

Town of Somerset Local Waterfront Revitalization Program

Adopted:
Town Board, August 9, 2005

Approved:
Acting NYS Secretary of State Frank P. Milano, December 13, 2005

Concurred:
U.S. Office of Ocean and Coastal Resource Management, November 2, 2007

This Local Waterfront Revitalization Program (LWRP) has been adopted and approved in accordance with provisions of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42) and its implementing regulations (6 NYCRR 601). Federal concurrence on the incorporation of this Local Waterfront Revitalization Program into the New York State Coastal Management Program as a routine program change has been obtained in accordance with provisions of the U.S. Coastal Zone Management Act of 1972 (P.L. 92-583), as amended, and its implementing regulations (15 CFR 923).

The preparation of this program was financially aided by a federal grant from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972, as amended. Federal Grant No. NA-82-AA-D-CZ068.

The New York State Coastal Management Program and the preparation of Local Waterfront Revitalization Programs are administered by the New York State Department of State, Division of Coastal Resources, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.



Rebecca A. Connolly, MMC

Town Clerk/Registrar

Town of Somerset

8700 Haight Road • P.O. Box 368

Barker, NY 14012 - 0368

Phone: (716) 795-3575 Fax: (716) 795-9041

TOWN CLERK'S CERTIFICATION

STATE OF NEW YORK

:SS:

COUNTY OF NIAGARA

I, Rebecca A. Connolly, Town Clerk of the Town of Somerset, DO HEREBY CERTIFY:

THAT I have compared the attached proceedings of the Town Board of the Town of Somerset including the resolution contained therein with the originals thereof on file in my office and that the same is a true and correct copy of the said original as recorded in the minutes of the Town Board meeting dated August 9, 2005 and filed in the Office of the Town Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Somerset, New York this 10th day of August 2005.

Rebecca A. Connolly, MMC

Town Clerk

Town of Somerset

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TOWN OF SOMERSET

Resolution to Adopt the Town of Somerset Local Waterfront Revitalization Program And Authorization to Submit to the New York State Department of State For Final Approval

WHEREAS, the Town of Somerset has prepared a Local Waterfront Revitalization Program, pursuant to Article 42 of the Executive Law; and

WHEREAS, the Draft Local Waterfront Revitalization Program (LWRP) and related local laws have been completed under the guidance of the Town of Somerset Waterfront Advisory Committee, the Town Attorney, and the Town Board; and

WHEREAS, the LWRP was subject to the required 60-day review period and modifications were made to the draft program document in response to comments received from this review; and

WHEREAS, the Town of Somerset Town Board, as Lead Agency under the provisions of the State Environmental Quality Review Act, prepared an environmental assessment form and evaluated the impacts of this action in accordance with the requirements of Part 617 of the implementing regulations of Article 8 of the New York State Environmental Conservation Law; and

WHEREAS, the Board determined that there would be no adverse impacts upon the natural, institutional, economic, developmental or social resources of the Town, and have therefore, issued a negative determination of significance, which has been filed and published.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Somerset Town Board hereby accepts and adopts the Draft Local Waterfront Revitalization Program for the Town of Somerset; and

RESOLVED, that the Town of Somerset Town Board hereby directs the Town Clerk to transmit the adopted LWRP and a copy of this resolution, to the New York State Secretary of State for approval pursuant to Article 42 of the New York State Executive Law - the Waterfront Revitalization of Coastal Areas and Inland Waterways Act.



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

February 24, 2006

Honorable Herbert A. Downs
Supervisor
Town of Somerset
8700 Haight Road
PO Box 368
Barker, NY 14012

Dear Supervisor Downs:

I am pleased to inform you that I have approved the Town of Somerset Local Waterfront Revitalization Program (LWRP), pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act. Everyone who participated in the preparation of this program is to be commended for developing a comprehensive management program that promotes the balanced preservation, enhancement, and utilization of the Town's valuable waterfront resources.

I am notifying State agencies that I have approved your LWRP and am advising them that their activities must be undertaken in a manner consistent, to the maximum extent practicable, with the program.

I look forward to working with you as you endeavor to revitalize and protect your waterfront.

Sincerely,

A handwritten signature in black ink that reads "Frank P. Milano". The signature is written in a cursive, flowing style.

Frank P. Milano
Acting Secretary of State

FPM:lt\gn



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

NOV - 2 2007

Rec'd Coastal Resources

NOV 07 2007

Mr. George R. Stafford
Director, Division of Coastal Resources
New York Department of State
41 State Street
Albany, New York 12231

Dear Mr. Stafford:

Thank you for the New York Division of Coastal Resources' June 28, 2007, request that the Town of Somerset Local Waterfront Revitalization Program (LWRP) be incorporated into the New York Coastal Management Program (CMP). You requested that the Town of Somerset LWRP policies described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request on July 9, 2007, and OCRM's decision deadline was extended until November 2, 2007.

Based on our review of your submission, we concur, with the exceptions described below, that the incorporation of the Town of Somerset LWRP is an RPC and we approve the incorporation of the LWRP policies (including the policy standards and supporting language) as enforceable policies of the New York CMP. Federal Consistency will apply to the approved policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4). Please include in the public notice the list of enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

CHANGES APPROVED

See enclosed list of the changes incorporated into the New York CMP.

CHANGES NOT APPROVED

OCRM does not approve the incorporation of Policy Standard 13.2.B., which relates to the siting of hydroelectric power generating facilities, as an enforceable policy. Any policies regarding such siting are preempted by the Federal Power Act under the jurisdiction of the Federal Energy Regulatory Commission.

OCRM does not approve the incorporation of Policy Standard 13.4.B., which lists factors to be used in the siting of Liquefied Natural Gas facilities, as an enforceable policy. Any policies regarding such siting are preempted by the Natural Gas Act, as amended by section 311 of the Energy Policy Act of 2005, under the jurisdiction of the Federal Energy Regulatory Commission.



QUALIFICATIONS

OCRM is not approving the incorporation of the following enforceable policies because they are not applicable to the Town of Somerset LWRP: 19 NYCRR 600.5 (a)(3), (a)(4), (b)(3), (b)(4), (d)(1), (g)(2), and (i). Additional policies found in the NYSCMP and Final Environmental Impact Statement that are not applicable include: 6, 29, and 42. As noted in the state's Approval and Findings document, these policies are part of the approved NYSCMP, but are not applicable to the Town of Somerset LWRP.

Policy Standard 13.3.A(5) specifically refers to the facility expansion project, and therefore only applies to the AES facility and the multiple use plan that has been developed for the site pursuant to the 1978 Opinion and Order Granting Certificate of Environmental Compatibility and Public Need.

Policy Standard 8.6 "does not apply to the existing State-approved solid waste disposal facilities (SWDA I, SWDA II and SWDA III) that accept only on-site waste generated at the AES facility" (Wendy Salvati of Wendell Duscherer, Town Attorney and Town Planning Consultant). Despite this clarification by the Town Attorney, this policy should be applied in a way that ensures reasonable availability of solid and hazardous waste facilities. In future amendments to the LWRP, consideration should be given to how any changes to the LWRP affect the application and impacts of Policy Standard 8.6. OCRM also is concerned that policies of this nature could cumulatively result in inadequate ability to meet the regional and national interests in having sufficient capacity for the disposal of solid and waste. Although there is no basis for determining that a threshold for regional and national interest concerns has been crossed by the Town of Somerset LWRP Policy Standard 8.6, New York State will be expected to demonstrate in future evaluations of the New York Coastal Program that the cumulative impact of local policies is not affecting the regional and national interests in having adequate solid and hazardous waste disposal facilities.

The Town of Somerset LWRP policies refer to the Town Code and several documents that were not submitted for incorporation as enforceable policies. After conferring with NYSCMP staff, OCRM confirmed that these documents are intended to be enforceable mechanisms or guidance for how to implement the policies. Therefore, the following documents are not approved as enforceable policies: Chapter 104 of the Town Code, Chapter 96 of the Town Code, EPA's Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, and the New York State Water Quality Accident Contingency Plan and Handbook.

PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received comment letters from nine individuals and groups, both in support of the LWRP and opposed to it. A summary of the comments and OCRM's responses are enclosed with this letter.

Thank you for your cooperation in this review. Please contact Carleigh Trappe at (301) 713-3155, extension 165, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John King", is written over the printed name.

John King, Chief
Coastal Programs Division

Enclosures: Policies Approved and Incorporated into the New York CMP and OCRM Summary Response to Comments

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APPENDICES

Appendix A.

Waterfront Consistency Law.

Appendix B.

Flood Damage Prevention Law_work

SECTION I – Local Waterfront Revitalization Area Boundary

The boundary of the Town of Somerset Local Waterfront Revitalization Area (LWRA) encompasses all of the land area along the Lake Ontario shoreline, as shown on [Map 1 – LWRP Boundary](#), and follows an inland boundary as noted below.

Beginning at the point where the mean high water line of Lake Ontario intersects with the corporate boundary between the Town of Somerset and the Town of Newfane, the boundary proceeds due south along this line for a distance of 6,916 feet. At this point, the boundary turns east and proceeds a distance of 6,608 feet and then south, a distance of 2,934 feet and then east a distance of 1,341 feet to Hosmer Road. The boundary then follows Hosmer Road north a distance of 1,099 feet to the boundary of West Somerset Cemetery and then turns west and continues a distance of 328 feet and then turns north and continues a distance of 169 feet and turns east and continues a distance of 330 feet to Hosmer Road. The boundary continues north along Hosmer Road to its intersection with Haight Road and follows Haight Road east to its intersection with Hartland Road. At its intersection of Hartland Road the boundary continues north along Hartland to a point 100 feet south of its intersection with the south shoreline of Fish Creek. The boundary generally encompasses all of the lands east the Newfane/Somerset Town line and north of Haight Road that are situated west of Hartland Road, and includes the undeveloped Conrail spur and surrounding lands excepting the cemetery property on Hosmer Road.

At this point, the boundary then continues east and norrttheast along a line drawn 100 feet from the centerline of Fish Creek to its intersection with Lower Lake Road. The boundary then continues east along Lower Lake Road to its intersection with Burgess Road and turns south along the overlap of Lower Lake Road and Burgess Road to the point where Lower Lake Road again diverges from Burgess Road. The boundary then continues east along Lower Lake Road to County Line Road, which is also the corporate boundary between the Town of Somerset, Niagara County and the Town of Yates, Orleans County. The boundary generally includes all the lands north of fish Creek and Lower Lake Road east of Hartland Road and west of the Orleans County line.

At this point, the boundary turns north and follows County Line Road (CR 50) to the point of the mean high water line of Lake Ontario. From this point the boundary

follows the mean high water line of Lake Ontario west to the point of origin for the local waterfront revitalization area boundary.

SECTION II – Inventory and Analysis

A. Regional Setting and Community Characteristics

The Town of Somerset is located on the south shore of Lake Ontario, in the northeast portion of Niagara County, New York as shown on [Map 2 – Regional Setting](#). It is situated between the Town of Yates (Orleans County) to the east, Town of Hartland to the south, and Town of Newfane to the west. The Town shares its northerly boundary with approximately 8.7 miles of the southern shoreline of Lake Ontario. Within the western New York region, Somerset is situated approximately 30 miles outside the Buffalo metropolitan area, with the City of Lockport located approximately half-way between.

The Town encompasses approximately 36.7 square miles in land area and is generally rural in character. Within the Town, the Village of Barker serves as a residential hamlet and center for community services. While the village provides significantly to the general character of the Town, it is located outside the designated Local Waterfront Revitalization Area (LWRA). The smaller hamlet of Somerset, which is also located outside the LWRA, also contributes to character to the Town as a whole.

The Town of Somerset has experienced generally continuous growth in population (6.7% annual average) since the 1940's. While the overall population and number of households, has continued to grow, the Town's rural community character and agricultural base has remained. With few exceptions, residential development has occurred at low densities and outside the Village. One of those exceptions has been residential development in certain areas along the lakeshore. Generally, growth outside the Village has been residential with commercial uses occurring in the Village. Industrial growth consists primarily of the AES power generating plant situated on the lakeshore.

This continuing growth and development of the Town and a concern for properly managing shoreline development, particular the potential use of land in the vicinity of the AES plant, has raised the need for the recent Comprehensive Plan and the Local Waterfront Revitalization initiatives.

B. Upland Uses

1. Existing Land Use

Land uses along the waterfront in the Town of Somerset within the LWRP study area are characterized by a mix of residential and agricultural uses, with some industrial, park and commercial properties, as depicted on [Map 3 – Existing Land Uses](#). While the industrial and commercial properties are limited in number, they account for a significant amount of land area. The key land use categories found in the LWRP study area are further described and quantified below.

Residential - There are approximately 286 residential parcels, accounting for 358 acres in the 11,113 acre LWRP study area. The smallest residential properties occur along the lakeshore in clusters on Huntington Beach Road, Lake View Drive, Lakeshore Road and Somerset Drive.

Agricultural - Agricultural lands comprise approximately 27 parcels, accounting for 1,622 acres in the LWRP study area. Land area in active farm production in Somerset declined between 1968 and 1978 by 3,115 acres. However, between 1978 and 2002 the declining trend stabilized and active farmland increased by approximately 100 acres. According to the U.S. Census of Agriculture, the number of farms in operation in the Town has also remained essentially stable between 1992 and 1997 (the most recent year available). For comparison, the number of farms in Niagara County over the same time period decreased by 8.2 percent, from 749 farms to 687. Approximately 81 percent of the farms in the area are in the 50 to 999 acre size range, compared to 64 percent in this size range in 1992.

Commercial - There is limited commercial activity in the LWRP study area, consisting of approximately 6 parcels comprising of 124 acres. The largest commercial properties are the private camps and commercial campgrounds. The YMCA Camp Kenan (47 acres) and the Lighthouse Christian Camp (77 acres) are private camps. Haight's Park Campground (79 acres – within the LWRA) and Brown's Camp (31 acres) are commercial campgrounds. The camps and campgrounds represent less intensive uses than their commercial designation implies. Also, in the case of the commercial campgrounds, the active campground areas do not cover the entire parcel, but do utilize the waterfront.

Industrial - The most significant industrial land use in the LWRP study area, as well as the Town, is the AES Somerset power generating plant. At approximately 1,100 acres AES accounts for 4.6% of the study area. The power plant contains large areas of undeveloped property, including approximately 2.3 miles of undeveloped shoreline.

Vacant - There are approximately 85 vacant parcels, consisting of 1,169 acres, or approximately 10% of the LWRP study area. Vacant lands include a combination of wood lots or abandoned agricultural fields. As noted above, a significant amount of additional undeveloped lands are undeveloped areas owned by the AES Somerset, LLC.

Parkland - There are two public parks along the shoreline within the LWRP study area. The larger of the two parks on is Golden Hill State Park. This park is a 511 - acre state-owned facility that contains a campground, nature trails, picnic areas and shelters, and playgrounds. The park facilities include a boat launch and offer public access to Lake Ontario for fishing, boating and other water-related recreational uses. There are 60 campsites. A unique feature of this park is the Thirty-Mile Point Lighthouse, a historic lighthouse built in 1875. The lighthouse, which is listed on the National and State Registers of Historic Places, is a popular tourist attraction, and was featured on a US Postal Service postage stamp in 1995 as the representative for Lake Ontario in a series of lighthouse stamps. Boat and camping facilities are open from April through October, while the remainder of the park and lighthouse are open year-round. Excellent views of the Lake Ontario shoreline are available from this site. The Village of Barker owns and maintains the Barker Bicentennial Park on Quaker Road at the lakeshore. The park is 1.5 acres in area and provides public access to the waterfront for fishing.

2. Zoning and Other Land Use Regulations

Within the Town of Somerset, land use is controlled by the Zoning Code (Chapter 205 – Zoning) and by Subdivision Regulations (Chapter 171 - Subdivisions of Land). Zoning in the Town includes four residential categories (agricultural, single-family, single and two family, and a lake shore residential district), one business district, two industrial zones (industrial and general industrial). The code also allows a planned unit development (PUD) or mixed use floating zone designation to be applied on a site-by-site basis. It should be noted that the "planned business areas" district of the code also encourages PUD's. Zoning is depicted on [Map 4 – Existing Zoning](#).

The zoning districts that occur within the LWRA are listed below along with a summary of the land uses identified as permitted uses by right and uses allowed with a special use permit (SUP) from the Planning Board:

Agricultural District

Within the LWRP study area, properties in the Agricultural District account for the largest land area in any zoning classification. While most of the agricultural land is not located directly on the waterfront, it is still important to consider because lands in agricultural receive the most development pressure. Also the nature of typical agricultural uses may result in the use of materials or practices that can potentially be threats to water quality. Landuses allowed in the Agricultural District include:

Single-family residential dwellings and accessory structures on lots having a minimum area of 60,000 square feet, and Farms and accessory structure and uses.

Uses allowed by Special Use Permits include Public utilities (SUP), Campgrounds (SUP), Mobile Home Parks (SUP), Air Strips (SUP), Retirement Homes (SUP),

Public Buildings (SUP), Churches (SUP), and Municipal Parks (SUP).

R-1 Single-Family Residential District

The R-1 Single-Family Residential zoning district occurs in the area on either side of Lower Lake Road, north of Fish Creek and south of Lake View Drive. This area is within the sewer district and has the potential for increased residential development. Allowed land uses in the R-1 District include Single-family residential dwellings and accessory structures on lots having a minimum area of 20,000 square feet. Cluster residential development (SUP) and Animal Husbandry (SUP) are permitted as special uses.

RLS Lake Shore Residential District

Approximately one-half of the entire lake shore falls into the RLS zoning district. Within this area, approximately 50 individual parcels are vacant and can possibly be developed for uses allowed in this district. Permitted uses are limited. They include Single-family residential dwellings and accessory structures on lots having a minimum

area of 20,000 square feet, and Cluster residential development (SUP) by special use permit.

I Industrial District

The Industrially zoned lands along Hosmer Road include the railroad tracks and power transmission lines. This is unlikely to change as long as the AES Power Generating Plant is in operation. Allowed land uses in the Industrial District include Laboratory, Assembly, Manufacturing, Food processing, Wholesale business, Office uses, and Farms.

PUD Planned Unit Development

The AES Power Generating Plant is located within the PUD zoning district. This property represents the single largest privately owned property within the LWRP study area and potential expansion or re-development could have significant impacts on the waterfront. Allowable land uses in the Planned Unit Development Zone are the same as those allowed in the Lake Shore Residential District, R-2 Single- and Two-family Residential District, B Business District and the I Industrial District.

Public Lands

There are two areas within the LWRA that are not included in a zoning district. The area within the Golden Hill State Park and Town owned property (Wastewater Treatment Plant) are depicted on the zoning map 'as islands' outside the surrounding zoning district. Typically local zoning does not apply to higher levels of governments and county, state and federal properties are not subject to local zoning regulations. Because the Golden Hill State Park is owned by New York State it is exempt from zoning regulations. Town property (the WWTP) is not subject to changes in use where zoning regulations would be applicable.

The Town's subdivision regulations are fairly standard regulations, with procedures for both minor subdivisions (4 or less lots, not involving public infrastructure improvements or extensions) and major subdivisions (more than 4 lots). A minor subdivision approval is a two step process with sketch plan and minor subdivision plat review. A major subdivision requires three steps: sketch plan, preliminary plan review, and final plat review.

The zoning code establishes height and bulk regulations, site plan specifications, development standards, required improvements, and penalties. The regulations include the authority to approve cluster development.

Within the LWRP study area there are several vacant properties that may be susceptible to future subdivision and residential developments. In addition, development pressures may also increase on agricultural lands within the sewer district. For these reasons it is important that the Town's subdivision and zoning regulations remain up-to-date as they are the Town's primary land use controls.

Other codes in the Town of Somerset that affect land use in the Town include: "Bed and Breakfast establishments", "Campgrounds and Vehicle Parks", "Environmental Quality Review", "Excavations", and "Mobile/Manufactured Homes".

Bed and Breakfast establishments are allowed by special use permits throughout the Town.

Campgrounds and Vehicle Parks establish a yearly permit requirement for these uses that are allowed in an agricultural district by special use permit.

Chapter 92 of the Town Code, known as Environmental Quality Review, is the local State Environmental Quality Review (SEQR) requirement for all development projects in the Town. The Town's SEQR code was adopted in 1977. Since then, the State has amended 6 NYCRR Part 617, the SEQR regulations, causing the Town's SEQR code to become outdated. The Town should either amend or repeal this law.

Excavations regulates excavation activities in the Town.

Mobile/Manufactured Homes establish standards for these uses, which are allowed by special use permit in agricultural districts (controlled by yearly license).

3. Land Ownership Patterns

The land ownership within the Somerset LWRP study area varies significantly by size ranging from over 1,000 acres to less than an acre. By any measure (number of parcels, land area, or lakeshore frontage) the majority of property in the LWRP study area is in private ownership. The largest privately owned property in the study area includes approximately 1,100-acres owned by AES Somerset, LLC, with 1.5 miles of

lakeshore frontage. There are relatively few other large vacant parcels that front on the lakeshore. However, two adjacent vacant parcels that adjoin the AES property at the western end of the LWRA have a combined frontage of approximately 1.1 miles and have the potential for future subdivision. Together these three properties represent over 2.3 miles of shoreline and over 1/4 of the Town's lakeshore.

Along the lakeshore there are two commercial campgrounds (Haight's Park Campgrounds and Brown's Camp) and two private camps (YMCA Camp Kenan and the Lighthouse Christian Camp). These camps do not utilize their entire property as intensely as the zoning would allow (either residential or commercial). There are numerous homes on small lots along the lakeshore having access from Huntington Beach Road, Lake View Drive, Lakeshore Road and Somerset Drive. These residential properties are interspersed with approximately fifty vacant lots.

The Golden Hill State Park occupies approximately 511 acres and has approximately 1.5 miles of waterfront. The only other publicly owned lands include the Village of Barker Bicentennial Park on Quaker Road; Town/Village wastewater treatment plant on Quaker Road at Lower Lake Road; and the Sawyer Cemetery on Lake Road.

4. Water-Dependent and Water-Enhanced Uses

The Lake Ontario shoreline within the Somerset LWRA is not heavily developed with uses that are dependent on their waterside location, as shown on [Map 5 – Water Related Uses](#). The only water-dependent uses along the waterfront include The AES power station, which utilizes lake water for cooling and Golden Hill State Park, which has a boat launch.

The Somerset LWRA primarily consists of water-enhanced and non-water dependent uses. The LWRA includes approximately 126 private residences, which are water-enhanced. Large non-residential properties along the lakeshore that are water-enhanced uses include Haight's Park Campgrounds, Brown's Camp (both commercial campgrounds; the Lighthouse Christian Camp and the YMCA Camp Kenan (both private camps).

