

SECTION 3

STATE AND LOCAL COASTAL POLICIES

3.1 DEVELOPMENT POLICIES

POLICY 1 Restore, revitalize, and redevelop deteriorated and under utilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.

Policy 1A

Concentrate redevelopment efforts in the Hamlet of Olcott and its harbor through the revitalization of marinas and marine service facilities and expansion of these facilities in the harbor and adjacent areas. Proceed with development of the Outer Harbor breakwaters and new marina development.

Policy 1B:

Encourage the restoration of the Olcott Hotel for tourist and recreation related facilities and the revitalization of deteriorated residential and commercial facilities in Olcott and Burt. Promote development of additional overnight accommodation.

Policy 1C:

Promote the restoration of use of Eighteen Mile Creek for fishing, recreation and limited boating activity.

Policy 1D:

Encourage the development of parking, navigation, highway and other services to support major waterfront uses.

Explanation of Policy:

At the confluence of Eighteen Mile Creek and Lake Ontario, Olcott has demonstrated the need for significant marine activity (54.6% of all county boat launches). Existing facilities are often overburdened and incapable of meeting current demands for launching, dockage, parking and sport fishing services. The harbor offers the regional attraction and marine services to capitalize on redevelopment efforts. Restoration of the diverse functions and facilities in the harbor is the top priority of the waterfront program.

Restoration and development of marine and recreation facilities (water-dependent) should be first concentrated in the Olcott Harbor of Eighteen Mile Creek. Adjacent

uplands are reserved for uses which depend on their proximity/access into these uses, will enhance their existence or will provide support services (see Policy 2). As the harbor will not accommodate all future needs for marine services, areas immediately adjacent to the harbor should be given first consideration in expansion of facilities to capitalize on existing marine development. This includes the area outside the Federal Piers (outer harbor).

The Lake Ontario shoreline in Olcott should also be included in designated water-related redevelopment efforts. Efforts should focus on swimming and marine commerce. The areas west of the Federal Piers and in Krull Park need to be preserved for their natural beach and swimming opportunities. The area east of the Federal Piers is appropriate for expansion of marina and safe harbor development. The Army Corps of Engineers has proposed construction of an outer harbor project consisting of construction of a system of breakwaters to create a boat basin and harbor of refuge on Lake Ontario at the mouth of Eighteen Mile Creek. An 800 ship marina and waterfront boardwalk would be developed in conjunction with this project.

The following additional guidelines shall be used to determine the consistency of proposed actions with this policy:

- a. Priority will be given to uses which depend on a location in or adjacent to the waterfront including marine facilities, hydroelectric power generation, water related recreation.
- b. Actions must enhance existing and intended uses in the Olcott Harbor area or at least not detract from or compromise efforts to restore and revitalize development in the Olcott Harbor area.
- c. Redevelopment and other actions should improve the deteriorated condition of the harbor and adjacent residential and commercial areas and not cause further deterioration.
- d. The action should serve as a catalyst for private investment in the area and reinforce the economic base of the Olcott Harbor area.
- e. Development actions should be coordinated to achieve multiple benefits of enhancing existing water-related uses, revitalizing deteriorated uses, restoring economic opportunities in the Olcott Harbor area and integrating land and water uses.
- f. Actions in the LWRA should improve adjacent and upland views of the harbor and the lake and must not effect local vistas.
- g. New development actions should be compatible with the scale, intensity and architectural character of the area.

Related Policies: 21, 27.

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

Policy 2A:

Promote the location of marine, recreation and support facilities in or adjacent to Olcott Harbor.

Policy 2B:

Promote the use of swimming, lake commerce and marine services along Lake Ontario within the Olcott area.

Policy 2C:

Encourage the siting of water-enhanced uses in upland areas east of the Olcott Harbor, adjacent to the Town Marina and along Route 18 (hotel, restaurants, camping, etc.).

Policy 2D:

Encourage the siting of uses requiring large quantities of water or a water-oriented location at Burt.

Explanation of Policy:

Most of Newfane's waterfront is severely limited in shore line development due to the existence of steep bluffs which inhibit access and increase development costs. The only continuous area of natural access is located in the Olcott Harbor area. This is also an area of existing beaches, parks (Town and County) and infrastructure. The past patterns of haphazard development in Olcott has not adequately provided for water-dependent uses resulting in a mixture of marine and residential uses along the coast and a high competition for space in a limited geographic area. The only way to insure the stability and prosperity of uses compatible with the water-oriented location of the harbor is to actively promote and enhance their prominence in siting along the shoreline.

The focus of boating and sport-fishing recreational activities in the Olcott Harbor area capitalizes on both traditional harbor uses and the availability of existing marine facilities. As such, appropriate water-dependent uses to be promoted and afforded preferential siting as water-dependent in the Olcott Harbor include:

- a. Recreational activities which depend on access to coastal waters (fishing, boating).
- b. Facilities needed to store and service boats (marinas, marine service/repair).
- c. Support facilities which are necessary for the successful functioning of permitted water-dependent uses (parking, snack bars, public restrooms, first-aid stations, etc.) although sited inland, as much as possible, from the shore.

The availability of beaches and the park along Lake Ontario in Olcott provides the best opportunity for swimming. Potential lake access also makes this area more compatible for outer harbor expansion and siting of shipping facilities due to limited harbor space. As a result, the following water-dependent uses are identified for preferential siting on the Lake Ontario shoreline:

- a. New harbor of refuge and marina (ACOE Outer Harbor Project).
- b. Structures needed for navigational purposes (lighthouses).
- c. Flood and erosion protection structures (breakwaters, bulkheads).
- d. Recreational activities which depend on access to coastal waters (swimming, boating).

Other uses, although viable for waterfront siting, cannot be accommodated within the limited area available in Olcott. The only notable exception is the hydroelectric facility at Burt (Burt Dam) for local power generation and user of large amounts of water (Eighteen Mile Creek) for processing.

Uses which will be enhanced by a waterfront location and further the siting of water-dependent uses will be encouraged to locate in areas adjacent to the Olcott shore. These include restaurants, marine/fishing supplies (ships store, tackle, bait) and tourist/recreational uses that will be able to capitalize on a waterfront view and/or promote and complement in-water facilities. However, these should not be afforded preference over water-dependent uses. In other parts of the LWRA, recreational uses such as tourist facilities, golf courses, parks, etc., may be sited in the coastal area to incorporate a coastline or waterfront view.

