

SECTION III Local Waterfront Revitalization Program Policies

The Local Waterfront Revitalization Program (LWRP) policies and sub-policies (collectively referred to as "policies") presented in this chapter consider the economic, environmental, and cultural characteristics of Wheatfield's waterfront. The policies represent a balance between economic development and preservation that will permit beneficial use of, and prevent adverse effects on, coastal resources. They also represent the enforceable policies of the New York State Coastal Management Program for the waterfront area subject to this LWRP. The policies are comprehensive and reflect the community's concerns; and they will be enforced through use of State laws and authorities, and local laws and regulations. These policies are the basis for Federal and State consistency determinations for activities affecting the local waterfront area. While the policies are enforceable as a matter of state and local law however, for reviews conducted under the federal Coastal Zone Management Act, the explanatory text for each policy is for explanatory purposes only. The policies are organized under four headings: developed waterfront policies; natural waterfront policies; public waterfront policies; and working waterfront policies.

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

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DEVELOPED WATERFRONT POLICIES

POLICY 1 - Foster a pattern of development in the coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development

The community character of the Town of Wheatfield waterfront areas is defined by the pattern of land use and development that is clustered along River Road (NYS Route 384 and 265) and the Niagara River in Sub-Area 1, and Lockport Avenue and the Erie Canal (Tonawanda Creek) in Sub-Area 2. Most of the shoreline in both Sub-Areas in the Town is well developed (primarily with residential uses), offering few opportunities for new development. The long standing planning goals of the Town are aimed at preserving and enhancing the character of the waterfront and its relationship to the River and the Canal, and providing better opportunities for recreation and public access that are compatible with the existing scale and patterns of development and the availability of services in the community.

This policy is intended to encourage a pattern of development that enhances the quality of life and protects the character of the waterfront areas. In recognizing the characteristics of the unique sub-areas along the waterfront, the primary components of this policy are to: strengthen the limited amount of economic activity that occurs along River Road in Sub-Area 1, protect and improve stable residential areas; improve recreation and public access opportunities, and preserve and protect remaining open space and significant natural resources. Development that does not reinforce the traditional land use pattern and improve the quality of life along the River and Canal would adversely impact the community character of these areas.

1.1 Concentrate development and redevelopment in order to revitalize and enhance the waterfront areas and strengthen the waterfront focus of the area.

New development or redevelopment should be located where infrastructure is adequate or can be upgraded to accommodate such development. The scale of development or redevelopment along the waterfront should be appropriate to the setting and character of the area and highlight existing resources, such as the local history and important natural or man-made features to reinforce community identity. Development and redevelopment efforts should be primarily focused in Sub-area 1. This area should be designed and developed as a focus for activity, drawing people to the area, as appropriate, and linking the river to the upland. Development and redevelopment decisions should be compatible with community and regional needs, as well as market demands. In addition, the environmental quality of any degraded areas should be restored and environmental constraints, in particular shoreline erosion and flood hazards, should be recognized as limiting factors to the development or redevelopment of certain areas. Finally, the efforts of the NYS Department of Transportation should consider means for calming traffic flow along NYS Route 384 to improve public safety and enhance community character. The speed and volume of traffic flow through the

area creates hazards for residents and negatively impacts the quality of life in the area. Adequate facilities for pedestrians and bicyclists should be ensured in both sub-areas. Any improvements to NYS Route 384 must not cut the upland community in Sub-Area 1 off from the waterfront.

Sub-Area 1 is, in many ways, a gateway to the Town and the Wheatfield waterfront, and redevelopment efforts should reflect this, including the development of a gateway feature that welcomes residents, workers and visitors to the area. River Road is a segment of the New York State Seaway Trail and a State and nationally-Designated Scenic By-Way. Gateway features and other roadway signage should recognize and promote this status.

There are two parcels at the western end of Sub-Area 1 that encompass approximately 25 acres of land and have potential for development and redevelopment. These properties are an appropriate setting for development, with adequate access to public infrastructure, and consideration has been given to opportunities for mixed use development that would offer commercial and residential uses, along with public access along the waterfront. Public access should be included in any development or redevelopment proposals for these lands.

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

1. New development should be located where infrastructure is adequate or can be upgraded to accommodate new development or redevelopment.
2. Development should be designed at a scale that is appropriate to the setting.
3. As appropriate, waterfront properties should be developed as focus areas of activity to draw people to the shoreline and link the waterfront with upland portions of the area.
 - a) provide and improve integrated linkages between the waterfront and upland portions of the community, including the use of appropriate directional signage;
 - b) meet community and regional needs and market demands when making development choices so that the end product provides a useful service and benefits and connects with the surrounding area;
 - c) recognize environmental constraints as a limiting factor for development and devise ways to blend environmental preservation into site design, wherever possible, to achieve development without adversely impacting important environmental resources;
 - d) restore environmental quality to degraded areas for both resource preservation and revitalization.
4. All development or uses should recognize the unique qualities of the waterfront by:
 - a) using building and site design to make beneficial use of the waterfront location and associated resources;

- b) minimizing consumption of waterfront lands that does not meet the intent of this policy or that would result in potential adverse impacts on natural resources;
- c) limiting shoreline alteration;
- d) incorporating recreational activities, public access, open space and other such amenities into site designs, as appropriate, to enhance the subject site and the surrounding community, and to increase visual and physical access to the Niagara River and Erie Canal;
- e) attracting people to the waterfront, as appropriate to the use;
- f) ensuring that design and siting of uses and structures complements the surrounding community and landscape;
- g) using indigenous plants as components of landscape design to improve habitat and water quality, and to lessen water demand.

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

All uses proposed for the waterfront areas should relate to the unique character of these areas and should be appropriate for the location. Water-dependent uses should be promoted where appropriate and given precedence over other types of development at suitable waterfront sites. Existing water-dependent uses should be protected. Development that is not dependent on a waterfront location or that cannot make beneficial use of such a location should be discouraged. Water-enhanced uses may be encouraged where they are compatible with surrounding development and are designed to make beneficial use of their location along the Niagara River or Erie Canal.

Water-Dependent uses

Water-dependent uses are activities that require a location in, on, over or adjacent to the water because these activities require direct access to, or use of, surface waters as an integral part of the activity.

Water-Enhanced uses

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

1. Water-dependent uses and water-enhanced uses should be sited and designed to:
 - a) attract people to or near the waterfront and provide opportunities for access;
 - b) provide public views to or from the water;
 - c) link the waterfront to adjoining business districts;
 - d) minimize consumption of waterfront land; and
 - e) not cause significant adverse impacts to community character and surrounding land and water resources.

2. Uses should be avoided that would:
 - a) result in unnecessary and avoidable loss of significant waterfront resources;
 - b) ignore the waterfront setting as indicated by design or orientation; and
 - c) fail, by nature, to derive economic benefit from a waterfront location.

