

## **SECTION V – Techniques for Local Implementation**

This section of the LWRP sets out implementation strategies for Somerset LWRP. This section considers existing laws and sections of Somerset Town Code that relate to the Policies, as well as identifying proposed laws, amendments and other Town actions necessary to support the Policies. A management structure for implementation and consistency review is presented, along with an outline of the financial resources that may be necessary to implement the LWRP.

### **A. Existing Laws**

#### **1. Chapter 80 – Campgrounds and Vehicle Parks**

Chapter 80 of the Town Code regulates the occupancy and maintenance of Campgrounds and Recreational Vehicle parks. Permits are required to operate such facilities. Permit applications must include plans for the sewer and water systems and certification of their approval from the Niagara County Health department. The regulations also provide setback and site design requirements.

#### **2. Chapter 92 - Environmental Quality Review**

This chapter of the Town Code outlines the local procedures for the State Environmental Quality Review (SEQR). This law requires that no action can be carried out without full compliance with the requirements of Chapter 92 of the Town Code and SEQR regulations (6 NYCRR Part 617). The last substantial amendments to the SEQR regulations went into effect on July 12, 2000.

#### **3. Chapter 104 – Flood Damage Prevention**

The purpose of this chapter of the Town Code is to protect public health, safety, and welfare and minimize losses due to flood conditions in specific areas. In conformance with the requirements of the National Flood Insurance Program, and to qualify for participation in this program, this law outlines the standards for construction in areas of special flood hazard and restrictions on encroachments and other activities in designated floodways. The law also sets

forth a process for obtaining a permit for this development in the floodplain. [Appendix B](#) contains a copy of Chapter 104 – Flood Damage Prevention.

#### 4. Chapter 109 – Freshwater Wetlands

Chapter 109 requires the Town to “exercise its regulatory authority” related to all activities regulated under the NYS DEC Freshwater Wetlands Regulations (Article 24 of the NYS Environmental Conservation Law). The purpose of the State regulations is to “preserve, protect and conserve freshwater wetlands... and to regulate use and development of wetlands to secure the natural benefits of these areas, consistent with the general welfare and beneficial economic, social and agricultural development of the state.

#### 5. Chapter 125 - Mobile/Manufactured Homes

This chapter provides a clarification of the definition of mobile/manufactured homes, as they differ from factory manufactured homes. While factory manufactured homes are considered as typical residential home construction, mobile/manufactured homes are restricted to mobile home parks (a use allowed with Special Use Permit in the Agricultural District within the LWRP). Chapter 125 regulates the location, size, layout and design, use, water and sewer systems, and service/accessory uses and structures in a mobile/manufactured home park.

#### 6. Chapter 152 – Sewers

This chapter regulates the connection to the public sewer system including, but not limited to, design, permitting and use of sewer connections. All existing and new homes and other buildings used for human occupancy are required to connect to the public sewer system if they are located in the Sewer District and abutting a road where there is a public sanitary sewer. Existing homes are required to connect after receiving official notice by the Niagara County Health Department. This law identifies the circumstances under which connection to the sewer system is required or under what circumstances alternate methods of sewage collection/disposal will be allowed. Where private disposal systems are utilized, this chapter requires their approval by the Niagara County Health Department. Connection to the sanitary sewer for disposal of storm water is not permitted. This chapter prohibits the discharge into the public sewer

system, wastewater that cannot be treated, or that interferes with the operation of the facilities or creates a health or safety concern.

#### 7. Chapter 161 – Solid Waste

This chapter establishes the town-wide refuse and garbage district for the Town of Somerset. It sets forth requirements for the Town to contract for garbage collection, disposal and recycling, (with the exception of commercial, industrial and institutional facilities) in compliance with the mandates of the New York State Solid Waste Management Act of 1988. The code identifies what materials must be recycled, and the proper preparation and disposal methods to be utilized.

#### 8. Chapter 171 – Subdivision of Land

Chapter 171 authorizes the Planning Board to review and approve plats for the subdivision of land in conformance with the Town of Somerset Zoning Code and Master Plan. The subdivision regulations set forth application/review procedures, plan specifications, design standards and required land improvements (road, drainage and utilities).

#### 9. Chapter 195 – Water

Chapter 195 regulates the connection to and use of the public water system including, but not limited to, hook-ups, meters, backflow prevention, use of hydrants. The chapter establishes rates and procedures for the approval of main extensions. The chapter prohibits connections to piping, vats, tanks, or other apparatus, which contain liquids that could endanger the water supply.