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 use which involves an irreversible, or nearly irreversible commitment of land. Parking lots, passive recreational facilities, outdoor storage areas, and nonpermanent structures are uses or facilities which would be considered "temporary" non-water dependent uses.

The following additional guidelines will be used to determine the consistency of proposed actions with this policy:

- a. The Town will use its zoning powers, authority to issue water/sewer permits and SEQRA (6NYCRP Part 617) to identify and allow preferential locations for water-dependent uses.
- b. Prospective uses will be sited in areas appropriate to their water access needs and consistent with requirements for public services (e.g. considerations of needs for a sheltered site, navigation channel access, sewer/water service, etc.) to resolve conflicts between competing uses.
- c. New uses will be developed so as to be compatible and complementary with adjacent uses and not compromise the character or environmental quality of the community.
- d. Promotion efforts shall focus on the revitalization or development of underutilized sites to enhance area use.
- e. The Town will utilize all means of incentive and promotion, where applicable, to encourage the siting of water-dependent uses including capital programming, property tax abatements, loan guarantees/rate reductions, favored lease arrangements for publically owned land and others.

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.

NOT APPLICABLE

Explanation of Policy:

Previously a commercial port was considered, but has been dropped due to non-feasibility.

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.

NOT APPLICABLE

Explanation of Policy:

Olcott Harbor is not a smaller harbor as defined by this policy.

POLICY 5

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

Policy 5A:

Concentrate development/redevelopment efforts in the Olcott area where public services and facilities are adequate to accommodate such uses.

Policy 5B:

Encourage improvement of public sewer and water facilities commensurate with planned coastal development in the Olcott area.

Explanation of Policy:

Olcott and the immediately adjacent areas are the only portions of the LWRA where sewer, water and transport facilities are available. It is also where substantial investments have been made in parks, harbor access/navigation, private development and marine services. Development contrary to this policy would compromise those investments and initially cause either added public costs or the under utilization of existing facilities.

These services have been carefully programmed to accommodate planned growth. The concentration of redevelopment in Olcott, therefore, reinforces existing development and promotes their complete utilization before any expansion should take place. Through capital programming, the Town will concentrate new development in sewered areas and insure the consistency of actions with this policy.

This policy will be fostered through the strengthening of the Olcott area, promoting an orderly growth/redevelopment pattern, reducing the need for new services in outlying areas, capitalizing on sufficient open space and encouraging energy conservation through the integration of community uses (residential, commercial, recreational).

Any large-scale development or action that encourages future development should be considered in relation to the following guidelines:

- a. Congestion and circulation in Olcott are existing problems that should not be compounded by new development.

- b. Principal water supplies are sufficient for new development although areas in Olcott east and west of the harbor require larger mains.
- c. The sewage treatment plant is adequate for residential and commercial uses but is limited for industrial solids.
- d. Development sites should be within 500 feet of public sewer and water.
- e. All other services (police, fire, health, parks, etc.) are adequate to handle new development in the Olcott area.

It is recognized that certain forms of development may and/or should be at locations which 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.

- a. Economic activities which depend upon sites at or near locations where natural resources are present.
- b. Development which by its nature is enhanced by a non urbanized setting, e.g., a resort complex, campgrounds, second home developments.
- c. Development which is designed to be a self-contained activity, e.g., a small college, an academic or religious retreat.
- d. Water dependent uses with site requirements not compatible with this policy or when alternative sites are not available.
- e. Development which because of its isolated location and small-scale have little or no potential to generate and/or encourage further land development.
- f. Uses and/or activities which because of public safety consideration should be located away from populous areas.
- g. Rehabilitation or restoration of existing structures and facilities.
- h. Development projects which are essential to the construction and/or operation of the above uses and activities.

In the Olcott area where development and redevelopment is encouraged by this policy, the condition of existing public water and sewage infrastructure may necessitate improvements. Those Town, State and Federal agencies charged with allocation of funds for investments in water and sewer facilities should give high priority to the needs of the Olcott area so that full advantage may be taken of the array of other existing infrastructure components in promoting waterfront revitalization.

POLICY 6

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

NOT APPLICABLE

Explanation of Policy:

The Town currently utilizes site plan review procedures, a local SEQRLaw, the joint USCOE/NYSDEC permit application and will incorporate the LWRP in local codes/regulations. The Town also uses one-stop review (coordinated by the supervisor for large projects) joint submission of proposals/permits when multiple agencies are involved and conducts consolidated public hearing procedures, where applicable. Other efforts are considered beyond the administrative and financial capability of the community.

3.2 FISH AND WILDLIFE POLICIES

POLICY 7 Significant Coastal Fish and Wildlife Habitats, as identified on the coastal area map, shall be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.

Explanation of Policy:

IMPACT ASSESSMENT:

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

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

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

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

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

Significant impairment is defined as reduction in vital resources (e.g., food, shelter, living space) or change in environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism. Indicators of a

significantly impaired habitat focus on ecological alterations and may include but are not limited to reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

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

The range of parameters which should be considered in applying the habitat impairment test include but are not limited to the following:

1. physical parameters such as living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (including loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates;
2. biological parameters such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, meristic features, behavioral patterns and migratory patterns; and,
3. chemical parameters such as dissolved oxygen, carbon dioxide, acidity, dissolved solids, nutrients, organics, salinity, and pollutants (heavy metals, toxics and hazardous materials).

Although not comprehensive, examples of generic activities and impacts which could destroy or significantly impair the habitat are listed below to assist in applying the habitat impairment test to a proposed activity.

Policy 7A:

The Eighteen Mile Creek - Lake Ontario Significant Coastal Fish and Wildlife Habitat shall be protected, preserved, and, where practical, restored so as to maintain its viability as a habitat.