The LWRA contains certain lands, some of which are located directly along the shoreline, that support, and are zoned for, non-water dependent agricultural uses. Most vacant land in the LWRA is in the Agricultural (A) District. Any undeveloped industrial land is part of the AES power station and located in the Planned Unit

Development (PUD) District. In 2001, several modifications were made to the Town Zoning. At this time, considering that there is very little development pressure along the shoreline, and that the current zoning reflects the Comprehensive Plan, the Town believes the zoning within the LWRA adequately meets its needs for the foreseeable future.

5. Tourism

There are no extensive tourism services found within the LWRA. Tourism activities are centered around recreational camping and fishing. Golden Hill State Park offers a lakefront location with camping, hiking, picnicking and boat launch facilities. The Thirty-Mile Point Lighthouse is also located within the State Park. The lighthouse living quarters are a popular destination to rent for overnight accommodations.

There are two private camps YMCA Camp Kenan and Lighthouse Christian Camp. There are also two privately owned commercial campgrounds located on the waterfront; Haight's Park Campgrounds and Brown's Camp, offering camping along with fishing and boat access to the waterfront.

Other tourist attractions include the Babcock House Museum operated by the Town of Somerset Historical Society and located on Lake Road. Commercial and retail services and restaurants are found outside the LWRA in Village and local hamlets.

Tourism in the LWRA is seasonal, with boating occurring from early May to late October. The private camps and campgrounds do not operate in the winter. However, Golden Hill State Park does offer cross-country skiing, snowmobiling, and snowshoeing.

The New York Seaway Trail follows Lake Road (NYS Route 18) in the vicinity of the Somerset LWRA. The Seaway Trail is a recognized scenic route paralleling Lake Erie, the Niagara River, Lake Ontario and the St. Lawrence River. This corridor is a designated National Scenic By-way. The Seaway Trail route is well marked and promoted as a tourism destination and as an alternative to the NYS Thruway and other interstate highways. The NYS Seaway Trail is a membership organization that encourages tourism and economic development in the communities along the Seaway Trail corridor by marketing the scenic byway designation.

C. Surface Waters and Surface Water Uses

Topographically, the entire northeastern part of Niagara County drains toward Lake Ontario via several major drainage courses including Johnson and Marsh Creeks, which extend easterly into Orleans County, and Fish and Golden Hill Creeks in the Town of Somerset. The LWRA is within the Golden Hill Creek drainage basin and the Johnson Creek drainage basin. Fish Creek and Gold Hill Creek and their tributaries represent the primary drainage courses to Lake Ontario. There are no major lakes or ponds within the LWRA.

Golden Hill Creek divides the Town in half, running from the extreme southwest corner of the Town to the northeast, through Golden Hill State Park. Golden Hill Creek has its headwaters near Town Line and Hosmer Roads and flows approximately 10 miles northeast through the Village of Barker and through Golden Hill State Park and discharges into Lake Ontario, just west of the boat launch. All land south of Golden Hill Creek and lands parallel to the creek, for approximately 1,000 feet to the north also drain to Golden Hill Creek.

All land lying generally north of the parallel line approximately 1,000 feet north of Golden Hill Creek, and below an elevation of 330 feet, drains to the north into Fish Creek or its tributaries, or to a small west branch of Golden Hill Creek. An exception is a small area on the AES Somerset property, which drains directly into Lake Ontario. Fish Creek flows approximately 7.5 miles from its headwaters near Hoffman Road in a northeast direction through the AES power station property and along the Barker Somerset Wastewater Treatment Plant facility, eventually discharging into Lake Ontario, west of Johnson Creek Road. A lesser, intermittent stream flows parallel to and just south of Fish Creek and outlets directly to Lake Ontario between Johnson Creek Road and Snell Grove Road.

In general, creeks and their banks remain in relatively natural conditions where they flow through the LWRA. The goals and policies section of the Somerset Comprehensive Plan suggests specific policies to guide local decision making in order to protect the creeks from the adverse effects of development. The implementation of these policies would help to allow for the protection of these waterways.

1. Marinas, Docks and Bulkheads

There are no marinas or permanent docks within the LWRA. The only boating facility accessible to the public is the boat launch ramp located in Golden Hill State Park. One ramp is available for transient users to launch and load small boats. There is also approximately 50 feet of floating dock and 1 stationary dock that are removed seasonally. Boat launch and dock facilities are open from April through October. Park user and parking fees range from \$5 to \$7. Outside the LWRA, the nearest marinas are in Olcott to the west and Lakeside to the east.

Outside the State Park only two concrete boat launch ramps on private properties were observed. One was at the Christian Lighthouse Camp, and the second was at a private residence on Lakeshore Road at the foot of Johnson Creek Road.

The use and need of shoreline protection varies within the LWRA based upon the varying height of the bluff and on the land use. Much of the LWRA shoreline generally west of Quaker Road, including the highest bluffs, remains natural.

Shoreline protection is in place along the residential some reaches of the waterfront. Shoreline protection consists of either large boulders placed at the bottom of the bluff or concrete walls. Walls are not consistent along the shoreline and occur at approximately a third of the homes. The walls are in various states of repair. Some are cracked and leaning into the water. There are few new walls. Many residences have wooden or concrete steps between the top of the bluff and the beach. Along Somerset Drive the bluff is somewhat lower than further west and the use of walls is less common. Rock armoring is in place.

At the Village Park there are two small piers approximately 24 inches wide and approximately 30 feet long that are remnants of an old water-pumping station. Today people use these piers to fish from.

Some of the highest bluffs occur within the State Park in the vicinity of the Thirty-Mile Point Lighthouse. In this area large boulders are placed at the bottom of the bluff for protection against erosion.

2. Vessel Use and Navigation

There is limited navigational use along the Somerset waterfront. Small pleasure craft are used for recreation and fishing. There are no commercial vessels in the area. The creeks tributary to the lake are not navigable. Various residents along the shoreline have boats but do not have permanent docks. According to interviews of park personnel, personal watercraft are becoming more popular with park users.

The lake bottom is rocky from the shoreline out to depths of 30 to over 50 feet where the bottom transitions to mud and clay. There is one area having a sandy bottom just west of Thirty-Mile Point. According to National Oceanic & Atmospheric Administration navigation charts rock obstructions occur along the shoreline that cover and uncover at depths up to 6 feet. Other obstructions and features include cribbing off the AES site and the Wastewater Treatment Plant outfall.

D. Public Access and Recreation

Public parkland and waterfront access is limited to a few facilities within the Town of Somerset LWRA. These facilities are depicted on [Map 6 – Public Lands and Cultural & Historic Resources](#). Golden Hill State Park is located along Lake Ontario at the easterly boundary of the Somerset LWRA. It is surrounded by agricultural lands and the Lighthouse Christian Camp to the west, by Lower Lake Road (County Road 82) to the south and Niagara-Orleans County Line Road (County Road 50) to the east. The 511-acre park contains a 72-site campground, recreation building, nature trails, picnic areas and shelters, playgrounds and a boat launch ramp. The park facilities offer public access to the lake for fishing, boating and other water-related recreational uses. A unique feature of this park is the Thirty-Mile Point Lighthouse. This State-operated park provides regional recreation and waterfront access opportunities.

The Village of Barker owns and maintains the Barker Bicentennial Park on Quaker Road on the lakeshore. The 1.5 acre park provides public access to the waterfront for fishing. Picnic facilities and restrooms are available on a seasonal basis.

There are two private camps and two commercial campgrounds that offer waterfront access to patrons and visitors. Their waterfront locations provide all four of these facilities significant scenic views of the lake and surrounding area.

The Town also has provisions for potential future park facilities within the property currently owned by AES Somerset, LLC. The original owner, New York State Electric and Gas (NYSEG), was directed to work with local officials to prepare a multiple use plan for their site as part of their approval to build what is now known as the AES Somerset power generating station. The approval, granted in the mid-1970's by the Siting Board, required a multiple use plan that would provide for the recreational needs of the community and to replace land previously designated by the Town for future recreation use. Under the leadership of the staff of the Erie and Niagara Counties Regional Planning Board, a multiple use plan for the power plant site was prepared and adopted by the Somerset Town Board, the Power Company, and various regulatory agencies. The plan provides for continued access to the lake and a combination of active and passive recreation uses to be implemented over a long-term period. The Town Planning Board also approved the multiple use plan, and it reflects the policy of the Planning Board relative to the proposed future use of that portion of the power plant site (approximately 30 acres). While there are no current plans to implement the multiple use plan, the Town wishes to retain its rights for the future recreational use by incorporating it into their LWRP and recently completed comprehensive plan.

E. Historic and Cultural Resources

The area known today as Somerset was first settled in 1810 and officially organized in 1823 from holdings of the Holland Land Company, with rail service commencing in 1876 and Village incorporation in 1908. A key historic resource resulting from the early development of Somerset is the Thirty-Mile Point Light House.

The Thirty-Mile Point Lighthouse, built in 1875, is a popular tourist attraction. The Lighthouse is listed on the National and State Registers of Historic Places. The lighthouse was also featured on a US Postal Service postage stamp in 1995 as the representative for Lake Ontario in a series of lighthouse stamps. The 70-foot high stone and brick lighthouse is located on the most northerly point of land along the south shore of Lake Ontario. The lighthouse operated from 1875 until 1958, when a steel tower with an automatic revolving light replaced it. In 1984, New York State took possession of the abandoned building from the United States Coast Guard for the purposes of including the property in Golden Hill State Park. At that time the structure was listed on the Federal and State Registers of Historic Places.

The Babcock House Museum, built in 1848, occupies a cobblestone farmhouse at 7449 Lake Road. The structure is owned by the AES Somerset, LLC but furnished and maintained by the Town of Somerset Historical Society. The structure is historically significant because it was the farmstead home of Jephtha Babcock, the first postmaster in the western section of Town, Supervisor of the Town of Somerset and a NYS Assemblyman.

Within the Town of Somerset, archaeological resources may also be found. In this regard, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) was queried to determine if any known archaeological or additional historic resources are known to exist within the study area or if the entire area has been identified as a zone of archaeological sensitivity. According to the OPRHP response, there is a documented archeological site in or adjacent to the LWRP study area. Therefore, a phase 1 archeological survey may be required during the approval process for any project(s) located within 1 mile of the archeological site.

F. Scenic Resources

There are no Scenic Areas of Statewide Significance within the Somerset LWRA as designated by the Secretary of State. (SASS's are limited to 6 areas in the Hudson River Valley).

Although not formally designated, the scenic resources along the waterfront in the Town of Somerset are locally important. These scenic resources consist primarily of the dramatic vistas of Lake Ontario and its shoreline. Excellent views of the Lake Ontario shoreline are available from the site of the Thirty-Mile Point Lighthouse in Golden State Park. Lake Road (State Route 18), which runs parallel to the lakefront, is a segment of the NYS Seaway Trail, a designated National Scenic By-way. Scenic views are also available from the private camps and residences located along the shore. Scenic views of the lake should be protected and improved wherever possible through the Site Plan review process.

G. Public Infrastructure

1. Water Supply

At the present time, the entire Town of Somerset is served by public water provided from the Niagara County Water District. The source of water is the west branch of the Niagara River.

Service is provided to Barker through a 10-inch line located on Quaker Road, which connects to a 24-inch line coming easterly on NYS Route 31 from the direction of Lockport. There are also two 10-inch water mains located along Route 18 and West Somerset Road that tie into the Town of Newfane, which are part of the Niagara County Water District. An 8-inch line also extends easterly from Wilson, along Lake Road. An additional 8-inch waterline is located on Haight Road with 10-inch lines on Coleman and Johnson Creek Roads. The areas west of Golden Hill State Park on Lower Lake and Somerset Roads are served by 8-inch lines, with a 10-inch line on Carmen Road. In general, the Town is well interconnected to the Towns of Newfane and Hartland, and the water system is fairly up-to-date and in good condition.

The Town of Somerset Comprehensive Plan indicates that currently, the Town water requirements are averaging 340,000 gallons per day, for domestic and industrial use. According to the County's Comprehensive Public Water Study, this usage was forecast to increase to 1.66 MGD for the Town by 1990. However, that forecast was not realized and there are currently no quantity or quality deficiencies in the public water distribution system.

2. Sanitary Sewer

The Somerset-Barker Sewer District was created in 1977. The Sewer District, serving the central area in the Town of Somerset, covers the LWRA between the AES power plant (north of Lake Road) to the mouth of Fish Creek. Sanitary sewer service is not provided to the entire LWRA. The areas served within the LWRA include Quaker Road, Hartland Road, Lower Lake Road and Somerset Drive. The Sewer District was extended around 1980 to provide domestic sewerage treatment to AES.

Dense areas of residential development within the LWRA that are not served by public sewer include Lake Shore Drive and Somerset Drive between the mouth of Fish Creek and Golden Hill State Park. Within these areas individual residences utilize on-site

septic systems. These residences are located on relatively small waterfront lots and as the on-site septic systems fail health and safety issues arise. Newer and replacement systems often are required to be sand filter systems, which are both more expensive for the homeowner and demand more treatment area. In the future, as older systems fail and newer in-fill development occurs, the Town will continue to receive pressure to expand the sewer district and provide service to this relatively dense residential area.

The wastewater treatment plant is located within the LWRA, on a 40-acre tract of land in the southwest corner of the intersection of Lower Lake Road and Quaker Road. The treatment plant discharges directly into Lake Ontario from an outfall approximately 1,500 feet into the lake from a point situated at the east of Camp Kenan.

According to the Town of Somerset Comprehensive Plan, October 2002, the sewage treatment system has sufficient surplus capacity to meet the projected population growth through the year 2025. The current SPDES permit is valid until June 2006. The plant has a design capacity of 278,000 gallons per day. It currently is operating at 110,000 gallons per day with seasonal fluctuations to over 200,000 gallons per day. There is an on-going project to improve aeration in the lagoons, but otherwise there are not operational problems effecting effluent quality. Future development within the LWRA should be directed to occur within the existing sewer service area.

3. Stormwater

The Town of Somerset does not have a closed drainage system. Stormwater is conveyed through open ditches. The Village of Barker stormwater sewer system contains four independent tile systems, which deliver the surface water to open drainage ways and then to Golden Hill Creek, or directly to the creek. The Village system has been operational since its inception in the early 1900's. However, areas of more recent development and areas adjacent to the Village have not yet been included in the Village's storm drainage system and continue to utilize open ditches. All of the stormwater collected within the Village and southern portions of Town eventually drains through the LWRA via a system of roadside ditches that drain to the creeks which discharge to Lake Ontario.

Because of proper highway construction and an annual program to maintain and clean ditches, storm water runoff has not become a major problem in the Town in general, nor in the LWRP in particular. This program has successfully minimized flood conditions and has helped to maintain the viability of active farmland. Efforts

must be continued to keep roadside ditches and culverts open and free from growth and debris. Further more, drainage considerations must be included in all development proposals.

4. Solid Waste Disposal

The Town contracts with private solid waste haulers for solid waste collection. Refuse collection and disposal is arranged through the Niagara County Solid Waste Consortium, which provides options to bid refuse collection and disposal services jointly with other Towns. Waste collection and disposal is contracted with American Refuel until 2008. Current contractual arrangements provide for collection and disposal, recycled material collection and disposal, and the disposal of large items and white goods on a weekly basis. The Town also arranges for an annual curbside tire pickup by Town work forces and disposal by private contract.

Agrilink Comstock Michigan Fruit and Mayer Brothers are large generators of solid waste in the Town and Village. They are able to dispose of their own organic waste on site, in a manner frequently monitored by and approved under State Health Department regulations. The AES generating station also produces large amounts of solid waste materials, which are stockpiled on site and disposed of in a regulated manner. There are no disposal facilities for municipal solid waste located within the LWRP study area.

5. Transportation System

As a predominantly rural town, the Town of Somerset has a relatively simple roadway system. Lake Road (NYS Route 18) is the principal east-west route in the Town, and Quaker (NYS Route 148) is the main north-south route. Along with Niagara Orleans County Line Road (NYS Route 269), Lake Road and Quaker Road are the only State routes in Somerset. All other roadways are under local or County jurisdiction.

Lake Road is the primary east-west highway proving access to the LWRA. In the eastern half of the study area, Lower Lake Road provides access to a series of residential streets along the lake shore, including Huntington Beach Road, Lakeview Drive, Coates Road, Brown's Camp Road, Lakeshore Drive, Somerset Drive, Snell Grove Road, Haight's Park, Hass Road, and Carmen Road. With few exceptions the residential roads have one point of access onto Lower Lake Road.

Hosmer Road, Hartland Road, Quaker Road, Johnson Creek Road, Burgess Road, Carmen Road and Niagara Orleans County Line Road provide north-south access to the Somerset waterfront. Within the LWRA, Quaker Road, north of Lake Road, is a Town Road. Lovers Lane has been abandoned and is no longer maintained by the Town.

Traffic counts indicate that Route 18 (Lake Road) and Hartland Road handle the most traffic. According to 2002 NYSDOT traffic data, NYS Route 148 had 3,150 vehicles reported in the section between County Road 135, Hartland /Somerset Town Line Road and NYS Route 18. According to average daily traffic count data collected by the New York State Department of Transportation in 2002, NY Route 148 had 3150 vehicles on the section between CR 135, Hartland Somerset Town Line Road and NY Route 18. There is no indication that any roadways currently operate at a failing level of service. There are no significant traffic problems in Town in general or within the LWRA in particular.

An active rail line runs through the western end of the Town, with a spur to the AES power generating station. This spur is included in the LWRA. The railroad right-of-way continues eastward through the Town, but this portion of the rail line is in private ownership and is not in operation. There is no public transportation service in Somerset.

According to the 1998 Bicycle Master Plan prepared by the Niagara Frontier Transportation Committee (now known as the GBNRTC), there are no existing designated bicycle routes in the Town of Somerset. That plan recommends establishing a bike route along the Lake Ontario shore for the full length of Niagara County, including the Town of Somerset. In Somerset, the route is shown along Lake Road to Quaker, along Quaker to Lower Lake Road, and continuing east to the County line. The New York Seaway Trail follows Lake Road (NYS Route 18) in the vicinity of the Somerset LWRA.

H. Water Quality

The New York State Department of Environmental Conservation (NYSDEC) assigns a water quality stream classification to surface waters in New York State, which identifies the best usage for that stream. Fish Creek and Golden Hill Creek are classified as Class C fresh surface waters and are not classified as protected streams. Therefore, NYSDEC does not regulate stream crossings or stormwater discharges into

these creeks. NYSDEC identifies the best usage for Class C streams as fishing and recreation. According to 6 NYCRR Part 701 Classifications - Waters and Groundwaters, Class C streams have conditions suitable for primary and secondary contact recreation (although other factors may limit their use for these purposes). These waters are suitable for game fish survival.

The creeks are the discharge points for stormwater drainage in the Town. Which is conveyed to these waterbodies through open roadside ditches and outfall pipes. Outfalls are typically considered point source locations for the introduction of pollutants carried in stormwater. Depending on the type of development present, stormwater runoff can be a source of metals, organic compounds, nutrients or other contaminants, in addition to pathogens. Measures can be implemented to reduce contaminant loadings in the effluent. This approach typically involves expensive structural devices that address a relatively small portion of the entire contributing watershed area, but can be effective for localized water quality problems. At present, there is no indication that the quality of the stormwater effluent delivered to Fish Creek and Golden Hill Creek is degraded to the extent that it would require this type of mitigation. A more feasible means of improving the quality of stormwater flows in the Town and Village, that reach Lake Ontario, would be to institute a best management approach, as discussed below.

The primary impact to water quality in the Somerset LWRA is non-point source pollution. Non-point source pollution is pollution that reaches a surface water body through unconfined or indiscrete means. Examples include stormwater sheet or overland flow (i.e. – unchanneled flow from paved surfaces, buildings and construction sites) which carries animal wastes, road oil and other automotive by-products, pesticides and fertilizer; and groundwater infiltration that can carry contaminants from faulty cesspools or septic tanks or toxins from other sources of pollution. The best way to control the rate of non-point contaminant generation and transport in upland areas is through the use of "best management practices" such as reducing fertilizer and pesticide applications, proper disposal of pet wastes, automobile waste oils, etc. and other non-structural means. This approach is relatively inexpensive as compared to the costs of employing structural measures to mitigate point source pollution. Public Education is an important means of implementing best management practices. Vessel waste discharges are another potential source of water pollution, particularly in areas where vessels are docked in higher concentrations. Due to the lack of a marina in the LWRA, vessel waste discharges have not been identified as a problem in the study area.

I. Topography, Geology and Soils

Somerset is located within the Iroquois Plain, which extends from the south shore of Lake Ontario, southerly to the Niagara Escarpment. The Escarpment traverses, in an east-west direction, the Towns of Lewiston, Cambria, Lockport, and the northern part of Royalton. North of the Escarpment elevations of below 500 feet are most common. Lake Ontario itself is at an elevation of approximately 250 feet above sea level. The Town of Somerset, which lies between the Escarpment and the Lake, ranges in elevation from a high of approximately 370 feet above sea level at the south town line, near Johnson Creek Road, to a low of 250 feet at lake level within the LWRA.

The Town, overall, has an elevation difference of approximately one-foot per thousand feet (0.1 percent) throughout its north-south length, to approximately Lower Lake Road. Within the LWRA, from Lower Lake Road northward, topography recedes toward the Lake at a rate of 50 feet per 1000 feet, or 5 percent slope. Areas to the west of Quaker Road have steeper topography up to 6 to 8 percent slopes on the northern extension of Hartland Road and Lower Lake Road. Immediately adjacent to the Lake, there are bluffs of 20 to 40 feet for approximately 80 percent of the Town's lakefront. These bluffs have in the past, constrained lakefront development. The majority of lakefront residential and recreational development has encroached on the lakefront bluffs north of Lakeview Drive in an area from Quaker Road, easterly to Golden Hill State Park.

According to the Niagara County Soil Survey (USDA Soil Conservation Service, 1972), the LWRA is primarily comprised of glacial till with sandstone and limestone fragments deposited shortly after the ice age. The majority of the soil in the LWRA is comprised of Hilton silt loam, Collamer silt loam, and Rhinebeck silt loam, which is usually found parallel to the Niagara escarpment. These soils are considered valuable for raising crops.

Soils within the Town vary greatly because of their initial creation as glacial drift deposits mixed with alluvium from the prehistoric recession of Lake Ontario. Although deposits of gravel are common in glacial formations, most of the soils in Somerset are alluvial deposits of silt and are heavy textured. Silts in particular have a soil composition in which moisture cannot be retained and a tight structure through which water cannot pass. This impervious soil structure, which inhibits the absorption of moisture, can be found in many areas of the Town outside the LWRA.