1.3 Maintain and enhance natural areas, recreation, and open space.

Natural areas, open space and recreational land offer public benefits that may not be immediately tangible. In addition to scenic and recreational benefits, these lands may also support important habitat, provide watershed management and flood control benefits, and serve to recharge ground water. Special consideration should be given to protecting stands of large trees and significant habitats. The expansion of infrastructure into undeveloped areas should be avoided where such expansion would promote development that is detrimental to important waterfront resources or the character of the waterfront areas.

There are no conservation lands or public parks in Sub-Area 1, but the Town owns a 4.6-acre property that is proposed for future parkland development to provide public benefit in this area. This land is situated just east of parkland in the City of Niagara Falls. The long-term vision is to develop a connection between these areas to further enhance public recreation and open space opportunities. River Road is also a designated segment of the NYS Great Lakes Seaway Trail and a designated Scenic By-way.

The abandoned railroad corridor in Sub-Area 1 provides an opportunity for public recreation and improved use as open space. The Town would like to improve this area for a multi-use trail that would enable a connection between the Cities of Niagara Falls and North Tonawanda. This trail would also represent an important segment in the Niagara River Greenway system. Such an effort would help to provide much needed recreational land to benefit the public in this area.

Baisch Park is the only park facility in Sub-Area 2. This 3.7-acre property is presently utilized for passive recreation. The long-term vision for this park is to develop a connection to the waterfront and the West Canal Marina and County park facility, which is situated immediately east of the LWRA, to enhance and improve recreational opportunities.

To enhance community character and maintain the quality of the natural and man-made environment, potential adverse impacts that may result from site development, including impact to existing development, the physical environment, and economic factors should be identified and avoided or properly mitigated. Development and redevelopment should be designed to take advantage of significant site characteristics, limit the disturbance of important natural resources, foster visual compatibility with the surrounding area, and maintain the continuity of public access along the water's edge.

1. Adverse impacts on natural resources should be avoided, including, but not limited to:

- a) degradation of water quality;
 - b) loss, fragmentation, and impairment of habitats and wetlands; and
 - c) alteration of protective features and changes to natural processes that would increase shoreline flooding and erosion.
2. Special consideration should be given to protecting mature trees, unique forest cover types and significant wildlife habitats.
 3. Establish a continuous trail system, with linkages to adjoining communities, that is sufficiently wide enough to allow for safe pedestrian and bicycle travel along the waterfront.

1.4 Minimize the adverse impacts of new development or redevelopment on the waterfront

To enhance community character and maintain the quality of the natural and man-made features in the Wheatfield waterfront areas, potential adverse impacts of new development and redevelopment on existing land uses, the natural environment, and the local economy should be properly assessed and mitigated. Development should reflect the recognition of existing site characteristics, limit the disturbance of land and water, and foster visual compatibility with surrounding areas. The size and scale of development or redevelopment should be compatible with the character of the surrounding area, the adjacent river or canal, and the Town as a whole. This is of particular importance in Sub-Area 1, where existing residential lots are narrow, with many not conforming to current Code requirements. Where parcels are combined and new residential development proposed, the size and scale of new structures must not adversely impact the character of the surrounding area, disrupt existing views or otherwise be designed in a manner that is not in keeping with the character of surrounding residential development.

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

1. Potential economic impacts should be minimized as follows:
 - a) prevent deterioration of the waterfront and the surrounding area by eliminating derelict and dilapidated conditions;
 - b) avoid uses that detract from community character of the waterfront;
 - c) prevent the isolation of community uses and people from the waterfront; and
 - d) protect and enhance the economic base of the community and promote diverse economic activity.

1.5 Protect stable residential areas

The existing residential neighborhoods along the waterfront are important to the overall character community and economic functioning of the area. New uses in stable residential neighborhoods should be avoided when their size or scale would significantly impact the character of the area. New construction, redevelopment and associated screening, such as fences and landscaping, should not reduce or eliminate vistas that connect local residents or visitors to the waterfront or views that are otherwise important to the surrounding area.

Public access improvements should also be emphasized to better establish the connection between residential areas and the waterfront. Linkages are also important and should be created through the development of the waterfront trail system.

POLICY 2 - Preserve historic resources

The intent of this policy is to preserve historic and archaeological resources in the LWRA. Concern extends not only to the specific site or resource, but to the area adjacent to and around specific sites and resources. There are no designated historic structures located with the LWRA. No known sites of archaeological significance have been identified within the LWRA, and both Sub-Areas have been considerably disturbed by clearing and development over the years. However, the NYS Office of Parks, Recreation and Historic Preservation (SHPO) has archaeological mapping that indicates that much of the Sub-Area 1 waterfront and the entire Sub-Area 2 waterfront is designated as archaeologically-significant (see Section 2.8.2). Therefore, the SHPO should be contacted when considering development or redevelopment projects within undisturbed areas along these waterfronts.

2.1 Maximize the preservation and retention of historic resources

1. Potential impacts to historic resources in the LWRA should be thoroughly evaluated through the environmental review process. All practical means should be utilized to preserve identified resources and mitigate or avoid potential adverse impacts.
2. The historic character of significant resources identified in the LWRA shall be preserved by protecting historic materials and features as follows:
 - a) evaluate the physical condition of important materials and features;
 - b) stabilize materials and features to prevent further deterioration;
 - c) protect important materials and features from inadvertent or deliberate removal or damage; and
 - d) ensure the protection of historic elements through a program of non-intrusive maintenance of important materials and features.
3. Repair historic materials and features using recognized preservation methods when physical condition warrants such repair.

4. Foster uses that maximize retention of the historic character of a resource and minimize alterations so as to preserve and retain the character of the structure.
 - a) Alterations should not obscure, destroy or radically change character defining spaces, materials, features or finishes in order to reduce adverse impacts to the resource.
 - b) Alterations may include selective removal of features that are not historic elements of the resource and its setting and that detract from the overall historic character of the resource.
 - c) Minimize potential negative impacts on the historic character of the resource due to necessary updates to systems in order to meet health and safety code requirements or to conserve energy.
 - d) In constructing new additions, use appropriate design and construction to minimize adverse impacts to historic character and allow for the visual compatibility of the new and old sections of structure.
5. The loss of historic resources or the historic character of the area shall be minimized when it is not possible to completely preserve the resource.
 - a) Historic structures should be relocated only when the resources cannot be preserved in place.
 - b) Demolition of a resource should only be allowed where alternatives for retention are not feasible.
6. Avoid potential adverse impacts of development and redevelopment on adjacent or nearby historic resources.
 - a) Historic resources should be protected by ensuring that development is compatible with the historic character of the affected resource.
 - b) Potential development should be designed to a size, scale, proportion and mass, and with a spatial relationship that is compatible with the historic resource.
 - c) Potential development should be designed using materials, features, forms, details, textures and colors compatible with similar features of the historic resource.
7. Limit adverse cumulative impacts on historic resources.
 - a) Minimize the potential adverse cumulative impact on an historic resource, which is a member of a group of related resources, which may be adversely impacted by the loss or diminution of any one of the members of the group.
 - b) Minimize the potential cumulative impacts of a series of otherwise minor interventions on an historic resource.
 - c) Minimize potential cumulative impacts from development adjacent to the historic resource.

