SECTION III Local Waterfront Revitalization Program Policies

Section 3 of the LWRP document presents the local waterfront revitalization policies and their associated standards that are used in guiding development actions in the Town of Porter. These policies consider the physical, economic, environmental and cultural characteristics of the community. They are comprehensive and reflect existing laws and authority regarding development and environmental protection. Together, these policies and their standards are to be used to achieve an appropriate balance between economic growth and development and the preservation that will enable the beneficial use of waterfront resources in the Town of Porter without undue impacts. The Town of Porter local waterfront revitalization program policies include the following.

DEVELOPED WATERFRONT POLICIES – Policies 1 through 6

FISH AND WILDLIFE POLICIES – Policies 7 through 10

FLOODING AND EROSION HAZARD POLICIES – Policies 11 through 17

GENERAL POLICY – Policy 18

PUBLIC ACCESS POLICIES – Policies 19 and 20

RECREATION POLICIES – Policies 21 and 22

HISTORIC AND SCENIC RESOURCES POLICIES – Policies 23 through 25

AGRICULTURAL LANDS POLICY – Policy 26

ENERGY AND ICE MANAGEMENT POLICIES – Policies 27 through 29

WATER AND AIR RESOURCES POLICIES – Policies 30 through 43

WETLANDS POLICY – Policy 44

DEVELOPMENT POLICIES

Policy 1 **Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other compatible uses**

Policy 1A **Redevelop and revitalize public lands that are abandoned, deteriorated or underutilized**

Policy 1B **Protect stable residential areas**

Explanation of Policy

State and federal agencies must ensure that their actions further the revitalization of urban waterfront areas. The transfer and purchase of property; the construction of a new office building, highway or park; the provision of tax incentives to businesses; and establishment of enterprise zones, are all examples of governmental means for spurring economic growth. When any such action or similar action is proposed in the Town of Porter Local Waterfront Revitalization Area (LWRA), it must be analyzed to determine if the action would contribute to or adversely affect revitalization efforts in this area.

It must be recognized that revitalization of once dynamic waterfront areas is one of the most effective means of encouraging economic growth, without consuming valuable open space outside of these waterfront areas. Waterfront redevelopment and revitalization is also one of the most effective means of rejuvenating, or at least stabilizing, residential and commercial districts adjacent to areas of revitalization activity.

In responding to this policy, several other policy principles must be considered:

1. Uses requiring a location abutting the waterfront must be given priority in any redevelopment effort (refer to Policy 2 for the means to effectuate this priority);

2. As explained in Policy 5, one reason for revitalizing previously dynamic waterfront areas is that the costs for providing basis services to such areas is frequently less than providing new services to areas not previously developed;

3. The likelihood for successfully simplifying permit procedures and easing certain requirements (Policy 6) will be increased if a discrete area and not the entire waterfront is the focus for revitalization efforts. In turn, ease in obtaining permits should increase the interest to invest in

these areas. Furthermore, once any concentrated effort for revitalization has succeeded, stabilization and revitalization of surrounding areas may occur in response to this action.

Local governments through waterfront revitalization programs have the primary responsibility for implementing this policy. Though local waterfront revitalization programs need not be limited to redevelopment, local governments are urged to identify areas as suitable for redevelopment, and establish and enforce redevelopment programs.

1. When a Federal, State or local action is proposed to take place in a location in the LWRA that is regarded as suitable for redevelopment, the following guidelines will be used:

   a. Priority should be given to uses that are dependent on a location adjacent to the water (see Policy 2).

   b. The action should enhance existing and anticipated uses. For example, a new highway should be designed and constructed to serve the potential access needs for local development.

   c. The action should serve as a catalyst to private investment in the area.

   d. The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline.

   d. The action must lead to development that is compatible with the character of the area, with consideration given to scale, architectural style, density, visual quality, and intensity of use.

   f. The action should have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base. For example, waterfront development meant to serve consumer needs would be inappropriate in an area where no increased consumer demands were expected, and existing development was already meeting demand.

   e. The action should improve adjacent and upland views of the water and, at a minimum, must not affect their availability or the quality of existing views.

   h. The action should have the potential to enable multiple uses on the site.

2. If a Federal, State or local action is proposed to take place outside of a given deteriorated or underutilized waterfront area that is suitable for redevelopment, and is either within the relevant

community or adjacent coastal communities, the agency proposing the action must first determine if it is feasible to undertake the action within the area in question. If such an action is deemed feasible, the agency should give strong consideration to undertaking the action in that area. If not feasible, the agency must take the appropriate steps to ensure that the action does not cause or exacerbate deterioration of that area.

The Town of Porter has undertaken improvements in the LWRA that have resulted in the revitalization of abandoned and underutilized lands for public benefit. Porter on the Lake Park is an example of this. Such improvements have provided a variety of opportunities for public access to the Lake Ontario shoreline and limited water-related recreation, public use and enjoyment of the lakefront, and enhance the Town as a regional tourist destination.

The Town of Porter also is home to two large State Parks – Fort Niagara State Park and Four Mile Creek State Park, which offer opportunities for a wide variety of active and passive public recreation. These parks bring numerous visitors to the Town's waterfront throughout the year. The State is encouraged to keep the various facilities located within these parks well maintained and to provide additional opportunities for recreational enjoyment wherever possible.

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

Public access improvements should also be emphasized to better establish the connection between upland residential areas and the waterfront. Linkages are also important and should be created through the expansion of the existing waterfront trail system, which does not extend beyond Joseph Davis State Park in the Town of Lewiston (immediately south of Porter).

Policy 2 Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters

Policy 2A Maintain and, where appropriate, expand water-dependent recreational facilities

Explanation of Policy

There is a finite amount of waterfront space suitable for development purposes. Consequently, while the demand for any given piece of property will fluctuate in response to varying economic and social conditions, on a State and Town-wide basis, the only reasonable expectation is that long-term demand for waterfront space will increase.

The traditional method of land allocation, i.e., the real estate market, with or without local land use controls, offers little assurance that uses that require waterfront sites will, in fact, have access to the shoreline. To ensure that such "water-dependent" uses can continue to be accommodated within the Town of Porter Local Waterfront Revitalization Area (LWRA), governmental agencies will avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses. Furthermore, agencies will utilize appropriate existing programs to encourage the siting of water dependent activities, where feasible.

A water dependent use is an activity that can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and involves use of the water as an integral part of such activity. The following uses and facilities are considered as water-dependent:

1. Uses that depend on the utilization of resources found in local surface waters, such as fishing;

2. Recreational activities that depend on access to the Niagara River, Lake Ontario or local creeks (e.g., fishing, boating, swimming, wildlife viewing and similar uses);

3. Flood and erosion protection structures, including bulkheads and seawalls;

4. Facilities needed to store and service recreational vessels (e.g., marinas, boat repair, boat storage, etc.);

5. Scientific/educational activities that, by their nature, require access to coastal waters (e.g., certain meteorological and oceanographic activities); and

6. Support facilities that are necessary for the successful functioning of permitted water-dependent uses (e.g., parking lots, snack bars, first aid stations, short-term storage facilities). Although these uses must be situated near the water-dependent use they support, they should be sited inland from the use rather than on the shore to the greatest extent possible.

The Town of Porter and New York State should protect, maintain and, where appropriate, expand existing water-dependent recreational uses. These include Fort Niagara State Park and Porter on the Lake Park.

In addition to water dependent uses, those uses that are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. A water-enhanced use is defined as a use or activity that does not require a location adjacent to or over coastal waters, but having such a location adds to the public use and enjoyment of the water's edge. Water-enhanced uses are primarily recreational, cultural, retail, or entertainment uses. A restaurant that uses good site design to take advantage of a waterfront view is an example of a water-enhanced use.

In the Town of Porter LWRA, water-enhanced uses primarily include residential uses located either on the water or in close proximity to the shore. Waterfront parks and multi-use trails are other water-enhanced amenities in the Town that benefit from their location along the shoreline. These types of uses help support tourism activity and economic development. A location near the water is also an attraction for residents and helps to maintain the strength of adjacent residential neighborhoods. Water-enhanced uses found in the Porter LWRA include Four Mile Creek State Park and Willow Beach Campground.

If there is no immediate demand for a water-dependent use in a given area, but a future demand is reasonably foreseeable, temporary non-water-dependent uses should be considered preferable to a non-water-dependent or enhanced use that involves an irreversible or nearly irreversible commitment of land. Parking lots, passive recreational facilities, outdoor storage areas, and non-permanent structures are uses or facilities that would likely be considered as "temporary" non-water-dependent uses.

In the actual choice of sites where water-dependent uses will be encouraged and facilitated, the following guidelines should be used:

1. Competition for space: Competition for space, or the potential for it, should be indicated before any given site is promoted for water-dependent uses. The intent is to match water-dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a site for water-dependent use. The choice of a site should be made with some meaningful impact on the real estate market anticipated. The anticipated impact could either be one of increased protection to existing water-dependent activities or else the encouragement of water-dependent development.

2. In-place facilities and services: Most water-dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water-dependent uses, consideration should be given to the following factors:

    a. The availability of public sewers, public water lines and adequate power supply;
    b. Access to the area for trucks and rail, if industry is to be accommodated; and
    c. Access to public transportation, if a high number of person trips are to be generated.

3. Access to navigational channels: Where recreational boating exists or is planned, consideration should be given to sites that have access to navigation channels.