The majority of soils in the Town can be agriculturally productive if they have good natural drainage or can be mechanically drained by tile lines or ditches. High soil suitability for grain crops, fruits, and some vegetables coupled with late springs and long falls (typical along Lake Ontario) combine to provide better growing conditions than in most other areas within the state. These two natural phenomena help to explain the relative stability that farming has had in the Town of Somerset.

Most of the soils in the Town will not readily accept dense urban development without the extensions of water and sewer lines, because of high water tables and impermeable soils. The existing areas of the Village and Town with sewer service contain sufficient capacity to more than accommodate the needs for future urban growth during the next ten to twenty years. Urban growth will benefit the public investments (sewer and water lines costs) if it is concentrated within the existing sewer and water district areas, in the following ways:

Permit less costly district charges and maintenance costs for landowners.

Promote a sense of community and neighborhood ties that cannot be created by scattered sprawl development along major highways.

Indirectly stabilize and enhance the area's agricultural-economy by reducing the potential of scattered residential development throughout the farming areas.

J. Natural Resources

1. Wetlands and Habitats

Under the New York State Freshwater Wetlands Act NYSDEC has prepared wetlands maps for the Town of Somerset, which are on file with the Town. The Town has adopted a wetland law, which is codified as Chapter 109 - Freshwater Wetlands of the Code of the Town of Somerset. The largest wetland areas in the Town are located outside the LWRA, in the southern portion of the town near the Town of Hartland.

Within the LWRA there are approximately 469 acres of federal jurisdictional wetlands, 360 acres of which are along the Lake Ontario shoreline. They primarily follow the creeks and tributaries. The Army Corps of Engineers (ACOE) regulates all activities that occur or are proposed within or near a potential wetland area. The quantity of wetlands that fall under the jurisdiction of the ACOE has been uncertain in recent

years due to litigation related to isolated wetlands. At this time, isolated wetlands (those wetlands with no apparent surface water outlet) are more vulnerable to changes in surrounding land uses because they no longer fall under the permitting authority of the Army Corps. See [Map 7 – Environmental Features](#).

As noted above, the Town of Somerset is crossed by a number of creeks, the most significant one being Golden Hill Creek, which runs through the LWRA to the its outlet into Lake Ontario. These creeks not only serve an important drainage function, but also provide attractive natural settings and offer opportunities for recreation. Golden Hill Creek and Fish Creek have experienced some salmon runs, and may have the potential to become an attraction for sport fishing.

Based upon a February 2003 review of the Natural Heritage Program databases, the NYSDEC Division of Fish, Wildlife & Marine Resources has reported that there are no records of rare or state-listed animals or plants, significant natural communities, or other significant habitats occurring within the LWRA boundary.

According to the Upstate New York Groundwater Management Program report of the NYSDEC, no Primary or Principal Aquifers underlie the study area.

2. Fish and Wildlife

According to a search of records by the New York State Department of State, Division of Coastal Resources, Coastal Habitats Unit, conducted in January 2003, no Significant Coastal Fish and Wildlife Habitat narratives or maps have been prepared for the Town of Somerset.

Salmon, Lake Trout, Rainbow Trout, and Brown Trout can be found within the western section of the Lake Ontario Shoreline. The eastern area surrounding Golden Hill State Park and the Thirty-mile Point Lighthouse are popular perch, bullhead, salmon, rainbow trout, and brown trout fishing areas. Fish Creek and Golden Hill Creek also include collections of rainbow and brown trout.

K. Flooding and Erosion

1. Flooding

On February 3, 1982, the Federal Emergency Management Agency (FEMA) released the Flood Insurance Rate Maps (FIRM) for the Town of Somerset. The LWRA is covered by Community Panel Numbers: 360512 0005 B and 360512 0010 B. The FIRM maps delineate the final flood hazard boundaries which provide the basis for the implementation of the regular program phase of the National Flood Insurance Program within the Town. Within the LWRA the flood hazard areas (100-year floodplains) include the immediate Lake Ontario shoreline; a 100 to 400 foot wide corridor along Golden Hill Creek and a 250 to 400 foot wide corridor along Fish Creek to its outlet.

In order for property owners to take advantage of the National Flood Insurance Program (NFIP), the Town Board has adopted federally approved floodplain management regulations to manage land use and development within the designated flood hazard areas (Chapter 104 of the Town Code). Flood hazard regulations were developed as part of the Town's Coastal Energy Impact Program and incorporated into the Town's zoning ordinance. Property owners within designated flood hazard areas are eligible to receive federal flood insurance and federally insured mortgage money is available to buyers.

The flood zones are established based upon the degree to which an area is susceptible to flood damage. The two general flood zones that exist within the Town of Somerset are:

"A" and "AE" Zones – (also called the special flood hazard area) is that area of land that would primarily experience still water flooding, without significant wave activity, during the 100-year storm. In Zone A no Base Flood Elevations or depths are shown, while in Zone AE Base Flood Elevations have been derived and are shown on the maps;

"C" Zone – areas of minimal flooding.

The entire shoreline up to an elevation of approximately 249 above mean sea level (msl) is located within the A1 Zone. The special flood hazard area Fish Creek is in the A3 Zone and has base flood elevations ranging from 249 to 265 above msl. Golden Hill Creek, north of Lower Lake Road, is also located in the A3 Zone and has base

flood elevations from 266 to 273 above msl. Because the Golden Hill State Park is outside the Somerset Corporate limits, Golden Hill Creek within the park and its outlet are not regulated by the NFIP and, therefore, base flood elevations are not available for this downstream segment. These natural flood zones, or plains, are relatively flat areas that surround streams and are periodically inundated with water due to overbank flow. Most of the land area in the LWRA is designated as C Zone.

Development in the floodplain in the Town of Somerset is regulated under Chapter 104 – Flood Damage Prevention of the Code of the Town of Somerset. This law is designed to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas, as designated on the Flood Insurance Rate Maps. Within the regulatory floodplain, Floodplain Development Permits are required for certain construction activities within the Regulated Floodway and Special Flood Hazard Area (Zones A and AE). Pursuant to Chapter 104, any development action proposed within the Special Flood Hazard Area requires review and possibly a permit from the Code Enforcement Officer, who is the designated Local Administrator of the Flood Damage Prevention Law.

2. Erosion

On December 27, 1988, the New York State Department of Conservation issued Coastal Erosion Hazard Area (CEHA) maps for the Town of Somerset, pursuant to Environmental Conservation Law Article 34. The CEHA maps delineate the boundaries of the areas subject to regulation under the 6 NYCRR Part 505 Coastal Erosion Management Regulations, which establish requirements for permitting, construction and other activities within these areas. Although communities have the option of adopting locally administered coastal erosion management regulations, at this time the Town does not choose to assume the responsibility for issuing coastal erosion management permits.

Under the State's coastal management oversight, only portions of the Town of Somerset shoreline are classified by the New York State Department of Environmental Conservation as a "Natural Protective Feature Area" or a "Structural Hazard Area" (See [Map 7 – Environmental Features](#)). The shoreline from the westerly Town line to a point approximately 650 feet west of Quaker Road is designated as a "Natural Protective Feature" area. A second Natural Protective Feature area begins along the shoreline of Golden Hill State Park, at a point approximately 1,300 feet west of County

Line Road and extends eastward. This area is also a designated Structural Hazard Area.

Portions of the shoreline have been armored with rock rip-rap and concrete seawalls to prevent shoreline erosion. Seawalls can be found along the base of the bluffs and the seaward extent of many shoreline residential properties in the central portion of the study the area.

L. Environmental Hazards and Constraints

In research conducted for the Town of Somerset Comprehensive Plan, October 2002, it was determined that there are no known inactive hazardous waste sites within the LWRA.

M. Summary of Assets, Issues and Opportunities

Assets:

While the overall population and number of households has continued to grow, the Town's rural community character and agricultural base has remained stable.

The number of farms in operation in the Town has remained essentially stable since 1992.

The Village and State Parks (including Thirty-Mile Lighthouse) provide access and recreational opportunities on the waterfront.

The New York Seaway Trail follows Lake Road (NYS Route 18) in the vicinity of the Somerset LWRA. This designated National Scenic By-way is promoted as a tourism destination.

Most of the LWRA is served by public sewers.

Soils are considered valuable for raising crops.

Significant scenic views are available of Lake Ontario from many locations along the waterfront

Issues:

While the industrial and commercial properties are limited in number, they account for a significant amount of land area.

The camps and campgrounds represent less intensive uses than their commercial designation implies. Because the active campground areas do not cover the entire parcel and are not intensively developed, they may be subject to development pressures.

AES Somerset power plant occupies a significant length of shoreline, over 1/4 of the study area.

There are approximately 85 vacant parcels in the LWRP study area, consisting of 1,169 acres that represent lands available for future development.

There are approximately 50 residential vacant in-fill lots along waterfront in the RLS Lake Shore Residential District.

There are several large vacant properties that may be susceptible to future subdivision and residential development, including large undeveloped properties west of AES.

Development pressures may also increase on agricultural lands within the sewer district.

Although there is shoreline protection along some residential reaches, some of the existing erosion protection structures are in various states of disrepair.

Waterfront access is limited to two points of public access at the Village's Barker Bicentennial Park and Golden Hill State Park.

Public sewer service is not provided to some dense areas of residential development. In the future, as older on-site subsurface waste disposal systems fail and newer in-fill development occurs, the Town will continue to receive pressure to expand the sewer district and provide service to this relatively dense residential area. However, as sewer service is expanded development pressures may also increase.

The primary potential impact to water quality is non-point source pollution.

Air quality at AES Somerset power generating station

Protection of AES as a water-dependent use

Protection of wetlands and habitats

State Park and WWTP are not included in the surrounding zoning district

Potential loss and reuse of Agrilink facility

Erosion of steep banks.

There are no marinas or permanent docks within the LWRA primarily due to a combination of factors including, steep bluffs and bottom conditions. It is not anticipated that local demand will increase to a level justifying the effort to overcome the physical obstacles to establishing marina facilities within the LWRA, nor is it warranted to plan for the same.

There are no ferries for transportation or recreational purposes operating out of the Somerset LWRA. Due to numerous reasons including the lack of on-shore infrastructure and offshore physical conditions the location of a ferry terminal is not warranted, nor is it compatible with the character of the Somerset Community. The lack of a natural harbor dictates a public capital investment and potential environmental impacts that do not justify the planning for such a facility.

Opportunities:

The campgrounds offer an opportunity to preserve relatively large and undeveloped areas of open space along the waterfront.

Creeks and their banks remain in relatively natural condition.

Undeveloped lands along lake shore offer future opportunities for public access.

The AES multiple use plan is in place to provide for the future recreational needs of the community (approximately 30 acres).

There is capacity at the WWTP to direct future development within the LWRA to occur within the existing sewer service area.

Creeks in the LWRA not only serve an important drainage function, but also provide attractive natural settings and offer opportunities for recreation.

In January 2003, in response to a request from the Niagara County Environmental Management Council, the Somerset Planning Board recommended the following area's within the LWRA for inclusion on Niagara County's list of lands to be considered for open space protection:

The multi-use area at the northeast edge of the AES Power Plant property as the area that can be developed into parkland along the Lake Ontario shoreline.

The Salt Springs located on Quaker Road. The area was used by the Native American Indian and has historic significance.

Lover's Lane north of the Creek. This area has a ravine and is in a floodplain.

Brown's Camp and Haight's Park. Both of these camps have considerable frontage along Lake Ontario and acreage that could be utilized as parkland. Open lakefront of 200 plus acres with 4,000' frontage on Lake Ontario on the west end of the Town.

SECTION III – Local Waterfront Revitalization Program Policies

Section III presents the waterfront revitalization policies and their associated standards that are used in guiding appropriate development actions for a community. These policies consider the physical, economic, environmental and cultural characteristics of the community. They are comprehensive and reflect existing laws and authority regarding development and environmental protection. Together, these policies and their standards are to be used to determine an appropriate balance between economic growth and development and preservation that will permit the beneficial use of waterfront resources in the Town of Somerset without undue impacts. The following is a list of the Town of Somerset LWRP policies.

DEVELOPED WATERFRONT POLICIES

Policy 1

Foster a pattern of development in the coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development.

Policy 2

Preserve historic resources

Policy 3

Enhance visual quality and protect outstanding scenic resources.

NATURAL WATERFRONT POLICIES

Policy 4

Minimize loss of life, structures, and natural resources from flooding and erosion.

Policy 5

Protect and improve water resources.

Policy 6

Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands, and rare ecological communities.

Policy 7

Protect and improve air quality.

Policy 8

Minimize environmental degradation from solid waste and hazardous substances and wastes.

PUBLIC WATERFRONT POLICIES

Policy 9

Improve public access to and use of public lands and waters.

WORKING WATERFRONT POLICIES

Policy 10

Protect water-dependent uses, promote siting of new water-dependent uses in suitable locations, and support efficient harbor operation.

Policy 11

Promote sustainable use of fish and wildlife resources.

Policy 12

Protect agricultural lands in the Somerset LWRP study area.

Policy 13

Promote appropriate use and development of energy and mineral resources.

DEVELOPED WATERFRONT POLICIES

POLICY 1

FOSTER A PATTERN OF DEVELOPMENT IN THE COASTAL AREA THAT ENHANCES COMMUNITY CHARACTER, PRESERVES OPEN SPACE, MAKES EFFICIENT USE OF INFRASTRUCTURE, MAKES BENEFICIAL USE OF A LAKESHORE LOCATION, AND MINIMIZES ADVERSE EFFECTS OF DEVELOPMENT.

Somerset's waterfront area is a key component to the character of the Town. The Town of Somerset waterfront is characterized by rural landscape with small enclaves of residential development along the shoreline of Lake Ontario. The vitality of the waterfront, and the preservation of the rural character of the area, is a critical component of the land use strategy for this area. Focusing future investment to sustain the community and protects the remaining open landscape that provides

agricultural, ecological and scenic value. The intent of this policy is to foster a pattern of development that protects and improves stable residential development, improves recreational opportunities, preserves open space and agricultural uses, and reinforces the rural character of the area.

Policy Standards

- 1.1 Concentrate development and redevelopment in order to revitalize and enhance the waterfronts and strengthen the traditional rural waterfront focus of a the community

New development should be located where infrastructure is adequate or can be upgraded to accommodate new development. Future development within the LWRA should be directed to occur within the existing sewer service areas.

The following planning principles should be used to guide investment and preparation of development strategies and plans:

- A. Scale development to be appropriate to the setting;
- B. Design development to highlight existing resources, such as local history and important natural and man-made features to reinforce community identity;
- C. Design the waterfront as a focus for activity that draws people to the shoreline and links the waterfront to upland portions of the community;
- D. Meet community and regional needs and market demands in making development choices;
- E. Recognize environmental constraints as limiting development; and
- F. Recognize the lack of sewer service as a constraint limiting development.

All development or uses should recognize the unique qualities of a lakeshore location by:

- A. Using building and site design to make beneficial use of a waterfront location and associated lakeshore resources;
- B. Minimizing consumption of waterfront lands and potential adverse impacts on natural resources;
- C. Limiting shoreline alteration and surface water coverage;
- D. Incorporating recreational activities, public access, open space, or amenities, as appropriate to the use, to enhance the site and the surrounding community, and to increase visual and physical access to the coast;
- E. Attracting people to the lakefront, as appropriate to the use;
- F. Ensuring that design and siting of uses and structures complements the surrounding community and landscape;

- G. Using indigenous plants as components of landscape design to improve habitat and water quality, and to lessen water demand; and
- H. Reinforcing community identity by highlighting local history and important natural and man-made features.

1.2 Ensure that development or uses make beneficial use of their waterfront location.

The amount of waterfront and its associated resources are limited. All uses should relate to the unique qualities associated with a waterfront location. Consideration should be given to whether a use is appropriate for a waterfront location. When planning waterfront development or redevelopment, the waterfront location should be reflected in the siting, design, and orientation of the development.

Water-dependent uses

Water-dependent uses should be promoted where appropriate and given precedent over other types of development at suitable waterfront sites. Existing water dependent uses should be protected.

Water-dependent uses are activities which require a location in, on, over, or adjacent to the water because the activities require direct access to water and the use of water is an integral part of the activity.

Development which is not dependent on a waterfront location or which cannot make beneficial use of a waterfront location should be avoided in the currently vacant areas along the waterfront.

It is recognized that the AES power generating station is a long-term water dependent use that will continue its operations Somerset. However, expansion or addition of non-water dependent uses should be avoided along the waterfront.

Water-enhanced uses

Water-enhanced uses may be encouraged where they are compatible with surrounding development and are designed to make beneficial use of their waterfront location.

Water enhanced uses are activities that do not require a location on or adjacent to the water to function, but whose location on the waterfront could add to public enjoyment and use of the water's edge, if properly designed and sited. Water-

enhanced uses are generally of a recreational, cultural, commercial, or retail nature.

To ensure that water-enhanced uses make beneficial use of their waterfront location, they should be sited and designed to:

- A. Attract people to or near the waterfront and provide opportunities for access that is oriented to the coast;
- B. Provide public views to or from the water;
- C. Minimize consumption of waterfront land; and
- D. Not interfere with the operation of water-dependent uses.
- E. not cause significant adverse impacts to community character and surrounding land and water resources
- F. where appropriate, improve public access to waterfront

Uses should be avoided that would:

- A. Result in unnecessary and avoidable loss of lakeshore resources;
- B. Ignore their waterfront setting as indicated by design or orientation; and
- C. By their nature, not derive an economic benefit from a waterfront location.

The existing camps and campgrounds are water-enhanced uses. Due to the lack of significant pressure for new development, it is anticipated that the camps will remain in operation. However, in the future, if the camps and campgrounds are proposed for re-development, priority should be given to water-dependent and water-enhanced uses over or non-water dependent commercial or industrial uses. This policy is reflected in the recently adopted (2003) Comprehensive Plan, which presents a Vision map promoting waterfront uses along the shoreline. Proper site planning (to protect the shoreline and promote public access) is facilitated by the Town's authority to utilize its existing cluster development regulations.

Since much of the existing waterfront land use is residential, in-fill development in existing residential areas should continue to be allowed in existing sewer service areas.

When deemed necessary by the Town, an overlay district should be established in order to provide enhanced use and design controls while maintaining the underlying residential and agricultural designations within the LWRA.

1.3 Maintain and enhance natural areas, recreation, open space, and agricultural lands

Natural areas, agricultural lands, open space, and recreational land produce public benefits that may not be immediately tangible. In addition to scenic and recreational benefits, these lands may also support habitat for ecologically important fish and wildlife, provide watershed management of flood control benefits, serve to recharge groundwater and maintain links to a region's agricultural heritage.

To enhance community character and maintain the quality of the natural and man-made environments, potential adverse impacts on existing development, physical environments, and economic factors should be addressed and mitigated. Development requirements should reflect site characteristics, limit the disturbance of land and water, and foster visual compatibility of the development with surrounding areas.

Adverse impacts on natural resources should be avoided, including:

- A. Deterioration of water quality;
- B. Loss, fragmentation, and impairment of habitats and wetlands; and
- C. Alterations to natural protective features and changes to the natural processes of erosion and accretion that lead to increased erosion rates, damage by lake storms, and tidal flooding.

Special consideration should be given to protecting stands of large trees, unique forest cover types and habitats, and old fields. The open space value of agricultural land should be protected, preferably through retention of agricultural production.

The expansion of infrastructure into undeveloped areas should be avoided where such expansion would promote growth and development detrimental to natural resources and agricultural productivity.

At this time the Town does not have the funds available to develop the recreation features in the Multi-use Plan. Nor does the Town believe that there is sufficient demand for a park at this time in that location. However, The Town should retain its options to implement the Multi-use Plan in the future to meet the recreation needs of the Town. At such time as demand and fund are in place, development of the Multi-use Plan should focus on public access to the waterfront.

- 1.4 Minimize potential adverse land use, environmental, and economic impacts that would result from proposed development

To enhance community character and maintain the quality of the natural and man-made environments of the waterfront area, potential adverse impacts on existing development, physical environments, and economic factors should be addressed and mitigated. Development requirements should reflect existing site characteristics, limit the disturbance of land and water, and foster visual compatibility of development with surrounding areas.

Cumulative and secondary adverse impacts from development and redevelopment should be minimized. Cumulative impacts are the result of the incremental or increased impact of repetitive actions or activities when added to other past, present, or future actions or activities. Secondary impacts are those that are foreseeable, but occur at a later time or at a greater distance from the action, and are caused by an action or activity, whether directly or indirectly.

Potential adverse impacts on existing development should be minimized, as follows:

- A. Avoid introduction of discordant features which would detract from the community by comparing the proposed development with existing mass and distribution of structures, scale, intensity of use, architectural style, land use pattern, or other indicators of community character;
- B. Mitigate adverse impacts among existing incompatible uses by avoiding expansion of conflicting uses, promoting mixed-use development approaches which would reduce potential for conflict, mitigating potential conflicts by segregating incompatible uses, and providing buffers, or using other design measures to reduce conflict between incompatible uses;
- C. Protect the surrounding community from adverse impacts due to substantial introductions of or increases in visually intrusive uses, odors, noise or traffic;
- D. Integrate waterfront areas with upland communities by: providing physical linkages between the upland community and the waterfront, matching uses to community needs, particularly as related to demographic characteristics, and limiting exclusion of the waterfront from the surrounding community; and
- E. Prevent displacement or impairment of the operation of water-dependent and water-enhanced uses.

Potential adverse economic impacts should be minimized, as follows:

- A. Prevent deterioration of the site and surrounding area by preventing derelict or dilapidated conditions, avoiding detracting from community character, and preventing isolation of community and people from the waterfront;
- B. Protect and enhance the community's economic base;
- C. Promote a diverse economic base; and

- D. Where expansion of infrastructure or services is necessary:
- (1) increase existing facility and service capacity and efficiency to foster concentration of development,
 - (2) where feasible, expand sewer service areas to currently un-served residential areas, and
 - (3) avoid expansion of improvements and services into previously undeveloped areas.

1.5 Protect stable residential areas

New development located in or adjacent to existing residential areas should be compatible with neighborhood character. New development can result in a reduction of informal public access points, which may be of significance to a residential area. The potential loss of these informal public access points emphasizes the need to foster opportunities to provide new public access points for the community.

New non-residential uses in a stable residential area should be avoided when the use, its size and scale will significantly impair neighborhood character. New construction, redevelopment, and screening, such as fences and landscaping, should not reduce or eliminate vistas that connect people to the water.

POLICY 2

PRESERVE HISTORIC RESOURCES.