2.2 Protect and preserve archaeological resources

1. Potential impacts to archaeological resources in the LWRA should be thoroughly evaluated through the environmental review process.

2. When a development action is proposed in the LWRA, a cultural resource investigation will be conducted.
 - a) A site survey will be undertaken to determine the presence or absence of cultural resources in the project area.
 - b) If cultural resources are discovered as a result of the initial survey, a detailed evaluation will be conducted to provide adequate data to allow for a determination of the significance of the archaeological resources.
3. If the potential for impacts to an archaeological resource exists, adverse impacts shall be minimized by:
 - a) redesigning the project,
 - b) mitigating direct impacts on the resources, or
 - c) recovering significant data/resources prior to construction.
4. Disturbance or adverse impacts to any archaeological resources situated on or under lands owned by the State of New York shall be avoided. These resources may not be appropriated for private use.
5. With respect to activities that involve excavation in the Town of Wheatfield, public agencies and utilities should contact the New York State Office of Parks, Recreation and Historic Preservation to determine appropriate protective measures for archaeological resources.

POLICY 3 - Enhance visual quality and protect outstanding scenic resources

It is the intent of this policy to protect and enhance visual quality and protect scenic resources in the LWRA. This policy is applicable, but limited to the scenic resources identified in Section 2.8.3. There are no Scenic Areas of Statewide Significance within the LWRA, but scenic vistas of the Niagara River and Tonawanda Creek (Erie Canal) are locally important.

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

From various points along the Wheatfield waterfront, there are excellent views of Niagara River and its shoreline, as well as the Erie Canal. The Seaway Trail, which extends along River Road (NYS Route 384/265) in Sub-Area 1, is the only National Scenic By-way in New York State, as well as a State-designated Scenic By-Way. In accordance with federal regulations, the erection of new off premises signs along designated State and National scenic by-ways is prohibited. The Town of

Wheatfield sign regulations currently restrict off premises signs to directional signage for local businesses that cannot exceed three sq. ft. in size; billboards and other such off premises signage is prohibited. Efforts should be made to enhance and improve this corridor in recognition of this designation. Improved signage and the enhancement of gateway features should be considered and encouraged. The Town should work to phase out any existing billboard signage along River Road to improve visual quality and support the federal signage restrictions.

3.1 Protect and improve visual quality throughout the Wheatfield waterfront.

The visual quality of waterfront is an important component in the character of this area. Waterfront uses often include residential and recreational components, infrastructure, and other physical modifications to the landscape that add visual interest. Some of these uses include elements that may not in themselves be considered scenic, yet contribute interest to the scenic quality of an area. Structures or activities that introduce visual interruptions to the natural landscape along the Wheatfield shoreline, such as intrusive artificial lighting, solid fencing that runs perpendicular to the shoreline or massive structural elements, should be discouraged, particularly in Sub-Area 1.

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

There are no areas designated under Protection of Natural and Man-made beauty Act (Article 49 of ECL) or designated Scenic Areas of Statewide Significance in the Wheatfield LWRA. As noted above, River Road (NYS Route 384/265) is a State and Nationally-designated Scenic By-Way. The designation for this corridor through Wheatfield is important and should be recognized as such. Efforts should be taken to protect and, where possible, to improve the visual quality and visual accessibility of the waterfront areas. In accordance with federal regulation, the erection of new off premise signs along designated state and national scenic by-ways is prohibited. The Town should also work to phase out any existing billboard signage along this thoroughfare to improve visual quality. This entry points into the Sub-Area 1 LWRA should be treated as gateway features, including aesthetic elements to welcome visitors and local residents to the area.

NATURAL WATERFRONT POLICIES

POLICY 4 - Minimize loss of life, structures, and natural resources from flooding and erosion

This policy seeks to protect life, structures and natural resources from the hazards of flooding and erosion. The policy reflects State flooding and erosion regulations and provides measures for the reduction of hazards and protection of resources. The provisions of this policy are applicable to the floodplain areas adjacent to the Niagara River and the Erie Canal.

The Town of Wheatfield waterfront contains flood zones that have been designated by the Federal Emergency Management Agency and are depicted on Flood Insurance Rate Maps, which were updated in September 2010. The Town participates in the National Flood Insurance Program and development in the floodplain is regulated under Chapter 101 of the Town Code – Flood Damage Prevention. This law is designed to promote the public health, safety and general welfare and to minimize public and private loss due to flood conditions in specific areas, as designated on the Flood Insurance Rate Maps. Pursuant to Chapter 101, all construction and other development that is proposed within regulated areas of special flood hazards requires a permit from the Town Code Enforcement Officer and must be in compliance with the standards outlined in the law (which are included in the Appendix).

The Town of Wheatfield adopted a Stormwater Management Law in November of 2007 to address the impacts of stormwater runoff that are associated with land development activities. Land development activities can result in flooding, stream channel erosion, and sediment transport and deposition in local waterways that impacts aquatic life and habitat. This law is aimed at controlling clearing and grading during construction, reducing loadings of waterborne pollutants, ensuring proper design and construction of stormwater control devices and implementation of stormwater management practices, and stemming economic losses that result from the impacts of faulty and unregulated stormwater discharges. To further address water quality and sediment and erosion problems in the community, the Town prepared a Stormwater Management Plan in 2009, as a compliment to the law. The Stormwater Management Plan addresses public education and outreach, public participation, illicit discharge detection and elimination, control of runoff from construction sites, post-construction stormwater management and pollution prevention, and other best management practices to address other sources of non-point source pollution that are conveyed by stormwater runoff. This plan should be followed and kept up to date.

In the Town of Wheatfield, the shoreline of Niagara River is subject to wind and wave action, which intensifies during severe weather events. Many residential property owners along the waterfront have experienced erosion problems and have hardened their shoreline with rip-rap, retaining walls or other structural measures to protect their property. Although many sections of the riverfront in Sub-Area 1 have been fortified, there are locations that remain natural. There are some areas in Sub-Area 1 that have been hardened in the past, but those structures are now in disrepair. The eastern half of Sub-Area 2 has a number of shoreline structures, while the area to the west has a significant stretch of shoreline that remains in a natural state.

The natural shoreline has an inherent natural, social, and economic value that should be respected to ensure continuing benefits. Hardening of the shoreline should be avoided except when alternative means, such as soft engineering alternatives and revegetation, are impractical to protect principal structures or extensive public investment (land, infrastructure, and facilities). Therefore, those portions of the Niagara River and Erie Canal shorelines that are not fortified should generally remain in a natural condition to respond to natural processes. Areas of the shoreline that have been hardened

should be returned to a natural condition where feasible and appropriate. Necessary shoreline protection structures that are in disrepair should be renovated.