Any activity that substantially degrades water quality, increases temperature or turbidity, reduces flows, or alters water depths in Eighteen Mile Creek would adversely affect the fish and wildlife resources of this area. These impacts would be especially detrimental during fish spawning and nursery periods (late February-July for most warmwater species and steelhead, and September-November for most salmonids), and wildlife breeding seasons (April-July for most species). Discharges of sewage or stormwater runoff containing sediments or chemical pollutants (including fertilizers) could adversely impact on fish or wildlife species. Of particular concern are the potential effects of upstream disturbances, including water withdrawals, stream bed disturbances, and effluent discharges. Hydroelectric facilities on the creek should only be permitted with run-of-river operations. Barriers to fish migration, whether physical or chemical, could have a significant impact on fish populations in the creek. Disturbances of wetland vegetation, including submergent beds, through dredging, filling, or bulkheading, would result in a direct loss of valuable habitat area. Enhancement of motorboat access to the area above Route 18 would significantly increase human disturbance of the habitat, reducing its potential value to many fish and wildlife species. Existing woodlands bordering Eighteen Mile Creek should be maintained to provide bank cover, perching sites, soil stabilization, and buffer areas.

Policy 7B:

The Hopkins Creek wetland will be protected as a locally important habitat for seasonal fishing and wildlife.

Explanation of Policy:

The fish habitats of Newfane are its most valuable resources in that they are the primary attraction for sport-fishing and boating. Eighteen Mile Creek supports cold water fish migrations in the spring and fall and limited warm water breeding. Hopkins and Keg Creeks provide seasonal migrations and support breeding in the upper reaches. These habitats provide critical area fish feeding and nursery opportunity and are of substantial recreation value to the area that would be impossible to replace.

In order to protect and preserve a significant habitat, land and water uses or development shall not be undertaken if such actions 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 capacity, 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 significant coastal fish and wildlife habitats include but are not limited to the following:

1. Draining wetlands, ponds: Cause changes in vegetation, or changes in groundwater and surface water hydrology.
2. Filling wetlands, shallow areas of streams, lakes, bays, estuaries: May change physical character of substrate (e.g., sandy to muddy, or smother vegetation, alter surface water hydrology).
3. Grading land: Results in vegetation removal, increased surface runoff, or increase soil erosion and downstream sedimentation.
4. Clear cutting: May cause loss of vegetative cover, increase fluctuations in amount of surface runoff, or increase streambed scouring, soil erosion, sediment deposition.
5. Dredging or excavation: May cause change in substrate composition, possible release of contaminants otherwise stored in sediments, removal of aquatic vegetation, or change circulation patterns and sediment transport mechanisms.
6. Dredge spoil disposal: May induce shoaling of littoral areas, or change circulation patterns.
7. Physical alteration of shore areas through channelization or construction of shore structure: May change volume and rate of flow or increase scouring, sedimentation.
8. Introduction, storage or disposal of pollutants such as chemical, petrochemical, solid wastes, nuclear wastes, toxic material pesticide, sewage effluent, urban and rural runoff, leachate of hazardous and toxic substances stored in landfills: May 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 which should be considered include but are not limited to the following:

1. Physical parameters such as: Living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates.
2. Biological parameters such as: Community structure, food chain relationships, species diversity, predator/ prey relationships, population size,

normality rates, reproductive rates, behavioral patterns, and migratory patterns.

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

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

POLICY 8

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

Policy 8A:

Protect Eighteen Mile Creek from future upstream pollution and the introduction of hazardous wastes from adjacent industrial uses and municipal surcharges through monitoring and permit review program by state and local agencies.

Policy 8B:

Encourage the clean-up of hazardous sediment accumulation in Eighteen Mile Creek which threatens critical fish/wildlife habitats.

Explanation of Policy:

Testing of sediments in Eighteen Mile Creek by the US Army Corps of Engineers (September 1981) demonstrated that toxic levels of contamination exist in the wetland and harbor. Samples were determined to be polluted with high levels of arsenic, iron, manganese, mercury and zinc. The concentration level increases with samples taken upstream. Twice in the late 1970's, fish in Lake Ontario were banned from consumption due to contamination of the food chain that began appearing in fish catches. In order to protect critical fish habitats in the LWRA, it is not only necessary to eliminate the introduction of hazardous wastes, but also remove the existing accumulation that is being trapped in creek sediments.

Most upstream industries are now regulated with respect to waste. Newfane industries are currently sewered as are those in Lockport. However, fertilizer

from rural runoff and surcharges during wet weather from the Lockport Sewer Treatment Plant add modest amounts to the existing problem. These continue to drift downstream and settle in the creek where accumulation levels increase.

Hazardous wastes are unwanted by-products of manufacturing and generally characterized as being flammable, corrosive, reactive or toxic. They are defined as wastes, individually or in combination, that may cause illness, increase mortality or pose a hazard to human health or environment due to their characteristics. The adopted NYSDEC list of hazardous wastes is contained in 6NYCRR Part 371.

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

POLICY 9

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

Policy 9a:

Promote the expansion of access to Eighteen Mile Creek, Hopkins Creek, Keg Creek and the Lake Ontario shoreline for fishing and improvement of fish stock (Hopkins Creek).

Policy 9B:

Support and encourage increases in the NYSDEC fish stocking program at Olcott.

Explanation of policy:

Recreational uses of coastal fish and wildlife resources include consumptive uses such as fishing and hunting, and non-consumptive uses such as wildlife photography, bird watching and nature study. The promotion of access to coastal wetlands via boat and bank trails from Fisherman's Park, the renovation of the old railroad trestle over Eighteen Mile Creek and the improvement of fishing access to Keg and Hopkins Creek support this policy. The expansion and diversification of fish stocking on Eighteen Mile Creek will help substantiate the wetland and encourage its use (warm water species feeding/spawning).

Any efforts to increase recreational use of these resources will be made in a manner which ensures the protection of fish and wildlife resources in marine and freshwater coastal areas and which takes into consideration other activities dependent on these resources. Also such efforts must be done in accordance with dependence on these resources. Such efforts must be done in accordance with existing state law and in keeping with sound resources management considerations. Such considerations include biology of the species, carrying capacity of the resources, public demand, costs and available technology.

The following additional guidelines should be considered in determining the consistency of a proposed action with these policies:

- a. Consideration should be made by Town, Federal and State agencies as to whether an action will impede existing or future utilization of recreational fish and wildlife resources.
- b. Efforts to increase access to recreational fish and wildlife resources should not lead to overutilization of those resources or cause impairment of a habitat (see Policy 7).
- c. Any public or private sector initiatives to supplement existing stocks (e.g., stocking a stream with fish reared in a hatchery) or develop new resources (e.g., creating private fee-hunting or fee-fishing facilities) must be done in accord with existing State Law.
- d. Stocking programs will be directed toward areas where known habitats will support and enhance fish population.
- e. The siting of public access facilities should be given a higher priority if facilities will be located in areas already affording public access (i.e. the development will improve and upgrade an existing facility) and areas where supporting infrastructure exists.

