

Town of Tonawanda Local Waterfront Revitalization Program

LWRP

Adopted:

Town of Tonawanda Board, April 19, 1993

Approved:

NYS Secretary of State Alexander F. Treadwell, December 13, 1996

Concurred:

U.S. Office of Ocean and Coastal Resource Management, March 26, 1997

Amended LWRP

Adopted:

Town of Tonawanda Board, April 7, 2008

Approved:

NYS Secretary of State Lorraine A. Cortés-Vázquez, September 17, 2008

Concurred:

U.S. Office of Ocean and Coastal Resource Management, February 26, 2010



2919 Delaware Avenue - Room 11 • Kenmore, New York 14217 • (716) 877-8804
Fax (716) 877-1261

Office of the Supervisor
ANTHONY F. CARUANA

April 8, 2008

Rec'd Coastal Resources

APR 15 2008

Honorable Lorraine A. Cortés-Vázquez
Secretary of State
New York State Department of State
99 Washington Ave
Albany, New York 12231-0001

State of New York

APR 14 2008

Department of State
Secretary of State

Re: Town of Tonawanda
Amendment to Local Waterfront Revitalization Program

Dear Secretary Cortés-Vázquez:

The Town of Tonawanda Town Board formally adopted amendments to the Town of Tonawanda Local Waterfront Revitalization Program (LWRP) and all associated implementing local laws at its meeting on April 7, 2008. These actions were taken after having completed all environmental review procedures in accordance with the State Environmental Quality Review Act (SEQRA) and having addressed review comments received pursuant to Article 42 of the NYS Executive Law. Attached is a copy of the resolution passed by the Town of Tonawanda Town Board in adopting the LWRP and a copy of the resolutions passed in adopting all of the necessary implementing local laws, as well as the Town Board's SEQRA Negative Declaration. In addition, a copy of the LWRP-related local law that was adopted has also been enclosed.

As Supervisor for the Town of Tonawanda, and on behalf of the entire Town, I respectfully request your consideration and approval of these amendments to the Town of Tonawanda Local Waterfront Revitalization Program pursuant to Article 42 of the NYS Executive Law.

Sincerely,

A handwritten signature in cursive script that reads 'Anthony F. Caruana'.

Anthony F. Caruana
Supervisor

AFC/slh
Enclosures

"A GOOD PLACE TO LIVE, WORK AND PLAY"





Town of Tonawanda
 2919 Delaware Ave
 Kenmore, NY 14217
 Melissa Brinson, Town Clerk

Meeting: 04/07/08 07:30 PM
 Department: Attorney

RESOLUTION 2008-246

Adopt the Amended Town of Tonawanda Local Waterfront Revitalization Plan, Pursuant to the Changes Being Made to the LWRP Consistency Law; Authorize the Supervisor to Submit the Amendments to the New York State Department of State

WHEREAS, the Town of Tonawanda initiated an amendment of its fully approved Local Waterfront Revitalization Program in cooperation with the New York State Department of State, pursuant to Article 42 of the Executive Law; and

WHEREAS, a Draft Local Waterfront Revitalization Program amendment was prepared and circulated by the Department of State to potentially affected State, federal, and local agencies in accordance with the requirements of Executive Law, Article 42; and

WHEREAS, the Tonawanda Town Board, as lead agency, filed a Negative Declaration - Notice of Determination of Non-Significance for preparation of the Local Waterfront Revitalization Program amendment, pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act);

NOW, THEREFORE, BE IT RESOLVED, that the Town of Tonawanda Local Waterfront Revitalization Program amendment is hereby adopted, and that the Town Supervisor is authorized to submit the Local Waterfront Revitalization Program amendment to the New York State Secretary of State for approval, pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Bargnesi, Councilman
SECONDER:	Joseph Emminger, Councilman
AYES:	Anthony Caruana, Joseph Emminger, Daniel Crangle, John Bargnesi
ABSENT:	Lisa Chimera

I do certify that I have compared the foregoing with the original minutes of the regular meeting of the Town Board held on April 07, 2008 and that the foregoing is a true and correct transcript from said original minutes and the whole thereof, and that the resolutions duly adopted by said Town Board are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the said Town of Tonawanda, Erie County, New York, this 8th day of April, 2008.

Melissa Brinson
 Town Clerk, Town of Tonawanda, NY



RECEIVED
SEP 26 2008
SUPERVISORS OFFICE

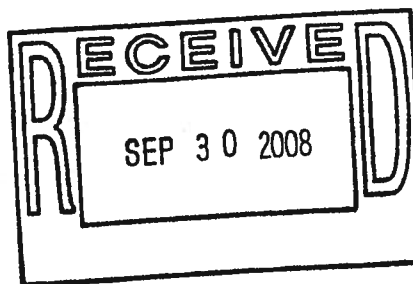
STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

September 17, 2008

Honorable Anthony F. Caruna
Supervisor
Town of Tonawanda
Municipal Building, Room 11
2919 Delaware Avenue
Kenmore NY, 14217-2395



Dear Supervisor Caruna:

I am pleased to inform you that I have approved the Town of Tonawanda Local Waterfront Revitalization Program (LWRP) amendment, 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 amendment 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. Copies of the final program document will be forwarded to your office in the near future. If you have any questions, please contact Jeffrey Beach in our Division of Coastal Resources at 518-473-2472 the Town municipal office.

Sincerely,

Lorraine A. Cortés-Vázquez

LACV:JB\gn



Rec'd Coastal Resources

George Stafford
Director
Division of Coastal Resources
Department of State
99 Washington Avenue, Suite 1010
Albany, NY 12231-0001

FEB 26 2010

MAR 04 2010

Dear Mr. Stafford:

Thank you for the New York Division of Coastal Resources' December 1, 2009 request that the revision to the Town of Tonawanda be incorporated into the New York Coastal Management Program (CMP). You requested that changes to the Town of Tonawanda LWRP policies described below be incorporated as a routine program change (RPC), 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 December 1, 2009, and OCRM's decision deadline was extended until February 3, 2010.

Based on our review of your submission, we concur that the changes to the Town of Tonawanda LWRP is an RPC and we approve the incorporation of the LWRP policies and policy standards as enforceable policies of the New York CMP. Federal Consistency will apply to the approved changes only after you publish notice of this approval pursuant to 15 C.F.R. § 928.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

CHANGES APPROVED

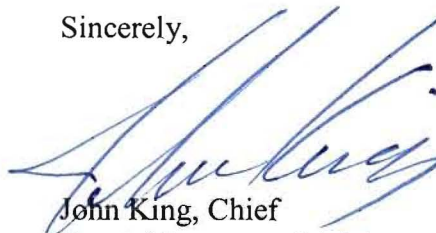
See enclosed list of the changes incorporated into the New York CMP.

PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Helen Farr at (978) 675-2170 if you have any questions

Sincerely,



John King, Chief
Coastal Programs Division

Enclosure: Changes Approved and Incorporated into the New York CMP



ACKNOWLEDGEMENTS

This report was prepared under the overall supervision and coordination of the Town of Tonawanda Town Board and Planning Board. Their sound advice and review comments were essential elements during the planning process.

Town Board

Ronald Moline,
Supervisor
Jeanne Bartlo
Carl Calabrese
Joseph
Millemaci
E. William Miller
Brian O'Bannon
Raymond
Sinclair

Planning Board

George Melrose,
Chairman
Edward Umiker
William Brucker
John Mundie

Wilber Stanbro
Julian Short
Ken English

Table of Contents

SECTION I - Waterfront Revitalization Area Boundary	1
1996 Local Waterfront Area Boundary	1
2008 Local Waterfront Area Boundary	2
SECTION II - Inventory and Analysis	1
A. Regional Setting	1
B. Historic Setting	2
C. Inventory and Analysis: Methodology	4
D. Demographic and Social Characteristics	5
E. Land Use	5
F. Inventory of Major Parcels	8
G. Zoning	9
H. Land Ownership	10
I. Vacancy Analysis	12
J. Environmental Factors	13
K. Utilities	20
L. Circulation and Access	20
M. Major Recent and Proposed Improvements	22
N. Summary	24
SECTION III - Waterfront Revitalization Program Policies	1
Development Policies	1
Policy 1	1
Policy 2	3
Policy 3	5
Policy 4	5
Policy 5	5

Policy 6.....	6
Fish and Wildlife Policies	6
Policy 7.....	6
Policy 8.....	9
Policy 9.....	9
Policy 10.....	10
Flooding and Erosion Policies	10
Policy 11.....	10
Policy 12.....	12
Policy 13.....	13
Policy 14.....	14
Policy 15.....	14
Policy 16.....	14
Policy 17.....	15
General Policy	16
Policy 18.....	16
Public Access Policies.....	16
Policy 19.....	16
Policy 20.....	19
Policy 21.....	21
Policy 22.....	22
Historic and Scenic Resources Policies	24
Policy 23.....	24
Policy 24.....	24
Policy 25.....	25
Agricultural Lands Policy.....	26
Policy 26.....	26
Energy and Ice Management.....	26
Policy 27.....	26
Policy 28.....	27

Policy 29.....	27
Water and Air Resources	27
Policy 30.....	27
Policy 31.....	28
Policy 32.....	28
Policy 33.....	28
Policy 34.....	29
Policy 35.....	29
Policy 36.....	29
Policy 37.....	30
Policy 38.....	31
Policy 39.....	31
Policy 40.....	32
Policy 41.....	32
Policy 42.....	33
Policy 43.....	33
Policy 44.....	33

SECTION IV - Proposed Land and Water Uses..... 1

A. Recent Reports	1
B. Market Factors.....	6
1. Industrial.....	7
2. Residential	7
3. Marina	7
C. Proposed Land and Water Uses	9
1. Southern Sector	10
2. Central Sector	10
3. Northern Sector	11
D. Proposed Projects.....	14
1. Cherry Farm Park	14
2. River Walk- Further Improvements/landscaping	14

3.	Sherwood-Two Mile Creek Greenway	14
4.	River Road Corridor Improvements.....	14
5.	Niagara River World redevelopment.....	15
6.	Town Boat Launch Improvements.....	15
7.	Aqua Lane Improvements.....	15
8.	Riverfront Park.....	15
9.	Isle View Park Extension	15
10.	Strawberry Island.....	15
11.	Isle View Development	15
12.	Huntley Station - Visual Improvements.....	15

SECTION V - Techniques for Local Implementation of the Program..... 1

A.	Local Laws and Regulations Necessary to Implement the LWRP	1
1.	Building, Plumbing and Electrical Standards (Chapter 54)	1
2.	Drainage Control Law (Chapter 73)	1
3.	Environmental Quality Review (Chapter 76)	1
4.	Flood Damage Prevention Law (Chapter 92).....	1
5.	Local Waterfront Revitalization (Local Consistency Law) (Chapter 129).....	2
6.	Sewers Ordinance (Chapter 165).....	2
7.	Smoke and Air Pollution (Chapter 173)	2
8.	Soil Removal (Chapter 179)	3
9.	Solid Waste Management (Chapter 181)	3
10.	Trees and Shrubs (Chapter 197)	3
B.	Proposed Local Laws Necessary to Implement the LWRP.....	3
1.	Zoning Law (Chapter 215).....	3
2.	Zoning Map Revisions	6
3.	Revisions to Local Consistency Law	6
C.	Management Structure Necessary to Implement the LWRP	6
1.	Official Overall LWRP Coordination.....	6
2.	LWRP Management Process.....	6
3.	LWRP Management Responsibilities	7

4.	Consistency Provision for Local Actions	7
5.	Local Review of Proposed State and Federal Actions.....	7
6.	Project Implementation.....	7
D.	Financial Resources Necessary to Implement the LWRP	8

SECTION VI - State and Federal Actions and Programs Likely to Affect Implementation 1

A.	State and Federal Actions and Programs which should be undertaken in a manner consistent with the LWRP	1
1.	State Agencies	1
2.	Federal Agencies.....	12
B.	State and Federal Programs Necessary to Further the LWRP	18

Appendix A – Zoning..... 1

Article IXA	W-MU Waterfront Mixed Use District (§ 215-70 - § 215-70.5).....	1
Article IXB	WB Waterfront Business District (§ 215-70.6 - § 215-70.11A).....	8
Article IXC	RHC Retail - Highway Commercial Use District (§ 215-70.12 - § 215-70.17).....	12
Article IXD	WID Waterfront Industrial District (§ 215-70.18 - § 215-70.25)	16
Article IXE	River Road Overlay District (§215-70.26 - § 215-70.30).....	24
Article IXF	Approval of Special Uses for Waterfront Districts (§ 215-70.31 - § 215-70.36).....	32
Article XXVI	Wind Energy Conversion Systems (WECS) [Added 11-20-2006 by L.L. No. 9-2006]	37

Appendix B –Local Waterfront Consistency Review Law 1

Appendix C - Procedural Guidelines for Coordinating NYS Department of State (DOS) & LWRP Consistency Review of Federal Agency Actions 1

Appendix D - Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect ... 1

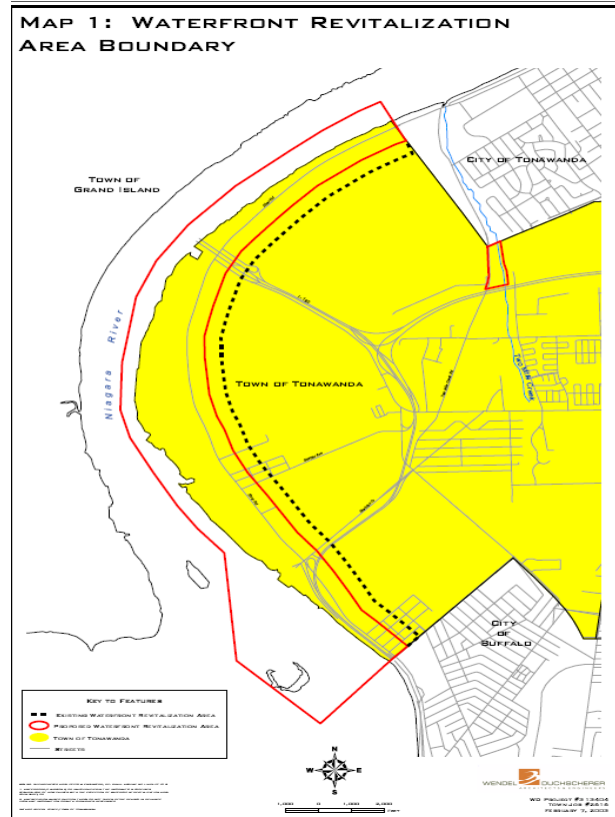
Appendix E- Coastal Fish & Wildlife Habitat Rating Form 1

LIST OF MAPS

Map 1	Waterfront Revitalization Area Boundary
Map 2	Regional Setting
Map 3	Study Area and Sub Areas
Map 4	Existing Land Use
Map 5	Major Parcels
Map 6	Public Lands
Map 7	Zoning Classifications with River Road Overlay
Map 8	Vacant Land - Developable Parcels
Map 9	Soils
Map 10	Floodplains, Wetlands and Habitats
Map 11	Water Quality and Erosion
Map 12	Inactive Waste Disposal Sites
Map 13	Circulation and Access
Map 14	Proposed Land and Water Uses

SECTION I - Waterfront Revitalization Area Boundary

Prior to the preparation of the 2008 Town of Tonawanda Local Waterfront Revitalization Program, the State designated coastal boundary was bounded by River Road. The original Local Waterfront Revitalization Program (LWRP), approved in 1996, extended the boundary 1000 feet inland from River Road in order to provide greater protection of waterfront resources, particularly views and aesthetics along the River Road corridor. The choice of 1000 feet was related to the expected relocation of River Road. It is now clear that River Road will not be relocated. As a result, the depth is unnecessarily deep. The change to a 500 foot distance will maintain protection for development fronting on River Road, while enabling greater flexibility farther away from the roadway. Protection of the River Road corridor will be accomplished through changes of the town's zoning ordinance including a River Road Zoning Overlay.



Map 1-Local Waterfront Revitalization Program

1996 Local Waterfront Area Boundary

The 1996 Town of Tonawanda Waterfront Revitalization Area included all lands and water encompassed within the following boundary:

Beginning at a point on the Town of Tonawanda/City of Tonawanda border 1,000 feet east of the eastern right-of-way of River Road (State Route 266), the Waterfront Revitalization Area Boundary proceeds southerly along a line 1,000 feet east of and parallel to the eastern right-of-way of River Road, following this line to the Town of Tonawanda/City of Buffalo border; then southwest and south along the Town Line into the Niagara River; then northerly along the Town Line in the Niagara River to its junction with the City of Tonawanda Line; then southeasterly along the Town Line to the point of beginning.

An extension of a corridor along Two Mile Creek from the City of Tonawanda to the Youngmann Highway was also part of the Town's Waterfront Revitalization Area. The boundary of this segment was as follows:

Beginning at the intersection of the western right-of-way of Two Mile Creek Road and the Town of Tonawanda/ City of Tonawanda border, the boundary proceeds south along the Two Mile Creek Road R.O.W. to the north right-of-way of the Youngmann Highway (Interstate 290); then east along this R.O.W. to a point 100 feet east of the center-line of Two Mile Creek; then north along a line 100 feet east of and parallel to the Creek center-line to the Town of Tonawanda/City of Tonawanda border; then westerly along the municipal border to the point of beginning. (References to the eastern right-of-way of River Road are intended to denote the right-of-way as it exists prior to the anticipated relocation of said roadway.)

2008 Local Waterfront Area Boundary

The Waterfront Revitalization Area Boundary described in the amended Town of Tonawanda LWRP includes all lands and water encompassed within the following boundary:

Beginning at a point on the Town of Tonawanda/City of Tonawanda border 500 feet east of the eastern right-of-way of River Road (State Route 266), the Waterfront Revitalization Area Boundary proceeds southerly along a line 500 feet inland of and parallel to the eastern right-of-way of River Road, following this line to the Town of Tonawanda border with the City of Buffalo; then southwest and south along the Town Line into the Niagara River; then northerly along the Town Line in the Niagara River to its junction with the City of Tonawanda Line, then southeasterly along the Town Line to the point of beginning.

The extension of the corridor along Two Mile Creek from the City of Tonawanda to the Youngmann Highway is still part of the Town's Waterfront Revitalization Area. The boundary of this segment was not changed and is as follows:

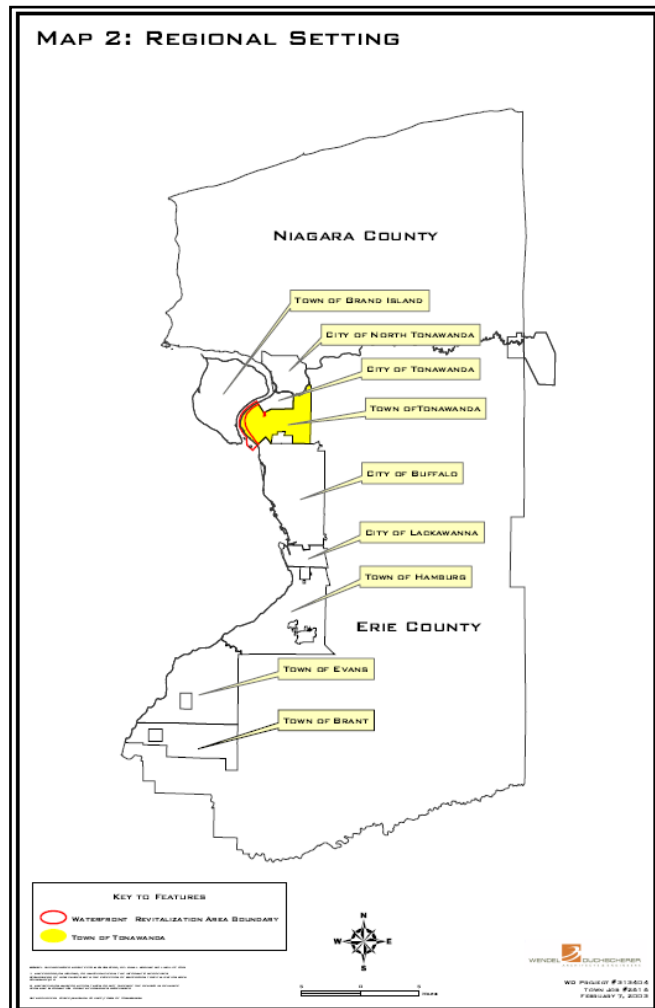
Beginning at the intersection of the western right-of-way of Two Mile Creek Road and the Town of Tonawanda/ City of Tonawanda border, the boundary proceeds south along the Two Mile Creek Road R.O.W. to the north right-of-way of the Youngmann Highway (Interstate 290); then east along this R.O.W. to a point 100 feet east of the center-line of Two Mile Creek; then north along a line 100 feet east of and parallel to the Creek center-line to the Town of Tonawanda/City of Tonawanda border; then westerly along the municipal border to the point of beginning. (References to the eastern right-of-way of River Road are intended to denote the right-of-way as it exists prior to the anticipated relocation of said roadway.)

SECTION II - Inventory and Analysis

A. Regional Setting

The Town of Tonawanda is located in northwest Erie County immediately north of the City of Buffalo. It is bounded on the east by the Town of Amherst, on the north by the Cities of Tonawanda and North Tonawanda, and on the west by the Niagara River. The Town of Grand Island lies offshore and is connected to Tonawanda by the twin spans of the South Grand Island Bridges. [Map 2](#) shows the Town within the region.

Tonawanda encompasses 21.4 square miles of land (including the 1.4 square mile Village of Kenmore, located in the south-central portion of the Town), and had a 1990 population of 82,464 (including 18,474 residents of the Village of Kenmore). During the 1940's and 1950's the Town experienced dramatic growth, increasing in population by 227% from 32,000 residents in 1940 to over 105,000 by 1960. A modest 2% growth during the 1960's resulted in a peak 1970 population of 107,282. Since then, the Town's population has declined by 15% to its present level. Since 1960, the Town has maintained a steady 9% to 10% share of the total population of Erie County.



Map 2 - Regional Setting

The eastern three-fourths of the Town is predominantly single-family residential in character with intensive commercial development occurring along major arterial highways such as Sheridan Drive (NY 324), Delaware Avenue (NY 384), Niagara Falls Boulevard (NY 62) and Elmwood Avenue. Delaware and Elmwood Avenues are major north-south thoroughfares and commuter routes to downtown Buffalo five miles south.

Tonawanda is directly served by two interstate highways: the New York State Thruway Niagara Section (I-190) and the Youngmann Memorial Highway (I-290). The Thruway lies in the industrial corridor occupying the western quarter of the Town and links Niagara Falls with downtown Buffalo and points

south and west. The Youngmann Highway is an east-west route through northern Tonawanda that links I-190 with the Thruway's main line (I-90) in Amherst and areas to the east.

The western quarter of Tonawanda, including its entire waterfront, has been used for industrial purposes since the early decades of the 1900's. The Niagara River and Erie Canal provided water for industrial processing, cooling, and transportation. Presently, firms such as General Motors, Dunlop, DuPont, FMC, and Tonawanda Coke continue to serve as major regional employers. According to the 1980 Census, 108,000 residents of Erie County were employed in manufacturing. Roughly 7,000 manufacturing jobs are located within the 2,900-acre industrial zone of western Tonawanda¹, which constitutes the largest single concentration of industry in Erie County outside the City of Buffalo.

B. Historic Setting

Settlement along the Tonawanda waterfront began after completion of the Erie Canal in 1825. Farming was practiced in the area from that time until well into the 1900's. The canal also fostered the establishment of inns and taverns along its banks; these uses continued until the filling of the original canal in the early 1900's.

At the turn of the century, most manufacturing was located in the City of Buffalo. As expansion of the industrial base continued, land became increasingly scarce and expensive. Electrical power was provided from Niagara Falls directly to Buffalo through the Town of Tonawanda. The combination of available land in large holdings, electricity and water for industrial processing combined to attract manufacturing to the Town's waterfront as early as 1904. At that time the Wickwire-Spences Steel complex, now referred to as the Roblin Industrial Park Complex, was begun (it opened in 1907), and rail service was extended into the area. This was followed by construction of the Huntley Power Plant in 1916 and the Dunlop Tire complex in 1920. As industry expanded, farming declined².

Also, the expansion of industry led to an increased demand for residential areas to accommodate employees. The Riverview neighborhood (an extension of the well-established Riverside community in the City of Buffalo) expanded, and a residential enclave developed immediately east of the Huntley plant along Sawyer Avenue. These neighborhoods continue to exist today.

Transportation improvements, such as the paving of River Road and construction of Sheridan Drive, continued to provide momentum for industrialization. The construction of the Grand Island Bridge and Boulevard in 1935 opened the northern half of the waterfront area for development. At the same time, ferry service to Grand Island, which was provided at the foot of Sheridan Drive, ceased. The area near the ferry terminal was occupied by small commercial establishments which have since disappeared. Much of the land was cleared to accommodate the Town's water treatment plant and, eventually, the Town's waterfront park and boat launch.

¹ Clifford Carlsen and Maryanne LePage, "25 Largest Employers, Business First of Buffalo: Top 25 Lists, 1984-85", Dec. 23, 1985, p. 25-B.

² Conversation with John Percy, Town of Tonawanda Historian, Jan. 25, 1986.

Other major industrial facilities such as Chevrolet, Western Electric, and the Frontier Oil Refinery complex continued to be developed during the 1930's and 1940's. The presence of large-scale industry was enormously beneficial to the Town's fiscal well-being. Partly because of this, the Town became extremely attractive for residents (due to favorable residential tax rates), and Tonawanda experienced rapid growth in the first wave of post-war suburbanization. The Town's residential areas were fully-developed by 1970, with the Town's population exceeding 107,000³. Table 1 presents population figures for the Town during the 1940 and 1990 periods.

The construction of the New York State Thruway in the mid 1950's and of the Youngmann Highway during the 1960's once again greatly increased accessibility to the Tonawanda waterfront area. Truck terminals were attracted by the convenience of access to the interstate system, as transportation shifted from a rail to a highway emphasis.

A significant consequence of industrialization has been the use of large areas of land for industrial waste disposal. Such activities have been occurring since the earliest days of industrial development. Today, the waterfront and immediate surroundings are dotted with nearly 30 waste sites, some of which remain active today⁴. These sites contain a wide range of deposits, including several toxic substances. The precise extent and composition of hazardous waste deposits have not yet been completely documented, and continue to undergo analysis.

During the 1960's and 1970's the pace of industrial expansion in Tonawanda declined in a manner common to the Buffalo metropolitan area at large. Industrial obsolescence and overall market factors have resulted in frequent abandonment and underutilization of facilities. Lately, the general public has developed a heightened awareness of the untapped potential of the waterfront for recreation. Beginning in the mid-1970's, attention throughout the Buffalo area has increasingly focused on this potential. In the Town of Tonawanda, efforts to increase public use of the waterfront began in the 1970's with construction of the Town's waterfront park and boat launch at the foot of Sheridan Drive. Segments of the Erie County Riverwalk are currently in varying stages of design and construction. A section of this hike-and-bikeway between the Grand Island Bridges and Erie County's Isle View Park opened in May 1988. Eventually, about one half of the Town's shoreline will be accessible for public recreation at a scale never before possible.

The waterfront is in transition. While industrial uses are still dominant, efforts are underway to diversify activities in the area. This process of change, begun twenty-five years ago, is likely to continue for some time to come. The Town's response to and intervention in this process will ultimately determine the future of this critically important area.

³ U.S. Bureau of the Census, U.S. Census of Population, 1990

⁴ U.S. Environmental Protection Agency, "Preliminary Evaluation of Chemical Migration to Groundwater and the Niagara River from Selected Waste Disposal Sites", EPA-905/4-85-001, March 1985, pp. 210-284; and NYS Department of Environmental Conservation Division of Solid and Hazardous Waste, Inactive Hazardous Waste Disposal Sites in New York State, Appendix Volume 3, January 1984, pp. 3-11.

C. Inventory and Analysis: Methodology

The purpose of the Inventory and Analysis is to describe existing conditions along the waterfront, as well as opportunities and constraints to future growth. In the case of the Town of Tonawanda, the waterfront zone includes the area shown on [Map 1](#). However, activities within this zone are affected by land uses in adjacent areas. Patterns of land ownership, physical development, circulation, and environmental factors beyond the zone boundaries directly influence activities within the corridor to a large degree.

The study area encompasses 1,131 acres within the designated waterfront zone, as well as 1,800 additional acres of land to the east. This area, whose eastern boundary follows Kenmore Avenue, the Niagara Thruway (I-90), the Youngmann Highway (I-290) and Two Mile Creek, includes most of the industrialized area of western Tonawanda.

Table 1: Town of Tonawanda Population: 1940-1990

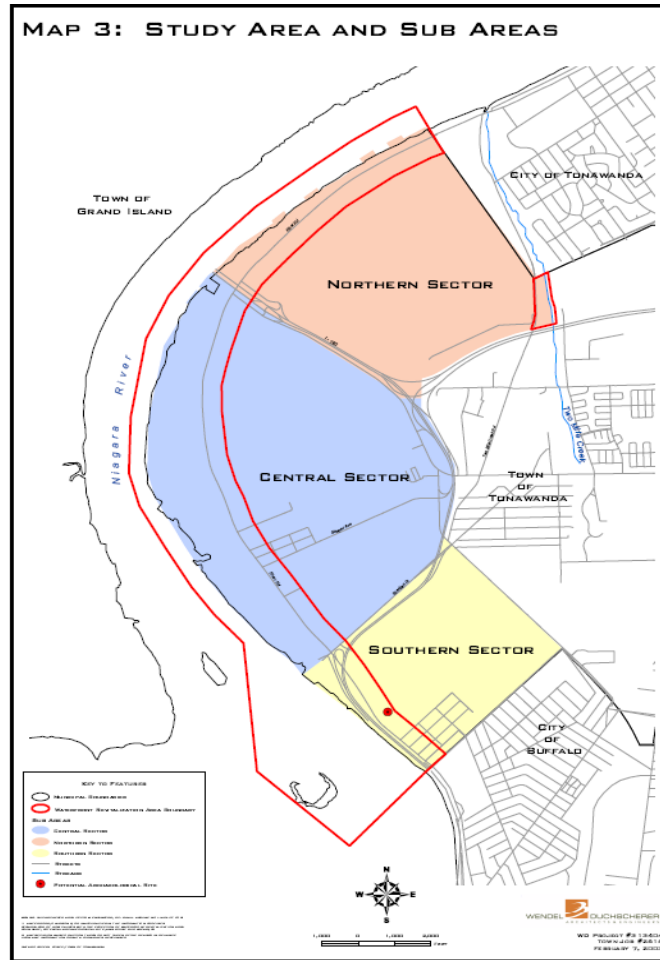
Year	Population	% Change
1940	32,155	
1950	55,270	+71.9
1960	105,261	+90.4
1970	107,282	1.9
1980	91,269	-14.9
1990	82,464	-9.0

Source: The U.S. Census of Population

Within this area, information has been assembled pertaining to land use, parcel size and ownership, circulation, soils, water quality, air quality, flooding, topography, wetlands, erosion, fish and wildlife habitats, industrial waste sites, archaeological sites, zoning, utilities, major capital investments and aesthetics. The information has been analyzed to determine short and long-term development constraints, as well as opportunities for change. The waterfront area has further been divided into three subareas, each with distinctive characteristics. These include:

1. **The Southern Sector (Sheridan Drive South)**, encompassing the residential/ commercial area adjacent to the City of Buffalo in the southernmost portion of the Town's waterfront area (and also including Strawberry Island). It contains 172 acres and 0.4 miles of river frontage.
2. **The Central Sector**, including the area between Sheridan Drive and the Grand Island Bridges encompasses 729 acres and extends along 2.5 miles of shoreline.
3. **The Northern Sector**, encompassing the remaining waterfront area north of the Grand Island Bridges. It includes 262 acres and 1.3 miles of river frontage. The area also includes the 19 acre Two Mile Creek corridor illustrated in [Map 1](#).

[Map 3](#) locates these subareas, as well as the entire study area.



Map 3 – Study areas and subareas

D. Demographic and Social Characteristics

Residential development within the study area is limited to the Southern Sector and the Sawyer-Kaufman section of the Central Sector. According to 1980 Census figures, these areas have a combined population of 1,104 (966 in the Southern Sector and 138 in Sawyer-Kaufman). In addition, a mobile home park located within the study area at Sawyer Avenue and Grand Island Boulevard (roughly 3/4 mile east of the waterfront area) contains an additional 80 residents.

The above is included in Census Tract 84, which extends from the Niagara River east to Military Road (about one mile east of the study area boundary).

E. Land Use

Map 4 displays existing land use along the waterfront. Specific subarea descriptions are presented below.

1. **Southern Sector:** This portion of the waterfront area encompasses 172 acres, including the 11-acre Strawberry Island. The horseshoe-shaped island is vacant land owned by New York State.

Its area fluctuates depending upon River levels. The island is wooded, low, and subject to considerable erosion. Between 1912 and 1950, a sand-and-gravel company used the island as a source of raw materials. At that time the island exceeded 40 acre⁵. Excavations of the northern portions eventually produced the present horseshoe configuration. The island remains popular with area boaters and fishermen as an informal rest area and picnic grounds. Immediately offshore from the State-owned Strawberry Island is the Town's water supply intake.

The mainland portion of the Southern Sector includes two sections: the shoreline along Aqua Lane at the foot of Sheridan Drive, and the inland section from River Road east. These are separated by the Niagara Thruway (I-190), which follows the course of the Old Erie Canal. River Road runs along the crest of a 20-foot high bluff above the Thruway. Views from the road to the Niagara River are significant.

The eastern side of the four-block section of River Road from the City of Buffalo north to Edgar Avenue is commercial. The neighborhood immediately east along Vulcan Street, Heutter, Roswell, Riverdale, and Edgar Avenues is a stable residential community of older homes. The Town Boys' and Girls' Club at the northeast corner of Riverdale Avenue and Grover Place provides recreation facilities.