#### 10. Chapter 205 – Zoning

This chapter regulates and restricts, by district, the location, construction, and use of buildings and structures, and the use of land in the Town of Somerset. This code establishes districts, as well as uses and dimensional requirement for each district. This chapter of the Town Code also presents the rules and procedures for obtaining special use permits (telecommunications service facilities, motor vehicle service stations, cluster developments and Planned Unit developments), and site plan review. The code outlines the duties and

procedures for Code Enforcement Officer and Zoning Board of Appeals. The zoning districts and their corresponding land uses are listed in more detail in Section II.

#### 11. Consistency Review Law

Actions to be directly undertaken, funded or permitted within the local waterfront revitalization area must be consistent with the policies set forth in the Town of Somerset LWRP. Through the adoption of a consistency review law, the Town can establish the legal framework required for the review of direct and indirect actions with the LWRP.

### **B. Proposed Local Laws Necessary to Implement the LWRP**

#### 1. Planned Unit Development (PUD) District

If, in the future, AES proposes to expand the power generating station on property it owns within the LWRA, such development should be done under the Town's Planned Unit Development (PUD) provisions. Approval of this PUD would require the Town Board to amend the Zoning Map by Local Law in conformance with Article XV of the Town of Somerset Zoning Code.

#### 2. Flood Damage Prevention Law

The Town may wish to review the definitions and treatment of mobile homes in the Chapter 104 Flood Damage Prevention in order to make it consistent with the Chapter 125 – Mobile/Manufactured Homes.

### **C. Other Public and Private Actions Necessary to Implement the LWRP**

The Village of Barker is responsible for the maintenance and improvement of the Barker Bicentennial Village Park. The Village is encouraged to continue to provide the resources necessary to maintain this asset to the community. This facility is important for its public access to shoreline, visual access to the lake and for its positive addition to the character of the LWRA.

#### **D. Management Structure to Implement the LWRP**

The review of proposed actions for consistency with the policies and purposes of the Town of Somerset LWRP will be undertaken by the Town department or official that receives the application for funding or approval. Any such action proposed within the LWRA would require completion of a Waterfront Assessment Form. Prior to undertaking, approving, permitting or funding any Type I or Unlisted Action in the Town of Somerset, as defined by Chapter 92 – Environmental Quality Review, the respective local official shall review the Waterfront Assessment Form to determine if the action is consistent with the LWRP. [Appendix A](#) contains a copy of the Local Waterfront Revitalization Program Consistency Review Law, which more fully sets forth the local review process. All State and Federal actions proposed within the Town shall be reviewed in accordance with the guidelines established by the New York State Department of State, as noted below.

#### **E. Procedural Guidelines for Coordinating the NYS Department of State (DOS) and 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 Town of Somerset LWRP Coordinator 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 Town of Somerset has no opinion on the consistency of the proposed direct federal 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 Town, DOS will contact the Town 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 the DOS "agreement" or "disagreement" letter to the federal agency will be forwarded to the Town of Somerset LWRP 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 Town of Somerset LWRP Coordinator and will identify the Department's principal reviewer for the proposed action.
2. Within thirty (30) days of receiving such information, the Somerset LWRP Coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposed; and (b) any possible problems pertaining to the consistency of a proposed action with local coastal policies.
3. When DOS and the Somerset LWRP 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 Somerset LWRP Coordinator upon receipt.
4. Within thirty (30) days of receiving the requested additional information or discussion possible problems of the proposed action with the principal reviewer for DOS, whichever is later, the Somerset LWRP Coordinator will notify DOS of the reasons why the proposed action may be inconsistent or consistent with the local coastal policies.
5. After the notification, the Somerset LWRP Program Coordinator will submit the Town's written comments and recommendations on the 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 Town

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 Town on the proposed permit action, DOS will contact the Somerset LWRP Coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant.
7. A copy of the DOS "concurrence" or "objection" letter to the applicant will be forwarded to the Town.

### **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 Somerset LWRP 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 consistency review.
2. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the Somerset LWRP 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 Town of Somerset LWRP Coordinator must submit the Town's comments and recommendations on the proposed action to DOS within twenty (20) days (or other time agreed to by DOS and the LWRP Coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the Town 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 Town, DOS will contact the Somerset LWRP Coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency determination.
6. A copy of the DOS consistency decision letter to the applicant will be forwarded to the Town.