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

1. Use hard structural erosion protection measures for control of erosion only where:
 - a) It has been documented that vegetative approaches to control erosion are not effective;
 - b) Construction of a hard structure is the only practical design consideration and is essential to protecting upland uses;
 - c) The proposed hard structural erosion protection measures are limited to the minimum scale necessary and are based on sound engineering practices; and
 - d) Practical vegetative methods have been included in the project design and implementation.
 - e) Adequate mitigation is provided and maintained to ensure that there is no adverse impact to adjacent properties or to natural coastal processes and natural resources and, if undertaken by a private property owner, does not incur significant direct or indirect public costs.
2. Develop best management practices and sediment and erosion control guidelines to further manage sedimentation and stream bank erosion in Bull Creek and other waterways that lead to the Niagara River and Tonawanda Creek.
3. Avoid developing new structures and uses, or reconstructing structures that are damaged by 50 percent or more of their value, in areas that are likely to be exposed to hazards unless:
 - a) the structure or use functionally requires a location along the shoreline or in coastal waters,
 - b) the new development would be located in an area of substantial public investment, or
 - c) the new structure or use is necessary for shoreline development that:
 - Reinforces or revitalizes areas along the waterfront that support important water-dependent uses or a concentration of mixed uses and other development (such as the inner harbor area), and
 - would not result in impairment of natural resources
4. Where practical, the relocation of existing structures and development that are exposed to flooding hazards away from the hazard is preferred over maintaining structures and development in place. Maintaining existing development and structures in hazard areas may be warranted for:
 - a) structures that functionally require a location on the coast or in coastal waters,
 - b) water dependent uses which, by the nature of the use, cannot avoid exposure to hazards;or

- c) sites in areas with extensive public investment, public infrastructure, or major public facilities.
5. Provide public infrastructure in or near identified natural protective features only if the infrastructure:
 - a) is designed in a manner that will not impair the protective capacities of natural protective features; and
 - b) is designed to avoid or withstand damage from flooding and erosion.
6. The following standards shall apply to new development, including new and substantially improved structures, in areas of special flood hazards.

Anchoring -

- a) All new construction and substantial improvements to structures in areas of special flood hazard shall be anchored to prevent floatation, collapse or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring standards to resist wind forces of the structure.

Construction materials and methods -

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

For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH and also Zone A, if base flood elevation date is available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria -

- a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b) The bottom of all such openings shall be no higher than one-foot above the lowest adjacent finished grade.
- c) Opening may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. Enclosed areas sub-grade on all sides are considered basements and are not permitted.

Utilities -

- a) Machinery and equipment servicing a building must either be elevated to or above the base flood level or designed to prevent water from entering or accumulating within the components during a flood. This includes heating, ventilating and air-conditioning equipment, hot water heaters, appliances, elevator lift machinery and electrical junction and circuit breaker boxes. When located below the base flood elevation, a professional engineer's or architect's certification of the design is required.
- b) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters.
- c) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall.
- d) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Subdivision proposals (including proposals for manufactured home and recreational vehicle parks and subdivision) -

- a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems located and constructed so as to minimize flood damage.
- c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

Encroachments -

- a) Within Zones A1 - A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-foot at any locations, or
 - The Wheatfield Town Board agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Wheatfield for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Wheatfield for all costs related to the final map revision.
- b) On streams with a regulatory floodway, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

- A technical evaluation by a licensed professional engineer shows that such an encroachment will not result in any increase in flood levels during the occurrence of the base flood, or
- The Wheatfield Town Board agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Wheatfield for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Wheatfield for all costs related to the final map revision.

Non-residential construction –

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

- a) If the structure is to be elevated, fully enclosed areas below the base flood elevations shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - The bottom of all such openings shall be not higher than one (1) foot above the lowest adjacent finished grade; and
 - Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- b) If the structure is to be floodproofed:
 - A licensed professional engineer or architect shall develop and/or review structural designs, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
- c) The Town of Wheatfield Local Flood Law Administrator shall maintain, on record, a copy of all such certificates noted in this policy.

Manufactured homes and recreational vehicles

- a) Recreational vehicles placed on sites within Zones A1 through A30, AE and AH shall either be on site fewer than 180 consecutive days, be fully licensed and ready for highway use or meet the requirements for manufactured homes, as outlined below. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- b) A manufactured home that is placed or substantially improved in Zones A1 through A30, AE and AH that is on a site either outside of an existing manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision, on which a manufactured home has incurred substantial damage as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor is elevated to or above one foot above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors.
- c) A manufactured home to be placed or substantially improved in Zone A1 through A30, AE and AH in an existing manufactured home part or subdivision that is not to be placed on a site on which a manufactured home has incurred substantial damage shall be elevated in a manner such as required in b) or elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation piers consisting of dry stacked blocks is prohibited.
- d) Within the A Zone, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.
- e) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as one foot more than the depth number specified on the FIRM enumerated in Section 115-6 of the Flood Damage Prevention Law (at least two feet if no depth number is specified). Elevation on piers consisting of dry stacked blocks is prohibited.

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

The erosion protection structures associated with residential uses along the riverfront in Sub-Area 1 are in various states of disrepair. The New York State Department of Environmental Conservation will work with residents and continue to permit the replacement of these structures or the installation of new structures in accordance with 6 NYCRR Part 608 (Protection of Water) and other applicable requirements.

Erosion control structures can be both beneficial and detrimental. While they may protect the immediate land behind the structure, they often contribute to erosion both on and off site. Poor design and siting can result in accelerated erosion, aesthetic impairments, loss of public recreational resources, loss of valuable marine and wetland habitats, and water quality degradation. The cumulative impact of these structures can be large in area and significant in impacts. Therefore, before approval and permitting is granted for erosion control structures, the purpose, function, impacts and alternatives to the project must be carefully evaluated to determine whether the structures are necessary and whether potential adverse impacts can be avoided or minimized. Hard structural erosion protection measures should only be used as a last alternative, where there is a documented erosion problem and where alternative measures have been proven to be inadequate to protect the principal use.

4.3 Preserve and restore natural protective features

Natural protective features along Niagara River and Erie Canal (Tonawanda Creek) include wetlands, and associated natural vegetation.

1. Maximize the protective capabilities of natural protective features by:
 - a) Avoiding alteration or interference with areas of the Niagara River and Erie Canal that are currently in a natural condition;
 - b) Enhancing existing natural protective features;
 - c) Restoring the condition of impaired natural protective features, wherever practical; and
 - d) Using practical vegetative approaches to stabilize natural shoreline features.

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

1. Retain ownership of public trust lands that have become upland areas due to fill or accretion resulting from erosion control projects.
2. Avoid losses or likely losses of public trust lands or use of these lands, including public access along the shore, which can be reasonably attributed to or anticipated to result from erosion protection structures.

3. Provide and maintain compensatory mitigation of unavoidable impacts to ensure that there is no adverse impact to adjacent property, to natural coastal processes and natural resources, or to public trust lands and their use.