Archaeological sites and historic structures are tangible links to the past development of a community-both its cultural and economic life-providing a connection to past generations and events. In the Town of Somerset, there are few identified archaeological or historical resources of statewide significance. Those that are known (Thirty-Mile Point Lighthouse and Babcock House), as well as those that may be identified in the future, are important components in defining the community's distinctive identity and heritage. Therefore, the effective preservation of historic resources must include efforts to identify, document restore and revitalize important resources, where appropriate.

The intent of this policy is to preserve the historic and archaeological resources of the Somerset LWRA. Concern extends not only to the specific site or resource, but with the area adjacent to and around specific sites or resources. The quality of adjacent areas is often critical to maintaining the quality and value of the resource. Effective

preservation of historic resources must also include active efforts, when appropriate, to restore or revitalize. While the Somerset LWRP addresses all such resources within the waterfront area, it actively promotes preservation of historic, archaeological, and cultural resources that have a waterfront relationship.

In addition to the above noted historic structures, historic resources that would be covered under this policy include those structures, landscapes, districts, areas or sites, or underwater structures or artifacts, which are listed or designated as follows:

- A. Any historic resource in a federal or state park established, solely or in part, in order to protect and preserve the resource;
- B. Any resource on, nominated to be on, or determined eligible to be on the National or State Register of Historic Places;
- C. Any cultural resource managed by the New York State Nature and Historic Preserve Trust or the New York State Natural Heritage Trust;
- D. Any archaeological resource which is on the inventories of archaeological sites maintained by the New York State Department of Education or the Office of Parks, Recreation, and Historic Preservation; and
- E. Any locally designated historic or archaeological resources protected by a local law or ordinance.

In identifying those elements that are important in defining the character and value of a historic resource, designation information, available documentation, and original research should be used. Important character-defining elements of the historic resource should be identified in terms of its:

- A. Time, place, and use;
- B. Materials, features, spaces, and spatial relationships;
- C. Setting within its physical surroundings and the community; and
- D. Association with historic events, people, or groups.

The value of the historic resource as indicated by:

- A. Its membership within a group of related resources which would be adversely impacted by the loss of any one of the group of resources;
- B. The rarity of the resource in terms of the quality of its historic elements or in the significance of it as an example; or
- C. The significance of events, people, or groups associated with the resource.

Policy Standards

2.1 Maximize preservation and retention of historic resources

Preserve and retain the historic character-defining elements of the resource. Use the following standards to achieve the least degree of intervention.

- A. Protect and maintain historic materials and features according to the following approach:
 - (1) Evaluate the physical condition of important materials and features;
 - (2) Stabilize materials and features to prevent further deterioration;
 - (3) Protect important materials and features from inadvertent or deliberate removal or damage; and
 - (4) Ensure the protection of historic elements through a program of non-intrusive maintenance of important materials and features.
- B. Repair historic materials and features according to recognized preservation methods when their physical condition warrants.
- C. When a historic feature is missing or the level of deterioration or damage precludes maintenance or repair:
 - (1) Limit the replacement of extensively deteriorated features or missing parts to the minimum degree necessary to maintain the historic character of the resource.
 - (2) Maintain historic character where a deteriorated or damaged feature is replaced in its entirety. In replacing features, the historic character of the resource can be best maintained by replacing parts with the same kind of material. Substitute materials may be suitable if replacement in kind is not technically or economically feasible and the form, design, and material convey the visual appearance of the remaining parts of the feature.
 - (3) When re-establishing a missing feature, ensure that the new feature is consistent with the historic elements of the resource. If adequate historical, pictorial, and physical documentation exists so that the feature may be accurately reproduced, use available documentation to

design and construct a new feature. If adequate documentation does not exist, design and construct a new feature that is compatible with the remaining features of the resource. The new design should be based on research, pictorial, and other evidence so that a true historical appearance is created.

D. Provide for efficient, compatible use of the historic resource.

E. Foster uses that maximize retention of the historic character of the resource:

- (1) Maximum retention of historic character is best achieved by using the resource as it was historically used; and
- (2) If the resource cannot be used as it was historically used, adapt a use to the historic resource that maximizes retention of character-defining materials and features.

F. Minimize alterations to the resource to preserve and retain its historic character.

- (1) Minimize potential negative impacts on the resource's historic character due to necessary updates in systems to meet health and safety code requirements or to conserve energy.
- (2) Make alterations to the resource only as needed to ensure its continued use and provided that adverse impact on the resource is minimized. Alterations should not obscure, destroy, or radically change character-defining spaces, materials, features, or finishes in order to minimize adverse impact on the resource. Alterations may include selective removal of features that are not historic elements of the resource and its setting and that detract from the overall
- (3) historic character of the resource.
- (4) Construct new additions only after it is determined that an exterior addition is the only viable means of assuring continued use of the resource.
- (5) In constructing new additions, use appropriate design and construction to minimize adverse impact on the resource's historic character. Adverse impact can be minimized in new additions by: clearly differentiating from historic materials and features; using design compatible with the historic materials, forms and details, size, scale and proportion, and massing of the resource to protect the integrity of the resource and its setting. In addition, new additions should be designed such that, if removed in the future, the essential form and integrity of the historic resource and its setting would not be impaired.

G. Minimize loss of historic resources or the historic character of the resources of the waterfront when it is not possible to completely preserve and retain the resource.

H. Relocate an historic resource when it cannot be preserved in place and the resource is imperiled:

- (1) directly by a proposed activity which has no viable alternative which would not result in adverse effects on the resource, or
 - (2) indirectly by surrounding conditions which are likely to result in degradation or inadequate maintenance of the resource
 - (3) the resource cannot be adapted for use on the existing site which would result in preservation of the resource,
 - (4) a suitable site for relocation is available, and
 - (5) it is technically and economically feasible to move the resource.
- I. Allow for demolition of the resource only when:
- (1) it is not feasible to protect the resource through relocation, and
 - (2) the resource has been officially certified as being imminently dangerous to life or public health, or
 - (3) the resource cannot be adapted for any use on the existing site or on any new site
- J. Document in detail the character-defining elements of the historic resource in its original context prior to relocation or demolition of the resource.
- K. Avoid potential adverse impacts of development on adjacent or nearby historic resources.
- L. Protect historic resources by ensuring that development is compatible with the historic character of the affected resource.
- M. Design development to a size, scale, proportion, mass, and with a spatial relationship compatible with the historic resource.
- N. Design development using materials, features, forms, details, textures, and colors compatible with similar features of the historic resource.
- O. Limit adverse cumulative impacts on historic resources.
- (1) Minimize the potential adverse cumulative impact on a historic resource, which is a member of a group of related resources that may be adversely impacted by the loss or diminution of any one of the members of the group.
 - (2) Minimize the potential cumulative impacts of a series of otherwise minor interventions on a historic resource.
 - (3) Minimize potential cumulative impacts from development adjacent to the historic resource.

2.2 Protect and preserve archaeological resources

Conduct a cultural resource investigation when an action is proposed on an archaeological site, fossil bed, or in an area identified for potential archaeological sensitivity on the archaeological resources inventory maps prepared by the New York State Department of Education.

- A. Conduct a site survey to determine the presence or absence of cultural resources in the project's potential impact area.
- B. If cultural resources are discovered as a result of the initial survey, conduct a detailed evaluation of the cultural resource to provide adequate data to allow a determination of the resource's archaeological significance.

If impacts are anticipated on a significant archaeological resource, minimize potential adverse impacts by:

- A. Redesigning the project;
- B. Reducing direct impacts on the resource; and
- C. Recovering data prior to construction.

Avoid disturbance or adverse effects on any object of archaeological or paleontological interest situated on or under lands owned by the State of New York. These resources may not be appropriated for private use.

2.3 Preserve and enhance the historic Thirty Mile-Point lighthouse.

The Thirty-Mile Point lighthouse adds significantly to the character of the Somerset waterfront community.

Provide for the long-term protection of Thirty-Mile Point lighthouse, which is listed in the National or State Register of Historic Places through the least degree of intervention.

- A. Protect the historic lighthouses from erosion hazards.
- B. Use nonstructural methods such as beach nourishment as the first choice in providing protection from erosion hazards
- C. Relocate the historic lighthouse if imperiled by erosion hazards that cannot be managed by nonstructural methods. The lighthouses should be relocated to an adjacent sites, whenever feasible, as determined by economics and

engineering constraints. In relocating the lighthouse, particular attention should be given to preserving the original context and function. In addition, any decision to relocate the lighthouse should provide for a sufficient period of protection to warrant the expenditure of funds for relocation.

D. Use hard structural erosion control measures to preserve the lighthouse only if:

- (1) The lighthouse is clearly imperiled by erosion hazards;
- (2) Relocation is not feasible based on economic or engineering constraints;
- (3) Nonstructural approaches would not provide sufficient protection; and
- (4) Hard structures would not adversely affect coastal processes.

2.4 Preserve and enhance the historic Babcock House Museum on Lake Road.

Provide for the long-term protection of the Babcock House Museum. In the event that AES Somerset, LLC proposes to develop or sell the 178-acre parcel, on which the Babcock House is located, measures must be put into place to ensure the continued preservation and maintenance of the museum, its associated out-buildings and a surrounding parcel large enough to ensure that their historic significance is not significantly diminished.

POLICY 3

ENHANCE VISUAL QUALITY AND PROTECT OUTSTANDING SCENIC RESOURCES.

Waterfront landscapes possess inherent scenic qualities. The presence of water and ever-changing expansive views, the ephemeral effects of wildlife and atmospheric changes, and the visually interesting working landscape draw people to the water's edge. Due to their importance, scenic resources should be considered in balancing wise use and conservation of waterfront resources.

From various points along the Somerset waterfront, there are excellent views of Lake Ontario and its shoreline. Significant views are available from Thirty-Mile Point within Golden Hill State Park, Lower Lake Road and from some vantage points along Lake Road (Route 18). The New York Seaway Trail follows Route 18 through the Town of Somerset. The Seaway Trail is the only National Scenic By-way in New York State. National Scenic By-ways are areas that possess outstanding qualities that exemplify the regional characteristics of our nation. This designation for the corridor through

Somerset is important and should be recognized as such. Efforts should be taken to protect and where possible, to improve the visual quality and visual accessibility of the waterfront area.

3.1 Protect and improve visual quality throughout the waterfront.

The visual quality of Town of Somerset waterfront is an important component in the character of this area. Waterfront uses often include residential and recreational activities, infrastructure, and changes to the landscape that add visual interest. Some of these uses include elements that may not in themselves be considered scenic, yet contribute interest to the landscape. Structures or activities that introduce visual interruptions to the natural landscape along the shoreline, such as intrusive artificial lighting or massive structural elements in open areas, should be discouraged.

The Thirty-Mile Point Lighthouse in Golden Hill State Park represents a structure that is significant both culturally and scenically and should be preserved and protected.

Wetlands, important open space, including upland areas and the expanse of water, and shorelines in natural conditions all contribute to scenic quality. Along the Somerset shoreline, the bluffs are the most significant natural feature adding to the scenic value of waterfront. These resources should be protected.

3.2 Protect aesthetic values associated with recognized areas of high scenic quality

There are no designated Scenic Areas of Statewide Significance; designated areas under Protection of Natural and Man-made beauty (Article 49 of ECL), designated scenic rivers, or other governmentally recognized scenic resource areas in the Somerset LWRA.

Route 18 runs through the western portion of the Somerset LWRA. Route 18 is part of the New York Seaway Trail, the only National Scenic By-way in New York State. National Scenic By-ways are areas that possess outstanding qualities that exemplify the regional characteristics of our nation. This designation for the corridor through Somerset is important and should be recognized as such. Efforts should be taken to protect and where possible, to improve the visual quality and visual accessibility of the waterfront area.

NATURAL WATERFRONT POLICIES

POLICY 4

MINIMIZE LOSS OF LIFE, STRUCTURES, AND NATURAL RESOURCES FROM FLOODING AND EROSION.

This policy seeks to protect life, structures and natural resources from the hazards of flooding and erosion. The policy reflects State flooding and erosion regulations and provides measures for the reduction of hazards and protection of resources. The Town of Somerset contains flood zones that have been designated by the Federal Emergency Management Agency and are depicted on Flood Insurance Rate Maps. The Town participates in the National Flood Insurance Program and development in the floodplain is regulated under Chapter 104 of the Town Code – Flood Damage Prevention. This law is designed to promote the public health, safety and general welfare and to minimize public and private loss due to flood conditions in specific areas, as designated on the Flood Insurance Rate Maps. Pursuant to Chapter 104, any development action that is proposed within regulated flood zones requires a permit from the Town Code Enforcement Officer and must be in compliance with the standards outlined in the law (see Appendix B).

In the Town of Somerset, flooding has been known to occur along Fish Creek and Golden Hill Creek and the shoreline of Lake Ontario is subject to high velocity wind and wave action from lakefront storms. Portions of the lakeshore have experienced erosion problems and required reinforcement due to the impacts of lake storm events.

In response to existing or perceived erosion and flood hazards, many landowners construct erosion control structures. While some erosion control structures are necessary to protect development, there are many erosion control structures located along the shoreline are not necessary for erosion protection.

Although some sections of the coast have been heavily fortified, significant stretches remain in a natural state. Other areas have been hardened in the past, but those structures are now in disrepair. The natural shoreline has an inherent natural, social, and economic value that should be respected to ensure continuing benefits. Consequently, those portions of the Lake Ontario shoreline that are not fortified should generally remain in a natural condition to respond to coastal processes. Where

feasible and appropriate, portions of the shoreline that have been hardened should be returned to a natural condition.

Development and redevelopment in hazard areas needs to be managed to reduce exposure to flooding and erosion hazards. Hardening of the shoreline is to be avoided except when alternative means, such as soft engineering alternatives, beach nourishment or revegetation, are impractical to protect principal structures or extensive public investment (land, infrastructure, facilities).

This policy seeks to protect life, structures, and natural resources from flooding and erosion hazards. The policy reflects State flooding and erosion regulations and provides measures for reduction of hazards and protection of resources.

Policy standards are divided into seven sections. Section 1 presents standards directed at protection of life and property, including measures for minimizing losses from flooding and erosion arranged in order of priority, ranging from avoidance to hard structural approaches. Section 2 addresses natural protective features. Section 3 addresses protection of public lands or public trust lands. Section 5 establishes conditions for expenditure of public funds for management of flood and erosion hazards contingent on public benefit.

Policy Standards

4.1 Minimize losses of human life and property damage by locating structures and other development away from flooding and erosion hazards

- A. Use hard structural erosion protection measures for control of erosion only where:
 - (1) Vegetative approaches to control erosion are not effective;
 - (2) Construction of a hard structure is the only practical design consideration and is essential to protecting upland uses;
 - (3) The proposed hard structural erosion protection measures are limited to the minimum scale necessary and are based on sound engineering practices; and
 - (4) Practical vegetative methods have been included in the project design and implementation.

B. In all areas of special flood hazards the following standards are required.

Anchoring -

- (1) All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.

- (2) All manufactured homes shall be installed using methods and practices that minimize flood damage. Manufactured homes must be elevated and anchored to resist floatation, collapse and lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

Construction materials and methods -

- (1) All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

Utilities -

- (1) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Subdivision proposals -

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage
- (2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either 50 lots or five acres.

Encroachments -

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A zones) shall be analyzed to determine the effects on the flood carrying capacity of the area of special flood hazards set forth in Section 104-13A(3) of the Flood Damage Prevention Law. This may require the submission of additional data to assist in the determination.

- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to the provisions of Sections 104-13B or 104-14d(4) of the Flood Damage Prevention Law, and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to Section 104-13B, the requirements of Section 104-16 of the Flood Damage Prevention Law shall apply.

C. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Sections 104-6 104-13B of the Town of Somerset Flood Damage Prevention Law, the following standards are required.

Residential construction - New construction and substantial improvements of any residential structure shall comply with the following:

- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
- (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch shall be provided for every square foot of enclosed area subject to flooding;
 - b. The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
 - c. Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

Non-residential construction - New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation, or be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevations shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - b. The bottom of all such openings shall be not higher than one (1) foot above the lowest adjacent finished grade; and

- c. Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (2) If the structure is to be floodproofed:
- a. A licensed professional engineer or architect shall develop and/or review structural designs, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - b. A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
- (3) The Town of Somerset Local Flood Law Administrator shall maintain, on record, a copy of all such certificates noted in this policy.

Construction standards for areas of special flood hazards without base flood elevations, include the following:

- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor (including basement) elevated to or above the base flood elevation as may be determined in Section 104-13B of the Flood Damage Prevention Law or two (2) feet above the highest adjacent grade where no elevation data is available.
- a. New construction or substantial improvements of structures, including manufactured homes shall have the lowest floor (including basement) elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
 - b. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - a minimum of two (1) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding
 - the bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade
 - openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

4.2 Maintain erosion protection structures to protect public health and safety and reduce erosion hazards

The erosion protection structures located along the central portion of the lakefront are in various states of disrepair. To protect public health and safety, and reduce

erosion hazards, lakefront property owners are encouraged to repair or replace concrete seawalls, rock rip rap and other erosion protections structures, to the greatest extent possible. The New York State Department of Environmental Conservation will work with residents and continue to permit the replacement of these structures or the installation of new structures in accordance with 6 NYCRR Part 505 (Coastal Erosion Management Regulations and Part 608 (Protection of Water).

4.3 Minimize loss of structures and natural resources in floodways

Located within areas of special flood hazards are areas designated as floodways. The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces.

When floodway data is available for a particular site (as provided by Subsections 104-6 and 104-13B of the Flood Damage Prevention Law, all encroachments, including fill, new construction, substantial improvements and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

4.4 Preserve and restore natural protective features

Natural protective features along Lake Ontario and the tributary creeks and streams include beaches, dunes, bluffs, and wetlands, and associated natural vegetation.

A. Maximize the protective capabilities of natural protective features by:

- (1) Avoiding alteration or interference with areas of the Lake Ontario shorelines currently in a natural condition;
- (2) Enhancing existing natural protective features;
- (3) Restoring the condition of impaired natural protective features, wherever practical; and
- (4) Using practical vegetative approaches to stabilize natural shoreline features.

4.5 Protect public lands and public trust lands and use of these lands when undertaking all erosion or flood control projects

- ##### A. Retain ownership of public trust lands that have become upland areas due to fill or accretion resulting from erosion control projects.

- B. Avoid losses or likely losses of public trust lands or use of these lands, including public access along the shore, which can be reasonably attributed to or anticipated to result from erosion protection structures.
- C. Provide and maintain compensatory mitigation of unavoidable impacts to ensure that there is no adverse impact to adjacent property, to natural coastal processes and natural resources, or to public trust lands and their use.

4.6 Expend public funds for management or control of flooding or erosion hazards only in areas of the lakeshore that will result in proportionate public benefit

Give priority in expenditure of public funds to actions that protect public health and safety, mitigate past flooding and erosion, protect areas of intensive development, and protect substantial public investment (land, infrastructure, facilities).

- A. The expenditure of public funds for flooding or erosion control projects:
 - (1) Should be limited to those circumstances where public benefits exceed public costs;
 - (2) Is prohibited for the exclusive purpose of flooding or erosion protection for private development; and
 - (3) May be apportioned among each level of participating governmental authority according to the relative public benefit accrued.
- B. Factors to be used in determining public benefit attributable to the proposed flood or erosion control measure include:
 - (1) Economic benefits derived from protection of public infrastructure and investment and protection of water-dependent commerce;
 - (2) Extent of public infrastructure investment; or
 - (3) Extent of existing or potential public use.

POLICY 5

PROTECT AND IMPROVE WATER RESOURCES.

The purpose of this policy is to protect the quality and quantity of water in the Somerset LWRP area. Water quality considerations include the management of both point and nonpoint pollution. Water quality protection and improvement must be accomplished by the combination of managing new and remediating existing sources of pollution.

Four sections present the standards for this policy. The first section deals with both point and nonpoint sources of pollution. These standards reflect the state regulations for point source discharge, treatment of sanitary and industrial wastes, and discharges into navigable waters. Section 2 presents specific approaches for managing nonpoint source pollution according to the land use or pollution source categories. Section 3 summarizes existing regulations for protection of lake water quality. Section 4 specifically addresses cumulative and secondary impacts as related to water quality.

Policy Standards

5.1 Prohibit direct or indirect discharges that would cause or contribute to the contravention of water quality standards and targets

A. Prevent point source discharges into lake waters and manage or avoid land and water uses which would:

- (1) Exceed applicable effluent limitations, or cause or contribute to contravention of water quality classification and use standards; or
- (2) Adversely affect receiving water quality.

B. Ensure effective treatment of sanitary sewage and industrial discharges by:

- (1) Maintaining efficient operation of sewage and industrial treatment facilities;
- (2) Providing, at a minimum, effective secondary treatment of sanitary sewage;
- (3) Modifying existing sewage treatment facilities to provide improved nitrogen removal capacity;
- (4) Incorporating into the design for new or upgraded wastewater treatment facilities the capacity for treatment beyond secondary treatment, if and when funding is available;
- (5) Reducing the demand on sewage treatment facilities by:
 - a. Reduce infiltration of excess water in collection and transport systems
 - b. Prevent unauthorized collection system hookups
 - c. Pretreat industrial wastes
 - d. Limit discharge volumes and pollutant loadings to or below authorized levels
 - e. Installing low-flow water conservation fixtures in all new development, and when replacing fixtures in existing development;
- (6) Controlling, and to the greatest extent possible, reducing the loadings of toxic materials into lake waters by including limits on toxic metals as part of wastewater treatment plant (WWTP) effluent permits and by enforcing any pretreatment requirement; and

(7) Use of on-site disposal systems only when it is impractical to connect with public sewer systems. Encourage residential development in areas served by sewer before non-sewer service areas.

- C. Protect surface and groundwater against contamination from pathogens and excessive nutrient loading by keeping septic effluent separated from groundwater and by providing adequate treatment of septic effluent.

This standard addresses performance of septic systems. Factors to include in assessing septic systems include water table elevation, soil porosity, and system design. Septic system capacity is an important factor, which can be controlled by reducing unnecessary organic loads. Nutrient loading to groundwater is of concern based on cumulative effects and resulting contamination of potable groundwater water and excessive nutrient loadings into surface waters including through springs and groundwater lens ponds.

- D. Encourage evaluation and remediation of on-site systems that currently do not adequately treat or separate effluent.

A desire to protect and improve water quality in the LWRA is one of the main goals of the LWRP. This goal may be achieved by continuing to encourage the implementation of best management practices in areas subject to non-point source pollution, in particular failing septic systems. Over the long-term, further water quality improvement can be achieved by extending sanitary sewers to locations with older, failing systems, such as the Lakeshore and Somerset Drive area, where there is denser residential development that utilizes on-site sanitary disposal systems. These systems may require maintenance, and in some cases replacement, to ensure the protection of water quality. The installation of public sewers into this area would eliminate the potential threats to water quality from failing septic systems. Until such time that sewer extensions can be accomplished, property owners should work with the Niagara County Health Department to obtain guidance and assistance with acceptable designs for septic system maintenance and replacement.