4. Compatibility with adjacent uses and the protection of other coastal resources: Water-dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Consideration should also be given to such factors as the protection of nearby residential areas from odors, noise and traffic. Affirmative approaches should also be employed so that water-dependent uses and adjacent uses can serve to complement one another. For example, a recreation-oriented water-dependent use area could be sited in an area already oriented towards tourism. Clearly, a marina, fishing pier or swimming area would enhance, and in turn be enhanced by, nearby restaurants, motels and other non-water oriented tourist activities. Water-dependent uses must also be sited to avoid adverse impacts on the significant coastal resources.

5. Preference to underutilized sites: The promotion of water-dependent uses should serve to foster development as a result of the capital programming, permit expediting and other State and local actions that will be used to promote use of the site. Nowhere is such a stimulus needed more than in those portions of the LWRA that are currently underutilized.

6. Providing for expansion: A primary objective of the policy is to create a process by which water dependent uses can be accommodated well into the future. State agencies and localities will, therefore, give consideration to long-term space needs and, where practicable, accommodate future demand by identifying more land than is needed in the near future.

In promoting water-dependent and water-enhanced uses, the following kinds of actions will be considered:

1. Favored treatment to water dependent use areas with respect to capital programming. Priority should be given to the availability and maintenance of roads and public transportation within areas suitable for water dependent and water enhanced uses.

2. When areas suitable for water dependent or water-enhanced uses are publicly owned, favored leasing arrangements and/or tax abatements should be given to these uses, as appropriate.

3. State and local planning and economic development agencies should actively promote water dependent or water-enhanced uses. In addition, a list of sites available for non-water dependent uses should be maintained to assist developers seeking alternative sites for their proposed projects.

4. Local, State and Federal agencies should work together to streamline permitting procedures that may be burdensome to water dependent and water enhanced uses.

5. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent and water enhanced uses.

Policy 3 Further develop the state's major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of state public authorities, of land use and development which is essential to, or in support of, the waterborne transportation of cargo and people

Explanation of Policy

The Town of Porter waterfront revitalization area is not designated as one of the State's major ports. Therefore, this Coastal Management Policy is not applicable.

Policy 4 Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity

Explanation of Policy

The Town of Porter waterfront revitalization area does not include a small harbor area, as defined by this policy. Therefore, this Coastal Management Policy is not applicable.

Policy 5 Encourage the location of development in areas where public services and facilities essential to such development are adequate

Explanation of Policy

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, development, particularly large-scale development, in the waterfront area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate; and where topography, geology, and other environmental conditions are suitable for and can accommodate such development.

The above policy is intended to accomplish the following:

1. Strengthen existing residential, industrial and commercial centers;

2. Foster an orderly pattern of growth where outward expansion may be occurring;

3. Increase the productivity of existing public services and moderate the need to provide new public services in outlying areas;

4. Preserve open space in sufficient amounts and where desirable; and

5. Foster energy conservation by encouraging mixed use and denser development activities in appropriate areas.

The following points shall be considered in assessing the adequacy of an area's infrastructure and public services:

1. Streets and roadways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;

2. The water needs of the new development (consumptive and firefighting) can be met by the existing water supply system;

3. Sanitary sewage disposal systems can accommodate the wastes generated by the development;

4. Energy needs of the proposed land development can be accommodated by existing utility systems;

5. Stormwater runoff from the proposed site can be accommodated by on-site and/or off-site facilities; and

6. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area of the development.

It is recognized that certain forms of development may and/or should occur at locations that are not within or near areas of concentrated development. Thus, this coastal development policy does not apply to the following types of development projects and activities.

1. Economic activities that depend upon sites at or near locations where natural resources are present, e.g., lumber industry, quarries.

2. Development that, by its nature, is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.

3. Development that is designed to be a self-contained activity, e.g., a small college, an academic or religious retreat.

4. Water dependent uses with site requirements not compatible with this policy or when alternative sites are not available.

5. Development that because of its isolated location and small scale has little or no potential to generate and/or encourage further land development.

6. Uses and/or activities that because of public safety consideration should be located away from populous areas.

7. Rehabilitation or restoration of existing structures and facilities.

8. Development projects that are essential to the construction and/or operation of the above uses and activities.

For any action that would result in development or facilitate and serve future development, a determination shall be made as to whether the action is within, contiguous to, or in close proximity to an area of concentrated development where infrastructure and public services are adequate. In areas of the Town of Porter Local Waterfront Revitalization Area, where development is encouraged by this policy, the condition of existing public water and sewage infrastructure may necessitate improvements. Those State and Federal agencies charged with allocating funds for investments in water and sewer facilities should give high priority to the needs of Town of Porter for enabling waterfront revitalization.

Policy 6 **Expedite permit procedures in order to facilitate the siting of development activities at suitable locations**

Explanation of Policy

The confusion, time delay and costs associated with the issuance of permits and approvals from all levels of government for development in the waterfront area is not always conducive to attracting investment in this area. For specific types of development activities, and in areas suitable for such development, state and local government agencies, including Town of Porter departments and agencies, will make every effort to coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulatory objectives are not jeopardized. These procedures and programs will be coordinated within each agency. Also, efforts will be made to ensure that each agency's procedures are coordinated with the procedures of other agencies at each level of government. To achieve this goal, if necessary, legislative and/or programmatic changes will be recommended. Finally, when proposing new regulations, an agency will determine the feasibility of incorporating these regulations within existing procedures, if this can reduce the burden on a particular type of development and does not jeopardize the integrity of the regulatory objectives.

FISH AND WILDLIFE POLICIES

Policy 7 **Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats**

Policy 7A **The Four Mile Creek Bay Significant Coastal Fish and Wildlife Habitat shall be protected, preserved and, where practical, restored so as to maintain its viability as habitat.**

Policy 7B **Six Mile Creek should be recognized for its habitat value and protected, preserved, and where practical, restored so as to maintain its viability as a significant habitat**

Policy 7C **Control Canada geese populations on public lands and the spread of aquatic invasive species in local waterways**

Explanation of Policy

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

1. Are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas);

2. Support populations of rare and endangered species;

3. Are found at a very low frequency within a coastal region;

4. Support fish and wildlife populations having significant commercial and/or recreational value; and

5. Would be difficult or impossible to replace.

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

1. Destroy habitat values through direct physical alteration, disturbance or pollution of a designated area, or through the indirect effects of actions that would result in a loss of habitat; and/or

2. 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 other physical, biological or chemical characteristics.

In order to protect and preserve wildlife habitats of local significance, land and water uses or development shall not be undertaken if such actions would destroy or significantly impair the viability of an area as a habitat. When the action significantly reduces a vital resource (e.g., food, shelter, living space) or changes environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism, then the action would be considered to "significantly impair" the habitat. Indicators of a significantly impaired habitat may include: reduced carrying capacities, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

The range of generic activities most likely to affect locally significant fish and wildlife habitats include, but are not limited to the following:

1. Draining wetlands or other water bodies that would cause changes in vegetation, or changes in groundwater and surface water hydrology;

2. Filling wetlands, shallow areas of streams, which could change the physical character of substrate (e.g., from sandy to muddy, smother vegetation, alter surface water hydrology);

3. Grading land can result in the removal of vegetation, increased surface runoff, or increased soil erosion and downstream sedimentation;

4. Clear cutting can result in the loss of vegetative cover, increased fluctuations in the amount of surface water runoff, or increased streambed scouring, soil erosion, or sediment deposition;

5. Dredging or excavation may cause changes in substrate composition, possible release of contaminants otherwise stored in sediments, removal of aquatic vegetation, or changes in circulation patterns and sediment transport mechanisms;

6. Dredge spoil disposal: May include shoaling of littoral areas or change in circulation patterns.

7. Physical alteration of shore areas through channelization or construction of shoreline structures can result in changes to the volume and rate of flow, or increased scouring and sedimentation; and

8. Introduction, storage or disposal of pollutants such as chemicals or other toxic materials, petrochemicals, solid wastes, pesticides, sewage effluent, urban stormwater runoff, and/or leaching of hazardous and toxic substances stored in landfills can cause increased mortality or sublethal effects on organisms, alter their reproductive capabilities, or reduce their value as food organisms.

The range of physical, biological and chemical parameters that should be considered as a part of habitat protection include, but are not limited to:

1. Physical parameters, such as living space, circulation, flushing rates, turbidity, water temperature, water depth, morphology, substrate type, vegetation, structure, erosion and sedimentation rates;

2. Biological parameters, such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, behavioral patterns and migratory patterns; and

3. Chemical parameters, such as dissolved oxygen, carbon dioxide, acidity, dissolved solids, nutrients, organics, salinity, and pollutants (heavy metals, toxic and hazardous materials).

When a proposed action is likely to alter any of these biological, physical or chemical parameters beyond the tolerance range of the organisms that populate the habitat, the viability of that habitat has been significantly impaired or destroyed. Such action, therefore, would be inconsistent with this policy.

Where destruction or impairment of habitat value cannot be avoided, potential impacts of land use or development should be minimized through appropriate mitigation. Use mitigation measures that are likely to result in the least environmentally damaging alternative. Mitigation techniques include:

1. Avoidance of potential adverse impacts to 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.

2. Minimization of unavoidable potential adverse impacts, including reducing the scale or intensity of the use or development, designing projects to result in the least amount of potential adverse impacts, choosing alternative actions or methods that would lessen potential impacts, using specific measures to protect habitat values from impacts that cannot be sufficiently avoided or minimized to prevent habitat destruction or significant habitat impairment, and/or implementing the specific protective measure included in the narratives for each State-designated Significant Coastal Fish and Wildlife Habitat (as outlined below for Four Mile Creek Bay).