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

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

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

POLICY 5 - Protect and improve water resources

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

New York State classifies surface waters based on best usage. The Niagara River is designated as Class A-Special. The best uses for Class A-Special waters include drinking water supply, food processing, primary and secondary contact recreation and fishing (and fish and wildlife propagation and survival). Tonawanda Creek and Bull Creek (Sawyer Creek) in Sub-Area 2 are classified C, with best uses including fishing, as well as primary and secondary contact recreation (although other factors may limit this use).

These classifications, however, do not necessarily reflect all water quality issues. Per the Federal Clean Water Act, the State has developed an inventory of specific waterbodies that characterizes general water quality, and publishes a list of the surface waters that cannot be fully used as a resource or have problems that can damage their environmental integrity. The Niagara River, Tonawanda Creek and Bull Creek are all considered impaired based on the resulted of this inventory and analysis. Shoreline development, bulkheading, dredging and other stream modifications have also impacted habitat and waterfront quality along the Niagara River.

Another primary source of water quality degradation in the Wheatfield LWRA is non-point source pollution, which reaches surface water bodies through unconfined or indiscrete means. The best way to control the rate of non-point contaminant generation and transport in upland areas is through the use of best management practices, such as reductions in fertilizer and pesticide usage, proper disposal of automobile waste oils, etc. Public education is an important means of implementing best management practices.

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

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

1. Prevent point source discharges into surface waters and manage or avoid land and water uses which would:
 - a) Exceed discharge limits specified by State Pollution Discharge Elimination System (SPDES) permits for municipal discharges.
 - b) Exceed applicable effluent limitations, or cause or contribute to contravention of water quality classification and use standards; or
 - c) Materially or adversely affect the quality of receiving waters.
2. Ensure effective treatment of sanitary sewage and industrial discharges by:
 - a) Maintaining efficient operation of sewage and industrial treatment facilities;
 - a) Providing, at a minimum, effective secondary treatment of sanitary sewage;
 - b) Modifying existing sewage treatment facilities to provide improved nitrogen removal capacity;
 - c) Incorporating into the design for new or upgraded wastewater treatment facilities the capacity for treatment beyond secondary treatment, if and when funding is available; and
 - d) Reducing the demand on sewage treatment facilities by:

- Reduce infiltration of excess water in collection and transport systems
 - Prevent unauthorized collection system hookups
 - Pretreat industrial wastes
 - Limit discharge volumes and pollutant loadings to or below authorized levels, and
 - Installing low-flow water conservation fixtures in all new development, and when replacing fixtures in existing development.
3. Control, and to the greatest extent possible, reduce the loadings of toxic materials discharged into Niagara River waters by including limits on toxic metals as part of wastewater treatment plant (WWTP) effluent permits and by enforcing any pretreatment requirements.

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

1. Minimize nonpoint pollution of surface waters using the following best management practices and approaches, which are presented in order of priority.
- a) Limit non-point source pollution by:
- Reducing or eliminating the introduction of materials that may contribute to nonpoint pollution;
 - Avoiding activities that would increase off-site stormwater runoff and transport of pollutants;
 - Controlling and managing stormwater runoff to:
 - minimize transport of pollutants,
 - restore degraded stormwater natural stormwater runoff conditions and
 - achieve no-net increase of runoff where unimpaired stormwater runoff conditions exist;
 - Retaining or establishing vegetation to maintain and provide soil stabilization, and filtering capacity;
 - Preserve natural hydrologic conditions to maintain natural surface water flow characteristics and retain natural watercourses and drainage systems where present;
 - And, where natural drainage systems are absent or incapable of handling the anticipated runoff demands:
 - developing open vegetated drainage systems as the preferred approach and designing these systems to include long and indirect flow paths to decrease peak runoff flows; and
 - using closed drainage systems only where site constraints and stormwater flow demands make the use of open water systems infeasible.
2. Reduce pollutant loads to surface waters by managing unavoidable nonpoint sources and use appropriate best management practices as determined by site characteristics, design standards, operational conditions, and maintenance programs.

3. Reduce nonpoint source pollution using specific management measures appropriate to specific land use or pollution source categories.

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

(1) Urban

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

(2) Hydromodifications

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

(3) Floatables and litter

- a. Prohibit all direct or indirect discharges of refuse or litter into surface waters of Niagara River, Tonawanda Creek (Erie Canal) and Bull Creek, or upon public lands contiguous to and within 100 feet of these surface waters.
- b. Limit entry of floatables to surface waters through containment and prevention of litter.
- c. Remove and dispose of floatables and litter from surface waters and along shorelines of the surface waters.

- d. Implement pollution prevention and education programs to reduce discharge of floatables and litter into roadside ditches, creek corridors and other local surface waters.

5.3 Protect and enhance surface water quality

1. Protect water quality of Niagara River, Tonawanda Creek (Erie Canal) and Bull Creek based on an evaluation of physical factors (pH, dissolved oxygen, dissolved solids, nutrients, odor, color and turbidity), health factors (pathogens, chemical contaminants, and toxicity), and aesthetic factors (oils, floatables, refuse, and suspended solids).
2. Minimize disturbance of upland creeks and streams, including their bed and banks, in order to prevent erosion of soil, increased turbidity, and irregular variation in velocity, temperature, and level of water.

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

1. Protect water quality by ensuring that watershed development results in:
 - a) Protection of areas that provide important water quality benefits;
 - b) Maintenance of natural characteristics of drainage systems; and
 - c) Protection of areas particularly susceptible to erosion and sediment loss.
2. Limit the individual impacts associated with development to prevent cumulative water quality impacts that would lead to a failure to meet water quality standards.

POLICY 6 - Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands, and rare ecological communities

6.1 Protect Locally Significant Waterfront Fish and Wildlife Habitats

No Significant Coastal Fish and Wildlife Habitats have been identified or mapped by the Department of Environmental Conservation within the Wheatfield LWRA. However, the Niagara River in Sub-Area 1 and Tonawanda Creek (Erie Canal) and Bull Creek in Sub-Area 2 represent locally significant habitats that should be offered a similar level of protection and, therefore, must be recognized and protected for their habitat value to avoid permanent adverse changes to local ecosystems.

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

Significant fish and wildlife habitats are those habitat areas which:

1. Exhibit, to a substantial degree, one or more of the following characteristics:
 - a) Is essential to the survival of a large portion of a particular fish or wildlife population; and
 - b) Supports a species which is either endangered, threatened, or of special concern as those terms are defined at 6 NYCRR Part 182.
2. Uses or activities should be avoided which would:
 - a) Destroy habitat values through direct physical alteration, disturbance, or pollution, or the indirect effects of actions that would result in a significant loss of habitat.
 - b) Significantly impair the viability of a habitat beyond the tolerance range of fish and wildlife species through:
 - Degradation of existing habitat elements;
 - Change in environmental conditions;
 - Functional loss of habitat values; or
 - Adverse alteration of physical, biological, or chemical characteristics.
3. Where destruction or significant impairment of habitat values cannot be avoided, potential impacts of land use or development should be minimized through appropriate mitigation. Use mitigation measures, which are likely to result in the least environmentally damaging feasible alternative. Mitigation includes:
 - a) avoidance of potential adverse impacts, including:
 - Avoiding ecologically sensitive areas;
 - Scheduling activities to avoid vulnerable periods in life cycles or the creation of unfavorable environmental conditions; and
 - Preventing fragmentation of intact habitat areas.
 - b) minimization of unavoidable potential adverse impacts, including:
 - Reducing scale or intensity of use or development;
 - Designing projects to result in the least amount of potential adverse impact;
 - Choosing alternative actions or methods that would lessen potential impact; and
 - Specific measures designed to protect habitat values from impacts that cannot be sufficiently avoided or minimized to prevent habitat destruction or significant habitat impairment.