5.2 Minimize nonpoint pollution of lake waters and manage activities causing nonpoint pollution

- A. Minimize nonpoint pollution of lake waters using the following approaches, which are presented in order of priority.

(1) Limit non-point source pollution by:

- a. Reducing or eliminating the introduction of materials that may contribute to nonpoint pollution;
 - b. Avoiding activities that would increase off-site stormwater runoff and transport of pollutants;
 - c. Controlling and managing stormwater runoff to:
 - minimize transport of pollutants,
 - restore degraded stormwater natural stormwater runoff conditions and
 - achieve no-net increase of runoff where unimpaired stormwater runoff conditions exist;
 - d. Retaining or establishing vegetation to maintain and provide soil stabilization, and filtering capacity;
 - e. Preserve natural hydrologic conditions to maintain natural surface water flow characteristics and retain natural watercourses and drainage systems where present; and
 - f. Where natural drainage systems are absent or incapable of handling the anticipated runoff demands:
 - develop open vegetated drainage systems as the preferred approach and design these systems to include long and indirect flow paths and to decrease peak runoff flows; and
 - use closed drainage systems only where site constraints and stormwater flow demands make open water systems infeasible.
- (2) Reduce pollutant loads to lake waters by managing unavoidable nonpoint sources and use appropriate best management practices as determined by site characteristics, design standards, operational conditions, and maintenance programs.
- B. Reduce nonpoint source pollution using specific management measures appropriate to specific land use or pollution source categories.

This section presents summary management measures to apply to specific land use or pollution sources. These management measures are to be applied within the context of the prioritized approach of avoidance, reduction, and management presented in the previous policy section. Further information on specific management measures is contained in Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (U.S. EPA, 840-B-92-002).

(1) Agriculture

- a. Control soil erosion and contain sediment in order to avoid entry of soils into the waters of Lake Ontario and Fish and Golden Hill Creeks.
- b. Manage nutrient loadings by applying nutrients only in amounts needed for crop growth, avoiding nutrient applications that will result in nutrient loadings to lake waters and tributaries creeks and streams.
- c. Limit contamination of lake and creek waters from pesticides to the extent possible by applying pesticides only when economically appropriate and in a safe manner.

(2) Urban

- a. For new development, manage total suspended solids in runoff to remain at predevelopment loadings.
- b. For site development, limit activities that increase erosion or the amount or velocity of stormwater runoff.
- c. For construction sites, reduce erosion and retain sedimentation on site, and limit and control use of chemicals and nutrients.
- d. For new on-site sewage disposal systems, ensure that siting, design, maintenance, and operation prevent discharge of pollutants.
- e. Plan, site, and design roads and highways to manage erosion and sediment loss, and limit disturbance of land and vegetation.
- f. Plan, site, and design bridges to protect ecosystems.
- g. For roads, highways, and bridges, minimize to the extent practical the runoff of contaminants to lake waters.

(3) Hydromodifications

- a. Maintain the physical and chemical characteristics of surface waters, reduce adverse impacts, and, where possible improve the physical and chemical characteristics of surface waters in the lake and creek corridors.
- b. Use vegetative means, where possible, to protect stream banks and shorelines from erosion.

(4) Floatables and litter

- a. Prohibit all direct or indirect discharges of refuse or litter into surface waters of Lake Ontario and Fish and Golden Hill Creeks, or upon public lands contiguous to and within 100 feet of the lake or creek waters.
- b. Limit entry of floatables to surface waters through containment and prevention of litter.
- c. Remove and dispose of floatables and litter from surface waters and shorelines of the lake and creeks.
- d. Implement pollution prevention and education programs to reduce discharge of floatables and litter into roadside ditches, creek corridors and the lake.

5.3 Protect and enhance surface water quality

- A. Protect water quality of Lake Ontario and Fish Creek and Golden Hill Creek based on an evaluation of physical factors (pH, dissolved oxygen, dissolved solids, nutrients, odor, color and turbidity), health factors (pathogens, chemical contaminants, and toxicity), and aesthetic factors (oils, floatables, refuse, and suspended solids).
- B. Minimize disturbance of creeks and streams, including their bed and banks, in order to prevent erosion of soil, increased turbidity, and irregular variation in velocity, temperature, and level of water.
- C. Protect the surface water quality of Fish and Golden Hill Creeks from the potential adverse impacts due to excavation, placement of fill, dredging and the

disposal of dredged materials, using avoidance and minimization methods including reduction in scope of work and use of clean fill.

5.4 Limit the potential for cumulative and secondary impact of watershed development and other activities on water quality and quantity

A. Protect water quality by ensuring that watershed development results in:

- (1) Protection of areas that provide important water quality benefits;
- (2) Maintenance of natural characteristics of drainage systems; and
- (3) Protection of areas that are particularly susceptible to erosion and sediment loss.

B. Limit the individual impacts associated with development to prevent cumulative water quality impacts that would lead to a failure to meet water quality standards.

5.5 Protect and conserve quality and quantity of potable water

Limit cumulative impact on groundwater recharge areas to ensure replenishment of potable groundwater supplies

POLICY 6

PROTECT AND RESTORE ECOLOGICAL RESOURCES, INCLUDING SIGNIFICANT FISH AND WILDLIFE HABITATS, WETLANDS, AND RARE ECOLOGICAL COMMUNITIES.

Policy Standards

6.1 Protect Locally Significant Waterfront Fish and Wildlife Habitats

No Significant Coastal Fish and Wildlife Habitats have been identified or mapped by the Department of Environmental Conservation within the Somerset LWRA. However, 18-Mile Creek represents a locally significant habitat that should be offered a similar level of protection and therefore, must be protected for the habitat values they provide and to avoid permanent adverse changes to the local ecosystem.

The standards for this section are to be applied to any activity that is subject to consistency review under federal and state laws. Examples of generic activities that

could destroy or significantly impair habitat values are provided within the impact assessment section of the narrative for each designated habitat.

Significant fish and wildlife habitats are those habitat areas which:

A. Exhibit, to a substantial degree, one or more of the following characteristics:

- (1) Is essential to the survival of a large portion of a particular fish or wildlife population; and
- (2) Supports a species which is either endangered, threatened, or of special concern as those terms are defined at 6 NYCRR Part 182.

B. Uses or activities should be avoided which would:

- (1) Destroy habitat values through direct physical alteration, disturbance, or pollution, or the indirect effects of actions that would result in a significant loss of habitat.
- (2) Significantly impair the viability of a habitat beyond the tolerance range of fish and wildlife species through:
 - a. Degradation of existing habitat elements;
 - b. Change in environmental conditions;
 - c. Functional loss of habitat values; or
 - d. Adverse alteration of physical, biological, or chemical characteristics.

C. Where destruction or significant impairment of habitat values cannot be avoided, potential impacts of land use or development should be minimized through appropriate mitigation. Use mitigation measures, which are likely to result in the least environmentally damaging feasible alternative. Mitigation includes:

- (1) Avoidance of potential adverse impacts, including:
 - a. Avoiding ecologically sensitive areas;
 - b. Scheduling activities to avoid vulnerable periods in life cycles or the creation of unfavorable environmental conditions; and
 - c. Preventing fragmentation of intact habitat areas.
- (2) Minimization of unavoidable potential adverse impacts, including:
 - a. Reducing scale or intensity of use or development;
 - b. Designing projects to result in the least amount of potential adverse impact;
 - c. Choosing alternative actions or methods that would lessen potential impact; and
 - d. Specific measures designed to protect habitat values from impacts that cannot be sufficiently avoided or minimized to prevent habitat destruction or significant habitat impairment.

6.2 Support the restoration of locally significant fish and wildlife habitat wherever possible so as to foster their continued existence as natural, self-regulating systems

A. Measures that can be undertaken to restore significant habitats include:

- (1) Reconstructing lost physical conditions to maximize habitat values;
- (2) Adjusting adversely altered chemical characteristics to emulate natural conditions; and
- (3) Manipulating biological characteristics to emulate natural conditions through re-introduction of indigenous flora and fauna.

6.3 Protect and restore freshwater wetlands

A. The following measures can further the protection or restoration of wetlands:

- (1) Compliance with the statutory and regulatory requirements of the Stream Protection Act.
- (2) Prevention of the net loss of wetlands by:
 - a. Avoiding placement of fill or excavation of wetlands;
 - b. Minimizing adverse impacts resulting from unavoidable fill, excavation or other activities;
 - c. Providing compensatory mitigation for adverse impacts that may result from unavoidable fill, excavation or other activities remaining after all appropriate and practicable minimization has been accomplished; and
 - d. Providing and maintaining adequate buffers between wetlands and adjacent or nearby uses and activities in order to ensure protection of the wetlands character, quality, values and functions.
- (3) Through the existing local review and approval processes for Site Plan, Subdivision, and Clustering, the Town should protect identified wetlands depicted in the Environmental Features Map. New development should first be designed to avoid wetlands. When avoidance is determined to be impracticable, disturbance to wetlands should be minimized and when disturbance is necessary the impact should be mitigated to the greatest extent possible.

POLICY 7 - Protect and improve air quality

This policy provides for protection of the air quality in the Town of Somerset.

Policy Standards

7.1 Control or abate existing, and prevent new air pollution

New land uses and development in the Town of Somerset should comply with the following standards.

- A. Limit pollution resulting from new or existing stationary air contamination sources, consistent with:
 - (1) Attainment or maintenance of any applicable ambient air quality standard
 - (2) Applicable New Source Performance Standards
 - (3) Applicable control strategy of the State Implementation Plan, and
 - (4) Applicable Prevention of Significant Deterioration requirements
 - B. Recycle or salvage air contaminants using best available air cleaning technologies.
 - C. Limit pollution resulting from vehicular or vessel movement or operation, including actions which directly or indirectly change transportation uses or operation, consistent with attainment or maintenance of applicable ambient air quality standards, and applicable portions of any control strategy of the State Implementation Plan.
 - D. Restrict emissions of air contaminants to the outdoor atmosphere that are potentially injurious to human, plant, or animal life or property, or that would reasonably interfere with the comfortable enjoyment of life or property.
 - E. Limit new facility or stationary source emissions of acid deposition precursors consistent with achieving final control target levels for wet sulfur deposition in sensitive receptor areas, and meeting New Source Performance Standards for the emissions of oxides of nitrogen.
- 7.2 Limit discharges of atmospheric radioactive material to a level that is as low as practicable
- State air quality standards regulate radioactive materials and pollutants. For actions with a potential impact on air quality, the Town shall provide necessary information, as appropriate, to the State to enable the State to effectively administer its air quality statutes pertaining to atmospheric radioactive material.
- 7.3 Capture and recycle chloroflourocarbon compounds during service and repair of air-conditioning and refrigeration units to the greatest extent possible

State air quality standards regulate chloroflourocarbon pollutants. For actions with a potential impact on air quality, the Town shall assist the State, whenever possible, in the administration of its air quality statutes pertaining to chlorofluorocarbon.

7.4 Limit sources of atmospheric deposition of pollutants to Lake Ontario, particularly from nitrogen sources

State air quality standards regulate sources of nitrogen pollution. For actions with a potential impact on air quality, the Town shall assist the State, whenever possible, in the administration of its air quality statutes pertaining to the atmospheric deposition of pollutants in the region, particularly nitrogen sources.

POLICY 8 - Minimize environmental degradation in the waterfront area from solid waste and hazardous substances

The intent of this policy is to protect people from sources of contamination and to protect lakeshore resources in the Town of Somerset from degradation through proper control and management of wastes and hazardous materials. In addition, this policy is intended to promote the expeditious remediation and reclamation of hazardous waste sites in developed centers to permit redevelopment.

Policy Standards

8.1 Manage solid waste (as defined under ECL §27-0701 and 6 NYCRR Part 360-1.2) to protect public health and control pollution

- A. Plan for proper and effective solid waste disposal prior to undertaking major development or activities generating solid wastes.
- B. Manage solid waste in accordance with the following solid waste management priorities:
 - (1) Reduce the amount of solid waste generated;
 - (2) Reuse material for the purpose for which it was originally intended or recycle material that cannot be reused; and
 - (3) Use land burial or other approved methods to dispose of solid waste that is not being reused or recycled.

- C. Create and support a market for maximum resource recovery by using materials and products manufactured with recovered materials, and recovering materials as a source of supply for manufacturing materials and products.
- D. Prevent the discharge of solid wastes into the environment by using proper handling, management, disposal and transportation practices.

8.2 Manage hazardous wastes to protect public health and control pollution

- A. Hazardous wastes are those materials defined under ECL §27-0901 and 6 NYCRR Part 371.
- B. Manage hazardous waste in accordance with the following priorities:
 - (1) Eliminate or reduce generation of hazardous wastes to the maximum extent practical;
 - (2) Recover, reuse, or recycle remaining hazardous wastes to the maximum extent practical; and
 - (3) Use detoxification, treatment, or destruction technologies to dispose of hazardous wastes which cannot be reduced, recovered, reused, or recycled.
- C. Ensure the maximum safety of the public from hazards associated with hazardous wastes through the proper management and handling of industrial hazardous waste treatment, storage, and disposal.
- D. Remediate inactive hazardous waste disposal sites. While there are no known inactive hazardous waste disposal sites within the Somerset waterfront area, should any be identified in the future they should be investigated and remediated in the appropriate manner to minimize impact on the environment.

8.3 Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment

- A. Substances hazardous to the environment are defined under ECL §37-0101. Toxic pollutants are defined under ECL §17-0105.
- B. Prevent release of toxic pollutants or substances hazardous to the environment that would have a deleterious effect on fish and wildlife resources.
- C. Prevent environmental degradation due to persistent toxic pollutants and limit discharges of bioaccumulative substances.
- D. Avoid resuspension of toxic pollutants and hazardous substances and wastes and reentry of bioaccumulative substances into the food chain from existing environmental sources.

- E. Prevent and control environmental pollution due to release of radioactive materials as defined under 6 NYCRR Part 380.
- F. Protect public health, public and private property, and fish and wildlife from inappropriate use of pesticides.
 - (1) Limit use of pesticides (substances defined under ECL §33-0101 and 6 NYCRR Part 325) to effectively target actual pest populations as indicated through integrated pest management methods.
 - (2) Prevent direct or indirect entry of pesticides into waterways.
 - (3) Minimize exposure of people, fish, and wildlife to pesticides.
- G. Report, respond to, and take action to correct all unregulated releases of substances hazardous to the environment.

8.4 Prevent and remediate discharge of petroleum products

- A. Prevent discharges of petroleum products by following methods approved for handling and storage of petroleum products and using approved design and maintenance principles for storage facilities.
- B. Clean up and remove any petroleum discharge.

Undertake clean-up and removal activities in accordance with the guidelines contained in the New York State Water Quality Accident Contingency Plan and Handbook and the procedures specified in the New York State Water Quality Accident Contingency Plan and Handbook.

8.5 Transport solid waste and hazardous substances and waste using routes and methods which protect the safety, well-being, and general welfare of the public and the environmental resources of the state; and protects continued use of all transportation corridors and highways and transportation facilities

8.6 Site solid and hazardous waste facilities to avoid potential degradation of lakeshore resources.

The siting of solid and hazardous waste facilities in the Town of Somerset LWRA is considered an inappropriate use of land and shall be prohibited. This prohibition does not apply to SWDA I, SWDA II and SWDA II for waste generated on site by the existing electrical generating facilities.

PUBLIC WATERFRONT POLICIES

POLICY 9 - Provide for public access to, and recreational use of, coastal waters, public lands, and public resources in the coastal area

Along many stretches of the Lake Ontario shoreline physical and visual access to the waterfront is limited for the general public. Limitations on reaching or viewing the lakefront are further heightened by a general lack of opportunity for diverse forms of recreation at those sites that do provide access. Often access and recreational opportunities that are available are limited to local residents. Because of the residential nature of much of the waterfront and due to the fact that much of the waterfront is in private ownership, with few exceptions, much of the shoreline is only accessible to local residents. In addition to the loss of opportunities for physical access, in some instances visual access has also been lost due to the elimination of vantage points.

Given the limitations on public access and recreation, this policy incorporates measures needed to improve and protect public access throughout the Somerset waterfront area. The need to maintain and improve existing public access and facilities is the first of these measures, and is necessary to ensure that use of existing access sites and facilities is optimized in order to accommodate existing demand. The second measure is to capitalize on all available opportunities to provide additional visual and physical public access along with appropriate opportunities for recreation.

Policy Standards

9.1 Promote appropriate physical public access and recreation throughout the waterfront area.

The following standards should be utilized to guide future decision making with regard to public access and the expansion of recreational opportunities along the Somerset lakefront.

- A. Provide a level of public access and type of recreational use that takes into account the following factors:
 - (1) Public demand for access and recreational use;
 - (2) Type and sensitivity of natural resources affected;
 - (3) Purpose of public institutions which may exist on or near the site;

- (4) Accessibility to the public access site or facility;
 - (5) The needs of special groups such as the elderly and persons with disabilities; and
 - (6) The potential for adverse impacts on adjacent land uses.
- B. Provide convenient, well-defined physical public access to and along the waterfront for water-related recreation.
- C. Protect and maintain existing public access and water-related recreation facilities.
 - (1) Support the prevention of physical deterioration of facilities at the Village of Barker Bicentennial Park and Golden Hill State Park due to lack of maintenance or overuse.
 - (2) Prevent any on-site or adjacent development project or activity from directly or indirectly impairing physical public access and recreation or adversely affecting its quality.
 - (3) Protect and maintain established access and recreation facilities.
 - (4) Protect and maintain the infrastructure supporting public access and recreation facilities.
 - (5) Encourage and allow the continued operation of the YMCA Camp Kenan and private campgrounds.
- D. Provide additional physical public access and recreation facilities at public sites along the lakefront.
 - (1) Continue to maintain the Town's position supporting the development of the recreational components of the AES multi-use recreation plan.
 - (2) Where feasible, provide for public access and recreation facilities on non-public waterfront lands as a secondary use.
 - (3) Provide for public access at streets terminating at the shoreline.
 - (4) Provide access and recreation facilities to all members of the public whenever access or recreation is directly or indirectly supported through federal or state projects or funding.
 - (5) Any transfer of public land holdings immediately adjacent to the lake should retain a public interest that will be adequate to preserve public access and recreation opportunities.
- E. Provide physical public access to, and/or water-related recreation facilities on, the waterfront whenever development or activities are likely to affect the public's use and enjoyment of public coastal lands and waters. Provide incentives to private development projects which provide public access and/or water-related recreation facilities.
- F. Restrict public access and recreation only where incompatible with public safety and protection of natural resources.

9.2 Provide public visual access to the lake or open space at all sites where physically practical

The following standards should be applied with respect to increasing visual access to Lake Ontario:

A. Avoid loss of existing visual access.

- (1) Limit physical blockage of existing visual access to the lake by development or activities due to the scale, design, location, or type structures.
- (2) Protect view corridors provided by streets and other public areas leading to the coast.
- (3) Protect visual access to open space areas associated with natural resources.

B. Minimize adverse impact on visual access.

- (1) Provide for view corridors to the lake in those locations where new structures would block views of the lake from inland public vantage points.
- (2) Use structural design and building siting techniques to preserve or retain visual access and minimize obstruction of views.
- (3) Visual access requirements may be reduced where site conditions, including vegetative cover or natural protective features, block potential views.
- (4) Vegetative or structural screening of an industrial or commercial waterfront site is allowed if the resulting overall visual quality outweighs the loss of visual access.

C. Provide compensatory mitigation for loss of visual access.

- (1) Provide public visual access from vantage points on the site where development of the site would block visual access from inland public vantage points.
- (2) Provide for additional and comparable visual access at nearby locations if physical access cannot be provided on-site.

D. Increase visual access to the lake whenever practical.

- (1) Provide an interpretative exhibit at an appropriate location for visual access to enhance public understanding and enjoyment of views of waterfront lands and waters and associated water-dependent uses.
- (2) Provide visual access to areas of high visual quality including community waterfronts, water-dependent uses, agriculture, natural resources, and panoramas of Lake Ontario.

9.3 Preserve public interest in and use of lands and waters held in public trust by the state and other government levels

A. Limit grants, leases, easements, permits or lesser interest in lands underwater in accordance with an assessment of potential adverse impacts of the proposed use, structure, or facility on public interest in public lands under water. Use the following factors in assessing potential adverse impact:

- (1) Environmental impact;
- (2) Values for natural resource management, public recreation;
- (3) Size, character, and effect of the transfer in relation to neighboring uses;
- (4) Potential for interference with navigation, public uses of waterway, and riparian rights;
- (5) Effect of the transfer of interest on the natural resources associated with the lands;
- (6) Water-dependent nature of use;
- (7) Adverse economic impact on existing commercial enterprises; and
- (8) Consistency with the public interest for purposes of navigation and commerce, fishing, bathing, and access to navigable waters and the need of the owners of private property to safeguard development.

B. Provide for free and unobstructed use of all navigable waters of Lake Ontario for navigation, recreation and other public trust purposes, including the incidental right of public anchoring.

C. Access and reasonable recreational use of navigable waters and public trust lands underwater should be provided.

D. Avoid substantial loss of public interest in public trust lands by assessing the cumulative impact of individual conveyances of grants, easements, and leases of public trust lands.

9.4 Provide access and recreation which is compatible with natural resource values

A. Provide appropriate access and associated recreational activity that will avoid potential adverse impacts on natural resources.

B. Limit public access and recreational activities where uncontrolled public use would lead to impairment of natural resources.

C. Provide public access for fish and wildlife resource related activities, including fishing and hunting, provided that the level of access would not result in a loss of resources necessary to continue supporting these uses.

WORKING WATERFRONT POLICIES

POLICY 10 Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations, and support efficient harbor operations

Policy Standards

10.1 Protect water-dependent uses

- A. Actions should be avoided which would adversely impact or interfere with existing water-dependent uses. Examples of water-dependent uses include:

- (1) Water-related public and quasi-public utilities; and
- (2) Navigational aids and structures.

10.2 Promote the siting of new water-dependent uses at suitable locations and provide for their safe operation

- A. Adverse impacts of new and expanding water-dependent uses should be minimized. Water-dependent uses should be sited in locations where:

- (1) The need for dredging is minimized;
- (2) Waterside and landside access, as well as upland space for parking and other facilities, is adequate;
- (3) The necessary infrastructure exists or is easily accessible, including adequate shoreline stabilization structures, roads, water supply and sewage disposal facilities, and vessel waste pump-out and waste disposal facilities; and
- (4) Water quality classifications are compatible.