Four Mile Creek Bay in the Town of Porter Local Waterfront Revitalization Area is the only State-designated Significant Coastal Fish and Wildlife Habitat in Porter. Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations in areas of local significance, such as Four Mile Creek Bay. Additionally, the Niagara River and Lake Ontario are home to numerous species of fish that are important to a local, regional and State recreational fishing industry, and provide habitat for over-wintering species of waterfowl.

Four Mile Creek Bay is one of the few sizeable areas of undisturbed coastal wetland remaining in Niagara County. Despite its small size relative to wetlands around eastern Lake Ontario, this area provides valuable habitat for a variety of fish and wildlife species. Probable or confirmed breeding bird species include green-backed heron, mallard, wood duck, belted kingfisher, and a variety of passerine birds. In

addition, this area serves as a feeding area for herons and waterfowl during spring and fall migrations. Other wildlife species inhabiting the bay include muskrat, raccoon, and painted turtles. Fourmile Creek Bay is a productive warm water fisheries habitat, which is relatively uncommon in this section of Lake Ontario. The area supports sizeable resident populations of brown bullhead, rock bass, largemouth bass, northern pike, and other panfish. Fourmile Creek is also one of about four tributary streams in Niagara County that have significant runs of steelhead (rainbow trout) in the spring, and runs of steelhead, brown trout, and salmon in the fall. These salmonid populations are the result of an ongoing effort by the NYSDEC to establish a major salmonid fishery in the Great Lakes through stocking, including in Four Mile Creek Bay. The relatively small, but diverse fisheries of this area provide valuable opportunities for recreational fishing by residents of northern Niagara County and visitors to Four Mile Creek State Park. Access to the area for bank fishing is readily available from within the park.

A habitat impairment test must be met for any activity that is subject to consistency review to identify potential actions that may destroy the habitat or significantly impair the viability of the Four Mile Creek Bay habitat. If a proposed action is subject to consistency review, then this habitat protection policy applies, whether the action is to occur within or outside of the designated habitat area. To assist in applying the habitat impairment test, the following are examples of generic activities that could potentially impact the Four Mile Creek Bay habitat:

1. Any activity that substantially degrades water quality, increases turbidity or sedimentation, reduces flows, or increases water level fluctuations in Four Mile Creek Bay would adversely affect many fish and wildlife species.

2. Discharges of sanitary waste or stormwater runoff containing sediments or chemical pollutants (including fertilizers, herbicides, or insecticides), could adversely impact on the fish and wildlife resources of the area.

3. Elimination of wetland vegetation, including submergent beds, through dredging, filling, or bulkheading, would result in a direct loss of valuable habitat area.

4. Barriers to fish migration, whether physical or chemical, could have a significant impact on fish populations in this area.

5. Development of motorboat access to Lake Ontario from the bay should be prohibited as it could adversely affect fish and wildlife in a variety of ways, including increased human disturbance of the habitat during fish spawning and nursery periods (late February through July for steelhead and most warm water species, and September through November for most salmonids) and wildlife breeding seasons (April through July for most species).

6. Existing woodlands bordering Four Mile Creek Bay should be maintained for their value as cover, perching sites and buffer zones.

Six Mile Creek is another waterway of local importance to the Town, which drains to Lake Ontario. Six Mile Creek includes an extensive area of undisturbed wetland estuary that provides habitat for a variety of birds and fish, as well as other wildlife species. Being of similar ecological value to Four Mile Creek Bay, this creek should be recognized by the State as a Significant Coastal Fish and Wildlife Habitat and afforded the same protections as Four Mile Creek Bay. In cooperation with the State's Coastal Management Program, the NYSDEC should evaluate Six Mile Creek using its rating system, which incorporates the five parameters for determining habitat value.

Canada geese are a valuable natural resource that provides recreation and enjoyment to bird watchers, hunters, and the general public throughout New York State. However, in recent years, flocks of local-nesting or "resident" geese have become year-round inhabitants of the parks and waterways in the Porter LWRA and, too often, they can cause significant problems. Expanses of short grass, abundant water resources, lack of natural predators, restricted hunting, and supplemental feeding have created an explosion in the number of resident geese. While most people find a few geese acceptable, problems develop as local flocks are growing. Problems include over-grazed lawn areas, accumulations of droppings and feathers on play areas and walkways, nutrient loading to surface waters, public health concerns, aggressive behavior by nesting birds, and safety hazards near roads and multi-use trails. To address problems with Canada geese in the Town of Porter LWRA, the following is recommended:

1. Work with GeesePeace to create a program for the management of Canada geese that is sustainable, economic, effective and non-controversial, and engages the whole community in a coordinated, cooperative effort.

2. Work with the NYSDEC to manage resident Canada geese through population stabilization, habitat modifications and site aversion so that the numbers of geese are in balance with other wildlife and no longer pose a significant problem in parks, public areas and recreational facilities.

3. Educate the public on the history of “resident” Canada geese, their unique behavior and why recreational feeding of geese and other wildlife is bad for the wildlife and the community.

4. Consider adoption of local regulations that prohibits feeding of geese and other wildlife on public property.

Invasive species of aquatic plants and animals are a threat to the ecological integrity of the Niagara River and Lake Ontario watersheds. Invasive species cause or contribute to:

1. Habitat degradation and loss,

2. Disruption of natural ecological processes,

3. The loss of native fish, wildlife and tree species, and

4. The loss of recreational opportunities and income.

Monitoring aquatic ecosystems is critical to preventing, detecting, and reducing the spread and impact of aquatic invasive species that threaten waters in the Niagara River and Lake Ontario watersheds. Educating landowners as to the proper control and eradication of invasive plant species is a critical part of maintaining watershed health. Identifying and removing invasive species is a vital aspect of restoring ecological health. Early detection and response is critical for the effective control of invasive species. Another important, and often overlooked component, is the proper disposal of invasive plants. If not disposed of properly they will only contribute to the spread of new infestations.

Once established in a new environment, invasive species are often difficult and expensive to eradicate. Although control efforts may be ineffective and costly, they are sometimes necessary to minimize or eliminate the invasive species' impact on the environment. Complete eradication of invasive plants may be desirable; however, this is not always feasible. Controlling existing populations and preventing their spread in the Town of Porter LWRA is a more practical and attainable goal. There are three methods of control: mechanical, biological, and chemical. Control methods and timelines for treatment vary for each species. Therefore, consultation with the NYSDEC, the Western New York Partnership for Regional Invasive Species Management (WNYPRISM) or the Buffalo Niagara Waterkeeper is recommended prior to taking any action to control aquatic invasive species.

Policy 8 Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which cause significant sub-lethal or lethal effects on those resources

Explanation of Policy

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous waste is defined in

Environmental Conservation Law [S27-0901(3)] as "waste or combination of wastes that because of its quantity, concentration, or physical, chemical or infectious characteristics may:

1. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or otherwise managed."

A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

The handling (storage, transport, treatment and disposal) of the hazardous materials is strictly regulated in New York State to prevent their entry or introduction into the environment, particularly into the State's air, land and waters. Such controls should effectively minimize possible contamination of and bio-accumulation in the fish and wildlife populations at levels that cause mortality or create physiological and behavioral disorders. Other pollutants of concern are those conventional wastes that are generated from point and non-point sources, and not identified as hazardous wastes, but controlled through other State laws.

Policy 9 Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources

Explanation of Policy

Recreational uses of fish and wildlife resources in the Town of Porter Local Waterfront Revitalization Area (LWRA) include consumptive uses such as fishing, and non-consumptive uses such as wildlife photography, bird watching and nature study and interpretation. Any efforts to increase the recreational use of fish and wildlife resources will be undertaken in a manner that ensures the protection of the resources in local surface water areas and surrounding natural upland areas, and that takes into consideration other activities dependent on these resources. Additionally, such efforts must be conducted in accordance with existing State and Local Law and in keeping with sound habitat management practices and considerations. Such considerations include biology of the species, carrying capacity of the resources, public demand, costs, and available technology.

The recreational and educational value of waterfront areas that have concentrations of fish and wildlife resources provides great benefit to the general public. This is particularly important in the lower Niagara River and Lake Ontario, and to a lesser extent Four Mile and other local creeks, which offer quality fishing opportunities in the LWRA. Where feasible, access to existing resources, whether for consumptive or non-consumptive activities, should be increased in these areas. Providing or enhancing access to Six-Mile Creek for non-consumptive (passive) activities should also be considered.

The following additional guidelines should be considered by Local, State and Federal agencies as they determine the consistency of their proposed actions with this policy:

1. Consideration should be given to whether an action will impede existing or future utilization of the Town's recreational fish and wildlife resources;

2. Efforts to increase access to recreational fish and wildlife resources in the LWRA should not lead to over-utilization of that resource or cause impairment of the habitat. Sometimes impairment can be more subtle than actual physical damage to the habitat (for example, increased human presence can deter animals from using the habitat area);

3. The impacts of increasing access to recreational fish and wildlife resources should be determined on a case-by-case basis, and/or conferring with a trained fish and wildlife biologist; and

4. Any public or private sector initiatives to supplement existing stocks (e.g., stocking a stream with fish reared in a hatchery) or develop new must be done in accordance with existing State Law.