Two large industrial complexes - DuPont and Chevrolet-Pontiac Canada Group (CPC) - are located between the residential community and Sheridan Drive to the north. Both are heavily dependent on industrial cooling and processing water.

The shoreline along Aqua Lane includes the Town's Aqua Park and boat launch, as well as the municipal water treatment plant. Privately-maintained water intakes for the nearby Chevrolet and DuPont plants are also located here. Commercial uses include a restaurant and marina. DuPont also maintains a boathouse for employees. The area exhibits high scenic potential.

2. **Central Sector:** Much of the subarea is occupied by major industrial facilities and utilities, including the Erie County Water Authority pumping plant, a Town of Tonawanda sanitary sewer lift station, the massive Huntley Steam generating plant of the Niagara Mohawk Power Corporation (which occupies 120 acres of land), two private marinas, the Erie County Water Authority Treatment Plant (occupying 88 acres), the Roblin Industrial Park complex, a sand-and-gravel processor/ distributor, a vacant 55-acre (former NMPC waste site) parcel known as the "Cherry Farm" owned by Niagara Mohawk, a truck terminal, a large private marina, and the Grand Island Bridges.

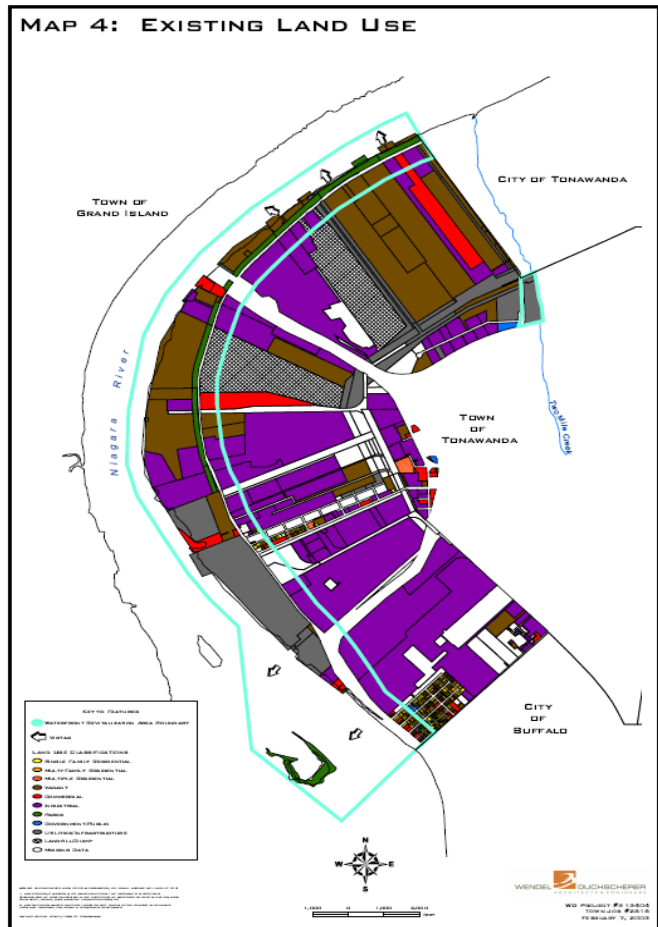
To the east of River Road, Dunlop Tire owns a vacant 25-acre area (a former waste disposal site) at the northeast corner of River Road and Sheridan Drive. The Dunlop manufacturing complex is located immediately east of this site.

⁵ Erie County Department of Environment and Planning, Preliminary Report: Strawberry Island, Nov. 13, 1985, pp.8-9.

The eastern side of River Road north to the Grand Island Bridges is entirely occupied by industrial uses such as FMC Industrial Chemical Group, Tonawanda Coke, tank farms, scrapyards, truck terminals, rail lines, power lines, and the Niagara Mohawk Fly-Ash Disposal site. At the northeast corner of Sawyer Avenue and River Road lies the small residential enclave known as the Sawyer-Kaufman community. It is surrounded by heavy industry.

Facilities within the waterfront area display considerable variety. Utilities such as the Huntley Power Generating Plant, Erie County Water Authority Plant, and the municipal water treatment plants are water-dependent. The Huntley plant occasionally receives shipments of coal by barge and relies on the River for industrial cooling. Other docking facilities at the Roblin complex and the Ashland Refinery are rarely used.

Elsewhere, other uses such as scrapyards and warehousing facilities have existed in the area for decades without any direct requirement for locating in proximity to the waterfront.



Map 4 – Existing Land Use

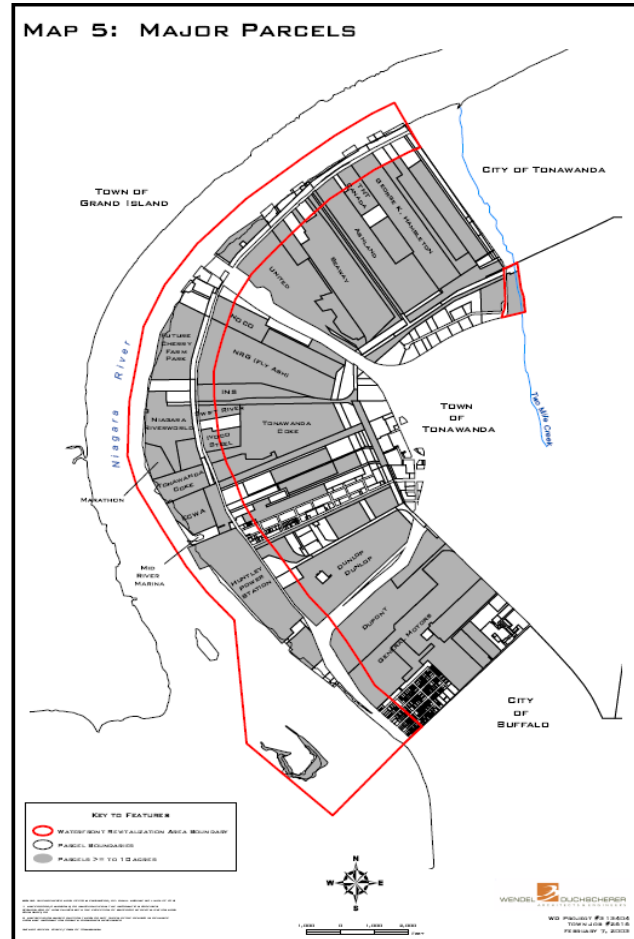
3. **Northern Sector:** Immediately north of the Grand Island Bridges east of River Road is the 140-acre Ashland Oil Refinery complex. Petroleum refining ceased in 1984, but tanks are still used as storage and distribution facilities for area service stations. Further north lays the Seaway Industrial Park, a major active landfill of regional importance. Several truck terminals and a small tank farm are in the vicinity. Roughly 65 acres of land north of the Seaway facility within the waterfront area are vacant. Other sections of the Northern Sector subarea west of River Road include the Ashland docking facilities, utility transmission lines and the County's Isle View Park. The park includes sections of the Riverwalk and a boat launch ramp.

Two-Mile Creek corridor is also part of the Northern Section. It contains 19 acres, evenly split between vacant brushland and the Town's sewage treatment plant. The corridor links with the City of Tonawanda's waterfront revitalization area to provide a potential open space link between the Niagara River and Sheridan Park.

F. Inventory of Major Parcels

As part of the analysis of the Tonawanda waterfront, all privately-owned parcels 10 acres or greater in size have been identified. Such parcels represent areas with the most opportunity for change, as well as the greatest barriers to development. Major development activities usually require the assembly of large contiguous areas of land. A preponderance of large parcels in an area might ease acquisition procedures, particularly if such parcels are underutilized. Conversely, large parcels which include relatively stable uses are typically less likely to become available for redevelopment and consequently become significant long-term factors to be considered in formulating and upgrading plans and policies for the waterfront.

Of the 845 acres of privately-owned land within the waterfront, roughly 733 lay within parcels of 10 acres or more. This figure represents 87% of all privately-owned lands within the waterfront, and 63% of all waterfront lands. The acreage is contained in 28 parcels, representing an average parcel size of 26 acres, while actual parcel sizes range from 10 to over 170 acres. Many of the largest parcels extend well beyond the limits of the waterfront area east of River Road. In some cases, their property lines are located over one mile away. Maps 5 and 6 present information on these parcels.



Map 5 – Major Parcels

Table 2: Major Private Parcels

#	Owner	Approx. Size within study area (acres)	Land Use	Specific Use	Water Dependent	Major Investment
1	General Motors	32	Industry	Chevrolet	Yes	Yes (\$360M)
2	Dupont	30	Industry	Dupont, Buffalo Film Division	Yes	No
3	Dunlop	33	Industry	Dunlop Tire	(\$100M)	Yes (\$100M)

#	Owner	Approx. Size within study area (acres)	Land Use	Specific Use	Water Dependent	Major Investment
4	FMC	14	Industry	Industrial Chemical	No	No
5	Noco Energy	8	Industry	Tank farm	No	No
6	Ashland	10	Industry	Tank Farm	No	No
7	Niagara Mohawk	5	Industry	Transmission Lines	No	No
8	Rouse Breihan, Inc.	12	Industry	Formerly Allied Chemicals (closed)	No	No
9	Erie County Industrial Development Agency (ECIDA)	6	Industry	Tonawanda Coke (Limited Operation)	No	No
10	NY Wire Mills	17	Industry	Cable Manufacturer	No	No
11		10				
12	Carmen Pariso	11	Industry	Trucking for Niagara	No	No
13	INS Equipment	5	Industry	Scrapyard	No	No
14	Niagara Mohawk	96	Landfill & Vacant	Fly Ash Site & "Cherry Farm"	No	No
15	ECIDA c/o Newman Oil	17	Industry	Tank Farm	No	No
16	Ashland	65	Industry	Tank Farm	No	No
17	Agway Petroleum	10	Industry	Tank Farm	No	No
18	Seaway Industrial park	28	Landfill	Landfill	No	No
19	Ashland	9	Vacant	Vacant	No	No
20	TNT Canada	13	Vacant	Vacant	No	No
21	George K. Hambleton	18	Vacant	Vacant	No	No
22	Neil Irving Norry et. al.	7	Industry	Tank Farm	No	No
23	Kenneth & Patricia Lefler	5	Vacant	Vacant	No	No
24	Inter-Mountain Terminal	10	Light Industrial	Truck Terminal	No	No
25	Niagara Mohawk	120	Utility	Huntley plant	Yes	No
26	ECIDA	26	Industrial	Tank Farm	No	No
27	Marathon Petroleum	14	Industrial	Tank farm	No	No
28	ECIDA	62	Industrial	Robin Complex	No	No

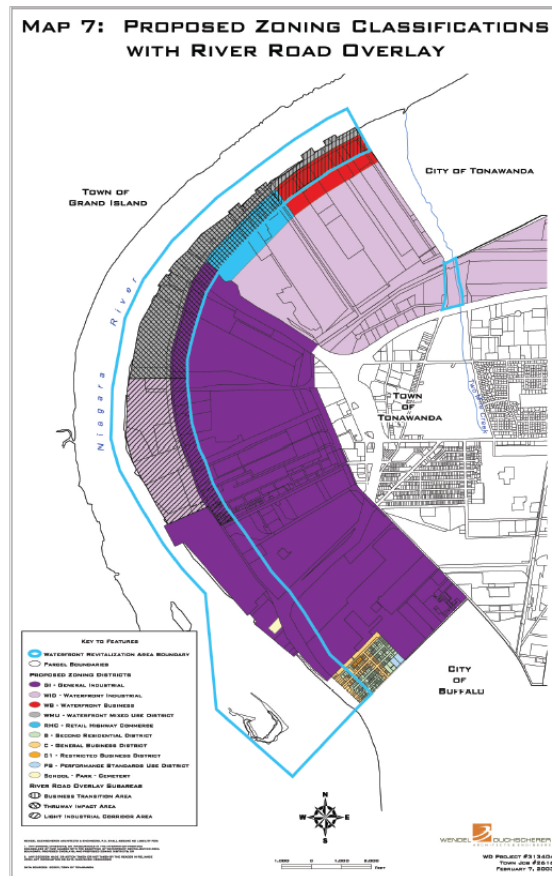
G. Zoning

The Waterfront Mixed Use District (W-1) is established on the shore of the Niagara River. District regulations permit a variety of public and private water-related park and recreational facilities. Additional specially permitted uses include marinas, boatyards, hotels, retail stores and restaurants, and other water-related commercial activities, as well as some residential uses.

The Waterfront Commercial Use District (W-2) is established on the land side of River Road. With site plan review, this district allows public and private water-related park and recreational facilities. All other uses, including boatyards, hotels, automotive service stations and other commercial and business uses, require a special permit.

The Waterfront Residential District (W-R) is established to allow medium to high density residential development along the river's edge. District regulations allow single family dwellings and public recreation with site plan review. Multi-family dwellings and townhouses are allowed by special permit. All structures must be setback a minimum of 75 feet from the crest overlooking the river shoreline. All uses should be designed to allow pedestrian access to and along the crest.

The Waterfront Industrial District (W-I) is established on the east side of River Road. The only permitted use in the District is public and private parklands and trails. Specially permitted uses include boat storage, offices, light manufacturing wholesale and warehousing, and other business and professional uses. Heavy industry, junk yards, truck terminals, landfills, and a variety of other uses are prohibited.



Map 7 – Zoning Classifications

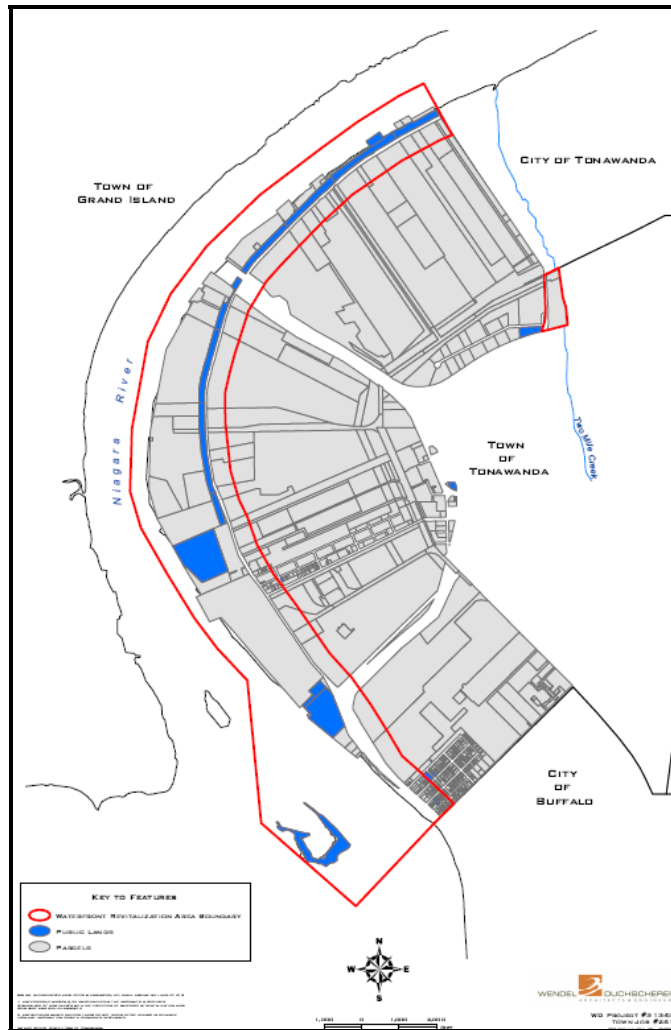
H. Land Ownership

Of the 1,045 acres within the Town's waterfront area not occupied by transportation facilities, roughly 200 acres (19%) are publicly-owned. The Town of Tonawanda owns 51 acres, including the water and sewage treatment plants and lift stations, the boat launch, and the waterfront park. Erie County owns 58 acres, much of which is included within the former Erie Canal right-of-way. The Erie County Water Authority owns 91 acres at its treatment plant and pump facility. New York State owns Strawberry Island, which is approximately 11 acres. The remaining 845 acres of waterfront land (81% of the total) is privately owned.

Approximately 32% of the river frontage is controlled by public agencies. Public ownership extends over an 8,400 foot length (including 1,600 feet used for the Niagara Thruway and Grand Island Bridges). In addition, Erie County owns 56% of the western frontage of River Road (13,000 feet out of a total highway length of 23,000 feet). This was the old Erie Canal bed.

Table 3: Land Ownership

Ownership	Acreage	% of Total
Town-owned	40	4.4
Other Public	150	12.8
Private	845	72.7
Transportation	118	10.1
TOTAL	1,163	100.0



Map 6 - Public Lands

I. Vacancy Analysis

Nine privately-owned parcels in the Tonawanda waterfront area are vacant, comprising 117 acres, and 57% of all vacant waterfront land. Of these parcels, five exceed 10 acres in size and include 98 acres in total. The three remaining parcels range from 1 to just under 10 acres.

Significant vacant public parcels include Erie County's 25-acre undeveloped section of Isle View Park, the 6 acres of NYS Thruway Authority land under the Grand Island Bridges, the 11-acre Strawberry Island (owned by New York State), and approximately 12 acres in the Two Mile Creek Corridor. These 42 acres of vacant public land represent 20% of all vacant land within the waterfront area.

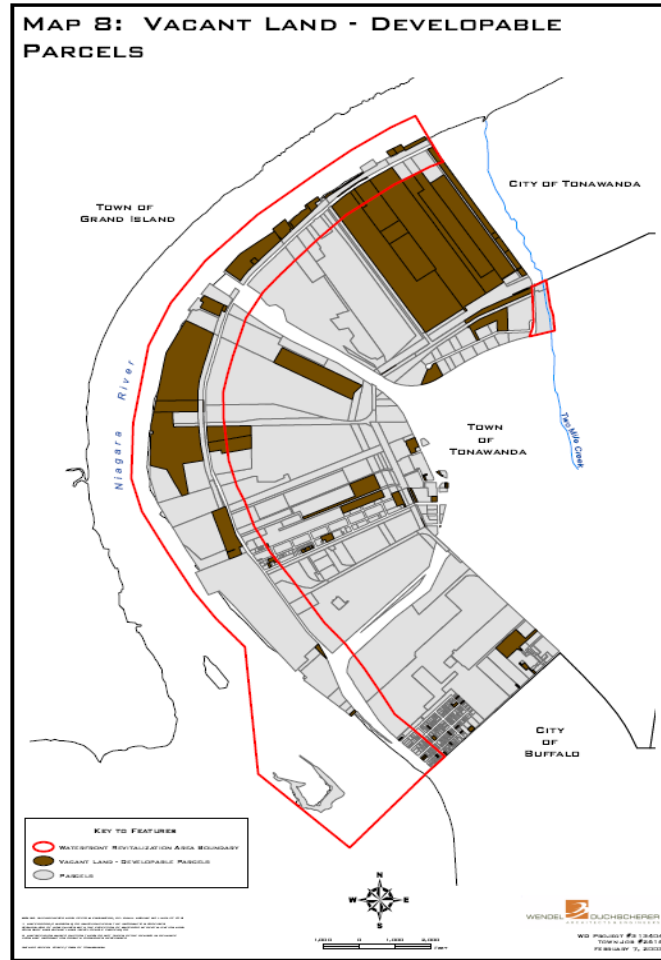
The remaining 47 acres of vacant land are scattered among four partially developed parcels, including the Dunlop complex, the Erie County Water Authority Treatment Plant, and the Ashland refinery complex. A small vacant area is also located at the southern end of Aqua Lane. Forty-six of these 47 acres are privately owned.

Table 4: Vacant Land: Tabular Summary

Parcel No.	Owner	Size (Acres)
1	Town of Tonawanda	11
2	Dunlop	25
3	Placid Harbor Marina	2
4	Erie County Water Authority	2
5	INS Equipment	9.6
6	Niagara Mohawk	55
7	Erie County	7
8	NYS Thruway Authority	6
9	Ashland	5
10	Erie County	2
11	Ashland	11
12	Ashland	91.4
13	Goetz Oil	2
14	TNT Canada	19.9
15	George K. Hambleton	80.9
16	Kenneth & Patricia Lefler	37.3
17	Town of Tonawanda	12
18	Erie County	25
19	Niagara Mohawk	7

Approximately two-thirds (172 acres) of the 206 acres of vacant land is located in the northern half of the waterfront area. The "Cherry Farm" parcel accounts for 55 acres. Another 46 acres are located just

south of the City of Tonawanda boundary. In fact, these vacant lands extend inland for a considerable distance and include a total of 314 acres.



Map 8 – Vacant Land

Table 4 and [Map 8](#) present detailed information on vacant land in the Tonawanda waterfront area.

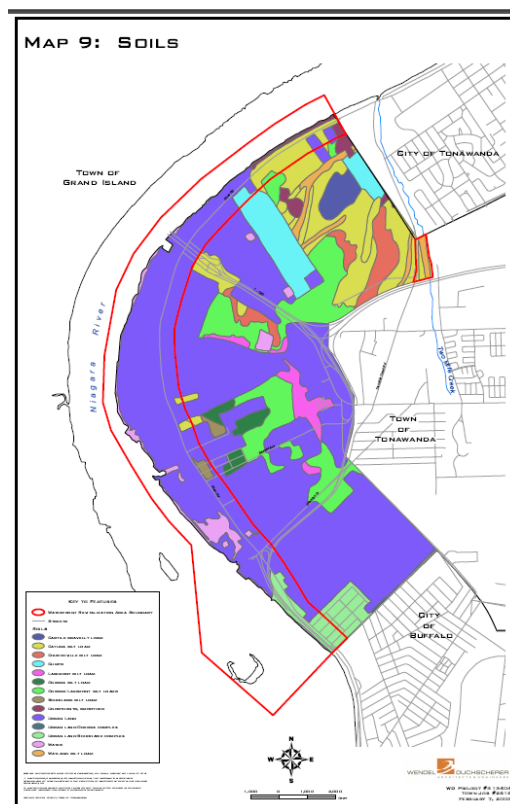
J. Environmental Factors

A series of environmental characteristics has been identified and evaluated within the waterfront area. These include topography, soils, flooding and erosion, water quality, air quality, wetlands, habitats, waste sites, and aesthetics.

1. **Topography:** Most of the terrain in the waterfront is level, exhibiting a gradual slope towards the riverbank. The bank is generally 5 to 8 feet above normal river levels. Bluffs along River Road's western edge in the Southern and Northern Sectors are approximately 20 feet in height. The Two Mile Creek corridor experiences an approximate 20% slope from Two Mile Creek Road to the stream itself.

2. **Soils:** Soils within Niagara View and Industrial Corridor subarea are classified as urban land. In the Northern Sector, Cazenovia-Cayuga soils are found near the shoreline and the Two Mile Creek corridor. These silty-loam soils are moderately well drained and exhibit slow permeability and a seasonally high water table of 1.5 feet to 4 feet. These soils are considered fair for intensive urban development, and fair to good for recreational uses. The northernmost 50 acres of the waterfront east of River Road consists of Churchville-Remson soils. These silt and silty clay loam soils are poorly drained, with slow permeability and high water tables, and are poorly suited for development.

Palms soils, which consist largely of organic deposits, are found on Strawberry Island. They are poorly-drained, have a high water table, and are often inundated by water for prolonged periods. These soils are poorly suited for development.

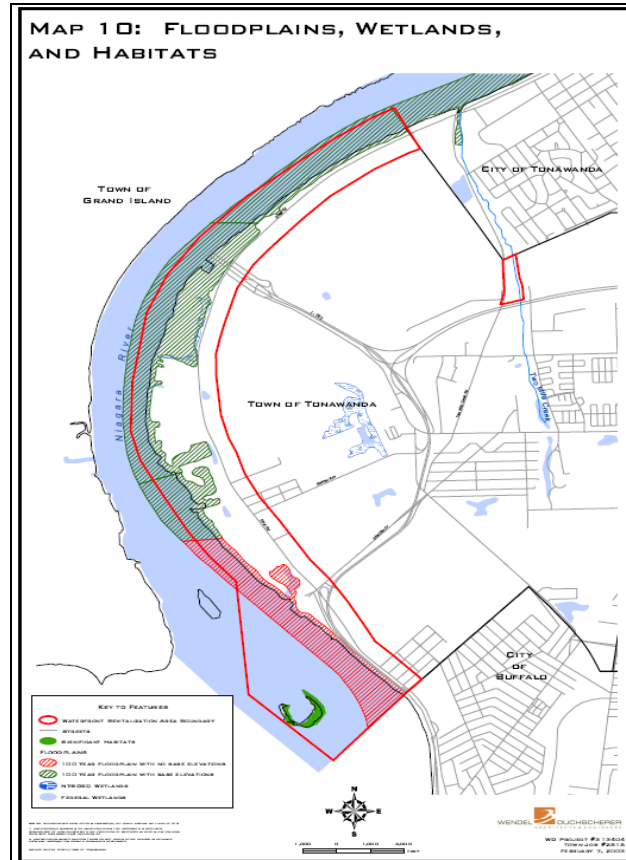


Map 9 - Soils

3. **Flooding:** The northernmost two miles of the Town's shoreline west of River Road lies within the Flood Hazard Area delineated by the Federal Emergency Management Agency. Floodplains also are found along several minor drainage facilities between the Roblin Complex and Sheridan Drive, as well as along areas immediately adjacent to the shoreline south to the City of Buffalo. No floodplains are found east of River Road.

It should be noted that the 50-acre Cherry Farm is designated as a special flood hazard area. Field inspections indicate substantially higher elevations than the adjacent Niagara River. This calls into

question the accuracy of the special flood hazard area designation. Over the long term, the Cherry Farm has development potential. Thus, the Town should consult with the Federal Emergency Management Agency to have the site reexamined relative to its flooding potential. [Map 10](#) indicates the extent of flood hazard areas.

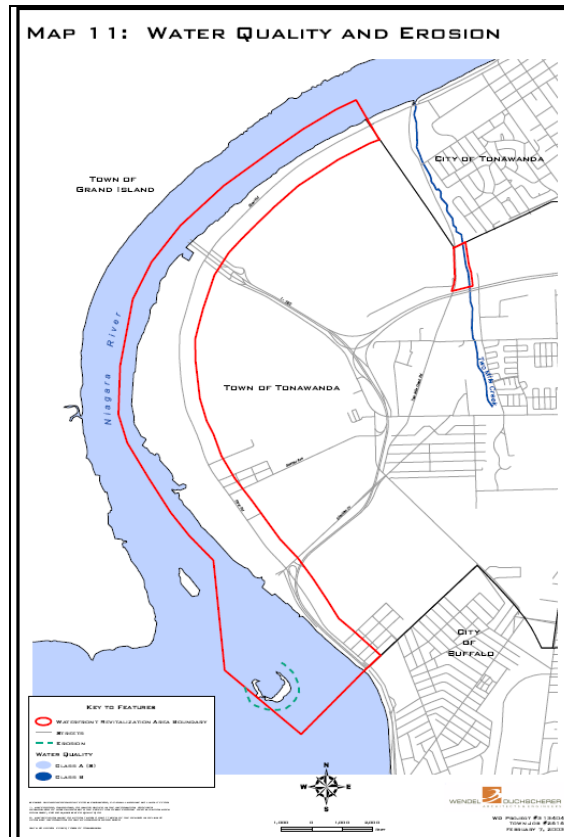


Map 10 – Floodplains, Wetlands, and Habitats

4. **Erosion:** Erosion along the Niagara River shoreline of the Town is not a major problem, and no erosion hazard areas have been designated pursuant to the Coastal Erosion Hazard Area Act (Environmental Conservation Law, Article 34).

Severe erosion is, however, experienced at Strawberry Island. Records indicate that in 1912 the island had an area of 204 acres⁶. Between 1912 and 1950, the island was extensively excavated as a source of sand and gravel. Aerial photos of 1951 show a remaining area of roughly 25 acres on the island. Since that time, the size of Strawberry Island has continued to diminish due to erosion. Its present size is 11 acres. [Map 11](#) notes the location of areas subject to severe erosion.

⁶ Erie County Department of Environment and Planning, OP. CIT.



Map 11 – Water Quality and Erosion

- Water Quality:** The Niagara River is classified as "Class A – Special Waters" subject to water quality standards listed in Part 700, Section 702.1 of the Rules and Regulations of Title 6 of the New York State Environmental Conservation Law. The river is a major source of drinking water.

Two Mile Creek is designated a "Class B" stream as defined in Part 700 of the State Environmental Conservation Law. The stream is suitable for all uses except as a source of water for drinking, culinary, or food processing purposes. [Map 11](#) shows protected streams and water quality classifications.

- Air Quality:** The Town's waterfront area is in compliance with all State and federal standards governing air quality⁷⁷.
- Wetlands:** A 13-acre Class II wetland (BW-8) is located west of River Road in the old Erie Canal right-of-way, roughly 1,500 to 4,000 feet south of the Grand Island Bridges. The wetland is classified as Class II by the NYS Department of Environmental Conservation's Final Freshwater

⁷⁷ NYS Department of Environmental Conservation, New York State Air Quality Implementation Plan, Erie and Niagara Counties, March 1979.

Wetlands Map for Erie County, filed on 9/10/86. The wetland is adjacent to the 55-acre "Cherry Farm" parcel on River Road. [Map 10](#) shows wetlands greater than 12.4 acres⁸.

- 8. Fish and Wildlife Habitats:** Strawberry Island - Motor Island Shallows and the surrounding 400 acres of river area has been designated as a significant coastal fish and wildlife habitat, pursuant to Executive Law, Article 42. Approximately 200 acres are in the Town of Tonawanda. The significant habitat designation indicates that the area warrants maximum protection from all public and private intrusions that might hinder its continuing function as a significant habitat. Strawberry Island is owned by New York State.

Strawberry Island - Motor Island Shallows is located in the upper Niagara River, roughly bounded by Strawberry Island, Motor Island, and the southern tip of Grand Island. The fish and wildlife habitat is an extensive shallow shoal area (generally less than 6 feet deep below mean low water), containing beds of submerging aquatic vegetation (e.g., wild celery), and patches of emergent wetland vegetation in shoreline areas. Much of this island appears to be eroding as a result of ice scour, high water levels, and direct removal by dredging. Dredging was responsible for much of the reduction in surface area of the island from approximately 200 acres in 1912 to 40 acres in 1948. Strawberry Island is a horseshoe-shaped island which is now 20 acres in size. There is a stand of native willow trees on the south end and a lagoon and marsh on the north side. The island functions as the geologic dividing point of the east and west branches of the Niagara River. The underwater portion of Strawberry Island - Motor Island Shallows is owned by the NYS Office of General Services and as of 1987, the upland portion of Strawberry Island is also owned by the State. Most of the adjacent land area on Grand Island is within Beaver Island State Park, which is extensively developed for recreational use⁹.

[Map 10](#) shows significant habitats.

- 9. Waste Disposal Sites:** Fourteen waste disposal sites are located within the Town of Tonawanda waterfront area, two of which are active¹⁰- the Seaway Industrial Park, which received municipal and industrial wastes from throughout western New York; and the Niagara Mohawk disposal site, which receives fly ash from the coal-fired Huntley power plant.

The Seaway facility occupies approximately 100 acres of land on the east side of River Road about one-half mile north of the Grand Island Bridges. It has been given a Class 2 priority by the NYS Department of Environmental Conservation, indicating that it presents a significant threat to the public health or environment and requires corrective action. The site is continually being upgraded with a leachate collection system to meet current standards. Collected leachate is piped to the Town sewer plant for treatment. Portions of the site contain radioactive uranium

⁸ NYS Department of Environmental Conservation, Wetland Map Series, Map No. BW-6 and TW-30, Revised 1985.

⁹ NYS Department of Environmental Conservation, "Coastal Fish and Wildlife Habitat Rating Form: Strawberry Island - Motor Island Shallows," pp.2-3 (undated).

¹⁰ U.S. Environmental Protection Agency and NYS Department of Environmental Conservation Division of Solid and Hazardous Wastes, OP.CIT.

tailings from the Manhattan project and PCB's have been detected in some surface water samples.

The Niagara Mohawk disposal site occupies nearly 100 acres of land east of River Road, roughly one-quarter mile south of the Grand Island Bridges. The site is in compliance with current regulations.

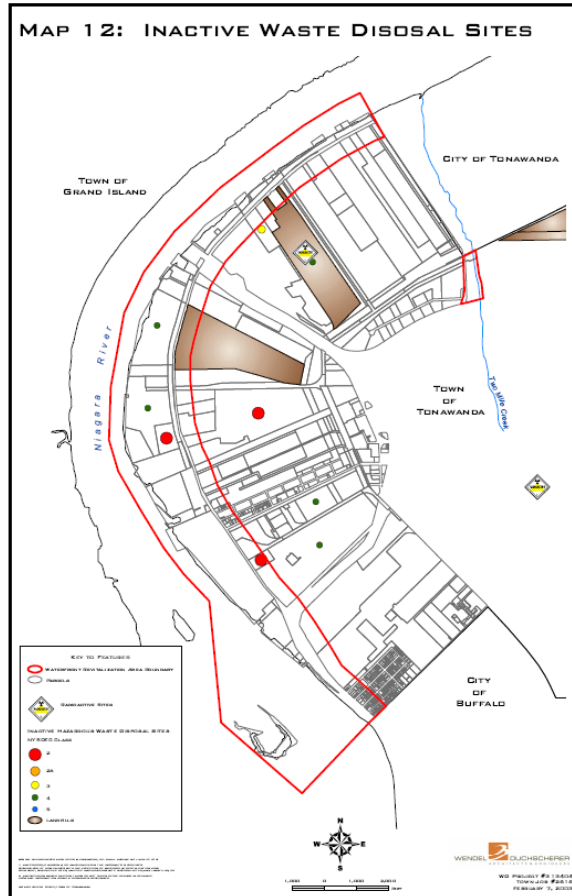
Twelve other inactive waste sites are located within the waterfront area. The presence of hazardous wastes has been confirmed at eight. One site, the 55-acre "Cherry Farm," has been given a Class 2 priority rating by the NYS Department of Environmental Conservation, while the INS Equipment site has been given a Class 3 ranking, indicating no significant threat to health or environment. The remaining hazardous waste sites' potential significance as environmental threats has not yet been determined.

