare and file with the clerk of the municipality proposing the action, a memorandum of protest with regard to the inconsistency of the proposed action. The memorandum of protest must contain a statement indicating the reasons for the inconsistency of the proposed action, and recommend reasonable alternatives or modification to the proposed action. When such memorandum of protest is filed, the municipality proposing the action shall not act contrary to such memorandum of protest except by a vote of a majority plus one of all the Board members thereof. Such action shall be subject to judicial review pursuant to the law providing for review of acts of such municipal agencies, commenced within thirty (30) days of its adoption.

5. Procedures to Review State Actions for Consistency with LWRP

a. Notification Procedure

(1) When a State agency is considering an action, the State agency shall notify the Planning Director.

(2) Notification of a proposed action by a State agency:

(a) Shall fully describe the nature and location of the action;

(b) Shall be accomplished by use of either the State Clearinghouse, other existing State agency notification procedures, or through any alternative procedure agreed upon by the state agency and local government;

(c) Should be provided to the Planning Director as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action.

(3) If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the Town's Supervisor can serve as the State agency's notification to the local government.

b. Local Government Review Procedure

(1) Upon receipt of notification from a State agency, the Planning Director will be responsible for evaluating a proposed action against the policies and purposes of the Town's approved LWRP.

(2) If the Planning Director cannot identify any conflicts between the proposed action and the applicable policies and purposes of the approved LWRP, the Director should inform the State agency in writing of his/her finding. Upon receipt of the finding, the State agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

(3) If the Planning Director does not notify the State agency in writing of the Town's finding within the established review period, the State agency may then presume that the proposed action does not conflict with the policies and purposes of the Town's approved LWRP.

(4) If the Planning Director notifies the State agency in writing that the proposed action does conflict with the policies and/or purposes of the Town's approved LWRP, the State agency shall not proceed with the action for a period of 90 days or until the identified conflicts have been resolved, whichever is earlier. The Planning Director 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 Town shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

c. Resolution of Conflicts

(1) In accordance with procedural guidelines issued by the Department of State, the following procedure shall apply whenever the Town of Smithtown has notified the Secretary of State and State agency that a proposed action conflicts with the policies and purposes of its approved LWRP.



- (a) Upon receipt of notification from the Town that a proposed action conflicts with its approved LWRP, the State agency should contact the Planning Director to discuss the content of the identified conflicts and the means for resolving them. A meeting of State agency and Town 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 Town.
  - (b) If the discussion between the Town and the State agency results in the resolution of the identified conflicts, the State agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600. The Town shall notify the State agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved.
  - (c) If the consultation between the Town 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 Town and the State agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
  - (d) Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the State agency and the Town.
  - (e) 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.
  - (f) The State agency shall not proceed with the proposed action until either the Secretary's findings and recommendations have been received, or 90 days from the date a notification of a conflict was received from the Town, whichever is earlier.
6. Procedures for Department of State and Town of Smithtown Review of Federal Actions for Consistency with the LWRP.

a. Permits and Licenses.

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

b. Direct Actions

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

other descriptive information on the proposed direct action to the Smithtown Planning Director and other interested parties.

- (2) This notification will state the date by which all comments and recommendations must be submitted to DOS and will identify the assigned DOS reviewer.
- (3) The review period will be about twenty-five (25) days. If comments and recommendations are not received by the end of the established review period, DOS will presume that the Town of Smithtown has "no opinion" on the consistency of the proposed direct Federal agency action with Town coastal policies.
- (4) If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the Planning Director, DOS will contact the Director 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 Smithtown Planning Director.

c. Financial Assistance

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

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

D. Financial Resources Necessary to Implement the LWRP

I. Proposed Projects

a. NYS Parkland Acquisition

Estimated Cost	\$1,000,000 vacant property (Town estimate) \$3,000,000 developed property (Town estimate)
Expended	\$0
Balance	\$4,000,000
Primary Funding Source	Environmental Quality Bond through the NYS Office of Parks, Recreation & Historic Preservation
Alternative Funding Source	Suffolk County may be able to acquire some of the parcels adjacent to existing county parkland; the Town of Smithtown may be able to acquire a few of the parcels adjacent to Town parkland.

b. Suffolk County Parkland Acquisition

Estimated Cost	\$ 500,000 (Town estimate)
Expended	\$0
Balance	\$ 500,000

Primary Funding Source	Suffolk County/public bonds
Alternative Funding Source	none

c. Town of Smithtown Acquisition Program

Estimated Cost	\$ 500,000
Expended	\$0
Balance	\$ 500,000
Primary Funding Source	General Obligation Bonds Program Revenue
Alternative Funding Source	none

d. Reconstruction of NYS 25/25A (Main Street)