Related Policies: 19, 20, 21.

POLICY 10

Further develop commercial finfish, shellfish and crustacean resources in the coastal areas by: (i) encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of the State's seafood products; and (iii) maintaining adequate stocks and expanding aquaculture facilities. Such efforts shall be in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them.

NOT APPLICABLE

Explanation of Policy:

Policy 10 is not applicable to Newfane which has no history of commercial fishing. The ban on fish eating of Lake Ontario species and the sports fishery objectives for this area suggests a conflict between commercial utilization of lake fish and the sports fishery industry. The possibility of a commercial fish processing facility for scrap fish exists, however, the necessary infrastructure (i.e. port, sewer, water, and land availability) is not adequate.

3.3 FLOODING AND EROSION POLICIES

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

Policy II A:

In-water structures (e.g. docks, bulkheads, breakwalls, etc.) along Lake Ontario and in Olcott Harbor should be constructed to withstand continuous inundation and be coordinated with Federal and State agencies for consistency in design and effectiveness.

Explanation of Policy:

The entire lakefront of Newfane is subject to erratic erosion due to storms, wind, steep slopes, and lack of soil stability. While significant efforts were directed toward Lake Ontario shoreline protection in the mid-1970's following storms, varying results and degrees of property owner participation have not solved the problem. Some homes left unprotected are perilously close to the bluff endangering lives and property. While the policy is only applicable in the 2500 foot hazard area west of Phillips Road, it is useful to the entire lakefront. Solutions to this problem will follow a dual approach:

- a. Restrictions on new structures to insure adequate set back from the shore to guard a 40-year investment (minimum 100' feet) will be insured through site plan review.
- b. The review of proposed structures in developed areas will be coordinated to retard erosion consistent with 6NYCRR Part 505.

In-water structures are defined as structures which are wholly or partially in the water, whether physically connected to the land or not. Typically, they include

fixed and floating boat docks, launch ramps/rails, shoreline protection; breakwalls, etc.

Flood hazards are concentrated in Olcott (along the beaches) and along Hopkins and Keg Creeks due to the existence of bluffs elsewhere. Structures will be sited in accordance with the Federal Emergency Management Agency flood maps (360504-005B and 0010B) and conform with applicable Federal and state regulations for use and construction in flood hazard and flood prone areas.

Where human lives may be endangered by major coastal storms, all necessary emergency preparedness measures will be taken, including disaster preparedness planning.

POLICY 12

Activities or development in the coastal area will be undertaken 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. Primary Dunes will be protected from all encroachments that could impair their natural protective capacity.

Explanation of Policy:

The coastal area contains shoreline bluffs and beaches along Lake Ontario which are natural protective features that reduce erosion and help safeguard human life and property. The bluffs also coincides with the Phillips Road erosion hazard area (see Inventory and Analysis) and are subject to an average erosion rate of 1.0 feet per year in this area. Excavation, protection structures, coastal development and waterfront actions must respect the fragile nature and protective value of these features and not diminish or destroy their capacity. Their natural capability will be preserved through site plan review and adherence to state regulations for Coastal Erosion Hazard Areas.

POLICY 13

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

Explanation of Policy:

Erosion protection structures are widely used throughout the coastal area. However, because of improper design, construction and maintenance standards, many fail to give the protection which they are presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will help ensure the reduction of such damage or loss.

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

Guidelines and criteria that will be utilized to advance this policy include:

1. An assessment of the effectiveness of proposed structural erosion control systems will be made to insure adequate design and protect adjacent property.
2. Erosion control systems will be viewed in a comprehensive manner rather than a piecemeal system of individual approaches. In areas of high erosion potential this will serve to address the issue of differential erosion.
3. Site plan and developmental reviews will contain provisions to address erosion through structural control measures, if required.

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

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:

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

POLICY 17

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

Explanation of Policy:

This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the waterfront area as well as the costs of protection against those hazards which structural measures entail. As identified in the Inventory and Analysis, erosion areas apply to the Lake Ontario Shoreline (particularly the hazard area near Phillips Road) and flood areas apply to Olcott, Keg Creek and Hopkins Creek.

Recognizing the high cost and potentially adverse impacts of such structural measures as groins, dams and bulkheads, Newfane addresses this policy by identifying "non-structural measures" appropriate to its shoreline, including:

1. Within identified Coastal Erosion Hazard Areas:
 - a. the use of setbacks as provided for in Environmental Conservation law (Article 34, 6NYCRR Part 505),
 - b. the strengthening of coastal landforms by the planting of appropriate vegetation on bluffs, the reshaping of bluffs to reduce the potential for

slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce run-off and internal seepage of waters.

2. Within identified flood hazard areas:

- a. the siting of new development or activities outside the flood hazard areas to avoid the risk of damage; and
- b. the flood proofing of buildings or their elevation above the base flood level.

This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing activities and development. To ascertain consistency with the policy, it must be determined if any one or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development, and to the hazard.

3.4 GENERAL POLICY

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

Explanation of Policy:

Proposed major actions may be undertaken in the LWRA if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State and the Town have established to protect those waters and resources. Proposed actions must take into account the social, economic and environmental interests of the State and its citizens in such matters that would affect natural resources, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

3.5 PUBLIC ACCESS POLICIES

POLICY 19 **Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources.**

In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

Policy 19A:

Protect, maintain and enhance access at existing parks (Krull Park, Town Marina, Fishermen's Park) and improve vehicular and pedestrian circulation and awareness of these public opportunities.

POLICY 19B:

Improve access to the Federal Piers and conduct the necessary legal steps to insure permanent future use of these facilities.

Policy 19C:

Insure that new development in Olcott area provides for public access to the shoreline, where applicable, or at least does not reduce the opportunity for waterfront access.

Policy 19D:

Encourage access to Eighteen Mile Creek fishing areas and the downstream side of Burt Dam.

POLICY 19E:

Encourage access to fishing and wildlife observation areas along Hopkins and Keg Creek.