- B. Due to the residential nature of much of the Somerset shoreline and due to the fact that the natural conditions of the shoreline, steep bluffs and shallow bottom, the Somerset shoreline is not appropriate for the location of marinas or other commercial transportation facilities such as passenger ferries, sight-seeing tour boat operators and charter recreational fishing operations.

10.3 Improve the economic viability of water-dependent uses

- A. Non-water-dependent accessory or mixed-use developments may be allowed, provided:

- (1) Accessory uses are subordinate and functionally related to the principal water-dependent use and contribute to sustaining the water-dependent use;

- (2) Mixed uses subsidize the water-dependent use and are accompanied by a demonstrable commitment to continue operation of the water-dependent use;
 - (3) Uses are sited and operated so as not to interfere with the principal operation of the site for a water-dependent use; and
 - (4) Uses do not preclude future expansion of a water-dependent use.
 - B. Locations that exhibit important natural resource values and significant resources, such as wetlands and fish and wildlife habitats, should be avoided.
 - C. Other uses may be incorporated in the waterfront, particularly water enhanced and marine support services, provided that these uses:
 - (1) Improve the working waterfront and its character;
 - (2) Do not interfere with the efficient operation of another water-dependent use; and
 - (3) Make beneficial use of a waterfront location through siting and design to increase public enjoyment of the waterfront.
- 10.4 Allow water-enhanced uses that complement or improve the viability of water-dependent uses
- A. When determining if a water-enhanced use is appropriate for siting along a waterfront, the following factors should be considered:
 - (1) The use would provide an economic incentive to prevent the loss of a water-dependent use;
 - (2) The use would be sited and operated so as not to interfere with water-dependent uses;
 - (3) The use would be sited in a manner that does not preclude future expansion of a water-dependent use; and
 - (4) The activity makes beneficial use of a shoreline location through siting and design to increase public enjoyment of the waterfront and enhance community character.

POLICY 11 - Promote sustainable use of living marine resources

This policy refers primarily to commercial and recreational fisheries, neither of which are significant features within the Somerset LWRA.

Living marine resources play an important role in the social and economic well being of waterfront communities. Recreational uses of living marine resources constitute an important contribution to the economy of the state. These resources provide recreational experiences and important accompanying economic activity. Although

Lake Ontario is widely utilized for recreational fishing, there are no significant support facilities along the Somerset shoreline.

Policy Standards

11.1 Provide for and promote the recreational use of marine fisheries.

As the only public means of access for recreational fishing, the boat launch ramp at the State Park should be maintained and protected. To better promote the use of marine resources in Lake Ontario, adequate infrastructure should be provided for, where feasible and appropriate, to meet recreational fishing needs, including dockage and parking.

POLICY 12 - Protect agricultural lands

The intent of this policy is to conserve and protect agricultural land in the waterfront area by preventing the conversion of farmland to other uses and protecting existing and potential agricultural production. Existing agricultural lands significantly add to the community character within the Somerset LWRA.

This policy contains four sections. The first section presents a definition of agricultural lands and contains standards to address conversion of agricultural lands and interference in agricultural operations. Section 2 directs the conditions that support agriculture be maintained and enhanced. Management of the impacts of unavoidable conversion of agricultural land is provided for by the standards in section 3. The last section recognizes the scenic and open space value of agricultural land and operations and provides for their protection within the framework of efficient farm operation.

Policy Standards

12.1 Protect existing agriculture and agricultural lands from conversion to other land uses that would eliminate agricultural production or potential agricultural production

- A. Avoid conversion of agricultural lands used or with the potential to be used in agricultural production to non-agricultural uses. The following order of priority presents the importance of existing or potential use of agricultural lands:

- (1) Lakeshore -related agriculture, particularly vineyard, vegetables, fruits, sod farms, and nursery and greenhouse products;
 - (2) Other lands actively used in agricultural production; and
 - (3) Agricultural lands not actively used in agricultural production.
 - B. Prevent encroachment of commercial, industrial, institutional, or residential development on existing agricultural lands.
 - C. Protect existing agricultural use and production from adverse impacts due to:

Public infrastructure and facility development including:

 - (1) Unnecessary encroachment of public projects into agricultural lands;
 - (2) Introduction of infrastructure or facilities, such as public roads or water or sewer facilities into agricultural lands;
 - (3) Dividing active farms with obstacles, such as highway construction and maintenance right-of-ways;
 - (4) Creation of other conditions which are likely to lead to conversion of agricultural lands, such as loss of necessary support services; and
 - (5) Environmental changes which are likely to reduce agricultural productivity or quality, including, but not limited to, changes in groundwater quantity and quality.
 - D. New development located adjacent or in proximity to agricultural land or uses should provide sufficient buffer between agricultural and non-agricultural lands to protect agricultural uses from interference from non-agricultural uses, and protect non-agricultural lands from potentially offensive agricultural practices.
 - E. Conversion of agricultural lands for public uses may be allowed provided that no other site is available or suitable for the intended public purpose and loss of agricultural lands and production is minimized.
- 12.2 Establish and maintain favorable conditions that support existing or promote new lakeshore agricultural production
- A. Promote new and maintain existing local support services and commercial enterprises necessary to support agricultural operations.
 - B. Provide economic support of existing agriculture by allowing mixed uses which would assist in retention of the agricultural use.
 - C. Promote activities and market conditions that would likely prevent conversion of farmlands to other land uses.

- (1) Avoid activities which would likely result in real estate market conditions that would be unfavorable to continued agricultural use.
 - (2) Promote activities that protect and expand agricultural commodity markets.
 - (3) Promote production and marketing of local agricultural products.
- 12.3 Minimize adverse impacts on agriculture from unavoidable conversion of agricultural land or agricultural production to other land uses
 - A. Minimize encroachment of commercial, industrial, institutional, or residential development of agricultural lands.
 - B. Retain or incorporate opportunities for continuing agricultural use.
 - C. Locate and site development to maximize protection of the highest quality agricultural land in large contiguous tracts for efficient farming.
- 12.4 Preserve scenic and open space values associated with agricultural lands
 - Development shall be located and arranged to maximize protection of agricultural land in large contiguous tracts to protect associated scenic and open space values.

POLICY 13 - Promote appropriate use and development of energy and mineral resources

This policy calls for conservation of energy resources in the Town of Somerset LWRA. It addresses alternative energy sources, provides standards to ensure maximum efficiency and minimum environmental impacts when siting energy facilities, standards to minimize the impact of large fuel storage facilities, and addresses land extraction and dredging.

13.1 Conserve energy resources

- A. Promote energy efficient modes of transportation.
 - (1) Promote and maintain remaining rail freight facilities.
 - (2) Integrate modes of transportation (pedestrian, bicycle and vehicular).
 - (3) Discourage the location of cargo or passenger transportation terminal along the Somerset waterfront.

- B. Plan and construct sites using energy efficient design. Energy efficient design includes consideration for solar utilization, protection from wind, and landscaping for thermal control.
 - C. Promote greater energy generating efficiency through design upgrades of existing facilities.
- 13.2 Promote alternative energy sources that are self-sustaining, including solar and wind powered energy generation
- A. Avoid interference with lakeshore resources and processes, including interference with migratory birds, when siting wind farm developments.
 - B. There are no existing hydroelectric power generation facilities on Lake Ontario in Somerset. There are no sites on Lake Ontario, in Somerset where the benefits of developing hydroelectric generating facilities are not outweighed by the economic costs and the potential adverse impacts on natural resources.
- 13.3 Ensure maximum efficiency and minimum adverse environmental impact when siting major energy generating facilities
- A. A major energy generating facility (the AES power generating facility) is currently located on the Lake Ontario shoreline. Although it is understood that the original approval included an additional generating unit, at this time, expansion has not been proposed. However, if future need arises, siting of additional major energy generating facilities or expansion of existing facilities should be encouraged to be developed in the area north of Lake Road, but in a manner that minimizes impact along the bluffs and shoreline and a clear public benefit is established using the following factors:
 - (1) There is a demonstrated need for the facility or facility expansion;
 - (2) The facility or facility expansion will satisfy additional electric capacity needs or electric system needs;
 - (3) Alternative available methods of power generation and alternative sources of energy cannot reasonably meet the public need;
 - (4) Upgrades of existing facilities cannot reasonably meet the public need;
 - (5) The facility expansion project includes construction and maintenance of feasible public recreational uses, including development of the existing recreational components of the multiple use plan; and
 - B. Due to its high likelihood to significantly impact the steep slopes, highly erodible shoreline, and scenic resources, the establishments of off-shore loading/unloading of material is strongly discouraged. Should the establishment of off-shore loading/unloading facilities be proven to be required for the continued operation of the power generating station it must be designed and constructed in a manner that minimizes disturbance of the shoreline and bluff areas and minimize the impact on the scenic resource of the LWRA.

- C. Achieve maximum transmission efficiency by siting major energy generating facilities close to load centers.
- D. Preclude the potential degradation of lakeshore resources by siting and constructing new or expanded electric energy generating and transmission facilities so that they would not adversely affect:
 - (1) Agricultural lands;
 - (2) Habitats critical to vulnerable fish and wildlife species, vulnerable plant species, and rare ecological communities;
 - (3) Wetlands;
 - (4) Historic resources; and/or
 - (5) Scenic resources.

13.4 Minimize adverse impacts from fuel storage facilities

In accordance with the standards of Title 17, Article 23 of the Environmental Conservation Law and the Federal Safety Standards (40 CFR Part 193):

- A. Ensure that the production, storage, or retention of petroleum products in the Town of Somerset LWRA is performed in accordance with NYS Department of Conservation standards.
- B. Liquified Natural Gas facilities must be safely sited and operated. Factors to be used in determining the appropriateness of a location for Liquified Natural Gas facilities include:
 - (1) The density of population in neighboring areas;
 - (2) The density of population of areas neighboring the delivery route;
 - (3) The risk of accident during transportation;
 - (4) The maximum distance that a liquified natural or petroleum gas vapor cloud is projected to expand and pose a threat to the public;
 - (5) The flammability or explosiveness of a cloud formed by vaporizing liquified natural or petroleum gas;
 - (6) One hundred-year flood zones;
 - (7) Areas with soils that cannot support static and dynamic loading without excessive lateral or vertical movement;
 - (8) Areas exposed to severe wave and wind forces;
 - (9) The geologic stability of the site;
 - (10) The need for the facility;
 - (11) The potential environmental impacts; and
 - (12) Reasonable alternative locations for the proposed facility.

Because of the high potential for hazard associated with liquid natural gas facilities, these facilities are subject to stringent regulation. The standards listed

here are derived from federal and state regulations that have been instituted to protect public safety.

- C. Protect natural resources by preparing and complying with an approved oil spill contingency plan.

- 13.5 Ensure that mining, excavation and dredging do not cause an increase in erosion, any adverse effects on natural resources or degradation of visual resources.

This sub-policy regulates land excavation and dredging activities in the Town of Somerset. All excavation activities shall be designed, permitted and conducted in conformance with the standards and procedures set forth in Chapter 96 of the Town of Somerset Code, regulating Excavations. Due to the disruptive nature of these activities, caution must be exercised to ensure that such activities do not adversely affect natural resources or disturb the human environment. The impact on visual resources is also important since the scenic character of the lakefront is important to preserving the rural character of the area.

- A. Additional factors to be used in determining the appropriateness of a commercial excavation operation within the LWRA include:
 - (1) Compatibility with adjacent uses;
 - (2) Loss of use of the site for other potential uses;
 - (3) Alteration of coastal geological landforms;
 - (4) Adverse impact on natural resources; and
 - (5) Degradation of visual quality.
- B. Removal of soils and overburden requires appropriate site preparation and subsequent site reclamation in accordance with an approved plan for the suitable use of affected lands, including:
 - (1) Drainage and water control to reduce soil erosion;
 - (2) Proposed future use of the affected lands; and
 - (3) Specific activities, including:
 - a. Revegetation;
 - b. disposal of refuse or spoil;
 - c. drainage and water control features;
 - d. grading and slope treatment; and
 - e. proposals for the prevention of pollution and the protection of the environment.
- C. Limit subaqueous sand and gravel extraction to activities necessary for erosion control.

SECTION IV – Proposed Land and Water Uses and Proposed Projects

This section of the LWRP presents the proposed land and water uses for the Town of Somerset waterfront area. [Map 8 – Proposed Land Uses and Projects](#), illustrates the proposed land uses for this area, and identifies the location of proposed projects.

A. Proposed Land Uses

1. Waterfront Land Uses

Land uses in the Somerset LWRA are proposed in a manner that will continue the general patterns of existing development in the study area. Land use changes are proposed to protect waterfront resources, maintain the existing character of the community, and properly accommodate future development. In addition, the proposed land uses are partially based on the vision developed for the Town of Somerset as part of the Comprehensive Plan prepared in 2002. These land use recommendations are intended to support the policies promoted in Section III.

In general, the predominant land use along the waterfront is, and should continue to be, residential. The numerous in-fill lots (approximately 50) along Somerset Drive, Lakeshore Road, Huntington Beach Road and Lakeview Drive, should be developed for residential use, as allowed under the zoning code. New residential development outside the sewer district should occur at a low density to avoid the necessity of sewer extensions.

Existing vacant and underutilized properties situated east of the AES property, that are larger in size, should be developed or redeveloped for residential uses that are clustered near the shoreline. This would maximize access to the shoreline and preserve open space. It would also allow for development that is more in character with the surrounding community.

It is not anticipated that there will be a high demand in the future for commercial or commercial-recreation uses along the Somerset waterfront. Somerset has a strong residential character along its waterfront with few water-dependent or water-enhanced commercial uses. For these reasons, no new commercial uses are depicted on the Proposed Land Use map. Commercial uses should remain in and around the Village of Barker, which functions as the Town center and business district for Somerset.

While the Haight's Park Campground and Brown's Camp may be subject to development pressures in the future, it is recommended that these water-enhanced commercial campgrounds remain in use in some capacity as low intensity recreational uses, rather than being redeveloped commercially with permanent structures and associated site improvements. These sites provide open, unobstructed views and although privately owned, they provide a break between the denser residential developed areas. The Lighthouse Christian Camp should also remain as it is developed today, and should not increase its relatively high density of development. The area south of the access drive for the camp would be appropriate for low-density residential use.

The AES power station is the only non-recreational water-dependant use in the LWRA. AES owns vacant and agricultural property within the study area, including a 178-acre waterfront parcel that has approximately 2,000 feet of shoreline. There are no immediate plans for this parcel to be developed. In the future, should AES need to expand its power generation facilities, such expansion should occur in the area north of Lake Road. Any future expansion in this area should be situated so that the shoreline and bluff remain undisturbed and protected as open space, with building(s) located closer to Lake Road.

2. Upland Uses

It is anticipated and encouraged that existing agricultural lands within the LWRA remain in agriculture use. Agricultural lands strongly contribute to the rural character of the community and provide the backdrop for many of the scenic vistas that help define the LWRA.

Existing vacant upland parcels should be guided towards development as agricultural or low-density residential uses, which would be compatible with neighboring uses. As with the vacant waterfront parcels, development on larger upland parcels could be clustered in order to preserve large areas of contiguous open space and significant views of the lake.

B. Proposed Water Uses

As previously described in the Inventory and Analysis (Section II), due to existing geologic conditions along the shoreline, there are no marinas or permanent docks in

the LWRA. This limits the potential for recreational boating activities in the area. In general, there are few existing water related uses along the shore. The boat ramp in Golden Hill State Park is the primary location for recreational boating. There are no plans to expand those facilities. Because of the steep bluffs it is unlikely that construction or reconstruction of docks or boathouses in other areas along the shore will occur in great numbers.

C. Proposed Projects

[Map 8 – Proposed Land Uses and Projects](#), identifies the locations of several potential project sites that could further the LWRP policies set forth in Section III. These proposed projects are only conceptual at this time, but set the stage for further development in the future, as the need arises.

AES Multiple Use Site – Future Municipal Park

A multiple use plan, was prepared as part of the approval for the AES Somerset power generating station. The multiple use plan was adopted by the Town and New York State Electric and Gas (NYSEG) and various regulatory agencies. It sets aside this future parkland to meet the future recreational needs of the community. The multiple use plan provides for continued access to the lake and the implementation of a combination of active and passive recreational uses over the long-term. The Town of Somerset Planning Board has approved the multiple use plan, which reflects the policy of the Planning Board relative to the proposed future use of that portion of the power plant site (approximately 30 acres).

While there are no current plans to implement the multiple use plan, the Town wishes to retain its rights for the future recreational use of the site. The multi-use area was included in the recently completed comprehensive plan. The Town reaffirms this position by incorporating this plan into the LWRP and depicting it as a future municipal park on the [Proposed Land Use and Projects map](#).

Breakwall Repairs - Various locations

Shoreline protection for residential uses is in place along various portions of the waterfront, primarily east of Quaker Road. This shoreline protection consists of either large boulders armoring the bottom of the bluff or concrete seawalls. The seawalls, some of which include boathouses and stairways, are in various states of repair.

Some walls are cracked and leaning into the water. The majority of the seawalls and other shoreline protection structures are located on privately owned residential property.

Where existing erosion protection structures are in such disrepair that they pose potential safety hazards or create the potential to worsen or establish other erosion problems, they should be reconstructed or replaced in-kind, in conformance with New York State and Army Corps of Engineers permits and standards. These repairs would be the responsibility of the private property owners. Piers and jetties should not be encouraged, as they would result in long-term adverse changes in erosion/deposition patterns.

Golden Hill State Park – Secondary Access

Golden Hill State Park is one of the largest properties along the shoreline, with approximately 1.5 miles of waterfront. The park offers public access to the lake and includes an extensive trail system. There are two vehicular entrances to the park, each off Lower Lake Road.

A park sign/trail map and trailhead are located at the eastern end of the park, along its boundary with County Line Road, which is a Town of Yates road located in Orleans County. However, there is no formal parking lot, only a small grass/dirt parking area that can accommodate up to a maximum of three cars, forcing additional cars to park in the road. The Town should continue to support the further development of facilities in Golden Hill State Park, including enlarging and improving a secondary entrance on County Line Road.

Storm Water Collection and Discharge Improvements

There is an identified need for stormwater collection and drainage improvements as development or subdivisions occur within the LWRA. New subdivisions must be designed in order to manage storm water runoff in a manner consistent with Town and State standards.

Road Improvements

The extension of Lakeshore Road east of Johnson Creek Road is a private road, which provides access to Johnson Creek Road and the public highway network for waterfront

residences. At this time this private road is not constructed to town standards. If and when the property owners wish to dedicate this road to the Town, it must first be reconstructed to meet Town standards, including drainage.

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.

SECTION VI - State and Federal Actions and Programs Likely to Affect Implementation

State and federal actions will affect and be affected by implementation of a Local Waterfront Revitalization Program (LWRP). Under State law and the U.S. Coastal Zone Management Act, certain State and federal actions within or affecting the local waterfront area must be “consistent” or “consistent to the maximum extent practicable” with the enforceable policies and purposes of the LWRP. This consistency requirement makes the LWRP a unique, intergovernmental mechanism for setting policy and making decisions and helps to prevent detrimental actions from occurring and future options from being needlessly foreclosed. At the same time, the active participation of State and federal agencies is also likely to be necessary to implement specific provisions of the LWRP.

Pursuant to the State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), the Secretary of State notifies affected State agencies of those agency actions and programs which are to be undertaken in a manner consistent with approved LWRPs. The following list of State actions and programs is that list. The State Waterfront Revitalization of Coastal Areas and Inland Waterways Act requires that an LWRP identify those elements of the program which can be implemented the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies. Such statement shall include those permit, license, certification, or approval programs; grant, loan, subsidy, or other funding assistance programs; facilities construction; and planning programs which may affect the achievement of the LWRP. Federal agency actions and programs subject to consistency requirements are identified in the New York State Coastal management Program and by the implementing regulations of the U.S. Coastal Zone Management Act.

The second part of this section is a more focused and descriptive list of State and federal agency actions which are necessary to further implementation of the LWRP. It is recognized that a State or federal agency's ability to undertake such actions is subject to a variety of factors and considerations; that the consistency provisions referred to above, may not apply; and that the consistency requirements cannot be used to require a State or federal agency to undertake an action it could not undertake pursuant to other provisions of law. Reference should be made to Section IV and

Section V, which also discuss State and federal assistance needed to implement the LWRP.

A. State and Federal Actions and Programs Which Should be Undertaken in a Manner Consistent with the LWRP

1. STATE AGENCIES

OFFICE FOR THE AGING

- 1.00 Funding and/or approval programs for the establishment of new or expanded facilities providing various services for the elderly.

DEPARTMENT OF AGRICULTURE AND MARKETS

- 1.00 Agricultural Districts Program
- 2.00 Rural Development Program
- 3.00 Farm Worker Services Programs.
- 4.00 Permit and approval programs:
 - 4.01 Custom Slaughters/Processor Permit
 - 4.02 Processing Plant License
 - 4.03 Refrigerated Warehouse and/or Locker Plant License

DIVISION OF ALCOHOLIC BEVERAGE CONTROL/ STATE LIQUOR AUTHORITY

- 1.00 Permit and Approval Programs:
 - 1.01 Ball Park - Stadium License
 - 1.02 Bottle Club License
 - 1.03 Bottling Permits
 - 1.04 Brewer's Licenses and Permits
 - 1.05 Brewer's Retail Beer License

- 1.06 Catering Establishment Liquor License
- 1.07 Cider Producer's and Wholesaler's Licenses
- 1.08 Club Beer, Liquor, and Wine Licenses
- 1.09 Distiller's Licenses
- 1.10 Drug Store, Eating Place, and Grocery Store Beer Licenses
- 1.11 Farm Winery and Winery Licenses
- 1.12 Hotel Beer, Wine, and Liquor Licenses
- 1.13 Industrial Alcohol Manufacturer's Permits
- 1.14 Liquor Store License
- 1.15 On-Premises Liquor Licenses
- 1.16 Plenary Permit (Miscellaneous-Annual)
- 1.17 Summer Beer and Liquor Licenses
- 1.18 Tavern/Restaurant and Restaurant Wine Licenses
- 1.19 Vessel Beer and Liquor Licenses
- 1.20 Warehouse Permit
- 1.21 Wine Store License
- 1.22 Winter Beer and Liquor Licenses
- 1.23 Wholesale Beer, Wine, and Liquor Licenses

DIVISION OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

- 1.00 Facilities, construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Permit and approval programs:
 - 2.01 Certificate of approval (Substance Abuse Services Program)
- 3.00 Permit and approval:
 - 3.01 Letter Approval for Certificate of Need
 - 3.02 Operating Certificate (Alcoholism Facility)
 - 3.03 Operating Certificate (Community Residence)
 - 3.04 Operating Certificate (Outpatient Facility)
 - 3.05 Operating Certificate (Sobering-Up Station)

COUNCIL ON THE ARTS

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Architecture and environmental arts program.