Policy 10 Further develop commercial finfish, shellfish, and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the state's seafood products, maintaining adequate stocks, and expanding aquaculture facilities

Explanation of Policy

There is no commercial finfish, shellfish or crustacean industry in the Town of Porter local waterfront revitalization area, and no on-shore commercial fishing facilities. Therefore, this policy is not applicable.

FLOODING AND EROSION HAZARDS POLICIES

Policy 11 Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion

Explanation of Policy

On coastal lands identified as coastal erosion hazard areas, buildings and similar structures shall be set back from the shoreline a distance sufficient to minimize damage from erosion unless no reasonable prudent alternative site is available as in the case of piers, docks, and other structures necessary to gain access to coastal waters to be able to function. The extent of the setback will be calculated, taking into account the rate at which land is receding due to erosion and the protection provided by existing erosion protection structures, as well as by natural protective features such as beaches, sandbars, spits, shoals, nearshore areas, bluffs and wetlands. The only new structure allowed in coastal erosion hazard areas is a moveable structure as defined in 6 NYCRR Part 505.2(x). Prior to its construction, an erosion hazard areas permit must be approved for the structure. Existing non-conforming structures located in coastal erosion hazard areas may be only minimally enlarged.

This policy seeks to protect life, structures and natural resources from the hazards of flooding and erosion. The policy reflects Town of Porter flood damage 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 Lake Ontario, as well as local creeks tributary to the lake.

The Town of Porter waterfront contains flood zones that have been designated by the Federal Emergency Management Agency and are depicted on Flood Insurance Rate Maps, which were last updated in September of 2010. The Town participates in the National Flood Insurance Program and development in the floodplain is regulated under Chapter 93 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 93, all construction and other development that is proposed within regulated areas of special flood hazards (100-year floodplains) requires a permit from the Local Floodplain Administrator (Town of Porter Builder Inspector) and must be in compliance with the standards outlined in the Flood Damage Prevention Law (which are included in the Appendix).

The Town of Porter is a member of the Western New York Stormwater Coalition and adopted a Stormwater Management Law in to address the impacts of stormwater runoff that are associated with land

development activities. Town 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 adopted a shared Stormwater Management Plan that was prepared by the Coalition, as a complement to the law. This 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.

The natural shoreline has an inherent natural, social, and economic value that should be respected to ensure continuing benefits. Lake Ontario is a constant force that impacts the Town of Porter shoreline, particularly during severe storm events and periods of high water that follow periods of significant rainfall. 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, where possible, those portions of the Lake Ontario shoreline that are not fortified should generally remain in a natural condition to respond to natural processes. If at all possible, areas of the shoreline that have been hardened should be returned to a natural condition wherever feasible and appropriate. Of greatest importance is that all required shoreline protection structures that are in disrepair should be renovated and that, in general, shoreline protection structures be maintained to ensure their utmost effectiveness.

Pursuant to Town of Porter Flood Prevention Law, no structure in an area of special flood hazard shall be constructed, located, extended, converted, or altered, and no land shall be excavated or filled without a permit and full compliance with the terms of the law and any other applicable regulations. The law includes construction standards that apply to all forms of development in the Town of Porter Local Waterfront Revitalization Area (LWRA).

The following standards apply to the construction of all structures in the LWRA:

1. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

2. Construction materials and methods.

a. New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

b. New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.

c. 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 data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable 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:

(1) 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; and

(2) The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

d. Openings in enclosed areas may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas sub-grade on all sides are considered basements and are not permitted.

3. Utilities.

a. New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

b. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

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; and

d. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

The following standards apply to new and other proposed development, including new and substantially improved structures and residential subdivisions, in the areas of special flood hazard shown on the Flood Insurance Rate Maps for the Town of Porter, and includes proposals for manufactured homes and recreational vehicle parks and subdivisions:

Subdivisions:

1. Proposals shall be consistent with the need to minimize flood damage;

2. Public utilities and facilities such as sewer, gas electrical and water systems shall be located and constructed so as to minimize flood damage; and

3. Adequate drainage shall be provided to reduce exposure to flood damage.

Encroachments:

1. 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:

   a. 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 location; or

   b. The Town of Porter 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 Porter 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 Porter for all costs related to the final map revision.

2. On streams with a regulatory floodway as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

   a. A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or

   b. The Town of Porter agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received, and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Porter 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 Porter for all costs related to the final map revisions.

3. Within Zones A1-A30, AE and AH and Zone A, if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.

4. Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least three feet or above the highest adjacent grade.

5. Within Zone AO, new construction and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the Town of Porter's Flood Insurance Rate Map (at least two feet if no depth number is specified).

6. Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

The following standards apply to new and substantially improved commercial, industrial and other non-residential structures located in areas of special flood hazard:

1. Within Zones A1-A30, AE and AH, and Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall either:

a. Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or

b. Be flood proofed so that the structure is watertight below two feet above the base flood elevation 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.

2. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

b. Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in Section 34-104(1)(b) of the Town Code.

3. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the local floodplain administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 34-104(1)(b) of the Town Code, including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

4. Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

5. Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

The following standards apply to manufactured homes and to recreational vehicles which are located in areas of special flood hazard:

1. Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:

a. Be on site fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the requirements for manufactured homes as specified in Sub-sections 34-105(2), (3) and (4) of the Town Code.

2. 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.

3. A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

4. Within Zone A, 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 grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

5. Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map (at least two feet if no depth number is specified).

Policy 12 Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs

Explanation of Policy

The beaches, bluffs, and other natural protective features within the Town of Porter LWRA help safeguard lands and property along the shoreline from damage, as well as reduce the danger to human life, resulting from flooding and erosion caused by severe storms and high-water levels on Lake Ontario and the Niagara River. Excavation of these coastal features, improperly designed erosion protection structures, inadequate site planning, or other similar actions that fail to recognize the fragile nature and high protective values of these resources, lead to the weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features must ensure that all such

adverse actions are minimized. Existing erosion protection structures shall be well maintained to ensure their ability to protect shoreline natural resources and property from storm and high-water damage.

Policy 13 The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs

Policy 13A Ensure that erosion protection in the Town of Porter LWRA is sufficient to protect upland areas from flooding and erosion

Explanation of Policy

Various forms of erosion protection are widely used throughout the Town of Porter Local Waterfront Revitalization area. However, because of improper design, construction, maintenance and age, some fail to give the protection that they were originally intended to provide. As a result, certain development may be sited in areas where it is subject to damage or loss due to erosion. This policy is designed to help ensure that erosion protection structures in the LWRA are constructed or reconstructed to provide effective, long-term protection in an effort to reduce such damage or loss. This is particularly important where public funds are used for the construction or reconstruction of these structures. Property owners should ensure that proper maintenance is undertaken, as needed, to ensure that erosion protection structures are in proper condition and capable of providing adequate protection.

Policy 14 Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations

Explanation of Policy

Erosion and flooding are processes that occur naturally. However, by our actions, humans can increase the severity and adverse effects of those processes, causing damage to, or loss, of property and endangering human lives. Those actions include:

1. The use of erosion protection structures, such as seawalls or impermeable docks, that interfere with the littoral transport of sediment to adjacent shorelands, thus increasing their rate of erosion on adjacent properties;

2. The failure to observe proper drainage or land restoration practices upland of the shoreline, thereby causing runoff and the erosion and weakening of the natural protective features along the shoreline; and

3. The placement of structures in identified floodways so that the base flood level is increased, causing damage to otherwise hazard-free areas.

No activity or development should be undertaken in the Town of Porter Local Waterfront Revitalization Area that would result in flooding or erosion, or any measurable increase of such. Property owners should take care to ensure that stormwater runoff generated upland of the top of bluffs or the shoreline in general does not weaken the stability of these resources. The planting of vegetation upland of the top of a bluff can help to absorb stormwater flows, helping to mitigate potential impacts. In no case should drainage be directed toward the shoreline so as to threaten shoreline resources. Additionally, adding plantings behind stone revetment and similar structures placed at the toe of a bluff can help to further stabilize those areas.

Policy 15 Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land

Explanation of Policy

Coastal processes, including the movement of shoreline sediment by water, and any dredging in nearshore or offshore waters that changes the supply and net flow of such materials, can deprive shorelands of their natural regenerative powers. Dredging activities in the Niagara River or Lake Ontario should be accomplished in a manner that does not cause a reduction of supply, and thus an increase of erosion, to adjacent shorelands. There are not offshore mining or excavation activities in the local waterfront revitalization area.

Policy 16 Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features

Explanation of Policy

Public funds are used for a variety of purposes along waterfronts throughout the State. This policy recognizes the public need for the protection of human life and existing development along the shoreline in the Town of Porter, as well as new development that desires a location adjacent to coastal waters. However, the adverse impacts of such development activities on the rate of erosion and on natural protective features that guard against flooding and erosion is also recognized. Therefore, the construction of erosion protection structures in the Town of Porter Local Waterfront Revitalization Area requires that a thorough analysis of the long-term costs and benefits of such action be undertaken before any expenditure of public funds for this action occurs.

Policy 17 Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible

Explanation of Policy

This policy recognizes both the potential adverse impacts of flooding and erosion upon development and natural protective features in the coastal area, as well as the costs of providing structural protection against those hazards. This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing development and resources against flooding and erosion in the Town of Porter Local Waterfront Revitalization Area. To ascertain consistency with this policy, it must be determined if any one, or any combination of, non-structural measures would afford the degree of protection appropriate to safeguard the character and purpose of the resources, activities or development to be protected. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the implementation of such measures whenever possible. Non-structural measures include, but are not limited to the avoidance of risk or damage from flooding by the siting of buildings outside the structural hazard area, and the flood-proofing of buildings or their elevation

about the base flood level. Under all circumstances the provisions of Chapter 93 of the Porter Town Code (the Flood Damage Prevention Law) must be followed.