Table 5: Waste Disposal Sites

#	Site Name/Owner	Status A=Active C=Closed (Year Closed)	DEC Class
1	Allied Chemical-Special Chemical Division	C (1960)	3
2	Ashland Oil Company	C (1982)	2a
3	Dunlop Tire & Rubber	C (1970)	2a
4		C	2a
5	FMC-Chemical Division	C (1976)	2a
6	INS Equipment Site	C (1978)	3
7	Polymer Applications	C	2a
8	Tonawanda Coke	C (1979)	3
9		C (1978)	2a
10	Roblin Steel	C (1976)	3
11	Ashland Petroleum	C (1982)	2a
12	Niagara Mohawk "Cherry Farm"	C	2
13	Seaway/Niagara Landfill Inc.	A	2
14	Niagara Mohawk Fly Ash Disposal Site	A	2
<i>DEC Class as Follows:</i> 2: <i>Significant threat to health and/or environment</i> 2a: <i>Significance undetermined</i> 3: <i>No significant threat</i>			

The "Cherry Farm" lies adjacent to the Niagara River about one-quarter mile south of the Grand Island Bridges. It was used as a waste site for prolonged periods until the 1970's. It includes foundry sand, fly ash and slag materials that have been capped with 6 inches of clay. Fill material reach depths of 20 feet. The site has been rededicated and is being redeveloped as a recreation

facility of regional significance. A Class I wetland borders the site on three sides. Samples from the hazardous waste site indicated the presence of phenol tars, chlorinated benzenes, lead, chlorinated organics, and 22 priority pollutants¹¹.



Map 12 – Inactive Waste Disposal Sites

- 10. Historic/Archaeological Sites:** No sites or structures are listed, or are eligible for listing, on the National Register of Historic Places within the waterfront area.

An archaeological site (UB 235) has been identified as lying on the mainland opposite Strawberry Island. Its potential significance is unknown and it may presently be located beneath the Chevrolet Plant¹². Reference should be made to [Map 3](#) for the site's location.

- 11. Aesthetics:** Opportunities to view the Niagara River are limited to areas south of Aqua Land Park, north of the Ashland Refinery, Isle View Park Extension, and in the immediate vicinity of

¹¹ Engineering-Science, Inc. and Dames & Moore, Engineering Investigations and Evaluations at Inactive Hazardous Waste Disposal Sites Niagara Mohawk Cherry Farm, Erie County, New York: Phase II Report, June 1985.

¹² Correspondence from Ben A. Nelson, Director, Archaeological Survey, SUNY at Buffalo, to Erie County Department of Environment and Planning, Feb. 19, 1986.

the Grand Island Bridges. The remaining shoreline is blocked from view by industrial development and woodland.

In the southern portion of the waterfront area, river views along River Road and I-190 are significant, encompassing Grand Island, Strawberry Island, downtown Buffalo, and the Canadian shore.

At the Grand Island Bridges, vistas are degraded by poor landscaping and bridge abutments. North of the Ashland refinery, overgrown slopes and overhead power lines diminish the area's aesthetic appeal. Dominant features of the landscape include the Huntley Station (with its smokestacks and transmission lines), the Grand Island Bridges, oil storage tanks, and the Roblin Industrial Park. Although attempts to lessen the visual impact of heavy concentrations of industry have been made through the installation of landscaped buffers (notably at the water plants and Huntley Station), overall aesthetic quality remains poor.

K. Utilities

The Town's sewage treatment plant on Two Mile Creek Road has a design capacity of 70 million gallons per day (M.D.) and is currently operating at a level of approximately 13 M.D. Trunk lines, 15 inches to 18 inches in size, parallel most of the west side of River Road; widely scattered service lines branch off to the east side of River Road between Sheridan Drive and the City of Tonawanda. Several branch lines provide service to the properties on the west side of River Road.

The Town operates a water treatment plant servicing the entire municipality. The plant's design capacity is 30 M.D. and current utilization is approximately 18 M.D. The intake lies just offshore of Strawberry Island.

Stormwater drainage in the waterfront area occurs through a combination of natural swales and piped storm drain systems.

Both electrical and natural gas services are available in the area. Supplies can readily accommodate new development in the area¹³.

The Town's solid waste is disposed of at the Occidental Waste to Energy Plant in the City of Niagara Falls, New York. The Town generates 150 tons per day and the disposal facility is operating at approximately 81% capacity. Since there is unlikely to be significant growth along the waterfront in the short term, the solid waste capacity is sufficient.

L. Circulation and Access

River Road is the primary highway serving the Tonawanda waterfront. The road is a four-lane State highway (NY 266) and is considered a minor arterial within the Buffalo urban area highway system. xvi River Road extends south (as Niagara Street) to downtown Buffalo. Traffic volumes vary on its three

¹³ The Saratoga Associates and Economic Research Associates, Comprehensive Development Plans and Strategy for expansion of Fire Tower Industrial Park, September 1985, pp. 47-49.

distinct sections within the Town: between the City of Buffalo and Sheridan Drive, 9,300 average daily trips (ADT's) occur; between Sheridan Drive and the Grand Island Bridges daily volumes of 6,950 occur; north of the bridges daily volumes average 9,900.^{xvii} The segment between Sheridan Drive and the Grand Island Bridges has one railway overpass. Abutments of this overpass are those of the previously existing overpass and act to constrict the width of River Road and serve to eliminate shoulders.

Grand Island Boulevard, Sawyer Avenue, Sheridan Drive, and Vulcan Street are east-west roads connecting River Road with the remainder of the Town. State highways are Grand Island Boulevard (NY 324, a two-lane minor arterial with an ADT of 1,930) and Sheridan Drive (NY 325, a four-lane collector with an ADT of 7, 540)¹⁴. Sawyer Avenue, a County highway is a two-lane local street with an ADT of 5,400¹⁵. Vulcan Street, a two-lane local street, runs directly on the Tonawanda-Buffalo boundary and is maintained by both municipalities. In addition, the Town maintains several minor local streets which are residential in character in the Niagara View area and in the vicinity of Sawyer Avenue and River Road.

The Niagara Section of the New York Thruway (I-190) serves the Tonawanda waterfront with interchanges at Sheridan Drive and River Road/Grand Island Boulevard. The four-lane interstate highway continues north over the Grand Island Bridges through Niagara Falls and on to Canada. To the south, the highway passes through downtown Buffalo connecting with I-90. Daily volumes in the Tonawanda waterfront range from 36,100 to 54,400¹⁶.

Public transportation is provided in the area by the Niagara Frontier Transportation Authority. Route No. 40 provides service along River Road between Buffalo and the Grand Island Bridges. The route connects downtown Buffalo with Niagara Falls via Grand Island. Hourly service is generally available mornings through evenings from Monday to Saturday.

Routes No. 5 and 30 serve the Southern Sector. Route 5 proceeds north from downtown Buffalo via Niagara and Tonawanda Streets, terminating at the intersection of Vulcan and Tonawanda Streets. Route 30 is an east-west route along Kenmore Avenue which also terminates at Vulcan and Tonawanda Streets. Frequencies on each route are approximately 30 minutes, with regular service provided Monday through Saturday.

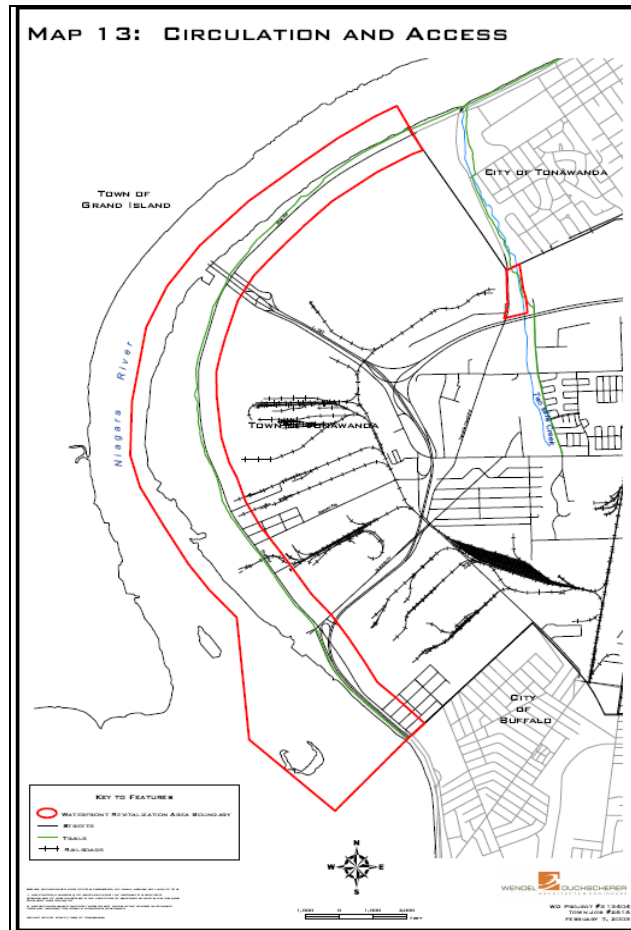
An extension of Route No. 30 (No. 30S) continues north along River Road to Sheridan Drive during morning and evening weekday rush hours and serves the Chevrolet, DuPont, and Dunlop complexes.

Completion of the Erie County Riverwalk will provide a safe and scenic bicycle route between downtown Buffalo and the City of Tonawanda. The route parallels River Road. For a further explanation see Section I, subsection XIV (A.5). [Map 13](#) illustrates the circulation system.

¹⁴ IBID.

¹⁵ Erie County Department of Environment and Planning, "Capital Assets and Facilities Management Program," 1986.

¹⁶ NYSDOT, OP.CIT.



Map 13 – Circulation and Access

M. Major Recent and Proposed Improvements

Several substantial public and private capital investments have occurred during the past five years which represent a major commitment to the future of the Town's waterfront. In addition, plans for future investment have been developed which will ensure the long-term stability of several major industries in the area. These are summarized below.

1. Recent Improvements

- a. **River Road Resurfacing:** NYS Department of Transportation -sponsored project consists of resurfacing and safety improvements to River Road between the Grand Island Bridges and the City of Tonawanda boundary. The \$583,000 project was completed in 1983.
- b. **South Grand Island Bridge (north span) Reconstruction:** NYS Thruway Authority project consisting of bridge deck reconstruction, repair of supporting piers, and painting. This \$5,100,000 project was completed in 1985.

- c. **Chevrolet-Pontiac-Canada Group, Inc.:** A program of ongoing modernization to production facilities and equipment has resulted in an investment of \$200 million in private funds since 1980.
- d. **Erie County Riverwalk (River Road Section):** The Riverwalk is a hike-and-bike path along the Niagara River that will eventually link downtown Buffalo with the Barge Canal in the City of Tonawanda. Several major sections have been completed. In the Town of Tonawanda, construction of a four mile section between the Grand Island Bridges and Barge Canal in the City of Tonawanda was completed in 1988. Project cost was \$850,000.
- e. **Anchor Marina:** Major renovations to this marina in the Niagara View subarea include new above-water docks and other ancillary improvements
- f. **Cherry Farm Park:** This 57-acre former hazardous waste site is being redeveloped as a park. The site has been remediated, design plans have been completed through an Environmental Protection Fund grant awarded to the Town in 1995 by the NYS Department of State, and completion of site improvements is anticipated by 2000. When completed, the park will be of regional significance.
- g. **Fire Tower Industrial Park:** A 62-acre Town sponsored project immediately northeast of the I-190/I-290 interchange. Begun in 1980, the Town has invested \$300,000 to construct roads and utilities to service this previously vacant and inaccessible area. The park is now 90% occupied. Twelve light industrial buildings have been constructed, and private investment totals \$12,000,000.
- h. **Uniland Development** has constructed five new buildings in an industrial and office park complex at Kenmore Avenue and Vulcan Street. Private investment has been roughly \$6,000,000. The firm has also constructed 8 new buildings in the 22-acre Interstate Commerce Center at a cost of \$12 million.
- i. **O-Cel-O Corp.** on Sawyer Avenue has invested \$20 million to upgrade production facilities since 1984.
- j. **Erie County Riverwalk (Erie Canal Section):** The 3.5 mile section of the Riverwalk between the City of Buffalo and the Grand Island Bridges was completion during the early 1990's at an estimated cost of \$2,300,000.
- k. **I-190 Rehabilitation:** The NYS Thruway Authority has implemented major rehabilitation of I-190 through the Town of Tonawanda during 1990. Resurfacing, safety improvements and reconstruction where necessary, are estimated to cost \$10,500,000.
- l. **Fire Tower Industrial Park Expansion:** During 1985 the Town undertook a long range study regarding the potential for expanding Fire Tower Industrial Park. The conceptual plan prepared for this study recommended eventual acquisition and development of

over 200 acres of vacant land between the existing Industrial Park and River Road. If implemented, this project would require the expenditure of \$1,250,000 for land acquisition, and \$4 million for roads, utilities, and site work.

N. Summary

The Tonawanda waterfront is in transition. Although the area has historically been dominated by heavy industry, a gradual awareness of the waterfront's value as a recreation resource has been steadily growing. It seems likely that increased recreation coupled with a steady decline of marginal industrial activities will continue in the foreseeable future.

Portions of the Tonawanda waterfront exhibit signs of industrial obsolescence. Drastic underutilization or outright abandonment of industrial facilities is common. This is not a local phenomenon, however. Underutilized industrial waterfront property in Tonawanda must be viewed in the context of all industrial waterfront land in the Buffalo metropolitan area. The City of Buffalo is grappling with the same issue of underutilization as the Town, only on a more massive scale. Two square miles of waterfront land and infrastructure abandoned by Bethlehem Steel in the City of Lackawanna are at the initial stages of revitalization.

Market forces have produced an extensive local surplus of waterfront industrial property while simultaneously creating a diminishing demand for their industrial reuse. Concurrently, a local demand for waterfront recreation exceeds the local supply of recreation facilities. Heavy utilization of nearly all water-related parkland throughout Erie County is readily apparent. The recreation potential of the Town of Tonawanda waterfront has yet to be fully realized. Three private marinas, the Town boat launch and its waterfront park, and development of the Cherry Farm Park currently respond to some of this recreation demand. The Riverwalk project, as well as the Isle View Park extensions, provide valuable fishing, cycling, and scenic opportunities.

While heavy industry may be declining along the Tonawanda waterfront, several important exceptions to this trend are evident. Recent and ongoing investments in the Chevrolet and Dunlop complexes seem to virtually guarantee their long-term presence in the area. The success of the Town's Fire Tower Industrial Park and the expansion of several other nearby industries also suggest that some level of industrialization will be present in the waterfront area for years to come. Water-dependent uses, which include the Niagara Mohawk Huntley Station now embarking on a \$13 million expansion, as well as the municipal and county water treatment plants, are also certain of long-term stability. All these facilities will strongly influence the course of future development.

Hazardous waste sites constitute a major factor affecting development. Approximately 200 acres in scattered locations have been used for the disposal of industrial wastes. The extent of potential hazards to the environment and public health has to be fully documented. Remedial work will be necessary at a number of locations prior to undertaking any redevelopment activities.

Any expansion of the BFI landfill will continue the high volume truck traffic along River Road, eliminate redevelopment of the Ashland site for less intensive uses, and continue the negative image many

residents have of the Town shoreline. Finally, development of a portion of the Ashland property as a federal radioactive waste disposal site will result in a variety of negative impacts similar to those caused by any BFI expansion.

The challenges confronting Tonawanda's efforts to fully capitalize upon its waterfront resources are formidable. Nevertheless, the potential to transform significant portions of the waterfront into an attractive and productive local and regional asset remains viable given a long-term commitment of joint public and private actions ¹⁷to undertake necessary steps.

¹⁷ Horizons Waterfront Commission and Saratoga Associates, Horizons Waterfront Action Plan, adopted January 29, 1992.

SECTION III - Waterfront Revitalization Program Policies

Development Policies

Policy 1

Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses.

Policy 1A

Revitalize the waterfront area between the northern limit of the Erie County water authority property to the southern limit of the county-owned isle view park for a mix of uses, with an emphasis on water-dependent and water-related uses on the shoreline.

Policy 1B

Wherever feasible, consolidate industrial operations to maximize public access.

The waterfront region in the Town of Tonawanda is in a period of transition. The area has a strong industrial heritage, but it is increasingly focused on waterfront recreational and scenic purposes. The Riverwalk, Isle View Park, Niawanda Park, Veteran’s Park, Fireman’s Park, Aqua Lane Park, the Town Boat Launch and the Two- Mile Creek Greenway are some of the recreational assets in or near the Town’s waterfront region. These amenities have increased public access and open space in the region, and are helping to change the character of the area. Former environmental concerns have largely been addressed.

The area is ready for redevelopment in a new context—one that recognizes the importance of industrial and commercial uses, but that also increasingly accommodates recreational use, public access to the waterfront and the aesthetic potential of the area.

The Southern Sector of the Tonawanda waterfront is essentially fully developed in active uses. Redevelopment is not likely to occur in this sector for the foreseeable future. The Central and Northern Sectors of the Tonawanda waterfront do contain vacant and underutilized parcels which offer important opportunities for redevelopment. The appropriate revitalization of the once-dynamic waterfront industrial corridor represents an effective means to regain the public’s positive perception of their shoreline. It will also serve to increase the marketability of vacant, underutilized sites by improving land use compatibility, the visual environment, and the economic potential of the area.

Water-dependent uses will be given priority for location immediately adjacent to the shoreline wherever feasible, with water-enhanced uses having secondary priority. For the upland portion of the waterfront revitalization area (east of River Road) water- enhanced and non-water-dependent uses are

allowable. All development within 500 feet of River Road will conform to design standards proposed in the River Road Overlay to minimize negative impacts and enhance the visual character of the area.

Water-dependent uses encouraged along the shoreline of the Central and the Northern Sectors include: recreational uses such as parklands, trails, docks, fishing facilities or picnic areas; marinas or yacht clubs; commercial excursion or fishing charter boat facilities; boatyard or boat storage facilities; and water-dependent industrial activities, such as water-intakes.

Water-enhanced uses appropriately included in the mix of allowed uses in the Northern Sector include support services to the water-based recreational assets in the area, such as small-scale retail operations, restaurants, visitor centers/ interpretative facilities, or lodging. Any development along the shoreline in the Northern Sector must be scaled to respect the physical and environmental limits of the site, as well as the aesthetic qualities of the waterfront.

In the Central Sector, which is more industrial in nature and where developable water-side parcels are larger, water-dependent or water-enhanced uses will receive priority and be encouraged, but a greater variety of uses may be allowed, including some light industrial uses and business offices.

Uses along the shoreline within the waterfront revitalization area boundaries shall be subject to the following standards:

1. The maximum building height for structures located west of River Road in the Northern Sector is 35 feet. Structures shall be located on a site in a manner that preserves views of the Niagara River from public roadways and lands.
2. All buildings, parking lots and outdoor storage areas shall be set back a minimum of 50 feet from the shoreline of the Niagara River, unless it is impracticable to do so. Trails, docks or piers, boat launch facilities, water- intake facilities, and structures associated with public park purposes may be located closer to the shoreline.
3. Landscaping shall be used to enhance the appearance of development, supply a visual break of the built environment and screen loading docks, storage areas and similar features.
4. Existing natural features and vegetation, including mature trees, shall be incorporated into site design to the maximum extent practicable.

In addition to the specific standards listed above, the following guidelines will be used to review actions for consistency with this policy:

1. The action should enhance existing and anticipated uses. For example, utility systems should be designed and constructed so as to serve the potential needs for desirable mixed use development (i.e. recreation, commercial, marina, residential, light industrial).
2. The action should serve as a catalyst to private investment in the area.

3. The action should improve the deteriorated condition of the sites and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline.
4. The action must lead to development which is compatible with the future plans for the area, with consideration given to scale, architectural style, density, and intensity of use.
5. The action should have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base.
6. The action should improve adjacent and upland views of the water and, at a minimum, must not affect these views in an insensitive manner;
7. The action should have the potential to improve the possibilities for multiple uses on the sites.
8. The action should not have potential for depreciating the value of nearby sites and should be fully compatible with existing or future planned nearby uses.

If an action is proposed by a state or federal agency to take place outside of the areas covered by this policy, the agency proposing the action must first determine if it is feasible to take the action within the area covered by this policy. If such an action is feasible, the agency should give strong consideration to undertaking the action in that area. If not feasible, the agency must take the appropriate steps to ensure that the action does not cause deterioration of the waterfront area, or the County's Isle View Park.

Refer to Policies 2, 21, 22, 25, 37, Part IV, and Appendix A for additional standards and guidelines.

Policy 2

Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.

Within the Town of Tonawanda waterfront, there are many existing public and private water-dependent uses. These uses include marinas, water-intake facilities for industrial uses, the Huntley power station, and Town and County boat launch sites. There are also many water-enhanced uses, such as the River Walk and parks. The Town supports and encourages the continuation of these uses.

In addition to these specific uses, the following shall also be considered appropriate water-dependent uses for the Tonawanda waterfront:

1. Uses which depend on the utilization of resources found in coastal waters (for example: fishing, mining of sand and gravel);
2. Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating, wildlife viewing);
3. Flood and erosion protection structures (for example: breakwaters, bulkheads);

4. Facilities needed to store and service boats and ships (e.g. marinas, boat repair, boat construction yards);
5. Industrial activities that depend upon access to coastal waters (for example: access to dockage, water for cooling)
6. Scientific/ educational activities which, by their nature, require access to coastal waters;
7. Support facilities which are necessary for the successful functioning of permitted water dependent uses (including parking lots, interpretive centers, parks, and snack bars.

In the northern sector of the waterfront, recreational uses and related support services shall be the preferred development type. Industrial and resource dependent uses are more appropriately located in the southern and southern portion of the central sector. The proposed zoning for the waterfront district will facilitate the siting of water-dependent uses along the shoreline, by allowing some these uses by right in appropriate locations.

The Town can benefit from facilitating the location and expansion of water-dependent uses in its waterfront. However, the large amount of vacant and available waterfront land does not warrant limiting allowable uses exclusively to water-dependent facilities. Water- dependent uses will be given priority on waterfront lands, but compatible water-enhanced and non-water-dependent uses will be permitted to locate in the waterfront area, in accordance with Policies 1 and 1A. Lands within the designated waterfront revitalization area that do not have waterfront access are not restricted to water-dependent or water- enhanced uses, but should be compatible in style and nature with surrounding uses.

The following standards shall apply to the siting of marinas within the Tonawanda waterfront:

1. Marinas shall be located and designed to minimize adverse impacts on coastal fish and wildlife habitats of local and statewide significance. They shall also be located to minimize adverse impacts on regulated freshwater wetlands.
2. Marinas shall be located in areas where minimum physical attributes required by marinas already exist and where minimal initial and subsequent maintenance dredging will be required. Such physical attributes include natural depths at or exceeding minimal navigable depths, low rates of sediment transport, and sufficient water movement to promote flushing.
3. Sites selected for new marinas shall contain adequate upland to accommodate associated facilities and accessory uses. Expansion of existing marinas is dependent upon the availability of adequate upland to accommodate the expansion.
4. Marinas shall be adequately landscaped to provide a park-like setting.
5. Pumpout facilities shall be provided in accordance with Policy 34.

6. Marinas shall be designed to maximize flushing to prevent possible accumulation of contaminants that could lower the quality of coastal waters.
7. New marinas must be sited and/or designed with adequate protection against boat wakes caused by existing boat traffic.
8. Marina design shall include provision for control of stormwater to prevent direct runoff from undeveloped portions of the site directly into coastal waters.
9. Marina design shall minimize interference with public use of underwater lands and the water surface.

The following standards shall apply to facilities providing boat maintenance service:

1. Boat maintenance activities, including washing, sanding, painting, draining bilge water, and servicing motors, shall not discharge waste water or other substances into any waterbody, nor shall any waste materials be disposed of in such a manner that they run over ground and into a waterbody.
2. Dismantled boats, engines, all parts or supplies, goods, materials, refuse, garbage, or debris shall be fully screened from view from public roads and from the waterside.

Refer to Policies 1, 19, 20, 21, 22, 37, Part IV, Proposed Land and Water Uses, and Appendix A, for additional standards.

Policy 3

The state coastal policy regarding the development of the state's major ports is not applicable to the Town of Tonawanda.

Policy 4

The state coastal policy regarding the strengthening of small harbors is not applicable to the Town of Tonawanda.

Policy 5

Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas.

The large scale investment of public funds for constructing sewer and water lines, as well as an efficient transportation network, requires a commitment by the Town to channel development into areas which can best accommodate the service needs of that development. This eliminates the future need of extending service areas into outlying regions, while foregoing the excess capacity of existing treatment plants, etc. The public is well served by a policy of infill development due to cost savings both in tax

dollars, as well as a reduction in fuel consumption. The latter occurs due to the proximity between work, home, and in the case of the waterfront, recreational areas.

The Town of Tonawanda waterfront area is fully serviced with adequate infrastructure to support the development called for by this LWRP. Proposed projects will be reviewed to ensure that existing system capacities will not be exceeded. Local, State, and federal agencies charged with allocating funds for improvements in water and sewer facilities should give high priority to the needs of the waterfront area, so that full advantage may be taken of the rich array of existing infrastructure components in promoting waterfront revitalization.

Policy 6

Expedite permit procedures in order to facilitate the siting of development activities at suitable locations.

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

The Town will utilize existing laws to ensure compliance with the LWRP. Where practicable, new regulations will coordinate and combine review periods and public hearing requirements to the maximum extent possible.

For specific types of development activities and in areas suitable for such development, Town, State and federal agencies will make every effort to coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulations and objectives are not jeopardized. These procedures and programs will be coordinated within each agency. Also, efforts will be made to ensure that each agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures will be coordinated and synchronized between levels of government and, if necessary, legislative and/or programmatic changes will be recommended.

When proposing new regulations, the Town will determine the feasibility of incorporating the regulations within existing procedures, if this reduces the burden on a particular type of development, and will not jeopardize the integrity of the regulation's objectives.

Fish and Wildlife Policies

Policy 7

Significant coastal fish and wildlife habitats, shall be protected, preserved, and where practicable, restored so as to maintain their viability as habitats.

Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are critical to the maintenance of a given population and, therefore, merit special protection. Such habitats exhibit one or more of the following characteristics: (1) are essential to the

survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas); (2) support populations of rare and endangered species; (3) are found at a very low frequency within a coastal regional; (4) support fish and wildlife populations having significant commercial and/or recreational value; and (5) would be difficult or impossible to replace.

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

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

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

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

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

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

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

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

1. Physical parameters, such as living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (including loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates;

2. Biological parameters, such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, meristic features, behavioral patterns and migratory patterns; and
3. Chemical parameters, such as dissolved oxygen, carbon dioxide, acidity, dissolved solids, nutrients, organics, salinity, and pollutants (heavy metals, toxics and hazardous materials).

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

Policy 7A

The Strawberry Island-Motor Island habitat shall be protected, preserved, and where practicable, restored so as to maintain its viability as a habitat.

Any activity that would substantially degrade water quality in Strawberry Island - Motor Island Shallows could affect the biological productivity of this area. All species of fish and wildlife may be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, excessive turbidity or sedimentation, and waste disposal. Spills of oil or other hazardous substances are especially significant threats to waterfowl concentrations in this area. Disturbances of littoral areas or wetland vegetation at any time of year may affect a variety of fish and wildlife species. Dredging, filling, bulkheading, or development of boat launching facilities in this area could adversely affect fish and wildlife in a variety of ways, including direct loss of habitat, and increased human disturbance during fish spawning and nursery periods (April-July for most warm water species). Temporary habitat disturbances would also be especially detrimental during this period. However, habitat management activities may be necessary to ensure that this productive fish and wildlife area is not destroyed by erosion. Structural measures, if appropriate, should be designed to maintain or enhance the value of Strawberry Island - Motor Island Shallows without adversely affecting existing fish and wildlife resources. Thermal discharges, depending on time of year, may have variable effects on use of the area by aquatic species and wintering waterfowl.

Installation and operation of water intakes could have a significant impact on fish populations, through impingement of juveniles and adults, or entrainment of eggs and larval stages. Recreational use of Strawberry Island should be controlled to restrict activities that may increase soil erosion. (See Appendix E for a detailed description of this habitat.)

Policy 8

Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which cause significant sub-lethal or lethal effect on those resources.

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

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

Other pollutants are those conventional wastes, generated from point and non-point sources, and not identified as hazardous wastes, but controlled through other State laws.

Policy 9

Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

Policy 9A

Expand recreational use of fish resources (i.e., fishing areas) offshore of the town's northern and southern sectors.

The educational and recreational value of coastal areas having a significant concentration of fish and wildlife resources is of extreme importance to the general public. This is important in the Strawberry Island area and Upper Niagara River areas offshore from the Southern and Northern sectors. The former represents a significant fish and wildlife habitat, while the latter areas are locally significant fishing areas. Both Southern and Northern sectors provide opportunities to catch yellow perch, walleye, and trout/ salmon.

Any efforts to increase recreation use of these resources will be made in a manner which ensures the protection of fish resources and which takes into consideration other activities dependent on this resource. Also, such efforts must be done in accordance with existing State and federal law and in

keeping with sound resource management considerations. Such considerations include biology of the species, carrying capacity of the resource, public demand, costs, and available technology.

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

1. Consideration should be made by federal, State and Town agencies as to whether an action will impede existing or future utilization of the Strawberry Island - Motor Island Shallows.
2. Efforts to increase access to Strawberry Island - Motor Island Shallows should not lead to overutilization of that resource or cause impairment of the habitat. Sometimes impairment can be more subtle than actual physical damage to the habitat. For example, increased human presence can deter animals from using the habitat area.
3. The impacts of increasing access to the Strawberry Island - Motor Island Shallows should be determined on a case-by-case basis, consulting the significant habitat narrative (see Policies 7 and 7A) and/or conferring with a trained fish and wildlife biologist.
4. Any public or private sector initiatives to supplement existing stocks (e.g., stocking a stream with fish reared in a hatchery) or develop new resources (e.g. creating private fee-hunting or fee-fishing facilities) must be done in accord with existing State law.

See Policy 7.

Policy 10

The state coastal policy regarding the development of commercial fishing resources is not applicable to the Town of Tonawanda.

Flooding and Erosion Policies

Policy 11

Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.

Policy 11A

Buildings and other structures within special flood hazard areas, including areas identified as special flood hazards on the flood insurance study maps filed for the Town of Tonawanda dated November 12, 1982, will be sited so as to minimize damage to property and human life.

Within the Town of Tonawanda waterfront area, the Niagara River flood hazard areas, or 100-year floodplains, have been designated on the official Flood Insurance Rate Maps dated November 12, 1982, prepared for the Town by the Federal Emergency Management Agency. The floodplain areas are shown in [Map 10](#).

There are no designated coastal erosion hazard areas within the Town's waterfront.

The public health and welfare is threatened by flooding, and there is a public interest in providing protection against flooding, which can result in significant public and private cost and endangerment of human life.

In the Tonawanda waterfront, any new development or substantial improvements shall be sited outside the flood hazard area, or shall be raised above the base floodplain level.

Any permitted uses built within the area designated as the 100-year floodplain shall be flood proof, according to the following guidelines:

A. Anchoring:

All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

B. Construction materials and methods:

1. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
2. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
3. Base flood elevation data shall be provided for subdivision proposals and other proposed developments which contain at least five (5) acres.

C. Subdivision proposals:

1. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
2. On-site waste disposal systems shall be located as to avoid impairment or contamination from flooding.

D. Specific standards:

In all areas within the waterfront revitalization area that are designated as special flood areas where the base flood elevation data have been provided as set forth in the Town's Flood Damage Prevention Law, the following standards are required:

1. **Residential construction:** In most areas within the waterfront revitalization area, residential housing is not an allowed use. If any new residential construction or substantial improvement of any residential structure were to occur within an area of special flood hazard in the waterfront revitalization area,

the lowest floor, including basement shall be elevated to or above the base flood elevation.

2. **Nonresidential construction:** New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
 - a. Be flood proof so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied.

Where human lives may be endangered by major lake storms, all necessary emergency preparedness measures shall be taken, including disaster preparedness planning. In response to a flood event or severe coastal storm, municipal and other agencies shall follow those procedures outlined in the Town's adopted Disaster Preparedness Plan.

Policy 12

Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, and bluffs.

Policy 12A

Activities or development in the coastal area will be undertaken so as to prevent further damage to Strawberry Island - motor island shallows.

The nearshore area adjacent to Strawberry Island helps safeguard the island from increased erosion. Activities or development in the nearshore area, as well as activities on the island itself, must be done in a manner that prevents any endangerment to the continued viability of the island and Motor Island shallows as a natural habitat (see Policy 7) .

For the purposes of this policy, the nearshore area are those lands underwater beginning at the mean low water line off the island and extending waterward a distance in a direction perpendicular to the shoreline to a point where mean low water depth is 15 feet, or to a horizontal distance of 1,000 feet from the mean low water line, whichever is greater.

Guidelines for reviewing consistency of shoreline actions with this policy are as follows:

1. Excavating, mining or dredging which may cause erosion of the island is prohibited, except construction or maintenance of navigation channels, bypassing sand around any natural or man-made obstruction, artificial beach nourishment, and maintenance of Town water intake.
2. Clean sand or gravel of a compatible type and size is the only material which may be deposited within nearshore areas.