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

1. Measures that can be undertaken to restore locally significant habitats include:
 - a) Reconstructing lost physical conditions to maximize habitat values;
 - b) Adjusting adversely altered chemical characteristics to emulate natural conditions; and

- c) Manipulating biological characteristics to emulate natural conditions through re-introduction of indigenous flora and fauna.

6.3 Protect and restore freshwater wetlands

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

POLICY 7 - Protect and improve air quality

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

7.1 Control or abate existing, and prevent new air pollution

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

1. Limit pollution resulting from new or existing stationary air contamination sources, consistent with:
 - a) Attainment or maintenance of any applicable ambient air quality standard
 - b) Applicable New Source Performance Standards
 - c) Applicable control strategy of the State Implementation Plan, and
 - d) Applicable Prevention of Significant Deterioration requirements

2. Recycle or salvage air contaminants using best available air cleaning technologies.
3. Limit pollution resulting from vehicular or vessel movement or operation, including actions which directly or indirectly change transportation uses or operation, consistent with attainment or maintenance of applicable ambient air quality standards, and applicable portions of any control strategy of the State Implementation Plan.
4. Restrict emissions of air contaminants to the outdoor atmosphere that are potentially injurious to human, plant, or animal life or property, or that would reasonably interfere with the comfortable enjoyment of life or property.
5. Limit new facility or stationary source emissions of acid deposition precursors consistent with achieving final control target levels for wet sulfur deposition in sensitive receptor areas, and meeting New Source Performance Standards for the emissions of oxides of nitrogen.

7.2 Limit discharges of atmospheric radioactive material to a level that is as low as practicable

State air quality standards regulate radioactive materials and pollutants. For actions with a potential impact on air quality, the Town shall provide necessary information, as appropriate, to the State to enable the State to effectively administer its air quality statutes pertaining to atmospheric radioactive material.

7.3 Capture and recycle chlorofluorocarbon compounds during service and repair of air-conditioning and refrigeration units to the greatest extent possible

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

7.4 Limit sources of atmospheric deposition of pollutants to Niagara River, particularly from nitrogen sources

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

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

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

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

1. Plan for proper and effective solid waste disposal prior to undertaking major development or activities generating solid wastes.
2. Manage solid waste in accordance with the following solid waste management priorities:
 - a) Reduce the amount of solid waste generated;
 - b) Reuse material for the purpose for which it was originally intended or recycle material that cannot be reused; and
 - c) Use land burial or other approved methods to dispose of solid waste that is not being reused or recycled.
3. Create and support a market for maximum resource recovery by using materials and products manufactured with recovered materials, and recovering materials as a source of supply for manufacturing materials and products.
4. Prevent the discharge of solid wastes into the environment by using proper handling, management, disposal and transportation practices.

8.2 Manage hazardous wastes to protect public health and control pollution

1. Hazardous wastes are those materials defined under ECL §27-0901 and 6 NYCRR Part 371.
2. Manage hazardous waste in accordance with the following priorities:
 - a) Eliminate or reduce generation of hazardous wastes to the maximum extent practical;
 - b) Recover, reuse, or recycle remaining hazardous wastes to the maximum extent practical; and
 - c) Use detoxification, treatment, or destruction technologies to dispose of hazardous wastes which cannot be reduced, recovered, reused, or recycled.
3. Remediate inactive hazardous waste disposal sites. While there are no known inactive hazardous waste disposal sites within the Wheatfield waterfront area, should any be identified

in the future they should be investigated and remediated in the appropriate manner to minimize impact on the environment.

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

1. Substances hazardous to the environment are defined under ECL §37-0101. Toxic pollutants are defined under ECL §17-0105.
2. Prevent release of toxic pollutants or substances hazardous to the environment that would have a deleterious effect on fish and wildlife resources.
3. Prevent environmental degradation due to persistent toxic pollutants and limit discharges of bioaccumulative substances.
4. Avoid resuspension of toxic pollutants and hazardous substances and wastes and reentry of bioaccumulative substances into the food chain from existing environmental sources.
5. Prevent and control environmental pollution due to release of radioactive materials as defined under 6 NYCRR Part 380.
6. Protect public health, public and private property, and fish and wildlife from inappropriate use of pesticides.
 - a) Limit use of pesticides (substances defined under ECL §33-0101 and 6 NYCRR Part 325) to effectively target actual pest populations as indicated through integrated pest management methods.
 - b) Prevent direct or indirect entry of pesticides into waterways.
 - c) Minimize exposure of people, fish, and wildlife to pesticides.
7. Report, respond to, and take action to correct all unregulated releases of substances hazardous to the environment.

8.4 Prevent and remediate discharge of petroleum products

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

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

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

PUBLIC WATERFRONT POLICIES

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

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

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

Presently, the Niagara County Sewer District owns a small, vacant parcel where the outfall for the wastewater treatment plant is routed to the Niagara River. This site is situated immediately adjacent to the York Road residential community and could provide access for local residents. There are also two larger properties located at the western end of Sub-Area 1 that encompass a total of approximately 25 acres of land that have potential for development and redevelopment. These properties are an appropriate setting for development, with adequate access to public infrastructure, and consideration has been given to opportunities for mixed use development that would offer commercial and residential uses, along with public access along the waterfront. Public access should be included in any development or redevelopment proposals for these lands. Long term, any larger scale development or redevelopment on the waterfront should include provisions for public access along the shoreline.

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

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

1. Provide a level of public access and type of recreational use that takes into account the following factors:
 - a) Public demand for access and recreational use;
 - b) Type and sensitivity of natural resources affected;
 - c) Purpose of public institutions which may exist on or near the site;
 - d) Accessibility to the public access site or facility;
 - e) The needs of special groups such as the elderly and persons with disabilities; and
 - f) The potential for adverse impacts on adjacent land uses.
2. Provide convenient, well-defined physical public access to and along the waterfront for water-related recreation.
3. Protect and maintain existing public access and water-related recreation facilities.
 - a) Support the connection of Baisch Park, in Sub-Area 2, with the waterfront and improvements at this park that would enhance recreational use.
 - b) Prevent any on-site or adjacent development project or activity from directly or indirectly impairing physical public access and recreation or adversely affecting its quality.
 - c) Protect and maintain established access and recreation facilities.
 - d) Protect and maintain the infrastructure supporting public access and recreation facilities.
4. Provide additional physical public access and recreation facilities at public sites along the waterfront.
 - a) Where feasible, provide for public access and recreation facilities on non-public waterfront lands as a secondary use.
 - b) Provide for public access at streets terminating at the shoreline.
 - c) Provide access and recreation facilities to all members of the public whenever access or recreation is directly or indirectly supported through federal or state projects or funding.
 - d) Any transfer of public land holdings immediately adjacent to the shoreline should retain a public interest that will be adequate to preserve public access and recreation opportunities.
5. Provide physical public access to, and/or water-related recreation facilities on, the waterfront whenever development or activities are likely to affect the public's use and enjoyment of public coastal lands and waters. Provide incentives to private development projects which provide public access and/or water-related recreation facilities.