Various forms of shoreline protection are in place along much of the Lake Ontario and the Niagara River to protect the shoreline from erosion. This policy acknowledges that the Lake Ontario shoreline is subject to the impacts of intense wave action from severe storms, particularly during times when water levels in the lake are elevated, and that non-structural measures may not be effective in certain areas. Shoreline protection structures include the use of stone revetment and rip rap, concrete rubble and concrete seawalls, and bulkheading, depending on the location, to ensure proper protection from flooding and erosion. The restricted vessel speed limit on the Niagara River also helps to control deterioration along the shoreline from wave action. It must be recognized that while shoreline hardening may provide relief from erosion in areas subjected to intense storms and wave action, these structural measures are expensive to install, can degrade shoreline habitat and interrupt natural shoreline processes, and may act to transfer erosion problems to adjacent areas. Alternative shoreline management techniques exist and should be considered for use as a first or next step for erosion protection in problem areas, whenever possible. Alternative measures should also be considered in combination with structural measures to increase protection, where feasible. Examples of alternative measures for protecting the shoreline include bioengineering techniques and planted buffers that utilize deep rooted vegetation. These alternative solutions can result in a more naturalized shoreline, which has ecological and aesthetic benefits. Hard structural erosion protection measures should only be uses where there is a documented erosion problem and where alternative measures have been proven to be inadequate to protect the principal use.
In determining whether non-structural measures will afford the degree of protection appropriate to protect against flooding and erosion, an analysis of existing conditions should be prepared. Where necessary, this analysis should include plans or sketches of the site and the protection measures proposed as mitigation.

GENERAL POLICY

Policy 18 To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards that the State has established to protect valuable coastal resource areas

Explanation of Policy

Proposed major actions may be undertaken in the Town of Porter Local Waterfront Revitalization Area if it is determined that they will not significantly impair valuable coastal waters and resources. This will ensure the achievement of the safeguards that the Town and State have established to protect valuable waterfront resources. Proposed actions must take into full account the social, cultural, economic and environmental interests of the Town and State, and their citizens, in such matters that would affect natural resources, water levels and flows in the Niagara River and local creeks, shoreline conditions, historic and scenic resources, recreation opportunities, public access, and the prosperity of interests in the waterfront area.

PUBLIC ACCESS POLICIES

Policy 19 Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities

Policy 19A Expand access opportunities to water-related recreational amenities in the LWRA

Explanation of Policy

This policy calls for achieving a balance among the following factors:

- the level of access to a water-related recreational resource or facility,
- the capacity of a resource or facility to sustain use, and
- the protection of natural resources.

An imbalance among these factors is typical in many areas and is often due to access-related problems. Therefore, priority shall be given to improving physical access to existing and potential water-related recreation sites within the Town of Porter Local Waterfront Revitalization Area, and to increasing the ability of residents and others to get to water-related recreation areas. The particular water-related recreation resources and facilities that should receive priority for improved access in the LWRA are public parks, boating facilities, fishing areas and waterfront trails. In addition, because of the greater competition for waterfront locations within the LWRA, this policy encourages mixed use areas and the multiple use of facilities, where feasible, to improve access.

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

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access, or unless such actions are found to be necessary by the public body having jurisdiction over such access as the result of a reasonable justification of the need to meet system-wide objectives.

   a. Access means the ability and right of the public to reach and use public lands and waters in the LWRA.

   b. Public water-related recreation resources of facilities include all public lands or facilities that are suitable for passive or active recreation requiring either water or a waterfront location or are enhanced by a waterfront location.

   c. Public lands or facilities are lands or facilities held by State or local government in fee simple or less-than-fee simple ownership, and to which the public has access or could have access, including underwater lands and the foreshore.

   d. A reduction in the existing level of public access includes, but is not limited to:

      (1) The number of parking spaces at a public water-related recreation resource or facility is significantly reduced;
      (2) The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting system-wide objectives; and
      (3) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

   e. An elimination of the possibility of increasing public access in the future includes, but is not limited to:

      (1) Construction of public facilities that physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities;

(2) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility; or

(3) Construction of private facilities that physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be evaluated according to the following factors:

   a. The level of access to be provided should be in accordance with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

   b. The level of access to be provided shall not cause a degree of use that would exceed the physical capability of the resource or facility. If this is determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

3. The Town and State will not undertake or fund any project that increases access to a water-related resource or facility that is not open to all members of the public.

The Town shall evaluate opportunities to increase access to existing water-related recreation facilities and provide such access to enhance public use. Sites that could benefit from increased access include, but are not limited to:

1. Porter on the Lake Town Park offers opportunities for improvement to increase public use and enjoyment; efforts should be made to undertake waterfront access and other improvements that will enhance use of this site by Town residents and visitors.

2. The multi-use trail system should be extended along the Niagara Scenic Parkway beyond Joseph Davis Park in the Town of Lewiston. This would enable a connection to and between Fort Niagara State Park and Four Mile Creek State Park; this trail should also be connected with Porter on the Lake Town Park to enable a complete connection between all waterfront parks in the Town.

3. The existing pathway that extends along Lower River Road (SR 18F), above the Niagara River, should be widened/reconstructed to accommodate multi-modal use; it should also be extended to ensure a connection between Joseph Davis State Park to the south and the Village of Youngstown to the north.

4. A formal means of upland access should be provided between Four Mile Creek State Park and Porter on the Lake Town Park, which are located side by side along Lake Ontario.

5. Install additional roadway signage along Lake Road (SR 18) and at prominent intersections in the vicinity of Porter on the Lake Town Park to identify the existence of this park and promote increased usage by the public.

Policy 20 Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses

Explanation of Policy

In coastal areas where there are limited or no recreation facilities that provide water-related recreational activities, access to the publicly-owned lands at large should be provided for activities and pursuits that require only minimal facilities. Such access could provide opportunities for scenic viewing or shoreline fishing. Similar activities requiring access include bicycling, bird watching, photography, and nature study. For these types of activities, there are several methods for providing access that should receive priority attention. These include the development of a shoreline trail system, the provision of access across transportation facilities to the waterfront, and the promotion of mixed and multi-use development that provide shoreline access to waterfront areas.

The Town of Porter waterfront offers a number of opportunities for access to the public foreshore and the water's edge. The two State parks and Porter on the Lake Town Park provide shoreline access for multiple uses. Although a public pathway extends along Lower River Road (SR 18F), above the Niagara River, this trail should be enlarged to accommodate multi-modal use and extended to provide a linkage between the Village of Youngstown and Joseph Davis Park in the Town of Lewiston. Additionally, a multi-use trail system that ends at Joseph Davis Park should be extended further north along the Niagara Scenic Parkway to provide access to Fort Niagara and Four Mile Creek State Parks. The provision of such additional access opportunities would enable a complete connection between the State park facilities in this area of Niagara County and provide a safer, and an alternative, means of accessing these recreational resources. The Town should also consider the possibility of providing limited access to Six Mile Creek for scenic viewing and passive recreation.

While publicly-owned lands referenced in the policy shall be retained in public ownership, the issuance of easements on lands underwater to adjacent onshore property owners is consistent with this policy,

provided such easements do not substantially interfere with continued public use of the public foreshore on which the easement might be granted. Also, the public use of publicly-owned underwater lands and lands immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety or the protection of fragile coastal resources.

The regulation of projects and structures that are proposed to be constructed on or over lands underwater is necessary to:

1. Ensure the responsible management of underwater lands and to protect the vital assets of the State that are held in public trust, and

2. Ensure that the exercise of riparian rights and access to navigable waters by waterfront property owners shall be consistent with the public interest and does not interfere with reasonable public use of, and access to, public trust lands and navigable waters for the purposes of navigation, commerce, fishing, recreation, environmental and aesthetic protection, and other such pursuits.

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

1. Existing level of public access from adjacent or proximate public lands or facilities to existing public waterfront lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be eliminated, unless such actions are demonstrated to be of overriding local, regional or Statewide public benefit or, in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access. In addition, the existing level of public access within public coastal lands and/or waters shall not be reduced or eliminated.

    a. A reduction in the existing or anticipated level of public access includes, but is not limited, to:

        (1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
        (2) Pedestrian access is diminished or blocked completely by public or private development.

b. An elimination of the possibility of increasing public access in the future includes, but is not limited to:

(1) Construction of public facilities that physically prevent the provision, except at great expense, of convenient public access to public coastal lands and /or waters.

(2) Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.

2. Public access from the nearest public roadway to the shoreline and along the waterfront shall be provided by new land uses or development, except where:

a. it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; or

b. adequate access exists within one-half mile.

3. The Town and State will not undertake or directly fund any project that increases access to a water-related resource or facility that is not open to all members of the public.

4. Proposals for increased public access to coastal lands and/or waters shall be evaluated according to the following factors:

a. The level of access to be provided should be in accordance with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

b. The level of access to be provided shall not cause a degree of use that would exceed the physical capability of the coastal lands and/or waters. If this is determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

5. In making any grant, lease, permit, or other conveyance of land now or formerly underwater, there shall be reserved such interests or attached such conditions to preserve the public interest in the use of State-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection, and access to the navigable waters of the State. In particular, the granting of publicly owned underwater or formerly underwater lands to private entities will be limited to exceptional circumstances only.