Explanation of Policy:

The access problems in Olcott are the lack of easy access to the Federal Pier and the lack of parking and circulation opportunities to support existing public access. Other existing coastal resources that need improved access include Eighteen Mile Creek (both at Olcott Harbor and near Burt Dam), Hopkins Creek and Keg Creek (seasonal fish migrations). Scenic resources at Route 18 and Transit Road should be improved (turn-off/parking, etc.) at the street end. The Town has acquired, through NYS Dept. of State grant funding, the north side of Ontario Street to expand the waterfront side of the park and protect lake access.

Actions that will advance this policy include:

- Parking expansion at Fishermen's Park and the Town Marina.
- Improve parking for access to East Federal Pier.
- Insure that private Ontario Street development provides for public access to Krull Park.
- Provide fishing access to Eighteen Mile, Keg and Hopkins Creeks via trails and/or easement access on adjacent properties.

In order to facilitate this policy, actions in LWRP that are part of or adjacent to the shoreline shall demonstrate that public access to water-related facilities and resources will be protected or enhanced prior to authorization. Guidelines for this include:

- a. The existing access from Town and County parks and public lands or facilities to Lake Ontario and its tributaries shall not be reduced, nor shall the possibility of increasing access in the future be eliminated, unless estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access.
- b. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:
 - (1) The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
 - (2) The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.
- c. The Town of Newfane will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
- d. Access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability for the accessway.
- e. Newfane will closely monitor improvements on Ontario Street, the Olcott Yacht Club, Town Marina and Burt Dam to protect and enhance public access opportunities (see projects described in Task IV).

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 should be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

Policy 20A:

Construct public boardwalk and marina as part of Outer Harbor Project.

Policy 20B:

Encourage restoration of the hotel pier in Krull Park for access to fishing opportunities adjacent to public lands.

Policy 20C:

Obtain access and use of the west beach (west of the Federal Piers) for public use.

Explanation of Policy:

In coastal areas where there are little or no recreation facilities providing specific water-related recreational activities, access to the publicly-owned lands of the coast at large should be provided for numerous activities and pursuits which require only minimal facilities for their enjoyment. Such access would provide for walking along a beach or a city waterfront or to a vantage point from which to view the seashore. Similar activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, fishing and hunting.

The old hotel pier in Krull Park provided fishing and aesthetic opportunities to complement area development for over 50 years. Its current state of disrepair makes it unusable and a hazard to near-shore navigation that must be corrected. Other than the Town Marina, the only other significant foreshore opportunity is the beach west of the Federal piers. Currently under private ownership public access and use is a high priority of this program and Town efforts.

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

1. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated.
2. The possibility of increasing public access in the future should not be precluded by proposed actions, including construction of public facilities;

prevent the provision, except at great expense, of convenient public access to public coastal lands and/or waters; sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters; or construction of private facilities which physically prevent public access to public coastal lands and/or waters.

3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development such as at Burt Dam where adjacent Eighteen Mile Creek is available to Route 78.
4. Improvements in access to public water-related resources and facilities along Lake Ontario shall be provided in accordance with estimated levels of use such as a pull off at Transit Road (at the lake) for viewing.
5. The Town of Newfane will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

POLICY 21

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

Policy 21A:

Recreational boating and fishing will be the primary water dependent uses in the coastal area concentrated in the Olcott Harbor area and Outer Harbor Project. Enhanced uses include Krull Park improvements and fishing facilities at Burt Dam.

Explanation of Policy:

The heart of the access and development focus of the Newfane LWRP is embodied in this policy. Critical recreational opportunities are concentrated in Olcott and include swimming, boating and scenic/passive recreation on Lake Ontario and fishing, boating and others in the Harbor. The parks and streets of the hamlet become the trail system linking Krull Park, waterfront access, beaches, marinas, and support services. These uses need to be increased as estimates of three to four times the dockage expansion of Olcott Harbor have been made requiring significant increases in facilities.

Water-related recreation facilities identified to advance this policy include expansion of the Town Marina and private harbor docks for boating; the reconstruction of the old hotel pier in Krull Park and the construction of a Fishermen's Trail at Burt Dam; and improvements to Krull Park (amphitheater, golf course, beach, etc.) to diversify recreation opportunities in the waterfront and accommodate rising demand. In addition, marine development is proposed for concentration around the NYS Route 18 bridge over Eighteen Mile Creek to protect, along with local regulations, the Eighteen Mile Creek wetland from further marine disruption.

Among the types of water-dependent recreation, provision of adequate boating services (e.g., toilet, parking, pumpout facilities) to meet future demand is to be encouraged consistent with preservation and enhancement of other coastal resources.

Any actions in the LWRA must consider the enhancement of existing recreation opportunities as expressed in this policy and the prospect of enlargement or the provision of new opportunities. Any actions so drafted will be given consideration above non-water related actions consistent with the protection/enhancement of other coastal resources.

Priority will also be given to proposals/actions that remove barriers to access to the shoreline. Critical areas of need include the East Federal Pier, west beach, the east side of Olcott Harbor and Lake Ontario. Areas of additional need outside the harbor include Burt Dam, Eighteen Mile Creek below the dam, Hopkins and Keg Creeks and scenic areas between Krull Park and Transit Road along Route 18 (especially at Transit Road overlooking the lake).

Related Policies: 1, 5, 19, 20 and Task IV.

POLICY 22

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

Explanation of Policy:

Many developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore, whenever 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 use cannot be foreseen.

The types of development which can generally be anticipated in Newfane to provide water-related recreation as a multiple use include but are not limited to:

- parks
- hydroelectric stations
- utility transmission rights of way
- sewage treatment facilities
- religious facilities/retreats
- schools, universities
- nature preserves
- large residential subdivisions
- commercial centers

Appropriate recreation uses which do not require any substantial additional construction shall be provided at the expense of the project sponsor provided the cost does not exceed 2 percent of total project cost.

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

3.6 HISTORIC AND SCENIC RESOURCES POLICIES

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

Policy 23A:

Protect archaeological resources along Eighteen Mile Creek and Lake Ontario.