6. Restrict public access and recreation only where incompatible with public safety and protection of natural resources.

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

The following standards should be applied with respect to increasing visual access to Niagara River and Erie Canal:

1. Avoid loss of existing visual access.
 - a) Limit physical blockage of existing visual access to the waterfront by development or activities due to the scale, design, location, or type structures.
 - b) Protect view corridors provided by streets and other public areas leading to the coast.
 - c) Protect visual access to open space areas associated with natural resources.
2. Minimize adverse impact on visual access.
 - a) Provide for view corridors to the waterfront in those locations where new structures would block views of the waterfront from inland public vantage points.
 - b) Use structural design and building siting techniques to preserve or retain visual access and minimize obstruction of views.
 - c) Visual access requirements may be reduced where site conditions, including vegetative cover or natural protective features, block potential views.
 - d) Vegetative or structural screening of an industrial or commercial waterfront site is allowed if the resulting overall visual quality outweighs the loss of visual access.
3. Provide compensatory mitigation for loss of visual access.
 - a) Provide public visual access from vantage points on the site where development of the site would block visual access from inland public vantage points.
 - b) Provide for additional and comparable visual access at nearby locations if physical access cannot be provided on-site.
4. Increase visual access to the waterfront whenever practical.
 - a) Provide an interpretative exhibit at an appropriate location for visual access to enhance public understanding and enjoyment of views of waterfront lands and waters and associated water-dependent uses.
 - b) Provide visual access to areas of high visual quality including community waterfronts, water-dependent uses, natural resources, and panoramas of the Niagara River and Erie Canal.

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

1. Limit grants, leases, easements, permits or lesser interest in lands underwater in accordance with an assessment of potential adverse impacts of the proposed use, structure, or facility on public interest in public lands under water. Use the following factors in assessing potential adverse impact:
 - a) Environmental impact;
 - b) Values for natural resource management, public recreation;
 - c) Size, character, and effect of the transfer in relation to neighboring uses;
 - d) Potential for interference with navigation, public uses of waterway, and riparian rights;
 - e) Effect of the transfer of interest on the natural resources associated with the lands;
 - f) Water-dependent nature of use;
 - g) Adverse economic impact on existing commercial enterprises; and
 - h) Consistency with the public interest for purposes of navigation and commerce, fishing, bathing, and access to navigable waters and the need of the owners of private property to safeguard development.
2. Provide for free and unobstructed use of all navigable waters of Niagara River for navigation, recreation and other public trust purposes, including the incidental right of public anchoring.
3. Access and reasonable recreational use of navigable waters and public trust lands underwater should be provided.
4. Avoid substantial loss of public interest in public trust lands by assessing the cumulative impact of individual conveyances of grants, easements, and leases of public trust lands.

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

1. Provide appropriate access and associated recreational activity that will avoid potential adverse impacts on natural resources.
2. Limit public access and recreational activities where uncontrolled public use would lead to impairment of natural resources.
3. Provide public access for fish and wildlife resource related activities, including fishing and hunting, provided that the level of access would not result in a loss of resources necessary to continue supporting these uses.

WORKING WATERFRONT POLICIES

POLICY 10 - Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations.

Land use along the shore is predominately residential and will remain as such for the foreseeable future. There are limited water-dependent uses in the Wheatfield LWRA. These consist of pipelines and outfall facilities for local utility companies. Niagara County owns narrow parcels along the waterfront for the routing of the outfall structures for the wastewater treatment plant and the water treatment plant.

There are also two locations where National Fuel Gas has routed pipelines for natural gas transmission, which extend along the bottom of the Niagara River, from the upland areas of the Town of Wheatfield over to Grand Island, on the opposite side of the Niagara River. These uses shall remain. Priority in the use of any property adjacent to the shoreline that may become available for development or redevelopment will be given to appropriate water-dependent use over equally qualified water-enhanced uses, and to either of these in preference to a use that is in no way water-related.

10.1 Protect water-dependent uses

1. Actions should be avoided that would adversely impact or interfere with existing water-dependent uses. Examples of water-dependent uses include:
 - a) Water-related public and quasi-public utilities; and
 - b) Navigational aids and structures.

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

1. Adverse impacts of new and expanding water-dependent uses should be minimized. Water-dependent uses should be sited in locations where:
 - a) The need for dredging is minimized;
 - b) Waterside and landside access, as well as upland space for parking and other facilities, is adequate;
 - c) The necessary infrastructure exists or is easily accessible, including adequate shoreline stabilization structures, roads, water supply and sewage disposal facilities, and vessel waste pump-out and waste disposal facilities; and
 - d) Water quality classifications are compatible.
2. Due to the residential nature of much of the Wheatfield shoreline and due to the fact that the natural conditions of the shoreline, steep bluffs and shallow bottom, the Wheatfield shoreline is not appropriate for the location of marinas or other commercial transportation facilities

such as passenger ferries, sight-seeing tour boat operators and charter recreational fishing operations.

10.3 Improve the economic viability of water-dependent uses

1. Non-water-dependent accessory or mixed-use developments may be allowed, provided:
 - a) accessory uses are subordinate and functionally related to the principal water-dependent use and contribute to sustaining the water-dependent use;
 - b) Mixed uses subsidize the water-dependent use and are accompanied by a demonstrable commitment to continue operation of the water-dependent use;
 - c) Uses are sited and operated so as not to interfere with the principal operation of the site for a water-dependent use; and
 - d) Uses do not preclude future expansion of a water-dependent use.
2. Locations that exhibit important natural resource values and significant resources, such as wetlands and fish and wildlife habitats, should be avoided.
3. Other uses may be incorporated in the waterfront, particularly water enhanced and marine support services, provided that these uses:
 - a) Improve the working waterfront and its character;
 - b) Do not interfere with the efficient operation of another water-dependent use; and
 - c) Make beneficial use of a waterfront location through siting and design to increase public enjoyment of the waterfront.

10.4 Allow water-enhanced uses that complement or improve the viability of water-dependent uses

1. When determining if a water-enhanced use is appropriate for siting along a waterfront, the following factors should be considered:
 - a) The use would provide an economic incentive to prevent the loss of a water-dependent use;
 - b) The use would be sited and operated so as not to interfere with water-dependent uses;
 - c) The use would be sited in a manner that does not preclude future expansion of a water-dependent use; and
 - d) The activity makes beneficial use of a shoreline location through siting and design to increase public enjoyment of the waterfront and enhance community character.