DEPARTMENT OF BANKING

- 1.00 Permit and approval programs:
 - 1.01 Authorization Certificate (Bank Branch)
 - 1.02 Authorization Certificate (Bank Change of Location)
 - 1.03 Authorization Certificate (Bank Charter)
 - 1.04 Authorization Certificate (Credit Union Change of Location)
 - 1.05 Authorization Certificate (Credit Union Charter)
 - 1.06 Authorization Certificate (Credit Union Station)
 - 1.07 Authorization Certificate (Foreign Banking Corporation Change of Location)
 - 1.08 Authorization Certificate (Foreign Banking Corporation Public Accommodations Office)
 - 1.09 Authorization Certificate (Investment Company Branch)
 - 1.10 Authorization Certificate (Investment Company Change of Location)
 - 1.11 Authorization Certificate (Investment Company Charter)
 - 1.12 Authorization Certificate (Licensed Lender Change of Location)
 - 1.13 Authorization Certificate (Mutual Trust Company Charter)
 - 1.14 Authorization Certificate (Private Banker Charter)
 - 1.15 Authorization Certificate (Public Accommodation Office - Banks)
 - 1.16 Authorization Certificate (Safe Deposit Company Branch)
 - 1.17 Authorization Certificate (Safe Deposit Company Change of Location)
 - 1.18 Authorization Certificate (Safe Deposit Company Charter)
 - 1.19 Authorization Certificate (Savings Bank Charter)
 - 1.20 Authorization Certificate (Savings Bank De Novo Branch Office)

- 1.21 Authorization Certificate (Savings Bank Public Accommodations Office)
- 1.22 Authorization Certificate (Savings and Loan Association Branch)
- 1.23 Authorization Certificate (Savings and Loan Association Change of Location)
- 1.24 Authorization Certificate (Savings and Loan Association Charter)
- 1.25 Authorization Certificate (Subsidiary Trust Company Charter)
- 1.26 Authorization Certificate (Trust Company Branch)
- 1.27 Authorization Certificate (Trust Company-Change of Location)
- 1.28 Authorization Certificate (Trust Company Charter)
- 1.29 Authorization Certificate (Trust Company Public Accommodations Office)
- 1.30 Authorization to Establish a Life Insurance Agency
- 1.31 License as a Licensed Lender
- 1.32 License for a Foreign Banking Corporation Branch

NEW YORK STATE BRIDGE AUTHORITY (regional agency)

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land under the jurisdiction of the Authority.
- 2.00 Facilities construction, rehabilitation, expansion, or demolition.

OFFICE OF CHILDREN AND FAMILY SERVICES

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Homeless Housing and Assistance Program.
- 3.00 Permit and approval programs:
 - 3.01 Certificate of Incorporation (Adult Residential Care Facilities)
 - 3.02 Operating Certificate (Children's Services)
 - 3.03 Operating Certificate (Enriched Housing Program)

- 3.04 Operating Certificate (Home for Adults)
- 3.05 Operating Certificate (Proprietary Home)
- 3.06 Operating Certificate (Public Home)
- 3.07 Operating Certificate (Special Care Home)
- 3.08 Permit to Operate a Day Care Center

DEPARTMENT OF CORRECTIONAL SERVICES

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

- 1.00 Financing of higher education and health care facilities.
- 2.00 Planning and design services assistance program.

EMPIRE STATE DEVELOPMENT/ EMPIRE STATE DEVELOPMENT CORPORATION

- 1.00 Preparation or revision of statewide or specific plans to address State economic development needs.
- 2.00 Allocation of the state tax-free bonding reserve.

EDUCATION DEPARTMENT

- 1.00 Facilities construction, rehabilitation, expansion, demolition or the funding of such activities.
- 2.00 Permit and approval programs:
 - 2.01 Certification of Incorporation (Regents Charter)
 - 2.02 Private Business School Registration
 - 2.03 Private School License

- 2.04 Registered Manufacturer of Drugs and/or Devices
- 2.05 Registered Pharmacy Certificate
- 2.06 Registered Wholesale of Drugs and/or Devices
- 2.07 Registered Wholesaler-Re-packer of Drugs and/or Devices
- 2.08 Storekeeper's Certificate

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

- 1.00 Issuance of revenue bonds to finance pollution abatement modifications in power-generation facilities and various energy projects.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of lands under the jurisdiction of the Department.
- 2.00 Classification of Waters Program; classification of land areas under the Clean Air Act.
- 3.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 4.00 Financial assistance/grant programs:
 - 4.01 Capital projects for limiting air pollution
 - 4.02 Cleanup of toxic waste dumps
 - 4.03 Flood control, beach erosion and other water resource projects
 - 4.04 Operating aid to municipal wastewater treatment facilities
 - 4.05 Resource recovery and solid waste management capital projects
 - 4.06 Wastewater treatment facilities
- 5.00 Funding assistance for issuance of permits and other regulatory activities (New York City only).

- 6.00 Implementation of the Environmental Quality Bond Act of 1972, including:
- (a) Water Quality Improvement Projects
 - (b) Land Preservation and Improvement Projects including Wetland Preservation and Restoration Projects, Unique Area Preservation Projects, Metropolitan Parks Projects, Open Space Preservation Projects and Waterways Projects.
- 7.00 Marine Finfish and Shellfish Programs.
- 8.00 New York Harbor Drift Removal Project.
- 9.00 Permit and approval programs:

Air Resources

- 9.01 Certificate of Approval for Air Pollution Episode Action Plan
- 9.02 Certificate of Compliance for Tax Relief - Air Pollution Control Facility
- 9.03 Certificate to Operate: Stationary Combustion Installation; Incinerator; Process, Exhaust or Ventilation System
- 9.04 Permit for Burial of Radioactive Material
- 9.05 Permit for Discharge of Radioactive Material to Sanitary Sewer
- 9.06 Permit for Restricted Burning
- 9.07 Permit to Construct: a Stationary Combustion Installation; Incinerator; Indirect Source of Air Contamination; Process, Exhaust or Ventilation System

Construction Management

- 9.08 Approval of Plans and Specifications for Wastewater Treatment Facilities

Fish and Wildlife

- 9.09 Certificate to Possess and Sell Hatchery Trout in New York State
- 9.10 Commercial Inland Fisheries Licenses

- 9.11 Fishing Preserve License
- 9.12 Fur Breeder's License
- 9.13 Game Dealer's License
- 9.14 Licenses to Breed Domestic Game Animals
- 9.15 License to Possess and Sell Live Game
- 9.16 Permit to Import, Transport and/or Export under Section 184.1 (11-0511)
- 9.17 Permit to Raise and Sell Trout
- 9.18 Private Bass Hatchery Permit
- 9.19 Shooting Preserve Licenses
- 9.20 Taxidermy License
- 9.21 Permit - Article 15, (Protection of Water) - Dredge or Deposit Material in a Waterway
- 9.22 Permit - Article 15, (Protection of Water) - Stream Bed or Bank Disturbances
- 9.23 Permit - Article 24, (Freshwater Wetlands)

Hazardous Substances

- 9.24 Permit to Use Chemicals for the Control or Elimination of Aquatic Insects
- 9.25 Permit to Use Chemicals for the Control or Elimination of Aquatic Vegetation
- 9.26 Permit to Use Chemicals for the Control or Extermination of Undesirable Fish

Lands and Forest

- 9.27 Certificate of Environmental Safety (Liquid Natural Gas and Liquid Petroleum Gas)
- 9.28 Floating Object Permit
- 9.29 Marine Regatta Permit
- 9.30 Navigation Aid Permit

Marine Resources

- 9.31 Digger's Permit (Shellfish)
- 9.32 License of Menhaden Fishing Vessel

- 9.33 License for Non-Resident Food Fishing Vessel
- 9.34 Non-Resident Lobster Permit
- 9.35 Marine Hatchery and/or Off-Bottom Culture Shellfish Permits
- 9.36 Permits to Take Blue-Claw Crabs
- 9.37 Permit to Use Pond or Trap Net
- 9.38 Resident Commercial Lobster Permit
- 9.39 Shellfish Bed Permit
- 9.40 Shellfish Shipper's Permits
- 9.41 Special Permit to Take Surf Clams from Waters other than the Atlantic Ocean
- 9.42 Permit - Article 25, (Tidal Wetlands)

Mineral Resources

- 9.43 Mining Permit
- 9.44 Permit to Plug and Abandon (a non-commercial, oil, gas or solution mining well)
- 9.45 Underground Storage Permit (Gas)
- 9.46 Well Drilling Permit (Oil, Gas, and Solution Salt Mining)

Solid Wastes

- 9.47 Permit to Construct and/or Operate a Solid Waste Management Facility
- 9.48 Septic Tank Cleaner and Industrial Waste Collector Permit

Water Resources

- 9.49 Approval of Plans for Wastewater Disposal Systems
- 9.50 Certificate of Approval of Realty Subdivision Plans
- 9.51 Certificate of Compliance (Industrial Wastewater Treatment Facility)
- 9.52 Letters of Certification for Major Onshore Petroleum Facility Oil Spill Prevention and Control Plan
- 9.53 Permit - Article 36, (Construction in Flood Hazard Areas)
- 9.54 Permit for State Agency Activities for Development in Coastal Erosion Hazards Areas
- 9.55 State Pollutant Discharge Elimination System (SPDES) Permit

- 9.56 Approval - Drainage Improvement District
 - 9.57 Approval - Water (Diversion for) Power
 - 9.58 Approval of Well System and Permit to Operate
 - 9.59 Permit - Article 15, (Protection of Water) - Dam
 - 9.60 Permit - Article 15, Title 15 (Water Supply)
 - 9.61 River Improvement District Approvals
 - 9.62 River Regulatory District Approvals
 - 9.63 Well Drilling Certificate of Registration
 - 9.64 401 Water Quality Certification
-
- 10.00 Preparation and revision of Air Pollution State Implementation Plan.
-
- 11.00 Preparation and revision of Continuous Executive Program Plan.
-
- 12.00 Preparation and revision of Statewide Environmental Plan.
-
- 13.00 Protection of Natural and Man-made Beauty Program.
-
- 14.00 Urban Fisheries Program.
-
- 15.00 Urban Forestry Program.
-
- 16.00 Urban Wildlife Program.

ENVIRONMENTAL FACILITIES CORPORATION

- 1.00 Financing program for pollution control facilities for industrial firms and small businesses.

FACILITIES DEVELOPMENT CORPORATION

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.

OFFICE OF GENERAL SERVICES

- 1.00 Administration of the Public Lands Law for acquisition and disposition of lands, grants of land, grants of easement and issuance of licenses for land underwater, including for residential docks over 5,000 square feet and all commercial docks, issuance of licenses for removal of materials from lands under water, and oil and gas leases for exploration and development.
- 2.00 Administration of Article 4-B, Public Buildings Law, in regard to the protection and management of State historic and cultural properties and State uses of buildings of historic, architectural or cultural significance.
- 3.00 Facilities construction, rehabilitation, expansion, or demolition.
- 4.00 Administration of Article 5, Section 233 of the Education Law regarding the removal of archaeological and paleontological objects under the waters of the State.
- 5.00 Administration of Article 3, Section 32 of the Navigation Law regarding location of structures in or on navigable waters.
- 6.00 Administration of Section 334 of the State Real Property Law regarding subdivision of waterfront properties on navigable waters of the State to depict the location of riparian lines on property surveys that must be filed with the county clerk.

DEPARTMENT OF HEALTH

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Permit and approval programs:
 - 2.01 Approval of Completed Works for Public Water Supply Improvements
 - 2.02 Approval of Plans for Public Water Supply Improvements.

- 2.03 Certificate of Need (Health Related Facility - except Hospitals)
- 2.04 Certificate of Need (Hospitals)
- 2.05 Operating Certificate (Diagnostic and Treatment Center)
- 2.06 Operating Certificate (Health Related Facility)
- 2.07 Operating Certificate (Hospice)
- 2.08 Operating Certificate (Hospital)
- 2.09 Operating Certificate (Nursing Home)
- 2.10 Permit to Operate a Children's Overnight or Day Camp
- 2.11 Permit to Operate a Migrant Labor Camp
- 2.12 Permit to Operate as a Retail Frozen Dessert Manufacturer
- 2.13 Permit to Operate a Service Food Establishment
- 2.14 Permit to Operate a Temporary Residence/Mass Gathering
- 2.15 Permit to Operate or Maintain a Swimming Pool or Public Bathing Beach
- 2.16 Permit to Operate Sanitary Facilities for Realty Subdivisions
- 2.17 Shared Health Facility Registration Certificate

DIVISION OF HOUSING AND COMMUNITY RENEWAL AND ITS SUBSIDIARIES AND AFFILIATES

- 1.00 Facilities construction, rehabilitation, expansion, or demolition.
- 2.00 Financial assistance/grant programs:
 - 2.01 Federal Housing Assistance Payments Programs (Section 8 Programs)
 - 2.02 Housing Development Fund Programs
 - 2.03 Neighborhood Preservation Companies Program
 - 2.04 Public Housing Programs
 - 2.05 Rural Initiatives Grant Program
 - 2.06 Rural Preservation Companies Program
 - 2.07 Rural Rental Assistance Program
 - 2.08 Special Needs Demonstration Projects
 - 2.09 Urban Initiatives Grant Program
 - 2.10 Urban Renewal Programs

- 3.00 Preparation and implementation of plans to address housing and community renewal needs.

HOUSING FINANCE AGENCY

- 1.00 Funding programs for the construction, rehabilitation, or expansion of facilities.
- 2.00 Affordable Housing Corporation

INTERSTATE SANITATION COMMISSION (regional agency)

- 1.00 Adoption and enforcement of air and water pollution standards within the Interstate Sanitation District.

JOB DEVELOPMENT AUTHORITY

- 1.00 Financing assistance programs for commercial and industrial facilities.

MEDICAL CARE FACILITIES FINANCING AGENCY

- 1.00 Financing of medical care facilities.

OFFICE OF MENTAL HEALTH

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Permit and approval programs:
 - 2.01 Operating Certificate (Community Residence)
 - 2.02 Operating Certificate (Family Care Homes)
 - 2.03 Operating Certificate (Inpatient Facility)
 - 2.04 Operating Certificate (Outpatient Facility)

OFFICE OF MENTAL RETARDATION AND DEVELOPMENT DISABILITIES

- 1.00 Facilities construction, rehabilitation, expansion, or demolition, or the funding of such activities.
- 2.00 Permit and approval programs:
 - 2.01 Establishment and Construction Prior Approval
 - 2.02 Operating Certificate Community Residence
 - 2.03 Outpatient Facility Operating Certificate

DIVISION OF MILITARY AND NAVAL AFFAIRS

- 1.00 Preparation and implementation of the State Disaster Preparedness Plan.

NATURAL HERITAGE TRUST

- 1.00 Funding program for natural heritage institutions.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (regional agency)

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land under the jurisdiction of the Authority.
- 2.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 3.00 Increases in special fares for transportation services to public water-related recreation resources.

OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION (including Regional State Park Commission)

- 1.00 Acquisition, disposition, lease, grant of easement or other activities related to the management of land under the jurisdiction of the Office.
- 2.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 3.00 Funding program for recreational boating, safety and enforcement.
- 4.00 Funding program for State and local historic preservation projects.
- 5.00 Land and Water Conservation Fund programs.
- 6.00 Nomination of properties to the Federal and/or State Register of Historic Places.
- 7.00 Permit and approval programs:
 - 7.01 Floating Objects Permit
 - 7.02 Marine Regatta Permit
 - 7.03 Navigation Aide Permit
 - 7.04 Posting of Signs Outside State Parks
- 8.00 Preparation and revision of the Statewide Comprehensive Outdoor Recreation Plan and the Statewide Comprehensive Historic Preservation Plan and other plans for public access, recreation, historic preservation or related purposes.
- 9.00 Recreation services program.
- 10.00 Urban Cultural Parks Program.

POWER AUTHORITY OF THE STATE OF NEW YORK

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land under the jurisdiction of the Authority.

- 2.00 Facilities construction, rehabilitation, expansion, or demolition.

NEW YORK STATE SCIENCE AND TECHNOLOGY FOUNDATION

- 1.00 Corporation for Innovation Development Program.
- 2.00 Center for Advanced Technology Program.

DEPARTMENT OF STATE

- 1.00 Appalachian Regional Development Program.
- 2.00 Coastal Management Program.
- 3.00 Community Services Block Grant Program.
- 4.00 Permit and approval programs:
 - 4.01 Billiard Room License
 - 4.02 Cemetery Operator
 - 4.03 Uniform Fire Prevention and Building Code

STATE UNIVERSITY CONSTRUCTION FUND

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.

STATE UNIVERSITY OF NEW YORK

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land under the jurisdiction of the University.

- 2.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.

DEPARTMENT OF TRANSPORTATION

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land under the jurisdiction of the Department.
- 2.00 Construction, rehabilitation, expansion, or demolition of facilities, including, but not limited to:
 - (a) Highways and parkways
 - (b) Bridges on the State highways system
 - (c) Highway and parkway maintenance facilities
 - (d) Rail facilities
- 3.00 Financial assistance/grant programs:
 - 3.01 Funding programs for construction/reconstruction and reconditioning/preservation of municipal streets and highways (excluding routine maintenance and minor rehabilitation)
 - 3.02 Funding programs for development of the ports of Albany, Buffalo, Oswego, Ogdensburg, and New York
 - 3.03 Funding programs for rehabilitation and replacement of municipal bridges
 - 3.04 Subsidies program for marginal branchlines abandoned by Conrail
 - 3.05 Subsidies program for passenger rail service
- 4.00 Permits and approval programs:
 - 4.01 Approval of applications for airport improvements (construction projects)

- 4.02 Approval of municipal applications for Section 18 Rural and Small Urban Transit Assistance Grants (construction projects)
- 4.03 Approval of municipal or regional transportation authority applications for funds for design, construction and rehabilitation of omnibus maintenance and storage facilities
- 4.04 Approval of municipal or regional transportation authority applications for funds for design and construction of rapid transit facilities
- 4.05 Certificate of Convenience and Necessity to Operate a Railroad
- 4.06 Highway Work Permits
- 4.07 License to Operate Major Petroleum Facilities
- 4.08 Outdoor Advertising Permit (for off-premises advertising signs adjacent to interstate and primary highway)
- 4.09 Real Property Division Permit for Use of State-Owned Property
- 5.00 Preparation or revision of the Statewide Master Plan for Transportation and sub-area or special plans and studies related to the transportation needs of the State.
- 6.00 Water Operation and Maintenance Program--Activities related to the containment of petroleum spills and development of an emergency oil-spill control network.

URBAN DEVELOPMENT CORPORATION and its subsidiaries and affiliates

- 1.0 Acquisition, disposition, lease, grant of easement or other activities related to the management of land under the jurisdiction of the Corporation.
- 2.00 Planning, development, financing, construction, major renovation or expansion of commercial, industrial, and civic facilities and the provision of technical assistance or financing for such activities, including, but not

limited to, actions under its discretionary economic development programs such as the following:

- (a) Tax-Exempt Financing Program
- (b) Lease Collateral Program
- (c) Lease Financial Program
- (d) Targeted Investment Program
- (e) Industrial Buildings Recycling Program

3.00 Administration of special projects.

4.00 Administration of State-funded capital grant programs.

DIVISION OF YOUTH

1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding or approval of such activities.

2. FEDERAL AGENCIES

DIRECT FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS

DEPARTMENT OF COMMERCE

National Marine Fisheries Services

1.0 Fisheries Management Plans

DEPARTMENT OF DEFENSE

Army Corps of Engineers

1.00 Proposed authorizations for dredging, channel improvements, breakwaters, other navigational works, or erosion control structures, beach replenishment, dams or flood control works, ice management practices

and activities, and other projects with potential to impact coastal lands and waters.

2.00 Land acquisition for spoil disposal or other purposes.

3.00 Selection of open water disposal sites.

Army, Navy and Air Force

4.00 Location, design, and acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facilities).

5.00 Plans, procedures and facilities for landing or storage use zones.

6.00 Establishment of impact, compatibility or restricted use zones.

DEPARTMENT OF ENERGY

1.00 Prohibition orders.

GENERAL SERVICES ADMINISTRATION

1.00 Acquisition, location and design of proposed Federal Government property or buildings, whether leased or owned by the Federal Government.

2.00 Disposition of Federal surplus lands and structures.

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

1.00 Management of National Wildlife refuges and proposed acquisitions.

Mineral Management Service

- 2.00 OCS lease sale activities including tract selection, lease sale stipulations, etc.

National Park Service

- 3.00 National Park and Seashore management and proposed acquisitions.

DEPARTMENT OF TRANSPORTATION

Amtrak, Conrail

- 1.00 Expansions, curtailments, new construction, upgrading or abandonments or railroad facilities or services, in or affecting the State's coastal area.

Coast Guard

- 2.00 Location and design, construction or enlargement of Coast Guard stations, bases, and lighthouses.
- 3.00 Location, placement or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON).
- 4.00 Expansion, abandonment, designation or anchorages, lightening areas or shipping lanes and ice management practices and activities.

Federal Aviation Administration

- 5.00 Location and design, construction, maintenance, and demolition of Federal aids to air navigation.

Federal Highway Administration

- 6.00 Highway construction.

St. Lawrence Seaway Development Corporation

- 7.00 Acquisition, location, design, improvement and construction of new and existing facilities for the operation of the Seaway, including traffic safety, traffic control and length of navigation season.

FEDERAL LICENSES AND PERMITS

DEPARTMENT OF DEFENSE

Army Corps of Engineers

- 1.00 Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

- 2.00 Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).
- 3.00 Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).
- 4.00 Approval of plans for improvements made at private expense under Corps supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).
- 5.00 Disposal of dredged spoils into the waters of the U.S., pursuant to the Clean Water Act, Section 404, (33 U.S.C. 1344).
- 6.00 All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
- 7.00 Construction of artificial islands and fixed structures in Long Island Sound pursuant to Section 4(f) of the River and Harbors Act of 1912 (33 U.S.C.).

DEPARTMENT OF ENERGY

Economic Regulatory Commission

- 1.00 Regulation of gas pipelines, and licensing of import or export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.
- 2.00 Exemptions from prohibition orders.

Federal Energy Regulatory Commission

- 3.00 Licenses for non-Federal hydroelectric projects and primary transmission lines under Sections 3(11), 4(e) and 15 of the Federal Power Act (16 U.S.C. 796(11), 797(11) and 808).