RECREATION POLICIES

Policy 21 Water-dependent and water-enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related used along the coast

Explanation of Policy

Water-related recreation includes such activities as boating, swimming, and fishing, as well as certain activities that are enhanced by a waterfront location and increase the general public's access to the shoreline, such as multi-use trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of scenic resources. The development of water-related recreation in the Town of Porter Local Waterfront Revitalization Area (LWRA) shall be consistent with the preservation and enhancement of important coastal resources, such as fish and wildlife habitats, aesthetically significant areas, and historic and cultural resources. Water-related recreational development in the LWRA should be designed to meet demand and shall take preference over the development of non-water-related recreational uses. The siting or design of new development in the LWRA that would result in a barrier to the recreational use of waterfront shall be avoided.

The Town of Porter benefits from two State parks and one Town facility that offer water-related recreational uses, including waterfront trails, fishing access, play fields and boating facilities. These uses should be maintained and enhanced, and where appropriate, expanded to increase opportunities for public use.

At present, opportunities to increase locations for shoreline fishing should be encouraged. The provision of adequate boating services to meet future demand is also encouraged, where feasible. The siting of boating facilities must be consistent with the preservation and enhancement of other coastal resources and their capacity to accommodate demand. Where the provision of new public boating facilities is essential for meeting this demand, such public actions should avoid competition with private boating development. Boating facilities will, as appropriate, include parking, park-like surroundings, restrooms and pump-out facilities.

Policy 22 Development, when located adjacent to the shore, will provide for water-related recreation, whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development

Explanation of Policy

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

The types of development that can generally provide water-related recreation as a multiple use include, but are not limited to parks, highways, utility transmission rights-of-way, schools, nature preserves (restricted to passive activities), residential subdivisions and commercial developments. Prior to taking action relative to any development proposal in the LWRA, the Town should determine if water-related recreation is feasible as a companion use. Such use should be consistent with LWRP policies and help to increase public use of the waterfront.

HISTORIC AND SCENIC RESOURCES POLICIES

Policy 23 Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation

Explanation of Policy

Among the most valuable of the State's man-made resources are those structures or areas that are of historic, archaeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. This policy is not to be construed as a passive mandate, but must include active efforts, when appropriate, to restore or revitalize historic and cultural resources through adaptive reuse. Of

particular concern is the preservation of historic and cultural resources that have a relationship with the waterfront.

The resources located within the Town of Porter Local Waterfront Revitalization Area that are of historic, architectural, archaeological or cultural significance and should be protected under this policy include the following:

1. Any resource that is on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places;

2. Any resource that is on or nominated to be on the State Nature and Historic Preserve Trust;

3. Any archaeological resource that is on the State Department of Education's inventory of archaeological sites; and

4. Any locally designated or significant historic landmark, structure, site or district.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the Town, State and Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to these resources. A significant adverse change includes but is not limited to:

1. Alteration of or addition to one or more of the architectural, structural, ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archaeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of a structure and any original or historically significant interior features including type, color and texture of building materials; entry ways and doors; fenestration; lighting fixtures; roofing; sculpture and carving; steps; rails; fencing; windows; vents and other openings; grillwork; signs; canopies; and other appurtenant fixtures and, in addition, all buildings, structures, outbuildings, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. (To the extent they are relevant, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be adhered to).

2. Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archaeological resource or component thereof, to include all those features described in (a) above plus any other appurtenant fixtures associated with a building, structure or earthwork.

3. All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archaeological resource and all actions within an historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgement about compatibility should focus on the visual and positional relationship between the proposed action and the special character of the historic, cultural, or archaeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts, this would include infrastructure improvements or changes, such as street and sidewalk paving, street furniture and lighting.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthworks, or component thereof of a recognized historic, cultural or archaeological resource that has been officially certified as being imminently dangerous to life or public health. Nor shall this policy prevent the ordinary maintenance, repair, or proper restoration of any resource or component thereof in accordance with the U.S. Department of Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as long as it does not involve a significant adverse change to the resource, as defined above.

The Town of Porter waterfront has a long and colorful history that is tied to the Revolutionary War. Fort Niagara State Park contains a number of sites and resources that are associated with this era in the Town's history (see Section 2.8 in the Inventory). Old Fort Niagara and other resources are examples of the wealth of history that exists in the area that should be better recognized and appreciated in an effort to celebrate the heritage of this area with the public.

Policy 24 Prevent impairment of scenic resources of statewide significance

Explanation of Policy

There are no scenic resources of statewide significance in the Town of Porter local waterfront revitalization area. Therefore, this policy is not applicable.

Policy 25 Protect, restore or enhance natural and man-made scenic resources that are not identified as being of statewide significance, but that contribute to the overall scenic quality of the coastal area

Explanation of Policy

The Town of Porter is located along two separate waterbodies that contribute to the scenic quality of the area and provide a wide array of opportunities for scenic viewing and enjoyment. As noted in the Inventory section of the LWRP, Lower River Road (SR 18F) and Lake Road (SR 18) are segments of the New York State Great Lakes Seaway Trail, which is a designated National and State Scenic By-Way. Actions shall be undertaken to protect, restore, improve or enhance the overall scenic quality of the waterfront along these roadways, wherever possible and feasible. Activities that could impair or further degrade scenic quality, such as irreversible modification of natural landforms or the installation of structures that would impact views, should be avoided.

Areas of visual interest in the Town of Porter Local Waterfront Revitalization area (LWRA) vary, depending on the location. Where some areas naturally, or have been improved to, provide scenic vistas, there are areas where views could be improved. These include, but are not limited to, certain sections of Lake Road. Additionally, focus should be placed on enhancements that would improve views/view corridors of the Niagara River from upland residential areas.

Entrances into the Town and the waterfront area should be aesthetically improved as “gateways” to highlight the fact that visitors and others are entering the LWRA and to enhance the visual quality of these areas, as needed.

The guidelines listed below should be considered for proposed actions in the local waterfront revitalization area. More emphasis may need to be placed on the removal of existing elements, especially those that degrade, and on the addition of new elements or other changes that could enhance visual quality. Removal of vegetation at key locations to improve visual access to coastal waters is one such change that might be expected to enhance scenic quality. However, discretion should be used to ensure that this action does not adversely affect other important resources in the waterfront area.

The following siting and facility-related guidelines shall be used to achieve the intent of this policy, recognizing that each development situation is unique and that the guidelines will have to be applied accordingly.

1. Avoiding loss of existing visual access and protecting view corridors provided by streets and other public areas leading to the waterfront and using structural design and building siting techniques to preserve or retain visual access and minimize obstruction of views.

2. Siting structures and other development such as highways, power lines, and signs, back from shoreline or in other inconspicuous locations to maintain the attractive quality of the waterfront and to retain views to and from this area;

3. Clustering or orienting structures to retain views, save open space and provide visual organization to a development;

4. Providing view corridors to the waterfront in those locations where new structures would block views of the waterfront from inland public vantage points.

5. Carefully incorporating existing structures (especially historic buildings) into the overall development scheme of the waterfront;

6. Removing deteriorated and/or degrading elements from the view;

7. Maintaining or restoring original land forms, except when changes screen unattractive elements and/or add appropriate interest;

8. Maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing appropriately creates views of coastal waters;

9. Using appropriate materials, in addition to vegetation, to screen unattractive features and elements;

10. Allowing the vegetative or structural screening of an industrial or commercial waterfront site if the resulting overall visual quality outweighs the loss of visual access.

11. Using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape, and do not block existing visual access.

12. Providing interpretative exhibits at appropriate locations for visual access to enhance public understanding and enjoyment of views of waterfront lands and waters.

13. Providing visual access to areas of high visual quality including community waterfronts, water-dependent uses, natural resources, and panoramas of the Niagara River and Lake Ontario.

AGRICULTURAL LANDS POLICY

Policy 26 Conserve and protect agricultural lands in the state's coastal area

Explanation of Policy

Although agriculture is a prominent land use in the Town of Porter, there are only six properties in the LWRA where farming or other agricultural activities occur. This land use accounts for approximately 150 acres of land, with a little more than half of this acreage located in a designated agricultural district. Nonetheless, the continued use of this land for agriculture is encouraged.

Implementing a policy of promoting agricultural use of land must, to be practical, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use as the result of some public action. The many other factors such as markets, taxes, and regulations that influence the viability of agriculture in a given area can only be addressed on a Statewide or national basis. This policy requires a concern for the loss of any important agricultural land. However, the primary concern must be with the loss of agricultural land when that loss would have a significant effect on an ability of agricultural uses in the area to continue to exist, prosper and expand.

It must be determined whether a proposed public action would result in the loss of important agricultural lands as identified in the waterfront area. If it is determined that an action would result in the loss of identified agricultural lands, but that loss would not have an adverse effect on the viability of agriculture in the surrounding area, then the action may be consistent with this policy. However, such action must be undertaken in a manner that would minimize the loss of important farmland. If the action is determined to result in a significant loss of important agricultural land, then the action is not consistent with this agriculture policy.