Policy 13

The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

Policy 13A

The construction of erosion protection structures at strawberry island shall be undertaken only if it has a reasonable probability of controlling erosion for at least 30 years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

Erosion protection structures may be proposed for Strawberry Island by private interest groups or the federal and state governments. Due to the significance of Strawberry Island as a fish habitat and recreational resource it is imperative that any such structure be designed properly and utilize construction and maintenance standards which ensure their reliability. This policy will help ensure the reduction of such damage or loss which might occur from inadequate erosion structures at the island.

This policy applies to any structures specifically designed to reduce or prevent erosion on Strawberry Island, such as a groin, jetty, seawall, revetment, breakwater or artificial beach nourishment project. It also applies to any shoreline protection structure that is constructed at other locations within the Town's waterfront area.

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

1. The construction, modification, or restoration of erosion protection structures must:
 - a. Not be likely to cause a measurable increase in erosion at Strawberry Island or lands located at other waterfront locations in the Town's coastal zone.
 - b. Minimize, and if possible, prevent adverse effects upon the significant fish habitat on and around the island.
2. All erosion protection structures must be designed and constructed according to generally accepted engineering principles which have demonstrated success or, where sufficient data is not currently available, a likelihood of success in controlling long-term erosion. The protective measures must have a reasonable probability of controlling erosion on the immediate site for at least 30 years.

3. All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions for a minimum of thirty (30) years. Individual component materials may have a working life of less than thirty (30) years only when a maintenance program ensures that they will be regularly maintained and replaced as necessary to attain the required thirty (30) years of erosion protection.

See Policies 7 and 14.

Policy 14

Activities and development including the construction or reconstruction of erosion protection structures shall be undertaken, so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.

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

See Policies 7, 11, 11A, 12, 12A, 13, 13A.

Policy 15

Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

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

See Policies 7, 12, 12A, and 14.

Policy 16

Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long

term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

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

Policy 17

Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the setback of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level.

POLICY 17A

Whenever possible utilize non-structural measures to minimize damage to property from flooding in those areas located in special flood hazard areas (i.e. 100 year flood plains). Such measures shall include the (1) installation of proper drainage measures and (2) the flood-proofing of buildings or their elevation above the base flood level.

This policy recognizes the potential adverse impacts of flooding and erosion upon development in the coastal area, as well as the costs of protection against those hazards which structural measures entail.

This policy shall apply to the planning, siting, and design of proposed activities and development within special flood hazard areas, including measures to protect existing activities and development. These areas are shown in [Map 10](#). To ascertain consistency with the policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development and to the hazard. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible.

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

Within identified Flood Hazard Areas, non-structural measures shall include, but are not limited to, the following:

1. Avoidance of risk or damage from flooding by the siting of buildings outside the hazard area.
2. Flood-proofing of buildings or raising their elevation above the base flood level.

See Policy 11.

General Policy

Policy 18

To safeguard the vital economic, social and environmental interests of the state and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.

Proposed major actions may be undertaken in the coastal area if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State has established to protect those waters and resources. Proposed actions must take into account the social, economic, and environmental interests of the State and its citizens in such matters that would affect natural resources, water levels and flows, shoreline damage, Hydroelectric Power Generation, And Recreation.

Public Access Policies

Policy 19

Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

Policy 19A

Maintain the ease of public access to Aqua Lane Park, town boat launch, and Erie County Riverwalk.

Policy 19B

Increase access opportunities, wherever practical, at the Erie County isle view park, Strawberry Island, New York State Thruway Authority property under the grand island bridges, and the two mile creek corridor.

Within the Town's waterfront, there are important public recreational resources that provide opportunities for the public to reach and enjoy the Niagara River shoreline. These areas include: Aqua Lane Park, Erie County Riverwalk, Town Boat Launch, and Erie County's Isle View Park. Maintaining access to these recreation facilities is a primary concern of the Town. In addition, there are currently undeveloped publicly-held areas which have the potential to provide expanded riverfront access in the

future. These areas include Strawberry Island, the Two Mile Creek corridor, and New York State Thruway Authority property under the Grand Island Bridges. Ensuring that public access to these future sites is not precluded is also an important component of this policy.

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

1. The existing access from River Road, Aqua Lane, and NYS Thruway Authority Rights-of-Way to County Riverwalk, Aqua Lane Park, Town Boat Launch, and Erie County's Isle View Park shall not be reduced, nor shall the possibility of increasing access in the future from these thoroughfares to the above mentioned resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify providing increased public access or unless such actions are found to be necessary or beneficial by the public body having jurisdiction over such access as the result of a reasonable justification of the need to meet systematic objectives.
2. Existing access points to future recreation areas along Two Mile Creek, the County's Isle View Park, Riverwalk, and the New York State Thruway Authority property under the Grand Island Bridge shall not be reduced or eliminated unless use of these resources is deemed unfeasible or too low to justify maintaining the access level.

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

- a. Access - the ability and right of the public to reach and use public coastal lands and waters.
- b. Public lands or facilities - lands or facilities held by New York State, State Authority, or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands.
- c. A reduction in the existing level of public access - includes, but is not limited to, the following:
 - (1) The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.
 - (2) The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting system-wide objectives.

- (3) Pedestrian access is diminished, or eliminated, because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - (4) Pedestrian access to the public recreation resources listed above is not provided as River Road is improved.
 - (5) Vehicular access to parking areas serving the recreation areas listed in this policy is diminished or eliminated.
 - (6) There are substantial increases in existing special fares (not including regular fares in any instance) of public transportation to a public water-related recreation resource or facility, except where the Niagara Frontier Transportation Authority determines that such substantial fare increases are necessary; and/or admission fees to such a resource or facility, and an analysis showing that such increases will significantly reduce usage by individuals or families and incomes below the State government established poverty level.
- d. An elimination of the possibility of increasing public access in the future includes, but is not limited to, restricting the following:
- (1) Construction of public facilities (such as expansion of River Road) which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities (e.g. to the County's Isle View Park).
 - (2) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.
 - (3) Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities. An example includes the sale of excess New York State Thruway Authority property north of the Grand Island Bridges for use as a gasoline station, thereby diminishing access to the County's Riverwalk.
3. Any proposed project to increase public access to public water-related recreation resources and facilities, including the State-funded Riverwalk, shall be analyzed according to the following factors:
- a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

- b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.
4. The public agencies will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
5. In their plans and programs for increasing public access to public water-related resources and facilities, public agencies shall give priority, in the following order, to projects located within (1) the Northern Sector, (2) the waterfront zoning district, and (3) the Southern Sector.

See Part IV, Proposed Land and Water Uses and Proposed Projects, and Appendix A, Waterfront Zoning Districts.

Policy 20

Access to the publicly-owned riverbank and to land immediately adjacent to the riverbank or the water's edge that are publicly owned shall be provided, and it should be provided in a manner compatible with adjoining uses. Such land shall be retained in public ownership.

Policy 20A

Access to the edge of the Niagara River shall be provided off Aqua Lane Park, town boat launch, sections of County Riverwalk, county Isle View Park, and Strawberry Island.

New York State owned lands under the Niagara River are recognized as beginning at the last known natural location of the "ordinary high waterline" of the riverbank.

While such publicly-owned lands shall be retained in public ownership, traditional sales of easements on lands underwater to adjacent onshore property owners are consistent with this policy, provided such easements do not substantially interfere with continued public use of the public lands on which the easement is granted. Also, public use of such publicly-owned underwater lands and land immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety, military security, or the protection of fragile coastal resources.

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

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

use of these lands and waters are too low to justify maintaining or providing increased access.

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

- a. (See definitions under Policy 19 of "access," and "public lands or facilities").
 - b. A reduction in the existing level of public access - includes, but is not limited to, the following:
 - (1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - (2) Pedestrian access is diminished or blocked completely by public or private development.
 - c. An elimination of the possibility of increasing public access in the future - includes, but is not limited to, the following:
 - (1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.
 - (2) Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.
 - (3) Construction of private facilities which physically prevent the provision of convenient public access to public coastal lands and/or waters from public lands and facilities.
2. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated. A reduction in the existing level of public access includes, but is not limited to, the following:
 - a. Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - b. Access is reduced or blocked completely by any public developments.
 3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development, except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency

or private association agrees to accept responsibility for maintenance and liability of the accessway.

4. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
5. In their plans and programs for increasing public access, State and Town agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the boundaries of the Federal-Aid Metropolitan Urban Area, but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary, but not served by public transportation.
6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:
 - a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
 - b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

See also Policies 1, 2, 7, 9, 19, 21 and 22, Section IV, Proposed Land and Water Uses and Proposed Projects, and Appendix A, Waterfront Zoning Districts.

Policy 21

Water-dependent and water-enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development.

Policy 21A

Redevelop the cherry farm site for a mix of active and passive water-dependent and water-enhanced recreation uses.

Policy 21B

Develop a linear trail for passive recreation along Two Mile Creek.

The demand for additional marina, swimming and fishing facilities in the Town of Tonawanda and Erie County has been well documented in Town, County, and State reports. The public right to recreational use of the Niagara River's resources is important to realize and can be accomplished through the expansion, development, and improvements of public water-related recreation facilities along the Town's waterfront area. This includes the County Riverwalk and Isle View Park, as well as the Town Boat launch and Aqua Lane Park.

The Cherry Farm site is a 55-acre former landfill located in the Central Sector of the Tonawanda waterfront. The site offers excellent opportunities for creation of additional active and passive water-related recreation for the Town. Investigation and remediation of hazardous wastes is required prior to use of the site for recreation purposes, and this work is being undertaken in consultation with the NYS Department of Environmental Conservation. Appropriate recreational use of the site includes boat launch facilities, shoreline walkways, an interpretive center, a wetlands nature trail, a bandshell, and open space. Design of the site should be protective of the natural resources on the site and in the Niagara River adjacent to the site, and should take full advantage of views to the Niagara River.

Two Mile Creek flows through the northeastern extension of the Town's waterfront and into the City of Tonawanda, where it empties into the Niagara River. Within the City of Tonawanda, the creek is incorporated into a municipal park, and the City has proposed a linear trail along the creek. Provision will be made for continuation of the linear trail into the Town's waterfront, providing a continuous link to the Niagara River and to the Riverwalk.

Consistent with demand and the protection of other important coastal resources, water-related (dependent and enhanced) recreation uses shall have a higher priority than any non-water-related uses, including non-water-related recreation uses. Water-dependent recreation uses shall have a higher priority than water-enhanced uses, including water-enhanced recreation uses. Determining a priority among water-dependent uses will require a case-by-case analysis. (See Policy 2 for definitions and additional provisions concerning water-dependent uses.)

Any development of water-related recreational facilities or increase in recreational use must be consistent with the preservation and enhancement of other important coastal resources, such as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, and significant mineral and fossil deposits and their capacity to accommodate anticipated use. Boating facilities will, as appropriate, include parking, park-like surroundings, toilet facilities, and pumpout facilities.

Use of off-road recreational vehicles shall not be permitted on public lands covered by this policy.

See also Policies 1, 2, 9, 19, 20 and 22 and Section IV, Proposed Land and Water Uses.

Policy 22

Development, when located adjacent to the shore, will provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development.

Policy 22A

Provide for multiple use of the town's water treatment plant for passive recreational use in association with aqua lane park and the County Riverwalk.

Policy 22B

Provide multiple use of land controlled by the New York State Thruway Authority for waterfront recreation access.

Policy 22C

Provide for multiple uses of appropriate sections of the town's sewage treatment plant which are deemed safe and environmentally compatible for a portion of the linear trail facility proposed for two mile creek.

Policy 22D

Provide, where practicable, for multiple use of aqua lane for the Riverwalk's linear trail facility.

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

The types of development which can generally provide water-related recreation as a multiple use include, but are not limited to, the following:

- parks
- highways
- power plants
- utility transmission rights of way
- sewage treatment facilities
- large residential subdivisions (50 units or more) shopping centers
- office buildings

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

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

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

The land controlled by the New York State Thruway Authority and owned by Erie County under the Grand Island Bridges offers ideal opportunities for passive recreational use. The Town shall initiate discussions with the Authority and Erie County to determine proper legal arrangements. The site contains the County Riverwalk , bridge abutments, and occupies 480 linear feet of river shoreline and includes approximately 7 acres.

See Part IV, Proposed Land and Water Uses and Proposed Projects, and Appendices A and B.

Historic and Scenic Resources Policies

Policy 23

Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation.

Policy 23A

Protect archaeologically significant sites in the southern sector.

A potentially valuable man-made resource in the Town is the archeological site in the Southern Sector. Its protection must involve recognition of its importance by all agencies and the ability to identify and describe it.

While the Town's program is concerned with the preservation of all such resources within the waterfront area, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

Prior to undertaking any action in the archaeologically-sensitive parts of the Southern Sector, the NYS Office of Parks, Recreation and Historic Preservation shall be contacted to determine if archeological resources will be affected by the proposed activity.

An archeological site (UB 235) has been identified as lying on the mainland opposite Strawberry Island. Its potential significance is unknown. It may presently be located beneath the Chevrolet Plant.

All practicable means to protect the area noted in Policy 23A shall be undertaken to prevent an adverse change to the site. A significant adverse change includes, but is not limited to, demolition or removal in full or part of the site.

Policy 24

The state coastal policy regarding the protection of scenic resources of state-wide significance is not applicable to the Town of Tonawanda.

Policy 25

Protect, restore, or enhance natural and manmade resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.

Policy 25A

Protect and enhance the scenic vistas of the town's shoreline.

Policy 25B

Upgrade the appearance of river road by providing trees and landscape plantings that are suitable for a roadside location.

The scenic vistas within the Town's waterfront area are shown in [Map 4](#).

The views of the Niagara River off River Road in the Northern Sector of the Town represent the only area where waterfront views are available to those using this major north-south coastal road. In the Southern Sector, the Town boat launch site, the Town water plant, and Interstate 190 also offer expansive views of the river. It is important to maintain these views. Therefore, the following guidelines will be used when reviewing actions against this policy:

1. Siting structures and other development such as highways, power lines, and signs, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore.
2. Clustering or orienting structures to retain views, save open space, and provide visual organization to a development.
3. Incorporating sound, existing structures into the overall development scheme.
4. Removing deteriorated and/or degrading elements.
5. Maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest.
6. Maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters.
7. Using appropriate materials, in addition to vegetation, to screen unattractive elements.
8. Using appropriate scale, form, and materials to ensure that the buildings and other structures are compatible with, and add interest, to the landscape.

9. Within the Waterfront Revitalization Area, billboards, roof signs and pole signs are prohibited. Ground signs are allowed for identification of a project or project area and will be consistent with the Town sign ordinance and design standards developed by the former Horizons Waterfront Commission.

River Road is a major access road in the Tonawanda waterfront, serving industrial users, as well as through traffic. Since it serves as a gateway to the Town's waterfront, its visual character is an important component of the public's perception of the waterfront. Street trees and appropriate landscaping shall be incorporated into improvement plans for River Road. In addition, private development shall provide street trees in accordance with the standards of the Waterfront Zoning District and the General Industrial Zoning District.

See Policies 1 and 2, and Part IV. Refer also to Appendix A and Appendix B.

Agricultural Lands Policy

Policy 26

The state coastal policy regarding the conservation and protection of significant agricultural lands is not applicable to the Town of Tonawanda.

Energy and Ice Management

Policy 27

Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

Policy 27A

Decisions on the expansion of Niagara Mohawk power corporation's Huntley station will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

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

A determination of public need for energy is the first step in the process for siting any new facilities. The directives for determining need are set forth in the New York Energy Law. With respect to transmission lines and steam electric generating facilities, Articles VII and VIII of the State's Public Service Law require additional forecasts and establishes the basis for determining the compatibility of these facilities with the environment and the necessity for a shorefront location. With respect to electric generating facilities, environmental impacts associated with siting and construction will be considered by one or more State agencies or, if in existence, an energy siting board. The policies derived from these

proceedings are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act. The Act is used for the purposes of ensuring consistency with the State Coastal Management Program and this Local Waterfront Revitalization Program.

In consultation with the Town of Tonawanda, the Department of State will comment on energy policies and planning reports as may exist; present testimony for the record during relevant proceedings under State law; and use the State SEQR and DOS regulations to ensure that decisions on other proposed energy facilities (other than those certified under the Public Service Law) which would impact the waterfront area are made consistent with the policies and purposes of this Local Waterfront Revitalization Program.

Policy 28

Ice management practices shall not damage significant fish and wildlife and their habitats, increase shoreline erosion or flooding, or interfere with the production of hydro-electric power.

Policy 28A

Ice management practices shall not damage the Strawberry Island habitat, increase shoreline erosion or flooding, or interfere with the production of hydro-electric power.

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydroelectric power, the Strawberry Island - Motor Island Shallows, flood levels, and rates of shoreline erosion damage. Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

Policy 29

The state coastal policy regarding the development of off-shore energy sources is not applicable to the Town of Tonawanda.

Water and Air Resources

Policy 30

Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards.

Municipal, industrial and commercial discharges include not only "end-of-the-pipe" discharges into surface and groundwater, but also plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into the Niagara River and Two Mile Creek, and those which pass through the Town's sewage treatment system before reaching the Niagara River.

Policy 31

State coastal area policies and purposes of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.

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

The State has identified certain stream segments as being either "water quality limiting" or "effluent limiting." Waters not meeting State standards and which would not be expected to meet these standards even after applying "best practicable treatment" are classified as "effluent limiting," and all new waste discharges must receive "best practicable treatment." However, along stream segments classified as "water quality limiting," waste treatment beyond "best practicable treatment" would be required, and costs of applying such additional treatment may be prohibitive for new development.

It should be noted that an easement and pipeline for the Town of Tonawanda's water supply crosses the island. The intake cribs are located just offshore of Strawberry Island. Since this portion of the river is an important water supply source, as well as a significant fish and wildlife habitat, it is vital that the water quality in this area remain high.

Policy 32

The state coastal policy regarding the use of alternative or innovative sanitary waste systems is not applicable to the Town of Tonawanda.

Policy 33

Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of stormwater runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g. construction of retention basins) and combined sewer overflows (e.g. replacement of combined system with separate sanitary and storm-water collection systems) are not economically feasible. Until funding for such projects becomes available, non-structural approaches (e.g. improved street cleaning, reduced use of road salt) will be encouraged.

Policy 34

Discharge of waste materials into the coastal waters from vessels will be limited so as to protect significant fish and wildlife habitats, recreational areas, and water supply areas.

The discharge of sewage, garbage, rubbish, and other solids and liquid materials from watercraft and marinas into the State's water is regulated. Within the Town's waterfront area, priority will be given to the enforcement of this law in the area of public water supply intakes which need particular protection from contamination by vessel wastes.

Pumpout facilities shall be required at all new or expanded marinas or at other places where boats are moored, except where:

1. The facility is designed for, and will serve, boats of 26 or less feet in length, which are not equipped with marine sanitation devices; or
2. The facility provides less than 25 seasonal slips for boats of 26 or more feet in length, and there is adequate pumpout capacity at a neighboring marina or other place which, by notarized agreement, will allow use of its pumpout facilities.

Policy 35

Dredging and dredge spoil disposal in coastal waters will be undertaken in a manner that meets existing state dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources and wetlands.

Dredging often proves to be essential for waterfront revitalization, maintaining navigation channels at sufficient depth, and removing pollutants. Such dredging projects, however, may adversely affect water quality and scenic resources. Often, these adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the spoil disposal site.

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

See Policies 7, 12, and 15.

Policy 36

Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

The NYS Environmental Conservation Law (Section 37-0101.2) defines materials hazardous to the environment as "substances which, because of their toxicity, magnification or concentration within

biological chains, present a demonstrated threat to biologic life cycles when discharges into the environment." All activities within the Town's waterfront area which are subject to this policy shall comply with all State and federal regulations.

Policy 37

Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics, and eroded soils into coastal waters.

Best management practices used to reduce these sources of pollution could include, but are not limited to, encouraging soil erosion control techniques and surface drainage control practices.

To maintain natural drainage functions of the land, and to reduce the volume of sedimentation and other pollutants entering the Niagara River, the following standards will be applied to all development and land use activities with the Town's waterfront area:

1. Stream channels, natural flood plains, and major drainage swales shall not be altered in a manner which decreases their ability to accommodate and channel stormwater runoff and flood waters. Disturbance of land includes activities such as alteration of slope, deposition of waste materials, and removal of vegetation.
2. Development shall preserve salient natural features of a site, minimize grading and cut and fill operations, ensure conformity with natural topography, and retain natural vegetation and trees to the maximum extent practicable in order to create the least erosion potential and adequately handle the volume and rate of velocity of surface water runoff.
3. Natural drainage patterns shall be protected and incorporated into site design.
4. Site preparation, including stripping of vegetative cover and grading, shall be undertaken so that no individual building site is stripped of its vegetation cover more than thirty (30) days prior to commencement of construction.
5. Disturbed soils shall be stabilized and revegetated or seeded as soon as practicable. During the interim, erosion protection measures such as temporary vegetation, retention ponds, recharge basins, beaming, silt traps, and mulching shall be used to ensure that sedimentation is minimized and mitigated.
6. In no case shall stormwater be diverted to another property either during site preparation or after development.
7. Fill shall not encroach on natural watercourses, constructed channels, wetlands, or floodway areas. All fill shall be compacted at a final angle of repose which provides stability for the material, minimizes erosion, and prevents settlement.

8. A natural vegetative buffer of twenty-five (25) feet shall be retained adjacent to surface waters and wetlands to absorb floodwaters and trap sediments.
9. Trails and walking paths along waterbodies shall be sited and constructed so they are not a source of sediment.
10. The amount and velocity of runoff from a site after development shall approximate its pre-development characteristics. However, if the site is adjacent to coastal waters, stormwater shall be contained on-site, to the maximum extent practicable, to prevent direct discharge of runoff into coastal waters.

Policy 38

The quality and quantity of surface water and groundwater supplies will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

The Niagara River is the sole source of drinking water in the Town of Tonawanda and therefore must be protected. The Town's waterfront area is serviced by a high technology water treatment and sanitary sewer system and all commercial and industrial discharges are regulated by State and federal law.

Policy 39

The transport, storage, treatment, and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect surface water supplies, recreation areas, and scenic resources.

Policy 39A

The permanent disposal and permanent storage of solid and hazardous wastes are prohibited within the town's coastal zone.

The definition of terms "solid wastes" and "solid waste management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludge from air or water pollution control facilities, demolition and construction debris, and industrial and commercial wastes. For a definition of hazardous waste see Policy 8.

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

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

Permanent solid and hazardous waste disposal and storage in the local waterfront area is prohibited.

Policy 40

Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to state water quality standards.

Policy 40A

Effluent discharged from the Niagara Mohawk Power Corporation Huntley generating station, Chevrolet motor division, Dunlop, DuPont, and other industrial facilities into the Niagara River will not be unduly injurious to fish and wildlife and shall conform to state water quality standards.

A number of factors must be considered when reviewing a proposed site for facility construction. One of these factors is that the facility not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, the public health, and public enjoyment of the receiving waters. The effects of thermal discharges on water quality and aquatic organisms will be considered by State agencies or, if applicable, a siting board when evaluating an applicant's request to construct a new electric generating facility.

Policy 41

Land use or development in the coastal area will not cause national or state air quality standards to be violated.

Policy 41A

Land use or development in the town's waterfront district will not cause any decrease in air quality standards.

The Town's Local Waterfront Revitalization Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation pursuant to the Clean Air Act and state laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the coastal area.

To the extent possible, the State Implementation Plan will be consistent with coastal lands and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan.

The Department of Environmental Conservation will allocate substantial resources to develop a regulatory and management program to identify and eliminate toxic discharges into the atmosphere. The State's Coastal Management Program will assist in coordinating major toxic control programming efforts in the coastal regions and in supporting research on the multi-media nature of toxics and their economic and environmental effects on coastal resources.

In addition, any land use or development proposed for the Town's Waterfront Zoning District must not result in a decrease in air quality within the area.

See Policy 1A.

Policy 42

Coastal management policies will be considered if the state reclassifies land area pursuant to the prevention of significant deterioration regulations of the federal clean air act.

The policies of the State and Local Waterfront Revitalization Programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications in coastal regions or adjacent areas. In addition, the NYS Department of State will provide the NYS Department of Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon State and Local Waterfront Revitalization Programs.

Policy 43

Land use or development in the coastal area must not cause the generation of significant amounts of the acid rain precursors; nitrates and sulfates.

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

Policy 44

Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

Policy 44a

Preserve and protect the freshwater wetlands in the cherry farm area.

A freshwater wetland of 13 acres is located in the Town's waterfront area adjacent to the Cherry Farm, and is illustrated in [Map 10](#).

The benefits derived from the preservation of this wetland include, but are not limited to:

- erosion, flood, and storm control

- natural pollution treatment
- groundwater protection
- recreational opportunities

Any activity proposed in this wetland shall conform to those standards established in NYCRR, Title 6, Parts 663 and 664.

In the Cherry Farm area, the existing freshwater wetland will be protected and incorporated into the design of the park as a passive natural area. Care shall be taken in the design, construction, and maintenance of the park to ensure that freshwater continues to flow into the wetland from the Niagara River through the existing inlets. In addition, any road crossing the wetland to provide access from River Road to the Cherry Farm site shall be constructed in a manner that permits the continued exchange of water from one side of the wetland to the other.

SECTION IV - Proposed Land and Water Uses

The Town of Tonawanda first prepared its Local Waterfront Revitalization Program in the early 1990's. Since that time, changed circumstances have affected the feasibility and desirability of proposed land and water uses for the waterfront area included in that document, particularly for the Northern and Central Sectors of the waterfront. In 2001, the Town decided that previous plans were not effectively achieving their goals for redevelopment of the Tonawanda waterfront, and a new land use study was commissioned to reassess the issue. The land use study focuses on the northern and central sectors of the Tonawanda waterfront. These are the areas where there are significant parcels available for development or redevelopment. Land uses in the southern sector are more fixed, and no significant changes are anticipated in the foreseeable future.

The study was guided by a steering committee representing a variety of interests, including Town and County governments, several Town Departments, the Town Planning Board, the Town Environmental Commission, local and county economic development officials and the New York State Department of State. Meetings with various interest groups and the public were also held to receive additional input. The result of this effort is the proposed new land and water uses section as outlined in Section C below.

A. Recent Reports

The Tonawanda riverfront has been the focus of numerous studies dating back many years and yielding a wealth of data about this area. The first step of the land use planning study was to conduct a literature review of existing reports and data. This ensured that the land use plan is based on a solid understanding of previous plans and recommendations for the waterfront. Some of the reports have retained more relevance than others, but all provide important insights into planning successes and failures in the area.

A brief summary of the earlier reports and the data they contain is contained here.

- 1. Upper Niagara River Study, 1976, Erie and Niagara Counties Regional Planning Board:** The Regional Planning Board conducted a study of how to increase the recreational opportunities along the Niagara riverfront from the City of Buffalo's northern border to the fall area of the City of Niagara Falls. Emphasis was placed on the development of both general and specific proposals which could be implemented with existing operation and maintenance funds of various agencies operating along the river. The plan emphasizes the improvement of access to the riverfront, development of specific recreational areas, and the development of a continuous trail along the entire Niagara River.

Specific recommendations for the Town included the following:

a. Southern Sector

- Continuation of Riverwalk between the Thruway and Niagara River, as well as along Niagara Street.
- Limited public use of Strawberry Island and designation as a nature preserve.
- Development of an artificial reef offshore of Strawberry Island for shore protection and fish habitat.
- Expansion of recreation facilities at Aqua Lane Park.
- Linking Sheridan Park to the waterfront by a Class I trail.

b. Central Sector

- Continue the Riverwalk along the Erie Barge Canal bed, acquiring public access easements between the Town boat launch and the Grand Island Bridge.
- Develop the area north of the Spencer Wickwire/Roblin site (Cherry Farm and adjacent parcels) into a municipal shoreline park with facilities for picnicking, boat launching and docks, bicycling, motor camping, and sports.
- Continue industrial land uses in all areas except the park area.

c. Northern Sector

- Continue the Riverwalk to connect with the Niawanda and Two Mile Creek Parks.
- Coordinate industries to use a single river dock.
- Promote landscaping along the entire corridor.
- Complete the extension of Isle View Park into the Town.

2. Interim Report on Feasibility of Improving Access and Water-Related Land

Management, 1979, U.S. Army Corps of Engineers: The Corps report outlined alternative water and related land management plans compatible with the comprehensive development goals of the Buffalo area. The recommendations for sections of the Town of Tonawanda waterfront include the following:

- Bicycle path on the waterside of the Thruway in Niagara View and extending to Sheridan Park via Sheridan Drive and Two Mile Creek Road.
- Ferry service to Strawberry Island.

3. Riverwalk - Phase II, 1981, Erie County Department of Environment and Planning: The County report identified the preliminary trail route in the Town and City of Tonawanda. In the Niagara View section, the walk would be located on the waterside of the Thruway. The trail would follow the old Canal bed through the industrial corridor with two diversions to the water's edge at the Erie County Water Authority treatment plant,

as well as at the Cherry Farm Overland Express International complex. In the Northern Sector, the Riverwalk would follow the canal bed to the undeveloped section of the County's Isle View Park. At that point, the trail would hug the shoreline.

4. **Comprehensive Development Plans and Strategy for Expansion of Fire Tower Industrial Park**, 1985, by Saratoga Associates with Economic Research Associates. This report addresses the Fire Town Industrial Park area, and the approximately 500 acres to its north, encompassing most of the waterfront area north of the Grand Island Bridges. The report is in three sections. The first section examines industrial development trends locally and in the region, in order to recommend a target strategy for the area. The second section proposes a Land Use plan for the area, while the third section provides a financing analysis for the development of the land.

The Land Use plan divides the area into three primary zones. Zone 1, the area along the River Road corridor, is identified as an area for light industry, ideally focusing on office and service industries. Zone 2, south of Rattlesnake Creek and north of the Fire Tower Industrial Park, is designated for general industrial use, including light and heavy industries. Zone 3 is Fire Tower Industrial Park. The report contains many recommendations regarding access, standards, landscaping, buffers and other issues that remain relevant.

5. **Horizons Waterfront Action Plan**, 1992, Horizons Waterfront Commission: In the Fall of 1988, the City and Town of Tonawanda, the Cities of Buffalo and Lackawanna, the Towns of Hamburg, Evans, and Brant, Erie County, and the Niagara Frontier Transportation Authority signed the Intermunicipal Agreement forming the Horizons Waterfront Commission. The Commission then began work on the Horizons Waterfront Master Plan, which was a multi-year effort to define the waterfront study area, inventory critical resources, formulate goals and objectives, develop a conceptual land use plan and prepare implementation recommendations and guidelines. The goals of Action Plan are to:

- provide a waterfront that gives significant enrichment to the quality of life;
- rejuvenate and sustain the waterfront as a clean, inviting, and healthy environment;
- achieve a prosperous waterfront by pursuing economic development that advances environmental quality and enriches the quality of life.
- The Town of Tonawanda was an active member of the Horizons Waterfront Commission, and continues to be with its successor, Western New York Empire State Development; therefore, its plans for future development are in concert with recommendations put forth in the Action Plan.

6. **Waterfront Region Master Plan, Town of Tonawanda**¹⁸, 1992, by Waterfront Master Plan Consulting Team (Halcyon Real Estate Advisors, Sasaki Associates and Nutter Associates). It builds upon the recommendations that the Horizons Commission made in 1991 for the Tonawanda waterfront. This plan, like the Horizons Plan, recommends a mix of uses along the waterfront, including residential, recreational, commercial, industrial, and retail based land uses. Six target projects were identified: River Road relocation; riverfront residential development; three office/light industrial projects; and two recreational projects (Cherry Farm and a Riverfront Park north of the Grand Island Bridge.) The report recommends a revision to the Town’s zoning regulations, based on the premise that the proposed land uses (including the relocation of River Road) would be implemented.

The realignment of River Road north of the Grand Island Bridge was the most dramatic recommendation, and was considered a key priority. By moving the roadway 1000 feet inland, additional waterfront land was to be made available for the riverfront residential development. The logic was to capitalize on the added value of a waterfront location, the excellent views from the bluffs, and the presence of residential neighborhoods to the north in the City of Tonawanda (although these neighborhoods would not be adjacent to the proposed housing). The relocation of the roadway was to be paid for by public funds, estimated to be \$5.4 million in 1991, not including the costs of acquiring the necessary rights-of-way. A decade later, it is clear that these funds will not become available, and any proposed housing development in this area is unlikely.

The report proposes office and light industrial uses on the east side of the relocated River Road. Two target projects were identified: the Isle View site, which had first priority; and a “Thruway Commerce Center” on River Road adjacent to the I-190. It was estimated these developments would support a total of over 5.3 million square feet in office, light industrial, and a small amount of convenience retail space. Additional light industrial space was proposed for the east side of River Road south of the Bridges. The remainder of the area was proposed to be open space or mixed use development.

Much of the information in this report is dated, or was specific to the development proposals and is no longer relevant (e.g. project feasibility analyses, cost-benefit analyses, market conditions). However, the report includes extensive background data on existing conditions (e.g. environmental conditions, transportation facilities, utilities), as well as information on possible site plans, sub-area development guidelines, design standards, etc. which remain useful.

¹⁸ The report is in two volumes: Volume I includes the main project information. Volume II- Appendices provides more detailed information/calculations for the market, cost-benefit, and project cost assumptions. It also provides the text of proposed regulations (zoning, site plan, subdivision regulations). The Executive Summary is included in Volume I and is also bound as a separate document.