Explanation of Policy:

There are no historic or architectural site/structures of national or state significance in the Newfane LWRA. Local cultural and historic sites, which may be eligible for State or Federal historic designation, include:

- Krull Park and the Early Pioneer Cabin – adjacent to Lake Ontario, the park has long been a tourist landmark and area of local cultural significance.
- Olcott Amusement Park – an example of 1940's amusements, rides and games.
- Olcott Hotel and Pier – old Main Street hotel that attracted tourists to the area from the late 1800's.
- Cemetery – located on Route 18 on the American Mission property, it dates back to the early 1800's and includes early area settlers.
- Old Grist Mill Site (Burt) – site of the first area mill built by Van Horn (early town leader).

As a recognized resource within the coastal areas, appropriate structures/sites should be protected and enhanced as part of the development review process. Their existence should be identified and promoted as a valuable part of area recreation/tourism activities. These facilities should not be altered, demolished, improved, visually impaired or adversely impacted without a full assessment of the effects and options for preservation.

Eighteen Mile Creek has been identified as archaeologically sensitive and, therefore, of significance to New York State and Newfane. Five sites are designated on the New York State Archaeological Site Inventory Map as being within the LWRA and one site is south of the LWRA on Eighteen Mile Creek. These sites include:

- two burial mounds on Eighteen Mile Creek
- a Proto-Iroquoian Village (near Hopkins Creek)
- two camp sites (Olcott Orchard, Keg Creek)
- Olcott Bridge Site

All projects in the LWRA involving filling, dredging, excavation, construction or actions leading to these activities shall consult local archaeological source (Historic Preservation Offices, County Historian, SUNY at Buffalo Anthropology Department) for the exact location and procedures for archaeological sites and their protection.

POLICY 24 Prevent Impairment of Scenic Resources of Statewide Significance

NOT APPLICABLE

Explanation of Policy:

There are no scenic resources identified in the coastal area of statewide significance and local scenic resources along the shoreline do not appear to meet the criteria as established by this policy.

POLICY 25

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

Explanation of Policy:

In order to unify the visual quality and protect vistas of local significance, the following visual and aesthetic elements should be restored, preserved and enhanced whenever possible in the coastal area:

- Views of Lake Ontario from Olcott, Krull Park, Route 18 and the street ends (Transit Road, Lockport-Olcott Road, Jackson Street, etc.) are excellent due to the high bluff elevation for overlook of the lake.
- The "fishing village" atmosphere of Olcott Harbor and its shoreline from NYS Route 18 and the east sides of the harbor are a result of the calm water, boat moorings and the structures crowding the shore.
- Views of Eighteen Mile Creek gorge (Route 18 bridge, railroad right-of-way at Burt, Burt Dam, Fisherman's Park, etc.) that include the gorge walls, trees, wetland vegetation and water in a serene setting.

The principle scenic resources are the Eighteen Mile Creek corridor (Burt Dam to NYS Route 18) and Lake Ontario vistas from NYS Route 18. While the creek possesses the most significant scenic quality (vegetation, water, topography, etc.), its access/view is very difficult. Boating and the Burt Dam Fishing Trail (see Section IV) are specifically intended to capitalize on this resource.

When considering a proposed action, which would not affect a scenic resource of statewide significance, agencies shall ensure that the action would be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. Activities which could impair or further degrade scenic quality include modification of natural landforms, removal of vegetation, etc. However, the effects of these activities would not be considered as serious for the general coastal area as for significant scenic areas.

Guidelines for actions and development to protect scenic resources and further this policy include:

1. Promote the clustering of development to provide unobstructed views of the lake or provide open space for vistas from a central, public, waterfront location.
2. Landscape features should incorporate scenic elements where feasible and utilize materials to enhance the overall scenic quality of the area.
3. Land forms and vegetation along Eighteen Mile Creek will be protected from development by proper siting and restriction from disruption.
4. Action in Olcott Harbor shall strive to reduce deterioration and restore the aesthetic quality of the harbor.
5. Street ends and municipal lands will be maintained and enhanced to provide access to coastal visual resources.

3.7 AGRICULTURAL LANDS POLICY

POLICY 26 **To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss, nor impair the productivity, of important agricultural lands, as identified on the coastal area map, if that loss or impairment would adversely affect the viability of agriculture in an agricultural district or if there is no agricultural district, in the area surrounding such lands.**

Explanation of Policy:

Important agricultural lands in the LWRA are located north of NYS Route 18 outside of the Hamlet of Olcott (east of Krull Park and west of West Creek Road). These are prime lands that contain the unique combination of soils, drainage, water, wind and climate for high value agricultural production. The entire area is protected by agricultural districts, but is still subject to modest development pressures (west of Olcott) due to the availability of public sewer and water. Any new development must justify elimination of this resource and determine that the action will not be significantly harmful to coastal agriculture.

Any action in the LWRA must be assessed to determine the effect, if any, on important agricultural lands as mapped on the State Coastal Inventory. Actions not affecting such lands or not affecting the viability of surrounding agriculture, may be consistent with this policy. Actions resulting in a significant loss of or adverse affect on important farmland would be considered inconsistent with this policy. This determination is more fully defined by the following guidelines:

- A. A public action would be likely to significantly impair the viability of an agricultural area in which identified important agricultural lands are located if:

1. The action would occur on identified important agricultural land and would:
 - a. consume more than 10% of the land of an active farm containing such identified important agricultural lands;
 - b. consume a total of 100 acres or more of identified important agricultural land; or
 - c. divide an active farm with identified important agricultural land into two or more parts thus impeding efficient farm operation.
2. The action would result in environmental changes which may reduce the productivity or adversely affect the quality of the product of any identified important agricultural lands.
3. The action would create real estate market conditions favorable to the conversion of large areas of identified important agricultural land to non-agricultural uses. Such conditions may be created by:
 - a. public water or sewer facilities to serve non farm structures;
 - b. residential uses other than farm dwellings;
 - c. any change in land use regulations applying to agricultural land which would encourage or allow uses incompatible with the agricultural use of the land.

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

1. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for farm family supplemental income.
2. Agribusiness development which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation, e.g. milk hauler, grain dealer, farm machinery dealer, veterinarian, food processing plants.

C. In determining whether an action that would result in the loss of farmland is of overriding regional or Statewide benefit, the following factors should be considered:

1. For an action to be considered overriding it must be shown to provide significantly greater benefits to the region or State than are provided by the affected agricultural area (not merely the land directly affected by the action). In determining the benefits of the affected agricultural to the region or State, consideration must be given to its social and cultural value, its economic availability, its environmental benefits, its existing and potential contribution

to food or fiber production in the State and any State food policy, as well as its direct economic benefits.