The following guidelines define what must be considered in making the above determinations:

1. A public action would likely significantly impair the viability of an important agricultural area if:

   a. The action would occur on identified agricultural land and would:

      (1) Consume more than 10 percent of the land of an active farm,
      (2) Consume a total of 100 acres or more of identified important agricultural land, or
      (3) Divide an active farm with identified important agricultural land into two or more parts, thus impeding efficient farm operation or reducing the size of farmed acreages to less than 25 acres.

   b. The action would result in environmental changes that may reduce the productivity or adversely affect the quality and use of any identified agricultural lands.

   c. The action would create real estate market conditions favorable to the conversion of large areas of identified agricultural land to non-agricultural uses. Such conditions may be created by:

      (1) Public water or sewer facilities to serve non-farm structures.
      (2) Transportation improvements, except for maintenance of and safety improvements to, existing facilities that serve non-farm or non-farm related development
      (3) Major non-agribusiness commercial development adjacent to identified agricultural lands
      (4) Major public institutions
      (5) Residential uses other than farm dwellings
      (6) Any change in land use regulations applying to agricultural land that would encourage or allow land uses that are incompatible with the agricultural use of the land.

2. The following types of facilities and activities should not be construed as having adverse effects on the preservation of agricultural land:

   a. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for supplementing farm family income.

   b. Agricultural business development, which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation.

3. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural land or, if it must be sited on identified important agricultural land, it should be done in a manner that avoids disturbance of land according to the following priority:

   a. Prime or unique farmland in orchards or vineyards,

   b. Other prime farm land in active farming,

   c. Farmland of Statewide importance in active farming,

   d. Active farmland identified as having high economic viability,

   e. Prime farmland not being farmed, and

   f. Farmland of Statewide importance not being farmed.

4. Where possible, development should be undertaken in a manner, such as conservation subdivision or clustering, that preserves land for continued or future agricultural use through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land should have priority over any other proposed multiple use of the land.

ENERGY AND ICE MANAGEMENT POLICIES

Policy 27 Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location

Explanation of Policy

New York's overall annual energy demand has begun to flatten over time, in part due to the success of State and utility energy efficiency programs. However, peak load (the highest amount of energy consumption in a given year) has continued to increase at a more rapid pace.[i] Renewable power sources—

[i] 2015 New York State Energy Plan, Vol. 1, p. 27.

hydro, solar, wind, and other carbon-free solutions—also continue to grow as a share of the total energy produced in the State.[ii] Significant investments in the billions of dollars are needed to replace New York's aging electric transmission and distribution infrastructure just to meet currently projected energy demand.[iii] To respond to these significant shifts in the State's energy infrastructure, State energy policies are being designed to maintain energy system reliability during peak load in ways that improve the grid's overall system efficiency, from both energy transmission and capital investment perspectives.[iv]

The New York State energy planning process provides a comprehensive framework for improving the State's energy system, addressing issues such as environmental impacts, resiliency, and affordability.[v] Key areas of focus for New York's energy planning and implementation policies include integration of renewable energy generation; local energy generation that can foster both economic prosperity and environmental stewardship; seeking innovative energy solutions across the State's public facilities and operations; increasing energy efficiency; and decreasing greenhouse gas emissions.[vi] New York's energy policy is also central to how the State responds to the challenges presented by a changing climate. New York State's energy planning recognizes that extreme weather events demand more resilient energy infrastructure, and that climate change presents both challenges and opportunities to lead and innovate.[vii] A determination of public need for energy is the first step in the process for siting new facilities. The directives for determining this need are contained primarily in Article 6 of the New York State Energy Law. That Article requires the preparation of a State Energy Plan. With respect to transmission lines and the siting of major electric generating facilities, Articles 7 and 10 of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for providing additional electric capacity. The policies derived from the siting regulations under these Articles are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Law. That law is used for the purposes of ensuring consistency with the Coastal Management Program.

The NYS Department of State (DOS) will present testimony for the record during relevant certification proceedings under Articles 7 and 10 of the Public Service Law when appropriate, and use the State SEQR and DOS regulations to ensure that decisions regarding other proposed energy facilities (not subject to

[ii] 2015 New York State Energy Plan, Vol. 1, p. 10.
[iii] 2015 New York State Energy Plan, Vol. 1, pp. 25-26.

[iv] 2015 New York State Energy Plan, Vol. 1, p. 27.

[v] 2015 New York State Energy Plan, Vol. 1, p. 9.

[vi] 2015 New York State Energy Plan, Vol. 1, p. 7; 2015 New York State Energy Plan, Vol. 1, p. 11.

[vii] 2015 New York State Energy Plan, Vol. 1, p. 17.

Articles 7 and 10 of the Public Service Law) that would affect the coastal area are consistent with coastal policies.

There are no land uses in the Town of Porter Local Waterfront Revitalization Area (LWRA) that generate energy through the burning of oil, gas or coal. Furthermore, there are no lands in the LWRA that can be used or are proposed to be used for this purpose. Although the Town of Porter recognizes the State's position on the public need and siting of energy generating and transmission facilities, uses that burn oil, gas or coal to generate energy are considered inappropriate in the LWRA and should be discouraged, as they would adversely affect the rural character of the waterfront area, would be a detriment to recreational tourism and would not provide significant public benefit to the Town.

Policy 28 Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding

Explanation of Policy

Ice buildup on the Niagara River is not formally managed along the Town of Porter waterfront. However, prior to undertaking local, State or Federal actions required for ice management, an assessment must be made of the potential effects of such actions upon fish and wildlife habitats, flood levels and the potential for flood damage, rates of shoreline erosion and the potential for shoreline damage. Following such an examination, adequate methods of avoidance or mitigation of any potential effects must be utilized if the proposed action is to be implemented.

Policy 29 The development of offshore uses and resources, including renewable energy resources, shall accommodate New York's long-standing ocean and Great Lakes industries, such as commercial and recreational fishing and maritime commerce, and the ecological functions of habitats important to New York

Policy 29A Conserve energy resources and promote alternative energy sources that are self-sustaining, including solar powered energy generation.

Explanation of Policy

The State recognizes the need to develop new indigenous energy resources. Among the various energy sources being examined are those that may be found on the Outer Continental Shelf (OCS) or in Lake Ontario. The State has been encouraging the wise development of both. As the Outer Continental Shelf does not extend into the channel of the Niagara River or off the shoreline of the Town of Porter, Policy 29 is not applicable.

The State encourages the responsible development of renewable energy resources. Wind, wave, tidal, and water current resources located offshore New York are an increasing focus of development interest, which may continue to grow as projects become more technologically feasible. Offshore renewable wind energy development is a use which depends on the utilization of resources found in coastal waters. The State recognizes offshore projects directly interconnected to the New York electrical grid as qualifying for eligibility as a dependent use at the same level as though the facility were located within the State.

The Town of Porter also recognizes the need to develop new renewable sources of energy. However, the Town recognizes that such development may endanger the environment and adversely impact important shoreline amenities and the quality of life in the Porter LWRA. The waterfront is a significant recreational resource in the Town and has the potential for increased tourism development. Therefore, any form of energy development in the offshore waters of Lake Ontario is discouraged in or adjacent to the waters of the Porter LWRA.

Although the Town does not support the use of offshore waters for the generation of alternative sources of power, energy conservation and the use of local small-scale sources for generating alternative energy is encouraged in upland areas of the LWRA. The conservation of energy should be an important part of prudent future planning for the waterfront. Energy efficiency can be achieved through several means that fall under the jurisdiction of the Town, including:

1. Promoting energy efficient design in new development, particularly LEED certification;

2. Promoting greater energy generating efficiency through upgrades of existing public and private facilities; and

3. Allowing the use of small-scale solar, geo-thermal or wind energy generating systems.

WATER AND AIR RESOURCES POLICIES

Policy 30 Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards

Explanation of Policy

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater, but also plant site runoff, leachate, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Regulated industrial discharges are both those that directly empty into receiving coastal waters and those that pass through the municipal treatment systems before reaching the local waterways. The discharge of any and all pollutants from municipal, industrial and commercial uses into the Niagara River, Lake Ontario or local creeks shall conform to all State and Federal water quality standards and be in full compliance with all applicable regulations that govern such discharges.

Policy 31 State coastal area policies and management objectives of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint

Explanation of Policy

Pursuant to the Federal Clean Water Act of 1977 (PL 95-217) the State has classified its coastal and other surface waters in accordance with the consideration of the best usage of these waters, with full regard to the interest of the public, and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. The policies and objectives of the Town of Porter Local Waterfront Revitalization Program shall be factored into the review process for the waters in the Niagara River, Lake Ontario, Four Mile Creek and other local creeks, in particular Six Mile Creek, where water quality has not been assessed. However,

such consideration shall not affect any water pollution control requirements established by the State pursuant to the Federal Clean Water Act.

In the review of existing water quality classifications for these waterways, it should be recognized that these classifications are not indicative of actual water quality conditions. Any review of local surface waters should take into consideration existing conditions of waterbodies as noted in the Statewide Inventory of Specific Waterbodies, and utilize the Waterbody Inventory/Priority Waterbodies List as a base resource for the evaluation and revision of water quality classifications (see Section 2.7 in the Inventory and Analysis).

Policy 32 Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities

Explanation of Policy

All lands located within the Town of Porter Local Waterfront Revitalization Area are fully serviced by public sanitary sewer service. There are no facilities that utilize alternative or innovative sanitary waste systems in this area. Therefore, this policy is not applicable. However, in unsewered areas of the waterfront where septic systems are in use, proper maintenance practices must be promoted to protect water quality and ensure that these systems are functioning effectively.