Estimated Cost	\$1.4 million
Expended	N/A
Balance	N/A
Primary Funding Source	NYSOT
Alternative Funding Source	N/A

e. Riverside Conservation Area Improvements

Estimated Cost	N/A
Expended	N/A
Balance	N/A
Primary Funding Source	N/A
Alternative Funding Source	N/A

f. San Remo Drainage Improvements

Estimated Cost	\$1,000,000
Expended	\$ 950,000
Balance	\$ 50,000
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	N/A

g. Kings Park Commons Community Park

Estimated Cost	\$ 400,000 Acquisition
Expended	\$ 100,000 Development
Expended	\$0
Balance	\$ 300,000
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	Community Development Block Grant funds for development only

h. Kings Park Bluff

Estimated Cost	\$ 215,000 Base \$ 700,000 with optional trailer parking
Expended	\$ 165,000
Balance	\$ 50,000 erosion and landscaping improvements
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	NYS OPR funds for some of the trailer parking; DOS funds for project design

i. Landing Avenue Drainage Improvements

Estimated Cost	\$ 60,000
Expended	\$0
Balance	\$ 60,000
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	DOS funds for project design

j. Callahan's Beach Improvements

Estimated Cost	\$ 20,000
Expended	\$0
Balance	\$ 20,000
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	DOS funds for project design

k. Long Beach Marina Improvements

Estimated Cost	N/A
Expended	N/A
Balance	N/A
Primary Funding Source	General Obligation Bonds
Alternative Funding Source	DOS funds for project design

E. Summary Chart of Actions Implementing Policies

<u>Policy#</u>	<u>Implemented or enforced by:</u>
1,1A,1B,1C	<ul style="list-style-type: none"><li>- Environmental Quality and Coastal Consistency Review Law</li><li>- Zoning Ordinance</li><li>- CD financing of water dependent/water related activities</li><li>- Rezone vacant or undeveloped properties to stabilize existing density and traffic congestion in CBD</li><li>- Financing incentives to restore/revitalize properties located in San Remo, Kings Park, and Smithtown</li></ul>
2	<ul style="list-style-type: none"><li>- Environmental Quality and Coastal Consistency Review Law</li><li>- Amend Zoning Ordinance to encourage water dependent uses in coastal area</li><li>- Coastal Floodplain Zoning and Management Regulations</li><li>- Public and private financing of water dependent/water related activities</li><li>- Favored leasing arrangements given to water dependent uses on Town-owned land</li></ul>
3	- Not Applicable
4	- Not Applicable

- 5,5A,5B
  - Zoning Ordinance
  - Subdivision Regulations
  - Environmental Quality and Coastal Consistency Review Law
  
- 6
  - Environmental Quality and Coastal Consistency Review Law
  - Make all agencies aware of LWRP and consistency review procedures as basis of expediting review
  - Subdivision Regulations
  - Marine Law
  
- 7,7A,7B,7C,7D
  - Environmental Quality and Coastal Consistency Review Law
  - Ordinance Regulating the Taking of Clams and Shellfish
  - Freshwater Wetlands Ordinance
  - Marine Law
  - Town will continue to regulate actions that could negatively impact coastal fish and wildlife habitats and will encourage the protection and preservation of these habitats
  
- 8
  - Environmental Quality and Coastal Consistency Review Law
  - Review of proposals through land use permitting procedures included in zoning ordinance
  - Require state to examine and upgrade Kings Park Psychiatric Center sewage treatment plant
  - Freshwater Wetlands Ordinance
  - Town will prevent possible ground and/or surface water pollution from hazardous wastes or other pollutants caused by utilization of the Kings Park Psychiatric Center ash fill
  - The Town will restrict future development on vacant land in San Remo, Kings Park and Smithtown that may negatively impact fish and wildlife habitats



9,9A

- Upgrade operations and facilities at the Kings Park Psychiatric Center sewage treatment plant to prevent activities that will pollute coastal area
- Use zoning to avoid siting of industrial/manufacturing activities in coastal area that could introduce toxic materials into ground and/or surface waters

- Zoning Ordinance

- Use of public and private funds to improve boat launching facilities at Old Dock Road Park and Kings Park Psychiatric Center

- Use of public funds to continue mariculture and shellfish managements efforts

- Use of public and private funds to improve on-land public access points at Old Dock Road Park, Kings Park Psychiatric Center, Greenbelt Trail, Smithtown Landing Country Club and Sunken Meadow State Park

#### Ordinance Regulating the Taking of Claims and Shellfish

- Encourage the State to improve on-land public access points at Kings Park Psychiatric Center and Sunken Meadow State Park

- Encourage Suffolk County to improve and maintain the Greenbelt Trail

10

- Use of CD funds to initiate mariculture programs and activities to expand shellfish resources