**F. Guidelines for Notification and Review of State and Federal Agency Actions where Local Waterfront Revitalization Programs are in Effect**

**Purpose of Guidelines**

1. 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 and federal 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). The guidelines are intended to assist these agencies in meeting that statutory consistency obligation.
2. The Act also requires that state and federal agencies provide timely notice to the Town of Somerset 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.
3. The Secretary of State is required by the Act to confer with state and federal agencies and Town of Somerset when notified by the Town that a proposed state or federal action may conflict with the policies and purposes of its approved LWRP. These guidelines establish a procedure for resolving such conflicts.



## **Definitions**

1. Action means:
  - A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
  - Occurring within the boundaries of the Town of Somerset Local Waterfront Revitalization Area (LWRA); and
  - Being undertaken pursuant to a state or federal agency program or activity that has been identified by the Secretary of State as likely to affect the policies and purposed of the Town of Somerset LWRP.
2. 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 the Town of Somerset LWRP, then the action must be one:
  - For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
  - That will minimize all adverse effects on the policies or purposes of the Town of Somerset LWRP to the maximum extent practicable; and
  - That will result in an overriding regional or statewide public benefit.
3. Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by the Town of Somerset 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, and proposed land uses and specific projects that are essential to the implementation of the LWRP.

## **Notification Procedure**

1. When a state or federal agency is considering an action as described in Item 2 above, the agency shall notify the Town of Somerset.
2. Notification of an action proposed by a state or federal agency:

- Shall fully describe the nature and location of the action;
  - 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 agency and Town of Somerset; and
  - Should be provided to the LWRP Coordinator, as identified in the Town of Somerset LWRP, 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. The timely filing of a copy of a fully completed Waterfront Assessment Form (WAF) with the Town of Somerset LWRP Coordinator should be considered adequate notification of a proposed action.
3. If the proposed action will require the preparation of a draft environmental impact statement (EIS), the filing of the EIS with the Town Clerk can serve as the agency's notification to the Town of Somerset.

#### **Local Government Review Procedure**

1. Upon receipt of notification from a state or federal agency, the Town of Somerset will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the Somerset LWRP Coordinator, the agency should promptly provide the Town with whatever additional information is available that will assist the Town in evaluating the proposed action.
2. If the Town of Somerset cannot identify any conflict between the proposed action and the applicable policies and purposes of the LWRP, it should inform the agency in writing of its finding. Upon receipt of the Town of Somerset's findings, the agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
3. If the Town of Somerset does not notify the agency in writing of its finding within the established review period, the agency may then presume that the proposed action does not conflict with the policies and purposes of the Somerset LWRP.
4. If the Town of Somerset notifies the agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the agency shall not proceed with its consideration of, or decision on, the

proposed action as long as the Resolution of Conflicts procedures established in Item 5 below shall apply. The Town of Somerset shall forward a copy of the identified conflicts to the Secretary of State at the time when the agency is notified. In notifying the agency, the Town of Somerset shall identify the specific policies and purposes of the LWRP with which the proposed action is in conflict.

### **Resolution of Conflicts**

The following procedure applies whenever the Town of Somerset has notified the Secretary of State and applicable state or federal agency that a proposed action conflicts with the policies and purposes of the Somerset LWRP.

1. Upon receipt of notification from a local government that a proposed action conflicts with the Town of Somerset LWRP, the agency should contact the Somerset LWRP Coordinator to discuss the content of the identified conflicts and the means for resolving them. A meeting of agency and Town representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within thirty (30) days of the receipt of a conflict notification from the Town of Somerset.
2. If the discussion between the Town of Somerset LWRP Coordinator and the agency results in the resolution of the identified conflicts, then, within seven (7) days of the discussion, the Town of Somerset shall notify the agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. That agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
3. If the consultation between the Town of Somerset and the 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 fifteen (15) days following the discussion between the Town of Somerset and the agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.

4. Within thirty (30) days following the receipt of the 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 resolution with appropriate representatives from the Town of Somerset and the agency.
5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within fifteen (15) days, notify both parties of his/her findings and recommendations.
6. The 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.

#### **G. Financial Resources Necessary to Implement the LWRP**

The implementation of the proposed projects identified under Section IV will require an undetermined amount of funding from public and private sources. Where applicable, the Town shall work diligently to secure funding through grants programs and other funding assistance programs to the greatest extent possible.

However, it is recognized that if the majority of the projects identified are implemented, they will be funded privately or by the State. Where grants are available from State and Federal agencies, the Town can seek these funds to support implementation of the identified LWRP projects.

The State of New York, particularly the New York State Office of Parks, Recreation and Historic Preservation, funds the continued maintenance of the Golden Hill State Park. This financial obligation is necessary to support recreational tourism, boating and fishing activities along this area of Lake Ontario.