7. **The Town of Tonawanda Waterfront Traffic Study**, 1996, by Bettigole Andrews and Clark, Inc. It is a detailed traffic study for the River Road corridor. It was commissioned in order to investigate potential means of providing improved access to three major open areas: along the waterfront from Sawyer Avenue north to the City of Tonawanda border; the North Youngmann Commerce Center Area¹⁹, and the Isle View site²⁰. The Bettigole study analyzes the potential traffic impacts and estimated costs of various alternatives for providing access to these sites.

The report contains extensive data on existing traffic conditions, including traffic counts, peak volumes, Levels of Service (LOS) for roadways and intersections, accidents, etc. It also provides projections of future traffic estimates, based on the proposed land uses summarized in the Waterfront Region Master Plan report. Eight alternative highway systems were devised, including one that did not assume the relocation of River Road. Traffic conditions for each of these alternatives were calculated. On the basis of this analysis, specific traffic and safety problems were identified. Additional alternative highway systems were also analyzed, and remediation measures were proposed to address problem areas. All alternatives were premised on the proposed land uses of the earlier reports, and as these assumptions change, the accuracy of the analysis is compromised. However, the report provides valuable insight into preferred traffic alternatives, and where major problems may occur, particularly in areas where there is substantial similarity in intensity and scale of proposed land uses.

One area where the report made recommendations was the on- and off-ramps for the I-190 at the Grand Island Bridges. These recommended measures were adopted and implemented by the New York State Department of Transportation in the course of their reconstruction of I-190, improving access and traffic flow in this area.

8. **River Road & I-190 Industrial Redevelopment Corridor Study**, 2000, by Bergmann Associates. The purpose of the study was to help promote development in the area of Tonawanda bounded by the I-190 south of the Grand Island Bridges. The report contains base data for this area (e.g. zoning, land use, type and capacity of infrastructure), and refers to a database of information about each parcel (owner, address, acreage and use), although the full database was not included in the report. A series of interviews with major businesses and agencies supplemented the data review.

The report summarizes assets and constraints, and makes recommendations regarding how to improve the development potential of area. The existing zoning is identified as one of the primary major obstacles to development in this area. The report concludes

¹⁹ This area is bounded by the railroad, the power lines, Two Mile Creek Road, and I-290. It is sometimes referred to as the “Mudflats” site.

²⁰ This area is bounded by River Road, the power lines, the City of Tonawanda boundary and Two Mile Creek Road. It is sometimes referred to as “300-acres”.

with the identification of four “Key Project Areas” and a summary of estimated costs and benefits to development.

9. **Sites Analysis and Development Strategies for Erie and Niagara Counties** (draft November 2001) prepared for Buffalo-Niagara Enterprise by Deloitte & Touche with Fantus. The draft of this report analyzes the development readiness of a number of sites in the Buffalo-Niagara region, including five sites in Tonawanda. Three of the sites are those identified in the Bergmann report. The other two are located north of the Grand Island Bridges, and therefore out of the study area for the earlier report. Four of the five sites are at least partially within the waterfront zone.

The ranking factors for the Site Analysis report were targeted for specific industry clusters, and therefore did not cover a full range of potential users²¹. Based on the development standards used in the report, however, two sites (North Youngmann Commerce Center and the River Road/Isle View site) were considered “viable” on a first-cut analysis, and investigated further. The report summarizes the advantages and constraints of these two sites, and suggests the best target industries. Neither site made the final selection, but they were identified as having future potential. Two other sites in Tonawanda were selected as “alternative” sites. Their characteristics did not meet the development requirements of the target industries at this time, although this did not preclude future development potential. One site, the former Roblin Steel property (currently known as Niagara River World), was rejected as having too many constraints for near-term redevelopment, at least for the target industries.

B. Market Factors

Buffalo's role as one of the nation's leading industrial centers in transportation, chemical production, and steel-making has declined since the 1960's as a result of national and international competition, significant shifts in the nation's economic and industrial output, and the aging of the region's capital stock and infrastructure. Today, Buffalo's economy is presently undergoing transformation from heavy industrial and manufacturing to service, reflecting similar nationwide trends. Service industries and wholesale and retail trade have experienced significant growth since the 1970s. The current leading manufacturing industries in Greater Buffalo include automotive components, printing, fabricated metals, industrial machinery, chemical and food processing, and computer and medical instruments.

As part of the region's economic restructuring, a number of public and private initiatives have been created to enhance economic and industrial development. These efforts are led by local, State, and federal governments, as well as private industry to facilitate regional economic diversification, industrial expansion and relocation, and linkages between education, research, and industry. The Erie County Industrial Development Authority (ECIDA) and the Metro Buffalo Alliance (MBA) are two examples of public/private partnerships involved in economic and industrial development.

²¹ The target industries were Information Technology, Research and Development (Medical Tech), Medical Device Manufacturing, Back Office Operations, and Warehousing and Distribution.

The Town's waterfront offers a unique physical setting which may warrant private developer interest, even without the massive public assistance programs of the past. Therefore, it is appropriate to consider the following market observations for some key land uses prior to outlining any proposed land and water uses:

1. Industrial

Based on recent trends and nationwide shifts, industrial growth areas are likely to be high technology sectors. The total Buffalo SMSA absorption of this type of industry per year is approximately 50 acres. It is expected that many of the new and growing industries in this field will continue to seek suburban locations with good corridor access.

Recent reports have indicated little demand for water-dependent industry along the Buffalo waterfront due to market changes, lack of growth rate projected for water-dependent industry, and the fact that the availability of sites having access to processed water is not limited to the waterfront.

As of 1990, there were 700 vacant acres of industrial park space in Erie County. Given the annual absorption rate, the above figure is enough to accommodate the region's needs for the next 12-15 year period. Given the large amount of underutilized waterfront industrial land in the Town of Tonawanda, opportunities are present to redirect these vacant areas to alternative land uses.

The absorption rate for industrial park space at the Town's Fire Tower Park averaged 8 acres annually over an 8 year period. Based on market data, it is estimated that the '300 Acres Site' could absorb some 3.02 million square feet of light industrial and office space.

2. Residential

An evaluation of the need for residential units in the year 2000 indicates that there is likely to be an oversupply of units to satisfy Town population needs. The analysis was limited strictly to Town needs and assumed a year 2000 population of 79,650 and total households of 27,190. However, by using a parallel analytical technique, recent reports have indicated that the City of Buffalo will need 30,580 new units by the year 2000. It can be assumed that much of this demand can be met in the Town of Tonawanda.

The actual number of units which can be supported at the waterfront is certainly a function of numerous items including site availability, environmental conditions, and pricing structure. Since the waterfront and adjacent areas are the only substantial areas in the Town where vacant land exists, it is reasonable to assume that some residential uses could be accommodated at choice locations if certain other conditions are present. These are noted later in this section.

3. Marina

Demand for boat slips on the Tonawanda waterfront will come from three basic sources: latent demand, or boats that would dock in a marina if space were currently available; transfer demand, or boats captured from existing marina space; and new boats entering the market each year seeking dockage

space. A market analysis indicates that tapping area boating demand is limited more by a lack of available waterfront sites than by a lack of market strength.

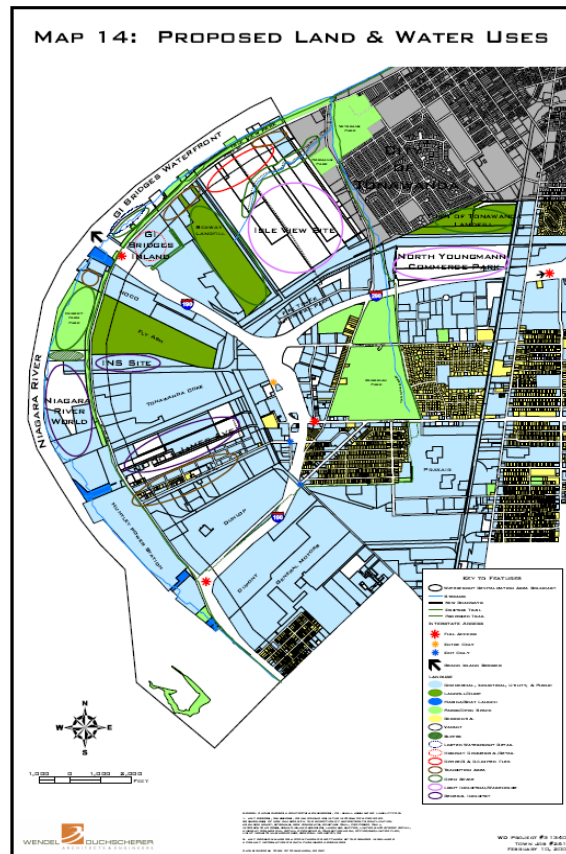
- a. **Latent Demand:** Local marina operators estimate that 25% of boat owners in Greater Buffalo would desire a boat slip. This yields a supply of 7,952 craft (of 31,809 total craft in 1987). Assuming present occupancies approaching 100%, the entire existing and proposed 1991 supply of slips is projected to be 4,362 slips. As a result, it is estimated that there is an unmet demand for approximately 3,590 slips. Halcyon projects that an attractively designed, well-located marina(s) on the Tonawanda waterfront could capture 20% to 30% of this latent demand, or from 700 to approximately 1,000 craft.
- b. **Capture from Existing Marinas:** The ability of a marina on the Tonawanda waterfront to capture demand currently being met by existing facilities depends, in large part, on the facility's location, access, fees, services, and design. However, these sources of demand will depend on a site-specific, detailed marina development program. A limited capture is possible.
- c. **Annual Growth Potential:** Erie and Niagara Counties have witnessed a substantial increase in the number of registered boats, particularly since 1985. This growth rate is conservatively projected to continue at approximately 3.0% annually into the early 1990s, yielding 1,937 new boats by 1991. Presuming 25% of these owners would desire boat slips, this results in an annual slip demand of 242 over this two-year period. Tonawanda's waterfront could capture 20% to 30% of this annual growth, providing demand for 97 to 145 slips.

Table 6: Marina Demand Analysis Summary Tonawanda Waterfront Region

	Demand	Unmet Demand(3)	Capture of Unmet Demand
Latent Demand	7,952(2)	3,950	@20.0 718 @30.0 % 1,077
Capture from Existing Marinas	N/A	N/A	N/A
Annual Growth Potential	1,937(4)	484(5)	@20.0% 97 @30.0% 145
TOTAL:			@20.0% 815 @30.0% 1,222
(1)	In Erie and Niagara Counties Only.		
(2)	Assumes 25% of total existing demand (31,309) would utilize boat slips.		
(3)	Existing slip demand @ 25% less existing and proposed marina slips (4,362).		
(4)	Growth compounded annually between 1989-1991.		
(5)	At 25%.		

C. Proposed Land and Water Uses

As noted above, the Town of Tonawanda undertook a land use study for the waterfront region in 2001-2002. The study process included a review of past studies, regulations and issues, and a thorough assessment of existing conditions, including infrastructure, existing land use, environmental features and concerns, and market indicators. Wherever possible, the data was mapped in a GIS format to facilitate analysis. These factors comprised the opportunities and constraints that determined feasible development options for the waterfront.



Map 14 – Proposed Land and Water Uses

The waterfront region in the Town of Tonawanda is in a period of transition. The area has a strong industrial heritage, but it is increasingly focused on waterfront recreational and scenic purposes. The Riverwalk, Isle View Park, Niawanda Park, Veteran’s Park, Fireman’s Park, Aqua Lane Park, the Town Boat Launch and the Two-Mile Creek Greenway are some of the recreational assets in or near the Town’s waterfront region. These amenities have increased public access and open space in the region, and are helping to change the character of the area. Former environmental concerns have largely been addressed. The area is ready for redevelopment in a new context—one that recognizes the importance of industrial and commercial uses, but that also increasingly accommodates recreational use, public access to the waterfront and the aesthetic potential of the area.

1. Southern Sector

The Southern sector includes lands south of Sheridan Drive in the Town of Tonawanda, including Strawberry Island. As noted above, most of the land uses in the southern sector of the waterfront are longstanding uses that are proposed to continue. Many are in public use, including the New York State Thruway, Aqua Lane Park, the Town Boat Launch, Strawberry Island and the Town's Water Treatment Plant. The industrial uses in this sector, such as General Motors, are major employers that are vital to the regional economy, and the Town supports continuation of these uses. These public and industrial uses are expected to continue into the foreseeable future. A small area near the City of Buffalo border is a stable residential neighborhood, bordered by a small commercial strip on the west side of River Road. While some redevelopment may occur in this area, it is expected it would be small scale and replaced by similar uses.

Land use recommendations in this sector are to maintain and improve existing uses. It is recommended that additional improvements to parkland and the Riverwalk through this sector be made, focusing on improving the availability and quality of public access. An example of the type of use to be promoted is the Sherwood-Two Mile Creek Greenway, which would create a link between the Two Mile Creek trail and the Riverwalk. Aesthetic improvements to existing trails and parklands and continued upgrading of facilities are also recommended.

2. Central Sector

This sector of the waterfront extends from Sheridan Drive on the south to the Grand Island Bridges. The southern portion of this sector is characterized by industrial uses, dominated by the Huntley Power Station property. It is anticipated that any development that occurs south of Sawyer Avenue will be industrial in nature. Over the long term, it is recommended that the residential area along Sawyer Avenue gradually transition to light industrial and commercial uses. The area from the northern boundary of the Niagara River World site south to the Huntley Power Station is a transition area between the heavily industrial lands of the southern portion of the waterfront and the more mixed uses to the north. It is recommended that new development in this area be focused on light industrial and commercial business. Mixed uses (commercial, parkland, retail and light industrial) should be encouraged in the northern portion of the central sector, including a proposed park at the Cherry Farm site. Recommendations for specific sites are as follows:

- a. **James Avenue:** Lands east of River Road along James Avenue, currently owned by NOCO, should be developed as small-scale businesses and industries, including industrial-services operations such as tool and die manufacturers and repair services. This type of development would be consistent with adjacent developed land uses. Only a small portion of this area falls within the waterfront revitalization area boundary.
- b. **Niagara River World:** This is a large (62-acres) site in one ownership. Redevelopment of the site is complicated by the presence of infrastructure and foundations from former users, and environmental concerns. It has a number of assets for industrial development, including an excess capacity of infrastructure, docking facilities, and good

connections to the interstate transportation system. Recommended land use is as a mixed-use facility, primarily industrial in nature. Water-dependent industrial uses are strongly encouraged on the riverfront portion of the parcel. Care will be taken that any development located along River Road maintain high design and landscaping standards.

- c. **East side of River Road across from Niagara River World:** These parcels are not vacant, but occupied by active, industrial uses that are expected to continue over the near term. Over the long-term, it is recommended that efforts be made to relocate the heavy uses occupying River Road frontage to less visible locations outside the waterfront revitalization boundary. Given adjacent areas, the site is likely to remain industrial, but redevelopment can take better advantage of rail and highway access, and have fewer negative impacts to the environmental and visual character of the area. Parcels on the east side of River Road are located a significant distance from the waterfront in this area, and non-water-related uses are appropriate. However, the visual impacts to the waterfront area should be considered in any redevelopment efforts, with an emphasis on improving landscaping, façades and other aesthetic features.
- d. **Cherry Farm:** This 57-acre site is a beautiful and strategically located parcel which offers excellent scenic views along a shoreline that extends nearly one-half mile along the River. Although it formerly contained low levels of hazardous wastes, the site has been successfully remediated, with provisions that facilitate its redevelopment as a park. The Town funded a park site master plan that includes nature trails through its 18 acres of natural wetlands, an interpretive center, and other recreational improvements. The trail system is designed to link into the Riverwalk to extend shoreline access. The Town is fully supportive of redevelopment of this site as a regional State Park.
- e. **Parcels adjacent to Cherry Farm:** The parcel to the south of the Cherry Farm site is vacant. Any development proposal for this site should take into account potential impacts on the Cherry Farm parcel, and be compatible with the proposed park. A trucking company currently occupies the parcel to the north of Cherry Farm. This is not a water-dependent or water-enhanced use, and ideally should be relocated to the non-waterfront side of River Road. As a viable business and an important component of Tonawanda's economy, the company should not be displaced, but if it becomes feasible at some point in the future, relocation should be supported. Location on the inland side of River Road would be acceptable.

3. Northern Sector

This sector has the greatest potential for successful redevelopment, away from its industrial past to a new image and identity. While the proposed waterfront revitalization area extends from the River to 500 feet east of the eastern right-of-way of River Road, land use plans for this sector encompass the entire area bounded on the north by the northern Town border, on the east by Military Road, and on the south by the Youngmann Expressway (I-290). Much of this land is vacant or underutilized, and includes significant acreage available for redevelopment. The long-term goal is to redevelop this area

with a focus on recreational amenities, high quality commercial development and increased public access.

Isle View Park and the Riverwalk set the image for the waterside development. Development should be concentrated on public access and parkland, with some limited commercial activity (e.g. small snack bar). On the east side of River Road, a mix of land uses is proposed, including commercial, office, retail, and research and development within the waterfront revitalization area, and light industrial and warehousing on the properties that are farther inland. Along River Road, the focus is on higher quality development (office park and highway retail). In contrast to former land use plans, residential development is not seen as an appropriate use in this area. Earlier plans for residential use were premised on the relocation of River Road to the east, which is no longer a viable option. The proximity to industrial uses and the potential for environmental issues further mitigate against the possibility of residential development in this area. Open space and possible public access along Rattlesnake Creek are recommended.

Recommendations for specific sites are as follows:

- a. Grand Island Bridges parcel- waterfront:** This vacant, wooded site is approximately 10 acres in size. To the north of this area is an active water-dependent industrial use (dockage for oil tankers) that separates the site from Isle View Park. Environmental issues (floodplains and wetlands) limit the amount development that is feasible. The site has excellent access and visibility from the Thruway. It is located directly on the Riverwalk, and provides excellent views of the River. A riverfront park in this location would fill in a gap in the ribbon of green space along the River from Niawanda in the City of Tonawanda to the proposed Cherry Farm Park to the south. Some limited ancillary park-related commercial development, such as a visitor center, small-scale convenience retail or a restaurant, is possible. Any development that occurs in this location should be a water-dependent or water-enhanced use, and provide for public access.
- b. Grand Island Bridges parcel-inland:** This site is located immediately north of the Grand Island Bridges on the east side of River Road. It is approximately 25 acres in size. Its high visibility and ease of access from the interstate system makes it an attractive location for highway-related retail activity, such as a truck depot or restaurant. Its proximity to the bridge toll plazas and the presence of oil storage tanks at the rear of the parcel limit its use for higher-value development. A new commercial use at this location would provide a transition between the industrial uses at the rear of the parcel and the more recreational-oriented uses (existing and proposed) on the opposite side of River Road. Any new development on this site should maintain high design standards, including a buffer to screen the oil tanks, and the site plan should include accommodations for pedestrians and bicyclists.
- c. Isle View Site:** This site fronts River Road on the inland side across from Isle View Park. It is primarily vacant, and has excellent potential for redevelopment. Rattlesnake Creek

bisects the property, running approximately parallel to River Road. The frontage property, which is within the waterfront revitalization area, is proposed as a high quality office park with some related commercial development. To maximize the value and appeal of the location, the site plan should establish strong visual and physical linkages to trails and parks adjacent to the site. For example, Rattlesnake Creek and its associated wetlands should be maintained as open space, possibly with limited trail access connecting to the Two-Mile Creek trail system. This will help establish a new image for the area, distinct from the industrial nature of the waterfront to the south, and provide additional access to waterfront assets.

The site is very large, extending over 200 acres inland. Although the interior portions of the site are not within the waterfront revitalization area, they are adjacent and were included in the land use planning efforts, along with the vacant parcel known as the North Youngmann Commerce Park, across Town Mile Creek Road from the Fire Tower Industrial Park. These properties are proposed for light industrial development, including warehousing and flex-type space.

For any development to occur at the Isle View site, some site improvements, including improved roadway access and the extension of utilities to the interior of the site would be required. Coordination of multiple owners or site consolidation would also be needed. Most likely a public-private partnership will be required to effectively accomplish land use plans for this site.

- d. **Landfill sites:** The Seaway Landfill, adjacent to the waterfront revitalization area, is inactive. Eventually, as the closure process is completed, it may be suitable for low-intensity recreational uses such as walking trails and open space. The Town landfill, although outside the boundaries of the waterfront area, could be redeveloped in a similar manner. Such reuse is encouraged, as it will help reinforce the transition of the Tonawanda waterfront to a more recreational-oriented area. It will also further public access and provide a more attractive neighboring use for planned adjacent uses.
- e. **River Road Corridor Improvements:** To successfully change the image of the area and promote waterfront revitalization, it is very important that any new development be carefully implemented. Techniques such as adequate buffers, high design standards and careful site planning will be utilized to ensure a high quality of development.

For all properties located along River Road, measures to help improve the visual image of the area are proposed. This is true for small, individual uses as well as more large-scale projects. Aesthetics and streetscape issues help set the tone for the area. Detailed site-specific landscape plans were made for all River Road frontages south of the bridges in 1991. These plans can serve as a basis for consideration for other properties along River Road. Also, to the extent feasible, current owners (including the NYS Thruway Authority) should be encouraged to invest in improvements and landscaping.

In addition, there are several uses along the waterfront which are not water-dependent or water-enhanced, or which do not complement the character that the Town is attempting to establish in this area. Over time, as opportunities are presented, it should be a policy to encourage these uses to relocate and be replaced with more compatible uses.

These recommendations are designed as a guideline for the types of development that are most appropriate for each location. They are not intended to preclude consideration of other types of development that are compatible with the Town's goals for this area and the policies of the LWRP. The intent of these proposed uses is to create a vital, active mix of uses in the waterfront region that are economically sound, promote public access, and improve the visual and physical character of the area.

The revitalization of Tonawanda' waterfront will be a challenge, requiring a long-term commitment and cooperative action on the part of both the public and the private sector. However, there is significant potential to transform key portions of the waterfront into attractive and productive new uses.

D. Proposed Projects

1. Cherry Farm Park

The Town remains committed to implementing the Cherry Farm Park Master Plan, and will continue to take steps to bring this project to fruition. This will increase public access, and implement policy 21A.

2. River Walk- Further Improvements/landscaping

The River Walk has been a successful project which has opened public access along the length of the waterfront in Tonawanda. The Town, in conjunction with the County, is committed to continuing to improve the aesthetics of the trail, and to provide additional spurs and linkages.

3. Sherwood-Two Mile Creek Greenway

The Town, in conjunction with Erie County, is in the process of implementing the Sherwood-Two Mile Creek Greenway. This trail system will extend the existing Two-Mile Creek Trail, extending it through the Praxair property, along Sheridan Drive, and connecting to the Riverwalk at the foot of Sheridan. This will complete a loop trail, and expand the public's ability to use and enjoy waterfront resources.

4. River Road Corridor Improvements

Instituting aesthetic improvements along River Road will improve the visual character of the waterfront region in the Town of Tonawanda. This will require cooperation with landowners and developers, and enforcement on the part of the Town of the standards and requirements provided in the new zoning regulations.

5. Niagara River World redevelopment

This is the responsibility of the private owner of this site. The Town will remain in communication with the landowner and the Tonawanda Development Corporation to determine how they can facilitate redevelopment of this site.

6. Town Boat Launch Improvements

The Town will support expansion and improvements to the Town Boat Launch on Aqua Lane to improve the public access to the water. Continued upgrades and improvements can be instituted overtime increasing the different types of water usage in the area.

7. Aqua Lane Improvements

The Town supports private business activities, additional improvements, and enhanced aesthetics in the Aqua Lane area.

8. Riverfront Park

The Town supports adding public trails, reserving the wetlands, and allowing limited commercial development in the area, in order to increase public access. Also the Town will consider the potential incorporation of adjacent lands into the park area.

9. Isle View Park Extension

The Town will support continued upgrading and improvements to Isle View Park.

10. Strawberry Island

The Town will support State efforts for reclamation and preservation of Strawberry Island.

11. Isle View Development

The Town will encourage the consolidation of parcels to facilitate economic development efforts within the Isle View development site area on the inland side of River Road. The Town will also consider other actions supportive of economic development efforts, such as assistance with extending infrastructure, or offering economic development zone incentives for development on the site.

12. Huntley Station - Visual Improvements

SECTION V - Techniques for Local Implementation of the Program

A. Local Laws and Regulations Necessary to Implement the LWRP

The Town of Tonawanda has several local laws and regulations that help implement the provisions of the LWRP. The following discussion briefly describes existing implementation mechanisms, and lists additional mechanisms that can be used to achieve local policy objectives.

1. Building, Plumbing and Electrical Standards (Chapter 54)

This local law requires that all development be connected to sanitary sewers, and that any wastes entering the sewer system will be diluted or neutralized to meet the requirements of the Sewers Law (Chapter 165). The size, materials, location and other specifications of sewer lines are controlled to ensure proper disposal of wastes and prevent polluted waters from entering public waters. Regulations governing stormwater drainage are also provided. This law helps to implement LWRP provisions for maintaining and improving water quality, and minimizing environmental degradation from wastes.

2. Drainage Control Law (Chapter 73)

This law is intended to plan for the present and future use of natural drainage ways and watercourses in the Town of Tonawanda. It prohibits improper drainage, unwise diversion, use or obstruction of streams or natural drainage courses without approval. All owners and occupants of property are required to keep any natural drainage way clear and unobstructed. This law helps implement policies that protect and restore ecological resources, and helps to minimize damages from flooding.

3. Environmental Quality Review (Chapter 76)

This law establishes a procedure to incorporate environmental factors into town planning, review and decision-making processes. It requires that any action other than those classified as Type II must fully comply with the SEQRA requirements of this Chapter (Chapter 76) and Part 617 of Title 6 of NYCRR.

4. Flood Damage Prevention Law (Chapter 92)

This local law minimizes the likelihood of property damage due to flooding by strictly controlling development in areas where flooding may occur. As currently written, the law prohibits all development except parks, flood protection structures and municipal facilities in areas designated as 100-year floodplains. The Town is considering changes to this law to allow additional permitted uses within the floodplain if they conform to strict standards of construction designed to minimize potential property and personal damage due to flooding. If the change is adopted, the requirements will be consistent with the standards provided in Policy 11.

The law implements LWRP policies by controlling the siting of buildings and structures to minimize property and personal damage due to flooding. In conformance with the National Flood Insurance Program, and to qualify for participation in this program, the law mandates that all uses, including

utilities, be located and constructed to minimize or eliminate flood damage. A development permit is required prior to development. No development is allowed within the floodway, unless a technical evaluation demonstrates that it will not result in any increase in flood levels during the occurrence of the base flood discharge. The statute also sets forth penalties for offenses.

5. Local Waterfront Revitalization (Local Consistency Law) (Chapter 129)

(See Appendix B)

The Local Consistency Law for the Town of Tonawanda requires that all Type I and Unlisted Actions (as defined by the SEQRA implementing regulations) directly undertaken, approved or funded by the Town will be reviewed by the Town Board for consistency with the Town of Tonawanda LWRP. No actions may be implemented unless the Town Board finds that the actions are consistent with policies and purposes of the LWRP, and certifies their consistency. By adopting this local law, the Town has established a legal framework for reviewing actions within the LWRA, and has committed itself and its agents to comply with the provisions of the LWRP.

6. Sewers Ordinance (Chapter 165)

The Sewer Ordinance regulates wastewater disposal procedures in the Town of Tonawanda. The law classifies and regulates industrial and non-industrial discharges and establishes permit and pre-treatment requirements. All developments used for human occupancy, employment, recreation or other purposes must connect to public sewers. No sewage or other polluted waste may be discharged to any sewer or any natural outlet unless it has been treated to fall within acceptable standards. The law specifies what types of wastes are prohibited and restricted. The Sewer Ordinance prohibits any discharge of any sewage or other polluted waters to any natural outlet within the Town, except where suitable treatment has been provided or where a federal national pollutant discharge elimination system (NPDES) permit has been duly issued and is currently valid for such discharge. The statute enumerates many types of wastes that are prohibited, including any which would cause the effluent from the sewage treatment plant to be unable to meet clean water standards. The statute also provides the Town the right to restrict any discharges it deems may pollute the receiving stream. The Town is authorized to refuse wastes, require pretreatment of wastes, control the quantities or rate of discharge, or require payments to offset the additional cost of treating wastes that do not comply with these standards. The discharge of stormwater, groundwater, roof runoff, subsurface drainage and other non-polluted waters or wastes into sewers or a natural outlet is subject to approval by the Town Plumbing Inspector. Such waters may not be discharged into sanitary sewers if a closed storm sewer is available. This law implements policies that protect and improve water resources, and minimize environmental degradation from solid waste and hazardous substances and wastes.

7. Smoke and Air Pollution (Chapter 173)

This chapter regulates the emission of smoke and air pollution in the Town of Tonawanda. The emission of dense smoke is prohibited, and other types of emissions, such as dust, soot, cinders, fly ash, noxious acids, vapors, fumes or gases, are regulated. Any and all installations which involve or affect the discharge of fumes into the atmosphere are subject to review and approval. Approval is also required to

construct, alter or use any fuel- or refuse-burning plants, equipment or devices, which must meet certain standards specified in the law. A certificate of operation is required for such to operate, with annual inspections to ensure continued compliance. This law implements policies pertaining to air quality.

8. Soil Removal (Chapter 179)

This law prohibits any excavation, removal or storage of earth, sand, gravel, rock, topsoil or other similar material, except for excavation necessary for construction of improvements, without the approval of the Town Engineer or Supervising Building Inspector. Any excavated area must have an approved ground cover for protection from erosion. No excavation may affect town drainage facilities, water mains, sewer lines or streets without approval of the Town Engineer or Supervising Building Inspector, and no surface water or stormwater shall be discharged directly into municipal facilities or drainage systems without approval. This law implements flooding and erosion policies, water quality policies and protection of ecological resources.

9. Solid Waste Management (Chapter 181)

This law establishes requirements for solid waste management, including regulation of types of wastes to be collected and the establishment of a curbside recycling program. It defines what materials are to be recycled, and specifies the proper preparation and disposal methods to be utilized. It prohibits the collection of hazardous wastes. This law implements policies that pertain to environmental quality.

10. Trees and Shrubs (Chapter 197)

This law requires that maintenance, planting, care, removal and other activities related to trees or shrubs located within the Town's rights-of-way on any public street outside the limits of the Village of Kenmore are the responsibility of the Superintendent of Highways of the Town of Tonawanda. Replacement trees shall be planted whenever a tree has been removed or destroyed. Intentional damage to public trees is prohibited, and the statute requires adequate protective barriers around public trees that are in danger of injury due to construction. This law protects natural resources within the LWRA and the Town.

B. Proposed Local Laws Necessary to Implement the LWRP

To implement the policies and provisions of the Town of Tonawanda Local Waterfront Revitalization Program, the following amendments shall be made to the Town Code. In particular, the Town Zoning Ordinance and Zoning Map shall be revised.

1. Zoning Law (Chapter 215)

Existing zoning in the waterfront region does not effectively direct development in the waterfront region of the Town. Changing circumstances dictate that the vision upon which the zoning districts are premised is no longer viable. For example, the Waterfront Residential district is viable only if River Road was relocated, which is no longer being considered. Provisions intended to strictly control development are seen as too restrictive. The types of uses that are allowed are limited, and virtually all development

requires a special use permit. Particularly in the southern district, zoning boundaries split large parcels, complicating development plans. All these factors contributed to stagnation, inhibiting development, particularly in areas where redevelopment is already a challenge. Other areas of the Town are experiencing redevelopment, while essentially no new private development is occurring along the waterfront.

The zoning districts for the waterfront region in the Town of Tonawanda have been rewritten to implement the provisions of this proposed amendment to the Town's LWRP. In essence, the new zoning ordinance repeals the former waterfront zoning districts (W-1, W-2, W-R and W-ID), and creates new waterfront districts consisting of the Waterfront Mixed Use (WMU), Office/ Research and Development Use District (O-RD), Retail-Highway Commercial Use District (RHC) and a new Waterfront Industrial District (WID). Boundaries of the new districts were based on a new land use plan prepared for the waterfront district, and do not correspond to the boundaries of the previous districts. In addition, a River Road Overlay district is proposed to manage growth and provide additional standards for development for properties fronting on River Road. These zoning districts apply to the northern and central sectors of the waterfront revitalization area. Zoning remains unchanged in the southern sector, which is essentially fully developed.

The Waterfront Mixed Use District (W-MU) is proposed on the shore of the Niagara River, extending from the northern border of the Town of Tonawanda with the City of Tonawanda, southward to the northern boundary of the parcel currently occupied by Niagara River World. It incorporates lands between the Niagara River and River Road. District regulations permit a variety of public and private water-related park uses, marinas, boatyards, hotels, retail stores and restaurants and other water-related commercial activities. Water-dependent facilities, such as docks or pipelines, are allowed as a specially permitted use, if they are accessory to an industrial development in the adjacent WID or G-I districts. Provisions within the district ensure that views are protected and that pedestrian access is encouraged.

The Office/Research and Development Use District (O-RD) is proposed on the land side of River Road at the northern end of the waterfront district. This district allows a variety of commercial uses, such as offices, laboratories, or research and development facilities. Additional uses, such as restaurants, retail, lodging, schools and a limited amount of warehousing are allowed with a special use permit. Development must be set back a minimum of 50 feet from Rattlesnake Creek and its tributaries. The provision of pedestrian access is encouraged in the required open space.

The Retail-Highway Commercial Use District (RHC) is proposed on the land side of River Road between the O-RD district and the Grand Island Bridges. Allowed uses include restaurants, retail stores, motels and other commercial uses. It is designed primarily to provide for highway-related uses while protecting pedestrian access and promoting higher design standards.

The Waterfront Industrial District (WID) is proposed to allow controlled industrial development at appropriate locations in the waterfront area. Permitted uses include public and private parkland, light industry, wholesale businesses, warehousing, research facilities, offices and other business and

professional uses. Development must be set back a minimum of 50 feet from Two-Mile Creek, Rattlesnake Creek and their tributaries, with public access encouraged in the buffer area.