POLICY 11 - Promote sustainable use of living marine resources

Living marine resources play an important role in the social and economic well being of waterfront communities. Commercial and recreational use of living marine resources along the Niagara River and Erie Canal constitute an important contribution to the economy of the region and State. The continued recreational use of these resources depends on maintaining long-term health and abundance of fisheries resources and their habitats, and on ensuring that the resources are sustained in usable abundance and diversity for future generations. This requires the State's active management of fisheries, protection and conservation of habitat, restoration of habitats in areas where they have been degraded, and maintenance of water quality at a level that will foster the occurrence and abundance of these resources. Allocation and use of the available resources must: 1) be consistent with the restoration and maintenance of healthy stocks and habitats, and 2) maximize the benefits of resource use so as to provide valuable recreational experiences and viable business opportunities for commercial and recreational fisheries.

This policy provides standards to ensure maintenance and health of living marine resources. It recognizes the importance of commercial and recreational use of fisheries stocks in our local waters and calls for the equitable allocation of resources. This policy also focuses on providing adequate infrastructure and support facilities for recreational and commercial users.

11.1 Ensure the long-term maintenance and health of living marine resources in the Niagara River and Erie Canal (Tonawanda Creek).

1. Ensure that recreational use of living marine resources is effectively managed in a manner that:
 - a) Eliminates contaminant threats to local marine communities.
 - b) Places primary importance on maintaining the long-term health and abundance of fisheries.
 - c) Results in sustained useable abundance and diversity of the resource.
 - d) Does not interfere with population and habitat maintenance and restoration efforts.
 - e) Uses best available scientific information in managing the resources.
 - f) Minimizes waste and reduces discard mortality of fishery resources.
2. Protect and manage native stocks and restore sustainable populations of indigenous fish and wildlife species and other living marine resources.
3. Foster the occurrence and abundance of marine resources in the Niagara River and Erie Canal through the protection and enhancement of water quality; and the protection, enhancement and restoration of spawning grounds and other breeding habitat.

11.2 Provide for and promote the recreational use of marine fisheries in the Niagara River and Erie Canal (Tonawanda Creek).

1. Maximize the benefits of resources to provide valuable recreational resource experience and viable opportunities for recreational fisheries.
2. Where fishery conservation and management require actions that would result in resource allocation impacts, ensure equitable distribution of impact among user groups, giving priority to existing fisheries in the state.
3. Protect public health and ensure the marketable fisheries resources are not contaminated.
 - a) Inform the public regarding health risks of consuming fish contaminated with toxics.
 - b) Restrict the harvest of fish when they are contaminated with toxics exceeding established public health thresholds.
 - c) Maintain water quality and wholesomeness of the fishery and marketable marine resources to protect public health.
4. Provide adequate infrastructure to meet recreational needs including appropriate fishing access, dockage, and parking (where appropriate).
 - a) Foster direct public recreational use of marine resources from the shoreline.
 - b) Encourage the provision of areas suitable for shoreline fishing, where feasible, when considering public access as a part of development and redevelopment plans for waterfront properties.

POLICY 12 - Protect agricultural lands

The intent of this policy is to conserve and protect agricultural land in the waterfront area by preventing the conversion of farmland to other uses and protecting existing and potential agricultural production.

While agriculture is still considered an important part of the Town economy and there are still several farms and nurseries located in other areas of the Town, the LWRA contains no farmland or farming. Therefore, Policy 12 is not applicable.

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

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

There are no existing hydroelectric power generation facilities located within the Wheatfield LWRA. In determining the appropriateness of any new hydroelectric energy generating facility, the following factors should be considered.

1. There is a demonstrated need for the facility.
2. Upgrades of existing facilities cannot reasonably meet the public need.
3. The facility is compatible with existing adjacent uses.
4. The facility is designed to minimize environmental and visual impacts to the Town's environmental, scenic, historic and cultural resources.
5. The facility does not adversely affect commercial navigation, commercial and recreational fishing and boating, water quality, habitats critical to fish and wildlife species, plant species, and rare ecological communities.

There are also no sites along the Niagara River where the benefits of developing hydroelectric generating facilities are not outweighed by the economic costs and the potential adverse impacts on the community, existing natural resources and the public.

Chapter 198 of the Town Code promotes the effective and efficient use of wind energy conversion systems and regulates the design, placement, construction, installation and/or modification of such systems for the purpose of protecting the health and safety of neighboring property owners and the general public, as well as the natural resources and aesthetics of the community. The only zoning district in the LWRA where such a system could be permitted by special use permit is the Industrial 1 (M-1) District in Sub-Area 1. In siting such facilities, visual and physical interference with waterfront resources, wildlife species and habitat, including migratory bird and bat populations, important scenic and gateway views, public recreational resources, must be avoided. Off-shore wind energy conversion systems are not considered appropriate within the waters included in the LWRA as these facilities would adversely impact navigation, fish and wildlife habitat and public recreational resources.

13.1 Conserve energy resources and promote alternative energy sources that are self-sustaining, including solar and wind powered energy generation.

The conservation of energy should be an important part of prudent future planning. Energy efficiency can be achieved through several means that fall under the jurisdiction of local governments, including:

- a) promoting an increased use of public transportation to the extent feasible, where practical;
- b) integrating modes of transportation (pedestrian, bicycle, auto and waterborne);
- c) promoting energy efficient design in new developments; and
- d) promoting greater energy generating efficiency through upgrades of existing public facilities.

13.2 Major energy generating and transmission facilities, which utilize non-renewable resources, shall not be sited in the LWRA.

Major non-renewable energy generating and transmission facilities are considered inappropriate uses that would adversely impact existing land uses, and natural and waterfront resources. Therefore, these facilities shall not be sited in the LWRA.

13.3 Minimize adverse impacts from aboveground and underground fuel storage facilities.

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

- a) ensure that storage and retention of petroleum products along the Town of Wheatfield waterfront is performed in accordance with NYSDEC regulations;
- b) because of the high potential for hazard associated with liquefied natural gas facilities, these facilities are considered inappropriate and would not provide significant public benefit along the Wheatfield waterfront and, thus, such uses should not be sited in this area; and
- c) natural resources must be protected by complying with local, county and state regulations and oil spill contingency plans.

13.4 Commercial mining and other mineral or gravel extraction activities are considered inappropriate uses for the Town of Wheatfield LWRA and should be prohibited.

13.5 Ice management practices shall not interfere with infrastructure systems, impair significant fish and wildlife and their habitats or increase shoreline erosion or flooding.

Ice build up on the Niagara River is not formally managed along the Wheatfield waterfront. To keep ice from interfering with the hydroelectricity generation, the power authorities conduct coordinated ice management operations that include regular icebreaker patrols, surveillance of river conditions and the use of the Lake Erie-Niagara River ice boom at the mouth of Lake Erie. Ice management activities in the vicinity of the Wheatfield waterfront shall comply with this policy.