Policy 33 Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters

Explanation of Policy

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of stormwater runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g., construction of retention basins) are not economically feasible. There are no combined sewer overflows in the Town of Porter. Proposed amendments to the Clean Water Act, however, will authorize funding to address severe water quality impacts. Until funding for such projects becomes available, non-structural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

Policy 34 Discharge of waste materials into coastal waters from vessels subject to state jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas

Explanation of Policy

All untreated sanitary waste from vessels is prohibited from being discharged into the surface waters in the Town of Porter Local Waterfront Revitalization Area. The waters of the Niagara River and the Lake Ontario are State-designated vessel waste no discharge zones. Boaters using these waterways are prohibited from discharging sanitary or other wastes from their vessels into the water. All vessels using the surface waters within the Town of Porter Local Waterfront Revitalization Area are required to utilize available vessel waste pump-out facilities for proper disposal of vessel waste.

POLICY 35 Dredging and filling in coastal waters and disposal of dredged material will be undertaken in a manner that meets existing State permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands

Explanation of Policy

Dredging, filling, and dredge material disposal are activities that are typically necessary in waterfront communities. Activities such as the maintenance of navigation channels at sufficient depths or pollutant removal, are necessary to support recreation and commercial boating activity and protect environmental resources. Such projects, however, can adversely affect water quality, fish and wildlife habitats, wetlands, and other important coastal resources. These adverse effects can be minimized through the careful design and timing of the dredging or filling activities, proper siting of dredged material disposal sites, and the beneficial use of dredged material. Such projects shall only be permitted in the Town of Porter Local Waterfront Revitalization Area if they satisfactorily demonstrate that any potential and anticipated adverse effects will be reduced to levels that satisfy State permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15 – Water Resources and 24 – Freshwater Wetlands), and are consistent with other local policies pertaining to the protection and use of coastal resources (LWRP policies 8, 15, 19, 20, 25 and 44).

Policy 36 Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur

Explanation of Policy

There are no major facilities in the Town of Porter Local Waterfront Revitalization Area that store or ship petroleum or other hazardous materials. These practices are not permitted within the Town of Porter LWRA. Small scale uses, such as gas stations or industrial uses, that store these materials are regulated by the New York State Department of Environmental Conservation and are required to operate in full compliance of all State (and Federal) regulations. (See Policy39).

Policy 37 Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters

Policy 37A Green infrastructure will be utilized, where appropriate, to improve stormwater discharges to local waterbodies

Explanation of Policy

Best management practices should be used to reduce non-point sources of pollution that degrade local surface water quality. The Town of Porter is a member of the Western New York Stormwater Coalition and has incorporated Stormwater Management provisions under Section 200-84 of the Town Code. All development activities that are undertaken in the Town's Local Waterfront Revitalization Area shall conform to these provisions and employ all necessary best management practices to prevent and address non-point source pollution.

In general, non-point pollution of surface waters should be minimized using the following best management practices and approaches, which are presented in order of priority.

1. Limit non-point source pollution by:

   a. Reducing or eliminating the introduction of materials that may contribute to nonpoint pollution;

b. Minimizing the disturbance of creeks and streams, including their bed and banks, in order to prevent erosion of soil, increased turbidity, and irregular variation in velocity, temperature, and water level;

c. Avoiding activities that would increase off-site stormwater runoff and transport of pollutants;

d. Controlling and managing stormwater runoff to minimize transport of pollutants, restore degraded conditions and achieve no-net increase of runoff where unimpaired stormwater runoff conditions exist;

e. Retaining or establishing vegetation to maintain and provide soil stabilization, and filtering capacity;

f. Preserving natural hydrologic conditions to maintain natural surface water flow characteristics and retaining natural watercourses and drainage systems where present; and

g. 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 policy 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 Non-Point 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 pre-development 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 greatest extent practical the runoff of contaminants to surface waters.

2. Hydro-modifications

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 Niagara River, Lake Ontario and local creeks that are tributary to the lake.

b. Use vegetative means, wherever 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, Lake Ontario and local creeks, 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 local surface waters.

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

In addition, where appropriate, the Town should invest in, and require, the utilization of green infrastructure to manage stormwater runoff. Green infrastructure is a sustainable means of preventing pollution while simultaneously bringing nature back to urban environments. Green infrastructure practices include techniques such as green roofs, roadside plantings, bioswales and enhanced tree pits, rain gardens, permeable pavement and the minimization of impervious surfaces, downspout disconnections and rainwater harvesting. These techniques improve water quality and transform rainwater from a source of pollution into a valuable community resource.

Green infrastructure practices should be incorporated into Town regulations, where applicable. The Town of Porter should require all private development and redevelopment projects to utilize green infrastructure in their designs to the greatest extent possible. Furthermore, private owners of existing properties in the LWRA should be encouraged to retrofit their properties and businesses with green infrastructure, whether it is the simple use of rain barrels or more substantial improvements to manage stormwater runoff.

Policy 38 The quality and quantity of surface water and groundwater supplies, will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply

Explanation of Policy

Public water supply in the Town of Porter is provided by the Niagara County Water Authority. Potable water is drawn from the Niagara River at the County's water treatment plant in the Town of Wheatfield for distribution to municipal customers. There are no primary or sole sources of water supply in the Town of Porter Local Waterfront Revitalization Area. Therefore, this policy is not applicable.

Policy 39 The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats,

recreation areas, important agricultural land, and scenic resources

Policy 39A The location of petroleum and other hazardous material shipment and storage facilities, junk/salvage yards, recycling facilities, or waste transfer facilities shall be prohibited within the Local Waterfront Revitalization Area.

Explanation of Policy

Solid wastes include sludge from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes. Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous waste is defined in Environmental Conservation Law (Section 27-0901[3]), as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed, transported or otherwise managed." Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

There are no facilities in the Town of Porter LWRA that store or treat solid and hazardous wastes. These practices and activities are not permitted in the waterfront area. Although the transport of these substances is not prohibited in the Town, it is discouraged. Solid waste and hazardous substances and materials that are transported through the Town's Local Waterfront Revitalization Area should be done so using routes and methods that protect the safety, well-being, and general welfare of the public; the environmental resources of the Town and State; and the transportation corridors and highways that are properly designated for such transport.

Policy 40 Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to state water quality standards

Explanation of Policy

There are no major steam electric generating or industrial facilities that discharge into coastal waters in the Town of Porter local waterfront revitalization area. Therefore, this policy is not applicable.

Policy 41 Land use or development in the coastal area will not cause national or state air quality standards to be violated

Explanation of Policy

New York's Coastal Management Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation pursuant to the Clean Air Act and State laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the coastal area. To the extent possible, the State Implementation Plan will be consistent with coastal lands and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan. There are no land uses in the Town of Porter Local Waterfront Revitalization Area (LWRA) that manufacture chemicals or other goods, or that generate energy through the burning of oil, gas or coal, thereby releasing emissions of constituents that result in the violation of Federal and State air quality standards. Furthermore, there are not lands in the LWRA that can be used in such a manner. Additionally, energy generating and transmission facilities are considered inappropriate uses that would not provide significant public benefit in the Town of Porter LWRA.

Policy 42 Coastal management policies will be considered if the State reclassifies land areas pursuant to the Prevention of Significant Deterioration regulations of the federal clean air act

Explanation of Policy

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

There are no land uses in the Town of Porter Local Waterfront Revitalization Area that manufacture chemicals or other goods, or that generate energy through the burning of oil, gas or coal, thereby releasing emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, particulate matter, sulfuric acid mist, or other constituents that result in deteriorated air quality. Furthermore, there are not lands in the LWRA that can be used for this purpose. Additionally, energy generating and transmission facilities are considered inappropriate uses that would not provide significant public benefit in the Town of Porter LWRA. Therefore, any consideration of this policy by the State of New York in the reclassification of land areas pursuant to the Prevention of Significant Deterioration regulations should take this factor into consideration.

Policy 43 Land use or development in the coastal area must not cause the generation of significant amounts of acid rain precursors: nitrates and sulfates

Explanation of Policy

There are no land uses or activities located or undertaken in the Town's Local Waterfront Revitalization Area that generate air pollutants that contribute to the generation of acid rain. Furthermore, there are no areas in LWRA where such industrial development could occur. Energy generating and transmission facilities are considered inappropriate uses that would not provide significant public benefit in the Town of Porter LWRA. Therefore, this policy is not applicable.

WETLANDS POLICY

Policy 44 Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas

Explanation of Policy

Freshwater wetlands include marshes, swamps, bogs, and flats that support aquatic and semi-aquatic vegetation and other wetlands so defined in the NYS Freshwater Wetlands Act and the NYS Protection of Waters Act. There are no tidal wetlands in the Town's Local Waterfront Revitalization Area.

The benefits derived from the preservation of freshwater wetlands include, but are not limited to, the following:

- habitat for wildlife and fish, including a substantial portion of the State's recreational fish species; and contribution to associated aquatic food chains;
- erosion, flood and storm control;
- natural point and non-point source pollution treatment;
- protection of groundwater supplies;
- recreational opportunities;
- educational and scientific opportunities; and
- value as aesthetic open space in otherwise densely developed areas.

Wetlands in the Town of Porter Local Waterfront Revitalization Area include portions of the creek corridors along Four Mile Creek and Six Mile Creek and small isolated areas on the Niagara Frontier Country Club, as well as larger wetland complexes in the upland areas of Sub-Area 1. These areas should be protected in accordance with State and Federal requirements, and enhanced where possible to improve their habitat value.