In addition, a River Road Zoning Overlay is proposed for properties that front on River Road within the waterfront revitalization area. The intent of the Overlay is to better manage and accommodate business growth along the River Road corridor in a manner that improves visual character, protects adjoining environmental resources and enhances the character of the area as an important gateway to the Town of Tonawanda and its waterfront. The Overlay, which is divided into three subareas to reflect varying character along the corridor, supplements the underlying zoning districts by requiring additional design and landscaping standards for development within the Overlay area.

Under the proposed zoning, only uses which are preferred are allowed by-right. Uses which are acceptable, but require greater controls must receive special use permits. To promote future flexibility, other uses not specifically listed may be allowed with a special use permit, if the Town Board, in consultation with the Planning Board, deems them consistent with the purpose and intent of the district, and compatible with other permitted uses. Under existing zoning districts, virtually all non-park uses require special use permits, which tend to inhibit private sector investment in the waterfront region.

The proposed regulations provide standards for landscaping, fencing, parking, storage and other design issues. For properties in the WMU district, which encompasses the waterfront side of River Road for all of the northern and most of the central sectors of the waterfront revitalization area, setbacks from the Niagara River (50 feet) and viewshed protections are incorporated. Height, front setbacks and lot coverage requirements are set for all waterfront districts.

In addition to the requirements contained in the district regulations, all development within 500 feet of the right-of-way of River Road must conform to additional design and aesthetic regulations contained in the River Road Overlay district. This district is intended to better manage and accommodate growth along River Road, improve the visual character of the waterfront area along its main access road, and provide additional protection to environmental resources. Recognizing that the character of the River Road corridor varies along its length, the Overlay establishes three separate subareas, and design regulations are tailored to each subarea.

By allowing preferred uses by right, the proposed districts encourage appropriate development along the waterfront. The regulations provide sufficient flexibility to promote new investment in the waterfront area in Tonawanda. The types of allowed uses were based on goals for the waterfront and policies of the LWRP, balanced with a realistic understanding of local and regional development trends as voiced by local economic development specialists and real estate professionals. They are, therefore, supportive of realistic, achievable redevelopment. At the same time, the regulations contain enough standards and guidelines to provide for attractive, high quality development. Structures must be scaled to be appropriate to the capacity of the site.

The proposed zoning regulations give precedence to water-dependent or water-enhanced uses on properties located along the river. Permitted uses in the Waterfront Mixed Use district that

encompasses all of the riverfront from Niagara River World north include water-dependent uses such as parklands, docks, fishing facilities, marina, boatyards and boat storage facilities, commercial excursion and charter fishing boat facilities. Water-enhanced uses that are allowed include visitor centers, lodging and small-scale retail stores and restaurants, with the intent that these commercial uses act as support services for visitors to the recreational assets in the area. The Waterfront Industrial District encourages water-dependent or water-enhance industrial or commercial uses on lands located along the Niagara River. Other waterfront zoning districts that allow a greater variety of uses are located on the inland side of River Road and not adjacent to coastal waters. By allowing preferred uses by right, the proposed zoning regulations simplify permitting procedures required for approval of development proposals in the waterfront area while still providing adequate protections.

2. Zoning Map Revisions

As discussed above, there are significant changes proposed to the districts and their boundaries. [Map 7](#) depicts proposed new zoning districts, and the boundaries of the River Road Overlay district. Zoning district boundaries were determined through the process of developing a land use plan for the northern waterfront region.

3. Revisions to Local Consistency Law

To be consistent with this amendment to the LWRP, the Local Consistency Law has been amended to remove references to residential development.

C. Management Structure Necessary to Implement the LWRP

1. Official Overall LWRP Coordination

The Town Board is the Lead Agency for all LWRP activities, and the Town Supervisor is designated as the local official responsible for overall management and coordination of the LWRP. Successful implementation of the Local Waterfront Revitalization Program will require the participation of the Town Board, the Planning Board, the Environmental Review Committee, the Engineering Department and the Building Department.

2. LWRP Management Process

The Local Consistency Law dictates that any action which is a Type I or Unlisted action within the coastal area must have a Waterfront Assessment Form (WAF) prepared.

When an application for approval or funding comes before any agency, department, office of other body of the Town of Tonawanda, the applicant shall fill out a WAF. The agency receiving the WAF shall provide it, with all relevant supporting documentation (maps, EAFs, plans, etc.), to the Town Board within ten days of its submission. The Town Board has thirty days to make a determination of consistency, unless an EIS is being prepared, in which case the SEQRA requirements supercede this timeline. The Town Board has the authority, in issuing a ruling on consistency, to impose practicable and reasonable conditions on any action to ensure its consistency.

3. LWRP Management Responsibilities

A number of agencies and departments are directly involved in ensuring that consistency reviews are completed for projects within the Local Waterfront Revitalization Area (LWRA). These agencies, with their responsibilities are:

- a. Town Planning Board is authorized to review and submit comments on applications for site plan review in the LWRA.
- b. Town Building Department, which reviews all applications for site plan review, shall be responsible for providing WAFs to individuals desiring to undertake certain work within the district pursuant to the Town Zoning Ordinance requirements. The Building Department shall require applicants to provide a completed WAF for consistency with the LWRP.
- c. Environmental Review Committee, reviews all Type I and unlisted actions as defined by SEQRA regulations, and shall evaluate consistency with the LWRP.
- d. Town Engineering Department shall provide waterfront assessment forms to applicants proposing activities within the coastal zone pursuant to SEQRA requirements.
- e. Town Board has the authority to certify all actions subject to SEQRA requirements within the coast zone as to their consistency with the LWRP.

4. Consistency Provision for Local Actions

All proposed Type I and Unlisted actions as defined by the State Environmental Quality Review Act within the Waterfront Revitalization Area will be subject to scrutiny by the Town Board for consistency with adopted waterfront policies.

5. Local Review of Proposed State and Federal Actions

Any proposed State and federal actions within the Town of Tonawanda's waterfront revitalization area are subject to review in accordance with the guidelines established by the New York State Department of State, as set forth in Appendix C.

6. Project Implementation

The Town of Tonawanda will work with the Town of Tonawanda Development Corporation (TTDC) to coordinate implementation of key projects for the waterfront area. As the local governmental entity, the Town Board and its several departments will be responsible for the exercise of powers and contribution of resources (i.e. staff and funding) in their respective jurisdictions (e.g. community development, engineering, parks and recreation, building). The TTDC, as the Town's primary economic development agency, will function as the main catalyst for business and industrial development, including the possible extension of economic development zone benefits, as appropriate, to new development within the waterfront area.

D. Financial Resources Necessary to Implement the LWRP

The implementation of the proposed projects identified under Section IV will take a mix of funding from private and public sectors. The Town has successfully accomplished many valuable projects in its waterfront area, and will continue to pursue outside funding sources and creative financing mechanisms to assist in its efforts to revitalize the Town of Tonawanda waterfront. Potential funding sources include economic development funds, parks development funds, and transportation funding for enhancements and trails.

The Town is committed to directly funding portions of the proposed projects, including the extension of water lines to interior lands to facilitate commercial and light industrial development in the lands identified for this use. The Town will also seek additional grant funding, particularly for important public access projects, such as Cherry Farm Park.

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

State actions will affect and be affected by implementation of the LWRP. Under State certain State 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 is also likely to be necessary to implement specific provisions of the LWRP.

The first part of this section identifies the actions and programs of State and Federal agencies which should be undertaken in a manner consistent with the LWRP. This is a generic list of actions and programs, as identified by the NYS Department of State; therefore, some of the actions and programs listed may not be relevant to this LWRP. Pursuant to the State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), the Secretary of State individually and separately notifies affected State agencies of those agency actions and programs which are to be undertaken in a manner consistent with approved LWRPs. Similarly, Federal agency actions and programs subject to consistency requirements are identified in the manner prescribed by the U.S. Coastal Zone Management Act and its implementing regulations. The lists of State and Federal actions and programs included herein are informational only and do not represent or substitute for the required identification and notification procedures. The current official lists of actions subject to State and Federal consistency requirements may be obtained from the NYS Department of State.

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

- 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.

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.

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- Repacker of Drugs and/or Devices
 - 2.08 Storekeeper's Certificate

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.

ENERGY PLANNING BOARD AND ENERGY OFFICE

- 1.00 Preparation and revision of the State Energy Master Plan.

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 and grants of easement of land under water, 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.

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

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

- 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.

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

- 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

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.

THRUWAY AUTHORITY /CANAL CORPORATION/CANAL RECREATIONWAY COMMISSION (regional agency)

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of land and other resources under the jurisdiction of the Thruway Authority, Canal Corporation, and Canal Recreationway Commission.
- 2.00 Facilities construction, rehabilitation, expansion, or demolition.
- 3.00 Permit and approval programs:
 - 3.01 Advertising Device Permit
 - 3.02 Approval to Transport Radioactive Waste
 - 3.03 Occupancy Permit
 - 3.04 Permits for use of Canal System lands and waters.
- 4.00 Statewide Canal Recreationway Plan

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

- 1.00 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

- 1.00 Fisheries Management Plans

DEPARTMENT OF DEFENSE

Army Corps of Engineers

- 1.00 Proposed authorizations for dredging, channel improvements, break-waters, 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 USACE 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.

INTERSTATE COMMERCE COMMISSION

- 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.

NUCLEAR REGULATORY COMMISSION

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

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 Intermodal Transportation
- 11.509 Development and Promotion of Domestic Waterborne Transport Systems

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

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

GENERAL SERVICES ADMINISTRATION

39.002 Disposal of Federal Surplus Real Property

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)

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

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)

* 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

State Actions and Programs Necessary to Further the LWRP

1. Department of State
Funding approval for LWRP implementation of various planning, design and construction projects, through the Environmental Protection Fund.
2. 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.
3. New York State Department of Transportation
Development of additional transportation enhancements and trails in the waterfront region and development of the Strawberry Island artificial reef.

4. New York State Department of Environmental Conservation
Development of Strawberry Island artificial reef, and funding approval for grants available through the Environmental Protection Fund and Clean Water/ Clean Air Bond Act for water quality priorities.
5. Empire State Development/ Empire State Development Corporation
Assistance with economic development efforts, including the possible revision of Empire Zone boundaries.
6. Office of Parks, Recreation, and Historic Preservation
Funding approval under programs such as the Land and Water Conservation Fund and the Clean Water/Clean Air Bond Act for development of waterfront parkland.

Appendix A – Zoning

Article IXA W-MU Waterfront Mixed Use District (§ 215-70 - § 215-70.5)

[Added 9-9-1996 by L.L. No. 8-1996

Editor's Note: This local law also provided for the repeal of former §§ 215-70, Purpose of Waterfront District; 215-70.1, Performance standards use permit required in Waterfront District; 215-70.2, Waiver of the performance standards use permit in Waterfront District; and 215-70.3, Design standards for Waterfront District. See now Arts. IXA through IXF for provisions relating to specific waterfront districts; amended 11-24-2003 by L.L. No. 6-2003]

§ 215-70 Purpose and intent

The purpose and intent of the W-MU Waterfront Mixed Use District shall be as follows:

- A. To promote and accommodate the development of a mix of uses which are designed to recognize the unique and irreplaceable character of the Niagara River shoreline. The uses should be designed to promote public access and use of the river shoreline while protecting and utilizing the unique features and vistas throughout the district.
- B. To provide for appropriate development in this area, which is to the west of River Road and includes many properties already being used for or designated for use as parkland or public space. Permitted development should be sensitive to the size of the properties and to any environmental conditions that may limit the amount of development the site can accommodate.
- C. To allow and encourage small commercial uses that complement the area's recreational, tourism, and parkland facilities while being sensitive to the physical and environmental limitations, such as limited space, floodplains and wetlands, characterizing much of the land within this district.
- D. To encourage flexibility in design and use of sites within the shoreline area while preserving the unique environmental features and maintaining or reviving the aesthetic qualities of the waterfront area. The flexibility of design will be accomplished by establishing minimal dimensional requirements for principal uses combined with site plan review and design standards which will ensure development which is compatible with the goals of the Local Waterfront Revitalization Program and the Waterfront Land Use Plan and any other relevant planning documents.

§ 215-70.1 Permitted uses

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Public and private parklands, trails, docks, fishing facilities, boat-launching facilities and picnic areas.
- B. Marinas and yacht clubs.
- C. Boatyard and boat storage facilities.
- D. Commercial excursion and charter fishing boat facilities.
- E. Visitor center, exhibit and interpretive facilities.
- F. A motel, hotel or hotel complex.
- G. Retail stores, restaurants and other water-enhanced uses, at a scale to be determined by the Town Planning Board, which are appropriate for the location of the site and surrounding land uses.
 - (1) Individual uses shall not exceed 5,000 square feet in total retail sales area.
 - (2) For stores and shops proposed to be connected in a plaza, the total structure or plaza shall not have a combined size in excess of 15,000 square feet.

§ 215-70.2 Specially permitted uses

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Combinations of permitted uses, based upon the determination of the Town Building Department, in consultation with the Town Planning Board, that such combinations are allowed for the waterfront area.
- B. Development of water-dependent facilities, such as docks or pipelines for the transfer of materials between land and river, as an accessory to industrial development elsewhere.
- C. Other uses not specifically listed above but which, based on a determination by the Town Board, in consultation with the Town Planning Board, are deemed appropriate for the waterfront area, are similar in nature to the other permitted uses or are compatible with the purpose and intent of this district.

§ 215-70.3 Accessory uses

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

§ 215-70.4 Dimensional requirements

- A. Minimum lot size. The required lot size for permitted uses shall be established by the Town Building Department in consultation with the Town Planning Board during the site plan review and approval process. The required minimum lot size shall be based on the amount of land necessary to adequately accommodate the proposed principal use as well as all parking, loading, landscaping, open space, setbacks, public access and traffic access. The required minimum lot

size shall also be based on the relative intensity of the proposed use, the need to protect or buffer the proposed use and the need to protect or buffer the use from scenic views or vistas.

- B. Setback requirements. Setbacks from buildings or structures for all other buildings and structures on the lot and from property lines for all principal structures and accessory uses shall be determined by the Town Building Department in consultation with the Town Planning Board during site plan review and approval and shall be based on the following guidelines:
- (1) Principal buildings, parking areas and accessory structures, excluding such facilities as docks, piers, wharves, boat ramps and other water-dependent related structures, shall be set back a minimum of 50 feet from the adjacent high-water mark of the Niagara River.
 - (2) Principal buildings, parking areas and accessory structures shall be set back a minimum of 35 feet from any property line, public pathway (closest edge) or road right-of-way, except for River Road where a fifty-foot setback must be maintained.
 - (3) Setbacks shall be established with due consideration of provisions of fire protection services and adequate access for emergency equipment within and around the site and abutting sites.
 - (4) Setbacks shall be established with due consideration of the protection and preservation of the unique nature and character of the shoreline area, scenic views and vistas and the specific goals of this district.
- C. Maximum building and other structure heights.
- (1) Maximum building heights for all permitted principal uses shall not exceed 35 feet. The Town Building Department shall also have the power to establish maximum principal structure heights of less than 35 feet in such cases where a visual analysis of the site prepared and submitted by the applicant and reviewed by the Town Building Department demonstrates that such height limitation is required to protect the scenic view or vistas or to maintain the overall aesthetic quality of the waterfront area.
 - (2) Accessory structures shall not exceed a maximum height of 20 feet unless otherwise specified or regulated in this chapter. These structures may be limited in their height dependent on a visual analysis as discussed above.
- D. Maximum lot coverage. The total overall ground coverage of all principal and accessory buildings and structures, parking areas and other impervious surfaces on any lot shall not exceed 65% of the total lot area. The remainder shall be open green space and/or landscaped areas.

§ 215-70.5 Additional design standards and requirements

The following additional design standards and requirements shall apply throughout the district. In addition, all development shall also conform to the requirements of the River Road Overlay (§ 215-70.26). Where a conflict may exist between these requirements and the Overlay requirements, the Overlay requirements shall be used.

A. Landscaping, screening and buffering.

- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
- (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.
- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
- (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.

B. Fencing. The use of fencing is discouraged within this district. Where used, the fencing shall be limited to four feet in height and shall be designed to not visually screen views of the river. For purposes of outside storage of materials directly associated with the commercial enterprise on said lot, fencing of a limited area is permitted.

C. View protection.

- (1) The site shall be developed in such a way as to maximize view opportunities at the river's edge and view corridors throughout the development. Site layout and design shall consider view corridors from the Riverwalk and any adjacent public open space. Important views should be protected and enhanced to the maximum extent practicable. To ensure visual access to the water, at least 25% of the shoreline shall be contained within view corridors. The total width of the view corridor shall be measured by dividing

the total width of the view corridors by the total shoreline in a single development parcel.

- (2) The Town Building Department, at its discretion or at the suggestion of the Town Planning Board, may require the applicant to provide information which will allow an adequate review of the potential impact of the development on the scenic resources of the area. Information that may be requested may include:
 - (a) Photographs of all existing scenic vistas at the site.
 - (b) Schematic plans and sections showing clearly the impact that development will have on the scenic vistas.
 - (c) Elevations or perspective sketches showing the proposed development and its impact on views to the river from surrounding public open space and/or public rights-of-way.
 - (d) Based on the findings of the visual assessment, the Town Building Department may limit the height or length of any proposed structure and may recommend changes in the arrangements of buildings if in its determination the proposed limitations or changes will protect or enhance the visual character.

D. Parking.

- (1) All permitted uses shall comply with the regulations outlined in Article XIII of this chapter and in the River Road Overlay for the standards for design of parking areas.

Editor's Note: See Article IXE, River Road Overlay District.

Where these requirements differ, the provisions of the Overlay shall supersede provisions of Article XIII.

- (2) To encourage pedestrian activity and accessibility, the Town Building Department may reduce minimum off-street parking requirements, taking into account the proposed use, pedestrian accessibility and other reasonable indications that the amount of parking is adequate to meet estimated parking needs.
- (3) Employee parking facilities shall not be located within any setback areas. Parking areas for visitors, customers or clients may be located within a setback area, provided that at least 50% of the area is landscaped. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (4) All parking areas shall be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained.

- (5) Parking areas shall not exceed 10,000 square feet of uninterrupted paving. Landscaped islands or medians or divider strips shall be placed within rows of parking spaces so that no row of parking exceeds 15 spaces without being interrupted by landscaping.
- E. Utilities and communication facilities. It is the strong intent that all utility and communication facilities shall be installed underground where feasible, unless extenuating circumstances are found. Installation shall be in the manner prescribed by the regulations of the government agency or utility company having jurisdiction. Where facilities are provided, they shall be planned to anticipate future utility needs and shall be sited to reduce future capital costs.
- F. Signage. All signage proposed for permitted uses within this district shall comply with the signage regulations of Article XXII of this chapter and the following conditions:
- (1) All graphics and signs shall be designed as an integral part of the whole for the entire development proposed for a given property within the district.
 - (2) Billboards, freestanding pole signs, portable ground signs and roof signs are not permitted.
 - (3) A single ground identification sign or directory sign may be constructed a minimum of 10 feet from the front lot line; it shall not exceed eight feet in height and have up to two faces with a maximum area of each face of 60 square feet. The combined total face area for ground and wall-mounted signs shall not exceed 300 square feet on a single property.
 - (4) All signs visible from River Road shall be compatible with any public signage established by the Town for the waterfront region.
 - (5) Signs shall have the minimum of information necessary in order to avoid clutter and confusion. Whenever feasible, signs should be combined into a single sign in order to minimize clutter.
- G. Docking facility and marina design standards shall be governed by all applicable federal and state standards and regulations.
- H. Storage of materials.
- (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrian ways or public open space. Service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas or public open space, they shall be completely screened with opaque materials.

- (2) Outside storage that is located within 150 feet of the district boundary shall not exceed eight feet in height. Elsewhere in the district, outside storage shall be limited to 12 feet in height. These height limits shall not apply to external boat storage, as allowed under Subsection H(3), below.
- (3) External boat storage of a single boat on a cradle shall be allowed at the discretion of the Building Department.

I. Lighting.

- (1) All lighting shall be located and designed as an integral part of the entire project of which it is a part and shall consider the architectural and landscape context of the site.
- (2) Lighting shall be provided for visibility, security and as an accent to architectural and/or landscape features.
- (3) Pedestrian-scale lighting shall be provided along major pedestrian paths and along the Niagara River edge.
- (4) Lighting fixtures shall be used that appear and function as a compatible whole, including the designs of building-mounted lighting.
- (5) Lighting shall be located and designed to minimize glare and reflection on adjacent properties and shall not interfere with the use of neighboring premises.
- (6) Lighting fixtures shall be used that direct light downwards in order to minimize interference with roadways and public use.
- (7) All wiring for lighting shall be installed underground.

J. Circulation. On-site circulation shall be designed to minimize conflicts between vehicles and pedestrians.

- (1) Common driveways and interconnection of parking areas should be provided where practical in order to efficiently serve adjacent related or complementary uses, to minimize the number of road cuts and to concentrate and control turning movements onto River Road and internal feeder roads and trails crossings.
- (2) All bike and walking paths shall be clearly identified with striping and/or signage as necessary within parking areas, driveway crossings and public roadway crossings.
- (3) Sidewalks or paths shall be placed parallel to all major roadways or driveways or shall form an interconnected network within a property or group of properties. Whenever practicable, pathways shall be connected to the existing local or regional pathway system.

**Article IXB WB Waterfront Business District (§
215-70.6 - § 215-70.11A)**

[Added 9-9-1996 by L.L. No. 8-1996; amended 11-24-2003 by L.L. No. 6-2003]

§ 215-70.6 Purpose and intent

The purpose and intent of the Waterfront Business District shall be as follows:

- A. In accordance with the Town of Tonawanda Waterfront Land Use Plan and the Local Waterfront Revitalization Program (LWRP), to provide for a planned district that will promote and accommodate the development of business uses which are designed to recognize the unique and irreplaceable character of the Niagara shoreline region. The uses will take advantage of views of the area, and provide a buffer between the waterfront public uses, the City of Tonawanda and the light industrial areas of the Town.
- B. To encourage flexibility in design and use of sites within the shoreline area while preserving the unique environmental features and maintaining or reviving the aesthetic qualities of the waterfront area. The flexibility of design will be accomplished by establishing minimal dimensional requirements for principal uses combined with site plan review and design standards which will ensure development which is compatible with the goals of the Town of Tonawanda.
- C. To promote the most desirable use of land and direction of building development in accordance with the Town's vision and LWRP which protects the character of the waterfront region and the established patterns in adjacent development, thereby maintaining land values and protecting and improving the Town's tax revenue.

§ 215-70.7 Permitted uses

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Public and private parklands, trails and recreation areas.
- B. Business and professional offices.
- C. General laboratories for testing and research.
- D. Research and development.
- E. Assembly of component parts.

§ 215-70.8 Specially permitted uses

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Retail, restaurant and lodging.

- B. In-service training schools for employees, provided that such use is incidental to one of the principal uses.
- C. Nursery schools or day-care centers to primarily serve employees in the district.
- D. Warehousing and distribution facilities representing less than 50% of the square footage of the total leasable area of the facility. Such specially permitted use must be accessory to the primary allowable use.
- E. Any other commercial use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to other permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

§ 215-70.9 Accessory uses

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

§ 215-70.10 Dimensional requirements

The dimensional requirements in the WB District shall be as follows:

- A. Minimum lot size and frontage. The required minimum lot size and frontage shall be based on the amount of land necessary to adequately accommodate the proposed principal use as well as all parking, loading, landscaping, open space, setbacks, public access and traffic access.
- B. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way.
- C. Side yard setback: minimum of 25 feet.
- D. Maximum lot coverage: The total overall coverage of all principal and accessory buildings and structures, parking areas and other paved or service areas on any lot shall not exceed 65% of the total lot area. The remainder shall be open green space and/or landscaped areas.
- E. Height restriction: The maximum building height shall not exceed 50 feet.

§ 215-70.11 Additional design standards and requirements

The following additional design standards and requirements shall apply throughout the district. In addition, all development within 500 feet of River Road shall conform to the requirements of the River Road Overlay.

- A. Two Mile Creek and Rattlesnake Creek Buffers.

A minimum of 50 feet on either side of Rattlesnake Creek, Two Mile Creek or their tributaries shall be maintained in its natural state or as landscaped open space. The setback distance shall

be measured from the average adjacent high-water line of the water body. The applicant is encouraged to protect the natural drainage elements within the project area and to provide a means of public access along any drainage element or within the fifty-foot buffer area where it is appropriate or desired to integrate the preservation of the drainage features into the open space element of the project design and accommodate trails.

B. Landscaping, screening and buffering.

- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and may give definition to street edges and provide screening. They shall not, however, impede public views of the river.
- (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall be encouraged to incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.
- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
- (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
- (5) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
- (6) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of

branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.

C. Parking.

- (1) Parking shall comply with Article XIII of this chapter for the number of parking spaces required and the standards for the design of parking areas. If the site is within the River Road Overlay District, the provisions of the Overlay shall supersede other parking requirements.
- (2) Employee parking facilities developed as structures or surface lots shall not be located within any setback areas or in the front of any building.
- (3) Employee parking areas shall be paved with a concrete or blacktop paving, paving brick or comparable hard surface approved by the Town Building Department, shall have curbing or bumper guards where needed and, except for driveways and other entrances, shall be properly drained and screened from view from the street.
- (4) Parking areas for visitors, customers or clients may be located within a setback area (required front or side yards), provided that at least 50% of the area is landscaped. Such parking areas must be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (5) Parking areas shall not exceed 10,000 square feet in area unless interrupted by a minimum fifteen-foot-wide landscaped strip. Median requirements may be relaxed if the parking lot configuration is irregularly shaped.
- (6) No loading docks shall be permitted on any portion of a building which faces a street; provided, however, that if two or more building walls face a street or a public right-of-way, then loading docks may be permitted if adequate landscaped screening is provided.

D. Signage. Signage shall comply with Article XXII of this chapter.

E. Fencing.

- (1) The use of fencing is discouraged within this district, except as needed for the purposes of screening features such as storage areas, utility buildings and similar types of structures or installations.

- (2) No fence shall be erected within any setback area. Fences shall be limited to six feet in height.
- F. Storage of materials.
 - (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrian ways or public open space. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
 - (2) Outside storage that is located within 150 feet of the district boundary shall not exceed 12 feet in height. Elsewhere in the district outside storage shall be limited to 20 feet in height.
- G. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. Where feasible, all utility and communications facilities shall be installed underground, in a manner prescribed by the regulations of the government agency or utility company having jurisdiction. All facilities shall be planned so as to anticipate future needs and shall be sited and sized to reduce future capital costs.
- H. Access to the rear of these properties and to the surrounding properties must be considered in the design and layout of any proposed use.

§ 215-70.11A Performance standards

Uses in this district shall be no more intrusive in impacts than is typical for standard office uses.

**Article IXC RHC Retail - Highway Commercial Use District (§
215-70.12 - § 215-70.17)**

§ 215-70.12 Purpose and intent

The purpose and intent of the RHC Retail-Highway Commercial Use District shall be as follows:

- A. To allow and encourage the development of a highway service and retail shopping area near the Grand Island Bridge that accommodates the needs and services of the traveling public.
- B. To provide for highway-related uses in a manner that remains consistent with the Town's goals for the waterfront area, including the maintenance of significant viewsheds, the encouragement of increased public access, and the promotion of higher design standards and aesthetics in this area of the Town.

- C. To encourage the development of uses that are compatible with adjoining uses, including the waterfront area across River Road, and that promote accessibility for pedestrian and bicyclist travelers as well as vehicular traffic.

§ 215-70.13 Permitted uses

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Restaurants.
- B. Gasoline stations.
- C. Retail stores.
- D. Motels and hotels.

§ 215-70.14 Specially permitted uses

Only the following uses shall be permitted with issuance of a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Truck stops and travel plazas.
- B. Any other commercial or retail use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to other permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

§ 215-70.15 Accessory uses

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

§ 215-70.16 Dimensional requirements

The dimensional requirements in the RHC District shall be as follows:

- A. Minimum lot size: none.
- B. Minimum lot frontage: 50 feet.
- C. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way.
- D. Side yard setback: minimum of 25 feet.
- E. Maximum lot coverage: 75%.
- F. Height restriction: The maximum building height shall not exceed 75 feet.

§ 215-70.17 Additional design standards and requirements

The following additional design standards and requirements shall apply throughout the district. In addition, all development within 500 feet of River Road shall conform to the requirements of the River Road Overlay.

- A. Landscaping. Due to the visibility of this district and the nature of the types of uses allowed, landscaping is an important component of design to screen, buffer and improve the aesthetics of development, which is likely to be dominated by large amounts of paving. The following landscaping standards shall apply:
- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
 - (2) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
 - (3) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
 - (4) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
 - (5) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.

B. Parking.

- (1) Parking shall comply with Article XIII of this chapter for the number of parking spaces required and the standards for the design of parking areas. If located within the boundaries of the River Road Overlay, the provisions of the Overlay shall supersede other parking requirements.
- (2) Employee parking shall not be located within any setback areas or in the front of any building.
- (3) Parking areas for visitors, customers or clients may be located within a setback area, provided that at least 50% of the area is landscaped. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (4) Parking areas shall not exceed 10,000 square feet of uninterrupted paving. Landscaped islands or medians or divider strips shall be placed within rows of parking spaces so that no row of parking exceeds 15 spaces without being interrupted by landscaping.

C. Signage. Signage shall comply with Article XXII of this chapter.

D. Fencing. No fences shall be permitted in the setback area. Fences shall be limited to six feet in height.

E. Storage of materials.

- (1) Required service areas, loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrianways or public open space, if feasible. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
- (2) Outside storage shall not exceed 12 feet in height.

F. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. Where feasible, all utility and communication facilities shall be installed underground, in a manner prescribed by the regulations of the government agency or utility company having jurisdiction. All facilities shall be planned so as to anticipate future needs and shall be sited and sized to reduce future capital costs.

G. Circulation. On-site circulation shall be designed to minimize conflicts between vehicles and pedestrians.

- (1) Common driveways and interconnection of parking areas shall be provided where practical in order to efficiently serve adjacent related or complementary uses, to minimize the number of road cuts and to concentrate and control turning movements onto to River Road.
- (2) All bike and walking paths shall be clearly identified with striping and/or signage as necessary within parking areas, driveway crossings and public roadway crossings.
- (3) Pedestrian and bike paths shall be provided to facilitate pedestrian access to developments. Wherever practicable, on-site pathways shall be connected to the existing local and regional pathway system.

Article IXD WID Waterfront Industrial District (§ 215-70.18 - § 215-70.25)

[Added 9-9-1996 by L.L. No. 8-1996; amended 11-24-2003 by L.L. No. 6-2003]

§ 215-70.18 Purpose and intent

The purpose and intent of the WID Waterfront Industrial District shall be as follows:

- A. In accordance with the Town of Tonawanda Waterfront Land Use Plan, to provide for a planned district for industrial development of a manufacturing, processing and/or assembly nature, as well as wholesale and warehousing activities.
- B. To accommodate these types of uses while maintaining the character and integrity of the surrounding land uses and the waterfront region in general, and protecting them from unreasonable adverse impacts.
- C. To encourage water-dependent or water-enhanced industrial or commercial uses on lands located along the Niagara River.
- D. To promote uses that will provide job opportunities and strengthen the Town's tax base.
- E. To maintain appropriate design standards within the Tonawanda waterfront region.

§ 215-70.19 Permitted uses

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII. Only the following uses shall be permitted with site plan approval by the Town Building Department and after having received comments from the Town Planning Board according to the process set for in the site plan regulations:

- A. Public and private parklands and trails.
- B. Boat storage facility.

- C. Light industry.
- D. Assembly of component parts.
- E. Wholesale business and storage.
- F. Warehousing and storage of goods for distribution.
- G. Public utilities.
- H. Research facilities, including laboratories and testing facilities.
- I. Business offices or medical professional buildings.

§ 215-70.20 Specially permitted uses

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Service or repair of an industrial nature.
- B. Retail sales of merchandise and/or services.
- C. Nursery schools and day-care centers to primarily serve employees in the district.
- D. Commercial laundry plants; bottling plants.
- E. Any other commercial, industrial or warehousing use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

§ 215-70.21 Use restrictions

- A. Residential dwelling units shall not be permitted, except for temporary quarters, such as for a plant watchman or caretaker, that do not constitute a primary residence.
- B. Junkyards, waste transfer or disposal, land mining and stockyards shall not be permitted.

§ 215-70.22 Accessory uses

The following uses are permitted as an accessory use to a permitted or specially permitted use, subject to site plan approval as set forth in Article XXIII.

- A. Storage structures subject to height screening conditions.
- B. Clinics, cafeterias and recreational facilities for the exclusive use of employees of the principal use.
- C. Garages, pump houses, water towers and storage tanks.
- D. Other customary accessory structures incidental to primary permitted or specially permitted uses.

§ 215-70.23 Dimensional requirements

The dimensional requirements in the WID Waterfront Industrial District shall be as follows:

- A. Minimum lot size: two acres.
- B. Minimum lot width at the front (frontage): 100 feet.
- C. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way line.
- D. Side yard setback: minimum of 25 feet.
- E. Lot coverage. Building coverage shall be limited to 40% of the lot area. Total coverage of the lot with impervious or paved surfaces shall be limited to 75%.
- F. Height restriction: The maximum building height shall not exceed 50 feet. The Town Building Department shall have the power to establish maximum heights of less than 50 feet for properties within the coastal zone boundary where such height limitation is required to preserve important views or maintain the overall aesthetic quality of the waterfront area.

§ 215-70.24 Additional design requirements and standards

The following additional design standards and requirements shall apply throughout the district. In addition, all development within the coastal zone (from the Niagara River to 500 feet inland of River Road) shall conform to the requirements of the River Road Overlay.