- 4.00 Orders for interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (15 U.S.C. 824a(b)).
- 5.00 Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).
- 6.00 Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

ENVIRONMENTAL PROTECTION AGENCY

- 1.00 NPDES permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to Section 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).
- 2.00 Permits pursuant to the Resources Recovery and Conservation Act of 1976.
- 3.00 Permits pursuant to the underground injection control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300h-c).
- 4.00 Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

DEPARTMENT OF INTERIOR

Fish and Wildlife Services

- 1.00 Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153(a)).

Mineral Management Service

- 2.00 Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to 43 U.S.C. 1334, exploration and development plans, and any other permits or authorizations granted for activities described in detail in OCS exploration, development, and production plans.
- 3.00 Permits required for pipelines crossing federal lands, including OCS lands, and associated activities pursuant to the OCS Lands Act (43 U.S.C. 1334) and 43 U.S.C. 931 (c) and 20 U.S.C. 185.

NUCLEAR REGULATORY COMMISSION

- 1.00 Licensing and certification of the siting, construction and operation of nuclear power plants pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

SURFACE TRANSPORTATION BOARD

- 1.00 Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines.

DEPARTMENT OF TRANSPORTATION

Coast Guard

- 1.00 Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.
- 2.00 Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501).

Federal Aviation Administration

3.00 Permits and licenses for construction, operation or alteration of airports.

FEDERAL ASSISTANCE*

DEPARTMENT OF AGRICULTURE

10.068 Rural Clean Water Program
10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410 Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans
10.413 Recreation Facility Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Renting Housing Loans
10.416 Soil and Water Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.422 Business and Industrial Loans
10.424 Industrial Development Grants
10.426 Area Development Assistance Planning Grants
10.429 Above Moderate Income Housing Loans
10.430 Energy Impacted Area Development Assistance Program
10.901 Resource Conservation and Development
10.902 Soil and Water Conservation
10.904 Watershed Protection and Flood Prevention
10.906 River Basin Surveys and Investigations

DEPARTMENT OF COMMERCE

11.300 Economic Development - Grants and Loans for Public Works and Development Facilities
11.301 Economic Development - Business Development Assistance
11.302 Economic Development - Support for Planning Organizations
11.304 Economic Development - State and Local Economic Development Planning

- 11.305 Economic Development - State and Local Economic Development Planning
- 11.307 Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
- 11.308 Grants to States for Supplemental and Basic Funding of Titles I, II, III, IV, and V Activities
- 11.405 Anadromous and Great Lakes Fisheries Conservation
- 11.407 Commercial Fisheries Research and Development
- 11.417 Sea Grant Support
- 11.427 Fisheries Development and Utilization - Research and Demonstration Grants and Cooperative Agreements Program
- 11.501 Development and Promotion of Ports and Inter-modal Transportation
- 11.509 Development and Promotion of Domestic Waterborne Transport Systems

COMMUNITY SERVICES ADMINISTRATION

- 49.002 Community Action
- 49.011 Community Economic Development
- 49.013 State Economic Opportunity Offices
- 49.017 Rural Development Loan Fund
- 49.018 Housing and Community Development (Rural Housing)

ENVIRONMENTAL PROTECTION AGENCY

- 66.001 Air Pollution Control Program Grants
- 66.418 Construction Grants for Wastewater Treatment Works
- 66.426 Water Pollution Control - State and Areawide Water Quality Management Planning Agency
- 66.451 Solid and Hazardous Waste Management Program Support Grants
- 66.452 Solid Waste Management Demonstration Grants
- 66.600 Environmental Protection Consolidated Grants Program Support Comprehensive Environmental Response, Compensation and Liability (Super Fund)

GENERAL SERVICES ADMINISTRATION

39.002 Disposal of Federal Surplus Real Property

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- 14.112 Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium Projects
- 14.115 Mortgage Insurance - Development of Sales Type Cooperative Projects
- 14.117 Mortgage Insurance - Homes
- 14.124 Mortgage Insurance - Investor Sponsored Cooperative Housing
- 14.125 Mortgage Insurance - Land Development and New Communities
- 14.126 Mortgage Insurance - Management Type Cooperative Projects
- 14.127 Mortgage Insurance - Mobile Home Parks
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Program
- 14.221 Urban Development Action Grants
- 14.223 Indian Community Development Block Grant Program

DEPARTMENT OF INTERIOR

- 15.400 Outdoor Recreation - Acquisition, Development and Planning
- 15.402 Outdoor Recreation - Technical Assistance
- 15.403 Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments
- 15.411 Historic Preservation Grants-in-Aid
- 15.417 Urban Park and Recreation Recovery Program
- 15.600 Anadromous Fish Conservation
- 15.605 Fish Restoration
- 15.611 Wildlife Restoration
- 15.613 Marine Mammal Grant Program
- 15.802 Minerals Discovery Loan Program
- 15.950 National Water Research and Development Program
- 15.951 Water Resources Research and Technology - Assistance to State Institutes
- 15.952 Water Research and Technology - Matching Funds to State Institutes

SMALL BUSINESS ADMINISTRATION

- 59.012 Small Business Loans
- 59.013 State and Local Development Company Loans
- 59.024 Water Pollution Control Loans
- 59.025 Air Pollution Control Loans
- 59.031 Small Business Pollution Control Financing Guarantee

DEPARTMENT OF TRANSPORTATION

- 20.102 Airport Development Aid Program
- 20.103 Airport Planning Grant Program
- 20.205 Highway Research, Planning, and Construction
- 20.309 Railroad Rehabilitation and Improvement - Guarantee of Obligations
- 20.310 Railroad Rehabilitation and Improvement - Redeemable Preference Shares
- 20.506 Urban Mass Transportation Demonstration Grants
- 20.509 Public Transportation for Rural and Small Urban Areas

* Numbers refer to the Catalog of Federal Domestic Assistance Programs, 1980 and its two subsequent updates.

B. STATE AND FEDERAL PROGRAMS NECESSARY TO FURTHER THE LWRP

1. Department of Environmental Conservation

Funding assistance with planning studies and/or design and construction of projects targeted to mitigate localized flooding problems in the Town.

2. Environmental Facilities Corp.

Funding assistance for the planning, design and construction of expansion or improvement projects within the Somerset-Barker Sanitary Sewer District.

3. Department of State

Funding approval for LWRP implementation of various planning, design and construction projects, as outlined in Section IV of this Program.

4. Department of Economic Development / Empire State Development Corporation

Assistance is needed for the preparation of economic feasibility studies for the reuse of various deteriorated and unutilized structures, as well as for the siting or improvement of public facilities.

5. Office of General Services

Prior to any development occurring in the water or on the immediate waterfront, OGS will be contacted for a determination of the State's interest in underwater or formerly underwater lands and for authorization to use and occupy such lands.

6. Office of Parks, Recreation, and Historic Preservation

Funding assistance for the planning, design and construction of expansion or improvement projects in Golden Hill State Park.

Funding approval under programs such as the Land and Water Conservation Fund and the Clean Water / Environmental Protection Fund for development of waterfront parkland.

7. Department of Public Service

Prior to any (re)approval of any permits for the AES Somerset Power Generating Station, permitting agencies must consider the LWRP to ensure consistency.

8. Army Corps of Engineers

Assistance with future proposed erosion control structures and repairs or ice management activities along Lake Ontario.

9. Department of Agriculture

Potential funding or other assistance with water, irrigation and/or drainage systems, or soil and water conservation.

SECTION VII – Local Commitment and Consultation

A. Local Commitment

The Town of Somerset initiated its efforts to prepare a Local Waterfront Revitalization Program in November 2002, at which time it established an Advisory Committee to oversee and guide the preparation of the program. The Advisory Committee was comprised of representatives from the Town government and local community, including local residents and business owners. This committee met six times during the planning process.

To strengthen local commitment for the Town's planning efforts, the Advisory Committee held a public information meeting to provide local citizens an opportunity to comments on significant issues and opportunities in the Town. The meeting was held on February 5, 2003. The purpose of this meeting was to introduce the LWRP and solicit initial comments from the public about their concerns for the waterfront. This meeting was attended by a total of eighteen people. The information gathered at this meeting was utilized to shape the LWRP policies, as well as the proposed projects and implementation measures outlined in the program.

The Somerset Town Board prior to adoption holds a public hearing on the LWRP. This hearing affords the general public an opportunity to hear a presentation of the study as well as provides the Town Board an opportunity to hear from the residents their general support or remaining issues.

B. Consultation

The Advisory Committee forwarded draft sections of the LWRP to the Department of State for their review and comment. In addition, draft documents were distributed to a number of involved and interested agencies to gather their comments on program findings and recommendations. The agencies that were contacted for their input included the Niagara County Department of Planning, Development and Tourism, the New York State Department of Environmental Conservation, the surrounding municipalities (Town of Newfane, Town of Yates, Village of Barker and the Orleans County Planning Department.

The draft LWRP was reviewed and approved by the Somerset Town Board and forwarded to the New York State Department of State. The Department of State initiated a 60-day review period for the draft program pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act and the State Environmental Quality Review Act. Copies of the draft LWRP were distributed to all applicable Federal agencies, potentially affected State agencies, Niagara and Orleans Counties, and the Towns of Newfane and Yates and Village of Barker. Comments received on the draft LWRP were reviewed by the Town and the Department of State, and changes were made, as required, to reflect the substantive comments.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
FEB 11 2005

Local Law Filing

(Use this form to file a local law with the Secretary of State)

MISCELLANEOUS
& STATE RECORDS

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

TOWN OF SOMERSET LOCAL LAW NO. 1 OF THE YEAR, 2005

A Local Law Entitled "Town of Somerset Waterfront Consistency Law"

Be it enacted by the Town Board of the Town of Somerset as follows:

GENERAL PROVISIONS

I. Title

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

II. Authority and Purpose

1. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this local law is to provide a framework for the agencies of the Town of Somerset to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for private actions or direct agency actions which are located in the waterfront area; and to ensure that such actions are consistent with said policies and purposes.
3. It is the intention of the Town of Somerset that the preservation, enhancement and utilization of the natural and manmade resources of the waterfront area of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss of fish and wildlife; adverse impacts to historic structures; diminution of open space areas or public access to the waterfront; erosion of shoreline; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
4. The substantive provisions of this local law shall only apply while there is in existence a Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. Definitions

1. "Actions" means either Type I or Unlisted Actions as defined by the SEQRA regulations (6 NYCRR 617.2), which are undertaken by an applicant or agency and that include:
 - (a) projects or physical activities, such as construction or other activities, that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - (i) are directly undertaken by an agency;
 - (ii) involve funding by an agency; or
 - (iii) require one or more, new or modified, approvals from an agency or agencies.
 - (b) agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;
 - (c) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
 - (d) any combinations of the above.
2. "Waterfront area" means the Waterfront Revitalization Area delineated in the Town's Local Waterfront Revitalization Program.
3. "Waterfront Assessment Form (WAF)" means the form used by the Town of Somerset to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.
4. "Code Enforcement Officer" means the Building Inspector and/or Code Enforcement Officer of the Town of Somerset.
5. "Consistent" means that the action will fully comply with the LWRP policy standards and conditions.
6. "Direct Actions" mean actions planned and proposed for implementation by an applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.
7. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Town of Somerset, 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 of the Town of Somerset.
8. "Appropriate Municipal Agency" means the Town Board, Town Planning Board or Town Zoning Board of Appeals reviewing the Action.

IV. Review of Actions

1. Whenever an action is proposed to be approved, funded or undertaken in the Town's Waterfront area, a Waterfront Assessment Form (WAF) shall be prepared by either the applicant, or if the action is proposed by the Town Board, then the WAF shall be prepared by the Town Board. Applicants shall file the WAF with the appropriate Municipal Agency. The Town Board shall file the WAF with the Town Clerk.
2. All actions undertaken within the Waterfront area shall be evaluated by the appropriate Municipal Agency for consistency in accordance with the LWRP policy standards and conditions, as set forth in Section III of the Town of Somerset Local Waterfront Lakefront Revitalization Program, a copy of which is on file in the Town Clerk's office. In the case of direct actions, the Municipal Agency shall also consult Section IV of the LWRP when making their consistency determination.

As appropriate, an action shall be consistent with the following policies:

- (a) Foster a pattern of development in the Town of Somerset that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of waterfront locations, and minimizes potential adverse impacts of development.
- (b) Protect existing water-dependent uses in the Town of Somerset and work to locate new water-dependent uses in suitable locations.
- (c) Protect existing agricultural lands.
- (d) Promote the sustainable use of living marine resources in the Town of Somerset.
- (e) Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands and rare ecological communities.
- (f) Protect and improve water resources.
- (g) Minimize loss of life, structures and natural resources from flooding and erosion.
- (h) Protect and improve air quality.
- (i) Promote appropriate use of energy resources.
- (j) Minimize environmental degradation from solid waste and hazardous substances and wastes.
- (k) Improve public access to the waterfront and the use of public lands.
- (l) Enhance visual quality and protect outstanding scenic resources.

(m) Preserve and protect historic resources.

3. After reviewing these policy considerations, the Municipal Agency shall make written findings of determination relating to the policies, as well as an appropriate SEQRA determination, prior to making a final determination on the action. If it is determined that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken, funded or approved, as proposed, unless the Municipal Agency finds that:
 - (a) no reasonable alternatives exist that would permit the action to be undertaken in a manner that would not substantially hinder the achievement of such LWRP policy standards and conditions;
 - (b) the action would be undertaken in a manner that would minimize all adverse effects on such LWRP policy standards and conditions;
 - (c) the action will advance one or more of the other LWRP policy standards and conditions; and
 - (d) the action will result in an over-riding 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.

4. The Town shall maintain a file for each action made the subject of a consistency determination. Such files shall be kept in the office of the Town Clerk and made available for public inspection upon request.

V. Enforcement

The Town Code Enforcement Officer (Town of Somerset LWRP Coordinator) shall be responsible for enforcing this Chapter. No work or activity on a project in the waterfront area that is subject to review under this Chapter law shall be commenced or undertaken until the Code Enforcement Officer has issued a consistency review determination, or been presented with a written determination from the appropriate Municipal Agency that the action is consistent with the Town of Somerset LWRP policy standards and conditions.

In the event that any construction, action or other activity is being performed in violation with this Chapter or any conditions imposed hereunder, the 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. Posting of a stop work order at any work site, or delivery to any individual shall constitute issuance. Issuance of a stop work order shall not be a prerequisite to prosecution for violating this law.

VI. Violations

1. Non compliance with any of the provisions of this Chapter shall constitute a violation, punishable by a fine not exceeding \$350.00 or imprisonment for a period not exceeding six months, or both for a conviction of a first offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate violation.
2. This law may be enforced by Civil Action and any violation thereof may be enjoined by a court or competent jurisdiction.

VII. 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.

VIII. Effective Date

This local law shall take effect immediately upon its filing in the office of the Secretary of State.

Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. **(Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2005 of the Town of Somerset was duly passed by the Town Board on February 8, 2005, in accordance with the applicable provisions of law.

2. **(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 200__ was duly passed by the _____ on _____ 200__, and was approved/not approved/repassed after disapproval by the (Elective Chief Executive Officer*) and was deemed duly adopted on _____ 200__, in accordance with the applicable provisions of law.

3. **(Final adoption by referendum.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 200__ of the Town of _____ was duly passed by the _____ on _____, 200__, and was approved/not disapproved/repassed after disapproval by the (Elective Chief Executive Officer*) on _____, 200__. Such Local Law was submitted to the people by reason of a mandatory/permissive referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the general/special/annual election held on _____, 200__, in accordance with the applicable provisions of law.

4. **(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the Local Law annexed hereto, designated as Local Law No. _____ of 200__ of the County/City/Town/Village of _____ was duly passed by the _____ on _____ 200__, and was approved/not approved/repassed after disapproval by the (Elective Chief Executive Officer*) on _____ 200__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 200__, in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as Local Law No. ____ of 200__ of the City of _____ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special/general election held on _____ 200__, became operative.


6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated at Local Law No. ____ of 200__ of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____, 200__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

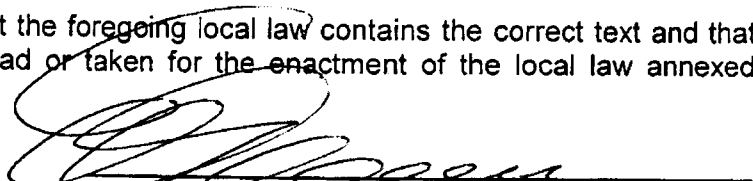
(Seal)


Clerk of the County legislative body, City, Town or Village
Clerk or officer designated by local legislative body
REBECCA A. CONNOLLY, MMC
Town Clerk, Town of Somerset
Date: February 8, 2005

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


EDWIN J. SHOEMAKER, Town Attorney
Town of Somerset

Date: February 8, 2005

FLOOD DAMAGE PREVENTION

Chapter 104

FLOOD DAMAGE PREVENTION

- § 104-1. Findings.**
- § 104-2. Purpose.**
- § 104-3. Objectives.**
- § 104-4. Definitions.**
- § 104-5. Applicability.**
- § 104-6. Flood Insurance Study.**
- § 104-7. Interpretation, conflict with other provisions.**
- § 104-8. Warning and disclaimer of liability.**
- § 104-9. Designation of local administrator.**
- § 104-10. Development permit required.**
- § 104-11. Application; information required.**
- § 104-12. Floodproofing certificate required.**
- § 104-13. Duties of local administrator.**
- § 104-14. General standards.**
- § 104-15. Specific standards.**
- § 104-16. Floodways.**
- § 104-17. Zoning Board of Appeals.**
- § 104-18. Conditions for variances.**
- § 104-19. Penalties for offenses.**

[HISTORY: Adopted by the Town Board of the Town of Somerset 4-14-1987 as L.L. No. 1-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land — See Ch. 171.
Zoning — See Ch. 205.

§ 104-1. Findings.

The Town Board of the Town of Somerset finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Somerset and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 104-2. Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.

- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 104-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood-control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
- E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, sewer lines, streets and bridges, located in areas of special flood hazard.
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 104-4. Definitions.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-99, V, VO, VE or V1-30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING — Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR — The same meaning as "basement."

COASTAL HIGH-HAZARD AREA — The area subject to high-velocity waters including, but not limited to,

hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE, VO or V.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

ELEVATED BUILDING — A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary and Floodway Map and the water surface elevations of the base flood.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.

FLOODWAY — The same meaning as "regulatory floodway."

FLOOR — The top surface of an enclosed area in a building (including basement), i.e., the top of the slab in concrete-slab construction or the top of the wood flooring in wood-frame construction.

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR — Lowest level, including basement or cellar of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one (1) or more sections, which is built on a

permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for one hundred (100) consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) — As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD — The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — At least fifty-one percent (51%) of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 104-13B of this chapter.

SAND DUNES — Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION — The initiation, excluding planning and design, of any phase of a project or the physical alteration of the property and shall include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the "actual start" means affixing of the manufactured home to its permanent site.

STRUCTURE — A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT:

- (1) Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
 - (a) Before the improvement or repair is started; or
 - (b) If the structure has been damaged and is being restored, before the damage occurred.
- (2) For the purposes of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
 - (a) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

- (b) Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 104-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of Town of Somerset.

§ 104-6. Flood Insurance Study.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled the "Flood Insurance Study for the Town of Somerset of Niagara County, New York," dated February 3, 1982, with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps is hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at Town Clerk's office.

§ 104-7. Interpretation, conflict with other provisions.

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other

lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 104-8. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Somerset, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 104-9. Designation of local administrator.

The Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 104-10. Development permit required.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 104-6. Application for a development permit shall be made on forms furnished by the local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question, existing or proposed structures, fill, storage of materials and drainage facilities and the location of the foregoing.

§ 104-11. Application; information required.

The following information is required where applicable:

- A. Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures.
- B. Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.
- C. When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 104-14C(1).
- D. Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 104-15.
- E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

§ 104-12. Floodproofing certificate required.

Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

§ 104-13. Duties of local administrator.

Duties of the local administrator shall include but not be limited to:

A. Permit application review. The local administrator shall review:

- (1) All development permit applications to determine that the requirements of this chapter have been satisfied.
- (2) All development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) All development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (4) All development permits for compliance with the provisions of § 104-14E, Encroachments.

B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 104-6, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 104-14D(4) in order to administer § 104-15.

C. Information to be obtained and maintained. The local administrator shall:

- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
- (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in §§ 104-14 and 104-15.
- (3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances when granted and certificates of compliance.

D. Alteration of watercourses. The local administrator shall:

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified

area of special flood hazard and actual field conditions.

- (2) Base flood elevation data established pursuant to § 104-6 and/or 104-13B, when available, shall be used to accurately delineate the areas of special flood hazard.
- (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 104-20 of this chapter.
- (2) All floodplain development found noncompliant with the provisions of this law and/or the conditions of the approved permit shall be subject to the issuance of a stop work order by the local administrator. Disregard of a stop work order shall be subject to the penalties described in § 104-19 of this chapter.

G. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the development permit or the approved variance.

H. Certificate of compliance.

- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected,

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changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator, stating that the building or land conforms to the requirements of this chapter.

- (2) All other development occurring within the designated flood hazard area will have upon completion a certificate of compliance issued by the local administrator.
- (3) All certifications shall be based upon the inspections conducted subject to § 104-13F and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 104-14. General standards.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two (2) feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include but are not to be limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state

and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

- (1) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.

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- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either fifty (50) lots or five (5) acres.

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the areas of special flood hazard set forth in § 104-13A(3). This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard for which base flood elevation data is available pursuant to § 104-13B or 104-14D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to § 104-13B, the requirements of § 104-16 shall apply.

§ 104-15. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in §§ 104-6 and 104-13B, the following standards are required:

A. Residential construction. New construction and substantial improvements of any resident structure shall:

- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
- (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for shall be provided for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction.

- (1) New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation or be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting

hydrostatic and hydrodynamic loads and the effects of buoyancy.

- (a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

- [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch shall be provided for every square foot of enclosed area subject to flooding.
- [2] The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
- [3] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

- (b) If the structure is to be floodproofed:

- [1] A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of

resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

[2] A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.

(2) The local administrator shall maintain on record a copy of all such certificates noted in this section.

C. Areas without base flood elevations.

(1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the base flood elevation as may be determined in § 104-13B or two (2) feet above the highest adjacent grade where no elevation data is available.

(a) New construction or substantial improvements of structures, including manufactured homes shall have the lowest floor (including basement) elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.

(b) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

[1] A minimum of two (1) openings having a total net area of not less than one (1) square inch shall be provided for every square foot of enclosed area subject to flooding.

- [2] The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
- [3] Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 104-16. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See definition in § 104-4.) The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by §§ 104-6 and 104-13B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 104-17. Zoning Board of Appeals.

- A. The Zoning Board of Appeals, as established by Town of Somerset, shall hear and decide appeals and requests for variances from the requirements of this chapter.¹
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.