- Zoning Ordinance

11

- Coastal Floodplain Zoning and Management Regulations

- Environmental Quality and Coastal Consistency Review Law

- Subdivision Regulations

- Zoning Ordinance

- Subdivision Regulations

- 12
  - Coastal Floodplain Zoning and Management Regulations
  - Environmental Quality and Coastal Consistency Review Law
  - Subdivision Regulations
  - Freshwater Wetlands Ordinance
- 13
  - Environmental Quality and Coastal Consistency Review Law
  - Marine Law
  - Site plan review procedure
  - Coastal Floodplain Zoning and Management Regulations
- 14,14A
  - Environmental Quality and Coastal Consistency Review Law
  - Marine Law
  - Subdivision Regulations
  - Coastal Floodplain Zoning and Management Regulations
  - Zoning Ordinance, as amended
- 15
  - Marine Law
  - Excavated Lands Ordinance
  - Environmental Quality and Coastal Consistency Review Law
  - Coastal Floodplain Zoning and Management Regulations
- 16
  - Coastal Erosion Hazards Act
  - Environmental Quality and Coastal Consistency Review Law
- 17,17A
  - Tree Preservation and Land Clearing Ordinance
  - Public financing of landscaping at Old Dock Road Park bluffs

- Environmental Quality and Coastal Consistency Review Law
- Coastal Floodplain Zoning and Management Regulations
- Zoning Ordinance
- Subdivision Regulations
- 18 - Environmental Quality and Coastal Consistency Review Law
- Coastal Floodplain Zoning and Management Regulations
- 19 - Public and private improvements at Old Dock road Park and KPPC, including boat launching sites and basins, bicycle paths, historic restoration, and fishing areas
- Increase public access to coastal recreational resources by acquisitions of lands or easements
- Request NYS to upgrade and fully utilize beaches of Sunken Meadow Park
- 20 - Same as Policy 19
- 21,21A - Zoning Ordinance with modifications to encourage water dependent/water related uses
- Environmental Quality and Coastal Consistency Review Law
- Off-Road Vehicle Ordinance
- Joint Waterways Ordinance
- 22 - Zoning Ordinance, as amended
- 23,23A - Historic Districts Local Law
- Environmental Quality and Coastal Consistency Review Law
- Execute memorandum of agreement with NYS to rehabilitate those historic properties sited on State-owned land
- 24 - Not Applicable
- 25,25A,25B,25C,25D - Historic Districts Local Law
- Environmental Quality and Coastal Consistency Review Law

- Zoning Ordinance, as amended
- Use of CD funds to eliminate blighted structures
- Wild, Scenic and Recreational River Act and 6NYCRR - Part 66B
- 26 - Zoning, as amended
- Subdivision Regulations
- 27 - Environmental Quality and Coastal Consistency Review Law
- 28 - Not Applicable
- 29 - NYS Coastal Management Program
- 30,30A - Zoning Ordinance, as amended
- Environmental Quality and Coastal Consistency Review Law
- 31 - NYS Coastal Management Program
- 32 - Environmental Quality and Coastal Consistency Review Law
- Encourage Suffolk County to revise permitting procedures to be more restrictive
- 33 - Subdivision Regulations
- Zoning Ordinance, as amended
- Coastal Floodplain Zoning and Management Regulations
- Environmental Quality and Coastal Consistency Review Law
- 34 - Boat Basin and Mooring Areas Ordinance
- Joint Waterways Ordinance
- Environmental Quality and Coastal Consistency Review Law
- 35,35A,35B - Freshwater Wetlands Ordinance
- Marine Law
- Environmental Quality and Coastal Consistency Review Law

- 36,36A
  - Zoning Ordinance, as amended
  - Environmental Quality and Coastal Consistency Review Law
- 37,37A
  - Environmental Quality and Coastal Consistency Review Law
  - Zoning Ordinance
  - Subdivision Regulations, as amended
- 38,38A,38B
  - Zoning Ordinance
  - Subdivision Regulations
  - Environmental Quality and Coastal Consistency Review Law
- 39,39A
  - Environmental Quality and Coastal Consistency Review Law
  - Zoning Ordinance
- 40
  - [Not Applicable] NYS Coastal Management Program
- 41
  - Environmental Quality and Coastal Consistency Review Law
  - Zoning Ordinance
- 42
  - NYS Coastal Management Program
- 43
  - NYS Coastal Management Program
- 44,44A
  - Freshwater Wetlands Ordinance, as amended
  - Zoning Ordinance
  - Coastal Floodplain Zoning and Management Regulations
  - Environmental Quality and Coastal Consistency Review Law
  - Subdivision Regulations