- A. Two Mile Creek and Rattlesnake Creek Buffers. A minimum of 50 feet on either side of Rattlesnake Creek, Two Mile Creek or its tributaries shall be maintained in its natural state or as landscaped open space. The setback distance shall be measured from the average high-water line of the water body. The applicant is encouraged to protect the natural drainage elements within the project area and to provide a means of public access along any drainage element or within the fifty-foot buffer area where it is appropriate or desired to integrate the preservation of the drainage features into the open-space element of the project design.
- B. Landscaping, screening and buffering.
 - (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
 - (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall be encouraged to incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.

- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
- (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
- (5) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
- (6) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.

C. Parking. Parking shall comply with Article XIII of this chapter and meet the following additional standards:

- (1) All parking areas shall be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained.
- (2) Employee parking facilities developed as structures on surface lots shall not be located within any setback areas. Employee parking areas shall have bumper guards where needed and, except for driveways and other entrances, shall be properly screened from view from the street.
- (3) Parking areas for visitors, customers or clients may be located within a setback area (required front or side yards), provided that at least 50% of the area is landscaped. A

landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.

- (4) Parking areas shall not exceed 10,000 square feet in area unless interrupted by a minimum fifteen-foot-wide landscaped strip. Median requirements may be relaxed if the parking lot configuration is irregularly shaped.
 - (5) No loading docks shall be permitted on any portion of a building which faces a street; provided, however, that if two or more building walls face a street or a public right-of-way, then loading docks may be permitted if adequate landscaped screening is provided.
- D. Signage. Signage shall comply with Article XXII of this chapter.
- E. Fencing. No fence shall be erected within any setback area. Fences shall be limited to six feet in height.
- F. Storage of materials.
- (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrianways or public open space. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
 - (2) Outside storage that is located within 150 feet of the district boundary shall not exceed 12 feet in height. Elsewhere in the district, outside storage shall be limited to 20 feet in height. These height limits shall not apply to external boat storage, as allowed under Subsection F(3), below.
 - (3) External boat storage of a single boat on a cradle shall be allowed at the discretion of the Building Department.
- G. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. All utility and communications facilities shall be installed so as to anticipate future needs and shall be sited and sized to reduce future capital costs.

§ 215-70.25 Performance standards

- A. General requirements.
- (1) All uses subject to the requirements of this section may be established and maintained if their operations are approved by the Town Building Department as being in conformance with the standards and regulations limiting dangerous and objectionable

elements, such as dust, smoke, odor, fumes, noise, or vibration. In approving the site plan, the Town Building Department shall decide whether the proposed use will conform to these applicable performance standards or to any additional performance standards required by state or federal laws or which are generally recognized performance standards for a given industry.

- (2) Uses subject to the performance standards procedure. Only manufacturing and research, experimental and testing laboratory uses and uses accessory thereto shall be subject to the performance standards procedure in obtaining a building permit. However, if the Code Enforcement Officer has reasonable grounds to believe that any other proposed use violates any of the performance standards, then the applicant shall comply with the performance standards procedure.

[Amended 3-26-2007 by L.L. No. 2-2007]

- (3) Enforcement provisions applicable to other uses. Initial and continued compliance with the performance standards is required of every use. Provisions for enforcement of continued compliance with performance standards shall be invoked by the Code Enforcement Officer against any uses if there is reasonable ground to believe that the performance standards are being violated by such use.

[Amended 3-26-2007 by L.L. No. 2-2007]

B. Performance standards procedure.

- (1) An application for a building permit or certificate of occupancy for a use subject to the performance standards procedure shall include a plan of the proposed construction and a description of the proposed machinery, operations and products and emission of any dangerous and objectionable elements. The applicant shall also file with any such plans and specifications an affidavit acknowledging his understanding of the applicable performance standards and stating his agreement to conform to the same at all times. During the course of site plan review, the Town Building Department will determine if the applicant's proposal falls within the performance standards.
- (2) Expert consultants.
 - (a) The Town may require a report by one or more expert consultants retained by the applicant to advise as to whether the proposed use will conform to the applicable performance standards. The applicant shall also submit a written report showing the manner in which the proposed use will comply with the performance standards.
 - (b) The continued effectiveness of the certificate of occupancy shall be conditioned on the continuous conformance of the applicant's completed buildings, installations and uses with the applicable performance standards.

C. Performance standards.

- (1) Fire and explosive hazards. All activities involving, and all storage of, flammable and explosive materials shall be protected at all times with adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire-suppression equipment and devices standard in industry. Burning of waste materials in open fires is prohibited at any time. The relevant provisions of state and local laws and regulations shall also apply.
- (2) Vibration.
 - (a) No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or beyond the lot lines, nor shall any vibrations produced exceed 0.002g peak at up to a frequency of 50 cycles per second, measured at or beyond the lot lines using either seismic or electronic vibration-measuring equipment.
 - (b) Vibrations occurring at higher than a frequency of 50 cycles per second or a periodic vibration shall not induce accelerations exceeding 0.001g. Single-impulse periodic vibrations occurring at an average interval greater than five minutes shall not induce accelerations exceeding 0.01g measured at the lot line.
- (3) Noise. Noise levels at the proposed facility must be controlled to prevent sound levels beyond the property line exceeding the ambient sound levels as shown in Table I. If background sound levels, excluding any contributions from the proposed new facility, exceed the limits in Table I, then the operations at the proposed facility must not cause a sound level exceeding the background.

Table I-Noise Level Limits²²

Receiving Land Use (decibels A)			
Time Period	Residential	Commercial	Industrial
7:00 a.m. to 11:00 p.m.	65	65	75
11:00 p.m. to 7:00 a.m.	50	65	75

- (4) Smoke. The density emission of smoke or any other discharge into the atmosphere during normal operations shall not exceed visible gray smoke of a shade equal to or darker than No. 2 on the standard Ringelmann Smoke Chart. (A Ringelmann Smoke Chart is a chart published by the United States Bureau of Mines, which shows graduated shades of gray for use in estimating the light-obscuring capacity of smoke.) These

²² Sound levels will be measured as Leq energy equivalent. The "Leq" is defined as the equivalent steady state sound level that contains the same acoustic energy as the time-varying sound level during a one-hour period exceeded no more than 10% of the time. The noise levels must comply with measurements taken using a Type 1 general purpose sound level meter, Type 2 or corresponding special sound meters Type S1A or S2A. All sound-monitoring equipment shall comply with the latest version of the ANSI standards.

- provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an apparent equivalent capacity.
- (5) Odor. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable when diluted in the ratio of one volume of odorous air emitted to four volumes of clean air. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail.
- (6) Fly ash, dust, fumes, vapors, gases and other forms of air pollution. No emissions shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling at any point beyond the boundaries of the lot. The concentration of such emission on or beyond any lot line shall not exceed 0.1 of the maximum allowable concentration (Threshold Limit Values) set forth in the Industrial Code Rule No. 12, relating to the control of air contaminants, as regulated by the New York State Department of Labor, or any subsequent standards.
- (7) Electromagnetic interference.
- (a) No use, activity or process shall be conducted which produces electric and/or magnetic fields which adversely affect public health, safety, and welfare, including but not limited to interference with normal radio, telephone or television reception from off the premises where the activity is conducted.
- (b) It shall be unlawful to operate or cause to be operated any planned or intentional source of electromagnetic radiation that does not comply with the current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation. It shall be unlawful if such radiation causes an abnormal degradation in performance of other electromagnetic radiators or electromagnetic receptors of quality and proper design. The determination of abnormal degradation in performance and of quality and proper design shall be made in accordance with good engineering practices, as defined in the latest principles and standards of the American Institute of Electrical Engineers, the Institute of Radio Engineers and the Electronic Industries Association. In case of any conflict between the latest standards and principles of the above groups, the following precedence in interpretation of the standards and principles shall apply: American Institute of Electrical Engineers, the Institute of Radio Engineers and the Electronic Industries Association.
- (8) Radioactive materials. The handling of radioactive materials, the discharge of such materials into the air and water and the disposal of radioactive wastes shall be in conformance with all applicable federal and state regulations.

- (9) Heat. Heat emitted to any or all points shall not at any time cause a temperature increase on any adjacent property in excess of 5° F., whether such change is in the air, on the ground, in a natural stream or lake or in any structure on such adjacent property.
- (10) Glare.
- (a) Direct glare. No such direct glare shall be permitted, with the exception that parking areas and walkways may be illuminated by luminaries so hooded or shielded that the maximum angle of the cone of direct illumination shall be 60° drawn perpendicular to the ground. Such angle may be increased to 90° if the luminary is less than three feet above ground. The cone of illumination shall not extend beyond the property lines.
- (b) Indirect glare. Indirect glare shall not exceed that value which is produced by an illumination of the reflecting surface, not to exceed 0.3 footcandle (maximum) and 0.1 footcandle (average). Deliberately induced sky-reflected glare, as by casting a beam upward for advertising purposes, is specifically prohibited.
- (11) Liquid, solid, gaseous or hazardous waste. No discharge shall be permitted at any point into a public sewer or stream or into the ground, except in accord with standards approved by the State and County Departments of Health, New York State Department of Environmental Conservation and local ordinances, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. There shall be no accumulation of solid wastes conducive to the breeding of rodents or insects.

Article IXE River Road Overlay District (§215-70.26 - § 215-70.30)

[Added 11-24-2003 by L.L. No. 6-2003]

§ 215-70.26 Purpose and intent

- A. In accordance with the goals and objectives of the Town of Tonawanda, the 2002 Waterfront Land Use Plan and the Town's Local Waterfront Revitalization Program, this overlay district is designed to better manage and accommodate business growth along the River Road corridor through the implementation of guidelines to regulate development and redevelopment. This overlay is also intended to encourage the development and redevelopment of uses that are in harmony with the surrounding area, improve the visual character of the area, protect adjoining environmental resources and enhance the character of the area as an important gateway to the Town of Tonawanda and its waterfront.

- B. This overlay will act to regulate the River Road corridor as a growing business district, with three distinct areas that possess unique characteristics, as follows:
- (1) The area situated generally between the City of Tonawanda and the northern property line of the Seaway landfill, herein referred to as the "business transitional area," should support uses that provide high quality commercial development. Development in this area should support the establishment of a gateway entrance from the City of Tonawanda and complement views of the Niagara River.
 - (2) The area situated generally between the northern boundary of the Seaway Landfill and the northern boundary of the parcel known as Niagara River World, herein referred to as the "Thruway impact area," is a mixed-use area comprised of commercial and industrial development and proposed parklands that is influenced by entrances and exits associated with the NYS Thruway system. These exits also serve as an important gateway to the Town's waterfront. While more intense uses are allowed in portions of this area, development should not degrade adjoining uses, particularly in areas characterized by parklands or important views.
 - (3) The area from the northern boundary of Niagara River World to the northern boundary of the Huntley Power Station property, herein referred to as the "light industrial corridor area," is characterized by a mix of heavy and light industrial uses and serves as a transition area to the heavily industrial area to the south.
- C. The River Road Overlay District regulations will supplement the underlying zoning requirements and provide for safe and orderly development within all three portions of the defined section of River Road. These overlay requirements are to be used in conjunction with the zoning regulations and other performance regulations in the code. Where conflicting requirements are encountered, the overlay requirements shall supersede any other regulations.

§ 215-70.27 Boundary description

This overlay district shall encompass the corridor of River Road, including the three areas outlined above, extending from the border between the Town and the City of Tonawanda to the northern boundary of the Huntley Power Station. The overlay district shall extend into all properties on the waterfront side of River Road to a depth of 500 feet from the western right-of-way of River Road or to the Niagara River, whichever is less. It shall also extend into all parcels on the inland side of River Road to a depth of 500 feet from the eastern right-of-way of River Road.

§ 215-70.28 General objectives

The special regulations contained herein, which govern all proposed development and redevelopment within the boundaries of the River Road Overlay District, shall be founded upon the following objectives.

- A. Business transitional area.

- (1) Being a transitional area between the Town and the City of Tonawanda, care shall be taken to minimize impacts to the city's resources.
- (2) The intent of this area of the overlay is to provide for a higher quality of development, focusing on a Class A office image and public parkland. All buildings that are visible from River Road should present a high-quality image. Architectural designs should complement land uses in the area, particularly Isle View Park, and provide for a positive image in the area. Appropriate facade designs and building materials that complement and improve the character of the area shall be required.
- (3) To promote more efficient traffic flow and traffic safety, every effort shall be made to provide shared means of ingress and egress to developed and developing properties. Where applicable, reference should be made to the New York State Department of Transportation Access Management Guidelines and regulations.
- (4) Landscaping, setback, signage and lighting standards shall be implemented to improve the visual quality of the area and buffer development and redevelopment from adjoining sensitive land uses. Emphasis should be placed on preserving existing vegetation and important natural resources to the extent feasible in site design. Designs shall take into consideration the views of the river, as well as the views from River Road.
- (5) The Town shall encourage and assist with economic development efforts, including promotion and marketing, in this area.

B. Thruway impact area.

- (1) This is an area of mixed-use developments, and attention should be given to the compatibility of proposed projects with adjoining uses when reviewing project proposals. While more intensive uses are allowed in this area, development should provide for a positive image.
- (2) This area services the traveling public. Access to the Thruway and the management of traffic on River Road are a primary concern. At the same time, provisions for pedestrian and bicyclist access should be accommodated in site design.
- (3) Architectural designs should complement surrounding land uses and provide for an improved and positive image of the area. Appropriate facade designs that complement and improve the character of the area shall be required. Views from River Road shall be of primary concern.
- (4) Landscaping and setback standards should be utilized to improve visual characteristics and buffer development and redevelopment from adjoining sensitive land uses.

C. Light industrial corridor area.

- (1) This is an area of mixed commercial, light industrial and heavier industrial uses, and redeveloping parcels. While heavier industrial uses may be allowed, it is important to minimize the visual impacts, particularly from River Road and from the Niagara River.
- (2) Water-dependent or water-enhanced uses are the preferred uses for property along the Niagara River.
- (3) Landscaping, building and setback standards should improve the visual quality of the area and buffer heavier industrial uses from River Road and from the Niagara River.
- (4) Emphasis shall be placed upon redevelopment of existing properties and the infill development of available vacant parcels.
- (5) As redevelopment takes place, emphasis should be placed on improving the aesthetics of the region, especially as it relates to the views from River Road and the Niagara River.

§ 215-70.29 Permitted uses and accessory uses

- A. The uses permitted in the River Road Overlay District shall be as prescribed in the underlying zoning. This overlay does not restrict or prohibit any use that is allowable in the applicable underlying zoning.
- B. The accessory uses permitted in the River Road Overlay District shall be the same as the accessory uses permitted in the underlying zoning districts, although there may be modified bulk requirements or additional performance standards for these accessory uses.

§ 215-70.30 Site design standards and requirements

- A. General (applies to all three areas).
 - (1) Proposed elevations, preliminary floor plans and perspective drawings shall be submitted at the time of site plan application. In addition, information shall be provided on proposed facade treatments and building materials.
 - (2) All existing trees larger than six inches in diameter as measured three feet above grade, groups of trees and other natural vegetation shall be incorporated into the landscape plan to provide natural buffering from adjacent properties. These features shall be preserved to the greatest extent feasible, especially along lot lines.
 - (3) For all areas, deciduous trees that are planted shall have a minimum caliper of three inches, measured two feet above grade. All planted coniferous trees shall have a minimum height of six feet above finished grade. Trees shall be planted along property frontage with a minimum of one deciduous tree for each 30 feet of frontage on River Road.

- (4) All required vegetative plantings shall be maintained in a healthy and productive condition and shall be routinely examined. Plant materials shall be replaced, as necessary or as directed by the Town. The Town Building Department shall enforce the upkeep of landscaped areas through periodic inspections in response to complaints.
- (5) Refuse storage (dumpster) locations shall be depicted on the plans and shall not be located near or adjacent to River Road and shall not be visible from the road. Where this is not feasible, such facilities shall be completely screened by opaque wooden, brick or masonry fences.
- (6) No outdoor speakers or other noise-producing devices shall be permitted.
- (7) If required, plans must include underground stormwater storage or, if it is to be located above ground, it must be located in the rear of the lot, if feasible. Aboveground stormwater storage (retention ponds) shall be screened with landscaping or other appropriate buffer.
- (8) Plans must indicate all access points to River Road. Consideration shall be given to the consolidation of access and removal of unnecessary roadway connections to River Road wherever feasible. All plans shall include provisions for pedestrians, and bicyclists, rollerbladers, and other nonvehicular traffic, and minimize vehicular crossings over the Riverwalk.
- (9) Plans shall show the location of the Riverwalk, other existing trails and parks in relation to proposed development. Connections to the Riverwalk and other trails and parks in the area are encouraged. Where appropriate, site plans shall be sent to Erie County for review to ensure no negative impacts to the Riverwalk.

B. Business transitional area.

- (1) Parking area lighting fixtures shall be reduced in intensity after 11:00 p.m. and shall be designed to illuminate the parking area only. Lighting plans shall be submitted and must include illumination footprints for review by the Town. Security lighting and other building lighting will be allowed to operate in accordance with Town requirements.
- (2) A landscaped area not less than five feet in width shall separate parking areas located on different parcels. Any amount over this will be credited to the parking interior landscaping requirement.
- (3) Each interior landscape island, median or divider area in parking lots shall be not less than 100 square feet in area and shall have an approved tree planted at the minimum ratio of one tree per 100 square feet of interior landscape island.
- (4) Spacing of curb cuts along River Road shall meet the requirements of the NYS DOT Access Management Guidelines. Site plan design must make every effort to provide for

shared access or cross-easement agreements to adjacent properties to minimize curb cuts and to control turning movements onto River Road and other collector streets.

- (5) On-site circulation shall take into consideration pedestrian and bicyclist traffic. Conflicts between vehicular and nonvehicular traffic shall be minimized through separated circulation paths where practicable. Clear identification of biking and walking paths through striping and/or signage shall be provided within parking areas and at driveways and road crossings.
- (6) All signage and lighting fixtures shall be of an appropriate size and scale, and aesthetically designed, so as to improve the overall quality of the area. No signage shall be permitted on any lot unless it is either attached to a building or placed in a location which has been approved through the site plan process. Signs attached to the sides of buildings may not project more than five feet above the roof. No roof signs, billboards or portable signs shall be allowed in the Overlay District.
- (7) Signage shall not include pylon signs or any form of flashing lights or animation. Signage shall be designed at ground level, typically not exceeding 12 feet in height, and should contain components such as brick.
- (8) Redevelopment of existing properties in this area must meet the standards of this district.
- (9) A concept sketch shall be presented to the Planning Board for its review, with a rendering of how the building will appear from River Road. Architectural guidelines are as follows:
 - (a) Diversity of architectural design, variation in building footprint, facade textures and treatments shall be encouraged to create a visually interesting design, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
 - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
 - (c) The visibility of rooftop equipment should be minimized by grouping this equipment away from the public view from River Road.
 - (d) The sides of all buildings shall have an equivalent level of quality of materials, detailing and window placement. Abrupt ending of architectural details shall be avoided with no radical changes in details, features or materials.
 - (e) Buildings with long, uninterrupted blank walls shall be avoided, and shall not be permitted on facades that are visible from River Road.

- (f) Modulation (defined as a measured setback or offset in a building face) shall be incorporated to reduce overall bulk and mass of buildings.
 - (g) Building designs shall incorporate traditional building materials such as masonry, stone, brick, finish grade wood (such as clapboard or shingle) and other natural-appearing materials. All buildings shall have durable exterior finish materials that cover all exterior walls. The most stringent design standards shall apply to buildings in locations most visible from public spaces.
 - (h) Buildings colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
 - (i) Facades of buildings facing public open space or pedestrian/bicycle pathways shall include design features such as building entries, windows, arcades, overhangs, canopies and related elements that create visual interest.
- C. Thruway impact area.
- (1) Although the focus of this area is on the traveling public, the site elements relating to this transportation emphasis should be modulated to minimize negative impacts. For example, parking areas shall be landscaped. Warehousing/truck loading areas and similar types of support areas shall be located towards the rear of the properties and shall not be visible from River Road, if feasible. If the area is visible from River Road, it shall be completely screened by opaque materials.
 - (2) In areas where the underlying zoning district is G-I, the Town shall require a landscaping plan, prepared by a licensed landscape architect or arborist. The landscaping shall be in the form of appropriate shrub and tree plant materials arranged in rows or clusters and designed as buffers, screens or hedges, which give attractive definition to the street edges or other areas of the lot. All plants, trees and shrubs shall be planted in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone. In areas where the underlying district is not G-I, the landscaping standards of the underlying district shall apply.
 - (3) Consideration should be given to the design, placement and height of lighting fixtures and signage. Such appurtenances shall be of an appropriate size and scale so as to reduce adverse effects and improve the character of the area.
 - (4) Signage, although important in this area, will not be in competition to see whose sign can be best seen from the highway. Pole-mounted signs over 15 feet in height shall be discouraged, and flashing lights will not be allowed.

- (5) A concept sketch shall be presented to the Planning Board for its review, with a rendering of how the building will appear from River Road. Architectural guidelines are as follows:
 - (a) Diversity of architectural design shall be encouraged, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
 - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
 - (c) Large buildings should have height variations to give the appearance of distinct elements.
 - (d) Building designs shall incorporate traditional building materials such as masonry, stone, brick and other natural-appearing materials.
 - (e) Building colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
 - (f) For all office and light industrial buildings, the outside face of walls exposed to the street shall be finished with face brick, its equivalent or better. The outside faces of walls abutting such walls exposed to the public street shall be finished in the same material to a minimum depth of 15 feet.
 - (6) Each application shall include a traffic control plan, access management components, and a review of the guidelines as they relate to entrance roads, curb cuts and access management.
 - (7) Redevelopment projects, requiring site plan approval, shall include plans for renovating the facade and the sides of the building and to meet other architectural requirements of this section [see Subsection C (5)].
 - (8) Structures to be located on the river side of River Road shall be placed to minimize loss of views to the river.
- D. Light industrial corridor area.
- (1) In areas where the underlying zoning district is G-I, the Town shall require a landscape plan, prepared by a licensed landscape architect or arborist. The landscaping shall be in the form of appropriate shrub and tree plant materials arranged in rows or clusters and designed as buffers, screens or hedges, which give attractive definition to the street edges or other areas of the lot. All plants, trees and shrubs shall be planted in accordance with a planting schedule provided by the applicant and approved by the

Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone. In areas where the underlying district is not G-I, the landscaping standards of the underlying district shall apply.

- (2) Consideration shall be given to the location, design and placement of all signage and lighting fixtures. Signage shall conform to the regulations set forth in Article XXII (Sign Ordinance) of this chapter.
- (3) Signage shall be unobtrusive and be compatible with Town standards. Freestanding signs shall not be installed on pylons or greater than eight feet in height. Signs attached on the building shall meet all Town standards.
- (4) Architectural standards:
 - (a) Diversity of architectural design shall be encouraged, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
 - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
 - (c) Large buildings should have height variations to give the appearance of distinct elements.
 - (d) Building designs shall incorporate traditional building materials such as masonry, stone, brick and other natural-appearing materials.
 - (e) Building colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
 - (f) For all office and light industrial buildings, the outside face of walls exposed to the street shall be finished with face brick, its equivalent or better. The outside faces of walls abutting such walls exposed to the public street shall be finished in the same material to a minimum depth of 15 feet.

Article IXF Approval of Special Uses for Waterfront Districts (§ 215-70.31 - § 215-70.36)

Editor's Note: Former Article IXE was renumbered as Article IXF 11-24-2003 by L.L. No. 6-2003.

[Added 9-9-1996 by L.L. No. 8-1996]

§ 215-70.31 Purpose and intent

The purpose of special use approval is to allow the proper integration into the waterfront area of the Town, uses which may be suitable only under certain conditions and at appropriate locations. Because of their characteristics or the special characteristics of the area in which they are to be located, these uses require special consideration so that they may be properly located with respect to the objectives of this chapter and the Town of Tonawanda Waterfront Region Master Plan, and their effect on surrounding properties and the Niagara Waterfront.

§ 215-70.32 Legislative authority; authorization for special uses

This chapter is enacted pursuant to the authority granted to the Town Board of the Town of Tonawanda in Article 16 of the Town Law of the State of New York and § 10 of the Municipal Home Rule Law of the State of New York. This chapter now supersedes and modifies § 274-b of the Town Law of the State of New York in that the functions and duties conferred upon the Planning Board in § 274-b of the Town Law of the State of New York be performed by the Town Board of the Town of Tonawanda, and the Town Board of the Town of Tonawanda shall be deemed the Planning Board for such purposes. The special uses listed in this chapter may be permitted, enlarged or otherwise altered upon authorization by the Town Board in accordance with the standards and procedures set forth in this article. In permitting a special use in the Waterfront District or the modification of such use, the Town Board may impose those standards and requirements expressly specified by this chapter and any additional conditions which the Town Board considers necessary and reasonable to serve the best interests of the surrounding property and the waterfront area as a whole. These conditions may include, but are not limited to, size or controlling the location and number of vehicle access points, increasing the street width, limiting the number, size and location of signs, limiting the hours of operation and requiring fencing, screening and landscaping of other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this chapter and classified in this chapter as a special use, any change in use or in lot area or an alteration of structure shall conform to the requirements dealing with special uses.

§ 215-70.33 Applicability

[Amended 3-26-2007 by L.L. No. 6-2007]

This article is applicable to the issuance of special use permits for all uses in the Waterfront Districts which require a special use permit.

§ 215-70.34 Uses near residential districts

In addition, in the case of any use located in or directly adjacent to a residential district:

- A. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to existing streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with said residential district or conflict with the normal traffic of the neighborhood.

- B. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

§ 215-70.35 Special use permits; procedure and information required

- A. An applicant shall initiate the special use permit in a Waterfront District procedure by filing an application addressed to the Town Board and delivered to the Town Clerk which includes:
- (1) A general description of the proposed use.
 - (2) A legal description of the property.
 - (3) A proposed current site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 200 feet of the lot, as well as showing the property and all properties within a radius of 500 feet of the exterior boundaries thereof.
 - (4) Plans and elevations necessary to show the proposed development.
 - (5) Other drawings or information as requested by the Town Board or Town Planning Board.
 - (6) A written statement which demonstrates how the proposed project meets the required standards.
 - (7) A filing fee, the amount of which shall be fixed by the Town Board by resolution.
- B. Review of the site plan shall take place concurrently with review of the special use permit application.
- C. The Town Clerk shall refer the special use permit application to the Town Planning Board who shall determine its completeness. If further information is necessary, the application will be returned to the applicant together with a written notice specifying the additional information or documentation required.
- D. Immediately upon determining that an application is complete, the Town Planning Board shall refer a completed application to the Building Department for coordination with the site plan review process.
- E. The Building Department shall submit its written comments concerning the special permit application to the Town Board within 45 days of its receipt.
- F. The Planning Board shall review the special permit application and submit a written report, including its recommendations, to the Town Board within 45 days of receiving a completed application.

- G. Public hearing on special uses in the Waterfront District. Before a special use is permitted, the proposed use shall be subject to public notice and a public hearing conducted by the Town Board. Public notice of said hearing shall be published in a newspaper of general circulation in the Town at least five days prior to the date thereof. The public hearing shall be held within 62 days of acceptance of the complete permit application by the Town Planning Board.
- H. At least 10 days before such hearing, the Town Board shall mail notices thereof to the applicant and to the Erie County Department of Environment and Planning as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in Subdivision 1 of § 239-m of the General Municipal Law.
- I. Compliance with State Environmental Quality Review Act. The Town Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations. Any time periods specified herein shall be extended as required so as to enable the Town Board to comply with the requirements of the State Environmental Quality Review Act.
- J. The Town Board shall, within 62 days of the public hearing on the complete special use permit application, render a decision on the permit. The time period may be extended by the mutual consent of the applicant and the Town Board. The decision of the Town Board on the application after the holding of the public hearing shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.
- K. In the case where a special use has been approved, a building permit shall be issued after the granting of the special use permit, and then only in accordance with the terms and conditions of the permit.
- L. A special use in a Waterfront District permit shall become void one year after approval unless, by conditions of the use permit, greater or lesser time is specified as a condition of approval or unless, prior to expiration of one year, a building permit is issued. The permit shall be void if the use shall cease for more than six months for any reason.
- M. The Town Board, on its own motion, may revoke any special use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. Written notice of such hearing shall be given to the holder of the special use permit. Such notice shall be given by regular mail and also by certified mail, return receipt requested, addressed to the address of the special use permit holder specified in the special use permit and mailed at least 10 days prior to the scheduled hearing. The foregoing shall not be the exclusive remedy, and it shall be unlawful for any person to violate any condition imposed by said permit. Prior to the revocation proceeding specified herein, the Town Board shall notify the holder of the special use permit, in writing, that he, she or it is not in compliance with the conditions specified in the permit and shall give the holder of the special use permit 60 days within which to comply. In cases where there is imminent danger to the public health, safety or

welfare, the Town Board may revoke the permit immediately. In such cases, the Town Building Department is authorized to issue an immediate order to stop work or operations.

- N. The Town Board may approve, disapprove or approve with modifications any special use permit. The Town Board approval may include recommendations for modifications that shall be included in the final site plan for the project if one is required or in the plans submitted during application for a building permit. Conformance with said modifications shall be considered a condition of approval. If the special use permit is disapproved, the Town Board shall provide written findings to the applicant listing the reasons for disapproval.

§ 215-70.36 Standards governing special uses

A special use in a Waterfront District shall comply with the standards of the district in which it is located and meet the following:

- A. In order to grant any special use, the Town Board shall find that the request is in harmony with the general purpose and intent of this chapter, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to streets giving access thereto.
- B. In order to grant any special use, the Town Board shall find that the establishment, maintenance or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- C. The proposal will not result in the destruction, loss or damage of any natural, scenic or significant historical resource.
- D. The proposal will not create excessive additional requirements of public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- E. The proposal will be served adequately by essential public facilities. such as highways, streets, police and fire protection, stormwater drainage, water and sewer and schools, or that the applicant for the proposed special use shall otherwise provide that these services be adequately obtained.
- F. The proposed structure or use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations.
- G. The proposed structure or use complies with all additional standards imposed on it by the particular provision of this chapter which authorizes such use.
- H. The proposal essentially conforms to the Town of Tonawanda Waterfront Region Master Plan.

Article XXVI Wind Energy Conversion Systems (WECS)
[Added 11-20-2006 by L.L. No. 9-2006]

§ 215-169 Purpose

The Town of Tonawanda has determined that a comprehensive local law regulating the development of WECS is necessary to protect the interests of the Town and its residents. The Town adopts this law to promote the effective and efficient use of the Town's wind energy resource through WECS, and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized, and that the WECS will not have a significant adverse impact on the aesthetic qualities of the Town.

§ 215-170 Definitions; applicability

A. As used in this article, the following terms shall have the meanings indicated:

COMMERCIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale.

NONCOMMERCIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet.

TOWER — The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.

TOTAL HEIGHT— (also MAXIMUM OVERALL HEIGHT) — The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.

TOWER HEIGHT — The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

WIND ENERGY CONVERSION SYSTEMS (WECS) — One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for use on site to reduce power costs for sale or redistribution to others. WECS include both commercial and noncommercial systems.

WIND ENERGY FACILITY — Any wind energy conversion system or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY SYSTEM — The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator,

nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.

WIND MEASUREMENT TOWER — A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

- B. Applicability. The requirements of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article.

§ 215-171 Permits required and allowable zoning districts

- A. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in compliance with this article.
- B. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in the General Industrial District (G-I), Waterfront Mixed Use District (M-MU) or the Waterfront Industrial District (WID) without the issuance of a special use permit approved pursuant to this article, the completion of SEQR, and upon issuance of a building permit.
- C. No wind energy facilities shall be constructed, reconstructed, modified, or operated in any residential district (First Residential - A, Second Residential - B or Multifamily Dwelling - M-F), or commercial district (Restricted Business - C-1, General Commercial - CB, Performance Standards Use - P-S, Waterfront Business - WB, or Retail-Highway Commercial - RHC) in the Town of Tonawanda.
- D. No wind measurement tower shall be constructed in the Town of Tonawanda except in the allowable districts pursuant to a special use permit and this article.

§ 215-172 Applications for wind energy facilities

- A. Applications for a special use permit for WECS will follow the general process for the issuance of a special use permit as described in Article XIV of the Town Code and this article, and shall be made as follows:
 - (1) Applicants for a special use permit for wind energy conversion systems within the Town of Tonawanda shall submit the following information to the Town for its referral to a professional engineer or consultant and the Planning Board of the Town for review and recommendation to the Town Board:
 - (a) Name and address of the applicant.
 - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.

- (c) Visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF (or by the Town of Tonawanda), existing tree lines and proposed elevations. The visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures.
- (d) A SEQR full environmental assessment form (EAF).
- (e) A site plan drawn in sufficient detail to show the following:
 - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - [2] Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
 - [3] Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the wind energy conversion systems.
 - [4] Surrounding land use and all structures within 1,500 feet of the wind energy conversion systems.
 - [5] Dimensional representation of the various structural components of the tower construction including the base and footing.
 - [6] Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
 - [7] Existing topography.
 - [8] Proposed plan for grading and removal of natural vegetation.
 - [9] Proposed plan for restoration after construction according to Town of Tonawanda and New York State Department of Environmental Conservation guidelines.
 - [10] Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
 - [11] Plan for ingress and egress to the proposed project site including:
 - [a] A description of the access route from the nearest state-, county-, and/or Town-maintained roads to include:
 - [b] Road surface material stating the type and amount of surface cover.
 - [c] Width and length of access route.
 - [d] Dust control procedures.
 - [e] A road maintenance schedule or program.
 - [f] Review railroad accessibility for deliveries.