- a. An agricultural area is an area predominantly in farming and in which the farms produce similar products and/or rely on the same agribusiness support services and are to a significant degree economically inter-dependent. At a minimum this area should consist of at least 500 acres of identified important agriculture land. For the purpose of analyzing impacts of any action on agriculture, the boundary of such need not be restricted to land within the coastal boundary. If the affected agricultural lands lie within an agricultural district then, at a minimum, the agricultural area should include the entire agricultural district.
- b. In determining the benefits of an agricultural area, its relationship to agricultural lands, outside the area should also be considered.
- c. The estimate of the economic viability of the affected agricultural area should be based on an assessment of:
 - i. soil resources, topography, conditions of climate and water resources;
 - ii. availability of agribusiness and other support services, and the level and condition of investments in farm real estate, livestock and equipment;
 - iii. the level of farming skills as evidenced by income obtained, yield estimates for crops, and costs being experience with the present types and conditions of buildings, equipment, and cropland;
 - iv. use of new technology and the rates at which new technology is adopted;
 - v. competition from substitute products and other farming regions and trends in total demand for given products;
 - vi. patterns of farm ownership for their effect on farm efficiency and the likely hood that farms will remain in use.
- d. The estimate of the social and cultural value of farming in the area should be based on an analysis of:
 - i. the history of farming in the area;
 - ii. the length of time farms have remained in one family;
 - iii. the degree to which farmers in the area share cultural or ethnic heritage;
 - iv. the extent to which products are sold and consumed locally;
 - v. the degree to which a specific crop(s) has become identified with a community.

- e. An estimate of the environmental benefits of the affected agriculture should be based on analysis of:
 - i. the extent to which the affected agriculture as currently practiced provides a habitat or food for wildlife;
 - ii. the extent to which a farm landscape adds to the visual quality of an area;
 - iii. any regional or local open space plans, and degree to which the open space contributes to air quality;
 - iv. the degree to which the affected agriculture does, or could, contribute to the establishment of a clear edge between rural and urban development.

D. Whenever a proposed action is determined to have an insignificant adverse effect on identified important agricultural land or whenever it is permitted to substantially hinder the achievement of this policy, then the required minimization should be undertaken in the following manner:

- 1. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural, or, if it must be sited on identified important agricultural land, sited to avoid classes of agricultural land, according to the following priority:
 - a. prime farmland in orchards or vineyards
 - b. unique farmland in orchard or vineyards
 - c. other prime farmland in active farming
 - d. farmland of statewide importance in active farming
 - e. active farmland identified as having high economic viability
 - f. prime farmland not being farmed
 - g. farmland of statewide importance not being farmed
- 2. To the extent practicable, agricultural use of identified important agricultural land not directly necessary for the operation of the proposed non agricultural action should be provided for through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land shall have priority over any other proposed multiple use of the land.

3.8 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.**

Policy 27A:

Encouragement of restoration of hydroelectric generation at the Burt Dam.

Explanation of Policy:

Demand for energy in New York will increase, although at a rate slower than previously predicted. The State expects to meet these energy demands through a combination of conservation measures; traditional and alternative technologies; and use of various fuels including coal in greater proportion. One such opportunity is the Burt Dam. Originally constructed as a hydroelectric generating station years ago, the facility has been restored to provide area power generation again consistent with acceptable environmental impact mitigation to protect downstream resources in the LWRA.

A determination of public need for energy is the first step in the process for siting any new facilities. With respect to transmission lines and steam electric generating facilities, Article VII 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 a shorefront location. With respect to electric generating facilities, environmental impacts associated with siting and construction will be considered by one or more State agencies or, if in existence, an energy siting board. The policies derive from the siting regulations under these Articles are entirely consistent with the general coastal zone polices derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization and Coastal Resources Act. That Act is used for the purposes of ensuring consistency with the Coastal Management Program and this Local Waterfront Revitalization Program.

POLICY 28 **Ice management practices shall not damage significant fish and wildlife and their habitats, increase shoreline erosion or flooding, or interfere with the production of hydro electric power.**

Explanation of Policy:

An assessment of potential effects of actions required for ice management must be made and determined that such actions avoid and/or mitigate impacts upon hydroelectric power production, fish and wildlife habitats, flood levels/damage, erosion rates and natural protective features.

POLICY 29 **Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.**

NOT APPLICABLE

This policy is not applicable to Lake Ontario as the physical feature of the lake effectively preclude off shore energy development.

3.9 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 ground water but also plant site run-off, leaching, spillage, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching the State's waterways.

POLICY 31

State coastal area policies and purposes of approved Local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over burdened 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 waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Local Waterfront Revitalization Programs and State coastal management policies shall be factored into the review process for coastal waters. However, such consideration shall not affect any water pollution control requirement established by the State pursuant to the Federal Clean Water Act.

The coastal area contains two major water receivers – Lake Ontario (Class A) and Eighteen Mile Creek (Class B from its mouth to Tributary 1; Class C from Tributary 1 to Burt Dam). While Eighteen Mile Creek contain polluted bottom sediments, Lake Ontario possess no current water quality limitations. Public sewers outflow into Lake Ontario (via the Town treatment plant on Route 18). As area soils do present a development limitation to septic systems, new development in the LWRA should be restricted to areas of available public sewers to avoid further degradation of coastal water quality.

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 existing tax base of these communities.

NOT APPLICABLE

Explanation of Policy:

The Newfane coastal area is saturated with high permeable soils that are prohibitive to septic system development. The Town has also made substantial investments in sewer treatment facilities and has sewerred about 50 percent of the LWRA and 70-80 percent of the coastal population. As such, the encouragement of separate, alternative sanitary systems (e.g. package plant, land spread, etc.) would endanger area water quality further and compromise public investments and expenditures to date.

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 storm water runoff and combined sewer overflows. Eighteen Mile, Keg and Hopkins Creek watersheds require proper storm water management to avoid erosion and control flood areas. Coastal soils are well drained and require management to avoid immediate flow into stream channels.