- [12] Detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material, equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.
- [13] Tree removal. All groves of trees shall be located on the site plan at time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board.
- (f) Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
- (g) Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
- (h) Noise report. A noise report shall be furnished which shall include the following:
 - [1] A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
 - [2] A description and map of the noise-sensitive environment, including any noise-sensitive receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two miles of the proposed facilities.
 - [3] A survey and report prepared by a qualified engineer that analyzes the preexisting ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction, and analyses at affected sensitive receptors located within two miles of the proposed project site.
 - [4] A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at sensitive receptor locations;
 - [5] A description and map of the cumulative noise impacts.
 - [6] A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this article.

- [7] Identification of any problem areas.
 - [8] Manufacturers' noise design and field testing data, both audible (dBA) and low frequency (deep bass vibration), for all proposed structures.
 - [9] A report that outlines issues and considerations for individuals that use hearing aids.
- (i) A geotechnical report shall be furnished which shall at a minimum include the following:
- [1] Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
 - [2] Foundation design criteria for all proposed structures.
 - [3] Slope stability analysis.
 - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (j) Ice throw calculations: A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- (k) Blade throw calculations: A report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- (l) Catastrophic tower failure. A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
- (m) FAA notification. A copy of written notification to the Federal Aviation Administration.
- (n) Utility notification. Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (o) Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (p) Floodplain. An application that includes any wind turbine which is located within a one-hundred-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.

- (q) Other information. Such additional information as may be reasonably requested by the Technical Support Department, Code Enforcement Officer, Planning Board or Town Board.
- B. Special use permits issued for wind energy conversion systems shall be subject to the following conditions.
- (1) Setbacks: The applicant shall adhere to the following setbacks.
 - (a) From zoning districts:
 - [1] Residential lot setback:
 - [a] No commercial wind energy systems shall be allowed in any residential district.
 - [b] One thousand feet from any residential district boundary line (A, B, and MF).
 - [c] One thousand feet from any other municipal boundary lines.
 - (b) From structures:
 - [1] A minimum 1.5 times the total WECS height from any building located outside the applicant's property line.
 - [2] A minimum of 1,500 feet from any dwelling.
 - (c) From property lines (excluding residential zones):
 - [1] A minimum 1.5 times the total WECS height from any property line excluding adjoining lot lines of project participants.
 - (d) From public road and highways:
 - [1] A minimum 1.5 times the total WECS height from any public road and highway.
 - [2] Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the center line of such right-of-way.
 - (e) From aboveground transmission lines greater than 12 kilovolts: A minimum 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD Zones.
 - (f) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.

- (2) Maximum overall height: The maximum overall height of any wind energy conversion system shall be 450 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (3) Signage. Signage limited: No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- (4) Color and finish.
 - (a) Color and finish: Wind turbines shall be painted a nonobtrusive (e.g., light environmental color such as white, gray, or beige) color that is nonreflective.
 - (b) Camouflage facilities: The design of commercial wind energy facility buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.
- (5) Lighting. Lighting plan required: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- (6) Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the wind energy conversion system.
- (7) Safety and security requirements. The applicant shall adhere to the following safety and security requirements:
 - (a) Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed-shutdown-disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
 - (b) Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
 - (c) Wiring. All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan

showing the locations of all overhead and underground electric utility lines, including substations for the project.

- (d) All transmission lines from wind energy conversion systems to on-site substations shall be underground. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
 - (e) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
 - (f) Climability. Wind turbine towers shall not be climbable up to 15 feet above ground level.
 - (g) Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
 - (h) Self-supporting structures. All structures shall be of monopole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
 - (i) Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
 - (j) Ice throw. Permit shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (8) Noise requirements. The applicant shall adhere to the following noise requirements:
- (a) Compliance with noise regulations required. A WECS permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
 - (b) Noise study required. The applicant shall submit a noise study based on the requirements set out in Subsection B of this section. The Planning Board and Technical Support Department shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
 - [1] Low frequency noise.

- [2] Infrasound noise.
 - [3] Pure tone.
 - [4] Repetitive/impulsive sound.
- (c) Noise setbacks. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
- (d) Audible noise standard. The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dBA for more than five minutes out of any one-hour time period or to exceed 50 dBA for any time period.
- (e) Operations, low frequency noise. A WECS facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (f) Noise complaint and investigation process required. The applicant shall submit a adequacy of the noise complaint and investigation process.
- (9) Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
- (a) Fireproof or fire-resistant building materials.
 - (b) Buffers or fire-retardant landscaping.
 - (c) Availability of water.
 - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment— without regular human occupancy.
 - (e) Provision of training and fire-fighting equipment for local fire protection personnel.
- (10) Impact on wildlife species and habitat. The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
- (a) Endangered or threatened species. Development and operation of a WECS facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Tonawanda Comprehensive Plan and/or the

studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.

- (b) Migratory birds. Development and operation of a commercial wind energy facility shall be evaluated based on SEQRA findings.
- (11) Unsafe and inoperable wind energy facilities; site reclamation. The applicant shall adhere to the following:
- (a) Removal and site restoration. Unsafe WECS facilities, inoperable WECS facilities, and WECS facilities for which the permit has expired shall be removed by the owner at his expense. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible as per Subsection B(11)(b) of this section. A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration at the time of building permit application. The bond shall be payable to the Town of Tonawanda for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. Any fund established may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.
 - (b) Removal and site restoration plan required. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Code Enforcement Officer and Technical Support Department for review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
 - (c) Public nuisance. Every unsafe WECS facility and every inoperable WECS facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable WECS facility shall not be considered a public nuisance, provided that the owner has modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.

- (d) Inoperable, defined. A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- (12) Interference with residential television, microwave and radio reception. The applicant must submit proof that the proposed construction of the wind energy conversion system will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (13) Interference with aviation navigational systems. The applicant shall adhere to the following:
 - (a) No interference with aviation facilities. No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
 - (b) Compliance with FAA regulations. All commercial wind energy siting shall comply with Federal Aviation Administration (FAA) regulations.
 - (c) Locking mechanisms to limit radar interference required. All WECS facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or clutter. This provision does not apply while the WECS is "free-wheeling" during startup and shutdown. The Town Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or clutter will be caused by the WECS facility.
- (14) Erosion control. The applicant shall adhere to the following:
 - (a) Erosion control plan required. Before the Town of Tonawanda shall issue a grading or building permit for the WECS facility, the applicant shall submit an erosion control plan to the Technical Support Department for review and approval. The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
 - (b) If the proposed project disturbs over one acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the notice of intent (N.O.I.) and stormwater pollution prevention plan (SWPPP) as required by the General Permit must be filed with the Town of Tonawanda prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.

- (15) Certification. The applicant shall provide the following certifications:
- (a) Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer licensed and registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Building and Construction Code that have been adopted in New York State.
 - (b) Certification of postconstruction. After completion of the wind energy conversion system, the applicant shall provide a postconstruction certification from a licensed professional engineer licensed and registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
 - (c) Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
 - (d) Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer licensed and registered in New York State. The engineer shall certify compliance with good engineering practices.
 - (e) Certification of project. Certificate of completion must be supplied by the applicant and approved by the Town of Tonawanda Code Enforcement Officer.

C. Monitoring requirements for wind energy conversion systems:

- (1) Right to enter premises for monitoring. Upon reasonable notice, Town of Tonawanda officials or their designated representatives may enter a lot on which a WECS facility permit has been granted for the purpose of monitoring compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
- (2) Avian/bat impact study plan. The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.

- (3) Periodic reporting required. The applicant shall agree to submit periodic monitoring reports to the Town. The report shall contain data on the operations and environmental impacts and shall be in the form prescribed by the Code Enforcement Officer.
- (4) Power production report required. The applicant shall agree to submit a quarterly power production report to the Town. The power production report shall cover the preceding calendar quarter and shall be in the form prescribed by the Technical Support Department and shall include actual power production in kilowatt hours for each WECS facility.
- (5) Inspections. Unless waived by the Town Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State-licensed professional engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (6) General complaint process.
 - (a) During construction, the Town of Tonawanda Code Enforcement Officer can issue a stop-work order at any time for any violations of the permit.
 - (b) Postconstruction. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Tonawanda Code Enforcement Officer, the permit holder/contact person shall have seven working days to reply to the Town in writing.

D. Application and development fees and costs:

- (1) Application fee. The applicant shall pay all costs associated with the Town of Tonawanda's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Tonawanda may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- (2) Development fees to be paid. A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a commercial wind energy system permit. Such fees must be related to the public need created by the wind energy

development. The purposes for which the permit fee may be used include, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.

- (3) Proof of insurance. Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

E. Findings.

- (1) Findings necessary to grant a WECS facility permit. In order to grant a WECS facility permit, the Town of Tonawanda shall review the application, all filings by any other party, and conduct a public hearing. A commercial wind energy facility permit shall not be granted unless the Town of Tonawanda makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan. The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Tonawanda.
- (b) Will not unreasonably interfere with the orderly land use and development plans. The proposed WECS facility will not unreasonably interfere with the orderly land use and development plans of the Town of Tonawanda.
- (c) Benefits to the applicant and public will exceed any burdens. The benefits of the proposed WECS facility project to the applicant and the public will exceed any burdens.
- (d) Not detrimental to the public health, safety and general welfare of the community. The proposed WECS facility will not be detrimental to the public health, safety or general welfare of the community.
- (e) Complies with all required provisions of the Zoning Ordinance. The proposed WECS facility shall comply with all required provisions of the Zoning Ordinance, unless variances have been properly applied for and granted pursuant to Article XVI of Chapter 215 of the Code of the Town of Tonawanda.

- F. The Town Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for each tower.

- G. WECS permits approved by the Town Board of the Town of Tonawanda shall be renewed annually. The permit holder shall make renewal application to the Code Enforcement Officer 60 days prior to expiration to allow for inspection and full compliance with all applicable laws and

regulations. The renewal application will include a fee as set by the Town Board. [Amended 3-26-2007 by L.L. No. 2-2007]

- H. The special use permit shall not be assignable or transferable.
- I. Amendments to special use permit. Any changes or alterations postconstruction to the WECS shall be done only by amendment to the special use permit and subject to all requirements of this article.
- J. The applicant licensee shall agree to indemnify and save the Town, its Town Board, officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents and/or employees arising from the construction, operation or maintenance of the WECS.
- K. The applicant shall certify to the Town that appropriate security will be in place to restrict access to the WECS and facilities following completion of construction.

§ 215-173 Wind measurement towers

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("Met") towers, shall be permitted as a special use in the same zoning districts as the WECS.

- A. An application for a wind measurement tower shall include:
 - (1) Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - (2) Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
 - (3) Address of each proposed tower site, including Tax Map section, block and lot number.
 - (4) Site plan.
 - (5) Decommissioning plan, including a security bond or cash for removal.
- B. The Town Board may attach such conditions as it deems appropriate to variance approvals as it deems necessary to minimize the impact of the variance.

§ 215-174 Permit revocation

- A. Testing fund. A special use permit shall contain a requirement that the application fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by residents. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate permit conditions, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: 1) order either remedial action within a particular time frame, or 2) order revocation of the wind energy permit or the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

§ 215-175 Fees and costs

All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

§ 215-176 Enforcement; penalties and remedies for violations

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a WECS or wind measurement tower in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense

and subjected to a fine of not more than \$250 or to imprisonment for a period of not more than six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.

- B. In case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation to prevent the illegal act.

Appendix B –Local Waterfront Consistency Review Law

CHAPTER 129 LOCAL WATERFRONT REVITALIZATION

[HISTORY: Adopted by the Town Board of the Town of Tonawanda 4-19-1993 by L.L. No. 2-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental Conservation Commission — See Ch. 8.

Environmental quality review — See Ch. 76.

Zoning — See Ch. 215.

ARTICLE I General Provisions (§ 129-1 - § 129-6)

§ 129-1 Legislative intent

This Local Waterfront Revitalization Program (LWRP) Consistency Law for the Town of Tonawanda requires all Type I and unlisted actions [as defined by the State Environmental Quality Review Act (SEQRA) implementing regulations] that would be directly undertaken, approved or funded by the town to be reviewed by the Town Board for consistency with the Town of Tonawanda LWRP. This chapter further prohibits such actions from being carried out unless the Town Board finds and certifies that the action is consistent with the policies and purposes of the LWRP. This applies equally to actions involving the Town Board and town agencies. By adoption of this chapter, the Town Board is legally committing itself and its agents to comply with the provisions of the LWRP.

§ 129-2 Title

This chapter shall be known and may be cited as the "Town of Tonawanda LWRP Consistency Law."

§ 129-3 Purpose

The purpose of this chapter is to provide for the protection and beneficial use of the natural and man-made resources within the Town of Tonawanda coastal area by ensuring that actions to be undertaken, approved or funded by town agencies within the town's coastal area will be undertaken in a manner consistent with the policies and purposes of the Town of Tonawanda Local Waterfront Revitalization Program.

§ 129-4 Authority

This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

§ 129-5 Applicability

All agencies of the Town of Tonawanda must comply with this chapter prior to directly undertaking, approving or funding any action within the coastal area when such action is classified as Type I or unlisted under Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

§ 129-6 Definitions

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

ACTIONS

- 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 which:
 - (1) Are directly undertaken by an agency;
 - (2) Involve funding by an agency; or
 - (3) Require one or more permits or approvals from an agency or agencies.
- B. Agency planning and policy making activities that may affect the environment and commit the agency to a course of future conduct or decisions.
- C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment.
- D. Any combinations of the above.

AGENCY

Any board, agency, department, office, other body or official or officer of the Town of Tonawanda.

APPLICANT

Any person making an application or other request to an agency to provide funding or to grant an approval or a permit in connection with a proposed action.

COASTAL AREA

The New York State coastal waters and adjacent shorelines, as defined in Article 42 of the Executive Law, which are located within the boundaries of the Town of Tonawanda as shown on the coastal area map on file in the Office of the Secretary of State and as delineated in the Town of Tonawanda LWRP.

CONSISTENT

That the action will fully comply with and not hinder any of the Town of Tonawanda LWRP standards and conditions and, whenever practicable, will advance one or more of such policies.

DIRECT ACTION OR DIRECTLY UNDERTAKEN

An action planned and proposed for implementation by an agency or the town. Direct actions include but are not limited to capital projects, promulgation of agency rules, regulations, local laws, codes or ordinances and policy making which commits an agency to a course of action.

ENVIRONMENTAL ASSESSMENT FORM (EAF)

The long form appearing at 6 NYCRR Part 617 used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF shall contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A written document prepared in accordance with 6 NYCRR Part 617. An environmental impact statement may either be draft or final form. A draft EIS is the initial statement prepared by either the applicant or the lead agency and circulated for review and comment. A generic EIS may also be prepared in accordance with 6 NYCRR Part 617.

FUNDING

Any financial support given by an agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance in connection with the proposed action.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)

The local waterfront revitalization program of the Town of Tonawanda as approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law Article 42), a copy of which is on file in the office of the Town Clerk of the Town of Tonawanda.

PERMIT

Permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by an agency.

PERSON

Any agency, individual, corporation, government entity, partnership, association, trustee or other legal entity.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Article 8 of the Environmental Conservation Law of the State of New York.

STATE ENVIRONMENTAL QUALITY REVIEW REGULATIONS (PART 617)

6 NYCRR Part 617.

TOWN

The Town of Tonawanda.

TOWN BOARD

The Town Board of the Town of Tonawanda.

TYPE I ACTION

Shall include all those actions listed in 6 NYCRR Part 617 and any critical areas of environmental concern as the Town Board shall have designated pursuant to the authority and procedure of 6 NYCRR Part 617.

TYPE II ACTION

Shall include all those listed in 6 NYCRR Part 617, except as otherwise noted in this chapter.

UNLISTED ACTION

All actions not listed as a Type I or Type II Action and not an exempt or excluded action as those terms are defined in 6 NYCRR Part 617.

WATERFRONT ASSESSMENT FORM (WAF)

The form used by the Town Board to assist it in determining the consistency of an action with the LWRP.

ARTICLE II Consistency Review Procedures (§ 129-7 - § 129-10)

§ 129-7 Initial review

The Town Board or a town agency, when proposing to undertake, approve or fund a Type I or unlisted action within the coastal area, shall prepare or cause to be prepared a Waterfront Assessment Form (WAF) for the proposed action.

§ 129-8 Certification of consistency

[Amended 4-7-2008 by L.L. No. 2-2008]

- A. The Town Board is authorized to review and make determinations regarding the consistency of proposed actions with the LWRP policy standards and conditions set forth in Subsection F of this section. Whenever a proposed action is located in the Town's coastal area, the Town Board shall make a written determination of consistency in accordance with the LWRP policy standards and conditions. No agency shall undertake, approve or fund any Type I action or unlisted action in the coastal area without first obtaining this determination. No action which is reviewed under this section shall be undertaken until a determination of consistency has been made by the Town Board.
- B. Whenever an agency receives an application for approval or funding of an action to be located within the coastal area, the applicant shall prepare a Waterfront Assessment Form (WAF) to assist the Town Board with its consistency review. The agency shall refer a copy of the completed WAF and all accompanying maps, plans and application to the Town Board within 10 days of its submission for the determination of consistency
- C. As early as possible in an agency's formulation of a direct action which is proposed to be located within the coastal area, the agency shall prepare a Waterfront Assessment Form (WAF) to assist the Town Board with the consistency review.
- D. After receipt of a completed WAF and all documentation the Town agency or the Town Board requires for an action, the Town Board shall determine whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection F of this section. The Town Board or the appropriate Town agency shall require the applicant to submit

any completed applications, EAFs and any other information deemed to be necessary to its consistency determination.

- E. The Town Board shall render its written determination and reasons therefor within 30 days following the referral of the WAF and all required documentation from the application or the Town agency, unless either an EIS is being prepared or is under review in accordance with the requirements of 6 NYCRR Part 617, or the time period is extended by the Town Board for good cause. The time period for a Town Board determination of consistency shall be suspended pending receipt by the Town Board of any EIS and any explicit findings related to a proposed project as may be required pursuant to SEQRA. The Town Board shall have the authority in its findings of consistency to impose practicable and reasonable conditions on any action to insure that it is carried out in accordance with this chapter.
- F. Actions to be undertaken within the coastal area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions which are derived from and further explained and described in Section II of the Town of Tonawanda LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Actions which are directly undertaken shall also be evaluated for consistency with Section IV of the LWRP. The action shall be consistent with the policy to:
- (1) Revitalize and redevelop deteriorating industrial and commercial structures (Policies 1, 1A and 1B).
 - (2) Retain and promote water-dependent uses (Policies 1A and 2).
 - (3) Ensure that development occurs where adequate public infrastructure is available to reduce health or pollution hazards (Policy 5).
 - (4) Protect significant fish and wildlife habitats from human disruption and chemical contamination (Policies 7 and 8).
 - (5) Maintain and expand fish populations for recreational use (Policies 9 and 9A).
 - (6) Minimize flooding and erosion hazards through nonstructural means and carefully selected long-term structural measures (Policies 11, 11A, 12, 12A, 13, 13A, 14, 15, 16, 17 and 17A).
 - (7) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 19, 19A, 19B, 20, 20A, 21, 21A, 21B, 22, 22A, 22B, 22C and 22D).
 - (8) Protect and restore archaeological resources (Policies 23 and 23A).
 - (9) Protect and upgrade scenic resources (Policies 25, 25A and 25B).
 - (10) Operate existing power plants in an environmentally sound manner and expand them only if compatible with public energy needs, the environment and waterfront (Policy 27 and 27A).
 - (11) Undertake ice management practices in a manner that protects habitats and prevents shoreline erosion and does not interfere with hydroelectric production (Policies 7, 28 and 28A).

- (12) Protect surface and groundwaters from direct and indirect discharge of pollutants and from other overuse (Policies 30, 31, 33, 34, 36, 37 and 38).
- (13) Perform dredging and dredge soil disposal in a manner protective of natural resources (Policies 15 and 35).
- (14) Eliminate non-water-dependent handling of petroleum and hazardous materials from the waterfront (Policy 36).
- (15) Handle and dispose of hazardous waste in a manner which will not adversely affect the environment or expand existing landfills (Policies 39 and 39A).
- (16) Discharge of effluent from energy or industrial facilities shall not be unduly injurious to fish and wildlife and shall conform to state water quality standards (Policies 40 and 40A).
- (17) Protect air quality (Policies 41, 41A, 42 and 43).
- (18) Protect freshwater wetlands (Policies 44 and 44A).

G. Determinations

- (1) If the Town Board determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the Town Board determines with respect to the proposed action that:
 - (a) No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 - (b) The action would be undertaken in a manner which would minimize all adverse effects on such LWRP policy standards and conditions to the maximum extent practicable;
 - (c) The action will advance one or more of the other LWRP policy standards and conditions;
 - (d) The action will result in overriding town, regional or statewide public benefit.
- (2) Such finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

H. The Town Board shall maintain a file for each action made the subject of the consistency determination and shall include in that file any findings made pursuant to this chapter. Such files may be made available for public inspection upon a properly completed freedom of information request.

§ 129-9 Enforcement

[Amended 3-26-2007 by L.L. No. 2-2007]

The Code Enforcement Officer and his designees shall be responsible for enforcing this chapter. No work or activity on a project within the coastal area which is subject to review under this chapter shall be commenced or undertaken until the Building Department has been presented with a written determination from an applicant or agency that the action is consistent with the town's LWRP policy

standards and conditions. In the event that work or any activity is not being performed in accordance with this chapter or any conditions imposed thereunder, 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 a project so long as a stop order is in effect.

§ 129-10 Penalties for offenses; prosecution of violations

A. Penalties for offenses.

- (1) Any person convicted of a violation of this chapter shall be deemed to have committed a violation and shall be subject to a fine not exceeding \$250 or to imprisonment for a period not exceeding 15 days.
- (2) Any person taking part in or assisting in any violation of this chapter shall also be subject to the penalties herein.
- (3) Each day that a violation of this chapter is committed or is permitted to exist shall constitute a separate offense.

B. Violations.

- (1) The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this chapter. The Town Attorney is also authorized to seek damages and any civil penalties in any civil action, and such penalties shall be in addition to and not in lieu of any criminal prosecution and penalty.
- (2) In the event of any actual or pending violation of this chapter, the Town Attorney may, in addition to other remedies, institute any appropriate action or proceedings to prevent, restrain, correct or abate such violation.
- (3) In addition to other remedies provided by law, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- (4) In addition to any fine or penalty imposed, the defendant shall pay all costs and expenses incurred by the town in determining such violation.

Appendix C - Procedural Guidelines for Coordinating NYS Department of State (DOS) & LWRP Consistency Review of Federal Agency Actions

DIRECT ACTIONS

1. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the program coordinator (of an approved LWRP) and other interested parties.
2. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.
3. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with local coastal policies.
4. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed direct action.
5. A copy of DOS' "agreement" or "disagreement" letter to the federal agency will be forwarded to the local program coordinator.

PERMIT AND LICENSE ACTIONS

1. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the program coordinator and will identify the Department's principal reviewer for the proposed action.
2. Within thirty (30) days of receiving such information, the program coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with local coastal policies.
3. When DOS and the program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the program coordinator upon receipt.
4. Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with local coastal policies.

5. After the notification, the program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with local coastal policies.
6. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant.
7. A copy of DOS' "concurrence" or "objective" letter to the applicant will be forwarded to the program coordinator.

FINANCIAL ASSISTANCE ACTIONS

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

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

I. PURPOSES OF GUIDELINES

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

II. DEFINITIONS

- A. **Action** means:
 1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
 2. Occurring within the boundaries of an approved LWRP; and
 3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.
- B. **Consistent to the maximum extent practicable** means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:
 1. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
 2. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and
 3. That will result in an overriding regional or statewide public benefit.

- C. **Local Waterfront Revitalization Program or LWRP** means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man-made resources, proposed land uses and specific projects that are essential to program implementation.

III. NOTIFICATION PROCEDURE

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

IV. LOCAL GOVERNMENT REVIEW PROCEDURE

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

as long as the Resolution of Conflicts procedure established in V below shall apply. The local government shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

V. RESOLUTION OF CONFLICTS

- A. The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP:
1. Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.
 2. If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
 3. If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
 4. Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.
 5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.
 6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

Appendix E- Coastal Fish & Wildlife Habitat Rating Form

Name of Area: **Strawberry Island - Motor Island Shallows**
 Designated: **October 15, 1987**
 County: **Erie**
 Town(s): **Tonawanda, Grand Island**
 7½' Quadrangle(s): **Buffalo NW, NY**

Score	Criterion
25	Ecosystem Rarity (ER) This is the largest area of riverine littoral zone and wetland in the Niagara River, a rare ecosystem type in the Great Lakes Plain ecological region.
0	Species Vulnerability (SV) No endangered, threatened or special concern species reside in the area.
9	Human Use (HU) Recreational uses (i.e., waterfowl hunting and fishing) are important to residents of the Niagara region of New York and adjoining portions of Canada.
20	Population Level (PL) An important area used by one of the largest concentrations of wintering waterfowl in the northeastern US; also a major muskellunge spawning area in the Great Lakes region. Geometric mean: $(16 \times 25)^{1/2}$
1.2	Replaceability (R) Irreplaceable

SIGNIFICANCE VALUE = $[(ER + SV + HU + PL) \times R] = 65$

SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS PROGRAM A PART
OF THE NEW YORK COASTAL MANAGEMENT PROGRAM

BACKGROUND

New York State's Coastal Management Program (CMP) includes a total of 44 policies which are applicable to development and use proposals within or affecting the State's coastal area. Any activity that is subject to review under Federal or State laws, or under applicable local laws contained in an approved local waterfront revitalization program will be judged for its consistency with these policies.

Once a determination is made that the proposed action is subject to consistency review, a specific policy aimed at the protection of fish and wildlife resources of statewide significance applies. The specific policy statement is as follows: "Significant coastal fish and wildlife habitats will be protected, preserved, and, where practical, restored so as to maintain their viability as habitats." The New York State Department of Environmental Conservation (DEC) evaluates the significance of coastal fish and wildlife habitats, and following a recommendation from the DEC, the Department of State designates and maps specific areas. Although designated habitat areas are delineated on the coastal area map, the applicability of this policy does not depend on the specific location of the habitat, but on the determination that the proposed action is subject to consistency review.

Significant coastal fish and wildlife habitats are evaluated, designated and mapped under the authority of the Coastal Management Program's enabling legislation, the Waterfront Revitalization and Coastal Resources Act (Executive Law of New York, Article 42). These designations are subsequently incorporated in the Coastal Management Program under authority provided by the Federal Coastal Zone Management Act.

This narrative, along with its accompanying map, constitutes a record of the basis for this significant coastal fish and wildlife habitat designation and provides specific information regarding the fish and wildlife resources that depend on this area. General information is also provided to assist in evaluating impacts of proposed activities on parameters which are essential to the habitat's values. This information is to be used in conjunction with the habitat impairment test found in the impact assessment section to determine whether the proposed activities are consistent with the significant coastal habitats policy.

DESIGNATED HABITAT: STRAWBERRY ISLAND - MOTOR ISLAND SHALLOWS

LOCATION AND DESCRIPTION OF HABITAT:

Strawberry Island - Motor Island Shallows is located in the upper Niagara River, roughly bounded by Strawberry Island, Motor Island, and the southern tip of Grant Island. This approximate 400 acre area is located in the Town of Grand Island and Tonawanda, Erie County (7.5' Quadrangle: Buffalo, N.W., N.Y.) The fish and wildlife habitat is an extensive shallow shoal area (generally less than 6 feet deep below mean low water), containing beds of submergent aquatic vegetation (e.g., wild celery), and patches of emergent wetland vegetation in shoreline areas. Much of this Island, which appears to be eroding as a result of ice scour, high water levels, and direct removal by dredging. Dredging was responsible for much of the reduction in surface area of the island from approximately 200 acres in 1912 to 40 acres in 1948. Strawberry Island is a horseshoe-shaped island which is now 20 acres in size. There is a stand of native willow trees on the south end and a lagoon and marsh on the north side. The island functions as the geologic dividing point of the east and west branches of the Niagara River. The underwater portion of Strawberry Island - Motor Island Shallows is owned by the N.Y.S. Office of General Services and as of 1987, the upland portion of Strawberry Island is also owned by the State. Most of the adjacent land area on Grand Island is within Beaver Island State Park, which is extensively developed for recreational use.

FISH AND WILDLIFE VALUES:

Strawberry Island - Motor Island Shallows is the largest area of riverine littoral zone in the Niagara River. Areas such as this are rare in the Great Lakes Plain ecological region, and are extremely valuable fish and wildlife habitat.

Strawberry Island - Motor Island Shallows is one of the most important fish spawning areas in the upper Niagara River. Studies during the mid-1970s indicated that this was one of two principal spawning grounds for muskellunge in the river, supporting an estimated annual population of 2-6,000 legal-size (28+ inches) fish. Most spawning by this species occurred during May and June, when water temperatures were 16-18 C, in heavily vegetated areas, 3-6 feet deep, with an appreciable current. This area is also one of the most productive spawning areas in the upper Niagara River for smallmouth bass, yellow perch, and various other resident freshwater fish species. Strawberry Island - Motor Island Shallows contains relatively large concentrations of many fish species throughout the year. As a result of the abundant fisheries resources in this area, Strawberry Island - Motor Island Shallows is one of the most popular recreational fishing areas in the upper Niagara River, attracting many anglers from the Buffalo metropolitan area and nearby Canada. A small bay on the north side of Strawberry Island is especially popular year-round, since it offers excellent conditions for ice fishing. Boat access to the area is available from marinas and public boat launches in the vicinity.

Strawberry Island - Motor Island Shallows is part of one of the most important waterfowl wintering areas (November-March) in the northeastern United States, especially for diving ducks. Mid-winter aerial surveys of waterfowl abundance for the ten year period 1976-1985 indicate average concentrations of over 14,000 birds in the upper Niagara River each year (25,371 in peak year), including approximately 8,500 common and red-breasted mergansers (17,470 in peak year), 2,600 common

goldeneye (8,520 in peak year), 1,900 canvasbacks (5,000 in peak year), and 1,200 scaup (2,306 in peak year), along with lesser numbers of black duck, mallard, bufflehead and oldsquaw. Strawberry Island – Motor Island Shallows serves as one of the major feeding and resting areas for these birds. The habitat is located in one of the few major wintering areas for canvasbacks in New York State. Waterfowl use of the area during winter each years is influenced in part by the extent of ice cover throughout the region. Concentrations of waterfowl also occur in the area during spring and fall migrations (March-April and October-November, respectively). Consequently this is one of the most popular waterfowl hunting areas in the Buffalo area, especially for diving ducks during the late season. There was a moratorium on canvasback duck hunting during 1986/1987. Summer use of the area by wildlife is not known to be significant, but common terns (T) may feed in the area, but the extent of their use has not been documented.

IMPACT ASSESSMENT:

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

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

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

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

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

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

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

environmental factors, however, do not have a sharply defined tolerance limit, but produce increasing emigration or death rates with increasing departure from conditions that are optimal for the species.

The range of parameters which should be considered in applying the habitat impairment test include but are not limited to the following:

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

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

Any activity that substantially degrades water quality in Strawberry Island - Motor Island Shallows would affect the biological productivity of this area. Important species of fish and wildlife could be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, excessive turbidity or sedimentation, and waste disposal. Spills of oil or other hazardous substances are an especially significant threat to waterfowl concentrations in this area.

Disturbances of littoral areas or wetland vegetation at any time of year could affect a variety of fish and wildlife species. Dredging, filling, bulkheading, or development of boat launching facilities in this area would adversely affect fish and wildlife in a variety of ways, including direct loss of habitat, and increased human disturbance during fish spawning and nursery periods (April-July for most warmwater species). Temporary habitat disturbances would also be especially detrimental during this period. However, habitat management activities may be necessary to ensure that this productive fish and wildlife area is not destroyed by erosion.

Structural measures, if appropriate, should be designed to maintain or enhance the value of Strawberry Island - Motor Island Shallows without adversely affecting existing fish and wildlife resources. Thermal discharges, depending on time of year, would have variable effects on use of the area by aquatic species and wintering waterfowl. Installation and operation of water intakes could have a significant impact on fish populations, through impingement of juveniles and adults, or entrainment of eggs and larval stages. Recreational use of Strawberry Island should be controlled to restrict activities that may increase soil erosion.

It should be noted that an easement and pipeline for the Town of Tonawanda's water supply crosses the island. The intake cribs are located just offshore of Strawberry Island. Since this portion of the river is an important water supply source as well as a significant fish and wildlife habitat, it is vital that the water quality in this area remains high.

KNOWLEDGEABLE CONTACTS:

Tom Hart or Greg Capobianco
Division of Coastal Resources & Waterfront Revitalization
NYS Department of State
162 Washington Avenue
Albany, NY 12231
Phone: (518) 474-6000

Terry Moore, Wildlife Manager
or Steve Mooradian, Fisheries Manager
or Jim Pomeroy, Environmental Protection Biologist
NYSDEC - Region 9
128 South Street
Olean, NY 14760
Phone: (716) 372-8676

Edward J. Harrison, Assistant Professor
Kent State University, Trumbull Campus
Warren, Ohio 44483

NYSDEC - Information Services
700 Troy-Schenectady Road
Latham, NY 12110
Phone: (518) 783-3932

James R. Spotila
Professor of Biology and
Director, Fisheries and Ecology Program
Department of Biology
State University College at Buffalo
1300 Elmwood Avenue
Buffalo, NY 14222
Phone: (716) 387-6409

Ron Gardner
Chairman, Conservation and Environment Committee
Local 774, UAW
2939 Niagara Street
Buffalo, NY 14207
Phone: (716) 873-4715