The Town of Newfane employs and will continue to employ the best non-structural practices in prohibiting inflow and infiltration into the waste water sewer system. The capacity of the total system is such that it is able to accommodate the majority of flows without surcharge under excess capacity.

Guidelines for incorporating effective storm water management into new development include:

- a. Provide specific criteria in site plan review processes which focus on storm water removal techniques, down stream capacities and construction management of drainage and sediment such as on-site retention, grading, straw dams during construction, sediments ponds, etc.
- b. Incorporate design standards as set forth by the Erie Niagara Regional Planning Board for development review.
- c. Utilize grading changes, landscape amenities and natural percolation as alternatives to piped storm water run off.

POLICY 34

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

Explanation of Policy:

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated. Priority will be given to the enforcement of this law in areas such as Eighteen Mile Creek where significant habitats water quality need protection from contamination by vessel wastes. Also, specific effluent standards for marine toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part

657). Public and private marinas and docking facilities will be required to install proper pump-out facilities for larger craft with disposal at the town facility.

POLICY 35

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

Policy 35A:

Maintain harbor entrance and depth by the US Army Corps of Engineers.

Policy 35B:

Promote the dredging of Olcott Harbor for removal of navigational obstructions (bridge abutment and silt flats in middle of channel) and expansion of marine facilities in the west harbor basin.

Explanation of Policy:

Dredging will prove to be essential for waterfront revitalization and development, maintaining navigation channels at sufficient depths, pollutant removal and meeting other coastal management needs.

Dredging will be needed to remove the bridge abutment in the harbor (old Main Street bridge), the silt flat in front of the Town Marina (north of Route 18) and in the west basin. Dredging will be prohibited south of Route 18. Such dredging projects, however, may adversely affect water quality, fish and wildlife habitats, and other important coastal resources. Often these adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the dredge spoil disposal site. Dredging permits will be granted if it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to levels which satisfy State dredging permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, and 34), and are consistent with policies pertaining to the protection of coastal resources (policies 7, 15, 25J 26 and 44).

Dredge material has been tested at the harbor entrance and found to be compatible with open lake disposal. Prospective material upstream will require impoundment/ secured disposal. All dredging in Eighteen Mile Creek will require adequate sediment testing and consolidated permit review/approval.

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 large-scale tank farms or other facilities for storage of hazardous materials within the LWRA. There are, however, two marina fuel filling stations – Hedley's and McDonough's Marinas in the Olcott Harbor. (Additionally, there is one upland filling and service station within the LWRA.) NYSDEC, the Coast Guard, and the Niagara County Health Department, all have jurisdiction over spills occurring within the harbor and have established procedures for dealing with offending parties and undertaking appropriate remedial action in the event of spills. NYSDEC also regulates the bulk storage of petroleum products (between 1100 and 400,000 gallons) pursuant to 6NYCRR Parts 612-614.

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:

Encourage the use of best management practices in agricultural and land development uses to reduce wind erosion.

Explanation of Policy:

Best management practices used to reduce these sources of pollution include, but are not limited to, soil erosion control practices and surface drainage control techniques. Through proper landscaping and planting methods and selection, construction techniques (e.g. hay bales), road salt application, and storage practices and land use controls, non-point source pollution can be controlled. Proper street cleaning is one management practice which can lessen non point source pollution as is contouring/tilling in agricultural areas.

Soils in the coastal (NYS Route 18 to the lake outside Olcott) are particularly subject to wind erosion (see Inventory and Analysis) if left uncovered or turned frequently. Agricultural and construction techniques such as contour plowing, straw on bare earth, early vegetative cover, watering, and site plan review must be used to reduce erosion opportunities.

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:

Surface and groundwater are the principle sources of drinking water in the State, and therefore must be protected. Newfane receives its public water supply from the Niagara County Water Authority, whose source is the Upper Niagara River, and serves the entire LWRA. The Town is interested in any upstream activity affecting the quality of their water supply and/or the recreational value of their surface water. In addition, any action which adversely affects the fish and wildlife habitats is of utmost importance when considering the economic vitality of the LWRA.

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 lands and scenic resources.

Explanation of Policy:

The definitions of terms "solid wastes" and "solid wastes management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludge from water pollution control facilities, demolition and construction debris and industrial and commercial wastes. While no specific facilities exist in the LWRA, they are generated at the treatment plant (sludge) and transported to the Philips Road composting site by Town forces.

Hazardous wastes are unwanted by-products of manufacturing processes 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 which improperly treated, stored, transported, disposed or otherwise managed." A list of hazardous wastes has been adopted by DEC (6NYCRR Part 371).

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

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.**

NOT APPLICABLE

Newfane does not possess major steam generating or industrial discharge facilities and is not likely to have any develop in the LWRA.

POLICY 41 **Land use or development in the coastal area will not cause National or State air quality standards to be violated.**

NOT APPLICABLE

Newfane is not the regional air quality maintenance area and is currently consistent with the State Implementation Plan. No facilities are proposed that would alter this condition.

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.**

NOT APPLICABLE

Newfane is not in a Federal air quality non-attainment area and no uses are proposed to compromise coastal air quality.

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

NOT APPLICABLE

No industrial, power or other facilities generating nitrates or sulfates exist or are planned in Newfane. This policy is not applicable.

POLICY 44

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

Policy 44A:

Develop a management plan for the Eighteen Mile Creek wetland for limited access excluding marine dockage.

Explanation of Policy:

State-designated freshwater wetlands exist on Eighteen Mile Creek from Route 18 bridge to Burt Dam and on Hopkins Creek. The Eighteen Mile Creek wetland is continually washed by upstream flow while the Hopkins Creek wetland is closed off from the lake most of the year by sediment at the mouth of the creek.

Eighteen Mile Creek has long been a navigable waterway and used for boat access to fish grounds in the shallow areas and private dockage.

At this time, the Town has determined not to pursue any dock activities south of the Route 18 bridge.

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and semi-aquatic vegetation and other wetlands so defined in the NYS Freshwater Wetlands Act and the NYS Protection of Waters Act.

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

- habitat for wildlife and fish, including a substantial portion of the State's commercial fin and shellfish varieties; and contribution to associated aquatic food chains;
- erosion, flood and storm control; natural pollution treatment;
- groundwater protection;
- recreational opportunities; educational and scientific opportunities; and
- aesthetic open space in many otherwise densely developed areas.